



**NDIS Quality
and Safeguards
Commission**

NDIS Quality and Safeguards Commission

Complaints Management and Resolution Guidance

Version 1- May 2018



Acknowledgment

This guidance is published by the Australian Government, adapting resources developed by the NSW Ombudsman and the Victorian Disability Services Commissioner. We thank the NSW Ombudsman and the Victorian Disability Services Commissioner for their assistance in developing this publication.

ISBN ([contact your Account manager if you need an ISBN](#))

Copyright notice



This document [[complaints management and resolution guidance](#)] is licensed under the [Creative Commons Attribution 4.0 International Licence](#)

Licence URL: <https://creativecommons.org/licenses/by/4.0/legalcode>

Please attribute: © Commonwealth of Australia ([Department of Social Services](#)) 2015

Notice:

1. If you create a derivative of this document, the Department of Social Services requests the following notice be placed on your derivative: Based on Commonwealth of Australia (Department of Social Services) data.
2. Inquiries regarding this licence or any other use of this document are welcome. Please contact: Branch Manager, Communication and Media Branch, Department of Social Services. Phone: 1300 653 227. Email: communications@dss.gov.au

Notice identifying other material or rights in this publication:

1. Australian Commonwealth Coat of Arms — not Licensed under Creative Commons, see <https://www.itsanhonour.gov.au/coat-arms/index.cfm>

Table of Contents

Definitions.....	4
About this guidance	5
Part 1 – NDIS Quality and Safeguards Commission	6
Who we are.....	6
What we do.....	6
Our guiding principles.....	6
Part 2 – Complaints functions and principles	7
Complaints principles.....	8
Part 3 – Making a complaint to the NDIS Commission.....	8
What is a complaint?	8
Why should somebody make a complaint?.....	9
What can a complaint be made about?.....	9
Complaints the NDIS Commission can take.....	9
Complaints the NDIS Commission cannot take	9
Who can make a complaint?	10
How can a complaint be made?	10
What can the Commission do about a complaint?.....	10
What can I expect when I make a complaint?.....	10
Protections for people making a complaint	11
Part 4 – The complaints process.....	11
What happens when I make a complaint?	11
Your privacy	11
Early resolution of a complaint.....	12
Resolving complaints through conciliation.....	12
Enforceable undertakings.....	13
Investigation	13
What happens next?.....	13
What if a person disagrees with the complaints process or a decision?.....	14
How is an application for reconsideration made?.....	14
The reconsideration process.....	15
Making a complaint to the Commonwealth Ombudsman	15

Definitions

Act	Means the <i>National Disability Insurance Scheme Act 2013</i> .
Complaints Rules	Means the National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018.
NDIA	National Disability Insurance Agency, whose role is to implement the National Disability Insurance Scheme (NDIS).
NDIS	National Disability Insurance Scheme, which is a new way to support a better life for hundreds of thousands of Australians with a significant and permanent disability and their families and carers.
NDIS Commission	Means the National Disability Insurance Scheme Quality and Safeguards Commission.
NDIS provider	A person (other than the NDIA) who receives: <ul style="list-style-type: none">• funding under the arrangements set out in Chapter 2 of the Act; or• NDIS amounts (other than as a participant); or• a person or entity who provides supports or services to people with disability other than under the NDIS; and who is prescribed by the NDIS rules as an NDIS provider. See s 9 of the Act.
Participant	A person with disability who receives supports or services from an NDIS provider. In this guidance we generally refer to NDIS participants.
Registered	
NDIS Provider	Means a person or entity registered under s 73E of the Act, to provide supports and services to NDIS participants.
Worker	Includes employees, contractors and people otherwise engaged for example, on a volunteer basis by an NDIS provider and people contracted by this provider.

About this guidance

This guidance has been developed to give people with disability, their family, friends, carers, advocates, workers and the public, information about how the NDIS Quality and Safeguards Commission (the NDIS Commission) manages and resolves complaints it receives about supports and services provided by NDIS providers.

This guidance sets out:

- information about how to make a complaint to the NDIS Commission, and
- what happens when you make a complaint.

For information about complaint handling by NDIS providers, see: Effective Complaint Handling Guidance for NDIS Providers [[insert link](#)].

