



Australian Government
Department of Social Services

Brief Summary of the 2019 review of the *National Disability Insurance Scheme Act 2013*

Supporting the implementation of the NDIS Participant Service Guarantee

DSS January 2020



This document is a summary only

This document was prepared by the Department of Social Services.

It briefly summarises the key findings and recommendations of Mr David Tune AO PSM's 2019 review of the *National Disability Insurance Act 2013*.

Importantly, this document does not summarise all the information contained in Mr Tune's report or provide the full detail supporting the 29 recommendations it made. The full report can be accessed on the [Department of Social Services website](#).

As a summary of Mr Tune's report, where this document includes data it reflects the data used in the report, even where more recent data are now available.

This document will reference page numbers from the full report, should you wish to read further information on specific subject matters.

1. Reviewing the NDIS legislation

The National Disability Insurance Scheme (NDIS) is a world-first system of disability support for eligible Australians with permanent and significant disability. The main piece of legislation that guides how the NDIS works is the *National Disability Insurance Scheme Act 2013* (NDIS Act), which is supported by other pieces of legislation called the NDIS Rules.

Why a review was needed

The introduction of the NDIS was an innovative reform of disability support in Australia. It started rolling out in 2013, will be fully available across Australia in July 2020, and will grow to support more than 500,000 Australians with disability by 2023.

The nature and speed of rolling out the scheme in these timeframes was highly ambitious. While many people with disability have reported excellent experiences with the scheme and are benefitting from the supports funded through the scheme, others have expressed frustrations with wait times and complexity of processes.

The National Disability Insurance Agency (NDIA), the agency responsible for delivering the NDIS, has implemented a number of reforms to address these issues and improve the participant experience. These reforms are having a positive effect. For example, data from the quarter ending 30 September 2019 shows:

- wait times for access decisions reduced from 38 days in the June 2019 quarter to 12 days
- first plans are being approved faster, from 133 days in the June 2019 quarter to 88 days
- unscheduled plan reviews as a proportion of NDIS participants decreased from 30.5 per cent in the March 2017 quarter to 16.1 per cent
- complaints from participants and providers are also tracking downwards and are at their lowest levels for more than two years.

In addition, the NDIA conducts regular satisfaction surveys of participants and has seen consistently high levels of reported satisfaction.

Notwithstanding these improvements, the next phase of the NDIS presents opportunities to deliver and embed improvements in the way the NDIS is delivered, with a stronger focus on improving the participant experience and maximising the benefits of what the NDIS can offer.

Read more about the implementation of the NDIS – from page 23.

The review

During the 2019 Federal Election, the Australian Government promised to develop and legislate an NDIS Participant Service Guarantee to improve participant experiences with the NDIS.

To do this, the Government commissioned a review of the NDIS legislation; Mr David Tune AO PSM was appointed as the independent reviewer.

The review looked at changes that could be made to the law to streamline NDIS processes, remove barriers to positive participant experiences and introduce the Participant Service Guarantee. The review did not consider changing the design or intent of the NDIS.

Read more about the background to the review and its terms of reference – from page 17.

The consultation

The Department of Social Services ran a public consultation on the review from 26 August to October 2019. The consultation gathered valuable insights from people with disability, families, carers, disability organisations, advocates and supporters from all around Australia.

Almost 2,000 survey responses and written submissions were received. Of the written submissions, 152 were published on the Department of Social Services' [Engage website](#).

More than 500 people took part in community workshops and focus groups in metropolitan and regional areas across Australia. The consultation also included specialised workshops for culturally and linguistically diverse people, people with intellectual or psychosocial disability, and Aboriginal and Torres Strait Islander people.

Read more about the consultation activities, submissions received and survey results – page 19, Appendix A (page 181) and Appendix B (page 184).

Mr Tune also met with the NDIA Board, senior officials from the NDIA, state and territory disability ministers, senior officials from the state and territory governments and key disability organisations.

Read more about the people and organisations consulted – Appendix C (page 200).

The review also drew on previous reviews (such as the 2015 Independent Review of the NDIS Act), inquiries (such as Productivity Commission and Joint Standing Committee inquiries into aspects of the NDIS), the NDIA's quarterly reports and other sources of data.

What the review heard

While there is support for the NDIS across all levels of government and the community, responses to the review often expressed frustration, dissatisfaction and sometimes anger about the way the NDIS has been implemented. It was clear that many of the benefits the NDIS seeks to achieve are yet to be consistently realised.

