

Submission by the
Commonwealth Ombudsman

**RESPONSE TO PRODUCTIVITY
COMMISSION'S ISSUES PAPER, 'REFORMS
TO HUMAN SERVICES'**

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INTRODUCTION

The Commonwealth Ombudsman's office welcomes the opportunity to respond to the Productivity Commission's second issues paper, *Reforms to Human Services*. This submission expands on the issues highlighted in our office's October 2016 response to the Commission's original issues paper, which sought to identify sectors for reform. Our submission also provides specific commentary against a number of the Requests for Information set out in Chapter 9 of the issues paper, 'Human services in remote Indigenous communities'.

BACKGROUND

The Commonwealth Ombudsman safeguards the community in its dealings with Australian Government agencies by:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action
- developing policies and principles for accountability, and
- reviewing statutory compliance by law enforcement agencies with record keeping requirements applying to telephone interception, electronic surveillance and like powers.

The Commonwealth Ombudsman's unique position in the Australian administrative law system provides this office with an understanding of the individual experiences of members of the public, who are dissatisfied with the way that government has dealt with their concerns. The Commonwealth Parliament has given the Ombudsman's office the power to investigate those complaints by obtaining records and information from the agency that would not ordinarily be available to a person acting on their own behalf. Over time, through investigating complaints about the actions of a particular Commonwealth department or agency, the Ombudsman's office is able to build up a detailed picture of an agency's operations.

The office also engages with peak bodies and community representatives that have direct access to stakeholders affected by government policies and programs. This engagement provides an opportunity for the office to develop a more holistic understanding of the public's experience of those programs, and is of particular value when the affected parties (such as Indigenous Australians) may be less inclined to make individual complaints.

RESPONSE TO TERMS OF REFERENCE

The Commonwealth Ombudsman's office plays an important role in safeguarding the Australian community in their dealings with Australian Government agencies. In recent years we have had a particular focus on the way in which government policies and programs are administered for vulnerable and/or disadvantaged people including people with disability, Indigenous Australians and people from culturally and linguistically diverse backgrounds.

Our handling of recent complaints¹ and stakeholder engagement about three key areas has identified a number of concerns regarding the delivery of services under these programs, particularly for remote Indigenous Australians. These are the National Disability Insurance Scheme (NDIS), the Community Development Program (CDP) and Disability Support Pension (DSP).

Our comments about the National Disability Insurance Scheme (NDIS) are taken from our engagement with stakeholders in the Barkly region (NT) and the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands, but we anticipate that similar issues are likely to be experienced in other remote Indigenous communities as the NDIS is rolled out in those locations.

Our comments about the Community Development Program (CDP) are informed through our investigation of individual complaints, liaison with the Department of Prime Minister and Cabinet, outreach in CDP regions and consultation with stakeholders (including legal services, peak bodies and community organisations).

Our office released an own motion investigation report² into the accessibility of DSP for remote Indigenous Australians in December 2016. Rather than repeat our findings here, we would encourage the Commission to read that report in tandem with our submission.

We have set out our comments below against each of the relevant Requests for Information (RFIs) outlined in the Commission's issues paper.

Service delivery challenges in remote Indigenous communities (RFI 32)

NDIS

The NDIS is premised on individuals being empowered to use their packaged funds to purchase the types of supports they need from a provider they choose. Stakeholders have pointed out to our office that there are a number of difficulties for participants, providers and the NDIA itself in delivering this vision in remote Indigenous communities.

The concept of choice and control

In order for NDIS participants to engage effectively in the NDIS, they need to see themselves as active consumers of services who have choices, rather than passive recipients. While many NDIS participants are making this cultural shift, there are some cohorts – including Indigenous Australians living in remote locations – where engagement with the NDIS has been at lower levels than projected.

Language and cultural barriers

Stakeholders tell us that, notwithstanding the NDIA's efforts to disseminate information by using Indigenous language in publications and employing local Indigenous staff, many Indigenous people – particularly in remote communities – still have a low level of understanding of the NDIS. Many participants will simply agree with a plan or a proposed service provider rather than experience embarrassment by asking questions or admitting they don't understand the arrangements.

