



Submission on the National Disability Insurance Scheme Quality and Safeguarding Framework

APRIL 2015

This is a submission to the Department of Social Services (DSS) on its *Proposal for a National Disability Insurance Scheme Quality and Safeguarding Framework* (the *Framework*). Mental Health Australia welcomes the development of a comprehensive framework to ensure that NDIS participants, their families and carers have access to safe and high quality services.

In addition to this submission, Mental Health Australia is currently working with DSS to facilitate direct consultation with NDIS Mental Health Peer Experts on the issues raised in the draft *Framework*.

Key issues in the Developmental Domain

Mental Health Australia is particularly interested in the Developmental Domain, as many NDIS participants with psychosocial disability may need support and assistance to effectively exercise choice and control. The United Nations *Convention on the Rights of Persons with Disabilities 2006* (UNCPD) states that every person has the right to make decisions about things that affect them, and requires parties to take appropriate measures to provide the necessary support people may require exercising this right.

Quality and safeguarding mechanisms in the Developmental Domain rest on assumptions about the link between market forces and service quality – for example that consumers and carers will influence the quality of services by choosing or rejecting some service offerings in favour of other, higher quality services. **In its role as market steward, government must ensure that decisions by individual participants do in practice create incentives for service providers to improve service quality – not just incentives to deliver services at lower cost or at scale. This is a fundamental challenge for the Scheme as a whole, and a criterion on which its success will ultimately be judged.**

Mental Health Australia recognises that market forces could eventually drive improvements to service quality and availability, and that consumers and carers should have the right to choose the services that they want. However, **market forces in isolation will not be sufficient where consumers or carers lack the skills, supports or resources required to evaluate the options available to them.**

Supported decision-making is an important part of quality and safeguarding. A basic premise of this approach is that autonomy does not need to be replaced with substitute decision-making, but can exist alongside it. People must be assisted to identify and express their choices even when capacity is in doubt, rather than excluding them from the decision-making process.

To overcome well-known barriers to choice and control, government must take proactive steps to support decision-making by people with psychosocial disability, involving carers wherever possible. Supported decision making can help to address the specific barriers that people with psychosocial disability face in exercising choice and control, such as difficulties with cognition, communication and self-advocating, or estrangement from family and other support networks. To avoid tokenism, such support must be tailored to the circumstances of those making decisions, with National Disability Insurance Agency (NDIA) staff and others having the knowledge and skills to identify and deliver support matched to individual needs.



To ensure that NDIS participants (and potential participants) with psychosocial disability are able to exercise their rights, government should adopt and resource structured approaches to supported decision-making, following consultation with consumers, carers and other experts in mental health. This is an emerging field, and a range of approaches will need to be tested, refined and promulgated as the NDIS evolves. **Mental Health Australia offers its assistance to government in planning how to deliver the right decision-making support for people with psychosocial disability.**

Decision-making support for people with disabilities is not always available now in Australia – as recognised through the recent report from the Australian Law Reform Commission on *Equality, Capacity and Disability in Commonwealth Laws on Human Rights*. That inquiry recommended further work to ensure that people have access to formal and informal decision making support, including:

- The adoption of *National Decision Making Principles* asserting that “persons who require support in decision-making must be provided with access to the support necessary for them to make, communicate and participate in decisions that affect their lives”.
- Amendments to the *National Disability Insurance Scheme Act 2013* and associated rules to include provisions for supported decision making and the recognition of ‘supporters’.

Mental Health Australia supports the ALRC’s recommendations and commends them to government as it finalises the NDIS Quality and Safeguarding Framework.

Since the ratification of the United Nations Convention, the disability sector has proposed that a framework of measures to support decision-making include:

- *administrative mechanisms or processes at the system or service levels* to ensure that services are able to effectively support decision-making; and
- *capacity building measures, programs or processes at the individual or community levels* to empower consumers and communities to actively participate in supported decision-making. These could include programs to educate consumers and carers about the NDIS.¹

Mental Health Australia recognises the steps government has already taken to build capacity at the individual and community levels – including supporting Mental Health Australia’s capacity building work through the NDIS Sector Development Fund. In addition to this important activity, **government must also ensure that system- and service-level interventions are in place, appropriately resourced, and seen as the core business of the NDIA.**

¹ French, P, (2009), *Everyone, Everywhere: Recognition of Persons with Disability as Persons before the Law*, People with Disability Australia, Sydney; and
People with Disability, 2012, *Disability Rights Now – Civil society report to the United Nations Committee on the Rights of Persons with Disabilities*. People with Disability Australia.