In particular, the review heard that some participants:

- feel the NDIS is too complex and difficult to navigate
- experience lengthy waits to supports
- do not understand how the NDIA makes decisions about eligibility for the NDIS and the supports provided in their plan, including when a support is reasonable and necessary
- have found the transition to the NDIS confusing and frustrating
- want to have more information and support to understand the NDIS, navigate the system and access their supports
- feel they are not recognised as the experts in their disability
- have difficulty finding information and products in accessible formats or in formats that otherwise suit their needs
- feel NDIA staff do not understand disability or appreciate the challenges they face as part of their everyday life.

What the review recommends

Mr Tune provided his report to the Australian Government in December 2019.

He found the NDIS Act and its accompanying Rules are broadly fit for purpose but that some areas of the NDIS Act are unnecessarily rigid and do not allow flexibility. The review made recommendations to improve NDIS processes and remove barriers in the law that make it difficult for the NDIA to effectively support people with disability.

Mr Tune made 29 recommendations but overall suggests:

1. Introducing a [Participant Service Guarantee](#) that sets out standards the NDIA must meet including:
 - clear expectations for how long processes will take to complete
 - more transparency in how the NDIA makes their decisions
 - better service delivery from NDIA staff and their Partners in the Community.
2. [Improving people's experience with the NDIS](#) by:
 - providing more flexibility in using NDIS funding
 - allowing plans to be amended
 - participants being provided drafts of their plan before it is approved
 - better supporting children and families
 - clarifying access for people with psychosocial disability
 - providing better connections to supports where markets are undersupplied
 - enhancing online systems so people can track where their requests are up to.
3. [The NDIA and governments working together](#) to:
 - clarify how the NDIS works with other service systems
 - help people navigate, engage with and understand the NDIS
 - create resources that help participants decide which supports they should use.

Read the full list of recommendations – pages 13 to 16.

When will the recommendations be implemented

The Australian Government has committed to make the Participant Service Guarantee law by 1 July 2020, although some of the reviews other recommendations may take longer to implement.

The recommendations build on the work the Government and the NDIA has underway, or has already completed to improve NDIS processes, such as:

- having a stronger focus during planning on how community, other government, informal and employment supports may be able to support the participant and their families/carers
- providing participants with a consistent point of contact

- enhanced planning communication products in a variety of formats
- joint planning and face-to-face pre-planning and plan implementation meetings at the discretion of the participant
- improved linkages between NDIA planners and the Partners in the Community workforce, including Local Area Coordinators (LAC) and Early Childhood Early Intervention (ECEI) Partners
- improved training for NDIA planners and Partners in the Community
- expansion of the NDIS Community Connectors program to assist people with disability and their families in hard-to-reach communities to navigate the NDIS and get the services they or their children need
- the provision of draft plan summaries to strengthen the focus on goals and outcomes, and provide participants with a greater understanding of, and confidence, in their NDIS plan
- the ability to have a longer plan of up to three years if a participant's support needs are stable.

Read more about the Government and NDIA's strategies to improve the participant experience – from page 28.

2. The NDIS Participant Service Guarantee

What we heard

Lengthy waits for decision making and a lack of information are two of the most regular complaints about the NDIS, with many participants telling the review they had to wait many months for the NDIA to contact them or make a decision. This has created uncertainty and often caused distress.

The current law is mostly silent on when the NDIA must make decisions. The review was asked to consider what timeframes would be appropriate to add to the legislation to make it clear to people when decisions about their access request, plan or review will be made. This would form the Participant Service Guarantee.

People reported issues with quality of service from the NDIS including:

- lack of transparency about why decisions are made and insufficient explanation of plans and decisions
- NDIA staff or Partners in the Community staff not understanding disability
- feeling disempowered
- a lack of respect, with a feeling that planners or Partners do not listen to their needs and goals.

What the report recommends

The Participant Service Guarantee should be part of the law, through a new NDIS Rule that sets:

- clear expectations on how long the NDIA will take to make decisions
- standards for how the NDIA will engage with people with disability
- requirements on the NDIA to report how well they are delivering on those expectations and standards.

Timeframes

The Participant Service Guarantee should set specific timeframes around critical decisions and actions of the NDIA through a participant’s NDIS journey. Some of the key timeframes proposed by the report are set out below.

