



Our ref: qA18740

9 October 2015

Review of the NDIS Act
Ernst & Young
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By email to: ndisactreview@au.ey.com

Dear Secretary

Thank you for the opportunity to provide comments to the Review of the Operation of the *National Disability Insurance Scheme Act 2013* (the Act).

The Commonwealth Ombudsman has jurisdiction to investigate the administrative actions and decisions of Australian Government agencies, including the National Disability Insurance Agency. To date my office has not received complaints relating to the review's specific terms of reference. Notwithstanding the absence of such complaints, I thought it may be useful to the review to convey feedback given to my office in the course of recent community consultations with people with disability and their families and support people.

In May 2015 my office, in conjunction with state and territory Ombudsman offices, made a submission to the Department of Social Services' consultation regarding the *Proposal for a National Disability Insurance Scheme Quality and Safeguarding Framework*. That submission asserts that the Commonwealth Ombudsman would be well-placed to deliver the National Disability Insurance Scheme (NDIS) complaints and oversight function, and encourages the Government to consider the Ombudsman to take on the role. Relevant to this review, that submission also discusses:

- Provider registration
- Choice and control for participants
- The need to consider the interactions between state and territory legislation and the Act as the Scheme moves to national implementation.

With a view to building our capacity in this area and better understanding the experience of people with disability engaged in the NDIS (and their families and carers), my staff has recently been consulting with those people along with advocates, peak bodies and peers support organisations to get their views on the way the NDIS is working in practice.

Two of the themes from those consultations are relevant to this review and are outlined briefly below.

Access criteria

A consistent theme in the feedback provided to our office is concern that the access criteria in the Act do not appropriately reflect the experiences of people with mental health conditions. In particular, mental health consumers and advocates in the Hunter trial conveyed the view that the emphases on permanency (s 24(1)(b)) and the likelihood of lifetime support (s 24(1)(e)) are inconsistent with the sector's focus on recovery. In light of this feedback, which we understand is likely to be reiterated by a number of submissions to the review, the government may wish to consider reframing the access criteria to ensure the Act provides equity of access for all people with disability, whether their impairment is intellectual, cognitive, neurological, psychiatric, sensory or physical.

We do not propose to comment on precisely how this might be achieved, as individuals and peak bodies representing those with lived experience of disability and the NDIS are better placed to comment on a more appropriate access framework.

Reasonable and necessary supports

Another area that comes up often in our consultations over the NDIS is the seeming disconnect between supports funded by the NDIS and the services delivered by other government systems. In particular, we have received feedback regarding particular supports which are deemed not to be 'reasonable and necessary' because they are more appropriately funded through other service systems (such as education, transport or health). While it is clear that it is government's intention to distinguish between those supports that are to be funded by the NDIS and those that are the responsibility of other service systems, participants have expressed concern that in their experience those other products or services are ineffective or are not readily accessible in their community. People providing this feedback expressed the view that refusing access to particular supports, in light of inadequate systems elsewhere in government, undermined the NDIS's focus on supporting independence and social and economic participation for people with disability.

Many of these participants and families reported that they felt a greater level of flexibility ought to be built into the definition of 'reasonable and necessary supports' to allow decision makers to consider whether supports that should be provided by other service streams are, in fact, available to the participant and, where they are not, whether they should instead be funded under the Act. We are aware that this issue may have also been canvassed in submissions to the Senate's recent Inquiry into 'current levels of access and attainment for students with disability in the school system, and the impact on students and families associated with inadequate levels of support'.

I trust this information will be of assistance to your review of the Act, and look forward to hearing more once the review has been completed.

If you would like to speak to my office regarding this submission, please contact Mr George Masri on (02) 6276 0129. If the Committee would like to speak with me directly, I can be contacted on (02) 6276 0149.

Yours sincerely



Colin Neave
Commonwealth Ombudsman