



**Submission by the
Commonwealth Ombudsman**

NDIS Planning

**Response to inquiry by the Joint Standing Committee on the
National Disability Insurance Scheme**

Submission by the Commonwealth Ombudsman, Michael Manthorpe PSM

September 2019

Introduction and summary

The Office of the Commonwealth Ombudsman (the Office) welcomes the opportunity to make a submission to the inquiry by the Joint Standing Committee on the National Disability Insurance Scheme (NDIS) into NDIS Planning.

As part of its broad oversight role of Commonwealth Government administration, the Office has oversight responsibility for the actions of the National Disability Insurance Agency (NDIA). Our Office handles complaints about the NDIA's administrative actions and decisions. We can also consider complaints about contracted organisations who deliver services on behalf of the NDIA, including local area coordinators who conduct information gathering and pre-planning interviews and Early Childhood Early Intervention partners.

Background

The purpose of the Office of the Commonwealth Ombudsman is to:

- provide assurance that the organisations we oversight act with integrity and treat people fairly
- influence systemic improvement in public administration in Australia and the region.

We seek to achieve our purpose through:

- 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
- providing assurance that Commonwealth, State and Territory law enforcement, integrity and regulatory agencies are complying with statutory requirements and have sound administrative practices in relation to certain covert, intrusive and coercive powers.

Through the investigation of complaints about the actions of a Commonwealth department or agency, the Office can build up a detailed picture of an agency's operations. In addition to resolving individual complaints, the Office monitors programs to identify systemic issues which raise concerns about public administration matters.

The Office is committed to working closely with the NDIA, the Department of Social Services, the NDIS Quality and Safeguards Commission, the community, service providers and people living with disability and their families, to understand the way the NDIS is working in practice, and influence systemic improvement in the administration of the scheme.

Response to Terms of Reference

This submission is informed by feedback received by our Office through complaints as well as from participants, families, carers, providers, advocates, community organisations and peak bodies.

It also reflects the issues and concerns raised with the NDIA through our regular engagement with the agency.

The incidence, severity and impact of Plan Gaps

In 2018–19, the Office received 1,711 complaints about the NDIA. This is a 12 per cent increase in complaints received compared to 2017–18. During the same period the number of NDIS participants increased by 62 per cent. The most common issues raised in complaints were reviews (33 per cent) and planning (13 per cent).

The Office has observed delays with the NDIA undertaking a participant's scheduled plan review by the date nominated in the NDIA's business system. Even though under the *National Disability Insurance Scheme Act 2013* (the NDIS Act), plans only cease when they are replaced by another plan or a person ceases to be a participant in the scheme¹, plans are lapsing in the NDIA's business system based on nominated review dates², which in turn causes a gap in funding for plan supports for participants.

Through our investigation of individual complaints, we have observed a number of issues relating to plan gaps, including inconsistent processes for responding to plan gaps, a lack of clear communication, and a lack of guidance and/or training for staff.

Inconsistent processes

From our complaints, we observed the NDIA adopting inconsistent approaches to addressing plan gaps. In some cases, the NDIA took action to extend plans, sometimes for up to a further 12 months. In others, the NDIA allowed the plan to lapse and then when a new plan was approved (some time later), the agency subsequently extended the original plan up to the day before the commencement of the newly approved plan.

For those people whose plans were extended, particularly for long periods, we are concerned that participants may not have had the opportunity to raise any issues with their existing plans or to discuss changing support needs.

The Office has concerns about the potential for people whose plans have lapsed and were subsequently extended to a new plan, to be disadvantaged during the plan gap period, particularly if there was confusion between participants, providers and the NDIA about how supports could be accessed and paid for during plan gap periods.

