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16 February 2021

The Hon Kevin Andrews MP
Chair
Joint Standing Committee on the National Disability Insurance Scheme
Parliament House
CANBERRA ACT 2600

Dear Chair

Inquiry into Independent Assessments

I welcome the opportunity to make this submission to the Committee's inquiry into independent assessments.

We are aware the Government intends to commence using compulsory independent assessments to inform National Disability Insurance Scheme (NDIS) access decisions from mid-2021, and planning and budgets from the end of 2021. Our submission focuses on potential issues regarding the administration of independent assessments that may be of interest to the Committee, based on our experience with the NDIS.

Our Role

As part of our broad oversight role of Commonwealth Government administration, my Office has jurisdiction to consider and handle complaints, undertake investigations and make recommendations to address systemic issues impacting on the administration of the NDIS.

We work closely with the National Disability Insurance Agency (NDIA) to influence systemic improvement in the administration of the NDIS. Since the creation of the NDIS, we have investigated and made a number of recommendations to address issues regarding its administration, particularly in relation to timeliness of NDIA decision making and clarity of communication.

In 2020, my Office also published three reports about the NDIA: *Investigation into the actions of the NDIA in relation to Mr C* (February 2020), *Administration of NDIS funded assistive technology* (August 2020) and *Did they do what they said they would? Reviewing our recommendations* (September 2020). These reports can be found on the publications page on our website.¹

¹ <https://www.ombudsman.gov.au/publications?page=1>

Complaints

Our reports and submissions are informed by the complaints we receive. Since the NDIS rollout commenced in 2013, the number of complaints about the NDIA has increased each year up to and including 2018–19. In 2019-20, the number of NDIA complaints to my Office about the NDIA decreased by 22 per cent, from 1,711 in 2018-19 to 1,331 in 2019-20. During the same period, the total number of in-jurisdiction complaints my Office received decreased by 10 per cent from the previous year. It is not clear the reasons for the decline in NDIA complaints to the Office, although we are aware that during the COVID-19 pandemic, the NDIA took a proactive approach to contacting vulnerable participants. This may have had a positive impact on the volume of NDIA complaints to the Office.

Over the five years to 2019-20, the main issues raised in complaints we received about the NDIA related to internal review requests; planning; access requests; complaints service and requests for assistive technology. Through the complaints received and investigated, we observed that similar themes arise across different areas of NDIA administration. These themes include delays in decision-making, unclear advice, the need for clear and consistent internal staff procedures and for increased responsiveness to complaints and enquiries.

In the main, we generally found the NDIA to be responsive and helpful in relation to our Office's comments and suggestions, inquiries and investigations and have not identified any major concerns with the NDIA's current overall complaint handling process. This is something we will monitor further as part of our role in monitoring the NDIS Participant Service Guarantee (PSG).

The Participant Service Guarantee and our oversight role

In 2019, the Government announced the introduction of the PSG, and initiated an independent review of the *National Disability Insurance Scheme Act 2013* (NDIS Act). Despite delays to legislative changes, from 1 July 2020 the NDIA commenced reporting on the PSG timeframes it has been able to implement administratively, and introduced a new Participant Service Charter, with five PSG engagement principles, to guide interactions with participants and prospective participants. These principles are Transparency; Responsiveness; Respectfulness, Connectedness and Empowerment.

The Government also committed \$2 million across four years from 2020-21 to enable my Office to monitor the NDIA's performance against the PSG and to support participants pursuing complaints about the timeframes for NDIA decision-making they have experienced. Our approach to the PSG performance reporting will be to assess and report on the NDIA's performance against the PSG engagement principles, service standards and timeframes. We will look at how the NDIA measures and reports on its performance. We will also assess how issues identified by our Office, through complaints, own motion investigations and engagement with the community, are addressed by the NDIA. When we identify systemic issues, we will review and analyse the administrative practices and procedures, and may make recommendations for improvement.

In its consultation papers on access and planning policies, the NDIA indicated that independent assessor organisations conducting independent assessments will be required to meet the engagement principles and service standards set out in the PSG, in addition to being subject to the NDIS Code of Conduct. My Office is working with the NDIA and the Department of Social Services to consider how monitoring of independent assessors' performance against PSG engagement principles and service standards may be undertaken and reported on.

Independent Assessments

The Government announced that from this year, independent assessments will be compulsory for prospective and existing NDIS participants, subject to the necessary legislation being passed. This is one of a number of reforms to the NDIS that are being introduced following the 2019 review of the NDIS Act. Other reforms include the introduction of the PSG, defining and providing accessible information on reasonable and necessary supports, and changes to the early intervention approach for children aged 6 years and under. At the same time, the NDIA is expected to introduce changes to participant budgets.

The breadth of changes being introduced in a relatively short timeframe may present a challenge for the NDIA, its partners and for participants, carers, advocates and service providers.

From our work with participants, carers and disability stakeholder groups, we know that poor or inconsistent information, unclear processes and delays in decision making are among the most frequent causes of complaints. These are the kinds of issues that may arise with the introduction of a number of changes to policy, processes and timeframes within a short period.

In implementing compulsory independent assessments, the NDIA should ensure the following:

- Participants, carers and other stakeholders are provided with clear, consistent and accessible information:
 - regarding the independent assessment process, including opportunities for internal and external review and complaints mechanisms, and
 - about when additional independent assessments can be requested, including clear guidance on the Independent Assessment Framework and how it applies to individual assessments, so that it is clear when assessments do not comply with that framework.
- The information about independent assessment processes contained in the NDIA's operational guidelines, standard operating procedures and practice guidelines is complete, and up to date and accessible.
- NDIA decision makers are provided with comprehensive training about exemptions from an independent assessment and prospective participants are given clear reasons when a decision is made not to grant an exemption.
- There is ongoing consultation about the changes, and the opportunity to refine processes based on complaints and other feedback where appropriate.
- Further consultation and engagement with Aboriginal and Torres Strait Islander and CALD participants and prospective participants, carers and representative groups be undertaken to ensure culturally appropriate methods of assessment are used.

It is pleasing to see that the NDIA is already considering many of these elements as part of its own consultation process and that these issues are highlighted in the consultation papers.

I make one observation about review rights and complaints processes. The NDIA will need to ensure that where participants are assessed as no longer eligible for funded supports based on the outcome of an independent assessment, they have clear information about how to seek a review of the decision and make complaints or provide other feedback. The NDIA should also ensure it has in place clear guidelines for NDIA staff and Partners in the Community about transition to early intervention and/or mainstream services and any conditions and processes relating to re-applying to the NDIS.

We will continue to work with the NDIA and monitor the implementation process to determine that these elements are properly implemented in practice.

I trust this information is of assistance to the Committee.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Michael Manthorpe', with a long horizontal flourish extending to the right.

Michael Manthorpe PSM
Commonwealth Ombudsman

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