



Australian
Competition &
Consumer
Commission

Contact officer: Nigel Vise
Contact phone: 03 9290 1468

Level 35, The Tower
360 Elizabeth Street
Melbourne Central
Melbourne Vic 3000

GPO Box 520
Melbourne Vic 3001

tel: (03) 9290 1800
fax: (03) 9663 3699

www.accc.gov.au

19 August 2016

Tony & Heather Tregale
Coordinators
Lifestyle in Supported Accommodation Inc
73 Nepean St
WATSONIA VIC 3087

Dear Mr and Ms Tregale

Re: Letter to Mr Rod Sims

I refer to the letter from Lifestyle in Supported Accommodation Inc (LISA) to Mr Rod Sims, Chairman of the Australian Competition and Consumer Commission (ACCC), dated 13 April 2016.

In your letter you set out LISA's view that recipients of National Disability Insurance Scheme (NDIS) funding who directly purchase disability support services or equipment will be consumers operating in an open market and that the ACCC will have a role in regulating this market.

NDIS

As you have pointed out in your letter, the NDIS involves a move from a 'block funded' model to an open or competitive market. Under the block funded model state government agencies block purchase goods and services for consumers with disability and then provide those goods or services directly to recipients.

Under the NDIS, participants may directly receive the funds to purchase the supports they need and will be free to purchase the supports from whatever supplier they choose. NDIS participants that make their own purchasing decisions are referred to as 'self-managed'.

This change means that NDIS participants who choose to self-manage their funds will be making their own purchases as consumers from a range of potential suppliers in an open and competitive market.

Australian Consumer Law

The Australian Consumer Law (ACL) (contained in a schedule to the *Competition and Consumer Act 2010 (CCA)*) provides consumers with a number of rights and places a number of obligations on businesses when dealing with consumers.

Businesses that deal with self-managed NDIS participants must comply with the ACL. Self-managed NDIS participants have the same rights when purchasing disability related goods or services as they (and all consumers) do when purchasing general goods and services.

Generally businesses must:

- Treat consumers fairly
- Provide accurate information and not mislead or deceive consumers

The ACL also include a basic set of guarantees for consumers who acquire goods and services from Australian suppliers, importers or manufacturers. These guarantees are intended to ensure that consumers receive the goods or services that they have paid for and that those goods or services are provided with appropriate skill and are of acceptable quality. Under these guarantees consumers can:

- Cancel services that are not provided with due care and skill or are not what they asked for
- Have faulty goods replaced, repaired or refunded (depending on the circumstances).

There are also a number of other obligations that businesses must meet.

The ACL uses a multiple regulator model. This means that as well as being regulated by the ACCC it is also regulated by each state or territories' consumer protection agency (for example, Consumer Affairs Victoria). These agencies are referred to as the ACL regulators.

Under the ACL a person is a consumer when they purchase goods or services that cost less than \$40,000 or are of a kind usually purchased for personal domestic or household purposes.

Generally, an organisation will be covered by the ACL if it is acting in trade or commerce. This means that it is engaging in some form of commercial or business related activity. Organisations, including not-for-profit organisations that supply goods or services to recipients of NDIS funding in exchange for payment will be doing so in trade or commerce and will be covered by the ACL.

Where there is an alleged breach of the ACL, consumers can complain to the appropriate ACL regulator. However, the ACL also gives consumer the right to take their own legal action.

Educational resources

With the roll out of the NDIS taking place, the ACL regulators have implemented an education program, led by the ACCC, to educate consumers with disability and businesses supplying them about their ACL rights and obligations. The ACCC has produced a range of publications specifically for consumers with disability..

These publications explain the operation of the ACL and the role of the ACL regulators. They set out the rights that consumers with disability have when dealing with businesses supplying disability related goods and services, and generally. They also set out the obligations that businesses have when dealing with consumers with disability.

These publications are:

- An easy English guide
- A consumer guide giving detailed explanations of consumer rights
- A two page fact sheet giving a simple overview of consumer rights.

Each of these publications is available on the ACCC website at www.accc.gov.au/about-us/information-for/consumers-with-disability. The Easy English guide has also been translated into eight languages, which are also available at this link.

The state/territory ACL regulators also have printed copies of these documents available and can be contacted directly if you would like some printed examples.

Complaints framework

Currently many states and territories have disability services commissioners, health services commissioners or ombudsman's offices with varying degrees of power to receive and investigate complaints from and enforce safeguards for people with disability. How these functions will be performed under the national approach being introduced by the NDIS is currently being considered at a policy level by the governments involved.

The Commonwealth Department of Social Service (DSS) is the department responsible the NDIS and it released a consultation paper on quality and safeguards in February 2015 followed by a series of public consultations between February and May 2015. DSS is currently developing a framework to manage complaints about suppliers by recipients of NDIS funding. If you wish to know more about the approach being taken and what opportunity there will be for public input, we suggest that you contact the DSS.

The ACL applies in conjunction with any specific complaint or investigative framework or regulations. As a form of universal regulation, the ACL regulators will have jurisdiction to investigate the suppliers of disability related goods and services (Where the supply takes place to a consumer in trade or commerce). The ACL regulators have jurisdiction in conjunction with the existing state-based complaints bodies and this will be the same under any new framework developed as part of the move to the NDIS.

Generally, where there is a sector specific regulator, it will be the most appropriate first point of contact for any concerns or complaints. It will often only be necessary to approach an ACL regulator if the conduct is beyond the scope of the sector specific regulator.

We trust that this assists with your understanding of the operation of the ACL and the role of the ACL regulators with respect to the NDIS.

Please contact Nigel Vise on (03)92901468 or myself on (03) 9658 6460 if you have any questions or would like to discuss this matter further.

Yours sincerely



Jayde Richmond
Director
Consumer and Small Business Strategies

