



Ms Kate Sanderson  
Coroner's Registrar  
Coroners Court of Victoria

Via email: [cpuresponses@coronerscourt.vic.gov.au](mailto:cpuresponses@coronerscourt.vic.gov.au)

Dear Ms Sanderson

### **COR 2020 003809 – NDIS Quality and Safeguards Commission Response to Recommendation**

Thank you for the opportunity to respond to the recommendation made by Coroner Judge Cain in relation to the death of Mr Gabriel Messo.

#### **THE RECOMMENDATION**

*The NDIS Quality and Safeguards Commission should conduct a review of the outsourcing arrangements to ensure that outsource providers of NDIS services have appropriate policies guidelines and training for staff to manage clients suffering mental health conditions who make threats of self-harm or harm to others. The policies and guidelines and training should include identifying a client's deteriorating mental health, and concerning behaviours, and guidelines on the management, escalation and/or referral to appropriate services including escalation to police in appropriate cases (at paragraph 365 of the findings).*

#### **PART A – BACKGROUND AND CONTEXT**

The National Disability Insurance Scheme (**NDIS**) provides eligible Australians with disability access to the supports and services they need to enable their social and economic participation. The NDIS is administered under the *National Disability Insurance Scheme Act 2013 (Cth)* (**NDIS Act**). The NDIS Act establishes two agencies responsible for the delivery of the NDIS:

- The National Disability Insurance Agency (**NDIA**)<sup>1</sup>; and
- The NDIS Quality and Safeguards Commission (**NDIS Commission**)<sup>2</sup>.

The NDIS Commission and the NDIA are two separate entities with different powers and functions, independent of each other. The NDIA is responsible for deciding who is eligible for the NDIS, and then preparing individualised support plans for those NDIS participants. An NDIS plan will include funding for reasonable and necessary supports and services paid under the NDIS. The NDIS participant is then able to exercise choice and control over which provider/s will deliver their supports and services through the open market, which comprises both registered and unregistered NDIS providers. The NDIS Commission is the regulator of NDIS providers, and our role is to protect people with disability by improving the quality and safety of NDIS supports and services.

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<sup>1</sup> Established under section 117 of the NDIS Act.

<sup>2</sup> Established under section 181A of the NDIS Act.

## **PART B – THE LEGISLATIVE FRAMEWORK**

My core functions under the NDIS Act include upholding the rights of people with disability, promoting continuous improvement amongst NDIS providers and the delivery of progressively higher standards of supports and services to people with disability, and monitoring changes in the NDIS market which may indicate emerging risk.

All NDIS providers are required to comply with the NDIS Code of Conduct, while registered NDIS providers also have to comply with the NDIS Practice Standards. Together with the NDIS Code of Conduct<sup>3</sup>, the NDIS Practice Standards build NDIS participant awareness of the quality of service provision they should expect from registered NDIS providers. As part of meeting their obligations, I expect NDIS providers to have governance and operational management systems relevant and proportionate to the size and scale of the provider and the scope and complexity of the supports being delivered. This would include having policies and procedures in relation to risk identification and management in respect of NDIS participants, and training in relation to worker obligations under the NDIS Code of Conduct.

Ultimately, the NDIS Act places the onus on NDIS providers to ensure they meet a high standard with respect to the supports and services they provide to NDIS participants, which implicitly involves the providers having specific knowledge of the NDIS participants' individual needs and preferences. Non-compliance by NDIS providers with their obligations can lead to the NDIS Commission taking compliance or enforcement action against them. These actions can include infringement notices, compliance notices, revocation of registration and where appropriate, banning orders prohibiting NDIS providers or workers from operating in the NDIS sector.

In addition, the NDIS Commission's behaviour support team provides leadership in relation to behaviour support, and in the reduction and elimination of the use of restrictive practices by NDIS providers. In this context, behaviour support focuses on evidence-based strategies and person-centred supports to address the needs of NDIS participants who have underlying behaviours of concern. NDIS Commission materials in support of the reduction and elimination of restrictive practices can be found on our website: [www.ndiscommission.gov.au/providers/understanding-behaviour-support-and-restrictive-practices-providers](http://www.ndiscommission.gov.au/providers/understanding-behaviour-support-and-restrictive-practices-providers).

## **PART C – RESPONSE TO RECOMMENDATION**

In relation to the recommendation made in the Coroner's findings, the NDIS Commission does not outsource providers of NDIS services, meaning the NDIS Commission does not have any contractual relationships with NDIS providers to deliver supports and services under the NDIS. Rather, NDIS participants have choice and control in the providers they use, and the NDIS legal framework places the onus on NDIS providers to ensure they are complying with all applicable laws that regulate the delivery of NDIS supports and services, such as the NDIS Code of Conduct.

Given the NDIS Commission does not outsource providers of NDIS services, the Coroner's recommendation is unable to be implemented as described. However, I trust the information above related to our regulatory approach and the obligations placed on NDIS providers under the NDIS Act provides an overview of the relevant quality and safeguarding mechanisms in place for NDIS participants receiving supports and services under the NDIS.

Lastly, I would like to express my condolences to Mr Messo's family. I note Mr Messo was not an NDIS participant in the lead up to his death, and therefore did not have an NDIS plan. I understand

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<sup>3</sup> The NDIS Code of Conduct can be found at *National Disability Insurance Scheme (Code of Conduct) Rules 2018*.

he was granted participant status on the same day that he died. As noted in His Honour's Findings at paragraph 20, ABC Aged and Disability Services (ABN 65 640 042 164) is a registered NDIS provider and was engaged by Mr Messo's family to assist Mr Messo with his mental health. It is unclear what assistance ABC Aged and Disability Services were providing in the lead up to Mr Messo's death, however given he was not an NDIS participant at the time, the supports or services were not being provided under the NDIS.

Please do not hesitate to contact Hilda McGrillen, Senior Lawyer, on 08 8318 2782 or [legal@ndiscommission.gov.au](mailto:legal@ndiscommission.gov.au) if you have any questions regarding the above.

Yours sincerely



**Tracy Mackey**  
Commissioner

23 February 2023