

# The role of the Commonwealth Ombudsman in overseeing the rollout of the NDIS – 2019 update Michael Manthorpe, Commonwealth Ombudsman

## Introduction & Acknowledgement

- Thank you for the introduction.
- Acknowledge traditional owners.
- Acknowledge Ben Gauntlet.
- I'm pleased to be returning to the Summit this year to provide an update on my Office's role in overseeing the roll out of the NDIS and sharing our work on the limited but still important contribution we can make to helping to build and maintain a strong and sustainable scheme.

## Overview of the role of the Ombudsman – what we do

- Before I talk specifically about the NDIS, it might be helpful to give a brief outline of my Office's role.
- My Office has two key objectives –
  1. To provide assurance to the Parliament and the public that the agencies and private sector organisations we oversee act with integrity and treat people fairly
  2. To influence lasting systemic improvement in public administration.
- In practical terms, this means we:
  - receive and manage complaints from the public about government agencies and some private sector organisations
  - Conduct inspections and audit activities
  - Engage with agencies and oversee organisations to provide feedback / recommendations / submissions / papers / reports.
- And my Office has a very wide remit – we have oversight of the administration of almost the whole of the Australian Public Service, plus the Australian Defence Force, we look at matters pertaining to Immigration detention, law enforcement compliance with covert powers, and oversight of Private Health Insurance, the Post Office, VET providers, and the ACT public service.
- We are an office of about 300 people, but given the breadth of our remit we have to be very thoughtful about what matters we take on, what complaints we investigate, or not, what topics we delve into in a systemic way, or not.
- We are also committed to ensuring accessibility for all people. Relevant to this audience, we have been working on a Disability Accessibility Review to strengthen our approach to making our services more accessible. We've been working on our website, on our use of interactive voice recognition, and the use of plain English, among other things, to ensure we are genuinely accessible.
- And we like to come to gatherings like this, so that you know we are around and may be able to help you or the people you work with to navigate government systems .

- People with disability are represented in complaints across my Office’s various jurisdictions.
- For example, as well as the NDIS, we get quite a few complaints about Disability Support Pension – going to matters such as delays in processing, matters pertaining to debts, review delays, and cancelled or suspended payments – as well as mainstream programs.
- But there are also limits to what we can do. Generally, our focus is on administration rather than policy; decisions of Ministers are off the table; we do not do “merits” review in the way courts and tribunals do, and all we can ever do is make recommendations for enhancing administration – we can’t direct change.

#### Improving complaint handling across government

- As I mentioned a moment ago, because of the breadth of our work and our relative size, we can’t investigate all the individual complaints that come our way.
- That’s why, in most cases, the most efficient way to resolve a complaint with an agency is to raise it with the agency first, before coming to my Office or another oversight body. But we want to be sure agencies are handling complaints well – and to help them improve these practices.
- We have commenced work on a number of initiatives to provide assurance about, and to influence improvement in, agency complaint handling practices:
  1. We are piloting a complaints assurance project, whereby we are working with a couple of agencies to assess the quality of their complaint handling processes and systems. We are also, by the way, bringing the same methodology to ourselves, because I want to hold my office to the same level of account as anyone else.
  2. We are working with agencies to develop and deliver training packages that work to improve agency complaint-handling capability. These include complaint handling workshops and a complaint handling forum for agencies and industry to hear and exchange information.
  3. We are working on developing feedback loops from agencies, so that when we refer people to an agency for help we seek feedback from the agency about what happened next and whether the person got a useful, timely response.
  4. Complainant feedback – the Office has commissioned market research to take feedback about our services from those who make a complaint to us.

#### Our role in relation to the NDIS

- I mention all of these things because I want you to know that I am using every bit of leverage I can find to enhance the experience of people who encounter problems in the systems that I oversee.
- And even though my resources are spread thin across a very wide remit, I also want you to know that one of the agencies we are particularly focussed is the NDIA. It is the third largest generator of complaints about government agencies (after DHS and Home Affairs), and so therefore we work closely with the agency.

- I have been particularly impressed with the NDIA's willingness to work with my Office as it seeks to improve its complaint handling arrangements and they have been early adopters of our education program.
- But I would go further than that: we don't just want the NDIA to handle complaints well; we want the NDIS to work. To put it another way – you don't have an Ombudsman if you don't have complaints, so that is the place we start. But we don't just want agencies to handle complaints well; we want agencies to work out what they need to do to prevent complaints happening in the first place.
- In turning to the NDIS, my Office has jurisdiction to consider and handle complaints about the both the NDIA and the NDIS Quality and Safeguards Commission.
- We are committed to working closely with both these agencies and with state disability complaint bodies during the transition, to drive enduring systemic improvements to the Scheme.

