

DISABILITY ADVOCATE 13TH MONTHLY ACTIVITY REPORT

JANUARY 2020

OVERVIEW

The Disability Advocate's role has been extended for another six months until 30 June 2020 to continue to hear from South Australians about their experiences with the National Disability Insurance Scheme (NDIS). The Disability Advocate's team has also seen some staffing changes with Lisette Claridge and Lyndi Gepp moving on and Sandra Wallis and Diane Holty joining the team to support the Disability Advocate in his role. Lisette and Lyndi provided excellent advice and policy analysis and I wish them every success in their future careers.

In 2019 the Disability Advocate met with over 150 groups comprising mostly participants in the NDIS and their families but also advocacy agencies and service providers. Information gleaned from these meetings identified a range of pain points for people and organisations when interacting with the National Disability Insurance Agency (NDIA). These matters ranged from basic customer service issues, operational issues to system design issues.

On the 17th September 2019 the Office of the Public Advocate (OPA) and the Disability Advocate made a submission to the review of the *NDIS Act 2013* (the Act) by David Tune. This submission was based on the findings from the Disability Advocate's work across 2019 identifying 20 red tape issues and recommended solutions to reduce red tape and streamline business processes. (Attachment 1).

This Disability Advocate monthly activity report focuses on the recommendations arising from the Tune review of the Act and commitments noted in The Hon Minister Stuart Roberts MP's National Press Club speech on 14 November 2019 where he unveiled a six point plan to deliver the final stages of the NDIS rollout. A gap analysis of these two significant events in the NDIS rollout has been undertaken against the recommendations in the OPA and Disability Advocate submission to the Act review. Recommendations that are not fully addressed are summarised and a course of action to continue to escalate these matters with the NDIA are proposed.

NDIS ACT 2013 REVIEW

The Tune review of the Act stems from the Australian Government's election commitment to develop the NDIS Participant Service Guarantee to support positive experience when engaging with the NDIS. To develop the guarantee the Government

commissioned a review of the *NDIS Act 2013* to identify opportunities to make the NDIS processes simpler and more straight-forward, removing legislative barriers to positive participant and provider experiences with the NDIS.

The review was undertaken by an independent expert David Tune AO PSM. People with disability, family members, carers, advocates and providers from around Australia shared their experiences and ideas through community workshops, an online survey and by making submissions.

On 20 January 2020 the findings of the independent review were released. There were 29 recommendations on how to improve NDIS processes and cut wait times and red tape for participants. These recommendations are listed in Attachment 2.

On 14 November 2019, following the release of the first quarterly report for 2019-2020 the Hon Minister Stuart Roberts MP addressed the National Press Club. The Minister announced a six point plan to deliver the final stages of the NDIS to an estimated 500,000 participants over the next five years. The key points of his speech and the plan are summarised in Attachment 3.

Findings from the Tune review of the Act and statements in the Minister's Press Club speech have been compared against the 20 red tape issues identified by the Disability Advocate. Attachment 4 is a comparison of these three documents and forms a gap analysis from which matters not addressed or partially addressed can continue to be escalated by the Disability Advocate. The Disability Advocate will continue to monitor the progress of NDIA responses to the Tune review. It is one thing to acknowledge matters that need reforming and quite another to systematically and energetically pursue the agreed reforms.

KEY FINDINGS

Overall the Tune report and Minister's speech addressed the majority of concerns raised by South Australians with the South Australian Disability Advocate. There were two findings made by the Disability Advocate that were not addressed in the review of the Act as they fell outside of the purview of the review. These were:

- **Disability Advocate (DA) Finding 8 - Public Guardians are not recognised as the participant's substitute decision maker**
- **DA Finding 10 – NDIA consent mechanisms are causing delays and double handling** (for example, NDIA consent mechanisms are not allowing foster families to act on behalf of their foster children and having to contact Department of Child Protection (DCP)).

The review acknowledged that these areas were not addressed as the NDIS Rules are made for the purpose of the administration of the NDIS by the NDIA and go into issues such as:

c) when a person should be appointed as a nominee to act on behalf of a participant.

d) when a person is responsible for undertaking actions and making decisions on behalf of children.

It also noted that:

This review does not consider those made by the NDIS Quality and Safeguards Commissioner, unless there are consequential impacts arising from recommendations made in this report.

In relation to adults, the report also acknowledged feedback suggesting that there is a need to review the nominee provisions of the NDIS Act in relation to their intersection with guardianship and administration legislation in the states and territories. The review considers it appropriate for governments, through the Disability Reform Council (DRC) to commission a review of the interoperability between the Commonwealth and state and territory legislation as it applies to nominee and guardianship provisions.

In the interim, The Office of the Public Advocate in South Australia is exploring options to participate in an NDIA trial into the use of a password to allow for the identification of third party agency staff speaking to the NDIA about NDIS participants. Preliminary investigations into this pilot appear to be promising and may address DA Finding 8, at least for the interim.

DA Finding 10 which relates to consent mechanisms for foster families to act on behalf of their foster child sits outside of the NDIS Act review. The *Children and Young People (Safety) Act 2017* acknowledges the role of approved carers (foster parents) to participate in any decision making process relating to the health safety and welfare or wellbeing of the child or young person. The authority to make decisions for a child under Guardianship of the Minister remains with the Minister or delegate. Section 76 of the *Children and Young People (Safety) Act 2017* provides for the Minister to delegate to an approved carer. The Disability Advocate will escalate the concerns raised to the Department for Child Protection and seek clarification on the policy position.

