

Improving the NDIS Experience: Establishing a Participant Service Guarantee

A submission to the Review of the NDIS Act and the new NDIS Participant Service Guarantee

October 2019



This submission is prepared by The Rights Information and Advocacy Centre Inc. (**RIAC**) and is supported by Villamanta Disability Rights Legal Service, the Disability Discrimination Legal Service and Leadership Plus.

About RIAC

RIAC is a not for profit organisation empowering communities across 22 local government areas operating throughout central and north western Victoria, Geelong and southern NSW, providing information and advocacy support to individuals, families, carers and communities.

RIAC is funded by the Commonwealth and Victorian Governments to provide issue based individual and systemic advocacy assistance to people living with a disability.

RIAC is also funded for the National Disability Insurance Scheme Appeals Program, which plays an important role in ensuring that National Disability Insurance Scheme (NDIS) decisions are fair and robust.

RIAC has been involved in the NDIS since implementation in the Barwon region in 2013. RIAC has been informed by our work and engagement with people with disabilities, their families and community sector organisations of the various challenges surrounding NDIS Planning.

Reference Items

We will address the following topics relating to:

- A. NDIA Service Standards;
- B. Getting Started: Eligibility and Application;
- C. Planning Processes 1: Creating your plan;
- D. Planning Processes 2: Using and reviewing plans;
- E. Appealing a decision by the NDIA;
- F. Removing red tape from the NDIS;
- G. Plan Amendments;
- H. Additional Information.

A. NDIA Service Standards

Possible principles for NDIA service standards

Principle	Description
Timely	The NDIS process will be easier to understand and use, enabling decisions about access, planning and review to happen promptly.
Engaged	The NDIA engages with people with disability, their family, carers and other support persons when developing operating procedures and processes.
Expert	NDIA staff have a high level of disability training and understand the impact particular disabilities have on people's lives. They understand what supports are most effective for a person's disability.
Connected	The NDIA works well with governments, mainstream services (such as health, education, justice services), disability representative groups and providers to ensure people with disability have coordinated and integrated services.
Valued	Participants, their families, carers and other support persons feel valued in their interaction with the NDIS, and know where to go if they need further assistance.
Decisions are made on merit	The NDIA acts in a transparent, informative and collaborative spirit so that participants understand why decisions are made.

1. Which of the above principles do you think are important for the NDIA to adhere to, and why?

The NDIA should be consistently adhering to all of the principles identified in the proposed Service standards. We believe it is critical that these standards are implemented during the planning experience for participants. If the service in this key area improves it can prevent the increasing amount of review requests and complaints relating to this process. Quality plans can prevent the need for as many reviews and will save the sector time, money and resources.

We respond to each of the proposed service standards below with some key consideration points.

- *Timely:*

- If the standard NDIA plan is 12 months, an internal review request of a plan should be determined within 3 months of submitting the review. Under no circumstances should the review request outlast the plan.
- Long review wait times can result in participants under-utilising and ineffectively using a plan. The support in question of review can often impact the implementation of the remainder of the plan.
- Participants should be contacted within 30 days of submitting an internal review request for an opportunity to provide further information the NDIA identifies that may assist their review. Once the additional information has been received an outcome should be determined within 30 days. Under exceptional circumstances this time frame may need to be extended and consultation with the participant must occur.

- It is important to ensure plans are correct initially to prevent reviews, therefore the NDIA needs to ensure quality time is invested in building plans – recommendations are provided within this submission to ensure quality plans are prepared.

- *Engaged*
 - Increased resources should be directed to ensuring participants are actively engaged through each stage of the planning process for their NDIS Plan.
 - This should include draft plans and time for participants to engage with a planner and vice versa to ensure any misunderstandings can be clarified and any errors can be corrected.
 - When avoidable errors are made at the planning process the effects can be devastating for participants and vital supports may be omitted. Consultation is critical to avoid this.
 - Currently the system is not user friendly for people with disabilities to navigate on their own.
 - The effect of these inefficiencies with engagement is causing unnecessary strain on the Advocacy system.

Case study:

An important report relating to a participant regarding continence products was not considered by an NDIA planner and therefore continence products were not included in the plan despite this being funded for the previous four NDIS plans. The family were not able to resolve this issue with their Local Area Coordinator and after submitting an Internal Review they waited for 2 months before seeking advocacy assistance from RIAC. Once RIAC became involved, this internal review was escalated and it was acknowledged this was an error and the continence products were quickly included in the plan. The family has been out of pocket for 2 months paying for continence products which they struggled to afford for the participant. The planner has then said they need to “follow up with finance” to seek reimbursement. It has been a further 3 months and there has been no reimbursement from NDIA finance.

