

To:
Joint Standing Committee on the National Disability Insurance Scheme
PO Box 6100
Parliament House
Canberra ACT 2600



Tuesday, 29 March 2022

Please see the Victorian Mental Illness Awareness Council (VMIAC) submission to the Inquiry into General issues around the implementation and performance of the NDIS.

The Victorian Mental Illness Awareness Council (VMIAC) is the peak Victorian non-government organisation for people with lived experience of mental health challenges. We provide individual advocacy, as well as both sector and consumer facing education, consultation and information to promote people's rights and wellbeing. This includes on issues pertaining to mental health and other intersecting services/systems that can support or impact mental health recovery. Our specialist experience advocating, at an individual and systemic level, for changes to the NDIS and the National Disability Insurance Agency (NDIA) position us well to contribute to this Inquiry. At an individual level VMIAC provides (State-wide):

- *Specialised information for consumers on how to apply for the NDIS*
- *Advice and support to gather evidence required for the NDIS*
- *Intensive support through the application process and planning meetings*
- *Advocacy support for NDIS Reviews and Appeals*

Underpinning this work is VMIAC's NDIS Critical Reference group comprising of NDIS participants. This reference group provides ongoing input and advice into VMIAC service delivery and strategic advocacy. Through our work and collaboration with NDIS participants VMIAC has built a broad understanding of the issues faced by consumers and government in implementing the original intention of the NDIS and its roll out, particularly as it relates to psychosocial disabilities.

This submission highlights issues raised by consumers/NDIS participants we have supported, alongside the challenges VMIAC faced during the course of providing our NDIS Review and Appeals Support Services.

In response to calls for action and reform in relation to psychosocial disability by Mental Health, Disability Advocacy and Consumer Peaks, the NDIA released its Psychosocial Disability Recovery-Oriented Framework. VMIAC welcomed the extensive work undertaken by the NDIA to develop the Framework, and believe with the right commitment and resourcing it can build greater trust in the NDIS among people with a psychosocial disability.

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VMIAC also welcomed the introduction of funded support for Recovery Coaches. We are hopeful that the introduction of Recovery Coaches opens the door for further recognition and support for other Lived Experience roles as a key part of the Scheme.

However, despite the introduction of the Framework - which acknowledges the need to support personal recovery – regrettably little change has occurred with regards to how it translates into recovery orientated practice, nor how the support needs of people with a psychosocial disability are being recognised and funded by the NDIA.

Specifically, VMIAC believe participants are being negatively impacted by narrow interpretations of the NDIS Act in relation to psychosocial disability and that the NDIS Rules and Guidelines are being referenced in ways that discount many legitimate claims for funded psychosocial supports.

VMIAC is keen to ensure participant's expertise around their own needs is heard and that clear advice and recommendations for support made by skilled mental health and allied health practitioners are considered appropriately.

We are committed to working with the NDIA to drive system improvements that support the needs of participants. We hope this submission will illuminate some of the drivers of challenges participants face and guide some initial solutions.

We welcome any further queries you have regarding the content of submission and look forward to receiving future correspondence regarding the inquiry findings so that we may share these with our membership.

Kind regards,

Craig Wallace

VMIAC CEO

SUBMISSION: General Issues around the Implementation and performance of the NDIS



by the Victorian Mental Illness
Awareness Council (VMIAC)

Submitted to:
Joint Standing Committee on the National
Disability Insurance Scheme (31.3.2022)

At a Glance

- VMIAC is concerned about experiences of both systemic and individual discrimination among NDIS participants with psychosocial disability accessing supports.
- VMIAC recommends greater transparency, consistency, and accountability from NDIA systems and among its decision makers and representatives.
- We believe the current internal review process compromises the principles and cornerstones of the Scheme, and that advocacy for external reviews is oversubscribed and underfunded.
- VMIAC believes the NDIA should treat participants holistically and employ a trauma-informed approach, particularly when dealing with participants with psychosocial disability.

Internal and External Reviews

This section aims to highlight the problematic nature of the internal NDIS review process which, in our experience, has resulted in almost inevitable progression to external reviews. This trend is evidenced by a large increase in NDIS Appeals enquiries at VMIAC (and other partner organisations), alongside an upward of 300% increase¹ in Administrative Appeals Tribunal (AAT) matters during the first half of this financial year. Furthermore, issues discussed are often not isolated to appeals processes but rather, appear endemic across the NDIA's administration of the Scheme. Below are some issues the VMIAC NDIS Team have repeatedly observed by those who contact us wishing to appeal NDIS decisions.