Process	Timeframe
The NDIA to make an access decision	21 days (no change)
Participants to provide information to support an access decision	90 days (increased from 28 days)
The NDIA to commence the planning process following an access decision	21 days
The NDIA to approve a plan following an access decision	70 days from 1 July 2020 56 days from 1 July 2021 onwards
The NDIA to offer and hold a plan implementation meeting following the approval of a plan	28 days
The NDIA to amend a plan once information is provided from a participant, including quotes	28 days for ordinary processes 50 days for complex home modifications or assistive technology
The NDIA to commence the scheduled plan review process	No less than 56 days from the scheduled plan review date
The NDIA to decide whether to undertake a request for an unscheduled plan review	21 days (increased from 14 days, but if the NDIA do not make a decision in 21 days, they must now do the review)
The NDIA to complete an unscheduled plan review, once they have decided to do a review	42 days from 1 July 2020 28 days from 1 July 2021
The NDIA to provide an explanation of their decision, if requested by a participant	28 days
The NDIA to complete a participants request for a review of an NDIA decision (internal review)	90 days from 1 July 2020 60 days from 1 July 2021
The NDIA to implement a decision of the Administrative Appeals Tribunal	28 days

Read more about the proposed timeframes – from page 159.

Engagement principles

The Participant Service Guarantee should ensure the NDIA remains accountable for the way it engages and works with people with disability. Accordingly, it should be designed around the NDIA being required to meet certain service delivery standards or 'engagement principles'.

The report suggests these standards be *transparent, responsive, respectful, empowering* and *connected*.

- **Transparent** – Participants and prospective participants have access to information about the NDIS and their plans that is clear, accurate, consistent, up-to-date, easy to understand and available in formats that meet their needs.
- **Responsive** – The NDIA responds early and fully to participants' individual needs, concerns and questions. It examines processes and systems regularly to make sure they continue to fit as the NDIS evolves and people's needs change. A single point of contact in the NDIA is provided for each participant, family group or strongly connected group.
- **Respectful** – The NDIA and its Partners value, listen to and respect participants and recognise participants' expertise about their disability. The NDIA will ensure its staff have a high level of training in disability (including psychosocial disability and other complex conditions) and in diversity (including Aboriginal and Torres Strait Islander cultures, culturally and linguistically diverse values and practices, and LGBTIQI+ and gender considerations).
- **Empowering** – Participants and prospective participants are empowered to make an access request, navigate the NDIS system, participate in the planning process and use their plan supports. Participants are given information about the reasons for all NDIA decisions about them.
- **Connected** – The NDIA and its Partners work with other government service systems to make sure participants get the support they need. It will reach out to communities and people who are unaware of the NDIS or reluctant to apply to assist them to connect with the NDIS.

The review also considers the Participant Service Guarantee should empower participants to receive a full draft plan before it is approved, and the right to request an explanation of a NDIA decision, in order to provide greater transparency around planning and NDIA decision-making.

Read more about the proposed engagement principles – from page 155.

Performance Reporting

Currently the NDIA is required by law to report to governments on a quarterly basis on the delivery of the NDIS across Australia. The review considered this report should include a detailed section on the NDIA's performance in meeting the timeframes and service standards set out in the Participant Service Guarantee. This will provide improved transparency around the NDIA's effort to improve the participant experience.

The Australian Government also committed \$2 million over four years from 2020-21 for the Commonwealth Ombudsman to monitor the NDIA's performance in delivering the Participant Service Guarantee. The review recommended amending the law to explicitly describe the Commonwealth Ombudsman's role, to ensure there is no doubt over its function in monitoring and reporting on how the NDIA is meeting the obligations of the Participant Service Guarantee.

The review also recommends that a new, independent participant satisfaction survey be designed and introduced to ensure that the NDIA has a clear understanding of how satisfied participants are with the NDIS.

Read more about the proposed performance metrics for the Guarantee – from page 166.

3. Other improvements to better support participants

What we heard

Across the review’s consultations, people reported a number of other issues with the NDIS, including:

- There is a lack of clarity in the legislation about when a person is eligible for the scheme.
- Cost is a barrier to accessing the scheme for many people with disability.
- There is a lack of coordination and consistency in the planning process.
- There is a disconnect between participants, planners and Local Area Coordinators.
- The way plans are constructed restrict participants from exercising choice and control, and takes away from an emphasis on their goals and outcomes.
- There is confusion around when a support is ‘reasonable and necessary’.
- Greater clarity should be provided surrounding the requirement for, use and form of information required by the NDIA.
- Planning processes do not effectively consider the broader supports families and carers need to maintain their caring roles.
- Managing and using a plan can be difficult and burdensome without support coordination.
- The requirements for varying and reviewing plans are overly prescriptive, creating additional complexity, stress and anxiety for participants.

What the report recommends

Other than the Participant Service Guarantee, a number of other improvements should be made to the legislation to benefit participants. These include:

Making plans more flexible

- Creating a power for the NDA to be able to amend a plan without needing a full plan review, to make simple changes or add new supports following receipt of a quote.

