



Comments on Draft NDIS Rules

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Rules for Becoming a Participant

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Clause 6.1(c)(ii)

This clause is welcomed as it acknowledges the crucial role of carers providing informal supports. However, for clarity, this clause should acknowledge all family members as the whole family may operate as the participant's support system. It is suggested that clause 6.1(c)(ii) should read as follows:

Strengthen the sustainability of the informal supports available to the person, including through building the capacity of the person's carer, and the capacity of family members to effectively provide informal supports.

Clause 6.3(a)(i) and (ii)

PACFA has already made submissions on the importance of early intervention supports being selected based on evidence of effectiveness. However, clauses 6.3(a)(i) and (ii) do little to clarify what sort of evidence would be required to determine whether a particular early intervention support would be funded or provided by the NDIS.

Furthermore, without a proper assessment, it may be difficult to determine what early intervention supports are required for an individual participant. In its submission, PACFA recommended a full psychosocial assessment be undertaken for all participants, not only those with impairments attributable to a psychiatric condition. Psychosocial factors may need to be addressed to ensure the effectiveness of early intervention supports. For example, if a participant does not have the self-management skills required to consistently use a new piece of equipment, or to adhere to the requirements of the early intervention, the early intervention may fail without additional psychosocial support.

Clause 6.3(b)

Others have already commented that the words in clause 6.3(b) "there are no other service systems that could more appropriately fund or provide supports" are problematic. PACFA shares this concern. It is possible that there will be other services that *could*, in theory, provide the required

supports, but whether they actually do is the issue. In practice, the participant may not be able to access the required support with the other service, for example, because of barriers to service access or because the participant is languishing on a waiting list. Alternatively, the support that is provided by the other service may not be sufficiently tailored to meet the needs of the participant or may not be provided by the participant's chosen support provider.

A Better wording for Clause 6.3 (b) would be:

that there are no other services systems that can immediately fund or provide supports that could achieve the outcome described above in paragraph 6.1(c)(i) or (ii).

Supports for Participants

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Clause 7.3

As already highlighted in other feedback from PACFA, the wording in this clause i.e. “whether a support should be considered to be more appropriately provided or funded through another service system” is problematic.

This appears to be understood by the drafters of the Rule as clause 7.3 acknowledges that no obligations can be imposed on other service systems to fund or provide particular supports. However the Rule does not address the service delivery gap that may result. If the other service system is not able to or does not provide the required supports, will the NDIS guarantee to provide them? If the NDIS does not have the capacity to provide these supports, then participants may potentially have to go without supports that are actually reasonable and necessary.

PACFA suggests that the following additional sentence be added to clause 7.3:

Where the other service system cannot or does not immediately provide supports that are reasonable and necessary for a particular participant, the CEO shall consider providing or funding the required supports through the NDIS.

Clauses 7.4, 7.5, 7.6, 7.7, 7.8 and 7.9

The distinction made between health and mental health in these clauses is not consistent with the draft NDIS Bill 2012. In the Bill, health and mental health are not separated out in this way. The principles in the legislation apply to all participants, regardless of the type of impairment. The drafting of clauses 7.4, 7.5, 7.6, 7.7, 7.8 and 7.9 is therefore completely contrary to the intention of the legislation.

For example, sections 24(1)(c) and (d) of the draft legislation, which set out the disability requirements for participants to access the NDIS, do not distinguish between health and mental health. The access criteria are the same regardless of whether the disability is due to an impairment that is intellectual, cognitive, neurological, sensory or physical or arising from a psychiatric condition.

Similarly, the early intervention requirements in sections 25(a), (b) and (c) do not have different requirements for those with impairments attributable to a psychiatric condition. Nor does section 34, which sets out the reasonable and necessary supports, address mental health separately.

It is not clear whether clauses 7.4 and 7.5 of the Rules relate only to participants with health-related impairments or whether they apply to all participants, regardless of the type of impairment. They should apply to all participants as the Rules will move into confusing and inconsistent territory if there are different criteria for people with different disabilities.

Of even more concern is the fact that the mental health principles and the supports most appropriately funded through the NDIS, as set out in clauses 7.7, 7.8 and 7.9, appear to apply only to participants with mental illness or a psychiatric condition. These criteria should enable access to supports for all NDIS participants, regardless of the nature or their impairment.