This is one of many examples where advocacy services have been required unnecessarily as a result of a review system which is not user friendly for families, let alone anyone with a disability and of a finance system which is almost impossible to get answers from.

- *Expert:*
 - The NDIA and Local Area Coordinator (LAC) staff need to be have a high level of disability training and need to be trained in Trauma Informed Practices.
 - The NDIA also needs to respect the expert evidence which is submitted from participants to inform their supports.
 - It is unacceptable for NDIA planners to make assumptions from reports- experts should be consulted to avoid any misunderstandings. The NDIA planner has often never met the

participant, yet they are making decisions which impact their level of supports and quality of life.

- The true experts for a participant are the participant themselves, their family and supports. This should be respected as a significant part of the planning process as it is underpinned in the current *NDIS Act*.
- NDIA staff should also be working with participants who have an appropriate level of training and understanding of the disability and resulting impact.
- To provide a greater level of service the NDIA could form specialist departments for managing particular disability categories.

- *Connected:*

- The NDIA's 1800 number does not enable participants to feel connected. If a participant has a plan they should have a direct "plan manager" within the NDIA.
- Participants are not supported to be connected with "mainstream" services. When the NDIA decides to no longer fund supports there is no coordination to ensure the participant is supported.
- If there is a dispute over whether a support should be funded between the NDIA and mainstream supports it is always the participant requiring the support who is left without the support while funding disputes are being resolved. The participant should be supported until the funding issues are resolved.
- Participants are not feeling connected with the LAC model because of the intense workload LAC's have

- *Valued:*

- Consistent feedback we receive from participants is they do not feel valued as a result of the high staff turnover of LAC's and the workload strain the LAC's and NDIA staff repeatedly communicate they are experiencing.
- Vulnerable participants are being expected to manage their NDIS Plan with the support of LAC's and no Support Coordinator.
- Due to the workload of LAC's the required level of support is not being offered and therefore participants are not feeling valued at any point of their experience with the NDIA.
- Expert reports are being disregarded and participants are not feeling 'listened to'.
- Advocates repeatedly hear from participants they want to "give up" and the NDIA is increasing the severity of their mental health impairment.
- We are also receiving reports of increased carer burnout from families who are constantly advocating for the children.

- *Decisions are made on merit:*

- At the External Appeals Administrative Appeals Tribunal (AAT) stage we witness positive outcomes for participants. The NDIA resolutions team work well to collaborate and come to a reasonable outcome where a participant is satisfied.
 - Participants should not have to navigate their way with an advocate to get to the AAT to receive a reasonable outcome. These outcomes should be arranged at the initial planning stage.
 - Much more training should be implemented to planners to avoid plans which participants are constantly seeking to appeal. This will save time and resources managing appeals for the sector.
- *Accessible:*
 - The system requires a lot more work in order to be accessible for participants with disability and especially representatives of minority groups.
 - The planning process, reviews process and complaints process are not user friendly for people with disability period and many participants rely on using their funded supports to advocate for them, submit complaints and follow up administrative errors with their plan. As a result of these challenges the advocacy sector is under significant strain and is unable to keep up with the demand for NDIA advocacy - the workload is currently unsustainable.

2. In your experience with the NDIA, do you think they fulfilled the above principles? If not, how are they falling short?

We are consistently witnessing examples of the NDIA not fulfilling the proposed principles in the NDIA Service Standards. See [**APPENDIX A RIAC's Submission to the Joint Standing Committee on the National Disability Insurance Scheme \(NDIS\): NDIS Planning, 6 September 2019**](#). To avoid repetition Appendix A should be read in conjunction with this Submission as it includes relevant issues and recommendations.

3. Do you have any ideas on how we can measure how well NDIA has delivered on each of the principles?

- The percentage of cases which go to the AAT and are settled by agreement at the AAT is significant in comparison to the number of matters which progress to final hearing at the AAT. From our agencies' experience cases are being settled at the AAT with the NDIS providing the supports requested to the participants because they are deemed reasonable and necessary. This shows that there are significant issues occurring at the planning and initial review stages. If the NDIA was operating with better quality plans then the number of AAT settlements would be reduced.

- Surveys to participants – currently the questions asked to participants in plan meetings do not give enough depth for understanding the issues. As an example “does the NDIS give you more support?” This question has a yes or no response and does not give an opportunity for any further information. Surveys which give valuable insight would be more appropriate for measurement.
- If there are legislated time frames, measurement against the implementation of these timeframes is critical, and results should be made publically available.

B. Getting Started: Eligibility and Application

What are some of the significant challenges faced by NDIS participants in the access process?

