



**Basic Rights
Queensland** Inc.
SOCIAL SECURITY & DISABILITY
DISCRIMINATION SERVICES

Submission to the National Disability Insurance Scheme

Proposal for a National Disability Insurance Scheme Quality and Safeguarding Framework –

- Monitoring and oversight
- Systems for handling complaints

1 May 2015

Introduction

Basic Rights Queensland (BRQ) is a state-wide specialist community legal centre, providing advice, advocacy and free legal services to people having problems with social security or disability discrimination.

More than half our clients are people with one or more disabilities, one-quarter have a mental health issue, 90% of our clients are living on under \$500 a week and nearly one-fifth have no income at all at the time they contact us.

With over thirty years' experience of advocating for our clients' rights to their social security entitlements and to live a life free from discrimination, we well understand the challenges facing people with disability and their carers in dealing with large systems and organisations and in asserting their right to appeal decisions made by these systems or organisations. While many can navigate on their own, without independent oversight and independent advocacy others will miss out on the benefits offered by the NDIS.

Our submission is based on our expertise in assisting, advocating and representing people through the social security appeals system and in making seeking redress for disability discrimination through the Australian Human Rights Commission or the Anti-Discrimination Commission of Queensland Processes. As such this submission focusses only on relevant aspects of monitoring and oversight and systems for handling complaints.

Submission

Registration and Code of Conduct

It is submitted as a matter of good governance service providers should be required to be registered and agree to adhere to a set Code of Conduct.

As stated in the Consultation Paper "registration of a provider would be subject to the provider behaving safely and ethically. There would be an 'NDIS Code of Conduct', setting out what the expectations are for safe and ethical behaviour ...It is proposed that if the NDIA has received information that a provider has behaved unsafely, or in a way that is unethical or caused harm, there would be an investigation by the NDIA or an independent authority (depending on the complaints and oversight options selected). This could lead to the provider's registration being suspended or cancelled, or other conditions imposed."

Basic Rights Queensland agrees with this approach

Registration conditions for the NDIA should prescribe in the Code of Conduct standards for provider-level complaints handling which will include, as a minimum, that information be provided to participants regarding how an internal complaint can be made, and how to take their complain further, without retribution or adverse consequences, if they are not satisfied with the internal complaint outcome.

Systems for handling complaints

- *How important is it to have an NDIS complaints system that is independent from providers of supports?*

With good will, many complaints will be able to be resolved internally; however from our experience in advocating for people experiencing disability discrimination, we know that this will often not be possible.

There is a need for an informal, timely, fair, free and independent complaint forum for individuals to access if a complaint at the service level is not resolved to the satisfaction of the participant. This would provide people with the opportunity to realise that they will have their complaint taken seriously and its independence means the participant will have more confidence than in an internal complaint process only.

- *What powers should a complaints body have?*

The complaint mechanism should reflect commitments including respect, easy access to services, quality information, fair and transparent services, genuine consultation and efficiency. It is essential that the complaints process reflects Australia's commitment to adhere to the principles of the Convention of the Rights of Persons with Disabilities.

To allow access a complaint should be able to be made orally or in writing, which is consistent with reviews of decisions in the *National Disability Insurance Scheme Act 2013* (Cth). Some ombudsmen require

complaints in writing which can mean that participants who cannot write are disadvantaged in having their complaint heard.

Access to independent advice, advocacy and representation

As recognised in the Consultation Paper, transitioning to a market based system may create power imbalances between participants and providers. There should be easy access to independent advice, advocacy and representation. Community advocacy and Legal Centres providing these services should be funded adequately to not only provide services to individuals, but also to contribute to systemic advocacy and review of service provision under the new NDIS scheme, to ensure that participants' rights are protected. This should be funded by the NDIA or by another department within State or Federal Governments. To not properly protect the rights of this vulnerable group is unacceptable.

External complaint forum

- *Should there be an independent oversight body for the NDIS?*

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- *If so, what powers and responsibilities do you think an oversight body should have?*

It is recognised in the Consultation Paper that participants may fear future problems with a provider or an employee of a provider. The establishment of an independent ombudsman with powers to recommend specific and proactive measures to be taken by the NDIA or the service provider will enhance confidence that a complaint will not lead to injustice, and intolerable harm and suffering.

We submit that a statutory Disability Ombudsman independent of the NDIA should be established, with power to refer a breach of the NDIS Code of Conduct for regulatory action. Its role should also be to enhance community and service provider awareness and education.

We submit that an ombudsman is consistent with other established ombudsmen who investigate complaints about the actions and decisions of those who fall within their authority.

With wide powers to handle complaints the ombudsman will be able to make recommendations that fall outside Consumer Law.

A standalone oversight body would be specialist and therefore more likely to be efficient, timely and effective. To have a number of avenues open depending on the nature of the complaint is inefficient, and can lead to the participant having had to contact a number of organisations before finding the correct forum to deal with their particular issue.

The Disability Ombudsman should also have power to review decisions that fall outside the Act. Decisions reviewable under the Act are listed exhaustively in s99. The legislation is narrowly drawn and omits important areas of decision making that people should have the right to review. Where there are discretions exercised it is not appropriate that an individual or service has power to make such a decision which is not appealable. All decisions should be reviewable, and the drafters of the legislation may have been unable to predict all decisions which require review.

When a complaint investigation is completed, written reasons for the decision and how the complaint is to be actioned should be provided to the service and the participant. In the case of the participant, written reasons would them to seek advice from advocates assisting them as to the merits of the action, and provide advice.

Yours sincerely



Georgina Warrington
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