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28 October 2021

The Hon Kevin Andrews MP  
Chair  
Joint Standing Committee on the National Disability Insurance Scheme

By email: [ndis.sen@aph.gov.au](mailto:ndis.sen@aph.gov.au)

Dear Chair

### **Inquiry into Current Scheme Implementation and Forecasting for the NDIS**

Thank you for the invitation to provide a submission to the Joint Standing Committee on the National Disability Insurance Scheme (the Committee) on its inquiry into Current Scheme Implementation and Forecasting for the NDIS (Inquiry).

The Inquiry's terms of reference focus on policy issues, such as scheme design, financial sustainability, and funding. We do not seek to comment on these policy issues, however we would like to highlight some observations about the administration of the NDIS, which may assist the Committee's consideration of the terms of references, especially:

- Paragraph (b) - *The interfaces of the NDIS service provision with other non-NDIS services provided by the States, Territories and the Commonwealth, particularly aged care, health, education and justice services; and*
- Paragraph (c)(ii) – *The reasons for variations in plan funding between NDIS participants with similar needs including whether inconsistent decision-making by the NDIA is leading to inequitable variations in plan funding.*

My Office is committed to working closely with the National Disability Insurance Agency (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 influence systemic improvement in the administration of the NDIS.

Since the commencement of the NDIS, we have undertaken several investigations and made recommendations to address a number of systemic issues related to the administration of the NDIS.

Our recent reports and submissions include:

- *Administration of reviews under the National Disability Insurance Scheme Act 2013* (May 2018)
- *Investigation into the actions of the National Disability Insurance Agency (NDIA) in relation to Mr C* (February 2020), and
- *Administration of National Disability Insurance Scheme (NDIS) funded assistive technology* (August 2020).

The Committee may find our report into the actions of the NDIA regarding Mr C relevant to this inquiry, and in particular paragraph (b) of the terms of reference. The investigation arose from a specific complaint but highlighted serious issues for prospective and current participants concerning access to NDIS supports while incarcerated and transitioning from prison. A copy of the report is **attached**.

Recommendation 3, in particular, touched on the interface between the NDIS and the justice system, suggesting that the NDIA should update its guidance materials to increase the likelihood that staff will identify prospective participants in custody whose access decisions warrant prioritisation. The NDIA accepted all our recommendations from this investigation, which may have broader application to the NDIA's administration of the NDIS for prospective participants transitioning from hospital and mental health facilities. Since the investigation, the NDIA reviewed its administrative processes for people in vulnerable circumstances and we continue to monitor its implementation of the recommendations.

Paragraph (c)(ii) of the Inquiry's terms of reference raises the issue of consistency in NDIA decision-making. In 2020-21 my Office received 741 complaints relating to the NDIA (compared to 1,331 complaints in 2019-20). The top four issues raised in these 741 complaints were reviews (23%), service delivery (22%), plans (22%) and access requests (11%).

We consider it may be of assistance to the Committee to note that to date we have not identified any specific trends or concerns about consistency in decision-making. This is not to say no such issues exist, only that our complaints from individual participants have not highlighted such issues. Generally, if a participant complains to us about their plan, we are likely to encourage them, in the first instance, to access their review rights in relation to the planning decision.

We are currently monitoring the progress of a range of proposed amendments to the *National Disability Insurance Scheme Act 2013*, including the Participant Service Guarantee (PSG) and Other Measures Bill 2021 and the National Disability Insurance Scheme (Participant Service Guarantee) Rules 2021. Together, the Bill and Rules set out the proposed role for my Office in monitoring and reporting on the NDIA's performance against the PSG. We continue to work with the NDIA as it prepares for implementation of the PSG.

Finally, we would like to take the opportunity to reiterate the importance of ensuring that people with disability are consulted and given the opportunity to share their experiences of the NDIS. As noted in our submission to the Committee's previous inquiry into independent assessments, potential changes to the NDIS present a challenge for the NDIA, its partners, and for participants, carers, advocates and service providers. From our work, we know that poor or inconsistent information, unclear processes, and delays in decision making are among the most frequent causes of complaints. Accordingly, it is critical that the NDIA continue to provide clear and complete information to participants about any changes.

I trust this information is of assistance to the Committee.

Yours sincerely

Penny McKay  
Acting Commonwealth Ombudsman  
*Influencing systemic improvement in public administration*