- Vulnerable participants needing support to make access requests -support services are limited and often have long wait lists due to demand.
- Access requests rejected without appropriate explanation – already the NDIA is not transparent and feels adversarial to people with disability
- Cost of reports
- Lack of understanding from allied health professionals of the NDIA access process and using the necessary language
- Support getting the appropriate allied health evidence
- Eligibility requests being rejected and no other services available or significant wait lists, especially for psychosocial disability.

The NDIS Act currently requires the NDIA to make a decision on an access request within 21 days from when the required evidence has been provided. How long do you think it should take for the NDIA to make an access decision?

- 21 days is reasonable however the NDIA rarely adhere to this legislated timeframe without any explanation to participants. From the very beginning people risk becoming disengaged by the long wait times.

Recommendations

- If there is a legislated timeframe this must be followed by the NDIA and if breached, there must be consequences for the NDIA. This data should also be collected and reported to the public.
- Increasing the staffing cap to ensure there are adequate planners and decision makers to implement the legislation.
- Ensuring people have support when making access requests and providing a clear explanation about why an access request has been rejected to give the person an opportunity to re-apply with additional evidence and support to do this.
- Increased community workers to support access requests.
- Increased services available for people who do not meet the access requirements.

- Making access request forms more accessible and flexibility when working with vulnerable people

Case Study: A RIAC Advocate from the Aboriginal and Torres Strait Islander Advocacy Program attempted to get an NDIA Access Request Form for an Aboriginal person wanting support to apply for the NDIA. The RIAC Advocate explained to the NDIA that it was most appropriate from him to get the form and go through this with the person. The NDIA and Local Area Coordinator refused to give our Advocate an access form. A complaint was submitted and this has still not been followed up.

C. Planning Processes 1: Creating your plan

Refer to [**APPENDIX A**](#) for details regarding the many challenges faced by NDIS participants throughout the planning process.

How long do you think the planning process should take? What can the NDIA do to make this quicker, remembering that they must have all the information they need to make a good decision?

- The planning process should be a supported and transparent process. NDIS Participants are currently not supported enough to ensure a quality planning process where participants feel they are heard.
- Participants who are not granted Support Coordination funding are not supported appropriately by their LAC to prepare for planning meetings. Due to the complexity of the NDIS, participants need specialist support when preparing for a plan meeting.
- The work load of LAC's does not allow for plan monitoring, evidence preparation, crisis management and disengagement.
- The planning process should be guided by the participant's needs. Participants should also be given the opportunity to correct any errors and determine whether an agreement can be reached within the limits of what is "reasonable and necessary". Time should be allowed for a draft plan if the participant would like this option and allowable time for any clarification or additional information needed from specialists. There should be flexibility. Keeping the participant involved in each step of the process.

Is the NDIA being responsive and transparent when making decisions in participants' plans? If not, how could this be improved?

Once the planning meeting has occurred with a Local Area Coordinator the participant does not receive any communication until the plan is finalised.

There is no opportunity for collaboration in this model and it creates a high degree of stress, fear and uncertainty regarding the planning process for participants. Once a participant receives their plan they

are told if there are any issues they need to submit a review which causes more anxiety because participants know this can take months to resolve. This is the opposite of a transparent model which is what the NDIA needs to move towards.

Getting the plan correct initially is critical in preventing unnecessary review requests. This level of quality should be prioritised over getting plans approved quickly and carelessly. The demand for advocacy service is increasing and RIAC is constantly being requested to provide support to people in plan review meetings because they are “scared” and “going to battle for support”. This is not what advocacy resources should be used for in the system and something needs to be done to address this.

Recommendations

- Co-designing of plans between the participant, LAC and NDIA.
- NDIA Delegate to provide a draft Plan.
- Participants should receive an interim plan if there are delays in gathering evidence to determine appropriate funding.
- NDIA Delegates to meet participants and LAC together if participants have questions regarding their draft Plan
- Improved communication and training between LACs and NDIS
- LAC role to be revised so they are not primarily responsible for the planning meetings. LAC's are better utilised for linkages and support to understand and implement Plans and assist to gather evidence.
- Planning meetings should not be over the phone unless requested by the family
- Increased staffing cap to enable NDIA Delegates time to get Plans correct initially
- The co-design of plans approach is consistent with section 4(8) of the NDIS Act 2013

People with disability have the same right as other members of Australian society to be able to determine their own best interests, including the right to exercise choice and control, and to engage as equal partners in decisions that will affect their lives, to the full extent of their capacity.

D. Planning Processes 2: Using and reviewing plans

Refer to [**APPENDIX A**](#) for details regarding the challenges faced by NDIS participants using and reviewing their plans.

