



Fact sheet

Own Motion Inquiries

Summary

The Commissioner can initiate an inquiry into a complaint or a reportable incident, or a series of complaints or reportable incidents, about supports or services delivered by NDIS providers. We refer to these as ‘own motion’ inquiries.

An Own Motion Inquiry can be about a particular complaint or reportable incident, where the inquiry might focus on establishing the facts about what happened, why it happened, whether anyone is or should be held responsible for it happening, and whether any changes should be made to stop it happening again.

An Own Motion Inquiry can also be about a series of complaints or reportable incidents, where the inquiry might focus on more systemic issues and identify areas for change to improve the quality and safety of supports for people with disability. An Own Motion Inquiry could focus on a series of complaints or reportable incidents in relation to one NDIS provider, or it could focus on a series of complaints or reportable incidents across a number of NDIS providers.

When can the Commissioner authorise an ‘own motion inquiry’?

The Commissioner can authorise an ‘own motion inquiry’ in relation to issues arising from:

- A complaint, or a series of complaints, that have occurred in connection with the provision of supports or services by one or more NDIS providers, under section 29 of the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018 (Complaints Rules)*; and
- A reportable incident, or a series of reportable incidents, that have occurred in connection with the provision of supports or services by one or more NDIS providers, under section 27 of the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018 (Reportable Incidents Rules)*.



The Commissioner can authorise an inquiry in relation to complaints or reportable incidents even if they have not been made or notified to the NDIS Commission.

Why does the Commissioner authorise ‘own motion’ inquiries?

The power to authorise an own motion inquiry in relation to a complaint or a reportable incident, or a series of complaints or reportable incidents, is a very broad power. The Commissioner has not adopted criteria for the use of this power.

For reportable incidents, own motion inquiries are only one of the options available to the Commissioner if the Commissioner considers that a reportable incident should be investigated.

- When a reportable incident occurs, the provider sometimes voluntarily establishes its own investigation and tells the NDIS Commission that it has done so. In some cases, providers establish internal investigations, which are conducted by an officer or employee of the provider. In other cases, providers establish external investigations, which are conducted by a person external to the provider. Providers usually give the NDIS Commission a report on the outcome of the investigation when the investigation is completed.
- When a provider notifies the NDIS Commission that a reportable incident has occurred, the Commissioner can require the provider either to carry out an internal investigation into the incident, or to engage an independent expert to carry out an external investigation into the incident. In either case, the provider must provide a report on the investigation to the Commissioner.
- Own motion inquiries give the Commissioner an additional option to inquire into a reportable incident or a series of reportable incidents.

Many factors might be relevant in determining whether an investigation or inquiry is necessary in relation to a reportable incident. If an investigation or inquiry is necessary, a number of considerations might be relevant in determining which type of investigation or inquiry is most appropriate. For example:

- A provider might be required to carry out an internal investigation if the provider has staff with the skills and experience to complete the investigation and there is no conflict of interest involved.
- A provider might be required to engage an independent expert to carry out an external investigation if there are actual or potential conflicts of interest identified, or the provider does not have the staff with the skills and experience to conduct the investigation, or if the subject matter requires specialist input or expertise.



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- An own motion inquiry would be used in exceptional circumstances only. It might be particularly well suited to examining a reportable incident or a series of reportable incidents that raises systemic issues, whether at the individual provider level or at the NDIS market level or both.

For complaints, the NDIS Commission usually seeks to help complainants resolve their complaints quickly and simply. Sometimes we can do this by speaking with the complainant and the providers and anyone else who is involved. Sometimes we conduct a resolution process, which might involve a conciliation process, or requiring the provider to examine and attempt to resolve the complaint and report back to the NDIS Commission.

In our experience, most complaints are resolved without the need for an investigation beyond what occurs in these types of resolution processes, and investigations are undertaken more often in relation to reportable incidents than in relation to complaints. However, the Commissioner has the power to authorise an own motion inquiry in relation to a complaint or a series of complaints.

The former Commissioner, Mr Graeme Head AO, outlined some considerations that might apply to use of the power to authorise an own motion inquiry in relation to complaints in a statement he gave to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. The considerations included the following:

- The own motion inquiry power in relation to complaints should not be used in a manner that might detract from or displace the development of participants' confidence to raise issues themselves. Nor should it be used in a manner that might detract from or displace the obligation on providers to develop their capacity to respond appropriately to complaints.
- The own motion inquiry power in relation to complaints might be particularly well suited to examining a complaint or a series of complaints that raises systemic issues, whether at the individual provider level or at the NDIS market level, or both.
- The own motion inquiry power in relation to complaints might be particularly well suited to examining serious and/or systemic matters complained of about the provision of supports or services by one of more NDIS providers in circumstances where the NDIS Commission has not received a complaint about them.

For both reportable incidents and complaints, the NDIS Commission may also decide to conduct a compliance-focused investigation. These investigations focus on issues of compliance and enforcement, and they are conducted using particular powers under the NDIS Act and the Regulatory Powers (Standard Provisions) Act 2014. These investigations are not own motion inquiries.



What to expect from an ‘own motion’ inquiry

When the Commissioner authorises an own motion inquiry, the Commissioner will determine the matters to be examined, and the specific objectives of the inquiry, also known as the terms of reference. The NDIS provider or providers involved in the complaints or reportable incidents that will be the subject of an inquiry may be given the opportunity to comment on the proposed terms of reference.

The scope of an own motion inquiry can vary from investigating a particular incident or matter involving one participant and one provider, to dealing with a broad range of incidents or matters involving a number of participants and providers.

The Commissioner may conduct an own motion inquiry using staff of the NDIS Commission, or the Commissioner may appoint a person external to the NDIS Commission to undertake the inquiry on behalf of the Commissioner. The Commissioner, or the person appointed by the Commissioner, will conduct the inquiry in accordance with the terms of reference determined by the Commissioner.

An own motion inquiry may be carried out as the Commissioner thinks fit. The Commissioner will determine how the inquiry is to be conducted, and whether anyone should be consulted or invited to participate in the inquiry. For example, the Commissioner may choose to:

- consult with other persons, bodies and governments on matters relating to the inquiry;
- request information that is relevant to the inquiry from any person; or
- provide opportunities for people with disability to participate in the inquiry.

Alternatively, the Commissioner may determine that an own motion inquiry is to be carried out by reference to documents and records only, or with the addition of interviews with or submissions from those persons directly involved in the relevant incident or matter the subject of a complaint.

How an own motion inquiry is to be carried out is likely to depend upon the scope and purpose of the inquiry. The Commissioner is likely to specify any particular requirements for carrying out the inquiry in the terms of reference. The Commissioner may also make decisions about how the inquiry is carried out during the course of the inquiry.

At the end of an own motion inquiry, the Commissioner may prepare and publish a report setting out the Commissioner’s findings in relation to the inquiry. The Commissioner is not required to prepare and publish a report in relation to an own motion inquiry. For example, the Commissioner might choose to publish a report of an own motion inquiry that examined systemic issues affecting a number of providers, but the Commissioner might choose not to publish a report of an own motion inquiry that examined a particular incident affecting a participant, particularly where a report of the inquiry would necessarily include extensive personal information about the participant and others involved in the incident.



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