**Reasonable & Necessary podcast**

**When NDIS services turn bad**

**Interview with NDIS Commissioner Tracy Mackey**

**GEORGE:** Hi and you’re listening to Reasonable and Necessary, Australia’s premier podcast series on everything you ever wanted to know about the National Disability Insurance Scheme, brought to you by the Summer Foundation. I’m your host, Doctor George Taleporos and on today’s episode, we chat with the NDIS Quality and Safeguards Commissioner, Tracy Mackey, about keeping service providers accountable. Check it out.

Hi Tracy, thanks for joining us.

**TRACY:** Thanks for having me, George.

**GEORGE:** It’s so good to have you on the show. We’ve been meaning to do this for a while, haven’t we?

**TRACY:** We sure have but we’re busy people and we’ve had good intent so it’s great to finally be chatting.

**GEORGE:** So, how did you end up becoming the NDIS Commissioner? What led you to want to take on this huge role?

**TRACY:** First of all, I think it’s a huge honour to have this role and I felt like it very much picked up my commitment personally and my experience personally, as well as professionally. So, to explain that a little more, I guess I have a brother who’s only 16 months younger than me and he’s had a disability since birth and so I’ve been on a journey together with him, as his big sister, for my whole life and we also grew up in a family that was exposed in many different ways to the social service system.

So, by the time I was in my early adulthood, what I really wanted to do was work in spaces that made a difference and really did help change the lives for the better, of those people who didn’t always have the same opportunities as others. And so I’ve been lucky enough to work across the social services system, including in disability and carers a couple of times and I’ve also more recently worked in regulation. And I think it’s an undervalued part of government that really does make sure systems work really well so when this opportunity came up, I just thought it was meant to be so I’m really happy to be here and I’m very keen to make as big a difference as I possibly can, in the short time that I have the privilege of holding this role.

**GEORGE:** Short time? Should be a long time... You’re not resigning, are you?

**TRACY:** No, definitely not.

**GEORGE:** Thought I had a scoop there, no. So, tell us, you’ve been doing this for about 8 months now and I’m thinking that you would have observed a lot of things, you hear a lot of complaints, you hear all the problems. What issues have you observed in your time so far?

**TRACY:** I think for me coming into the role, I was very conscious that we’d all been through COVID and we’re still going through COVID but over the last couple of years, many of us have experienced lockdowns for long periods of time and it’s meant that particularly for organisations like the Commission who’s relatively new, we’d had this period where we weren’t necessarily having the same opportunities to engage as we’re used to. So, our ability to go out and meet with people and see services happening on the ground had really been limited during the COVID period.

So, being new, I have really taken it upon myself to make sure that I’m out and about so that I’m hearing and learning and listening to people about what their experiences are. And I’ve met with many, many hundreds of stakeholders, participants, their families, advocates, providers, peak bodies and I continue to do that because that’s how we’re learning about where we can best focus as the Commission. And we combine that together with obviously the information we have as the regulator, so information that comes through complaints, information that comes through incidents, information that we gather when we do compliance operations. And there were some really consistent themes from very early on and they remain pretty consistent but these - please don’t read these as my list of the only things we’re focusing on.

So, the first 1 I would say is we really need to make sure we’re participant-focused and that’s a really hard place for us to explore, because for a regulator it’s unusual to think about rights and regulation together. They’re normally separate parts but in fact, they’re integral. So, we’ve got to really have that voice of participants very much front and centre in our decision-making around our regulatory decisions, as well as the decisions we make all the time about how we approach our work. So, that’s probably first and foremost for me, how we are participant-focused in everything we do. And please, don’t anyone think that I think that we’ve already nailed that. I think we’ve got a long way to go but it’s a work in progress and we want to be really open that that’s something that we are seeking to achieve and work towards.

So, the other issues that have really consistently been raised are things like registration, where everyone’s got a view and everyone’s got an answer but in fact, it’s a really complicated issue and there’s lots of connections to other things when we start to think about registration. But that hasn’t stopped us from starting to explore all the issues that there are around registration. So, we’ve had a round table earlier this year, we’ve put out a couple of papers. So, registration is 1 of those issues that we’ll keep working on and we’ll certainly have a lot more to say about, and I imagine a lot of other people will also have a lot to say about as we go forward. There’s also -

**GEORGE:** On the issue of registration, have you got - for people who are unsure what you mean that everyone has an opinion, what are you saying? Can you explain for people that aren’t quite sure what you’re talking about?

**TRACY:** So, at the moment, part of the Commission’s responsibility is to regulate all supports and services that are delivered to NDIS participants. So, at the moment, there are arrangements where some services are required to be delivered by a registered provider and there’s a process, a government administrative process around how to be a registered provider. And then there are other providers and sometimes they’re a single worker, sometimes it’s a big organisation, that aren’t registered but still offer supports and services. And depending on an individual participant, they might have a mix of both registered and unregistered or you might have all unregistered, it just depends on the particular circumstances.