Reasons are not provided in accessible formats

Most clients come to us with little or no understanding as to why their NDIS access or support request has been denied. Reasons provided in the outcome letter are confusing to many laypeople and can be difficult to understand for those with psychosocial and/or other disabilities that affect cognition. We find this is due to:

- *Reasons are not written in plain language*
- *Letters will often quote rules or legislative provisions with little or no explanation as to how these rules apply to their case*
- *No reference is made to how or why the consumer's evidence was deemed insufficient*

This creates a lack of transparency in decision making and can be overwhelming for consumers to make sense of. The use of legal jargon and lack of useful information provided about the decision and reasons hinders people with disability from determining if the decision was reasonable or whether evidence was properly considered. This can feel intimidating for consumers, promote self-doubt and may prevent them from exercising their rights to appeal when they have a legitimate case.

If consumers do pursue an appeal, the process may be delayed because the inadequate provision of reasons means they are unable to properly articulate why they disagree with the decision. This can cause

¹ Henriques-Gomes, L. (2021, Dec. 11). *Legal challenges against NDIS decisions more than triple in five months*. The Guardian. <https://www.theguardian.com/australia-news/2021/dec/11/legal-challenges-against-ndia-decisions-more-than-triple-in-five-months>

significant delay at the AAT, for example, where the NDIA makes assumptions about the supports being sought at appeal based off the AAT application (which is essentially a response to the reasons provided) and the entire first AAT Case Conference is wasted clarifying the reasons for the appeal and the supports in dispute.

Recommendation 1: *Reasons for refusal of access or support requests should be provided to participants in plain language, avoid technical legal terminology wherever possible and should also:*

- *be as comprehensive and transparent as possible*
- *allowing participants to thoroughly understand the decisions made and the evidence reviewed to make the decision.*

This could be enabled by ensuring decision makers receive training in accessible and plain language skills.

No Small Change: significant cuts to plans

We are increasingly seeing significant cuts to plan budgets, sometimes greater than 50%, either from one plan to the next, or smaller cuts over the course of several plans. This is despite there being no significant changes to the support needs, or the evidence of the participants functioning, and often in direct conflict with clinician recommendations.

VMIAC has concerns NDIA delegates responsible for these decisions lack the qualifications or experience to interpret, assess nuance or the implications of functional capacity expressed in clinician reports which is not *explicitly* stated. We recognise clinicians should be appropriately trained in NDIS report writing, ensure reports are accessible and that recommendations in them are sufficiently detailed, however the onus should not be on them alone. NDIA delegates should be aware of the limitations of their own knowledge, seek clarification from clinicians and cautiously interpret reports when making important judgements.

It is unclear how the plan cuts VMIAC are seeing are justifiable, especially in a situation where a person requires an elevated level of support and all evidence suggests this will not be changing. Furthermore, plans are often difficult to interpret, which can confuse participants and inhibit them from identifying where cuts have been made, creating further barriers to appealing these decisions.

Furthermore, VMIAC is also concerned participants with psychosocial disability, who often rely significantly on capacity building supports, are having plans cut under inaccurate assumptions these are not required long term. For many participants with psychosocial disability, capacity building via the use of psychology (or other individual therapies) is essential to maintain (and hopefully improve) their ability to access other plan supports. We believe the loss of these will result in substantive decline in functional capacity across a range of domains if they cannot get out the door to engage with the rest of their supports.

Participants already demonstrate permanency of their impairment at the time of receiving access to the NDIS. They require consistency and certainty around the type and level of support they will receive from year to year. Substantial and unexpected cuts to a participant's funding contradicts the core principles of the scheme and we believe appropriate checks and balances are required to ensure these are not being

made against expert evidence.

The de-stabilising and detrimental effect of significant cuts to plan funding on participants must be acknowledged through improved oversight. High staff turnover has been identified as a driver of challenges for the Agency by its staff, and the NDIS Participant Service Guarantee ² indicates time focused KPIs (e.g. timeframes for completing internal reviews). It is therefore difficult to trust NDIA staff making these decisions have appropriate time, training or expertise to evaluate evidence and apply the legislation and rules appropriately to a given case.