Mental Health Australia therefore recommends that:

- The NDIA establish structures and arrangements to facilitate supported decision-making and the development of formal and informal support networks, with explicit reference to NDIS participants that face barriers to exercising choice and control.
- The NDIA works with service providers to deliver best practice supported decision-making, such as through a nationally agreed supported decision-making protocol that is explicitly incorporated into the NDIS Act and/or NDIS Rules.
- The NDIA deliver supports through the Information, Linkages and Capacity Building (ILC) stream which effectively build individual capacity and deliver accessible information to actual and potential NDIS participants with psychosocial disability, their families and carers.
- Government provide resources for a strong independent advocacy network for mental health consumers and carers, to help ensure that people can call on their natural safeguards wherever possible.

Mental Health Australia is currently developing an issues paper on Supported Decision Making and the NDIS, as part of a project for the NDIA and DSS under the Sector Development Fund.

Key issues in the Preventative Domain

The NDIS guidelines aim to support, and are consistent with, the *National Disability Standards*. However, for people with psychosocial disability, services also need to adhere to the *National Standards for Mental Health Services*.² These provide a benchmark for the delivery of high-quality services for people with mental illness, with explicit reference to recovery principles which underpin contemporary best practice in mental health. The *National Standards for Mental Health Services* have been endorsed by Commonwealth and state/territory governments, as part of an overarching principle of consumer and carer participation, involvement and engagement. The Standards focus on:

- how services are delivered
- whether services comply with policy directions
- whether services meet expected standards of communication and consent
- whether services have procedures and practices in place to monitor and govern particular areas—especially those which may be associated with risk to the consumer, or which involve coercive interventions.

The Standards have been developed to apply across the broad range of mental health services, including services likely to be funded through the NDIS.

Mental Health Australia recommends that the *National Standards for Mental Health Services* be incorporated as part of the service level safeguards for relevant NDIS service providers.

² [http://www.health.gov.au/internet/main/publishing.nsf/Content/CFA833CB8C1AA178CA257BF0001E7520/\\$File/servst10v2.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/CFA833CB8C1AA178CA257BF0001E7520/$File/servst10v2.pdf)



Restrictive Practices

Mental Health Australia welcomes DSS's intention that restrictive practices are always a last resort, with preference given to the least restrictive option.

Mental Health Australia is concerned, however, that the Framework focuses on the role of a *guardian* in authorising a behaviour support plan, rather than emphasising the role of the *participant*. Denying the participant a role in developing and agreeing a behaviour support plan is not consistent with the stated intention of reducing the use of restrictive practices.

Mental Health Australia refers DSS to the National Mental Health Consumer and Carer Forum's position statement on *Ending Seclusion and Restraint in Australian Mental Health Services*.³ This calls for more accountability and public reporting of instances of seclusion and restraint – a recommendation subsequently taken up by all jurisdictions and supported by the National Mental Health Commission.

To foster accountability at the service level, **Mental Health Australia endorses Option 3 in the DSS discussion paper, where providers must report on each occasion where a restrictive practice is used.** This should take place in ways which minimise the administrative burden on providers where possible.

Without this level of reporting, it will not be possible to determine whether the NDIS does in practice reduce restrictive practices by disability service providers.

About Mental Health Australia

Mental Health Australia is the peak, national non-government organisation representing and promoting the interests of the Australian mental health sector and committed to achieving better mental health for all Australians. It was established in 1997 as the first independent peak body in Australia to represent the full spectrum of mental health stakeholders and issues. Mental Health Australia members include national organisations representing consumers, carers, special needs groups, clinical service providers, public and private mental health service providers, researchers and state/territory community mental health peak bodies.

Mental Health Australia aims to promote mentally healthy communities, educate Australians on mental health issues, influence mental health reform so that government policies address all contemporary mental health issues, conduct research on mental health issues, and carry out regular consultation to represent the best interests of our members, partners and the community. These endeavours in education and policy reform are matched by our commitment to researching more innovative approaches to the provision of mental health care. In addition, Mental Health Australia continues to focus on the human rights of people with a mental illness.

Mental health issues affect one in every five Australians. We cannot afford to be complacent in our efforts to achieve changes to our mental health care system when we consider the impact of mental health on our community.

³ <http://www.nmhccf.org.au/documents/Seclusion%20&%20Restraint.pdf>



Mental Health Australia



Mentally healthy people,
mentally healthy communities

Mental Health Australia is the peak independent, national representative body of the mental health sector in Australia.

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