So, what we’ve been looking at around registration is what the arrangements might be in the future because what we’ve learnt in the first few years is we were handed over some arrangements that the NDIA had put in place, and they were helpful in the early days of us establishing. But now we’ve got a lot of information and a lot of feedback from people about the kind of things that don’t seem to be quite right around registration. So, they’re everything from how does someone who’s a participant know whether or not the person or organisation that they’re choosing to provide their supports or services is actually going to deliver in a quality way, and what’s the expectation around them delivering in that way?

There’s also particular requirements around registration for those organisations and entities that are registered. And that includes them going through an audit process which can be for a small organisation, a very challenging thing for them to go through, so we want to understand whether or not - and I’m going to use a bit of bureaucratic speak for a second - whether or not it’s proportionate to what we’re trying to manage. So, what we’re looking at through an audit is whether or not an organisation is operating consistent with what we would expect. So, are they delivering a quality service? And we’ve got some arrangements around that, so for example we have practice standards, so they help tell providers and workers what’s expected of them when they deliver certain supports and services.

So, the audit checks on those practice standards to see whether or not an organisation is operating in that way. So, there’s all sorts of questions about how we best use that audit process, whether or not it’s required and for us and the reason I use that bureaucratic term around proportionate is that we’re interested in thinking about risk. Because we’re interested in ensuring quality firstly and also ensuring that the safeguards are in place. So, we think about things through a bit of a risk lens and that’s part of what we’re doing, is exploring what future registration arrangements might be.

It’s certainly not as simple as some people say, “Don’t register anyone,” and other people say, “You should register everyone,” and it’s certainly not as simple as doing either of those things and requires us to really delve into what different proposals and options would look like. And to have an arrangement in the future that really draws on what we’ve learned in the first few years of operation and I expect just like we have been having some really robust conversations with all sorts of stakeholders that there’ll be many more to come as we think about those future arrangements.

**GEORGE:** Yeah, the framework never had the proposal or the plan to have registered for everyone or not registered for everyone, but it was really around as you said, risk. And I think that what you’re aiming to get a sense of from your data is a little bit more about the risks around registered providers but not so much around unregistered, is that right?

**TRACY:** Yes and no. So, we do have information about unregistered providers and we already - as I mentioned - have responsibility for regulating unregistered providers. So, if you’re a participant that engages workers directly or uses an unregistered organisation, what we want you to know is if something happens or you’re not comfortable with something or something goes wrong or you’ve even got a question, you can still contact us and we can still use many of the - I call them the levers - there’s lots of things we can do to try and address and respond to issues so we can still do that for unregistered providers. It’s just often a slightly different process, and sometimes there are different ways we use different levers.

So, we still regulate unregistered providers and there’s still a responsibility so part of what we want to make sure people are aware of is if you’re working to support someone who’s an NDIS participant that you’re still covered by what’s called the code of conduct and that code of conduct was put in place to ensure that all NDIS participants received services and supports that were in their best interests. And what I mean by that is upheld their rights, were delivered in a quality way, people understood their responsibilities and any capabilities that were required, they had in place. So, all of those things around making sure the arrangements are okay and meet the expectations that we have. And I say ‘we’ in a very general term, I don’t mean the Commission per se, but participants all expect that the support and services they receive are delivered in the best possible way for them. And that’s something that we need to continue to focus on.

**GEORGE:** Are you saying that that’s not enough?

**TRACY:** I’m not saying it’s not enough, I’m saying not enough people - and this is both individuals and organisations - recognise their responsibilities under the code. And what we still see is complaints coming in about unregistered providers, and what we don’t know is the extent to which we’re not seeing some of the bad practice that is going on in unregistered providers. Whereas in registered providers, we’ve got a bit more of an opportunity to look into what’s happening but more and more, we’re stepping into the space of unregistered providers.

So, you’ll see us quite soon doing a campaign that we’re about to embark on around unregistered providers, because we’re seeing a spate of poor practice in a particular location. So, we’re keen to act regardless of whether it’s registered or unregistered because all NDIS participants should absolutely expect the services and supports they get to be of a quality standard and also, upholding all of the safeguards that everyone expects and should enjoy.

**GEORGE:** Interesting, looking forward to that campaign. When will that be available?

**TRACY:** I’m not going to say much more because part of it will be us stepping into that space for the first time, we’ve chosen a particular location and we’ll be doing a dedicated campaign, not too soon.