Is the NDIA giving people enough, and the right type of information, to help them use their plan? If not, what other information could the NDIA provide?

- The current LAC model is highly flawed and LAC's work load preparing plans is significant and they are not able to support participants to understand and engage with their plan.

- Participants not deemed ‘complex enough’ are not provided with funding for a Support Coordinator which leaves them vulnerable and at a greater risk of disengaging with the NDIS.
- RIAC has observed the following issues arise for participants from LAC’s ill-equipped to implement NDIS plans:
 - Underspending in the plan
 - Difficulty engaging with services
 - Service providers changing
 - Services unavailable in particular areas
 - Crisis situations, changing circumstance – especially psychosocial participants with impairments of an episodic nature
 - NDIS Plan finance administration issues
 - Unsatisfied with the plan and not knowing how to change
 - Gathering additional evidence to support with the review process
 - Difficulty understanding the review process
- All the above issues can be enhanced depending on the particular LAC’s workload, whether the LAC is on leave, and the high turnover of LAC staff. The LAC role is currently unsustainable and requires urgent revision. An increased number of staff is required to ensure participants are supported throughout the duration of their plan.

Recommendations

- LAC’s not to conduct plan reviews but instead provide increased support for participants to implement their plans and resolve procedural, administrative and finance issues with plan
- LAC’s to support preparing evidence for a plan review and monitoring the plan
- Plan reviews to be arranged with an NDIA Planner and LAC and for draft plans to be provided to participants
- Specialised NDIA planners to support participant needs based on disabilities
- Revising the Support Coordination model to ensure complex participants are supported based on their needs, not based on the amount of hours in their NDIS plans – there are too many variables that increase utilisation of support coordination funding.

E. Appealing a decision by the NDIA

Refer to [**APPENDIX A**](#) for details regarding the challenges faced by NDIS participants appealing decisions from the NDIA.

Issues:

- Time frames
- Cost of providing additional evidence

- Appeal applications outlasting the NDIS Plan is unacceptable and defeats the purpose of a plan review process
- NDIS Plans outlasting the AAT appeal process and if a matter is settled a participant receives a new 12 month plan without the process of a plan review to update their plan appropriately.
- Ensuring that participants receive adequate support during external review by the AAT. When an individual is not supported in negotiating a settlement with the NDIA, the potential for the agency to excessively influence the outcome in the agency's favour is too great.

Recommendations:

- Participants should be contacted within 30 days for any additional evidence/information required to support their internal review.
- Reviews should be resolved within 3 months of being submitted – unless evidence from the participants is being obtained which takes longer.
- If a participant is unable to gather appropriate evidence they should be supported to be linked in appropriately.
- Better collaboration from the NDIA with treating professionals, family and carers to understand the circumstances of the review request.

F. Removing red tape from the NDIS

Do you think there are parts of the NDIS Act and the Rules that are not working or make things harder for people interacting with the NDIS?

It appears the key issues are not related directly to the *NDIS Act* or Rules but as explained in this submission, the issues arise from the NDIA disregarding the Act and Rules such as legislated time frames that are consistently not followed. The essence of the legislation relating to choice and control and collaboration with participants is also overshadowed by the decisions the agency makes.

The NDIA has very little accountability if it is not following the legislation or Federal Court rulings. There are no statistics regarding the number of times the NDIA have not followed the legislated timeframes. A governing body is required which can hold the NDIA accountable to their obligations under the legislation. The Commonwealth Ombudsman's power is severely limited in this area.

G. Plan Amendments:

Recommendations:

- Constant changes to plan dates cause issues with participants, service agreements and invoice payments. These errors often take months to resolve. If this can be resolved by reducing red tape it would be appropriate for the NDIA to implement these.
- A participant should be given as much time as they need to provide evidence to support changes they are requesting in a plan amendment and should be supported through this process. It can

be very intimidating for participants to seek this evidence unsupported and there is a risk the treating professional does not understand what will satisfy the NDIS.

- The date of the plan should not have to change unless there needs to be a significant change to the plan where a full plan review is required to occur.

H. Additional Information

Please see **APPENDIX A – Submission to the Joint Standing Committee on the National Disability Insurance Scheme (NDIS): NDIS Planning, 6 September 2019** for further discussion regarding issues and recommendations for improving the NDIS.

The agencies contributing to this submission thank the enquiry for the opportunity to provide a submission for this review on behalf of NDIS Participants and advocates supporting them.

All advocacy agencies are finding the complexity of participants' experience with the NDIS is making our staff's workload unsustainable. We have long waitlists and have resorted to closing our intake when the increasing demand for individual advocacy has been unmanageable.