CONSULTATION DRAFT

Part 1 – NDIS Quality and Safeguards Commission

Who we are

The National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission (the NDIS Commission) is an independent government body that will work to improve the quality and safety of NDIS services and supports, investigate and resolve problems, and strengthen the skills and knowledge of providers and participants across Australia.

The NDIS Commission has been set up to achieve the following objects:

- help protect and prevent people with disability from harm caused by poor quality or unsafe supports or services provided under the NDIS
- maintain and enhance public trust and confidence in the sector through increased accountability and transparency
- support and sustain a robust, vibrant and innovative NDIS market.

What we do

The Commission is responsible for implementing the NDIS Quality and Safeguarding Framework, which introduces a new, nationally consistent approach to regulation for the NDIS.

To achieve our objects, the NDIS Commission:

- registers and regulates NDIS providers
- monitors compliance with the NDIS Practice Standards and NDIS Code of Conduct, which set out expectations for the quality and safety of services
- responds to concerns and complaints about NDIS supports and services
- oversees providers' management of reportable incidents, including abuse and neglect of NDIS participants
- educates providers and participants in the use of behaviour support strategies that reduce and eliminate restrictive practices
- works with states and territories to design and implement nationally consistent NDIS worker screening
- facilitates information sharing about quality and safeguards with the National Disability Insurance Agency (NDIA) and other state, territory and Commonwealth regulatory bodies.

Our guiding principles

The guiding principles underpinning the NDIS Commission's functions, set out in the *National Disability Insurance Scheme Act 2013* (the Act), include supporting the rights of people with disability to:

- Realise their potential for physical, social, emotional and intellectual development.
- Participate in and contribute to community life including socially and economically.
- Exercise choice and pursue their goals including taking reasonable risks and pursuing any grievance.
- Be included in making decisions about their life.
- Live a life of dignity, free from abuse, neglect and exploitation.
- Have the roles of families, carers and other significant persons in their lives recognised and respected.
- Have the roles of advocates in representing the interests of people with disability acknowledged and respected.

Part 2 – Complaints functions and principles

The NDIS Commission is responsible for supporting the resolution of complaints about the provision of supports and services by all NDIS providers. Complaints can lead to better services for everyone, and can be a way to sort out issues quickly.

Registered NDIS providers are required to have complaints management arrangements in place and to support people with disability to understand how to make complaints [[link to provider guidance](#)].

The NDIS Commission's complaints functions include:

- managing, resolving, conciliating and investigating complaints
- providing education and developing best practice resources on complaints handling
- building the capability of, and empowering, people with disability to understand their rights and to speak up when they are not happy about supports or services provided by NDIS providers
- helping NDIS providers to develop a culture of learning and innovation to deliver high quality supports and services, prevent incidents and respond to complaints
- reviewing complaints data to identify systemic issues to be addressed
- reporting publicly on the causes, types and number of complaints and their outcomes.

Complaints principles

Principle	Description
Centred on people with disability	Management of a complaint is respectful of, and responsive to, a person with disability's preferences, needs and values.
Outcome focussed	Management of a complaint should reveal the factors that contributed to the complaint being made, and seek to prevent matters giving rise to complaints from reoccurring, where appropriate.
Clear, Simple and Consistent	The process for receiving and responding to complaints is easy to understand, accessible and consistently applied.
Accountable	NDIS providers are responsible for appropriately managing complaints. Everyone involved in the management of a complaint understands their role and responsibilities, and will be accountable for decisions or actions taken in regard to a complaint.
Continual improvement	The complaints process facilitates the ongoing identification of issues and implementation of changes to improve the quality and safety of NDIS supports and services.
Proportionate	The nature of any actions following a complaint will be proportionate to the issues raised and any risk of harm to people with disability.

Part 3 – Making a complaint to the NDIS Commission

The *National Disability Insurance Scheme Act 2013* and Complaints Rules set up a complaints resolution scheme that is open to anyone to make a complaint about the provision of supports and services by NDIS providers.

What is a complaint?

A complaint is an expression of dissatisfaction with (for example) a decision, service or product. A person does not have to call their dissatisfaction a 'complaint', in order for it to be handled as a complaint by the NDIS Commission.