VMIAC propose the NDIA implement a hurdle requirement. For example, when any proposed funding cuts exceed a certain percentage of a person's plan, that the NDIA are then required to consult participants about the proposed cut and require the decision and reasons to be reviewed by a senior planner, or if necessary, an assistant director/director before being finalised.

VMIAC's recommendations in this respect are based on assumptions that none of these plan cuts are part of a wider cost-cutting drive. The NDIA has recently denied targeted plan cuts, but the overwhelming anecdotal evidence from participants contacting our services, within our NDIS advocacy network and the media suggests this is occurring and that it is disproportionately affecting those with psychosocial disability ³.

Recommendation 2: *The NDIA implement procedure and policies to ensure consultation of participants where proposed funding reductions to their plans meet a threshold percentage. The Participant should be provided clear reason for the proposed reduction and an opportunity to respond. Where proposed plan reductions meet a threshold percentage of the plan value or support hours - a senior planner should provide oversight and review of this decision whereby the response of the Participant is also considered before implementing the cut.*

Discrimination towards psychosocial disability is cultural and systemic

The NDIS was not initially designed with psychosocial disability in mind, and there are unique misunderstandings and forms of stigma attached to psychosocial disability that differ from those attached to other disability types. VMIAC are concerned these permeate NDIS services, systems, processes, and decision making resulting in discriminatory responses to participants with psychosocial disability.

This discrimination begins at the access stage. The administrative burden⁴ of completing an access request is likely to weigh most heavily on those with psychosocial disability and/or cognitive impairments. Anxiety, amotivation related to depression or dissociative symptoms may completely inhibit a person from trying to access the scheme, particularly if they have no informal support to help. Intersectional experiences of discrimination have also been identified in relation to inequitable participant

² NDIA. (2022, Mar. 1). Participant Service Guarantee. NDIS. <https://www.ndis.gov.au/about-us/policies/service-charter/participant-service-guarantee>.

³ Fitzsimmons, C. (2022, Mar. 20). NDIS denies cost-cutting as average person's plan down 4 per cent. The Sydney Morning Herald. (accessed online 29.3.22) <https://www.smh.com.au/national/ndis-denies-cost-cutting-as-average-person-s-plan-down-4-per-cent-20220317-p5a5dz.html>

⁴ Carey, G., Malbon, E., & Blackwell, J. (2021). Administering inequality? The National Disability Insurance Scheme and administrative burdens on individuals. *Australian Journal of Public Administration*, 80(4), 854–872. <https://doi.org/10.1111/1467-8500.12508>;

NDIS administrative burden through a gendered lens. (2022, February 7). *Croakey Health Media*. <https://www.croakey.org/ndis-administrative-burden-through-a-gendered-lens/>

outcomes. For example, women make up a disproportionate number of people with psychosocial disability⁵ and they are also more likely to be the carer of someone else with disability, often deprioritizing their own support needs⁶. Furthermore, women often present with more complex disabilities than men, can experience gender bias which reduces the likelihood of diagnosis of particular conditions (such as autism spectrum) and women are more likely to have less time to manage administrative burdens associated with accessing government services⁷.

Additionally, obtaining suitable evidence to demonstrate permanent and significant impairment is complex due to the very nature of psychosocial disability impacts e.g. fluctuating symptoms, diagnosis uncertainties or lack of capacity to engage in treatment long-term. Ongoing support for mental illness is often financially prohibitive, and evidence in the form of clinician reports is often hindered by a person's ability to pay for them.

Therefore, NDIA decisions to deny access or supports to people with psychosocial disability are made primarily in the context of barriers specific to the lives of people facing disabling mental health issues and high distress. This creates unique obstacles for these participants or potential participants to exercise their right to appeal that those with other disabilities may not face. The prospect of appealing NDIS decisions may be anxiety-inducing or beyond a person's capacity to engage and worsened by the fact that they have inadequate support, are in a vulnerable state, or even in crisis.

