

**National Mental Health Commission**  
October 2021

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# Submission on the proposed NDIS legislative improvements and the Participant Service Guarantee



**Australian Government**  
**National Mental Health Commission**

# Introduction

Thank you for the opportunity to make a submission on the proposed National Disability Insurance Scheme (NDIS) legislative improvements and the Participant Service Guarantee.

In 2019, the National Mental Health Commission (the Commission) made ten recommendations to the 2019 review of the NDIS Act and the new NDIS Participant Service Guarantee (**Attachment A**). While it is acknowledged the legislative changes being made are in response to the recommendations made by the Tune Review, the Commission would like to take the opportunity to re-affirm our position on changes required to the NDIS in support of people with psychosocial disability.

Should you require clarification, or would like to discuss this submission in further detail, please contact Ms Alicia Harwood, a/g Director, at [alicia.harwood@mentalhealthcommission.gov.au](mailto:alicia.harwood@mentalhealthcommission.gov.au) or on (02) 8229 7531.

## Proposed NDIS legislative improvements and the Participant Service Guarantee

### Schedule 1

The Commission supports the legislative amendments that would allow changes to participant plans without the need to undergo a full review of the plan (item 22). Powers provided to the Commonwealth Ombudsman to independently monitor and report to the Government on how well the NDIS is improving the participant experience (item 54) is also supported.

While the Commission supports the intent of the inclusion of a timeframe for reviewing decisions (items 3-6, 13, 15, 22, 33-34 and 43), the Commission cautions that a quicker review of decisions about a person's access to the scheme and their plans within certain timeframes does not necessarily mean an improvement in their experience and could lead to an unintended consequence. There are risks associated with an over-emphasis on timeliness, including creating unintended incentives for service delivery staff to prioritise meeting targets over effectively addressing the needs of participants. It is therefore necessary that there is flexibility in timeframes to allow for circumstances where it would be in the participant's best interest to extend the time required to progress through the various stages of the NDIS access, planning or review. On this basis, we recommend the NDIS rules allow the CEO to consider and decide requests after 21 days of receiving a request strictly where it would benefit a participant to do so. Situations could include more time to gather evidence or make an informed decision that would be favourable to the participant. This needs to be reflected in all sections of the exposure draft that relate to timeframes for decision-making.

### Schedule 2

The Commission supports the legislative changes made to Schedule 2 and is pleased to see the importance of co-design being reflected in the Act (item 3), as well as the inclusion of lived experience as a criterion of eligibility for appointment as a Board Member (item 44). This inclusion of lived experience in both co-design processes and Board Membership must include lived experience of psychosocial disability. Furthermore, the Commission recommends the appointment of more than one Board Member with lived experience, with at least one member having lived experience of psychosocial disability. The Commission encourages the NDIA to work with peak mental health bodies and consumer and carer representative organisations to ensure the adequate participation of mental health consumers and carers when co-designing any aspect of the psychosocial disability stream.

The removal of 'psychiatric condition' and replacement with 'psychosocial disability' (items 14 and 17) is supported. However, while the Commission notes the intention of the changes to the NDIS (Becoming a Participant) Rule 2016 are to acknowledge the often fluctuating and episodic nature of psychosocial disabilities (items 16 and 18), the concept of

permanence remains. The NDIS (Becoming a Participant) Rules 2021 should be modified to reflect that the requirement for a condition to be permanent (or likely to be permanent) does not apply to psychosocial disability.

### Schedule 3

Given the NDIS is now available across Australia, the Commission supports the legislative changes to remove redundant provisions made in Schedule 3.