Most NDIS providers will already be familiar with handling complaints and be aware of the Australian and New Zealand Standard Guidelines for complaints management in organisations.

Why should somebody make a complaint?

Making a complaint can lead to improved services, communication and sometimes changes to policies and procedures, and the way NDIS providers deliver services.

Providers can use their complaints experience and information to regularly improve their communication and services.

What can a complaint be made about?

People can make a complaint to the NDIS Commission about an issue arising out of, or in connection with, an NDIS provider's provision of supports or services.

A complaint can be made about any NDIS provider and/or its workers, whether or not the provider is registered with the NDIS Commission.

Although complaints should generally be raised directly with an NDIS provider in the first instance, people do not have to raise a complaint with a provider before approaching the NDIS Commission for help.

Complaints the NDIS Commission can take

The NDIS Commission deals with complaints such as:

- Whether services or supports have been provided in a safe and respectful way
- Whether services and supports have been delivered to an appropriate standard
- How an NDIS provider has dealt with a complaint about services or supports provided to an NDIS participant
- How an NDIS provider has dealt with an advocate or carer of an NDIS participant

Complaints the NDIS Commission cannot take

Other complaints schemes or bodies are more appropriate for things like:

- actions taken by the National Disability Insurance Agency (NDIA), including decisions about eligibility and a participant's plan including whether to fund services or supports and how much
- disability services or supports provided by an organisation which is not an NDIS provider – for example, health services
- decisions of courts, tribunals or coroners

The NDIS Commission will support people to make complaints to other bodies where necessary.

Complaints about the NDIA can be made to the NDIA or to the Commonwealth Ombudsman.

Complaints about the NDIS Commission are handled by an independent person in the NDIS Commission, or the Commonwealth Ombudsman. The NDIS Commission encourages people to provide feedback about how it can improve services.

Who can make a complaint?

Anyone can make a complaint to the NDIS Commission about the provision of supports and services by an NDIS provider. This includes people with disability, their families, friends, carers, advocates or guardians, workers (including volunteers) of an NDIS provider or any other person who wishes to make a complaint.

How can a complaint be made?

A complaint can be made to the NDIS Commission by:

- Phoning: 1800 xxx xxx (free call from landlines) or TTY 1300 xxx xxx. Interpreters can be arranged.
- Writing xxx
- Email xxx@gov.au; or
- National Relay Service users: Deaf, hearing impaired or speech impaired TTY users: xxxx xxx xxx then 1800 xxx xxx; speak and Listen users: 1800 xxx xxx then 1800 xxx xxx. For more information: www.relayservice.gov.au
- Completing a complaint form on the NDIS Commission's website at www.xxx.gov.au;
- In any other way that best meets the needs of the person making the complaint.

What can the Commission do about a complaint?

The NDIS Commission can help people to make a complaint to an NDIS provider. If a person is not able to resolve a complaint with an NDIS provider, the NDIS Commission will work with NDIS participants, their representatives (including advocates) and providers to resolve the complaint.

If a complaint raises a serious compliance issue, the NDIS Commission has powers to take action against an NDIS provider.

What can I expect when I make a complaint?

The NDIS Commission will:

- support people to make a complaint in a way which is culturally appropriate;
- help people who require additional support to make a complaint, and
- provide information about the use of independent advocates.

A complaints officer will talk to you about your complaint to understand the issues you are concerned about.

Protections for people making a complaint

It is an offence to threaten or intimidate a person who makes a complaint to the NDIS Commission. The NDIS Commission works closely with people and their NDIS providers to ensure people are not disadvantaged in any way.

Complaints can be made anonymously, or people can ask the NDIS Commission to keep some of the details of a complaint confidential. However, making a complaint on an anonymous or confidential basis may affect whether, or how thoroughly, the NDIS Commission can deal with it.

Registered NDIS providers are responsible for taking steps to safeguard people's right to complain.

Part 4 – The complaints process

What happens when I make a complaint?

The NDIS Commission will acknowledge receipt of a complaint unless it was made anonymously, or the contact details of the person making the complaint were not provided.