**GEORGE:** Oh, okay, not too far away. So, it sounds like you’ve got a real - you’re really motivated to understand what’s going on and address the issues. One thing that people often say to me because I talk to people who are unhappy with their services and I say, “You need to talk to the Commission,” and they’ll say, “What’s the point? What are they going to do for me?” Can you answer that question?

**TRACY:** So, depending on what’s happening, we can do all sorts of things. And it’s hard for me to say exactly what we will do because every situation is a little bit different. But the message I’d love participants to take away, if nothing else, from listening to the podcast today is if something’s not right, don’t wait for something really bad to happen to think that that’s your point of time to do something. If you’re starting to feel uncomfortable, if you’re not sure that things are right, then let us know and we’ve got a campaign that was developed by participants that’s called ‘Make It Known, Make It Heard’ and that’s all about encouraging participants to let us know when things aren’t going right.

We do use the word ‘complaint’ at the moment and I think sometimes that worries or scares people away, don’t quite want to make a complaint. But it’s literally an umbrella word for covering - just letting us know that things aren’t going right. It’s much better for us to be able to work with you and whoever’s providing the support really early on. And sometimes it’s about helping that organisation or individual to understand what information and learning and capability documentation is around to help them understand how they could possibly do their job in a better way.

So, sometimes it’s that really early stage of pointing them in the right direction, sometimes it’s a bit further along the track and we really need to do facilitated conversations between a provider and a participant. And sometimes it’s something that’s much more significant and that’s where we’ll start to really step into the space of investigating and undertaking compliance action. But all along, regardless of where things sit, front of mind for us is safeguarding the participant. So, if we know something’s happening, what we want to do is stop it from happening again or prevent it from happening at all. So, that’s a starting point around how we look at that engagement with people.

So, if you don’t already know it, our phone number is 1800 035 544 and I’m sure George has got a clever way of sharing that. And we’ve got opportunities for those people who may not be able to easily use that as a call number. We do have other mechanisms that you can use, including contacting us over the web but also, we’ve got the National Relay Service which has all sorts of arrangements depending on people’s needs. So, I’d really encourage people to get in contact anytime they’re not sure, anytime they’re worried. We want you to do that as early as possible.

**GEORGE:** Yeah and I’ve had an experience where I contacted the Commission and it was very supportive so I do encourage people to pick up the phone or I think you can email and text as well.

**TRACY:** Yeah.

**GEORGE:** And yeah, just have a chat. You’re in control, right? You don’t need to hand over control to the Commission. The Commission is very respectful and that’s what I’ve found.

**TRACY:** I’m glad to hear that was your experience, George and I’m sorry you had to contact us because we’d love to have a space where no one had to contact us because everything was going well. But the more people do contact us, the more we understand what are some of those issues that people are really experiencing and we can think about not only responding to that individual circumstance or incident, but we can also think about, ‘What do we put in place to try and improve things across the board?’. So, there’s lots of work we’ve been doing in that space as well.

**GEORGE:** What other key messages do you have for people who might be listening? Firstly, for providers?

**TRACY:** For providers, I’d say it doesn’t matter if you’re registered or unregistered. You are subject to the code of conduct, and what we’ve got in place is a set of practice standards and even though there’s quite a rigorous and robust process for registered providers around meeting those practice standards, they’re really the how-to guide for all providers. So, if you’re unregistered, there’s your how-to guide that you can go to.

We’ve also just worked really closely with providers and participants and workers to develop a capability framework and at the moment, we’re out there testing that capability framework so I’d encourage providers and participants, if you want to think about, ‘What are the capabilities and what do different practices look like?’ we’re currently testing a bunch of tools so you can go to the test site and not only can you use the tools but you can also give us feedback about, ‘Actually, can you think about adding this?’ or, ‘Can you change this tool in this way?’ and we’re happy to take that feedback on board. But that capability framework for providers is another, ‘Here’s what we’re expecting of you in terms of delivering on the code of conduct. Again, doesn’t matter if you’re registered or unregistered. Here’s your how-to guide.’ So, you’ve got 2 really good resources there to think about what you need to do.

I would also say that a key role of the Commission is actually improving the quality of providers and workers and it’s something that we hold really close and really do want to make a difference of. So, we are thinking about what actions we can take to influence the market so that people are delivering at a quality level and I’ll give you an example of that. We currently hold quite a bit of information about different service providers, both registered and unregistered and there’s lots of other decisions we make as citizens going about our lives where we look to understand whether or not that particular service is 1 that’s a gold standard or not so much a gold standard.

So, how do we start - 1 of the things we’re thinking about is how do we start to share information so people can see what the regulator’s view is of a quality in certain service providers? It’s not something that’s going to happen tomorrow but it is something that we really will want to explore as part of the broader NDIS review and it’s something that a lot of people raised with me.

