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mhcc
mental health coordinating council
PO Box 668 Rozelle NSW 2039
T 02 9555 8388
E info@mhcc.org.au
W www.mhcc.org.au

Joint Standing Committee on the National Disability Insurance Scheme
PO Box 6100
Parliament House
Canberra ACT 2600

E: ndis.sen@aph.gov.au

Submission: Inquiry into the NDIS Quality and Safeguards Commission

The Mental Health Coordinating Council (MHCC) is the peak body for community based mental health organisations (CMOs) in New South Wales. The purpose of the Council is to support a strong and sustainable community-managed mental health sector that delivers effective health, psychosocial and wellbeing programs and services to the people of NSW. MHCC provides its membership and the sector with policy leadership, promotes legislative reform and systemic change and offers resources and training to assist community-based organisations to deliver quality and effective services. The MHCC Learning and Development arm is a widely respected registered training organisation delivering nationally accredited mental health training and professional development courses.

MHCC thanks the Joint Standing Committee on the National Disability Insurance Scheme for the opportunity to provide input into the Inquiry into the NDIS Quality and Safeguards Commission, that seeks to examine systemic and ongoing issues about the operations and framework of the Commission. In making this submission MHCC has consulted with its members and the sector more broadly via a survey. This submission reflects the collated feedback. However, the time available for this submission has made it a difficult to consult more broadly. Nevertheless, our submission also includes anecdotal perspectives received over the course of the establishment and roll-out of the NDIS for people living with psychosocial disability in NSW.

MHCC note that the NDIS Commission's Quality and Safeguarding Framework includes the NDIS Practice Standards and the NDIS Code of Conduct (as well as detailed guidance materials); and that the NDIS Practice Standards (which have superseded the NSW Disability Service Standards).

Background

The NDIS Practice Standards and Quality Indicators (NDIS Practice Standards) ushered in a new nationally consistent outcome-focused approach by clearly stating the requirements of service providers from the perspective of a NDIS participant.

Since the introduction of the NDIS Practice Standards in July 2018, there has been significant emphasis on Complaints Management, Incident Management, Behaviour Supports and clarifying the role of workers. These four key activity areas have been supported by robust guidance materials.

Built into each Practice Standard is a continuous quality improvement element specific to the requirements of that practice standards. This approach to service quality is supported by the audit process as service providers are required to undertake a yearly audit which is largely concerned with a continuous quality improvement.

The Code of Conduct is a positive development for NDIS participants living with psychosocial disability as well as the NDIS provider supporting those NDIS participants. It gives effect to the rights of persons with disability by clearly outlining the role of workers providing supports to NDIS participants.

The NDIS Practice Standards are broadly applicable to a multitude of service provision models across a broad range of NDIS service provision sub-markets. In this submission MHCC make some observations regarding the NDIS Practice Standards and the Code of Conduct as they relate to psychosocial disability service provision including addressing the interests and rights of NDIS participants.

Community managed mental health service context

Before 2017, CMO/NGO psychosocial rehabilitation and support services delivered in community settings by community-managed mental health services were mostly block funded by state government and Commonwealth programs. Many of these programs have transitioned to the NDIS.

CMO/NGO services are delivered under the National Standards for Mental Health Services in keeping with key practice principles of 'Trauma- Informed Recovery Oriented Practice'. These principles represent the foundation of a best practice approach in delivering psychosocial support services; and as such should be reflected in the worker and provider Guidance to the Code of Conduct and the requirements of the NDIS Practice Standards.

Survey Findings

This submission specifically refers to two items described in the Inquiry's Terms of Reference:

> ***c) The adequacy and effectiveness of the NDIS Code of Conduct and the NDIS Practice Standard,*** **and**
>
> ***d) The adequacy and effectiveness of provider registration and worker screening arrangements, including the level of transparency and public access to information regarding the decisions and actions taken by the Commission.***

MHCC developed a survey to garner views from its members in line with these Items. Given the data set, we have been unable to draw firm conclusions. However, we can point to broad trends and issues emerging from the data. Please see following a summary of responses about the four areas identified in the survey:

1. Relative Complexity of the NDIS Practice Standards
2. Alignment with Psychosocial Disability Principles
3. Adequacy of Interim Worker Screening Arrangements
4. Behaviour Supports

Relative Complexity of the NDIS Practice Standards
The data was inconclusive as to the relative complexity of the NDIS Practice Standards compared to the NSW Disability Service Standards (in place in NSW prior to the NDIS Practice Standards) and the National Standards for Mental Health Services.

Adequacy of Interim Worker Screening Arrangements
Most survey participants noted that the Interim Worker Screening Arrangements in NSW were fit for purpose, and that the NDIS Commission requirements effectively mirror the worker screening requirements previously required in NSW under the NSW Disability Service Standards.

Alignment with Psychosocial Disability Principles
Survey participants agreed that the interests and rights of people living with mental health conditions were upheld by the NDIS Code of Conduct and the Guidance materials for Providers and Workers. Nevertheless, many would like to see the NDIS Code of Conduct and the Guidance materials for Providers and Workers better aligned to the principles of trauma-informed recovery-oriented practice.

For details about language and terminology in the Code of Conduct and the NDIS Practice Standards relating to psychosocial disability please see the General Comments section below.

Behaviour Supports
The survey asked questions regarding Implementation of behaviour support plans, and the delivery of Specialist Behaviour Supports for NDIS participants with lived experience of mental health conditions. Thecomments outlined below speak to the complexity of behaviour support requirements and issues raised with MHCC with respect to implementation of behaviour support plans.

