



Submission by the
Commonwealth Ombudsman

**National Disability Insurance Scheme
(NDIS) – Code of Conduct**

Response to Discussion Paper

Submission by the acting Commonwealth Ombudsman, Doris Gibb

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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.

Response to Terms of Reference

The Office of the Commonwealth Ombudsman welcomes the opportunity to respond to the Department of Social Services' (DSS) discussion paper on a proposed National Disability Insurance Scheme (NDIS) Code of Conduct.

Complaints about providers

Over the past two years the Office of the Commonwealth Ombudsman has focused heavily on building a solid understanding of the operation of the NDIS, as well as of the specific experience of individuals and providers in engaging with the National Disability Insurance Agency (NDIA). This has included visits to each of the original trial and early launch locations and a number of subsequent rollout areas to meet with the NDIA, participants, families, carers, support people, advocates, peak bodies and service providers.

In the course of this engagement our office has received complaints and anecdotal feedback from NDIS participants, families, advocates and service providers who are concerned about the quality and safety of NDIS-funded supports currently being delivered. Many have also expressed concern about how quality and safety will be ensured as the market expands with the national rollout of the NDIS.

The Commonwealth Ombudsman does not have jurisdiction to consider complaints about the quality and safety of NDIS-funded supports, but works closely with state and territory disability complaints bodies who oversight those providers to share information about issues arising in our respective jurisdictions. We anticipate the Office will continue to work in this way as the NDIS Quality and Safeguarding Commission gradually assumes oversight of complaints about NDIS providers from 2018.

The Office will also have jurisdiction to consider complaints about the administrative actions and decisions of the NDIS Commission.

The proposed Code of Conduct

Our office supports, and has contributed to the NDIS Quality and Safeguarding Framework, including the development of a Code of Conduct for NDIS providers. We agree that a Code of Conduct is vital in making clear the high standards expected of service providers and individual

workers in delivering NDIS funded supports, as well as the accountability mechanisms that apply if those standards are not upheld.

We offer the following additional comments for consideration by DSS when finalising the Code of Conduct.

Participant capacity and awareness

The protection offered by the Code of Conduct is premised on participants (and those who support them) knowing and understanding their right to take action, and their capacity and willingness to do so in the event of a breach.

However, it is widely accepted that people with disability are underrepresented in reporting abuse and making complaints. There are many reasons for this including a lack of understanding of their rights, fear of repercussions and difficulties engaging with reporting or complaints systems.

Our engagement with stakeholders indicates that participants and their families often find the NDIS confusing and daunting. This perspective is amplified amongst participants in Indigenous and culturally and linguistically diverse (CALD) communities who face additional barriers to engagement with the Scheme as a result of language and culture.

We suggest that, to provide optimal protection to NDIS participants, careful consideration be given to strategies to ensure people with disability are aware of the Code, understand their rights, and are supported to speak up about situations that may constitute a breach of the Code of Conduct.

Acceptance by service providers

Our engagement with service providers indicates that most organisations and individuals welcome the clarity and consistency that is likely to come from a national Code of Conduct. However, many have expressed concern about the extra administration, and associated costs, arising from compliance with new or different registration requirements and standards.

We encourage DSS to ensure providers are given clear and timely information about the Code of Conduct once finalised, to maximise their opportunity to prepare for the associated changes.

Assurance of continued service provision for participants

The DSS discussion paper anticipates a swift response to a breach of the Code of Conduct, which presupposes that an alternative service will be available when required. However, one of the key themes arising out of our engagement, particularly in rural and remote areas, is around the lack of suitable providers for certain supports. With this in mind, we anticipate there may be difficulties for some participants in accessing alternative services where there are serious allegations that warrant the suspension or revocation of a provider's registration.

We suggest consideration be given to what practical support might be provided to participants who are unable to access another provider as a result of action under the Code of Conduct.

Adding to this complexity, providers have already told us about difficulties in accessing payments from the NDIA in a timely manner. We suggest that, in the absence of arrangements to ensure timely payment, the NDIA may have difficulty distinguishing which provider should be paid for supports where services need to be substituted quickly. Disputes or delays in payments may also discourage providers from taking up new clients at short notice to fill gaps created by Code of Conduct actions.

The need for advocacy and support resources

The proposed arrangements for handling complaints and reports of breaches of the Code of Conduct appear robust and comprehensive. As an added layer of protection, we suggest it will be important that, where needed, participants (and their supports) are afforded appropriate support to participate fully in the complaints and investigation processes.

In the first instance, the NDIS Commission will require sufficient resources to conduct its investigations with a human rights approach that assures the views and experiences of the participant are heard and given appropriate weight in the investigation.

There may also be instances where participants (or their support people) are not able to participate in a complaints or reporting process without the support of an advocate. In our view, a guarantee of funding for those advocacy services will be crucial.

Record keeping and accountability

Providers have told us they do not consider the NDIS pricing schedules adequately account for administration tasks, including record keeping, and as a result these tasks are often not prioritised.

In our experience clear and accurate records are central to conducting a robust investigation. We anticipate that for NDIS Code of Conduct investigations to be effective, it will be similarly vital that providers are able to provide clear records and detailed case notes when requested to do so. We suggest that DSS ensure providers are given clear guidance about their responsibilities for making, keeping and storing records. This should include the level of detail required, how and when the records can be accessed, and the timeframe for which the records must be maintained.