We value the NDIS and the support it provides to Australians living with a disability. When it works, it works well and can positively impact lives. However, there are currently too many steps along the process where errors and issues can occur and take too long to resolve, even when only something minor. This can be enough to trigger trauma and distress in participants, their families and their other support networks. This is something our Advocates see participants experiencing throughout the NDIS journey and it is unacceptable that this system can create such a negative experience for our most vulnerable Australians. We look forward to the implementation of this NDIS review.

Yours sincerely,

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APPENDIX A – Submission to the Joint Standing Committee on the National Disability Insurance Scheme (NDIS): NDIS Planning, 6 September 2019

Submission to the Joint Standing Committee on the National Disability Insurance Scheme (NDIS): NDIS Planning

Reference Items

We will address the following identified reference items within our submission:

- a. the experience, expertise and qualifications of planners;
- b. the ability of planners to understand and address complex needs;
- c. the ongoing training and professional development of planners;
- d. the overall number of planners relative to the demand for plans;
- e. participant involvement in planning processes and the efficacy of introducing draft plans;
- f. the incidence, severity and impact of plan gaps;
- g. the reassessment process, including the incidence and impact of funding changes;
- h. the review process and means to streamline it;
- i. the incidence of appeals to the AAT and possible measures to reduce the number;
- j. the circumstances in which plans could be automatically rolled-over;
- k. the circumstances in which longer plans could be introduced;
- l. the adequacy of the planning process for rural and regional participants; and
- m. Any other related matters.

a. The experience, expertise and qualifications of planners;

Barriers:

- Local Area Coordinators (LAC) conducting plan reviews which can cause inaccurate and misconstrued information being forwarded to NDIA delegates for Plan approval. It creates a middleman approach, which makes the NDIA seem faceless to participants.
- Plans compiled by LACs, compared to NDIA Planners, cause increased inconsistency in plans and decreased faith in LACs and the NDIA for participants and the wider community.
- LACs not consistently understanding how NDIA funding can be utilised.
- LACs often telling participants how to use their Plans without fully understanding their situation due to time constraints and therefore, limiting many people with disabilities to mundane activities.
- Lack of choice and control – sometimes LAC's disregard the person with a disability's needs. Often LAC will respond to a client's request as "the NDIA won't fund that", without seeking clarification whether it is reasonable and necessary and offering options for appeal and review.
- Inconsistent plans based on which NDIA delegate approves the plan. Plans for participants of similar needs can vary significantly depending on experience and qualification of the delegate. This creates uncertainty through the whole planning process. This causes anxiety with families at the planning stage and causes animosity towards LACs and the NDIA.

- Example: two children in the same family with Autism Level 2 and very similar medical reports and needs requested to the LAC. The plans went to two different NDIA Planners, one plan was returned with an \$11,000 Core Budget, and the other with a \$0 Core Budget.
- NDIA Planners not qualified to make decisions about Plans regarding participants they have never met.
- This model is not consistent with section 4(3) of the NDIS Act 2013 *People with disability and their families and carers should have certainty that people with disability will receive the care and support they need over their lifetime.*

Recommendations:

- Co-designing of plans between the participant, LAC and NDIA.
- NDIA Delegate to provide a draft Plan
- NDIA Delegates to meet participants and LAC together if participants have questions regarding their draft Plan
- Improved communication and training between LACs and NDIS
- LAC role to be revised so they are not primarily responsible for the planning meetings. LACs are better utilised for linkages and support to understand, implement Plans and assist to gather evidence.
- Increased staffing cap to enable NDIA Delegates time to get Plans correct initially
- The co-design of plans approach is consistent with section 4(8) of the NDIS Act 2013
People with disability have the same right as other members of Australian society to be able to determine their own best interests, including the right to exercise choice and control, and to engage as equal partners in decisions that will affect their lives, to the full extent of their capacity.

b. The ability of planners to understand and address complex needs;

Barriers:

- LACs planners with lack of training and understanding omit critical information for the NDIA. This causes concern when it is apparent the NDIA are relying on report from LAC rather than reading all of the specialist evidence for a participant.
- Difficult for an NDIA delegate to understand a participant's needs if they have never met.
- Participants who find planning meetings uncomfortable can easily omit important information, which would assist the LAC to understand their needs.
- Participants can present well at meetings without being able to articulate and advocate for what they need.
- Participants not being supported to obtain appropriate evidence from specialists.
- Support Coordination being denied for participants – only very complex participants appear to be getting this support in their plans. This leaves participants who may not fit the category of "very complex" but need more support than what LACs can offer them to connect with services, understand and utilise their plan.

