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‘Feedback on the NDIS proposed legislative changes to the NDIS Act

Mental Health Community Coalition ACT

Peak Body in the ACT for the Community Mental Health Sector

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About MHCC ACT

The Mental Health Community Coalition of the ACT (MHCC ACT) is a membership-based organisation established in 2004 as a peak agency. It provides vital advocacy, representational and capacity building roles for the Not for Profit (NFP) community-managed mental health sector in the ACT. This sector covers the range of non-government organisations (NGOs) that offer recovery, early intervention, prevention, health promotion and community support services for people with a mental illness. The MHCC ACT vision is to be the voice for quality mental health services shaped by lived experience. Our purpose is to foster the capacity of ACT community managed mental health services to support people to live a meaningful and dignified life.

Our strategic goals are:

- To support providers to deliver quality, sustainable, recovery-oriented services
- To represent our members and provide advice that is valued and respected
- To showcase the role of community-managed services in supporting peoples' recovery
- To ensure MHCC ACT is well-governed, ethical and has good employment practices.

Bec Cody

CEO MHCC ACT

Inge Saris

Policy and Advocacy Officer

Preamble

The Mental Health Community Coalition ACT (MHCC ACT) welcomes the opportunity to provide feedback on the proposed legislative changes. However, the short timeframe to provide feedback may be a hindrance to some. We would suggest a lengthier timeframe for any further proposed changes to allow and encourage positive feedback. MHCC ACT would also like to raise the extensive changes that are needed to be reviewed in this tight timeframe and note that as a peak, we have the ability to meet this timeframe, but many members of the community, who these changes will directly impact, may not have the ability to understand or respond to such extensive changes within the tight timeframes. Although MHCC ACT welcomes the decision to enable the sector to provide feedback on these significant changes, we note there is a global pandemic currently in play, with many states dealing with lockdowns and ongoing outbreaks of COVID19. This is an incredibly stressful time for participants, their carers and providers continuing to support participants.

Additionally, given the way in which the Independent Assessments were introduced last year, the community are hesitant that the NDIA is not acting transparently. There is ongoing unrest in the community that any changes rushed to be introduced and implemented may negatively impact them. Hence, MHCC ACT are providing feedback in a positive manner with the caveat there may have been some changes with negative consequences that have been missed. We encourage the NDIA to commit to an extensive and meaningful consultation process around implementing the proposed changes to ensure all stakeholders' views are appropriately incorporated.

Proposed legislative changes to the NDIS Act and Rules

MHCC ACT is inclined to support the proposed changes as a whole. We recognise the need to adjust the NDIS Act and Rules to improve the operation of the NDIS in line with the Tune Review and recognise the permanent nature of the Scheme. However, MHCC ACT does, hold concerns with the ambiguity in terminology, which may provide for a negative interpretation of the intended changes. In addition, there is still a high level of lack of trust across the sector with bad experiences regarding seemingly ad hoc and inconsistent decisions by the NDIA, causing anxiety and suspicion. A better approach would be to have a higher level of clarification and transparency, a longer timeframe in which to provide feedback and a positive and inclusive consultation with the sector.

Psychosocial disability

Changes to the NDIS Act.

MHCC ACT welcomes the replacement of the terms psychiatric condition with psychosocial disability in the NDIS Act and the recognition of recovery and the episodic nature of mental illness. It is a departure from diagnosis, which has been relentlessly advocated for by the sector. However, there are underlying questions outlined below which we are calling on having answers to prior to the implementation of the proposed changes.

- What constitutes an impairment which attributes to a psychosocial disability?
- Who would assess this impairment?
- Would that lead to the need for a diagnosis after all?

As outlined above, MHCC ACT supports a change of language to psychosocial disability but are concerned that the proposed changes may not capture people with psychosocial disabilities who are reluctant to enter the psychiatric stream for assorted reasons. Further clarification and work need to be done to ensure people aren't excluded due to cultural and/or socioeconomic reasons.

New Rule Becoming a participant

Part 2 disability requirements

Permanency

The success of the support for participants with a psychosocial disability will depend on the interpretation of the rules and the expertise of all involved. MHCC ACT is concerned that the disability requirements for people with psychosocial disability are not clearly defined, leaving too much room for negative interpretation. Furthermore, there are concerns about the ambiguity around terms like *appropriate* treatment, *substantial* improvement, and a *reasonable* period of time. MHCC ACT has questions that need to be addressed prior to the implementation of the proposed changes. They are:

- What constitutes an appropriate treatment in this context?
- Do psychosocial support services fall under this, or is it limited to clinical and pharmaceutical treatment?
- What is seen as a substantial improvement?
- Who assesses that?

In addition, the requirement to have undergone or is undergoing treatment is problematic for those with lived experience who are not comfortable entering the clinical stream for a variety

of reasons. How will they be assessed, and will they even be able to join the Scheme, are just a couple of the questions. Does the requirement to prove that no appropriate treatment is available, take the long waiting list into account? For example, a participant is approved to start Cognitive Behavioural Therapy, but there is a waiting list of two years. Does this mean appropriate treatment is available even though it is not accessible for years?