A complaints officer will arrange a time to talk to you to understand the concerns you are raising. They will ask you for enough information so they can understand the issues involved and any concerns about the immediate health, safety and wellbeing of any person with disability affected by an issue raised in the complaint. This information will help the NDIS Commission decide how to respond.

If there are issues the NDIS Commission is unable to help you with, you will be provided with information to make a complaint to the right place.

If you have made a complaint on behalf of a person with disability, the NDIS Commission will ask whether they are aware of the complaint and if they have requested or consented to you raising concerns about an issue. The NDIS Commission will seek their views wherever possible to understand what outcome they would like. The NDIS Commission's focus is on what is important to and for the person receiving the service, and will seek to involve them in the process as much as possible.

The NDIS Commission will send you written confirmation of the issues in the complaint and the outcomes you are seeking. The NDIS Commission will seek your consent and that of any person with disability affected by issues raised in a complaint to pass on information about the complaint to the NDIS provider to start the resolution process.

Your privacy

The NDIS Commission's complaints service is confidential. The NDIS Commission collects and uses personal information, including sensitive information, for the purpose of performing functions as set out in the Act. The NDIS Commission is committed to the proper handling of this information in

accordance with the Australian Privacy Principles in the *Privacy Act 1988 and the NDIS (Protection and Disclosure of Information) Rules*. Further information is contained in our Privacy Policy (*under development*) [\[insert hyperlink\]](#).

Early resolution of a complaint

In helping you to decide how to resolve a complaint, the NDIS Commission may:

- work with you and the person with disability to understand the complaint and how it can be resolved
- request information and documentation to help clarify the issues
- with your consent, talk to the NDIS provider to get their views about the complaint
- talk to you and the person with disability about the information the NDIS Commission gets from a provider
- work closely with you, the person with disability and the NDIS provider to find ways to resolve the complaint including through conciliation.

After the NDIS Commission has reviewed all relevant information about the complaint, it may require the NDIS provider to undertake remedial action to address identified concerns for example:

- to take certain steps to help an affected person with disability, or
- where the NDIS Commission considers action should be taken to address deficiencies in the NDIS provider's complaints management system.

The NDIS provider may be required to report back to the NDIS Commission on actions it has taken to address the identified concerns.

The NDIS Commission will monitor the NDIS provider's response. As part of this, the NDIS Commission may request further documentation, contact people involved in the complaint, visit the service or talk to other people affected by the issues including other people with disability and staff.

If the NDIS Commission is not satisfied that the NDIS provider has taken the remedial action within the specified timeframe, it may consider taking compliance action.

Resolving complaints through conciliation

Conciliation can be used to try to resolve a complaint that could not be resolved through early resolution processes. The most common form of conciliation is a meeting between the person making the complaint, the person with a disability affected by an issue raised in a complaint, and the provider. Participation in a conciliation is an open and voluntary process.

The purpose of a conciliation meeting is to help people reach agreement on how the complaint can be resolved. Individual meetings are scheduled ahead of the conciliation meeting to help each party prepare and plan how they will participate. The NDIS Commission will facilitate the conciliation and help to clarify the issues, gather information and encourage discussions between people at the

conciliation meeting. The NDIS Commission does not advocate for either the person or the provider. It is not a public hearing, a court, or a tribunal.

Each person is given the opportunity to put forward his or her views. Because of this, conciliation may be preferable for some people as this person-centered approach allows the person making the complaint to have their views heard directly by the provider.

If the conciliation results in the parties agreeing to particular actions and outcomes, the NDIS Commission may end the resolution process on the basis that the parties have reached an agreement. The NDIS Commission may also decide, if no agreement is reached, to end the conciliation process if the NDIS Commission is satisfied that, given all the circumstances, the continuation of the resolution process is not appropriate or warranted.

Enforceable undertakings

Enforceable undertakings are written undertakings given to a person by NDIS providers that are enforceable in court. They can be used to record the agreed outcome of a resolution process and are enforceable by the NDIS Commission in court.

Investigation

The NDIS Commission may decide that an issue raised in a complaint is better dealt with through compliance action, including an investigation. This may include issues where the NDIS Commission identifies serious concerns or risks to people with disability. If a resolution process is not appropriate because an issue discloses or appears to disclose unlawful conduct, the NDIS Commission will comply with its procedural fairness guidelines, [[insert link to procedural fairness guidelines and summary](#)].