¹ For reasons outlined in our previous submission we tend to receive few complaints from Indigenous people and those we do are usually made on their behalf by a legal or advocacy service.

² http://www.ombudsman.gov.au/data/assets/pdf_file/0024/42558/Accessibility-of-DSP-for-remote-Indigenous-Australians_Final-report.pdf

Many Indigenous groups have highlighted with us their view that the Scheme doesn't account for the importance and interconnectedness of family and kinship relationships for Indigenous participants and the communities they are a part of. For example, in the broader community people with disability are likely to have one or two primary carers, while in Indigenous communities – particularly in remote areas – there are likely to be a larger number of kinship carers performing different caring roles for a person. It is not clear that the NDIA's planning process accounts for the inclusion of each of these people, either in speaking to the participant's own needs or to the needs of the community in supporting the participant.

Stakeholders have stressed that many Indigenous people, and particularly those living in remote areas, are wary of engaging with government, due to past bad experiences or a general lack of trust. Further, they told us that many Indigenous communities do not readily identify a person as having a disability, even when the person's impairment is very severe. When combined with fears that people with disability (especially young people) might be taken away for treatment, it is probably unsurprising that peak Indigenous disability groups have expressed concern that many Indigenous people with disability will fly under the radar and not seek to access the NDIS.

Peak bodies have suggested that if the NDIS was able to focus more on community needs and engagement with local communities, more Indigenous people with disability would be inclined to effectively engage with the NDIS. They told us that Indigenous people generally needed additional support to access the NDIS due to a lack of understanding of the Scheme itself, as well as a general mistrust of government. In particular, stakeholders identified that the concept of planning for the future was not something that was readily understood or practiced in many Indigenous communities, making it difficult for participants or carers to effectively participate in the planning process.

Practical considerations

Many remote communities are several hours, or even several days drive from the nearest regional hub, and this can be hampered by weather for many months of the year. In some instances there is access by plane but, again, even this access can be limited by weather, cost and scheduling. This kind of sporadic attendance in community means that service providers often have difficulty establishing trust with participants or, perhaps more importantly, with the broader community.

There is very little mobile phone or internet coverage in many areas, and mail services are also sporadic and unreliable. There is also a low level of literacy in some communities. This can mean the options for delivering information or services other than in person are often very limited.

Disability service providers report that they experience great difficulty in attracting suitably qualified staff who also have the appropriate awareness of, and commitment to delivering culturally-appropriate services to remote Indigenous communities.

CDP

Many of the practical issues outlined above apply equally to the delivery of CDP. In particular, stakeholders have raised concerns about the way in which CDP participants in remote communities are advised of their mutual obligations and appointments. In particular, mail services are infrequent and can take weeks to arrive at their destination. Online messages are ineffective when there are few computers and limited internet access.

Jobseekers also face problems in reconnecting with their provider or with the Department of Human Services – Centrelink when penalties are imposed on them for not attending activities. This difficulty arises because of communication problems that are compounded in remote communities including limited access to internet, mobile coverage and public phones and Centrelink call wait times. If jobseekers are not able to reconnect with their provider or with Centrelink in a timely manner, they are left without payments.

Current service delivery model for human services in remote Indigenous communities, including the experience of reforms and areas for potential improvement (RFI 33-35)

NDIS

Provider experience

The Barkly region was the first remote Indigenous region in which the NDIS was trialed. We are told that, although there are 30 service providers registered, most visit only sporadically.

There is a recognised skills shortage across the disability workforce generally, but particularly in remote areas like Tennant Creek. Many services said they had trouble attracting suitably qualified staff and also could not offer training to less skilled staff as their staff levels were so small that they could not spare staff from front line service delivery in the meantime.