Recommendation 3: *The NDIA and DSS should ensure:*

- *all planners, case managers and local area coordinators receive regular and up to date externally provided professional training modules.*
- *processes and procedures are guided by operational policies specifically designed to build staff capabilities around psychosocial disability and a focus on the planning process.*
- *the underrepresentation of women in the Scheme, and the administrative burdens they face is addressed through the development of a co designed NDIS Gender Strategy undertaken in partnership with women's organisations, consumer peaks, and women participants. This should include data collection and ways to measure improvements in the experiences of women participants.*

Funds for psychological support should remain where there is already demonstrated need

In response to recommendations by the Independent Disability Advisory Council and the Tune Review in 2021, the NDIA developed a Psychosocial Disability Recovery-Oriented Framework (the Framework)⁸ to ensure the NDIS is more responsive to participants living with psychosocial disability, their families and

⁵ Australian Government Department of Health. (2018). *National Women's Health Strategy 2020-2030* (p. 11, Figure. 3).

⁶ Yates, S., Carey, G., Hargrave, J., Malbon, E., & Green, C. (2021). Women's experiences of accessing individualized disability supports: Gender inequality and Australia's National Disability Insurance Scheme. *International Journal for Equity in Health*, 20(1), 243. <https://doi.org/10.1186/s12939-021-01571-7>

⁷ Yates, S., Carey, G., Hargrave, J., Malbon, E., & Green, C. (2022) Women make up half the disability population but just over a third of NDIS recipients (accessed online 29.3.22) <https://theconversation.com/women-make-up-half-the-disability-population-but-just-over-a-third-of-ndis-recipients-173747>

⁸ NDIA, 2021, (accessed online 23.3.22) <https://www.ndis.gov.au/understanding/how-ndis-works/mental-health-and-ndis#psychosocial-recovery-oriented-framework>, p.12

carers. The Framework needs to be systematically operationally integrated - and that Principle 5 is reflected immediately in the practices, attitudes and decisions made by the NDIA.

Some consumers VMIAC support told us of NDIS Plans which have had psychology funding removed without notice or warning where such psychological support is essential to ensure their day-to-day functioning, ability to maintain relationships and their connections with other plan supports. We believe references to requests by the NDIA in AAT appeal statements that participants use a mental health care plan for psychology, can be symptomatic of lack of clarity between treatment and disability-related psychological support.

Medicare funding is available for the treatment of mental health conditions. NDIS funding should be available for participants who require evidence-based psychological interventions to support functional capacity, regardless of whether they are receiving treatment or therapy under a mental health care plan or not.

VMIAC regularly encounters instances of the NDIA shifting psychological support service delivery to non-psychologists. For example, the NDIA may replace recommended psychology hours with therapy assistant or support worker hours with the intention that these supports implement psychological strategies on behalf of psychologists.

Recommendation 4: VMIAC supports the recommendation by the Australian Psychological Society⁹ that the Federal Government clarify the boundaries between the health and disability sectors, particularly in relation to psychosocial disability. In addition, the NDIA should ensure that psychological interventions which require a suitably qualified practitioner are not outsourced to support workers.

Flawed Internal Review processes are causing increase in AAT cases

VMIAC believe the internal review process is fundamentally flawed in ways which compromise effectiveness, efficiency and requires an overhaul to increase consistency and transparency. Participants receive no guidance about how to submit an internal review request beyond being advised of their right to do so. This disadvantages those who put their appeal broadly, for example, stating they have 'insufficient core or capacity building funding'. Where a participant does not know to state *specific supports and hours*, they are denied the opportunity to have these needs assessed on their evidence - significantly reducing their prospects. NDIA reviewers do not contact participants to clarify what the appeal is about, rather they make decisions based on broad requests providing limited reasons.

The above example reflects the broader issue of limited or no communication between participants and internal reviewers. VMIAC's Appeals Program staff find participants are often unaware they can submit additional evidence as part of an internal review. Those who do plan to submit additional evidence are often hindered by uncertainty about the reasons for the original decision (discussed above). Thus, limiting their ability to obtain the best quality evidence that directly addresses them.

Participants (and their carers or clinicians) are rarely contacted at any stage throughout the internal review

⁹ Australian Psychological Society (2021) Submission to the Joint Standing Committee 2021 Inquiry into the Workforce Providing NDIS Services. <https://psychology.org.au/about-us/what-we-do/advocacy/submissions/professional-practice/2021/submission-to-the-joint-standing-committee-2021-in>

process for clarification or consultation. Often the only contact a participant has is a brief phone call to explain the decision has been made, but even this communication is not guaranteed, meaning outcomes are provided without any verbal communication.