What happens next?

Most complaints are resolved during the early resolution stage. There are a number of ways a complaints resolution process may end, including:

- if the issues have been resolved because the person making the complaint and the NDIS provider have agreed on a resolution strategy;
- the NDIS Commission is satisfied that the NDIS provider has addressed the issues;
- the NDIS Commission has enforced the NDIS provider to undertake remedial action within a specified timeframe; or
- a complaint has been withdrawn.

The NDIS Commission may also decide to end a complaints resolution process if it believes:

- the complaint or issue is better dealt by another person or body
- the circumstances giving rise to the complaint or issue cannot be determined

- the information given by the complainant was not given in good faith
- the complaint or issue has already been, or is already being, dealt with
- a person with disability affected by an issue raised in the complaint does not wish the resolution process to continue;
- the complaint or issue is, or has been, the subject of a legal proceeding or a coronial inquiry, and the complaint or issue has been, or will be, adequately dealt with
- having regard to all the circumstances, continuation of the resolution process is not appropriate or warranted.

In deciding whether to end a resolution process, the NDIS Commission will consider:

- whether the health, safety or welfare of any person with disability affected by an issue raised in the complaint will be negatively impacted by the decision; and
- whether the complaint may have been withdrawn on the basis of victimisation, coercion or duress.

At the end of the resolution process, the NDIS Commission will write to the person who made the complaint, the affected person with disability and the NDIS provider about the NDIS Commission's decision, the information that led to this decision and the rights of people involved in the complaint to have the decision reconsidered.

What if a person disagrees with the complaints process or a decision?

If, at any time during the complaints process, a person is concerned about how the NDIS Commission is managing their complaint, they are encouraged to contact the NDIS Commission to provide feedback so concerns can be resolved.

Once the NDIS Commission has decided to finalise a complaint, a request can be made for the decision to be reviewed. This is called a **reconsideration**.

How is an application for reconsideration made?

An application for reconsideration may be made in writing, or by any other means which is appropriate in the circumstances.

An application to the NDIS Commission for reconsideration should:

- be made within six weeks of the parties being notified of the relevant decision, and
- provide information about why you want the decision changed e.g. what has happened, what are you unhappy about?

The reconsideration process

The reconsideration will be undertaken by a person who was not involved in the original decision-making.

Once an application for reconsideration has been received, a decision will be made within four weeks to confirm that the original decision stands, or that a new resolution process will be undertaken. You, a provider or other person involved in the resolution process may be asked to provide further information.

If it is decided that the original decision stands, the person who applied for the reconsideration will be notified in writing.

If a new resolution process is to be undertaken, the NDIS Commission will notify:

- the person who made the complaint,
- a person with disability affected by an issue (unless it would be inappropriate to do so)
- the NDIS provider to which the issue relates; and
- any worker of the NDIS provider who may have an adverse finding made against them.

The processes the NDIS Commission will follow to finalise the resolution process, and to notify the relevant people that the resolution process has been finalised, are the same as for ending the initial resolution process.

If a further resolution process is undertaken following a reconsideration of an earlier decision, the parties cannot seek reconsideration of the outcome of that further resolution process.

Making a complaint to the Commonwealth Ombudsman

Anyone who is not happy with the NDIS Commission's service can raise their concerns with the Commonwealth Ombudsman. The Ombudsman investigates complaints from people who believe they have been treated wrongly, unfairly, unjustly or discriminated against by an Australian Government department or agency. The NDIS Commission is a government agency.

The Ombudsman is impartial and independent. The Ombudsman can resolve disputes through consultation, negotiation and formal recommendations.

The Ombudsman can only look at the NDIS Commission's actions in managing a complaint. If the Ombudsman identifies a problem with the NDIS Commission's response, it can make findings and recommendations. The NDIS Commission will consider the Ombudsman's findings and recommendations, including taking any action consistent with its commitment to continuous quality improvement.

More detailed information on how the Ombudsman's office performs its role is available on the Ombudsman's website [\[insert hyperlink\]](#).