



Queensland Alliance for Mental Health

Proposed NDIS Legislative Improvements and the Participant Service Guarantee

Submission

7 October 2021



Queensland Alliance for Mental Health

Queensland Alliance for Mental Health (QAMH) is the peak body representing the Community Mental Wellbeing Sector in Queensland. QAMH advocates and supports member organisations to foster better outcomes for people experiencing mental health issues. We are committed to promoting the unique value the Community Mental Wellbeing Sector offers to the health care continuum within Queensland. QAMH is proud to work with its members and key partners, to influence system reform and enhance the contribution that the Community Mental Wellbeing Sector plays in people's lives.

A note on language

QAMH intentionally refers to the community managed mental health sector as the Community Mental Wellbeing Sector to emphasise the unique contribution and preferred future direction of the sector as outlined in our [Wellbeing First Report](#). This includes non-government, not-for-profit community-based mental health organisations that provide psychosocial supports and access to natural supports in the community.

QAMH contact details

433 Logan Road

Stones Corner QLD 4120

For any further information please contact:

Jennifer Black

Chief Executive Officer

Email: jblack@qamh.org.au

Tel: (07) 3394 8480

Background

For Australians living with disabilities, the National Disability Insurance Scheme (NDIS) promises a life-changing opportunity to access supports and services they require to effectively participate in society. However, teething problems were inevitable given the complexity, size and rapid roll-out of the NDIS. An independent review of the NDIS Act 2013¹ (the Tune Review) revealed these problems are particularly serious for people living with a disability resulting from mental illness (also known as psychosocial disability). This is not surprising given people living with a disability resulting from mental health challenges were the last group to be included in the NDIS, with initial planning focusing on meeting the needs of people living with physical and intellectual disabilities.² Key differences from other disabilities include the episodic nature of disabilities resulting from mental health illness, that can, at times be invisible and not well identified. For example, people living with depression, schizophrenia or other types of mental illness can experience occasions where they are unable to perform everyday activities, including simple tasks necessary to look after themselves, while other times their mental illness has less impact of their day-to-day functioning.²

QAMH appreciates the opportunity to provide a submission on the Proposed NDIS Legislative Improvements and the Participant Service Guarantee. However, we are disappointed in the short consultation period of four weeks, especially during a time many are preoccupied with COVID-19 outbreaks across the country. The consultation includes no less than 16 complicated, dense documents to review the proposed changes. From our perspective, this does not foster the “co-design” process that the National Disability Insurance Agency (NDIA) have committed to working towards. Our response to this consultation primarily focuses on changes relating people who experience mental health challenges which impact on their day-to-day functioning (referred to as “psychosocial disability” in the consultation documents).

What we support

QAMH welcomes most of the proposed changes to the NDIS Legislation and believes, overall, it is a step in the right direction in making the NDIS more inclusive, particularly for people who experience mental health challenges which impact on their day-to-day functioning.

¹ Tune, D. (2019). Review of the National Disability Insurance Scheme Act 2013.

https://www.dss.gov.au/sites/default/files/documents/01_2020/ndis-act-review-final-accessibility-and-prepared-publishing1.pdf

² Handcock, N. & Smith-Merry, J. (2020). *It's hard for people with severe mental illness to get in the NDIS – and the problems don't stop there*. The Conversation. <https://theconversation.com/its-hard-for-people-with-severe-mental-illness-to-get-in-the-ndis-and-the-problems-dont-stop-there-130198>

Eligibility

We welcome the proposed changes to the [NDIS \(Becoming a Participant\) Rules](#) which now recognises the fluctuating and episodic nature of some mental illnesses and helps clarify when someone with a “psychosocial disability” may be eligible for the NDIS.

This includes the addition of subsection 3 to section 24 of the NDIS Act, which states:

“For the purposes of subsection (1), an impairment or impairments to which a psychosocial disability is attributable and that are episodic or fluctuating may be taken to be permanent, and the person may be taken to be likely to require support under the National Disability Insurance Scheme for the person’s lifetime, despite the episodic or fluctuating nature of the impairments.”³

While in the proposed new [NDIS \(Becoming a Participant\) Rules](#), the legislative definitions of permanency (section 8 of the Exposure Draft) and substantial reduced functional capacity (section 10 of the Exposure Draft) for people living with or without “psychosocial disability”, enabling independent consideration of psychosocial impairments.

These proposed changes respond to recommendation 8 (a) of the Tune Review¹, to “provide clearer guidance for the NDIA in considering whether a psychosocial impairment is permanent, recognising that some conditions may be episodic or fluctuating.”

QAMH also acknowledges the proposed legislative changes does not include the introduction of independent assessments and welcomes this exclusion.

Establishment of specific timeframes

QAMH welcomes the new Participant Service Guarantee to support positive participant experiences with the NDIS, including the establishment of specific timeframes in which the NDIA must make critical decisions about a person’s access and action relating to their plans. Previously, some timeframes were vague – for example, “as soon as reasonably practical” or “nil” timeframes were provided, causing some participants unnecessary stress and anxiety.¹ We strongly support the addition of specific timeframes, keeping the NDIA accountable to NDIS participants, and responding in a timely manner. The Commonwealth Ombudsman will also have an important role in keeping the NDIA accountable by

³ Australian Government Department of Social Services. (2021). *Exposure Draft: National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Amendments) Bill 2021*. <https://engage.dss.gov.au/wp-content/uploads/2021/09/participant-service-guarantee-and-other-measures-ed-bill-2021.pdf>

monitoring the implementation of the Participant Service Guarantee, particularly the new timeframes established. QAMH recognises that the establishment of specific timeframes reflect the recommendations from the Tune Review¹, however our sector feels there is opportunity for the NDIA to be more ambitious.

