Mental Health Australia

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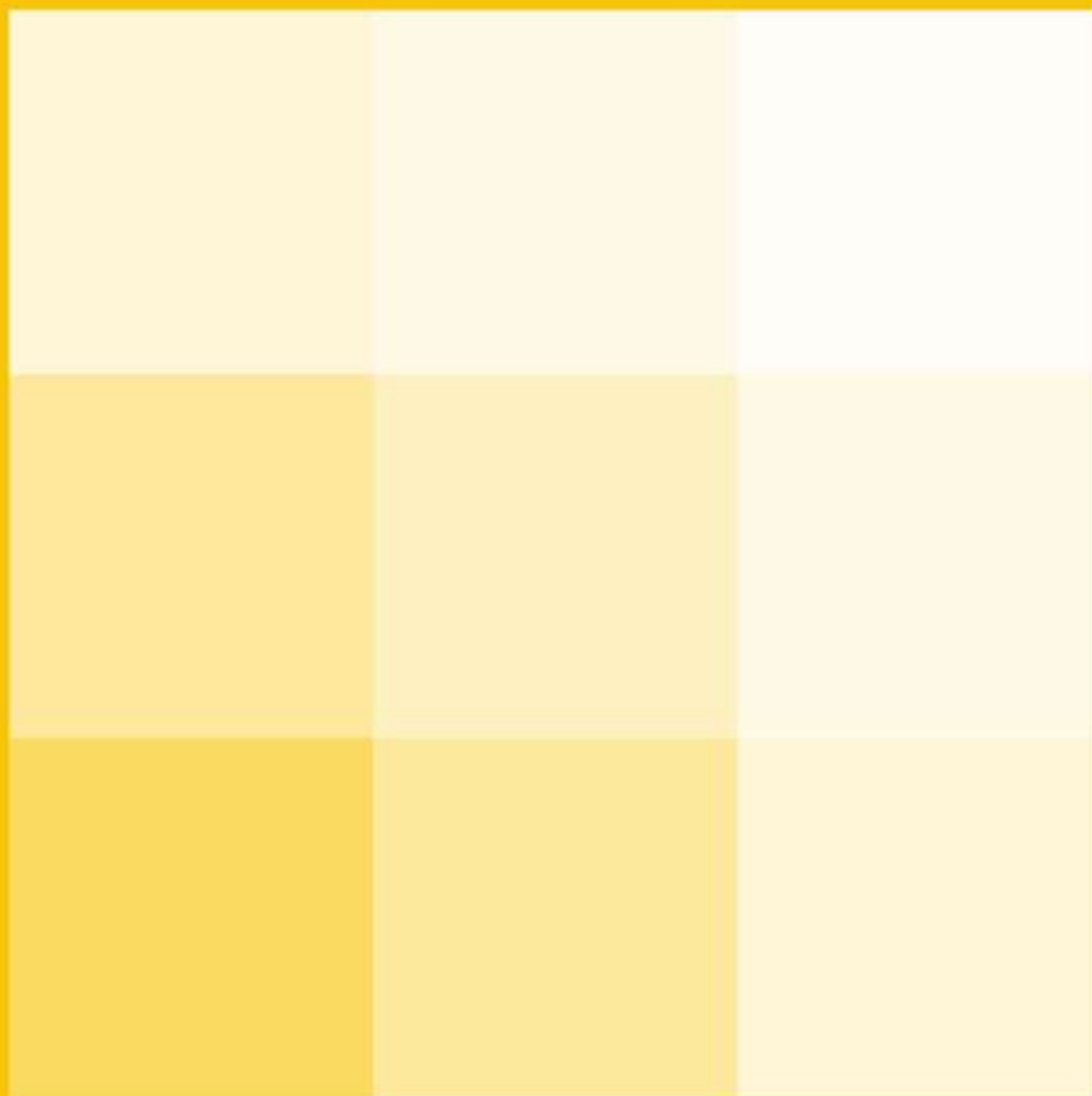

Submission to the Independent Review of the NDIS Act

OCTOBER 2015

Introduction

This submission has been prepared for Ernst & Young, which is conducting an independent review of the *National Disability Insurance Act* (Cth) *2013* ('the *Act*'). The *Act* requires that such a review be conducted two years following the commencement of the National Disability Insurance Scheme (NDIS).

Mental Health Australia recognises the scope of the review is limited to the legislative framework underpinning the NDIS, and will not address the success of the NDIS or the performance of the National Disability Insurance Agency (NDIA). This submission is therefore restricted to the legislative framework and does not address broader issues of scheme design or implementation. It is intended to supplement Mental Health Australia's engagement with the Ernst & Young review team, and provides information and commentary on several aspects of the Act which are highly significant for mental health stakeholders.