While the Participant Service Guarantee attempts to address past issues of lengthy delays in completion of internal reviews by providing reasonable timeframes for decision-making¹⁰, we are concerned strict timelines, without clear avenues for extensions and combined with understaffing and retention issues, could have serious unintended consequences. Shorter turnarounds for internal reviews mean participants often have insufficient time to provide evidence, with no reliable means of notifying the NDIA of pending evidence to extend time. We have supported participants who advised the NDIA of pending evidence only to see a decision go ahead without it.

Additionally, enforcing KPIs with emphasis on the number of internal reviews completed leads to rushed decision-making and prevents thorough review of available evidence, having no regard to the size or complexity of a particular case. This subsequently results in flawed decision-making by internal reviewers (and other decision-makers) leading to exponential increases in the number of matters progressing to the AAT.

This is unsustainable and stretches the resources of advocacy providers, the NDIA and the AAT far beyond their capacity. The NDIA is spending considerable time and money on legal costs on these matters, which more often, result in a positive outcome for the participant. The AAT Annual Reports indicate most NDIS matters are settled prior to hearing, and of those that do proceed to hearing, the Agency's decision is varied in 65% of cases¹¹.

The personal cost to the participant to achieve this outcome is often a great detriment to their mental health and the Agency has little justifiable excuse for failing to prevent progression to a distressing external review¹².

Recommendation 5: The NDIA urgently: commission an independent comprehensive review of the internal review process with the goal to:

- *determine improved resourcing of the Internal Review and Complaints teams in response to growing demand*
- *improve communications about the internal review process, including clear detailed guidance on how to submit a request for internal review, the avenues and timelines for submitting additional evidence; as well as embedding process and cues to contact participants regarding decisions being reviewed.*

Recommendation 6: DSS and/or the NDIA commission a participant outcome evaluation to determine the impact of internal and external reviews on participants with a psychosocial disability, particularly with respect to experiences of trauma and emotional distress.

¹⁰ The 2019 Review of the National Disability Insurance Scheme Act 2013 report (Tune Review) (p. 146).

¹¹ AAT Annual Report 2020-2021 (p. 52); AAT Annual Report 2019-2020 (p. 37).

¹² Submission to the Joint Standing Committee on the NDIS: General Issues around the Implementation and performance of the NDIS. *Unreasonable and unnecessary harms: Joint submission regarding the NDIS internal review and external appeals processes.*

Underfunding of NDIS Appeals Advocacy Services

Current funding arrangements for NDIS Appeals Advocacy Services exacerbates the issues raised here. The number of enquiries VMIAC receive exceeds our capacity to provide support, meaning we are forced to turn away people who would have been high priority at any other time. Other service providers we refer to have equally limited or no capacity to take on new clients.

Underfunding advocacy providers means services need to deprioritize internal reviews, greatly reducing the availability of support for those going through them. People with a disability are therefore disadvantaged, deciding not to pursue an internal review request. Or, they do so without fully understanding the reasons for the decision, the strengths/weaknesses of their case, how to improve their chances of success, or the right to provide additional evidence. VMIAC believe internal reviews risk turning into a rubber-stamping process where people are either prevented from exercising their rights of review or moved on to the AAT.

Underfunding also increases participant reliance on family members or plan funded Support Coordinators as they go on to the external AAT process. Support Coordinators do not have expertise in this area and are increasingly stating AAT matters are outside their scope. This is unsurprising since they are expected to do this work in a volunteer capacity.

Where a Support Coordinator agrees to assist, risks arise that the participant will be told several months into proceedings they require alternative representation due to a potential or perceived conflict of interest, particularly when support coordination hours are in dispute. Losing support at a crucial time can be distressing, create uncertainty during an already stressful process and lengthen delays while alternative support is sought.

Power imbalances are increased as people with a disability are expected to face lawyers from commercial law firms. People need reassurance, emotional encouragement and support to understand the process, technical language, to obtain and submit evidence, and manage their case so they may fully exercise their rights.

Finally, VMIAC's Appeals and Review Support service model which employs professionally qualified Lived Experience advisors can maximise engagement among harder to reach consumers with limited trust in mainstream providers. There are no other services specialised in NDIS expertise who are simultaneously capable of relating to the lived experience of people with psychosocial disability or who experience high distress.