Our concerns

A change in language

QAMH acknowledges the proposed changes to the NDIS Legislation includes the implementation of recommendation 8 (b) of the Tune Review¹, which replaces references to “psychiatric conditions” with “psychosocial disability”. However, QAMH does not support this type of language. The term ‘disability’ is not used in a mental health context, nor will people identify with “psychosocial disability”. QAMH recommends using person-first language. For example, people who experience mental health challenges which impact on their day-to-day functioning.

Ambiguous language

The proposed new [NDIS \(Becoming a Participant\) Rules](#) relating to permanency (section 8 of the exposure draft) and substantial reduced functional capacity (section 10 of the exposure draft) includes ambiguous language, leaving some points in the criteria open for interpretation. For example, section 8, subsection 2 states:

“The impairment may be considered permanent, or likely to be permanent, only if:

(a) both:

- (i) the person is undergoing, or has undergone, **appropriate treatment** for the purpose of managing the person’s mental, behavioural or emotional condition; and
- (ii) the treatment **has not led to a substantial improvement** in the person’s functional capacity, **after a period of time that is reasonable** considering the nature of the impairment (and in particular considering whether the impairment is episodic or fluctuates); or
- (b) no **appropriate treatment** for the purpose of managing the person’s mental, behavioural or emotional condition is **reasonably available** to the person.”⁴

QAMH is particularly concerned about the ambiguity of the language in bold above. Such language raises many questions, for example, what is considered “a period of time that is reasonable”? or what

⁴ Australian Government Department of Social Services. (2021). *Exposure Draft: National Disability Insurance Scheme (Becoming a Participant) Rules 2021*. <https://engage.dss.gov.au/wp-content/uploads/2021/09/becoming-participant-rules-final-0.pdf>

is considered “appropriate treatment”? To avoid the possibility of inconsistent decision-making by the NDIA, the Rules must provide clarity around these terms.

This will need to be co-designed with people accessing care, particularly in providing clarity around what is considered reasonable treatment, to ensure that quality of life is at the centre of these discussions. This is crucial given the relationship between what is provided by health vs what is provided by psychosocial support is complex let alone the relationship individuals have with the nature of mental health care. For example, someone might have experienced serious side effects of a treatment medication and may choose to live with a level of symptomatology to create a manageable life. This person should not be excluded by NDIA on the basis that they have not engaged in treatment.

Plan variation without consultation

QAMH is alarmed to see the proposed changes to the NDIS Act (and Rules) will allow the CEO of the NDIA to vary an NDIS participant’s plan on their own initiative. The [Exposure draft](#) of the NDIS Act includes the addition of section 47A: Variation of participant’s plan by the CEO which states:

“(1) The CEO may, in writing, vary a participant’s plan (except the participant’s statement of goals and aspirations).

Variation on CEO’s own initiative or on request

(2) The CEO may do so on the CEO’s own initiative or on request of the participant.”

QAMH is concerned that the proposed changes will allow the CEO to vary a plan without consultation, consent or request from an NDIS participant. In addition, the circumstances in which these powers can be applied are not constrained, nor are they reflective of those outlined in the Tune Review. For example, Section 10 of the Exposure draft for the proposed Plan Administration Rules sets out a list of matters in which the CEO must “regard” when deciding whether to vary a participant’s plan. The proposed changes appear broader than the recommendation from the Tune Review¹ which states “the NDIA is prevented from varying a plan under section 37(2) of the NDIS Act. As previously discussed, this review proposes removing this provision to allow a plan to be amended under **certain limited circumstances.**” QAMH does not support these proposed changes to the NDIS Act (and Rules) and recommends amending those changes to align and reflect the limited circumstances outlined in the Tune Review.

Ongoing Issues with the NDIS

Member organisations also raised concerns about ongoing issues with the NDIS, including:

- The NDIA's lack of accountability, and poor communication with providers, and clients. Member organisations have reported cases where plans have been discontinued overnight, leaving vulnerable people without supports.
- The NDIA's failure to consistently recognise the complex interface that exists between health and "psychosocial disability", leaving some member organisations concerned people are losing, or missing out of therapeutic supports in their NDIS plans. This is often the experience of people living with an eating disorder, and other co-morbidity challenges.
- The remuneration for recovery coaches compared with Support Coordination, and a reduction in Support Coordination hours where both roles are needed. Member organisations continue to question the decision making on the allocation of these hours.
- The NDIS disability model does not align with a wellness and Recovery Framework.
- The current siloed approach creates competition, rather than recognising the value of collaboration and the benefits this to the individual receiving supports.

We recognise that many of the above ongoing issues identified by member organisations may be out of scope for this consultation. QAMH will continue to advocate for change, and to improve the NDIS for people who experience mental health challenges which impact on their day-to-day functioning.