

Submission: Proposed NDIS legislative improvements and the Participant Service Guarantee.

QDN

QUEENSLANDERS WITH DISABILITY NETWORK
NOTHING ABOUT US WITHOUT US

Submitted to Department of Social Services
7 October 2021

About Queenslanders with Disability Network (QDN)

Queenslanders with Disability Network (QDN) is an organisation of, for, and with people with disability. The organisation's motto is "nothing about us without us". QDN operates a state-wide network of over 2,000 members and supporters who provide information, feedback, and views from a consumer perspective to inform systemic disability policy and disability advocacy.

QDN also operates 26 Peer Support groups across a range of metropolitan, regional, and rural and remote locations in the state, run by people with disability for people with diverse disabilities. members and supporters who provide information, feedback, and views from a consumer perspective to inform systemic disability policy and disability advocacy.

QDN undertakes a range of work activities and projects as outlined on QDN's website and detailed in our Annual Report. Our systemic advocacy work encompasses a range of responses – from community campaigns, formal submissions, evidence to commissions and inquiries, and membership of roundtables and working groups around national, state, and local government legislative and policy initiatives.

QDN's work is focused on the rights and full social and economic inclusion of people with disability, along with areas of key importance identified by Queenslanders with disability – the National Disability Insurance Scheme (NDIS), improving mainstream services that people with disability rely on every day, including health, housing employment and transport, and the impact of COVID-19.

Introduction

Queenslanders with Disability Network (QDN) welcomes the Department of Social Services' consultation around the proposed NDIS legislative improvements and the Participant Services Guarantee. The disability sector has been anticipating the response to the Tune Report, to give effect to the recommendations contained within it. We note that the four week timeframe has made it challenging for people with disability, their families, and organisations to be able to consider the impacts, and what they will mean in practice.

The NDIS in Queensland has had a significant impact on the lives of over 90,000 Queenslanders with disability to date. For many people it is the first time in their life that they have accessed disability support. However, many Queenslanders with disability continue to experience challenges with not only access to the scheme but also challenges as participants across varying aspects of the scheme, resulting in poorer outcomes.

QDN acknowledges the extensive work that has been undertaken at State and Commonwealth levels to address the scheme processes and implementation challenges that are being experienced by participants, families/carers, providers, and the systems that interact with them. It is important that the solutions and way forward continue to respond to the feedback and perspectives of people with disability, families, and providers to deliver on the intention and foundations of the NDIS with people with disability in the driver's seat.

It is critical going forward that the Queensland Government continues in the important role they have as an investor and partner in the NDIS to ensure it delivers for Queenslanders with disability.

QDN welcomes the opportunity to make this submission to provide the feedback on the proposed legislative improvements and the Participant Service Guarantee from the perspective of people with disability, and our allies in the disability sector.

General feedback

Overall, QDN welcomes the majority of the proposed changes and believes they are reflective of the feedback provided by the broader disability community.

QDN was pleased to see that the exposure draft does not contain any changes to 'reasonable and necessary supports', the introduction of independent assessments, or debt recovery powers which a commitment has been given to co-designing future significant changes with people with disability and the broader sector. QDN believes that fundamental to any change is the process of co-design and involving people with disability, their families, and providers from the beginning in planning, design, implementation, and review.

QDN supports the introduction of measures which improve participant experiences to make NDIS processes more straight forward, require timeframes around access, plans and reviews, remove barriers to access for specific disabilities, increase flexibility, and specify inclusion of people with disability in governance of the Agency. However, QDN members have raised the importance that this is balanced, that decision making powers have safeguards and specifications in place to ensure that they can not be open to interpretation.