Stakeholders in Tennant Creek acknowledged the NDIA had made some provision for training but the timeframes were unrealistic as they did not make any allowances for recruiting suitable candidates. Important development activities like mentoring, learning support and supervision were also not factored into the cost of services. Some feedback indicated concern that the only providers who could realistically deliver services in remote locations for the rates set by the NDIA would be large multinational companies using untrained labour. Indeed, there was concern that – contrary to the intention of the Scheme, being to offer greater choice – larger service providers were likely to be the ones to succeed under such conditions and could in fact lead to a reduction in competition and/or service quality. In a population where people were less inclined to complain there would, in turn, be little or no contestability of services.

Providers also spoke about the need to service remote communities on a fly in, fly out basis but commented that the remote pricing schedule does not adequately account for the associated costs. Further, in some communities there was little or no accommodation, meaning that providers could service only a few participants in a day before flying out again, even if there were other participants who required services.

Under the previous, block-funded arrangements overheads such as travel, training and recruitment were accounted for in bulk, rather than needing to be costed to each service user. While the same pricing issues are reflected in complaints across the provider network, they appear to be particularly valid in a remote context where the opportunity to identify economies of scale are limited by smaller participant populations and generally higher costs.

Participant experience

Community stakeholders told us about a number of people in the Barkly region who had been accepted into the NDIS but had used very little, if any, of the funds in their plan. Often participants had previously been receiving services from a block-funded provider and there was no need for them to seek out services but rather just attend on the nominated day. Faced with having to identify and engage providers directly, many participants did not feel able or comfortable doing so and, instead, simply disengaged from the Scheme and relied on other systems such as health services instead. Some health providers reported noticing a reduction in the participant's overall health and wellbeing, in stark contrast to the aim of the NDIS.

The NDIS provides for a coordinator of supports to be funded under a participant's plan if they require assistance to identify and access providers of disability supports funded in their plan. However feedback from stakeholders in remote Indigenous communities suggested that providers offering these services were often not effective in engaging participants and, instead, participants were looking for help from health services, advocates and other community supports who were known to, and trusted by the community.

Accountability

Service providers in Alice Springs told us they were providing a service to a visiting Tennant Creek resident who had an NDIS package and was unable to access services locally, but that it was doing this without funding.

On the other hand, we were provided with accounts of services who had drawn down on funds from a participant's plan even though the participant did not receive the service.³ Stakeholders suggested there were inadequate accountability mechanisms in such situations, because it would require the affected participant to complain even though they were unlikely to do so. The service provider's explanation would likely be that they had planned for and attempted to provide the service, thus incurring a cost, and should be able to recoup that outlay.

In any event, it is clear that efficient service provision in a remote mobile population requires a high level of planning and coordination; features that are not congruent with many remote Indigenous people's lives and, in turn, are often difficult for providers to effect on the ground.

Service coordination

In our remote outreach, we were told by a number of Aboriginal Community Controlled Health Organisations that, although they were not currently NDIS service providers, they considered they were vital sources of information and health services for, and about NDIS participants. Notwithstanding the relevance of the information and relationships they hold, the health organisations were not able to contribute to planning processes or to receive information about final plans once decided. In their view, this constituted a waste of an opportunity to provide informed, holistic services across health and disability for NDIS participants.

Ways to improve service delivery in remote communities

Based on our experience of the NDIS to date, we consider that service delivery of disability supports for Indigenous Australians in remote communities may be improved by:

³ Where the participant had either not attended or cancelled at very short notice

- providing additional, targeted support to participants and communities to assist them to better understand (using qualified Indigenous interpreters when necessary):
 - the concepts of disability and planning for the future (where those concepts are not consistent with local language and/or culture)
 - their rights and responsibilities as NDIS participants, including their right to choose a provider (where there is a range of provider options) and make complaints
- considering options for better information sharing across service sectors (for example, between the NDIS planners and Aboriginal Community Controlled Health Organisations)
- ensuring the pricing structure for service providers adequately accounts for:
 - the costs of travel
 - the costs of recruiting and training suitably qualified staff
 - the costs of missed or cancelled appointments where they have already incurred costs in setting up the service
- considering options to encourage skilled staff and providers to deliver services in remote locations
- requiring service provider staff to complete Indigenous cultural awareness training
- requiring service provider staff to use Indigenous interpreters when necessary.