For example, people with impairments that are cognitive, intellectual, neurological, physical or sensory in nature may require support with day to day living including planning, decision-making, personal hygiene and household chores. Clause 7.9(a) only contemplates that people with a psychiatric disability may require this support.

Similarly, clause 7.9(b) contemplates allied health or other therapy in relation to the functional impact of a psychiatric condition on undertaking daily living activities or social and economic participation. However, people with other types of disabilities are very likely to require this type of support as well. It is also a principle (in clause 4 (11) of the draft legislation) that all participants should be supported to participate in the community and in employment.

These examples demonstrate that the way these Rules have been drafted is entirely contrary to the spirit and intention of the draft NDIS Bill. PACFA suggests that the drafting of this whole section of the Rules needs serious rewriting.

Ideally, health and mental health would not be separated out in these Rules but if for some reason they have to be under separate headings, the Rules should be redrafted to make it clear that these supports are available to all NDIS participants, regardless of the type of impairment. It should be clear that all participants may need support with their health and with their mental health.

Clause 7.6

There is no acknowledgement in clause 7.6 of the contribution of carers and family members and the need to provide support in order to make the informal supports provided by them sustainable and effective. It is suggested that the following additional example should be added:

7.6 (g) support required to strengthen the sustainability of the informal supports available to the person, including through building the capacity of the person's carer, and the capacity of family members to effectively provide informal supports.

Clause 7.14 and 7.16

In general, the Rules do not provide sufficient focus on the essential roles that carers and family members play providing informal supports to NDIS participants.

The reference in clauses 7.14 to family support only relates to supports for children, families and carers in relation to a child with disability. There need to be other provisions enabling support for families and carers in relation to all participants, not only in relation to children with disability.

Similarly, the supports contemplated in clauses 7.16 would be relevant to all NDIS participants, not only children with disability. This clause needs to be redrafted accordingly.

Clauses 7.15 (b) and 7.16

This clause explicitly precludes support for parenting programs, counselling or other supports for families, which are provided to families more broadly in the community. Family therapy for families caring for a person with a disability, in order to strengthen these informal supports, is a specialist support that may not be available in the community. Where it is not available in the community, this support should be funded by the NDIS. This should be added as an additional example of appropriately funded supports in clause 7.16:

Clause 7.16 (d) Counselling or other supports for carers or families where required to strengthen and sustain the informal supports provided by them to the participant.

Rules for Registered Providers of Supports

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Clauses 3.11 and 6.5

It is acknowledged that some supports can and will be provided by people from a range of backgrounds and that it will not always be a requirement for applicants seeking registration as providers of supports to have particular qualifications or approvals. However, where these are relevant to the suitability of the applicant, clause 3.11(a) applies and the qualifications and approvals *relevant to the provision of those kinds of supports* are taken into account. Approvals are defined in clause 6.5.

As drafted, the definition of approvals in clause 6.5 only applies to applicants from professions that are regulated by government. The definition will not capture professions that are self-regulated, such as counselling and psychotherapy, where the profession provides its own professional registration system. This means that, in theory, a counsellor could be registered with the Agency even though they do not meet the accepted professional standards for the counselling profession. This raises concerns about the quality of the supports that would be provided by these providers, as well as serious concerns for the safety of participants.

PACFA therefore submits that where the applicant is from a recognised profession, for example, Counselling or Psychotherapy, the applicant should be required to hold registration or membership with a relevant national professional organisation. This will ensure that the practitioner meets the requirements of that profession, such as ongoing professional development, holding professional indemnity insurance, following the code of ethics for that profession, and being subject to a complaints handling process.

The following amended version of clause 6.5 is suggested:

Clause 6.5

approvals includes any approvals, licences, registrations, authorisations, certifications or memberships (however described) that the applicant or its staff:

- (a) are required to hold under an applicable law of the Commonwealth, a State or a Territory; or
- (b) hold with a national professional organisation that covers practitioners who provide that type of support (the **profession**) and which professional organisation:
 - (i) assesses practitioners against established training standards for the profession; and
 - (ii) requires practitioners to hold professional indemnity insurance; and
 - (iii) administers a continuing professional development scheme in which practitioners are required to participate as a condition of membership; and
 - (iv) maintains a code of conduct which practitioners must uphold as a condition of membership; and
 - (v) maintains a formal disciplinary procedure, which includes a process to suspend or practitioners, and a complaints resolution procedure.