

Senator Jonathon Duniam

Chair
Senate Community Affairs Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

11 August 2017

Dear Senator Duniam

I write to ask as part of the Inquiry into the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017* (the Bill) the Committee consider amendments to Schedule 2 of the Bill.

Currently, paragraph 24(1)(b) of the *National Disability Insurance Scheme Act 2013* provides people meet the disability requirements for the National Disability Insurance Scheme (NDIS) if they have an impairment or impairments that are, or are likely to be, permanent.

The *National Framework for Recovery-Oriented Mental Health Services* was developed by the Australian Health Ministers' Advisory Council in 2013 and is formal government policy. The Framework acknowledges that "Words and language are critically important in the mental health field where discrimination, disempowerment and loss of self-esteem can cause people to battle with self-stigma". This is why the use of the term "permanent" in the NDIS legislation presents such a big barrier to the cohort for whom the Scheme is intended to support. It is why so many mental health stakeholders have made this point in their submissions to Parliamentary inquiries, the review of the NDIS legislation and the current Productivity Commission Review of NDIS Costs.

The legislation for the NDIS presents something of a clash in philosophies when it comes to mental health, psychosocial disability and the NDIS. Paragraph 24(1)(b) may make sense with regard to certain disabilities that result from impairments such as blindness or reduced mobility, which can leave people unable to live and work without support.

The idea of permanence is more problematic for someone with psychosocial disability. Many people with psychosocial disability associate with mental illness have needs and impairments that can change in severity and nature over their lifetimes, sometimes very quickly. People who experience severely debilitating mental illness may not access the mental health 'system' for a long time – only as long as they need for their symptoms to improve. People with severe and persistent mental illness emphasise the importance of hope and a belief in their ability to grow and change for the better critical to their recovery.

Janet Meagher, member of the NDIA's Independent Advisory Council, former National Mental Health Commissioner and highly respected consumer advocate, told the Joint Standing Committee into the NDIS:

I think there has been a long-running argument coming from the mental health sector about the NDIS running counter to the principles of recovery, which are dominant in the mental health discourse in Australia at the moment. I put myself forward as one of the people who promoted, from the very beginning, the concept of recovery, from way back in the early nineties. I put to you that a distorted concept has come through that now means something different to what it meant when we introduced it—and which is still owned by the consumer movement, the Lived Experience Movement: the right to maintain hope. That is our concept of recovery. Anyone that purports personally to follow a recovery strategy or ideology in their lives will acknowledge that it is not, and cannot be, a model. It is a mindset whereby I will do everything possible to maintain hope that I will have a fulfilling and contributing life. Therefore, in the context of the NDIS, I see the elements of the insurance model actually promoting my right to maintain hope, my activities to maintain my hope and my future in the community of my choice. Ideologically, I cannot see how recovery is aligned to permanency. I will always live with my illness. I do not think at this stage it is going to go away. However, I have hope and, through that hope, I am able to maintain a relatively productive and contributing life, and a lot of my peers do similarly. This is not an official view of the IAC, but it is a very personal and strong view held by me, a leader in the mental health community, that permanency has very little to do with recovery; it has everything to do with hope.

On principle then it would seem unreasonable to deny hope to anyone with a severe and persistent mental illness, given the positive effects it can generate.

Further, for any two people with precisely the same diagnosis – of schizophrenia, say, or bipolar disorder – it can be impossible to predict which one might need long-term support, making the idea of a 'permanent impairment' difficult to fit with the realities of mental health. That said, many people with psychosocial disability will need, and should expect to receive, support over the long term, and perhaps for a lifetime. These are difficult tensions to reconcile within the policy and legislative framework currently underpinning the Scheme.

For its part, the NDIA has made efforts to accommodate the needs of people with psychosocial disability. For example, the NDIA's mental health team has endeavoured to ensure the access process is consistent with a recovery orientation,¹ as recognised in the NDIA's fact sheet *Psychosocial disability, recovery and the NDIS*. However, there are ongoing concerns across the mental health sector about inconsistent outcomes of the assessment process, with confusion about whether this has to do with how the 'permanent impairment' requirement is being applied or other factors (or both).

Schedule 2 of the Bill presents a timely opportunity to ensure that the NDIS meets the needs of people with severe mental illness and psychosocial disability and aids their recovery. We urge the Committee to consider an amendment to the Bill that:

¹ Australian Health Ministers Advisory Council. *A National framework for recovery-oriented mental health services. Guide for Practitioners and Providers*. 2013



- in paragraph 24(1)(a) remove the reference to *psychiatric condition* and replace it with *psychosocial disability*
- in paragraph 24(1)(b) replace the word *permanent* with *ongoing, enduring, or chronic*; and
- incorporate into paragraph 24(1)(b) *the impairment or impairments are ongoing, or likely to be ongoing without the person receiving supports intended to build their capacity.*

These amendments are intended to clarify the original intended cohort for the Scheme – i.e. people with the greatest need for disability support – not to expand the Scheme’s reach. We do not recommend a relaxation in access criteria or their application, but instead to make improvements in order to assist the right people to access the NDIS as easily as possible.

I would welcome an opportunity to discuss these important issues with the Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Josh Fear', with a stylized, overlapping loop structure.

Josh Fear
Acting Deputy CEO