CDP

Activities

During outreach, community organisations have expressed concern that CDP activities offered to jobseekers are often not relevant to their personal development needs and/or to producing an employment outcome. Their concerns include:

- limited formal language, literacy and numeracy (LLN) programs that will provide genuine employment outcomes for Indigenous Australians. Many LLN programs are embedded with other activities but do not necessarily provide the structured, targeted and intensive training that jobseekers need
- some providers have a shortage of suitably qualified and trained staff to deliver programs that will produce employment outcomes
- lack of capacity building and community driven programs. For example, feedback from a community in Alice Springs was that there are opportunities for micro businesses but they need to be community driven. Examples of past programs that were viewed as being successful were the ranger program run by the Central Land Council and the Yuendumu outstation program
- programs are introduced or removed without adequate warning, explanation or consultation with communities
- some jobseekers choose not to participate in the CDP because the activities are not meaningful, culturally appropriate or likely to improve their access to real jobs.

Complex administrative and information technology systems for providers

Some providers and their peak bodies have complained about complex and onerous administrative arrangements that can result in more time being spent on compliance and reporting than on delivering outcomes. For example, providers need to report hourly

jobseeker attendance; time providers consider would be better spent on the key objective of achieving employment outcomes.

When providers do not have adequate training, resources, support and internet access to use information technology systems, this can result in poor and inadequate record keeping. This is particularly concerning when a record of non-compliance can impact on a jobseeker's income support payment. For example, while visiting the NT in 2015, we were told of a situation where a CDP provider recorded a large number of non-compliance incidents as soon as they could access systems on their return from a remote community, rather than entering them at the time the non-compliance occurred. This resulted in many job seekers in the same community having their payments suspended at the same time, compounding the effects of the penalty.

Impact of financial penalties where participants do not attend activities

Since the CDP commenced in July 2015 our office has observed a significant and disproportionate increase in the number of compliance penalties being applied to Indigenous jobseekers in remote communities compared to non-Indigenous jobseekers.⁴ Stakeholders have also raised concerns about the impact of CDP penalties on the broader community.⁵

The current system is predicated on penalties leading to increased jobseeker compliance, with the outcome of jobseekers engaging with services, addressing barriers to employment and gaining skills to obtain employment. However, many stakeholders have questioned the reasonableness of, or evidence for this assumption, given that compliance penalties continue to be more prevalent for remote Indigenous participants.

Indigenous jobseekers may not attend appointments for a range of reasons, such as lack of transport, involvement in cultural business and miscommunication. Some jobseekers may have vulnerabilities, such as undiagnosed medical conditions, that have not been identified or assessed when considering their capacity to engage in the designated activities. During our outreach, stakeholders told us that many Indigenous jobseekers do not raise personal issues affecting their compliance with providers because they do not feel comfortable doing so.

More flexible, culturally appropriate and non-punitive strategies to re-engage Indigenous jobseekers may be a more effective way of achieving the desired outcomes than financial penalties. These strategies may include discussing reasons for non-compliance, giving jobseekers another chance to attend an appointment, letting them make up time missed from an activity, and clearly identifying, assessing and accounting for vulnerabilities.

⁴ For example in the quarter 1 April to 30 June 2016, Indigenous jobseekers incurred 67.83% of non-payment periods and 59.78% of short term financial penalties compared to 32.17% of non-payment periods and 40.22% of short term penalties incurred by non-Indigenous jobseekers: Department of Employment, Job Seeker Compliance Public Data-June Quarter 2016 (14 October 2016), https://docs.employment.gov.au/system/files/doc/other/job_seeker_compliance_data_-_june_qtr_16.pdf; accessed 10 January 2017.

⁵ During outreach in August 2016 a stakeholder raised concerns about the impact of CDP penalties on a particular community near Alice Springs. They provided case studies to highlight the impact when CDP participants have financial penalties, are left without payment and have to rely on others in the community for financial support.

