



**CONSUMERS'
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

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By email: supportcoordination@ndis.gov.au

National Disability Insurance Agency
GPO Box 700
CANBERRA ACT 2601

Dear Sir/Madam

Support Coordination—Discussion Paper

Thank you for the opportunity to respond to the Discussion Paper on Support Coordination (the **Paper**) published by the National Disability Insurance Agency.

This submission responds to various issues raised by the Paper but does not respond to every question recognising the issues raised are inter-related. In summary, we argue:

- there needs to be a strong conceptual foundation for the role of support coordinators that goes further than them facilitating choice—we consider this must be linked to core objectives of the National Disability Insurance Scheme (**NDIS**);
- policy development needs to recognise the limits of contestability and competition in human service markets, particularly in relation to regulating quality of services;
- there is an urgent need to improve the quality of support coordination, including through minimum qualifications & professional standards;
- professionalism in support coordination or any intermediary role needs to eliminate, rather than seek to manage, conflicts of interest that arise; and
- it would be better if intermediaries in the disability services marketplace were styled as advocates with a duty to the participant.

About CFA

The Consumers' Federation of Australia (**CFA**) is the peak body for consumer organisations in Australia. CFA represents a diverse range of consumer organisations, including most major national consumer organisations. Our organisational members and their members represent or provide services to millions of Australian consumers.

CFA's member organisations include membership-based organisations, organisations that provide information, advice, counselling or assistance to consumers, and organisations that identify regulations or market features that harm consumer interests and propose solutions. CFA is currently represented on the NDIA industry reference group.¹

Objectives of the NDIS

The *National Disability Insurance Scheme Act 2013* (Cth) (the **Act**) incorporates a number of objectives which are relevant to support coordination, including to:

- support the independence and social and economic participation of people with a disability;²
- promote the provision of high quality and innovative supports that enable people with disability to maximise independent lifestyles and full inclusion in the community;³
- protect and prevent people with disability from experiencing harm arising from poor quality and unsafe support or services.⁴

The Act also seeks to enable people with disability to exercise choice and control in pursuit of their goals and planning and delivery of their supports.⁵

CFA's observation in relation to the NDIS is that 'choice and control' sometimes become ends in themselves, rather a means to an outcome. There is a tendency in many policy discussions to focus on creating more 'choice and control' rather than focusing on what 'choice and control' seeks to deliver for people with disabilities and their families.

There are a range of circumstances where the market dynamics are such that competition is not capable of improving outcomes. This can include markets where there are information asymmetries, such as markets where it can be difficult to assess the quality of a service that will be delivered over a long-term. Even if the consumer perceives an ability to gain improved outcome through a different service provider, there can be difficulties in switching due to long-term contracts and exit fees.

Behavioural biases also come into play; consumer choices can depend on a range of cognitive, social, and emotional factors. For example, people tend to stick with the 'default option' even when it is not the best option. This will be a rational response for many people including people with a disability. Given disability services are relationship-based, and these relationships may take quite some time to become established, switching is by no means a simple decision.

In the development of policy relating to support coordination, it is essential that the focus remains on the outcomes being sought by the NDIS. The CFA encourages particular focus to be given to the independence and social and economic participation for people with a disability, and access to high quality and innovative supports that enable people with a disability to maximise independent lifestyles and full inclusion in the community. This

¹ See: <https://www.ndis.gov.au/about-us/reference-group-updates/industry-reference-group>

² Section 1(c), *National Disability Insurance Scheme Act 2013* (Cth)

³ Section 1(g), *National Disability Insurance Scheme Act 2013* (Cth)

⁴ Section 1(ga), *National Disability Insurance Scheme Act 2013* (Cth)

⁵ Section 1(e), *National Disability Insurance Scheme Act 2013* (Cth)

necessarily requires expectations of very high-quality service provision, and a recognition that ‘choice’ alone is not the mechanism that drives quality services.

Intermediaries in the ‘market’ for disability supports

Markets for human services, including disability supports, are not like markets for widgets. As noted above, the ‘market’ is disciplined not by consumers/buyers substituting one supplier for another, but by regulation and monitoring of supplier behaviour.⁶

Another common response in such markets is to promote the role of intermediaries, who play a role in navigating and interpreting information in order to assist users to make quality assessments. In the NDIS-context, there appear to be a number of different intermediaries whose roles and functions interact. These include:

- local area coordinators—community services funded by the NDIA to help people plan, organise and access disability services and supports, both within and outside the NDIS;
- support coordinators—the subject of the current consultation;
- plan managers—funded NDIS-services which help participants manage plan budgets, invoicing and financial reporting;
- NDIS planners—who among other things help some participants link with support coordinators; and
- plan nominees—persons appointed to act on a NDIS participant’s behalf and make decisions where they are unable to, commonly a family member.