Functional capacity

MHCC ACT supports the inclusion of episodic and fluctuating impairments to accommodate the principles of recovery and the nature of many psychosocial disabilities. However, clarity needs to be given around interpreting the *overall* effect and the *reasonable* period of time.

Powers of the CEO

New Rule Plan management

Supports not to be provided by particular providers

The CEO will have the power to refuse the provision of service by a service provider as states in section 8 of the above rule. One of the criteria is

The provision of supports is not likely to substantially improve outcomes for the participant or benefit the participant in the long term

The terminology in this change leaves room for negative interpretation. MHCC ACT again has questions that need to be addressed prior to the proposed changes being implemented.

Those are:

- Who decides what *substantially improvement* is?
- Who decides if a service is to *the benefit* of the participant?

Additionally, criteria 8 b) allowing denial of a service provider when it is deemed that:

- (i) another person could provide the support to the participant;
- (ii) that other person is likely to provide better outcomes for the participant than that person;

- Once again, who and how is this decided?

There is the potential that the government of the day could play favourites with certain service providers. This could impact significantly smaller, less known providers and or newcomers to the sector. It can also limit the choice and control of the participant.

Thin markets

MHCC ACT would like clarification on what is envisaged by the powers of the CEO in plan management and market intervention so as not to cause concern. Understanding this, as

well as the CEO delegations, will provide more understanding of how quality assurance is undertaken to ensure participants, carers, and providers will get consistency and fairness.

The ability for market regulation needs to come with better protections to avoid favouritism and discrimination.

MHCC ACT acknowledges that conflict of interest within a provider can negatively impact the choice and control of the participants, and it needs to be addressed when it occurs. In line with recommendation 16b of the Tune review:

16 b.outline circumstances in which it is not appropriate for the providers 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.:

What seems to be missing in the proposed changes is how the change will address what the Tune Review was outlining in its recommendation, specifically that support coordinators are referring participants to support services provided by their own organisations. This was based on anecdotal evidence, and there is no evidence that this is a widespread problem, however it does need to be addressed.

The proposed changes in section 8 give the CEO more power to intervene than is recommended by the Tune Review. MHCC ACT notes that there is no mention of the conflict of interest for support coordinators, leaving room for ambiguity.

MHCC ACT will continue to advocate for improving the pricing guide to reflect the true cost of service delivery. This will enable service providers to employ and train staff to meet demand and ensure participants will receive the best level of care and support. Based on the current market settings, service providers cannot provide the terms and conditions to attract and retain staff with the experience and qualifications needed to meet participants goals in a recovery-focused framework. This situation is enabling the thin market issue the NDIA wants to address.

Direct payments

MHCC ACT is seeking further clarification regarding changes outlined for direct payments. Having a pay-and-go system is often easier; however, this must be managed in the best

interests of both participants as well as providers. MHCC ACT supports the initiative to reduce the administrative burden for participants and providers. However, we are cautious regarding the ability of the NDIA to have complete control over deciding which provider/s to include in this payment scheme. This can disadvantage smaller, less known providers while also having the potential to limit the choice and control of participants.

MHCC ACT shares the concern of the sector that the NDIA will use the payment system to gather private information on participants and providers. To protect the privacy of participants and providers, there will need to be adequate safety and protection measures in place. MHCC ACT has many questions which need to be addressed prior to implementation to avoid unethical use of the data and create reassurance for participants and providers.

These are:

- Who will have access to this data?
- How will the data be used?
- Who will give consent for the data to be collected and used?
- How are participants and providers informed of this data collection and what it is used for?
- Will there be an opt-out option?
- How is the data protected against breaches and cyber-attacks?

Plan review instigated by the CEO

Section 48 allows the CEO to initiate a reassessment of a participant's plan at any time, either at the CEO's own initiative, before the 'reassessment date' and/or in any circumstances that may be specified in a participant's plan. Additionally to the questions this raises around self-determination and choice and control for participants, there is the issue of service continuation guarantee and how that will impact service providers. MHCC ACT strongly believes this could have gravely negative impacts on participants' choice and control and put limitations on providers.

Summary

In summary, MHCC ACT supports many of the proposed changes but has raised numerous questions regarding the level of ambiguity both in the NDIS Act and the Rules. More clarity needs to be given to ensure that the interpretation of the changes will benefit participants in their self-determination, choice, and control. In addition, clarity and assurances are needed

for service providers that the changes in the powers of the CEO will not lead to favouritism and sudden changes to their service delivery.

There are concerns that, although the inclusion of psychosocial disability in the NDIS Act and the recognition of the episodic nature of the recovery in the rules, there will still be an over-reliance on clinical services for assessment. MHCC ACT would support non-clinical support services to be given equal status to clinical services to ensure all participants receive the most appropriate care and support. By including non-clinical services, there is greater support for the large cohort of people with psychosocial disability who are reluctant to enter the clinical stream for distinct reasons and address inequality for this cohort.

Lastly, MHCC ACT fully supports the submission of Advocacy for Inclusion and the concerns they have raised.