Recommendations:

- See recommendations in a. above.
- All people with disabilities and their families may have complex needs. To ensure plans correctly reflect the complexities of people the NDIA should invest the time at the planning stages to consider these needs.

- Section 4(12) of the Act should be taken into consideration to address the complex needs of participants - *The role of families, carers and other significant persons in the lives of people with disability is to be acknowledged and respected.* The complexities of the NDIS administrative process are becoming increasingly difficult for families to cope with.
- The LAC should have capacity to support participants during points of crisis, but also to proactively provide support to prevent points of crisis.

c. The ongoing training and professional development of planners;

Barriers:

- Reported lack of sensitivity and misunderstanding of people's disabilities.
- The NDIA maintains on their website that transport should be categorised into levels and the website still inaccurately refers to the McGarrigle decision from the AAT that was overturned by the Federal Court. The NDIS planners are continuously telling participants they get a "contribution" to transport. This is all inconsistent with the Federal Court McGarrigle decision that supports should be fully funded.

Recommendations:

- Increased training regarding relevant legally binding outcomes of Federal Court decisions
- Improved training for NDIA and LACs in the following areas:
 - Cultural competency training for working with Aboriginal and Torres Strait Islander People
 - Mental Health
 - Human rights obligations under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)
 - Understanding diversity in disabilities and not making assumptions and generalisations

d. The overall number of planners relative to the demand for plans;

Barriers:

- Consistent reports from LACs and NDIA Planners that they are time constrained as excuses for delays and unresponsiveness – participants losing faith in the process.
- LACs not explaining or supporting participants in understanding their plans in a way suitable for the participant due to time constraints.
- Planning meetings going ahead despite lack of evidence, the participant needs for the right supports and participant receiving no support to obtain this evidence.
- LACs are under strain with unreasonable expectations from the NDIA.
- We have heard LACs say "*our case load is too high to be expected to do linkages*"
- LACs not implementing plans (when no Support Coordination) in a timely manner and sometimes not at all leading to underspending of plans.
- Feedback from LAC's is that the NDIA planners who approve plans engage in minimal discussion about the justification of supports and do not give the opportunity for additional evidence, questions or clarification to be asked to the participant or professional supports due to time constraints.

Recommendations:

- Same as part a. above
- LAC to have a more supportive role for participants to prepare and gather appropriate evidence for planning meetings

- Improved communication between LACs and participants: KPIs for LACs to respond to participants (we receive multiple complaints from participants who never hear from their LAC until we are involved)

e. Participant involvement in planning processes and the efficacy of introducing draft plans;

RIAC is highly supportive of introducing draft plans. Parts a-d above have identified various barriers for participants that could be resolved by introducing this. Although this step would be more resource intensive at the planning process, it has the following benefits:

- Resolve misunderstandings saving time and resources spent from the sector submitting reviews and appeals.
- Restoration of participant's faith in the NDIS planning process if they are being included.
- Time for participants and their families/support team to understand their plan and support categories.
- Reduction in internal and external reviews.

f. The incidence, severity and impact of plan gaps;

Barriers:

- Constantly changing plans can create payment issues with providers. There are significant delays regarding provider reimbursements because of errors with NDIS plans. Providers await payments for months and months and on occasions are withdrawing vital services to participants.
- Escalation process with the NDIA Finance department is not effective.
- Providers invoicing participants directly for payment when NDIS does not resolve errors.
- *Example: the NDIA owed the Taxi Network \$5,000 which was overdue and despite multiple attempts to escalate this the NDIA did not pay the taxi network, the Taxi network withdrew services. The vulnerable participant missed day programs and his host family paid the \$5,000 out of their own funds so the service could be reinstated. The host family are still seeking reimbursement which has been promised for the last 5 months*

Recommendations:

- Increased support from the NDIA Finance Department to support NDIA Planners, LACs, Support Coordinators, Participants and anyone else making enquiries.
- Improved escalation pathways for finance
- Timeframe commitments to resolve financial complaints

g. The reassessment process, including the incidence and impact of funding changes;

Barriers:

- Lack of funding continuity and fluctuating uncertain plans from year to year for participants is concerning. Reports from participants and providers is that these changes impact how services can work effectively. Even though participants can show evidence support is required, the NDIA reduces funding which has adverse consequences.