QDN is pleased to see the following key changes included:

1. The inclusion of timeframes into the Act and Rules is welcomed, however we believe these could be more ambitious.
2. Annual reporting by the Commonwealth Ombudsman for review of the NDIA's performance in relation to the Participant Service Guarantee, as well as reporting on participant experience. However, QDN believes that this reporting could be strengthened to also be made to the Disability Reform Council given the responsibilities and roles of each of the jurisdictions.
3. Changes to the different types of reviews in terms of 'variation' and 'reassessments' is positive, and the language is less confusing
4. Amendment of the Administrative Appeals Tribunal's jurisdiction with regard to reviewing plans which have been varied or replaced by new plans throughout the course of the appeal
5. The addition of co-design with people with disability is a vital and necessary NDIS principle, along with more inclusive language.

The Participant Service Guarantee is supported and QDN endorses this as a mechanism to inform and increase awareness of participant rights within the scheme, with associated timeframes hopefully resulting in reduction of participant uncertainty and gaps in provision of support.

The overarching complexity of the NDIS Framework generally with the Act, the Rules and Operational Guidelines can result in lack of accessibility for people with disability and their families.

QDN members have however raised concerns about the unstructured decision making powers contained in the act, and the expansion of the rule-making powers. It is important that the NDIS framework maintains a balance of flexibility to change but also a balance of powers and decision making subject to parliamentary and public scrutiny. The level of powers and decision making required for rules that are fundamental aspects of the scheme must continue to require joint decision making and agreement between State/Territory and Commonwealth Ministers at Disability Reform Council and should not be changed to be Rules that can be made at the discretion of a single Minister. State and Territory Governments continue to be shareholders contributing to the scheme, and QDN believes that it is critical that decisions that are fundamental to the scheme, remain in legislation and with high level decision making across Commonwealth, State and Territory Minister.

People with disability, their families and providers continue to require capacity building, education and mentoring delivered in accessible and inclusive ways to ensure they understand the new changes and impacts upon the participant and their supports.

Access to individual and systemic advocacy continues to be a critical factor in getting fair, reasonable, and equitable access and outcomes from the NDIS.

1. Participant Service Guarantee

Overall, the feedback around Participant Service Guarantee is supported and in line with the Tune Review recommendations. The monitoring functions of the Commonwealth Ombudsman will play an important role to ensure this is being implemented on the ground. However, there a number of key issues that have been raised by QDN members which are outlined below.

It is critical that the requirements and conditions for eligibility to access need to be set out in the Act, rather than the Rules.

QDN welcomes the proposed changes to the NDIS Becoming a Participant Rule, 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.

Greater inclusiveness in the scheme for people with psycho-social disability signals a significant improvement, however, the proposed rules relating to permanency and substantial reduced function capacity includes ambiguous language that could be open to interpretation. In particular what is considered by 'appropriate treatment', what are the parameters for 'substantial improvement', and what is considered a period of time that is reasonable, and what is meant by reasonably available – is this in terms of availability of supports and dependent on the local market? The NDIS Rules must provide clarity around these terms.

QDN members support changes to variation of plans and reduction of red tape, however it is important that this is an agreement between the Agency and the participant about what needs to happen and why.

At this point, the drafting affords the Agency too much discretion, with new powers that would allow the CEO to initiate and make changes to participants plans without consultation. The introduction of a plan variation process which does not trigger a full plan review is welcomed, however further detail is required

about the proposed NDIS powers to initiate and make changes to participant plans without consultation. This appears to be in contrast to the recommendations of the Tune Report.

Unstructured decision making powers for the CEO or their delegate result in a lack of clarity around parameters and gives broad discretion to the agency. The CEO power to decline a request for variation and move to a reassessment which would mean that the participants access to the scheme and their existing supports are open for reassessment. The CEO already has power to initiate a reassessment, which in practice means that if a participant does not wish to have their plan varied, the CEO can still undertake a full reassessment.

There needs to be an inclusion that a participant can request a reassessment to enable equity around participant initiated requests for variations or reassessments. This appears to be in contrast with the recommendations made in the Tune Report.

There needs to be structured decision making power in place with respect to the matters that the CEO 'must have regard to' in deciding if they are going to initiate the variation of a participants plan.

