



Systems for handling complaints

A complaint can be an opportunity to tell a provider that something needs to be fixed or improved, or it may be much more serious.

The NDIS means the disability sector will transition to a more market-based model. People need to be able to make complaints in any consumer-driven system.

What is a complaint?

A complaint is the expression of dissatisfaction with a decision, service or product. Complaints can take a variety of forms, including:

- dissatisfaction about the service or product and how it is being delivered — some of which may be resolved by providing further information
- disagreement with a decision made by the provider of the disability support, product or service — which may require explanation or investigation
- a claim that a situation or decision should never have happened or been made, or an issue that requires explanation or resolution

A complaint is not the same as a serious incident, which is an event that threatens the safety of people and property.

Serious incident reporting is discussed separately in Part 1 of the consultation paper. Serious incidents such as criminal offences or safety issues could be reported initially through a complaints system — but such matters require investigation and in some cases, other action by the police or other authorities.

Why have an NDIS complaints system?

A change in market structure

NDIS participants are customers and purchasers of products and services.

Usually, a customer who is unhappy with their product or service would raise their concern with the provider and expect a remedy that both parties can agree on.

An appropriate response from the provider may depend on the extent to which consumers are empowered to negotiate their needs with their providers, and the strength of the regulatory framework to compel providers to act appropriately.

Many new issues are likely to arise as the NDIS and the disability sector move to a more market-based system. This may create power imbalances between participants and providers of supports.

The market may become more fluid due to the rapid entry of many new providers. Some providers may enter or exit the market or merge with other providers.

This will be particularly so for participants who have limited capacity to raise concerns about their supports without assistance from others.

Participants may also fear a complaint will cause further problems, including retribution from their provider or someone who works for them.

In some circumstances, the effect of this kind of power imbalance may result in injustice and intolerable harm and suffering, unless specific and proactive measures are taken.

Existing consumer protections may not extend to the full range of NDIS supports

Some formal protections exist when there is a direct relationship between the buyer and the seller of a product or service.

For example, both parties have certain responsibilities under the Australian Consumer Law. It sets out the rights and obligations of both parties and the legal avenues for redress if the consumer does not agree that the provider has complied with the law.

However, not every support an NDIS participant might buy in their plan will be covered by the existing consumer law.

This has been a challenge for many service sectors, such as banking, superannuation, telephone, gas and electricity services.

To give consumers in these sectors a fairer say, governments set up independent bodies with enforcement powers, which are able to assess complaints independently.

Possible approaches

The consultation paper describes three broad options for an NDIS complaints scheme:

Option 1: self-regulation

Providers would develop and operate their own complaints management and feedback systems. They would be encouraged and assisted to:

- establish best practice internal complaints processes
- subscribe to an external disputes-resolution service, where an independent perspective would help to resolve participants' concerns.

Participants would also have recourse to state or territory fair trading departments, the health complaints system, or professional registration bodies.

Option 2: internal and external complaints-handling requirements

Registration conditions for the National Disability Insurance Agency (NDIA) would prescribe minimum standards for provider-level complaints handling.

This could include assurance that the participants who use their services have access to information about how to complain, what to expect and what to do if they are not happy with the response.

The provider should be able to demonstrate they have systems in place which ensure participants who make a complaint will be protected from retribution or other adverse consequences.

In addition, participants could also complain to an independent organisation. This could be an industry-initiated body that providers 'sign up to'. Or it could be an organisation funded to mediate and help resolve complaints — but would have no power under the law.

Serious incidents that involve a risk of harm to a complainant or others using a service could be escalated to the NDIA for possible regulatory action, or referred to police, if the complaint involves allegations of a criminal nature.

Option 3: independent statutory complaints function

As a condition of their registration under this option, providers, as under Option 2, would be required to demonstrate they have effective internal complaints-handling processes.

Government would establish a formal external complaints body to help providers respond to complaints about their service effectively and resolve them quickly and appropriately. This body could either be:

Option 3a: complaints office in the NDIA

Government would introduce legislation to authorise the NDIA to investigate and respond to complaints about providers.

Option 3b: disability complaints office

Alternatively, a disability complaints office independent of the NDIA could be established to respond to complaints that cannot be resolved between the provider and the participant without assistance.

If the disability complaints office considered further action was needed on a particular complaint, it would refer the matter to the NDIA for action.

For example, if such an office considered a provider may have breached the proposed NDIS Code of Conduct, the NDIA would investigate whether a regulatory response was appropriate.

Questions

- How important is it to have an NDIS complaints system that is independent from providers of supports?
- Should an NDIS complaints system apply only to disability-related supports funded by the NDIS, to all funded supports, or to all disability services regardless of whether they are funded by the NDIS?
- What powers should a complaints body have?