As noted in the Paper, there are also other roles such as community connectors as well as hospital and justice liaison officers.

CFA considers one of the problems is that there is confusion caused by the various intermediaries and overlap in their roles and functions. Sam’s case study, outlined below, is an example of confusion about the role of support coordinator and plan nominee—the support coordinator pushed back on certain service expectations because the participant had a plan nominee.

Confusion about the role of support coordinators is exacerbated by the various levels of support coordination (level 1, level 2, level 3 etc) and service agreements that are vague or ambiguous about the nature of the service to be provided. Among other things, vague service agreements blunt the effectiveness of the Australian Consumer Law, for example, the consumer guarantee that services are to be rendered with due care and skill.⁷ This is because it is not even clear what services are to be delivered.

Given that there are range of intermediaries, CFA considers that policy effort should be focused on clearly defining the roles of all the intermediaries, not just support coordinators. Until this is achieved, there is likely to be ongoing confusion.

⁶ Rhonda Smith & Alexandra Merrett, *Competition Policy and Human Services: where theory meets practice*, available at: <https://www.acoss.org.au/wp-content/uploads/2018/09/ACOSS-Choice-Final-Report.pdf>

⁷ Section 60, Australian Consumer Law (Schedule 1, *Competition and Consumer Act 2010* (Cth))

In our view, if there are to be intermediaries in human services markets, it would be better for them to be styled in the role of advocates rather than brokers or other 'coordinators' where there may be a lack of clarity as to duty. Advocates have a sole duty of acting in the interest of the person and are appropriate in the context of services where there are power imbalances (e.g. between service providers and participants). Existing intermediaries such as support coordinators and plan managers appear to have a range of duties. Styling intermediaries as advocates might also contribute to professionalism and deal with conflicts of interest.

Sam's case study

Sam (name changed) is the legal guardian and NDIS Plan Nominee for Jamie (name changed) whose severe disabilities require extensive one-to-one support. Sam said she wanted the flexibility associated with 'self-managing' NDIS funding, importantly so she was free to choose the service providers that Jamie engaged with. Sam is not professionally trained or skilled in managing NDIS funding or in managing the complex disability service delivery system. Sam was heavily reliant on the expertise of the support co-ordinator funded under her NDIS plan to help her 'self-manage'.

While Sam was receiving support co-ordination services, Sam told us that she was initially left with approximately \$9,500 of out of pocket expenses from support providers after the NDIS funding was depleted when Jamie's support needs unexpectedly increased. Sam instructs that these out of pocket expenses arose at a time when she was allocated a replacement support coordinator (due to her ordinary support coordinator being on leave). Despite being on notice about the rapidly depleting NDIS funds, Sam informed us that the support coordinator did not advise or assist her to apply to vary the plan to avoid this situation.

This is in the context of the support coordinator allegedly providing the second highest level of support coordination support (of three levels) and charging above the NDIS price guide for that service (receiving over \$10,000 for the year), relative to Jamie's needs. (The support coordinator appeared to provide poor value for the service delivered. By comparison, Jamie's plan management service received around \$1,400 for the same year for providing a service of paying pre-approved invoices).

Sam has relied on other supports to advocate on her behalf to deal with the outstanding expenses, and in some cases has been able to achieve waivers or reductions in fees on the basis of hardship. The amount currently outstanding is slightly over \$1,600. Sam engaged Consumer Action Law Centre, a CFA member, to write to the support coordinator complaining that the support coordinator had breached the contract, breached the NDIS Code of Conduct, engaged in misleading and deceptive conduct and also breached the consumer guarantees in the Australian Consumer Law to provide services with due care and skill and that were fit for purpose. Consumer Action Law Centre is providing ongoing assistance to Sam.

This case is demonstrative of a concern about deficiencies in the NDIS definitions about the scope and role of support coordination, a lack of sufficient oversight of the contractual terms of the Service Agreements used by support coordinators (causing uncertainty, confusion and challenges for consumers in asserting their legal rights), as well as

inconsistencies in the quality of service of provision of support coordinators.