Ways to improve service delivery in remote communities

Based on our experience of the CDP and its predecessor programs, we consider that effective service delivery of employment services for Indigenous Australians in remote communities will require:

- communities playing a greater role in the design and planning of CDP activities and the means of delivery
- providers having sufficient flexibility to deliver programs in ways that meet the cultural needs and preferences of Indigenous Australians. This includes flexible arrangements for jobseekers in remote locations to attend appointments and undertake activities
- providers having adequate training, resources, support and internet access to use information technology systems and maintain timely, accurate records
- providers having a regular presence in remote communities to ensure that mutual obligation and compliance activities occur regularly, and staff can build trust with individuals and communities
- providers having the opportunity, information, knowledge and skills to assess whether a jobseeker is vulnerable and has a reasonable excuse for not attending an activity
- ensuring jobseekers have a clear and accessible avenue to make complaints and provide feedback
- providers giving jobseekers information about their rights and obligations as users of the service, in a way that is clear and accessible (using interpreters and providing information in local Indigenous languages if necessary).

Improving commissioning (RFI 36)

NDIS

The issues discussed above highlight areas where government stewardship is needed. In their engagement with our office, peak Indigenous bodies emphasised the importance of working with the community to test proposed programs and service delivery approaches to ensure they are accessible to all community members. Spending time building relationships with key community contacts and inviting co-design were suggested as ways to improve engagement by Indigenous people in government programs.

Many disability groups have stressed the need to have a 'provider of last resort' in scenarios where the market is slow to develop or does not develop at all, particularly for participants who are unable to advocate for themselves or are disadvantaged by distance, language or culture. Stakeholders have told us they believe that competition will be greatest in the less complex end of the service market, while participants with high support needs may be left stranded without essential supports if there is a sudden collapse of a service upon which they rely and they are not in a position to promptly negotiate an alternative service. While the NDIS allows the consumer the choice of services where there are a range of providers, it also places the risk for service failure on the consumer if it does not provide a safety net.

Indigenous disability groups have been clear in suggesting that preserving block funding for key supports in remote Indigenous communities would assist in maintaining continuity of service, particularly where the incentives for competition are low and people with disability

are at risk of missing out on services. Ideally, this would be achieved using the principles of community involvement and co-design to identify and create sustainable solutions.

CDP

We have outlined above (at RFI 34-36) ways in which we consider the CDP could be delivered more effectively to remote Indigenous communities. While these strategies may go some way to improving delivery of the CDP, it will be essential that government takes a strong stewardship role in:

- monitoring CDP providers' adherence to standards for delivering the program including the way they identify, assess and record non-compliance
- monitoring the outcomes of the CDP to identify whether the current system of mutual obligation activities and compliance measures are achieving the program's aim of improved access to employment for remote Indigenous participants.

Implementing reforms (RFI 37)

NDIS

Opening up the disability services market to competition under the NDIS will almost certainly provide most NDIS participants with greater choice. However, even if it can be assumed (which, for the reasons outlined above, it is not clear that it can be) that a robust service market will naturally develop in remote Indigenous communities, most participants in those markets will require significant support to build their capacity to exercise their rights as consumers.

While the NDIS has some measures in place – including coordinators of supports and the ILC framework – stakeholders tell us there are some fundamental cultural hurdles that must be overcome before participants can even contemplate purchasing decisions. These include:

- understanding of the concept of disability
- acceptance that they (or a member of their community) have a disability
- acceptance that they (or a member of their community) will benefit from accessing disability supports.

We are aware the NDIA has funded pre-planning work to occur in each region as the NDIS is rolled out, to assist participants to understand the Scheme and what it means for them. Feedback to our office is that this work has been only partly successful in developing remote Indigenous participants' understanding of, and engagement with the key concepts underlying the NDIS. Stakeholders have stressed the need to more effectively consult with, and involve communities ahead of the rollout in their region. In particular, they pointed to the importance of engaging trusted local Indigenous leaders and organisations who can assist in building trust and understanding of the Scheme itself and what it can offer to individuals with disability and the community more broadly.