Read more about plan amendments – from page 136.

- Legislating that participants can use their funding flexibly, except for certain limited supports such as Specialist Disability Accommodation and high cost home modifications and assistive technology.

Read more about plan flexibility – from page 113.

- Providing participants with more certainty about when the NDIA will fund support coordination in plans.

Read more about support coordination – from page 118.

- Ensuring participants who are using the supports of a plan-manager to purchase and manage their NDIS supports are protected from risks in engaging unregistered providers.

Read more about plan management – from page 126.

- Providing more clarity on what ‘reasonable and necessary’ means, with:
 - the NDIA providing publicly available and accessible examples of what types of supports are reasonable and necessary, and how it decides what is reasonable and necessary
 - the law to reflect recent agreements between governments on the boundaries between the NDIS and other systems, such as health and justice
 - the legislation to explain that the NDIS is not responsible for funding supports if the appropriate service system, such as health, does not fund it.

Read more about ‘reasonable and necessary’ – from page 46.

Support for children and their families and carers

- Providing better support by emphasising family-centred planning processes and recognising the role of respite in supporting families and carers to maintain their caring roles.
- Providing the NDIA with more powers to flexibly fund early childhood supports for children under seven years while their first plan is being developed.

Read more about support for children and families – from page 99.

Support for people with psychosocial disability

- Clarifying what “permanency” means when requesting access to the NDIS, noting the episodic and fluctuating nature of some mental health conditions.
- Reinforcing a best-practice recovery model at the centre of the planning process.

Read more about support for psychosocial disability – from pages 72 and 87.

Improving access to NDIS supports

- Providing the NDIA with additional powers to intervene in the market for the purpose of assisting participants to access supports where the market is thin or doesn’t exist, or where other market constraints restrict participants’ ability to exercise choice and control.

Read more about facilitating service delivery – from page 122.

- More streamlined and coordinated planning processes, including:
 - by testing alternate ways to deliver the scheme, including trialling and evaluating a model where a participant develops their plan with the person responsible for approving the plan
 - allowing information about a participant to be used across all NDIS processes
 - removing financial barriers to access the scheme by enabling a new functional capacity assessment process funded by the NDIA to be undertaken. This process will provide information to support the NDIA to make clear and consistent decisions about a person’s eligibility for the scheme or the supports provided for in their plan.

Read more about streamlining processes – from pages 40 and 65.

4. Extra actions for the NDIA and governments

The review made a number of recommendations that do not involve amending the legislation, but require operational reforms or further work by governments to improve the participant experience, including:

- The NDIA and governments working with researchers and experts in disability support to establish an accessible source of publicly available information about evidence-based best-practice approaches, to help participants exercise informed choice and control.

Read more about a better informed NDIS – from page 124.

- The NDIA developing a comprehensive national outreach strategy to ensure everyone who is eligible for the NDIS is aware of the scheme, and supported to engage with it.

Read more about outreach – from page 80.

- Undertaking reviews of the NDIA’s operational guidelines for Supported Independent Living with an emphasis on reinforcing the principles of choice and control.

Read more about Supported Independent Living – from page 108.

- The NDIA giving priority to ICT and workflow management tool upgrades, including the ability for participants to track their journey through the NDIS.

Read more about ICT systems – from page 56.

- The Commonwealth Government providing additional funding through independent parties to support people with disability to navigate the NDIS.

Read more about navigating the NDIS – from page 44.

- The Australian Government produce accessible versions of the legislation, to ensure all people with disability have access to the legislative basis of how the NDIS operates.

Read more about understanding the legislation – page 57.

- Governments working together to clarify:
 - the eligibility of people with chronic health conditions under the NDIS
 - the role of nominees, guardians and supported-decision making under the NDIS
 - the role of the NDIA in undertaking fraud detection and enforcement activities
 - the operation of compensation provisions under the NDIS Act.

Read more about other policy issues – from page 36.

More information

Read the full report on the [Department of Social Services website](#). You can also find the terms of reference for the review, including Auslan and Easy Read versions, on this page.

Find more information about the consultation at the [Department of Social Services' Engage website](#), including the discussion paper, an overview of the review, and published submissions received. You can sign up to a mailing list to get updates on the Participant Service Guarantee.

Next steps

The Australian Government is considering the 29 recommendations made in the review and what will need to change in the legislation and the way the NDIS operates to reflect the findings. This will take into account improvements and reforms that are already underway.

The formal Government response will be published shortly, with the legislation giving effect to the Participant Service Guarantee made law in July 2020.