MHCC received survey responses indicating that the registration requirements for Specialist Behaviour Support Practitioners and Service Providers implementing behaviour support plans are complex. The requirements under the NDIS are outlined in the following:

- A set of two NDIS Practice Standards: The Specialist Behaviour Support Module and the Implementing Behaviour Support Plans Module
- The Positive Behaviour Supports Framework and the Self-assessment Resource Guide for the Positive Behaviour Support Capability Framework; as well as
- Jurisdiction specific Restrictive Practice Authorisation requirements.

Survey participants also raised practical issues about the implementation of behaviour support plans, namely:

- Disability support worker understanding of Behaviour Support requirements including the ongoing reporting requirements
- Need for additional training for disability support workers on behaviours of concern as they relate to NDIS participants with psychosocial disability. (This would lay the foundation for training delivered by a Specialist Behaviour Support Practitioners about implementation strategies for a specific behaviour support plan).

General Comments

Further to Member Survey feedback, MHCC share some general comments in relation to potential amendments and additions to the:

1) **NDIS Practice Standards and Quality Indicators**

- We draw attention to the issue of language throughout both the Practice Standards and the Code of Conduct. Whilst the Standards frequently refer to the promotion of independence and informed choice, the use of the term "person-centred" in contemporary recovery thinking in a mental health/ psychosocial disability context is thought to promote self-determination less than the term 'person-centred and directed'. We would advocate that in promoting the principles of supported decision-making this terminology be amended to reflect this objective.

- Management of medication (p.17). We suggest to add to this indicator the need for workers to support participants' requests for medical review with health professionals; in relation to their concerns about side effects both on function and physical health/life outcomes; and where possible liaise with appropriate practitioners.

- Supporting the Assessment and Development of Behaviour Support Plans (p.28). *Relevant workers have the necessary skills to inform the development of the participant's behaviour support plan.* MHCC recommend adding the text - "including understanding the impact past and current trauma, which may represent a risk of re-traumatisation, and affect behaviours". (We refer here to for example, such circumstances in which the power differential has the potential to mirror past traumatic experiences). This point should include the skills to manage distress triggered by re-traumatisation (such as dissociation).

- Reportable incidents involving the use of restrictive practice (p.30). *Where an unauthorised restrictive practice has been used, the workers and management of providers implementing behaviour support plans engage in debriefing to identify areas for improvement and to inform further action. The outcomes of the debriefing are documented.* MHCC recommend that additional text be added that stresses that: *"e*very effort should be made to involve participants in providing feedback to inform improvement and redesign of strategies to minimise future use of restrictive practices".

2) NDIS Code of Conduct: Guidance for Workers

- In relation to the NDIS Code of Conduct (p.4). MHCC advocate that the Code be more inclusive of trauma-informed recovery principles of practice to better reflect a best practice approach for working with people living with psychosocial disability. This includes the acknowledgment of stigma and discrimination experienced by people living with psychosocial disability.

- In relation to *Act with respect for individual rights to freedom of expression, self-determination and decision-making in accordance with applicable laws and conventions* (p.5, Point 15). *People with disability have the right to choice and control about who supports them and how their supports and services are delivered.* MHCC suggest that the concept of "Will and Preference" be introduced here, and that this is defined in the Glossary.

  For example: Supported decision-making assumes that all people have capacity to make their own decisions and that these decisions are based of a person's 'will and preference', or their 'expressed wishes'. This is in contrast with the 'best interests' approach used in substitute decision-making models, where decision-making power is held by others, and decisions are driven by what others determine to be their 'best interests' which may or may not always be in line with the person's will (ALRC Summary Report 124, 2014).

Additionally, the concept of Capacity needs to be included in the Glossary. For example: Capacity refers to a person's ability to make his/her own decisions. These may be small decisions, such as what to do each day, or bigger decisions such as where to live or whether to have an operation. A person may lack capacity in some areas, but still be able to make other decisions.

- The Scenario (p.8) is confusing as it talks about formal Guardianship, and then focuses only on matters that relate to Financial Guardianship. It is important that workers understand the difference between a Guardianship Order and a Financial Management Order. Many workers would assume from this scenario that a Guardian has substitute decision-making powers related to financial matters, when in fact they do not have authority to make financial decisions on a person's behalf.

- *Communicate in a form, language and manner that enables people with disability to understand the information and make known their will and preferences* (p.9). The concept of "will and preference "is not defined in the Code. We recommend that this be included in the Glossary as suggested earlier in the Standards.

- Scenario (p.14) is a poorly described example of psychosocial disability. It could also be considered as stigmatising and judgemental. We would suggest a description that is more empathic. For example: *Since Jordan sometimes experiences extreme frustration as a consequence of his mental and physical health difficulties, he can become aggressive, and requires a BSP which specifies that two workers are required to support him shower.*

- MHCC recommend that the Glossary (p.34) include definitions of the terms: psychosocial disability; capacity, supported decision-making; Guardianship and Guardianship Orders; Financial Management Orders.

3) NDIS Code of Conduct: Guidance for Providers

- MHCC reiterate comments made earlier about defining the concept of "will and preference" in the Guidance for Workers. This would assist particularly in relation to point 22 (p.9).

- Point 21 (p.8) refers to Legal Guardian, this document would also benefit from some description about the different Guardianship roles, length of orders, and powers granted (which may be different according to participant need).

- Other comments regarding language, clarity and where the same scenarios are used, in the Guidance for Workers, equally applies to the Guidance for Providers.

MHCC expresses its willingness to be consulted further on this Inquiry; and acknowledges the contributions of those Members who assisted by providing feedback. For any further information about this submission, please contact

Carmel Tebbutt
Chief Executive Officer
Mental Health Coordinating Council