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Submission for the Standing Committee on Community
Affairs (Legislation Committee) Inquiry into the National
Disability Insurance Scheme Amendment (Participant
Service Guarantee and Other Measures) Bill 2021

November 2021

Patron: His Excellency General the Honourable David Hurley AC DSC (Retd)

President: Mick Reid AM

Introduction

Mental Illness Fellowship Australia (MIFA) thanks the Standing Committee on Community Affairs (Legislation Committee) for the opportunity to provide feedback on the inquiry into the National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill 2021 ('the NDIS Amendment Bill'). We are pleased to see that so many of the proposed changes aim to implement the recommendations of the Tune Review 2019 and we provide comments on those changes that relate specifically to psychosocial disability and recovery-oriented practice. We are hopeful that these changes will assist people with psychosocial disability to successfully apply for supports under the NDIS and increase the rate of successful applications, which has previously been lower than for other forms of disability.¹

Changes relating to psychosocial disability

We are pleased that the proposed legislative changes are an improvement on the current NDIS Act. However, we urge the Standing Committee to consider that further work needs to be done to establish agreed principles or guidelines around the interpretation and implementation of the legislative changes relating to psychosocial disability.

One of the improvements is the introduction of the new section 8 (when an impairment is permanent or likely to be permanent for the purposes of the disability requirements—psychosocial disabilities), which relates to changes being made to section 24. It is a welcome development that changes to section 24 will “enable independent consideration of psychosocial impairments as meeting the disability access requirements for the NDIS, **with particular focus on the potentially fluctuating and episodic nature of these impairments**”² (our emphasis added). We also note that these “new rules broaden the eligibility criteria for permanency to focus on whether the person has been unable to find a substantial improvement to their condition through appropriate treatments, or whether there are no appropriate treatments available to the person to manage the condition.”³ We believe that these changes better reflect the experiences of people with serious mental illness and substantially reduced functional capacity who could benefit from supports under the NDIS.

Though a substantial improvement, further work needs to be undertaken to ensure the new legislation is interpreted consistently and applied appropriately. It is essential that the NDIA and its employees, healthcare providers and those working within the health care and mental health care sectors can consistently interpret and apply the new legislation for the benefit of people

¹ Productivity Commission, 2020. Mental Health, Report 95, p. 852.

² Department of Social Services (2001), Explanation of the National Disability Insurance Scheme (Becoming a Participant) Rules 2021, p. 8, accessed 7 Oct 2021 at <https://engage.dss.gov.au/wp-content/uploads/2021/09/consultation-becoming-participant-explanatory-statement-1.pdf>.

³ Ibid at p. 8.

with psychosocial disability. Some of the proposed new wording will require further clarification to ensure consistency in application. These include:

- “psychosocial disability”
- “impairments to which a psychosocial disability is attributable”
- “appropriate treatment”
- “a period of time that is reasonable considering the nature of the impairment”.

The terms and phrases above require further explanation to be applied consistently once the legislative changes are enacted. For example, in the changes relating to permanency, further explanation is required for several clauses. These include: “the person is undergoing, or has undergone, appropriate treatment”; “the treatment has not led to a substantial improvement in the person’s functional capacity, after a period of time that is reasonable”; and “no appropriate treatment for the purpose of managing the person’s mental, behavioural or emotional condition is reasonably available to the person”. These terms are ambiguous and may not be applied appropriately or consistently in practice. We do not want a lack of clarity in the application of this legislation to result in uncertainty or confusion for people living with psychosocial disability, which could negatively impact on their participant experience journey or result in disengagement with the NDIS pathway.

There is much to be gained from taking this opportunity to clarify the meaning of these essential terms before the revised legislation is enacted. Indeed, NDIS participants, the sector and the community would greatly benefit from an agreed definition for the term ‘psychosocial disability’. This phrase came into being with the creation of the NDIS and is not well understood by the community. The term ‘psychosocial disability’ is often rejected by or does not resonate with many people living with serious mental health conditions with substantially reduced functional capacity who would be eligible for support under the Scheme. We support an approach that enables this term to be better understood by NDIS participants and potential participants, their family, friends and loved ones, health and mental health professionals and the broader community. Better knowledge about what is meant by the term ‘psychosocial disability’ may also encourage more potentially eligible people with severe mental illness and substantially reduced functional capacity to apply for support under the Scheme and access services that will support their mental health recovery journey over the lifespan.

We are pleased to see in the Explanatory Statement from the Department of Social Services that these revised sections of the legislation are designed to broaden the eligibility criteria for permanency and provide greater flexibility to account for the variety of experiences of people with psychosocial disability. To ensure the legislation lives up to this promise, further work must be done to support consistency in the interpretation. We recommend that the Government engage with the mental health sector and people with lived experience to establish agreed guidelines for the interpretation of these ambiguous terms contained in sections 8 and 24.

Recommendation 1

We recommend that the Standing Committee on Community Affairs consider how the legislative changes relating to psychosocial disability can be consistently interpreted and appropriately applied in practice to ensure the best outcomes for people with psychosocial disability. We further recommend that the Government engage with the mental health sector and people with lived experience to establish agreed guidelines for the interpretation of terms contained in sections 8 and 24 of the NDIS Amendment Bill.

NDIS Psychosocial Disability Recovery-Oriented Framework

MIFA notes that there are no references in the NDIS Amendment Bill or in the Explanatory Statement to recovery-oriented practice and/or recovery in the lives of people with psychosocial disability. Developing and implementing the NDIS Psychosocial Disability Recovery-Oriented Framework is a critical piece of work in improving the experience of NDIS participants with psychosocial disability and promoting better outcomes, choice and control.

In a recent consultation paper to the Department of Social Services, we urged the Government to elevate the importance of this work and recommend that, as a minimum, the NDIS Psychosocial Disability Recovery-Oriented Framework and how it will operate be included in the NDIS Operational Guidelines. This will promote consistency and clarity in the operationalisation of the Framework and support the implementation of the Participant Service Guarantee for participants with psychosocial disability.

Recommendation 2

We recommend that the Standing Committee on Community Affairs consider how the NDIS Psychosocial Disability Recovery-Oriented Framework can be appropriately included or referred to in the NDIS Amendment Bill to direct the implementation of the Participant Service Guarantee for people with psychosocial disability.

Disclaimer

This submission represents the position of MIFA. The views of MIFA members may vary.

Contact

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About MIFA

MIFA is a federation of seven long-standing member organisations, established in 1986. Our members deliver specialist services for individuals living with severe mental ill-health and their carers, friends and families, out of nearly 60 ‘front doors’ in metropolitan and regional areas, to over 20,000 people each year. Our membership has a strong focus on building community, valuing peer support and lived experience, and supporting recovery. We have substantial experience delivering specialist, place-based, community-building programs to those experiencing mental illness, and 60% of our workforce has a lived experience as a consumer or carer.

Our vision is that Australians have the best possible mental health and quality of life. We know from experience that recovery of a better quality of life is possible for everyone affected by mental illness. We work with individuals and families in their journey to recover mental health, physical health, social connectedness and equal opportunity in all aspects of life. MIFA’s core strength lies in amplifying the voice of people affected by severe mental illness, their families and friends. We advocate for positive changes in all areas of social and public policy that impact on the quality of life of people with lived experience of mental illness. We create collaborative projects and communities of practice that support our MIFA member organisations.

MIFA’s current member organisations operating across Australia are BRIDGES Health & Community Care, Mental Health Foundation ACT, Mental Illness Fellowship Australia (NT), Mental Illness Fellowship of WA, One Door Mental Health, **selectability** and Skylight Mental Health.