Recommendation 7: *DSS address the demonstrated need for funding independent lived experience run NDIS support and advocacy programs; and, provide ongoing funding for NDIS Appeals Advocacy Support Services to ensure consistency for the sector, its workforce and service users.*

Application of the access criteria needs more legal consensus

Our view (and one that is shared among some other legal advocates) is that once a participant has been granted access to the NDIS, that participant's support needs should be considered holistically. At that stage access criteria have been met, therefore the only relevant consideration onwards is whether

supports are reasonable and necessary for the participant, as set out in section 34 of the National Disability Insurance Act 2013.

However, the NDIA regularly treats access as pertaining to one disability only and refuses supports on the basis they do not relate to the disability for which access was granted. This approach has no basis in legislation, being neither in the Act nor the Rules, yet is often cited as a reason for refusing support in internal and external reviews¹³.

Participants have limited options available to them to respond to these decisions. If a support is reasonable and necessary for a participant, excluding funding for it from their plan is at odds with the purposes of the scheme. Participants frequently resort to dealing with these decisions by providing all the evidence that would be required if an access request was made based on the additional disability. Requiring a participant to meet the access criteria a second time places a significant additional barrier between the participant and the supports they need.

Participants without legal or knowledgeable advice may opt to not challenge this further.

Where a participant contests the case manager's application of the legislation governing reasonable and necessary supports, they can request an internal review followed by an external review, if necessary. As covered above these processes are currently rife with accessibility issues. Given the significant increase in the number of NDIA decisions being reviewed by the AAT, any concerns about having their decisions externally reviewed and potentially set aside is clearly not deterring the NDIA from applying the legislation incorrectly at the plan review or internal review stage.

This leaves participants to have decisions reviewed or overturned by the Federal Court. The cost to a participant, in time, money and mental well-being, of pursuing an issue such as this in the Federal Court is effectively prohibitive. The burden of addressing incorrect application of the legislation should not fall on participants. The NDIA should ensure all case managers correctly apply the legislation.

Recommendation 8: DSS seek independent legal advice which tests the Agency's current application of s34 of NDIS Act 2013 and rule 5.1(b) of the NDIS (Supports for Participants) Rules 2013 with respect to the funding of reasonable and necessary supports where co morbidities and co-conditions are present.

Trauma-informed care

All NDIA participants, regardless of the nature of their disability, deserve to be treated sensitively and in a trauma-informed manner. Trauma-informed practice is a strengths-based framework founded on the principles of safety from harm, trustworthiness, choice, strengths building, collaboration and empowerment¹⁴. It is particularly critical for participants with psychosocial disability, where the likelihood of the participant having experienced past trauma is high.

¹³ McLaughlin and NDIA [2021] AATA 496, [39] – [61]; Mulligan v National Disability Insurance Agency [2015] FCA 544

¹⁴ Kezelman, C, Stavropoulos P. (n.d.) Practice Guidelines for Clinical Treatment of Complex Trauma Blue Knot Foundation..

Research has identified trauma as a major public health problem^{15, 16}, and systems of care which do not accommodate its impacts risk harming and further marginalising already vulnerable citizens. Despite the NDIA providing services to participants who are at high-risk of re-traumatisation, we hear many interactions between participants and case managers do not limit these risks. At a minimum, case managers should be trained in trauma-informed care to ensure they make decisions and facilitate effective internal review processes which support a low likelihood of additional psychological harms.

As identified earlier, the process of taking decisions to internal and external appeal can be challenging, often prohibitively so for participants with a psychosocial disability. An external review in the AAT is by its very nature an adversarial process. Participants with a history of trauma will find the combative interactions with lawyers particularly difficult to cope with. As such, many of these participants withdraw AAT applications challenging NDIA decisions.

The VMIAC NDIS team have also been involved in matters where NDIA lawyers have directly contacted participants, rather than contacting them through their representatives thereby causing extreme distress. The NDIA needs to be accountable for the representatives it appoints, and participant well-being should be prioritised by case managers and appointed representative of the Agency.

Recommendation 9: The NDIA provide trauma informed care training to all staff who interact with participants to increase Agency representatives' capacity for trauma-informed engagement; and; that the Agency develop guidelines and procedures governing engagement with participants who have a recognised history of trauma.