Access criteria

From the time the exposure draft of the NDIS legislation was released, mental health stakeholders have been concerned about the implications of the requirement that NDIS participants have (and therefore be assessed by the NDIA as having) an impairment or impairments that 'are, or are likely to be, permanent'. The notion of permanency appears to be at odds with the emphasis on recovery underpinning national mental health policies, best articulated in the National Framework for Recovery-Oriented Mental Health Services endorsed by Commonwealth and State/Territory Governments in 2014.

Mental Health Australia (formerly the Mental Health Council of Australia) drew the Government's attention to our concerns with this aspect of the access criteria when the legislation was before the Parliament and in the development of the *Rules*; the relevant correspondence is attached to this submission. Many of the issues raised at that time remain real and pressing in the context of the current review of the *Act*. Mental Health Australia has heard many stories from trial sites about the challenges that this element of the access criteria has created – for NDIA assessors, who must apply the criteria in practice; for mental health practitioners, who are asked to make judgements about the likelihood of permanency of impairment from a clinical perspective; and most importantly for consumers, for whom a judgement about permanency can undermine hope and optimism about the future.

Mental Health Australia draws the review team's attention to the submission from MI Fellowship, which considers at length the misalignment between the concept of permanency and contemporary best practice in mental health. As MI Fellowship's submission rightly observes, the evidence base does not support linking a diagnosis of mental illness with the assertion that any associated impairments would be lifelong. Many stakeholders have raised similar concerns with Mental Health Australia about this aspect of the *Act*. Without amendment and/or clarification, either through the legislative framework or otherwise, the reliance on permanency as a central consideration in determining access will continue to confuse and concern those in the mental health sector.

It should be emphasised that, in raising concerns about this aspect of the access criteria, Mental Health Australia is not arguing for the access criteria to be relaxed so as to allow larger numbers of people with psychosocial disability into the NDIS than originally conceived. Instead, we are arguing that the concept of permanency of impairment is a poor fit with respect to mental illness and psychosocial disability. We acknowledge governments have a difficult task to ensure the NDIS is financially sustainable in the long term, and NDIS investments must be targeted to the cohort with the highest needs. Nevertheless, we are not confident the access criteria as currently framed allow the NDIA to assess the likelihood of permanency of impairment in a manner that is nationally consistent, evidence-based and respectful to applicants.

On a different matter relating to the access criteria, the role of NDIS-funded early intervention for psychosocial disability associated with mental illness remains a source of confusion for mental health stakeholders. It seems counterintuitive, and inconsistent with insurance principles, that someone can qualify for early intervention supports only if they can demonstrate they already have an impairment that is permanent or likely to be permanent. The very small number of people in trial sites with a primary diagnosis of mental illness who have entered the NDIS under the early intervention provisions appears to reinforce this characterisation.

The attached correspondence provides further explanation of Mental Health Australia's concerns regarding the early intervention provisions in the *Act*.

Nominee provisions

From a mental health perspective, it is important the *Act* and the *Rules* strikes the right balance between the powers of participants, carers, treating clinicians and others, particularly when there are changes in the decision-making capacity of participants. It is difficult to judge from the *Act* or the *Rules* themselves whether the right balance has been achieved, and Mental Health Australia has received little evidence to date from trial sites that would inform such an assessment.

However, carer representatives have raised concerns about what they perceive to be an imbalance between the rights or participants and the rights of carers in making decisions about NDIS-funded services. Mental Health Australia hopes to see more consideration given to these issues, based on a systematic examination of what has occurred in trial sites to date and in consultation with both consumers and carers.

Governance arrangements

Broadly, service providers and industry groups feel distant from governance arrangements.

Policy governance arrangements have not facilitated systematic engagement or consultation with service providers and other stakeholders in key decisions. This is also true for many consumers and carers, who often report feeling excluded from key decisions regarding NDIS policy.

From an *implementation governance* perspective, feedback loops have developed slowly. It will be essential to the future success of the NDIS to put in place arrangements that allow problems and potential solutions to be identified and escalated quickly, and for decisions

regarding these issues to be fed back to practitioners in a timely way. Current governance arrangements are highly government-centric, with occasional and by no means comprehensive attempts to seek advice from consumers, families and other experts.

Mental Health Australia hopes future governance arrangements will promote more regular and person-centred consultation regarding a wide range of issues associated with the NDIS.

Attachments

1. Letter from Frank Quinlan, Chief Executive Officer, Mental Health Council of Australia to the Hon. Jenny Macklin MP, Minister for Disability Reform and Minister for Families, Community Services and Indigenous Affairs, 8 April 2013

2. Letter from Frank Quinlan, Chief Executive Officer, Mental Health Council of Australia and David Meldrum, Executive Director, Mental Illness Fellowship of Australia to the Hon. Jenny Macklin MP, Minister for Disability Reform and Minister for Families, Community Services and Indigenous Affairs, 19 August 2013

3. Letter from Frank Quinlan, Chief Executive Officer, Mental Health Council of Australia to the Hon. Jenny Macklin MP, Minister for Disability Reform and Minister for Families, Community Services and Indigenous Affairs, 31 October 2013

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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