



Scope of Commissioner's Functions

Key points

- The Commissioner has a range of core functions, as well as specific functions relating to complaints, reportable incidents and behaviour support.
- Anyone can complain to the Commissioner about an issue **arising out of, or in connection with**, the provision of supports or services by an NDIS provider, whether the provider is registered with the Commission or not.
- The words 'arising out of' mean that the provision of supports or services must be a contributing factor to the issue being complained about. But it doesn't need to have directly caused the issue.
- Registered NDIS providers have to report to the Commissioner about certain types of incidents that occurred, or are alleged to have occurred, **in connection with** the provision of supports or services by registered NDIS providers.
- The Commissioner can also inquire into reportable incidents that occurred, or are alleged to have occurred, **in connection with** the provision of supports or services by registered NDIS providers.
- The words 'in connection with' mean that the incident must be related to, or associated with, the provision of supports or services by the NDIS provider delivering those supports. But the supports or services don't need to have caused or contributed to the incident.
- In this context, the 'supports or services' are those provided to an NDIS participant under their NDIS plan.
- NDIS participants may also receive services that are not provided under the NDIS, known as 'mainstream services'. For example, care that aims to improve the overall health of a person, such as hospital care, or dental care, or other health related services.
- The Commissioner may make inquiries in relation to mainstream services if this is necessary to deal with a complaint or reportable incident.
- The Commissioner's behaviour support function is broad. Some of the activities the Commissioner may undertake extend to the use of restrictive practices in the provision of *all* supports and services, not just NDIS funded supports and services.
- The NDIS Code of Conduct applies to all NDIS providers, their employees, officers and contractors, when they are providing supports and services under the NDIS.

Core functions

1. The NDIS Quality and Safeguards Commissioner (**the Commissioner**) has a range of core functions, as well as functions specific to complaints, reportable incidents, and behaviour support. These functions are set out in the:
 - *National Disability Insurance Scheme Act 2013 (NDIS Act)*;
 - The *NDIS (Complaints Management and Resolution) Rules 2018 (the Complaints Rules)*; and
 - The *NDIS (Incident Managements and Reportable Incidents) Rules 2018 (the Incidents Rules)*.
2. The Commissioner has broad core functions, some of which are in relation to the delivery of supports and services to people with disability generally, regardless of whether the supports and services are funded under the NDIS.
3. For example, some of the Commissioner's core functions that are not limited to NDIS providers include:
 - upholding the rights of, and promoting the health, safety and wellbeing of people with disability receiving supports or services;
 - developing a nationally consistent approach to managing quality and safeguards for people with disability receiving supports or services;
 - promoting the delivery of progressively higher standards of supports and services to people with disability; and
 - developing and overseeing the broad policy design for a nationally consistent framework relating to the screening of workers involved in the provision of supports and services to people with disability.

Complaints management

4. The Commissioner's complaints function under the Complaints Rules includes the investigation, management, conciliation and resolution of complaints about issues **arising out of, or in connection with**, the provision of supports or services by an NDIS provider. In addition, the Commissioner can carry out an inquiry because of a complaint.
5. The Complaints Rules allow a person to make a complaint to the Commissioner in relation to an issue **arising out of, or in connection with**, the provision of supports or services provided by an NDIS provider.
6. A complaint **arises out of** the provision of supports or services provided by an NDIS provider if the provision of supports or services is a contributing factor to the issue giving rise to the complaint, but the issue cannot be too remote from the provision of supports or services.

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7. A complaint is **in connection with** the provision of supports or services provided by an NDIS provider if the issue is in some way related to, or associated with, the provision of supports or services by the NDIS provider. For a matter to satisfy this requirement, it is not necessary to establish that the matter occurred *because of* the provision of supports and services (that is, it does not require a causal relationship with the provision of supports and services). The meaning of 'in connection with' is further discussed below in the context of reportable incidents, but also applies to complaints.

Management of reportable incidents

8. Registered NDIS providers have to report certain types of incidents that occur, or are alleged to have occurred, **in connection with** the provision of supports and services by registered NDIS providers. Under the Incidents Rules, the Commissioner may also inquire into reportable incidents that occur, or are alleged to have occurred, **in connection with** the provision of supports or services by registered NDIS providers.
9. A reportable incident is **in connection with** the provision of supports or services by a registered NDIS provider if the incident is in some way related to, or associated with, the provision of supports or services by a registered NDIS provider.
10. The words **in connection with** have broad application, but do not cover circumstances in which the connection between an event, or alleged event, and a registered NDIS provider is due to timing or physical coincidence.
11. The Commissioner's complaints and reportable incidents functions establish a framework for the conduct of NDIS providers, and not a broader framework for the investigation of complaints and incidents relating to NDIS participants.
12. Whether a matter is within scope of the Commissioner's complaints and reportable incidents functions has to be considered and decided on a case by case basis.

Supports or services

13. The Commissioner's functions relating to complaints and reportable incidents only cover supports or services funded under the NDIS.
14. If a provider is providing supports or services outside the NDIS (i.e. outside their capacity as a registered NDIS provider, or NDIS provider, as the case may be), then the complaints and reportable incidents functions will not apply.

Mainstream services

15. Generally, the Commissioner's complaints and reportable incidents functions are in relation to supports and services delivered by NDIS providers, but sometimes there may be occasions where it is necessary to make inquiries into the delivery of mainstream services.
16. Mainstream services include things like care that aims to improve the overall health of a person, such as hospital care, or dental care, or other health related entitlements that are accessed through the health system, or other public services.

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17. The Commissioner will only make inquiries in relation to mainstream services to the extent necessary to complete a comprehensive investigation into a complaint **arising out of, or in connection with**, the provision of supports or services provided by an NDIS provider.
 18. Similarly, the Commissioner will only make inquiries in relation to mainstream services to the extent necessary to complete a comprehensive investigation into a reportable incident that occurred **in connection with** the provision of supports or services by a registered NDIS provider.
 19. It is important to note that the Commissioner's functions are primarily concerned with the conduct of NDIS providers, but the Commissioner may make inquiries in relation to mainstream services if necessary to deal with a complaint or reportable incident.

Behaviour support function

20. The Commissioner's behaviour support function is to provide leadership in relation to behaviour support, and in the reduction and elimination of the use of restrictive practices by NDIS providers.
21. Some of the activities the Commissioner may undertake extend to the use of restrictive practices in the provision of *all* supports and services, not just those funded under the NDIS. For example, the Commissioner may:
 22. provide education, training and advice on the use of behaviour supports and the reduction and elimination of the use of restrictive practices;
 23. undertake and publish research to inform the development and evaluation of the use of behaviour supports; and
 24. assist States and Territories to develop a regulatory framework, including nationally consistent minimum standards, in relation to restrictive practices.

NDIS Code of Conduct

25. The NDIS Code of Conduct contains principles that set the minimum expectations for how NDIS providers are to conduct themselves when providing supports and services under the NDIS.
26. The NDIS Code of Conduct applies to all NDIS providers, their employees, officers and contractors, when they are providing supports and services under the NDIS.
27. For further information, please refer to:
 - Sections 73W-73Z and sections 181E-181H of the *National Disability Insurance Scheme Act 2013*
 - *NDIS (Complaints Management and Resolution) Rules 2018*
 - *NDIS (Incident Management and Reportable Incidents) Rules 2018*
 - *NDIS (Code of Conduct) Rules 2018*