Our complaint handling role:

- For the NDIA, we consider complaints about its *administrative actions and decisions*. This includes things like:
  - Delays in making a decision such as finalising a request for review
  - Confusion about the reasons for a decision
  - Staff providing unclear or incorrect information
- My Office considers whether what happened was fair and reasonable, taking into account the relevant law, policy and procedures as well as the broader principles of good public administration. Our focus is on the *process* followed by the Agency, and whether its decisions are lawful and reasonable.
- We draw on the individual cases to identify systemic issues that require attention.

### NDIS Commission

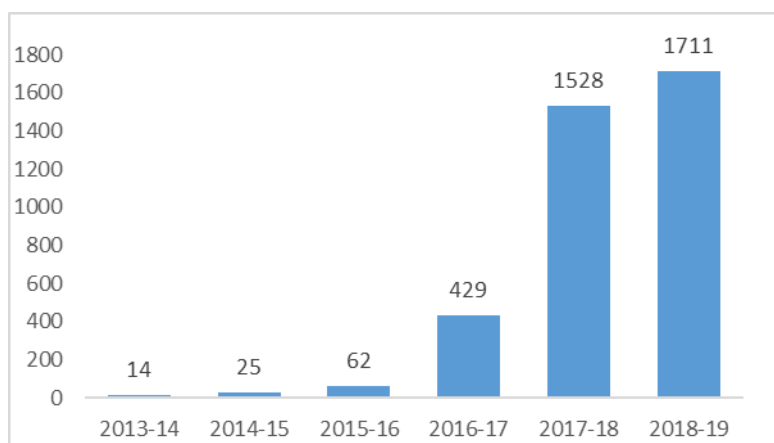
- We *don't* take complaints about the actions of disability service providers – these can be made to the NDIS Quality and Safeguards Commission (the Commission).
- However, my Office has a dual role in relation to the Commission:
  - We have an oversight role, through which we can investigate complaints about the Commission's actions and decisions, and
  - We also work closely with the Commission to:
    - Share information about areas of potential overlap, and
    - Ensure complaints received by either of my Office or the Commission find their way to the right place, by taking a no-wrong-door approach.
- Areas for potential overlap include complaints either Office receives about disability service providers (in which context they are covered by the Commission) but who are also delivering a service on behalf of the NDIA, such as Local Area Coordinators (LACs) and Early Childhood Early Intervention (ECEI) Providers (ECEI) (in which context they are covered by my Office). In these cases, a deeper assessment is required to determine whether the complaint is one for my Office, the Commission, or potentially both.

- We are currently engaging with the Commission to develop agreed processes and procedures that help us address these issues.
- As you would know, the Commission now operates in all States and Territories except WA. In WA, we continue to work closely with the Health and Disability Services Complaints Office.
- During the 2018-19 financial year, my Office received only a very small number of complaints about the Commission, none of which have raised serious systemic concerns for us, but I do want you to know that if you are experiencing difficulties there you are able to complain to my Office.
- But back to the NDIA...

## Complaint themes to the Office

### NDIA Complaints

- Since the NDIS trials commenced in 2013, complaints to my Office about the NDIA have grown significantly year to year.
- There are now over a quarter of a million participants in the NDIS, and complaints to my Office grew by 12 percent in the last year to around 1700. This is compared with an over 250 per cent increase in complaints from 2016-17 to 2017-18.



- The make-up of the top issues complained about has remained largely unchanged from one year to the next.
- This year 58 percent of complaints have been about the following three issues:
  - Reviews – section 48 unscheduled review and section 100 reviews. (32%)
  - Requests for assistive technology; and (13%)
  - Planning (13%)
- These complaint themes, and a range of other factors, drive the focus of my Office’s strategic work.

### Our strategic work:

## Monitoring the implementation of the Reviews report

- As I just mentioned, complaints about the NDIA's handling of reviews remains the most complained about issue in NDIA complaints to our Office.
- I would like to share with you a case study which illustrates the issues we are seeing in relation to reviews.