Recommendation 10: The NDIA monitor its appointed representatives, particularly external lawyers, to ensure they comply with the model litigant obligations by which the Agency is bound.

15 Maur et al, 'Prevalence of interpersonal trauma exposure and trauma-related disorders in severe mental illness' (2013) 4(1) *European Journal of Psychotraumatology* 6 – 13.

16 AIHW July 2020, cites Mills et al. 2011; Rosenman 2002 in 'Stress and trauma' in *Australia's Health 2020 report* (accessed online 7.2.2021)

Summary Recommendations:

Recommendation 1: Reasons for refusal of access or support requests should be provided to participants in plain language, avoid technical legal terminology wherever possible and should also:

- *be as comprehensive and transparent as possible*
- *allowing participants to thoroughly understand the decisions made and the evidence reviewed to make the decision.*

This could be enabled by ensuring decision makers receive training in accessible and plain language skills.

Recommendation 2: The NDIA implement procedure and policies to ensure consultation of participants where proposed funding reductions to their plans meet a threshold percentage. The Participant should be provided clear reason for the proposed reduction and an opportunity to respond. Where proposed plan reductions meet a threshold percentage of the plan value or support hours - a senior planner should provide oversight and review of this decision whereby the response of the Participant is also considered before implementing the cut.

Recommendation 3: The NDIA and DSS should ensure:

- *all planners, case managers and local area coordinators receive regular and up to date externally provided professional training modules.*
- *processes and procedures are guided by operational policies specifically designed to build staff capabilities around psychosocial disability and a focus on the planning process.*
- *the underrepresentation of women in the Scheme, and the administrative burdens they face is addressed through the development of a co designed NDIS Gender Strategy undertaken in partnership with women's organisations, consumer peaks, and women participants. This should include data collection and ways to measure improvements in the experiences of women participants.*

Recommendation 4: VMIAC supports the recommendation by the Australian Psychological Society¹⁷ that the Federal Government clarify the boundaries between the health and disability sectors, particularly in relation to psychosocial disability. In addition, the NDIA should ensure that psychological interventions which require a suitably qualified practitioner are not outsourced to support workers.

¹⁷ Australian Psychological Society (2021) Submission to the Joint Standing Committee 2021 Inquiry into the Workforce Providing NDIS Services. <https://psychology.org.au/about-us/what-we-do/advocacy/submissions/professional-practice/2021/submission-to-the-joint-standing-committee-2021-in>

Recommendation 5: The NDIA urgently: commission an independent comprehensive review of the internal review process with the goal to:

- *determine improved resourcing of the Internal Review and Complaints teams in response to growing demands*
- *improve communications about the internal review process, including clear detailed guidance on how to submit a request for internal review, the avenues and timelines for submitting additional evidence; as well as embedding process and cues to contact participants regarding decisions being reviewed.*

Recommendation 6: DSS and/or the NDIA commission a participant outcome evaluation to determine the impact of internal and external reviews on participants with a psychosocial disability, particularly with respect to experiences of trauma and emotional distress.

Recommendation 7: DSS address the demonstrated need for funding independent lived experience run NDIS support and advocacy programs; and, provide ongoing funding for NDIS Appeals Advocacy Support Services to ensure consistency for the sector, its workforce and service users.

Recommendation 8: DSS seek independent legal advice which tests the Agency's current application of s34 of NDIS Act 2013 and rule 5.1(b) of the NDIS (Supports for Participants) Rules 2013 with respect to the funding of reasonable and necessary supports where co morbidities and co-conditions are present.

Recommendation 9: The NDIA provide trauma informed care training to all staff who interact with participants to increase Agency representatives' capacity for trauma-informed engagement; and; that the Agency develop guidelines and procedures governing engagement with participants who have a recognised history of trauma.

Recommendation 10: The NDIA monitor its appointed representatives, particularly external lawyers, to ensure they comply with the model litigant obligations by which the Agency is bound.

VMIAC works across Victoria and acknowledges the many Aboriginal nations that have lived and cared for this sacred land for thousands of years, and which continues today. We pay respect to Traditional Custodians and Elders – past, present, and emerging – and thank them for their wisdom and generosity of spirit. We acknowledge that this land was never ceded. We support the Uluru statement from the heart.

