

7 October 2021

Australian Government
Department of Social Services
NDIS Act Review Consultations
GPO Box 9820
CANBERRA ACT 2610

Level 13, 257 Collins Street
Melbourne VIC 3000
PO Box 38
Flinders Lane VIC 8009
T: (03) 8662 3300
F: (03) 9663 6177
psychology.org.au

Submitted via survey to the NDIA: [Submission form](#)

Dear Sir/Madam

**Australian Psychological Society response to the
Australian Government proposed NDIS legislative improvements and the Participant Service Guarantee**

The Australian Psychological Society (APS) is the leading professional body for psychology in Australia, with more than 27,000 members nationally, many of whom work in the disability sector and with National Disability Insurance Scheme (NDIS) participants and their supports. The APS is dedicated to advancing the discipline and profession of psychology in the communities we serve for the benefit of all Australians.

The APS welcomes the Australian Government's intent to make NDIS processes easier and better for Scheme participants via proposed changes to the enabling legislation and appreciates the opportunity to provide feedback. We highlight, however, that it is not always the legislation that creates complexity, dissatisfaction and poor outcomes for NDIS participants and potential participants. Too often, our members, people with a disability and their supports, describe situations where the intention of the legislation is not honoured by NDIS staff including NDIS Planners, Local Area Coordinators (LACs) and Support Coordinators (SCs) and some providers and workers.

They report:

- A serious lack of understanding within the NDIA and NDIS about the importance of funding and implementing psychology interventions that will improve the quality of life of participants (and their families),
- Considerable inconsistencies in NDIS decision-making processes, timelines and outcomes,
- Limited or no explanations for NDIS decisions, and
- The wilful misapplication of the legislative provisions.

The APS notes that Schedule 1 of the *Exposure Draft Bill for an Act to amend the National Disability Insurance Scheme Act 2013¹, and for related purposes* (the Bill) and the accompanying *NDIS (Participant Service Guarantee) Rules 2021* (PSG Rules) introduces a new Scheme guarantee that aims to:

- Clarify the timeframes for the NDIA to make decisions about Scheme access and plans, and
- Require the NDIA to meet and report on engagement principles and service standards when working with people with a disability and their supports.

NDIS providers have been rightly subject to quality assurance processes since the inception of the NDIS. However, introduction of the NDIA Participant Service Guarantee (PSG) is an overdue and necessary step that aims to improve the NDIS participant, and potential participant, experience by establishing transparent timelines, service standards and performance reporting. There are, however, aspects of the PSG in need of amendment to align fully with its aims.

For example, the proposed changes to PSG s32 (which provides that if a person becomes a participant, the CEO of the NDIS must facilitate the preparation of the participant's plan) fail to include a timeframe in which that must occur. We also note the proposed changes to s174(3) to 4(c) in Schedule 1 of the Bill, which removes the prescribing of matters from direct Ministerial authority from the Act and relegates it to the PSG Rules. It does so on the basis that such amended arrangements will increase Board transparency and flexibility. The APS does not agree and argues for reasons of transparency that direct Ministerial authority for PSG matters must remain visible within the Act itself as part of a fully functioning PSG.

It is also important to remember that the Scheme exists to provide the reasonable support participants need to live an ordinary life. Mechanisms for evaluating the impact of the NDIS on participants' lives are notably absent from the stated aims of the PSG and s15 of the PSG Rules, which focus on quantitative performance measures for NDIA planning, coordination and decision-making. The APS supports the inclusion of these measures, but requests consideration be given to factors that also establish the Scheme's impact.

The APS welcomes the inclusion of engagement principles and service standards in the PSG Rules as a critical step towards the NDIA improving their engagement with participants and prospective participants to ensure proper operation of the Scheme. We note too that the stated intention of the NDIS and NDIA is to act in a timely and consultative fashion with key stakeholders to address existing and emerging concerns to realise the Scheme's goals. Our experience is that the professions and peak bodies are too often informed about policy developments and changes as an afterthought (e.g., as occurred around Recovery Coaches and Scheme changes due to Covid 19).

The APS has raised its concerns about the lack of adequate consultation on many occasions with senior members of the NDIS and NDIA with less-than-hoped-for results. We argue for the inclusion of specific NDIA engagement principles and services standards for key stakeholders (such as professional and peak bodies) to guide and mandate improvement of NDIA consultation mechanisms and practices (in addition to those proposed for NDIS participants and prospective participants).