- Fluctuating plans from year to year especially impacts participants with psychosocial disability who may have a severe functional impairment and services cannot work effectively if funding is fluctuating.
- If a participant is seeking an internal review of their plan, the focus of their next plan becomes about justifying why the support they need is necessary. By the time the review is addressed months of potentially critical treatment has been lost.
- People fear if they don't spend their funding they will lose their funding in the next plan. There are many reasonable explanations why participants are unable to spend their funding. E.g. Unable to find appropriate providers, crisis situations, issues with service providers.
- Funding changes without warning can also have negative impacts on other mainstream services and can leave vulnerable participants with out of pocket expenses for necessary services which the NDIS previously funded.
- NDIS Planners and decision makers are not having any regard to the operation and effectiveness of participant's previous plans. The NDIS Act Section 33 5(f) states "*In deciding whether or not to approve a statement of participant supports under subsection (2), the CEO must: have regard to the operation and effectiveness of any previous plans of the participant.*
- No reimbursement from the Agency if a participant appeals decision from Plan that is overturned. Delays in the review process mean participants experience out of pocket expenses for vital supports, which should have been funded initially. The impact of funding decisions is often unknown to planners and disregarded. The mental distress we see participants and their supports experience from these decisions can be devastating.
 - *Example: Host Family Payments were ceased by the NDIS without notification to families. This left vulnerable individuals and host families without payments until this was reinstated months later causing financial strain on families. As a result of this, some Host Families were forced to cease providing support to participants. Host Family Payments have now been reinstated without any reimbursements.*
 - *Example: MEPACS Alarm System for a client was previously funded by NDIS and when no longer funded by NDIS the Participant was invoiced personally without consenting.*

Recommendations:

- Same as part a. above
- The co-designing of plans and draft plans
- Communication regarding funding changes and the implications of these changes for the participant and their holistic support network to ensure minimal disruptions.

h. The review process and means to streamline it;

Barriers:

- Delays in review process leads to decline in mental health and faith in the NDIS process, leads to disengagement and continuity of supports and significant out of pocket expenses for necessary supports
- Delays are often still outlasting the expiration of NDIS Plans
- Delays disrupt the flow of the current plan, often leading to inefficient use of funds and time of therapists and support coordinators

Recommendations:

- Implementing more resources to the planning stage to circumvent the need for many reviews

- Legislative time frames for reviews
- Raising staffing cap to ensure volume of reviews can be addressed in a timely manner.

i. The incidence of appeals to the AAT and possible measures to reduce the number;

Barriers:

- NDIS Planners and decision makers can often disregard previous outcomes of the AAT process. This disregards the NDIS Act Section 33 5(f) "*In deciding whether or not to approve a statement of participant supports under subsection (2), the CEO must: have regard to the operation and effectiveness of any previous plans of the participant.*"
- The effect of the above means participants are required to re-submit reviews each year for supports that were approved from the AAT process. This affects each plan and the vital supports, especially if transport is in dispute. This creates isolation especially in regional and remote areas.
- The NDIS are continuously extending plans when participants are in the Tribunal process. This results in many issues for participants including:
 - New service agreements need to be implemented each time
 - Providers are not willing to take participants with short plans as there is no guarantee that the plan will be extended
 - Confusion of how to implement a plan extension as there is very little assistance to navigate this, especially if the participant does not have support coordination.
 - The Tribunal is requiring the NDIA to submit a separate application in relation to plan extensions when a participant has an open AAT matter. This is resulting in participants having limited supports while involved in the slowly moving AAT process.

Recommendations

- Planners to take into account the above legislation when reviewing a participants plan. If a decision has been made by NDIA senior decision makers at any point (either usual planning process or AAT) that a support is reasonable and necessary, and there are no significant changes for the participant that the previous decision should still be relevant when undertaking a scheduled plan review.
- The recommendations in this submission will ensure there has been every opportunity for the participant and their support team to be involved in the funding required to support the participant.
- Representative from NDIA with appropriate delegation to provide clear feedback and instructions to be present at case conferences (on the minimal occasions this has occurred the process is highly efficient).
- Continue to build the capacity and efficiency of the Early Resolution Team to ensure a more streamlined process.
- NDIA to consult regularly with Advocacy and Legal organisations regarding the efficacy of the AAT process

j. The circumstances in which plans could be automatically rolled-over;

Recommendations:

- Plans to be for a participant's lifetime that are reviewed from time to time or when there is a change in circumstances. This would take the pressure off the Agency to have continual

- reviews, they could be more efficient with RORD submissions, access requests, and supporting the people the scheme was meant to support.
- If a support meets the criteria for reasonable and necessary in one plan for it to consistently continue in following plans unless there is a significant change in circumstances.
 - Provide the option for participants to roll over their plan if their circumstances haven't changed and the evidence suggests it is appropriate for supports to continue.

k. The circumstances in which longer plans could be introduced;

Recommendations:

- Longer plans could be introduced with the co-designing of plans model. If requested by a participant and suitable for their circumstances, this could be appropriate.
- For longer plans to be implemented the change of circumstances process for an early plan review would need to be reliable to address any unexpected shortfall of the plan.
- Alternatively a model where plans are to be for a participant's lifetime and reviewed on a needs basis as stated above.

