



information
and privacy
commission
new south wales

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Review of the NDIS Act
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Submission on the Independent Review of the Operation of the *National Disability Insurance Scheme (NDIS) Act 2013*

I write to you in regard to the discussion paper on the above review.

NSW Government agencies are working with the National Disability Insurance Agency (NDIA) to implement the NDIS. The delivery of the NDIS aims to improve the availability and quality of services to people with disability in NSW. In this regard, there should be no diminution in the information access rights for people with disability. Indeed, the strengthening of information access in the NDIS will enable realisation of the first principle in section 4 of the NDIS Act, by supporting informed involvement of people with disability in decision making processes that affect them.

The discussion paper at question 18(e) refers to '...the effectiveness of information sharing between the NDIA, jurisdictions and providers'.

Ensuring robust, efficient flows of information between providers, carers, agencies and funders is essential for maximising the impact of the NDIS, particularly as clients may be receiving services from multiple providers.

I recently made a submission to a NSW Legislative Council Inquiry into service coordination in communities with high social needs which canvassed these issues from the perspective of the NSW *Government Information (Public Access) Act 2009* (GIPA Act) as an enabler of information sharing for service coordination. Similar legislation applies in a number of other Australian jurisdictions. A copy of the submission is attached.

Some relevant issues raised in the submission which may assist the review include:

- the necessity for a holistic approach to information management in supporting a holistic approach to service delivery
- the importance of an open-access framework
- the growing role of the non-government sector in service provision
- the need to remove barriers (especially cultural and organisational barriers) to information exchange
- learning from international lessons and insights, and
- ensuring the complementarity of information access and privacy regimes

More specifically, the impact of clients leaving NSW public sector agencies (such as Ageing, Disability and Home Care, which is part of the NSW Department of Family and Community Services) operated or funded organisations to the NDIS may result in an unintended loss of access rights under the NSW information access regime.

Currently under the GIPA Act, section 121 requires an agency to ensure that service provision contracts with the private sector must provide for that agency to have an immediate right of access to information contained in records held by the contract. The transition of disability supports provided by state agency contracted NGOs to the NDIS may result in clients being serviced by organisations outside of the NSW information access regime. As such the provision of section 121 would no longer be operative. Further, section 121 applies to the state agency and the contracted NGO; it does not operate to facilitate information exchange between agencies dealing with the same or different NGOs, or between NGOs.

More broadly the movement of clients (and their personal information) across service boundaries and the changes in responsibility could easily lead to confusion about what access arrangements apply at various points in the system. In developing recommendations, the review might consider ways in which access regimes can be visibly and seamlessly maintained and integrated, not reduced or fragmented.

Consistent with the principles underlying the NDIS, clients and their carers should be regularly engaged and supported in understanding how they might access not just their personal information but also the broader policy, planning and delivery information held by funders and providers. Ensuring such access will help achieve the goal of open government and effective, transparent service delivery. This approach was highlighted in an independent research report into improving open government in NSW. The report, commissioned by the IPC through the University of Technology Sydney provides an insight into the types of practical mechanisms utilised in selected international jurisdictions to promote open government through information sharing and citizen engagement. The report notes that "*This recognises the citizen evolving from a dependent relationship upon government for information to one of mutuality and reciprocity where citizens in receipt of government services are conceived as resources of value to, and collaborators in animating, the system, rather than as mere beneficiaries of it. This means that citizens as users of public services are not defined entirely by their needs, but also by what they might contribute to service effectiveness, and to other users and their communities through their own knowledge, experience, skills and capabilities.*" I commend the report to the review: *Advancing the Objects of the Government Information (Public Access) Act 2009 (NSW): An international comparative evaluation of measures used to promote government information release* (available at: http://www.ipc.nsw.gov.au/sites/default/files/file_manager/REPORT_Advancing_the_objects_of_the_GIPA_Act_2015.pdf)

Please do not hesitate to contact David Marcus, Manager Performance Reporting and Projects, on (02) 8071 7041, or by email at david.marcus@ipc.nsw.gov.au if you have any queries.

Yours sincerely

 27 October 2015
Elizabeth Tydd
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