### CASE STUDY - reviews:

- Carlos (not his real name) requested a review of the NDIA's decision to decline the request for specialist funding for a wheelchair (in his daughter Maria's plan).
- The NDIA undertook the review and confirmed its original decision. Although the NDIA verbally told Carlos of the decision, it did not send him or Maria a written decision. Without a written decision, Carlos was unable to seek merits review of the NDIA's decision by the Administrative Appeals Tribunal (AAT).
- Carlos complained to our Office. We contacted the NDIA and it sent a decision letter to Maria. Carlos and Maria were then able to exercise their rights to get the NDIA's decision reviewed.
- You may recall that last year I published a report into the NDIA's administration of reviews. My report highlighted three main problems:
  - **Timeliness in handling a participant's request for review** – at the time of my report, the NDIA had around 13,000 outstanding requests for review and acknowledged some reviews were up to nine months old.
  - **Handling requests** – providing more guidance to staff to identify the type and grounds for review to ensure a participant's review request is managed appropriately.
  - **Communicating with participants** many of the complaints to my Office arose because participants were unsure if the NDIA had received their request for review and, if so, what progress had been made. In some cases, the NDIA also failed to provide participants with written reasons for its decisions – like the case study I mentioned a minute ago.
- My Reviews report made 20 recommendations which were all accepted by the NDIA.
- This year my Office has been monitoring the NDIA's progress in implementing the recommendations and its strategies for addressing the backlog.
- Since our report was published, the NDIA has:
  - taken steps to improve its communications with participants by changing its decision letters and improving its acknowledgement letters to make it clear how the participant's review request is being handled;
  - improved its guidance for staff by updating its internal operating procedures and guidance materials; and
  - restructured its teams and processes for handling reviews in order to streamline and improve the review process.

- While I am pleased that the NDIA has made some progress in implementing my recommendations, there is still significant work to be done to address timeliness in completing reviews to ensure the backlog is not allowed to continue to grow.

### Assistive technology

- Over the last year, we also noticed an increase in complaints about the NDIA's handling of requests for assistive technology.
- While I am sure most of you are aware, assistive technology, refers to a range of assistive supports which can be required such as wheel chairs, other equipment, or home modifications to support people with disability.
- Similar to complaints about reviews, the issues being raised in assistive technology complaints related to delays and communication. This case study highlights some of those issues.

### CASE STUDY – assistive technology delays and communication with participants

- We received a complaint from John (not his real name) who contacted my Office because of delays in getting assistive technology included in his plan.
- He told us he was in hospital and was waiting for the NDIA to approve funds so he could obtain customised mobility equipment and have modifications made to his home, so that he could get out of hospital.
- He told us that he had followed all the steps including providing quotes and assessments, and despite calling the NDIA multiple times had waited five months for a decision before approaching my Office.
- We investigated his complaint. We noted that his request had been handled by multiple teams and there had been lengthy delays in both processing his request and responding to the participant's attempts in following up the NDIA's decision.
- During the investigation, the NDIA acknowledged the complexity of this participant's circumstances. It took action to provide a support coordinator to assist the participant in engaging with the hospital and in obtaining his mobility equipment and the required modifications to his home.
- The issues, in this case study, around delay and communication with participants are common themes in the assistive technology complaints received by my Office.
- As you may know, last year the Joint Standing Committee into the NDIS inquired into the provision of assistive technology.
- My Office made a submission and I appeared at the inquiry and shared the issues based on our analysis of the complaints made to the Office.
- In response to the Joint Standing Committee's report, the NDIA is piloting various initiatives to improve and streamline assistive technology processes, as well as improve the information available to participants and providers.

- We are engaging with the NDIA regarding these initiatives and are providing feedback into the administration of its new processes, and we will continue to examine this issue.

### NDIA's administration of transition supports

- So in both of the areas I've just touched on, ie reviews and assistive technology, we get far more individual complaints than we can possibly manage, so we also try to bring a systemic lens to the problems and look for ways in which we can make independent recommendations to the NDIA about how to fix them.
- My Office is not however just concerned about areas of high complaint numbers. We understand that the NDIS is there to provide support to some of our most vulnerable members of the community.
- For that reason, this year my Office will also be looking into the NDIA's administration of transition supports.
- The case study I just described touches on this issue. In that case, the complainant told us that he was unable to be discharged from hospital until adequate supports funded by the NDIS were in place.
- My Office has investigated other complaints where participants have been unable to access supports when transitioning out of hospitals, prisons or other State and Territory-funded institutions, or they have been released from one of these places without an adequate plan being in place.