For example, in one case, the NDIA advised the participant's plan was extended due to the agency not being able to complete a scheduled plan review meeting before the end date due to staff capacity. As a result of our investigation, the Office learned the NDIA's decision

¹ *National Disability Insurance Scheme Act 2013* (NDIS Act) – s37

² Under the NDIS Act, while the Chief Executive Officer may decide to review a participants' plan at any time, the CEO must conduct a review before the plan's review date (s 48(4) and(5) of the NDIS Act).

to extend the participant's plan and not conduct a face-to-face review was in accordance with that particular NDIA regional office's process for the participant cohort, at the time, rather than a whole of agency policy or legislative provisions.

In another case, the NDIA confirmed the scheduled plan review had been delayed by around three months, in part due to a delay in requesting additional evidence from the participant. In this case the review resulted in an increase in funded supports for the participant. The policy applied by the NDIA in this case was that where a participant is waiting for a plan review and their plan has expired, it would cover the cost of supports that are in line with what the participant was receiving in their previous plan until it approves the next plan.

While we acknowledge NDIA's efforts to ensure it is not reducing participant's supports, we are concerned that NDIA has not applied this policy position consistently. We understand there may be circumstances where it is not possible to finalise a scheduled plan review before a previous plan lapses however, we consider it important for the NDIA to have consistent processes to ensure participants are not disadvantaged.

We understand, from 5 September 2019, the NDIA has implemented changes so that all plans that expired in the previous 28 days, or are due to expire in the next seven days, will be extended by 28 days. However, we note the automatic extension to plans does not address concerns about whether the plan is appropriate. Given the short period since the implementation of this process, we will continue to monitor these changes and any impact on complaints made to the Office.

Communication

A recurring theme in complaints to the Office, has been the lack of communication between the NDIA and participants regarding plan gaps, particularly:

- when the NDIA will undertake the plan review
- what the participant can do if funds in the plan are exhausted or are about to be exhausted
- how the participant can access funding during the gap.

In some cases, we saw participants pay for services directly during the plan gap period and then seek reimbursement from the NDIA. In other cases, we saw participants not provided with clear information about how to access and pay for supports during the plan gap period.

By way of example, one complainant advised us they had attempted multiple times over a two and a half year period to organise a review meeting for their child who is a NDIS participant. As a result, they were unable to raise any issues regarding the appropriateness and reliability of the supports provided. Until recently, there was a lack of clear information on the NDIA website about how participants could access services during plan gap periods and how (and when) providers could make claims for payment.

Given the importance of supports, particularly supports for daily personal activities, it is critical that participants have access to these supports during plan gap periods. It is also important that there is clear and accessible communication for participants and providers about plan gaps, how to access supports during plan gap periods, and the status of scheduled reviews.

This became apparent to the Office when a participant with a vision impairment complained to our Office that the complainant had received incorrect information about how to claim for services or items they obtained in their self-managed budget during the gap period. The NDIA had advised the complainant would need to complete a paper form (without Braille) and send it to the agency in order for payments to be manually processed. However, during our investigation, the NDIA confirmed the manual claim form is also available in an electronic format, with system enhancements to enable broader accessibility.

We acknowledge the NDIA has recently taken steps to address some of these issues and has included information on its website about changes it is making to address plan gap issues.

The review process and means to streamline it

In May 2018, we published a report into the NDIA's administration of reviews, *Administration of reviews under the National Disability Insurance Scheme Act 2013*, in which 20 recommendations were made and accepted by the NDIA. A copy of the report is attached. The report highlighted three main areas of concern:

- Timeliness in handling a participant's request for review—at the time of the report, the NDIA had around 13,000 outstanding requests for review and acknowledged some reviews were up to nine months old.
- Handling of 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 the 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.

We are continuing to follow up the NDIA's implementation of the recommendations made in our report and we acknowledge the NDIA has made some progress in doing so. However, there is still significant work for the NDIA to address timeliness in completing reviews to ensure the backlog does not continue to grow. Indeed, complaints about reviews continue to represent 33 per cent of complaints to the Office about the NDIA. We will continue to monitor the implementation of the recommendations made in our May 2018 report.