



Australian Government
National Mental Health Commission

Ms Jeanette Radcliffe
Secretary, Legislation Committee
Senate Standing Committee on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600 Australia
Email: community.affairs.sen@aph.gov.au

**Response to the Inquiry into the National Disability Insurance Scheme (NDIS) Amendment
(Quality and Safeguards Commission and Other Measures) Bill 2017**

Dear Ms Radcliffe,

The National Mental Health Commission (NMHC) appreciates the opportunity to provide a submission to the Inquiry into the NDIS Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017 (the NDIS Amendment Bill 2017).

The NMHC broadly supports the proposed amendments and welcomes further consultation as required. We endorse the establishment of the independent NDIS Quality and Safeguards Commission to promote nationally consistent quality assurance mechanisms and safeguards for NDIS participants. The NMHC understands that the NDIS Quality and Safeguards Commission will involve the creation of a provider registration system including national practice standards and a code of conduct, a complaints and incident management system, and a compliance monitoring and enforcement process. The NMHC believes that if the proposed changes through the NDIS Amendment Bill 2017 are enacted, there will be improvements for people receiving services through the NDIS.

There are, however, several aspects of the NDIS Amendment Bill 2017 that the NMHC believes can be improved to increase the likelihood that the scheme will succeed in delivering the outcomes that governments and the wider community are seeking, while reducing the risks within the scheme.

Psychosocial disability

The NDIS Amendment Bill 2017 and subsequent supporting material should mention the specific needs of people living with a psychosocial disability. The NMHC proposes that the establishment of the NDIS Quality and Safeguards Commission must account for the following challenges which impact on people with psychosocial disability and providers of NDIS support services:

- a functional assessment tool for psychosocial disability is required
- a psychosocial disability reference package is required
- there continue to be disparities in outcomes for people with psychosocial disability compared to other types of disability
- there continue to be disparities in outcomes for people with psychosocial disability due to inconsistencies in the application of eligibility criteria and the planning process, with different outcomes for people in broadly similar circumstances
- specific outcomes continue to be undefined for psychosocial disability in the NDIS Outcomes Framework.



The establishment of the NDIS Quality and Safeguards Commission should acknowledge and support the above-mentioned extensive body of work that is still required, otherwise people with psychosocial disability who are deemed eligible to access NDIS reference packages and potential NDIS providers will not benefit from the proposed changes through the NDIS Amendment Bill 2017.

Complaints processes

The NMHC understands that the NDIS Quality and Safeguards Commission will be established to protect and prevent people with disability from experiencing harm arising from poor quality or unsafe supports or services under the NDIS. However, the potential underestimation of the number of people eligible to access the NDIS, be it with a psychosocial disability or other type of disability, poses a significant implication for the establishment and capacity of the NDIS Quality and Safeguards Commission. The NMHC is concerned about the less visible cohort of people who have some level of psychosocial disability but who are deemed ineligible for NDIS reference packages because their functional impairment is either not sufficiently severe or it is not deemed 'permanent or likely to be', or both. The Department of Health has estimated that around 100,000 Australians access psychosocial services but the size of this cohort could be as large as 190,000 people aged 0-64 years (according to estimates by the Department of Social Services). This is indicative of a long term and large gap between the level of need for psychosocial disability services and the supply of such services.

The NDIS Amendment Bill 2017 should also provide greater clarity about the stage at which people can make complaints to the NDIS Quality and Safeguards Commission. For example, can a person make complaints or notifications about serious incidents at any stage of their involvement with the NDIS including during the access request stage or is this only possible once a person has been determined to be a participant having met the NDIS access criteria? The NDIS Amendment Bill 2017 should also clarify whether the NDIS Quality and Safeguards Commission will be responsible for conducting internal reviews should people disagree with the decisions made by the National Disability Insurance Agency (NDIA), as is currently the case.

In response to the Regulation Impact Statement, the NMHC supports Option A4 whereby an independent statutory complaints function would be undertaken by the NDIS Quality and Safeguards Commission.

Restrictive practices

The NMHC appreciates that the NDIS Quality and Safeguards Commission will play a lead role in providing national oversight and policy setting in relation to behaviour support and monitoring the use of restrictive practices, within the NDIS, with the aim of reducing and eliminating such practices. Although states and territories have made significant advances in relation to seclusion, these advances are largely regionally based and ways to measure, monitor and ensure public accountability for restraint are still being considered. Hence, the NMHC welcomes the creation of a national Senior Practitioner who will be responsible for providing leadership in behaviour support, and in the reduction and elimination of the use of restrictive practices, by NDIS providers through a range of activities including building capability and competency in the sector, developing policy and guidance material, providing education and advice, undertaking and publishing research in these areas, and overseeing the use of behaviours support and restrictive practices through national monitoring and reporting. The NMHC specifically supports separate tracking of restrictive practices involving people with psychosocial disability to enable more accurate monitoring and reporting for this cohort.

In response to the Regulation Impact Statement, the NMHC supports:

- Option C5 whereby quality assurance requirements for some suppliers would be undertaken by the NDIS Quality and Safeguards Commission, noting that additional requirements would apply to providers that wish to deliver supports that involve direct staff-participant contact, lack supervision or require specialist expertise, or support participants at heightened risk of abuse or neglect.
- Option D3 whereby a legislative framework would be implemented to ensure an office for professionals with suitable expertise (referred to as the Senior Practitioner) can provide practice leadership and clinical governance, promote best practice, and have powers to investigate and make directions. Requirements to report regularly on the use of restrictive practices and scrutiny of reports by the Senior Practitioner will provide public accountability and potential disincentives for the inappropriate use of restrictive practices.

Consumer and carer engagement

Noting that there is strong evidence that where people with disability have a say in key decisions about their lives, outcomes are much better, the NMHC requests that the objectives and activities of the NDIS Quality and Safeguards Commission be underpinned through consumer and carer engagement. This would involve consumer and carer engagement in the co-production and co-design of the NDIS Quality and Safeguards Commission, its activities, and supporting material. The NMHC specifically supports a targeted approach to engage people with psychosocial disability and their carers, given its complexity and unique considerations compared to other types of disability.

Thank you for the opportunity to comment on the NDIS Amendment Bill 2017. The NMHC looks forward to receiving updates about progress made to establish the NDIS Quality and Safeguards Commission, and would be pleased to provide further input in the future.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Peggy Brown', written in a cursive style.

Dr Peggy Brown
Chief Executive Officer
National Mental Health Commission
3 August 2017