Source: Consumer Action Law Centre

Quality of services

The Paper confirms that support coordinators play a ‘central role’ in ensuring the ongoing delivery of participants’ critical supports but notes that there are not qualifications or competencies required for these roles. This is not only counter-intuitive but verging on reckless particularly when the NDIA is expending upwards of \$420 million a year on these supports.

As noted above, CFA considers it would be better if NDIS intermediaries were styled as advocates which would then imply a high degree of professionalism. Even absent this type of reform, it would be better if support coordinators met professional standards. Professions possess special knowledge and skills (usually obtained through training) and adhere to ethical standards of the profession. A professional is also prepared to apply this knowledge and exercise these skills in the interests of others.⁸

It might be argued that professional support coordinators might come at a higher cost. However, it is noted that the NDIA spends significant funds on intermediaries (across the various roles described above) and that there may be cost savings should these be rationalised and focused on delivering participant outcomes rather than the performing of certain tasks.

Furthermore, we understand that the NDIS is designed to help individual participants meet their goals and become more independent. The Productivity Commission, in its original report proposing the NDIS, found that such a focus would deliver economic benefits through increased participation (including through employment) as well through supplier efficiency and choice.⁹ We consider that these benefits are only likely to be achieved if choice is meaningful, supported by a high quality and professionalised intermediary where required.

Lyla’s shows that there are costs—both to individual participants but as well as the system (e.g. through complaints)—where support coordinators do not meet needs. The case of a support coordinator not monitoring plan implementation effectively and leaving a participant in debt is perhaps an extreme example. However, we suspect there are many other examples where lesser quality support coordination means that the NDIS objectives (including cost savings) are not delivered. For example, where a participant’s goal may be to become more self-sufficient, but the support coordinator implements supports which increase dependency because they lack the required specialised knowledge and skills. These sorts of quality issues are unlikely to result in complaints but may serve to undermine the scheme.

⁸ Definition obtained from Professions Australia website: <https://www.professions.org.au/what-is-a-professional/>

⁹ Productivity Commission, *Inquiry Report: Disability Care and Support*, 2011, chapter 20.

Lyla's case study

Lyla (name changed) has cerebral palsy and lives alone. She relies solely on the Disability Support Pension and her NDIS package to support herself.

While Lyla's NDIS package is managed by the NDIA, Lyla's plan includes funding for a support coordinator. Lyla's support coordinator assisted Lyla to engage a cleaning service to be funded by her NDIS plan. The cleaner provided 2 hours of cleaning a week over a period of around 15 months.

At that point, Lyla began receiving requests for payment from the cleaner, amounting to more than \$1,300. Lyla was confused by this as she had been told by her Support Coordinator that these services would be paid for through her NDIS package. When Lyla asked her support coordinator about this, she was told that there was nothing they could do and if she didn't pay the money she could be taken to court. Lyla discovered that this cleaning agency was not able to be paid under an NDIS-managed plan. Lyla experienced significant distress about this, and therefore made the full payment to the cleaning company from her own pocket.

Lyla engaged Consumer Action Law Centre to write to the support coordinator seeking that they reimburse Lyla for all the monies she had paid to the cleaning service. The letter alleged that the support coordinator had engaged in misleading and deceptive conduct, and also breached the consumer guarantees in the Australian Consumer Law to provide services with due care and skill (i.e. by failing to engage cleaning services that could be paid for through her NDIS package).

Following this intervention, Lyla was provided a refund for the amounts she had paid for the cleaning service.

Source: Consumer Action Law Centre

Conflicts of interest

CFA welcomes the recommendation of the Tune Review that the NDIS Rules be amended to outline circumstances in which it is not appropriate for the providers of support coordination to be the provider of other funded supports in a participant's plan.¹⁰

CFA considers that implementation of this recommendation should result in a market where intermediaries are separate from other service providers, that is, so any potential conflict of interest is eliminated. As noted above, we consider intermediaries should be styled on advocacy where there is an ethical duty to the participant, rather than broking which has a history of putting self-interest ahead of any duty. This approach is more likely to deliver high quality and professional services, and better contribute to the broader goals of the NDIS.

¹⁰ Mr David Tune AO PSM, *Review of the National Disability Insurance Scheme Act 2013, 2020*, Recommendation 16

Please contact me via chair@consumersfederation.org.au should you have any questions about this submission.

Yours sincerely,

A handwritten signature in black ink that reads "Gerard Brody". The signature is written in a cursive style with a large, prominent 'G' and 'B'.

Gerard Brody
Chair
Consumers' Federation of Australia