The report does not directly address **DA Finding 1 – The planning questionnaire does not capture the extent of the participant’s needs** (or subtlety due to yes/no answers required) although joint planning and the introduction of functional assessments funded by the NDIA may provide the clarity required. At times the questionnaire is completed with the Local Area Coordinator (LAC) and the participant and the information is then sent to the NDIA Planner to construct and approve the plan. The plan approver (planner) being present at the meeting will provide the opportunity for better information gathering to inform the plan, although this is an administratively expensive option and better path would be for NDIA planners to do the planning leaving LAC’s to perform the function they were originally meant to undertake.

DA Finding 12 – Support Coordination as an individualised component of a participant plan does not work for all participants.

This finding is addressed in both the Minister’s Press Club address and the Tune review. The Minister announced that from 1 July 2020, the NDIA will aim to remove the distinction between core and capacity building so that participants and their families can use plan funding more flexibly on those supports that best meet their needs. Recommendation 15 of the Tune review recommends the NDIS Rules are amended to clarify that supports in the participants plan should be used flexibly, except in limited circumstances, such as capital support.

Recommendation 16 of the Tune review proposed the amendment of the NDIS Rules to:

- a) set out the factors the NDIA will consider in funding support coordination in a participant’s plan
- b) outline circumstances in which it is not appropriate for the provider of support coordination to be the provider of any other funded supports in a participant’s plan, to protect participants from provider’s conflicts of interest.

The recommendations do not fully address the conflict of interest when a service provider also offers support coordination or the need for complex participants with ongoing complex needs to have ongoing support coordination.

DA Finding 13 – Accommodation Vacancies – There is no panel or replacement mechanism managing accommodation vacancies. It is not clear whether actions implemented to date contained in Appendix D of the Tune Review sufficiently address this matter.

D.3 The NDIA has been working to improve access to SDA for eligible participants and with governments to improve provision of accessible and well-designed housing for people with disability. Reforms already implemented by the NDIA include:

- a. establishing a dedicated team to fast-track eligibility decisions*
- b. developing an innovation plan to detail the actions that the NDIA will take to encourage more innovation in SDA and accommodation support models.*

D.4 This work supplements the actions taken by governments to change the National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016 to give participants greater flexibility in their choice of living arrangements, including who they live with.

Further discussions with the NDIA relating to this matter may clarify whether recent work of the NDIA specifically addresses supported accommodation vacancy management.

DA Finding 17 – Many moving to the NDIS (‘Planners doing plans with delegation to sign off the plan’. LAC sticking to LAC work and not doing planning but also able to offer support coordination). Recommendation 3 of the Tune review focuses on the Commonwealth providing additional funding for people with disability to navigate the NDIS. The Tune review also notes new participant booklets to support people with disability and participants on their journey through NDIS have already been introduced. Despite this all participants need access to Local Area Coordinators (LAC) and the planning process should remain with planners.

The following three findings all relate to the response of NDIA in a crisis situation. All three do not appear to be acknowledged or addressed in the Tune report recommendations.

- **DA Finding 15 - Change of Circumstance (CoC) needs a triage approach**
- **DA Finding 19 - No clear crisis response by the NDIA or escalation pathway**
- **DA Finding 20 - NDIA inability to respond quickly to sudden change of circumstances**

The lack of a crisis response or contingencies in place in the event of an urgent change of circumstance places avoidable pressure on other service systems and potentially unnecessary stress on the participant and their networks. The Disability Advocate will

continue conversations with the NDIA about how this matter can be addressed or resolved.

The recommendations and actions to date in the Tune review and Minister's speech are promising and show a concerted effort to address a number of customer service, operational and systemic issues. It will be critical to monitor how and whether these recommendations are implemented over the coming year.

ACTIONS

- 1) Propose the review of the nominee provisions of the NDIS Act in relation to their intersection with guardianship and administration legislation in the states and territories.
- 2) Enquire with the Department for Child Protection into the policy position relating to foster families as decisions makers for foster children who are NDIS participants.
- 3) Enquire into whether planning processes such as joint planning have addressed concerns about the lack of information in the planning questionnaire.
- 4) Clarify with the NDIA whether Recommendation 16 of the Tune review will address the conflict of interest when a service provider also offers support coordination or the need for complex participants with ongoing complex needs to have ongoing support coordination.
- 5) Clarify whether changes to the SDA have meant that participants are more easily able to find out about supported accommodation vacancies.
- 6) Engage with the NDIA to raise the concerns about pressures on other support systems and the risk to participants due to a lack of crisis response/ triaging of CoC in an emergency situations.
- 7) Raise the separation of the LAC role from the planning role to return to its original intended purpose with the NDIA.
- 8) Monitor updates on the progress of the implementation of the 29 recommendations in the Tune review.

ATTACHMENTS

- 1) South Australian Office of the Public Advocate and the Disability Advocate – Submission to the Review of the *NDIS Act 2013*.
- 2) Executive summary and recommendations - Review of the National Disability Insurance Scheme Act 2013 – Removing Red Tape and implementing the NDIS Participant Service Guarantee – David Tune AO PSM December 2019.
- 3) Summary points - National Press Club address The Hon Stuart Robert MP – The NDIS Plan – Speech to the National Press Club, Canberra 14 November 2019.

- 4) Gap analysis – OPA/ Disability Advocate recommendations, NDIS Act 2013 Review Report and The Hon Stuart Robert MP - NDIS Plan Press Club speech.
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