I. The adequacy of the planning process for rural and regional participants;

Barriers:

- Planners need to be realistic about the services provided
- Transport should be fully funded which is problematic for participants who live in rural and regional areas
- Regarding Remote Classification
 - NDIA (noting it is a Commonwealth Agency) has adopted the Monash Model in determining extra supports/ benefit for the individuals who reside in a remote area by way of increased support rates to allow accessing services.
 - The adopting of the Monash Model though discriminates against people with a disability as the definition of 'remote' varies from the definition of remote under other Cth agencies eg. the Australian Taxation Office.
 - e.g. Warracknabeal Post code 3393.
 - People can access remote Salary Packaging benefits via the Australian Taxation Office who live in this postcode. The Monash Model (NDIA) though still classes 3393 as 'regional'.

Recommendations

- Classification of areas need to be consistent throughout Cth Government departments to avoid confusion.
- NDIA to update their Operational Guidelines regarding transport to be consistent with the Federal Court McGarrigle decision and appropriate training for planners to understand this.

m. Any other related matters.

- LACs being instructed not to provide support to participants who are currently engaged with the Administrative Appeals Tribunal (AAT) leaving them unable to coordinate implementation of current plans.

- Removal of case management from the Disability Sector with no replacement under NDIS – creation of an enormous gap in services for many participants.
- Appropriate options for participants where case management has been removed but is still necessary.
- Access to Delegates as to any other professional ie be able to phone them directly.
- Fully implement the current Aboriginal and Torres Strait Islander Engagement Strategy NDIS and ensure it is incorporated into all induction and training within the NDIA.
- The First Persons Disability Network has created a 10 point plan and blueprint for the way forward which RIAC also endorses and hopes is incorporated into any future initiatives or thinking from the NDIA in relation to working with Indigenous Communities:
<https://fpdn.org.au/ten-priorities-to-address-disability-inequity/>

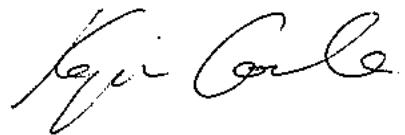
Case Study

- **28/08/2017** – A family sought the assistance of RIAC for a review of a reviewable decision (RORD) for their 29 year old son. At this time, the RORD had already been submitted some time before the first advocacy meeting. The family reside in regional Victoria and have little supports in the area for their son to access.
- After many discussions with the Agency, the mother decided that she wanted to proceed to the Administrative appeals tribunal.
- Copious amounts of information was provided, with many teleconferences and conciliation meetings which were held in the AAT process. Approximately 12mths was spent proving that the transport (among other things) was a reasonable and necessary support that must be fully funded.
- During this time, the participant was not able to access all of his services that were funded, as the transport funding was insufficient. This caused stress and isolation for the participant and his mother who was required to stay at home with her son.
- The outcome of the external review was successful for the participant and the much needed reasonable and necessary supports were put in place.
- The case was closed on **17/08/2018**
- Moving forward another 12 months to August 2019, the participant's mother contacted RIAC, as there had been a scheduled plan review.
- The approved plan had been cut significantly. The mother was extremely upset and distressed that the process that they had been through over the past 24 months was going to have to be re-lived.
- There had been no changes to her son's needs, in fact it was reported that he had the best year of his life so far. His parents were organising their first holiday without their son, as the supports he received were finally adequate.
- However, there had been a change to the support that the participant's mother could provide. She was now a carer of her elderly and palliative mother, which required visits to Melbourne three or more times a week. She could not always be there to provide all the support to (her now) 30 year old son.
- Again, an internal review was submitted, and again the wait has begun for a decision and again the participant cannot access his supports that were deemed reasonable and necessary only 12 months earlier.

Again, we thank the Joint Standing Committee for the opportunity to provide input into this inquiry. RIAC hopes to see the NDIS thrive for the benefit of participants, their families and all support networks. The implementation of the NDIS currently requires significant improvements to ensure the obligations of the United Nations Convention on the Rights of Persons with Disabilities (**UNCRPD**) are upheld. The objects

of the NDIS Act 2013 also reiterate commitment to the UNCRPD, however without action the commitment becomes mere words. If recommendations from this inquiry are implemented in a timely manner Australian's impacted by disability can restore their hope in the NDIS system to become a true example of upholding the rights of people with disabilities.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Karryn Goode".

Karryn Goode
CEO
Rights Information and Advocacy Centre