



# LEGISLATIVE ASSEMBLY

## FOR THE AUSTRALIAN CAPITAL TERRITORY

---

STANDING COMMITTEE ON HEALTH, AGEING AND COMMUNITY SERVICES  
Chris Steel MLA (Chair), Elizabeth Kikkert MLA (Deputy Chair), Vicki Dunne MLA,  
Caroline le Couteur MLA, Michael Pettersson MLA

### ANSWER TO QUESTION TAKEN ON NOTICE DURING PUBLIC HEARINGS

---

Asked by Mr Michael Pettersson on 11 May 2018: Ms Jodie Griffiths-Cook took on notice the following question:

Ref: Hansard Transcript 11 May 2018, PAGE 64.

In relation to: Dispute resolution between NDIA and the Human Rights Commission

Can you comment on how the alternative dispute resolution has changed since the NDIS came in?

Ms Jodie Griffiths-Cook: The answer to the Member's question is as follows:–

The ACT Human Rights Commission (HRC) is able, under the *Human Rights Commission Act 2005* ('HRC Act'), to receive complaints about a disability service provided in the ACT for people with a disability or their carers. Disability services include services that provide assessment or referral of support needs, coordination, case management and brokerage, as well as services that provide home help, personal care, rehabilitation, advocacy, etc.

If the HRC decides to consider a complaint it has received, the HRC has the power (under section 73 of the HRC Act) to compel information and documents from the other party in response to the complaint, and may also decide the matter is appropriate to proceed to conciliation. Conciliation is an informal and confidential alternative dispute resolution process, which gives the person who made the complaint and the person or service provider complained about, the opportunity to talk about the complaint and discuss ways to resolve it, including by providing an apology, agreeing to introduce changes to practices or policies, financial compensation, agreeing to training for staff, and/or providing an explanation.

Prior to the NDIS rollout in the ACT in 2013, Disability ACT was responsible for allocating funds and also for providing care and support to people living with a disability. The HRC received and considered complaints against Disability ACT and also other disability service providers in the ACT. Disability ACT consistently participated in the HRC's complaints processes and responded to requests for information.

Since the rollout of the NDIS in the ACT, the HRC has received numerous complaints about the NDIA. The HRC has attempted to seek a response from the NDIA in relation to the concerns raised in the complaints received, under our powers to request information in s 73 of the HRC Act. The NDIA has refused to participate in the HRC's complaints resolution process. It has disputed the HRC's jurisdiction over the NDIA, arguing the NDIA is simply a funding body and does not provide disability services so therefore it is not covered by the HRC's jurisdiction. The NDIA has also argued that the NDIS Act prevents the NDIA from providing information to the HRC in relation to complaints the HRC has received about the NDIA.

The HRC's view is that the NDIS Act is not a barrier to the NDIA complying with the Commission's requests for information in the exercise of its complaints investigation functions in relation to disability services provided in the ACT. However, we have met a lot of resistance from the NDIA in engaging in our complaints resolution process, even where we have explicit consent from the person who has brought the complaint forward.

The NDIA's refusal to participate also appears to be at odds with undertakings made in the *Quality Assurance and Safeguards Working Arrangements for ACT NDIS Trial*, which is in force until the NDIS Quality and Safeguards Commission begins in the ACT on 1 July 2019. Those arrangements expressly state that the ACT Disability and Community Services Commissioner will continue to have jurisdiction to deal with complaints about disability services, including complaints regarding NDIA functions that fall within the jurisdiction of the Commissioner. The NDIA's response is also contrary to the *Guiding Protocol for the NDIA and the ACT Disability and Community Services Commissioner and ACT Health Services Commissioner* in relation to complaint handling, signed in May 2015.

Prior to the NDIS rollout, the HRC also received complaints about disability service providers. While we continue to receive and handle these complaints we note that no referrals of complaints about providers have been received from the NDIS although that is also part of the protocol.

The NDIA's consistent refusal to participate in the HRC's complaints resolution process leaves some NDIS participants with no other avenue of redress because the only other redress mechanisms available are the:

- Commonwealth Ombudsman, who is limited to investigating government administrative actions – in the HRC's experience, the Ombudsman generally has been focused on systemic issues and does not provide a conciliation or alternative dispute resolution function;
- Australian Human Rights Commission, which is limited to receiving complaints of alleged discrimination or an alleged breach of the Convention on the Rights of Persons with Disabilities; and
- Administrative Appeals Tribunal, which is limited to reviewing 'reviewable decisions' under the NDIS Act. It is also a time-consuming and inaccessible mechanism for many people.

The proposed NDIS Quality and Safeguards Commission will also not have the power to investigate complaints arising out of the provision of services by the NDIA.

The HRC met with the NDIA's Chief Risk Officer in July 2017 to discuss the need to address the issues being experienced by NDIS participants who have submitted complaints to the HRC. As a result of that meeting, it was agreed that the HRC would provide a copy of those complaints to the ACT Branch Manager who would work with the HRC to address those concerns. The HRC has received no update in relation to those complaints, despite following up numerous times.

The HRC is concerned that ACT NDIS participants have had their rights of redress reduced, and are not being supported in all their dealings and communications with the NDIA to ensure their capacity to exercise choice and control is maximised. The current approach is leaving people with a disability who are NDIS participants in the ACT with limited effective remedies for their individual concerns.

We note also that Feros Care, the ACT local area coordination service, on NDIS advice, has also refused to respond to complaints made about it on the basis it is not required to do so given its role as a LAC. There is no legal barrier to Feros Care participating in the complaint process, particularly where complainants have given consent for the release of their personal information to assist with the resolution of a complaint.

Feros Care is also a disability service provider in the ACT and this response from Feros Care means we have been unable to assist people to resolve any concerns they have with services provided by Feros Care. Given the Quality and Safeguards Commission does not commence in the ACT until July 2019 this leaves people with limited remedies regarding Feros Care despite its central role in the NDIS implementation in the ACT.

Approved for circulation to the Standing Committee on Health, Ageing and Community Services.

Signature: 

Date: 25 May 2018

By: Ms Jodie Griffiths-Cook