### CASE STUDY – Leaving institutions

- Sarah has Multiple Sclerosis, or MS, and high care needs and no access to informal supports at home.
- During 2017, Sarah's condition deteriorated and she sustained several injuries in her home. She also spent a large portion of her time in hospital.
- In November 2017, Sarah was granted access to the NDIS, and the Scheme commenced rolling out in her area from December 2017. According to the NDIS 'phasing rules' she was not due to transition to the NDIS until the period September-December 2018.
- In early 2018, the hospital declined to discharge her on the basis that she did not have adequate supports at home to provide her with the care she required (and prevent her from suffering further injury).
- While she was in hospital, her social worker contacted the NDIA on her behalf at least six times between January and May 2018, requesting an urgent planning meeting, raising safety concerns, and seeking to have the matter escalated. After failing to secure a date for a planning meeting, the social worker complained to our Office and we investigated her complaint.
- In investigating the complaint, my Office pointed out that the NDIS Act provides for the CEO to commence preparing participants' plans sooner than the timeframes set out in the 'phasing' rules. We directed the NDIA to its Operational Guideline which sets out the circumstances in which the NDIA may prioritise planning for participants.

- In response to our investigation, the NDIA assessed Sarah’s situation and determined that she met the criteria for urgent planning. It promptly arranged a planning meeting and Sarah obtained an NDIS plan which allowed her to obtain the supports she needed.
- At our suggestion, the NDIA also agreed to provide additional training to its staff about the existence and application of the relevant Operational Guidelines, so that other participants in the same situation as Sarah would not face the same problems.
- While the complainant in this case had a representative who was able to complain to both the NDIA and my Office about her situation, I am conscious that there are many participants who might not be in that position.

### Stakeholder Engagement

- My Office is committed to having strong stakeholder relationships to hear from advocacy groups who might reach vulnerable groups which might otherwise struggle to engage with Government.
- To the extent we can, we engage with outreach around Australia, to meet stakeholders and hear what they have to say.
- The conversations we have on the ground, including with advocacy groups and others, are important to promote our services, and to put us in touch with issues affecting the success of the Scheme, especially where we might not receive these as complaints.
- By gathering information, intelligence and anecdotal evidence, we are better equipped to engage on issues affecting the more vulnerable members of the Australian community and to achieve more effective systemic outcomes.

### Looking forward to next year.

- The NDIS is now available across almost all of Australia with full roll out of the Scheme drawing ever nearer.
- As you would know better than I, there is still plenty of work to be done to streamline processes, improve timeliness, and also to improve the information available to participants, their families and advocates who are navigating the Scheme.

### The Participant Service Guarantee

- In that context, I was pleased that the Government recently committed to establish and legislate a new National Disability Insurance Scheme (NDIS) Participant Service Guarantee (the Guarantee) that sets minimum times for NDIS processes such as access and plan approvals, and reviews. The Guarantee is to commence on 1 July 2020, following a review of the *National Disability Insurance Scheme Act 2013* (NDIS Act) in the second half of 2019.
- The Government also committed \$2 million, across 4 years, for my Office to monitor the NDIA’s performance against the Guarantee timeframes and to support NDIS participants pursuing complaints about the timeframes they have experienced.
- I am pleased that, all going well, we will get a little more resource to provide oversight of the NDIA and my goal will be to optimise the use of the available funds.
- It will mean we can investigate more individual complaints about the NDIA, based on the Service Guarantee timeframes. It will mean that we will be better placed to analyse the complaints to



identify systemic issues, and it will enhance our capacity to look at those, and engage with stakeholders. In short, it will help us do our job a little better, for the good of the whole system.

## Conclusion

- By this time next year, the NDIS will be fully rolled out.
- I hope to speak to you again then to tell you about the continuing maturing and stabilising of the scheme.
- I should also acknowledge that even though my Office by its nature focuses on complaints, on any balanced analysis, the roll out of the NDIS is not all doom and gloom.
- In its latest quarterly report to the COAG Disability Reform Council, the NDIA reported a high satisfaction rate, with 88% of participants rating their overall experience with the NDIS planning process as either very good or good. This was an improvement on the previous quarter's satisfaction rate of 84%.
- My Office welcomes this improvement, and acknowledges the positive outcomes that the Scheme helped significant numbers of participants to achieve.
- The NDIS is undoubtedly one of the biggest reforms to public administration of our time.
- I am yet to meet a person who wants it to fail.
- But I am also reminded of the experience of the banks, and in particular the experience of the Commonwealth – as reported in the APRA report – about focusing on Net Promoter Scores. The learning is that even if your overall satisfaction rating seems high, I think it is still critically important for the voices of those who are unhappy with the scheme to be heard. Of course, not every problem can be fixed, but you can't spot the problems unless you hear the voices.
- My office will continue to work with complainants, stakeholders, the NDIA and the NDIS Quality and Safeguards Commission to do our bit to make the NDIS a success for so many people.

Thank you.