It is important to make certain practices routine, such as providing reasons for all decisions and providing draft plans for all plans. The current proposal to make them available only upon request suggests a certain hesitance to make decision-making by the Agency transparent, which is meant to be one of the main objectives of the Participant Service Guarantee being legislated. Participants continue to carry the burden of enforcing procedural fairness but there is a large power imbalance between participants and the agency which should be better recognised by these amendments.

Procedural fairness works best when it is specifically provided for in law. Instead of providing reasons or draft plan etc on request, these should be provided to all participants in accessible formats.

Additionally, the amendment to stipulate who *cannot* provide supports to a participant can be used to prevent participants from engaging family members to provide supports, when this is entirely appropriate in some communities and geographical locations.

Recommendations:

- a) Becoming a participant rules in section 7-10 is a significant matter of policy and should be located in the Bill.
- b) Guidance is required in the rules to the definition of 'appropriate treatment', 'managing a condition', 'substantial improvement' and 'reasonably available.'
- c) The use of the CEO power to initiate plan variations and reviews need to be limited to specific circumstances and consistently defined with what was recommended in the Tune Review.
- d) Enable participants to be able to initiate request for reassessments.
- e) Set out requirements for procedural fairness with regards to CEO initiated reassessments to enable participants to receive information about rationale for decisions, what will be reassessed, ability to provide input and information and access to draft plans.

Payment of Supports

QDN members welcome the introduction of systems that provide greater flexibility, that are easy to use and benefit people with disability as participants of the NDIS. However, QDN members overall do not support the proposed introduction of the payment system which reads that the CEO can decide how the money is paid and to whom without regard to what the participant's choice. QDN members felt that they had little information about by the introduction of the new payment system, how it will work, what it will mean for participants. Overall, QDN members do not support a unilateral requirement that everyone must use the new payment platform. QDN members feel that this needs further clarification and consideration and needs to be clear that people have a choice about the use of this system.

Recommendations:

- a) Clarification about the choice of participants to 'opt out' of the payment system and ensure they can continue payment to make direct payments to their service providers.
- b) Engagement with NDIS participants, particularly those who are self-managing and plan managing around the proposed payments platform.

Plan Management decisions

Feedback from QDN members overwhelmingly did not support the proposed changes to Plan Management Rules around the CEO's decision making powers and determination of 'unreasonable risks'. Members highlighted that there are no clear parameters around this and that it can be open to interpretation, noting that the CEO has broad powers around how to change these criteria. QDN members identified concerns about this decision making being used to limit the number of people who can plan manage and therefore their flexibility in engaging with providers.

Recommendation:

- a) Guidance is required to the rules and the determination of 'unreasonable risks' and how this will be determined, what rationale and reasons will be given to participants.

Engagement Principles and Service Standards

Currently there is no requirement for the NDIA to provide participants with a copy of their draft plan, rather that participants can request to see their plan. Feedback from QDN members acknowledges that this already occurs, and they do not get to see their draft plan before it is finalised and approved. Given the significant increase in request to Administrative Appeals Tribunal, the high level of requests to alter plans when participants have not been able to review and there is incorrect information, missing information, and determinations based upon old information, an action to significantly reduce this administrative burden on plan reviews would be to ensure the participant can receive a copy of their draft plan.

Recommendation:

- a) Requirement to provide participants with a copy of their draft plan is part of the engagement principles and service standards.

Conclusion

QDN supports the overall intent of the proposed NDIS legislative improvements and the Participant Services Guarantee, however, sees that there needs to be some adjustments to the draft exposure bill to take into consideration the issues raised in this submission. We look forward to continuing to work with the Commonwealth Government, Queensland Government, National Disability Insurance Agency, and disability sector allies to ensure that the voice of people with disability is strong and part of the conversations to deliver an internationally leading disability support scheme that achieves real outcomes for people with disability. It is critical to ensure that the NDIS continues to grow and be shaped by people with disability, families and carers, and industry to jointly create the solutions that are needed to take this scheme forward to continuing change and refinement to honour the intentions of the scheme and deliver for people with disability.

Queenslanders with Disability Network

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