The APS supports a number of the proposed changes to the legislation in Schedule 1 of the Bill and the PSG Rules that introduce new "plan variations" and replaces existing plan reviews. The APS anticipates these changes, when requested by participants, can improve the flexibility and efficiency of the Scheme to manage minor plan changes and technical errors instead of small changes activating unnecessary and lengthy review processes.

We are, however, deeply concerned about the new s47A and s10 of the *NDIS (Plan Administration) Rules 2021* (PA Rules) that empower the NDIS CEO to vary a participant's plan without request, consultation, or consent from the participant and without requiring a plan reassessment to be undertaken or a new plan to be created.

It is unclear to the APS why, when and how it would be appropriate to allow the NDIS CEO power to vary a plan without consultation or consent, except in emergency situations where a participant cannot be consulted within a reasonable time frame². The APS strongly recommends the revision of s47A to clarify the circumstances that enable such plan changes without participant consultation or consent. Additionally, we argue that s10 of the PA Rules requires the same range of matters to be considered as s11 (which provides guidance about plan changes initiated by a participant) to provide more explicit guidance about plan variations regardless of who initiates the process.

The APS is similarly concerned about s8 in the *NDIS (Plan Management) Rules 2021* that provides guidance about when it would be appropriate for the NDIS CEO to specify that a particular person or provider must not provide support. Only one circumstance must be satisfied, being "any other matter the CEO considers relevant". The APS views this as too broad and grey, enabling misinterpretation and misapplication and is inconsistent with the enabling legislation for the NDIS. We request revision of S8 to include more explicit guidance and safeguards, especially in light of the continuing reports from our members about frequent NDIA and NDIS misunderstandings and ignorance concerning providers and evidence-based practice.

The APS welcomes the changes proposed for psychosocial disability in Schedule 2 of the Bill (s24 and s25) and the related amendments to the new s8 in the *NDIS (Becoming a Participant) Rules 2021*. The proposed changes shift the focus from psychiatric conditions to psychosocial disability and clarify when someone with a mental health condition and psychosocial disability may be eligible for the NDIS, including eligibility for early intervention.

Notably, the proposed changes to defining a 'permanent' psychosocial disability for access to the NDIA (not applicable when the person meets early intervention requirements) recognises that people with a permanent psychosocial disability may have impairments that vary in intensity, are episodic or fluctuating. The changes better reflect the nature of many permanent psychosocial impairments and allow people with a wider variety of psychosocial impairments to be considered eligible for the NDIS who may have been inappropriately excluded due to fluctuations in their condition or limited treatment availability.

We believe there are, however, many undefined terms incorporated in the eligibility criteria for psychosocial disability (e.g., appropriate treatment, substantial improvement and reasonably available). The APS proposes more guidance be provided regarding the interpretation of these terms to avoid inconsistent application. Such guidance must also consider the personal decisions and subjective thresholds surrounding treatment and improvement to ensure people with a disability retain choice and control³.

The APS remains concerned that, despite these legislative revisions, psychosocial disability is likely to continue to be inconsistently dealt with in the Scheme due to limited Planner, LAC and SC knowledge. For example, Planners commonly transfer responsibility for care for those with psychosocial disabilities inappropriately to the MBS.

We have previously argued that Planner training remains of paramount importance for appropriate determination and referral within the Scheme to facilitate good outcomes for participants with psychosocial disabilities. That continues to be a clear need for corrective, transparent policy development.

The APS has a long history of working with the Government and other agencies to establish standards to ensure the quality and safety of mental health care. The APS has a vital contribution to make to the Scheme and seeks to partner more closely with the NDIA and NDIS around critical matters, like the NDIS psychology workforce and how the Scheme can be more transparent. We look forward to an NDIS (as envisioned under its enabling legislation) that ensures appropriate entry to the Scheme and that NDIS participants can receive equitable, accessible and effective services and supports that enables them to live ordinary lives as valued community members.

Thank you again for the opportunity to respond to this consultation. If any further information is required from the APS I would be happy to be contacted through my office on (03) 8662 3300 or by email at z.burgess@psychology.org.au

Kind regards

Dr Zena Burgess, FAPS FAICD
Chief Executive Officer

References

¹ The APS acknowledges the Allied Health Professions Association (AHPA) analysis of the draft legislation that informed the development of parts of this submission.

^{2 3} Public Interest Advocacy Centre (PIAC) (Sep 20, 2021). *Explainer: What are the proposed changes to the NDIS Act?* <https://piac.asn.au/2021/09/20/explainer-what-are-the-proposed-changes-to-the-ndis-act/>