They say, ‘Can’t you tell me if this provider is okay or not?’ and so we want to make sure that instead of us doing something ad hoc that we do something that’s really helpful so that participants can make decisions and have those choices. But make those decisions in a way where they’ve got the right information at their fingertips in a really simple way so that they know whether or not the provider they’re engaging with is a quality provider.

**GEORGE:** Wow, that’s really interesting now that that will be available to the public. I think that for people to make decisions around their supports, we do rely on other people’s opinions, don’t we?

**TRACY:** We do.

**GEORGE:** And their experience. So, that will be very helpful. What about your message to people with disabilities?

**TRACY:** As I mentioned before, I think I really do want people to come and talk to us early, don’t wait for something to happen. Because often when something quite significant does happen, we find out that there’s a number of things, smaller issues that had occurred previously. So we really want to get in there as early as possible so we want people to have the confidence to be able to approach us and just like you shared, George, your experience with us was that we were respectful and helpful.

That’s exactly… I hope for everyone that engages with us, that’s their experience. So, I just really encourage everyone to make sure you contact us as early as possible and therefore we can try and make sure everything’s okay, and we can also not only take action about what’s happening with you but we can think about how we build the quality across the whole sector.

**GEORGE:** What about people who are worried about repercussions? Like they’re worried that their provider will in some way be unhappy and therefore, they’re too afraid to come forward?

**TRACY:** Yeah. I guess I’d say a couple of things. First of all, your safety and the supports and services that you get are of the utmost importance. And if something isn’t going right, then I think it’s… I understand how difficult it can be to let someone else know but we really encourage you to do that because we want to make sure that all of the safeguards that should be in place are in place. And the reason I say that is because when people get worried about a possible repercussion, that tells me a lot about the way in which that service provider is conducting themselves generally. And they’re not a kind of service provider that is adhering to the code of conduct. So, we’ve probably got not only the issues that that particular participant is experiencing but I reckon we’ve probably got a whole lot of other issues that we would want to engage with that provider about.

We have been trialling a few different ways of how we bring providers and participants together to resolve issues and sometimes we can do that in a way that allows the anonymity of the participant to remain so for example, if it’s a - I don’t want to give examples because I don’t want people to think they’re the only things we’re focusing on, so I’m trying really hard not to give an example. So there might be something that several participants are experiencing and we’ve had 1 of those examples very recently, that was quite a significant incident and so 1 of those participants finally contacted us and there were 7 participants.

So, the provider that we were talking to didn’t need to know which participant but did know that we were on them about those particular issues. So, sometimes we can do it in that way. Other times - we’ve been trialling an arrangement that is a virtual coming together to resolve issues. Without calling it problem-solving or mediation or any of those things, and people are finding that quite helpful. So we’re doing a quite small trial of that up in Brisbane so we’ll see how that goes. And then we’ll see if that’s - if it’s helpful, we’ll roll it out more broadly. And we’re also very conscious, and it’s part of our safeguarding that we do all the way through the decision-making about how we act, if the situation is particularly poor, then we will look at what are the alternatives for that person and making sure that there are alternative arrangements around supports and services for that person.

So, we will make sure, depending on the circumstance, that we’re not going to if you like, leave people in the lurch, that there are arrangements in place. But I would encourage people to as I say, let us know as early as possible and let us know if you’ve got a concern about repercussions. The last thing I might say is that we treat complaints the same, regardless of whether or not you tell us everything about you or if it’s anonymous. So, we will treat that complaint in the same way. So, please have confidence that - it just means we can’t come back to you and follow up, but if you do it anonymously, we’re going to take the same action as we would if it was the person giving us all their contact details.

**GEORGE:** Yeah, I think that that’s - anonymity can be pretty important when people rely on services. Tracy, I know we’ve run out of time. We have had a few technical difficulties unfortunately for people who are viewing and listening but I’m sure we’ll have a chance to talk again soon in the future and I’m really glad that you’re out there talking to people and making sure that people with disabilities ourselves are involved in the future working and in how the quality and safeguarding roles out for the next few years. It’s important that we’re all involved and having a say.

**TRACY:** Absolutely. We’re just 1 part of the bigger ecosystem that is the NDIS so we definitely want to put participants at the centre and do our part to make it all work and I really appreciate the time, George and happy to come back at another time and talk about some of the other issues that we’re working on.

**GEORGE:** Excellent. Thanks for your time, Tracy. Bye.

**TRACY:** Bye.

**GEORGE:** That’s all we have time for on today’s episode of Reasonable and Necessary. Thanks to our partner for this episode, the NDIS Quality and Safeguards Commission. To be notified of future episodes, don’t forget to hit the subscribe button and the notification bell. Thanks for listening and until next time, stay well and reasonable.