



National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018

I, Graeme Head, as delegate of the Minister for Social Services, make the following rules.

Dated 17 May 2018

Graeme Head
Commissioner of the NDIS Quality and Safeguards Commission

Contents

Part 1—Preliminary	2
1 Name.....	2
2 Commencement	2
3 Authority.....	2
4 Definitions	2
Part 2—Complaints management and resolution system for registered NDIS providers	3
5 Simplified outline of this Part	3
6 Purpose of this Part	3
7 Complaints management and resolution system must comply with this Part.....	3
8 Complaints management and resolution system requirements.....	3
9 System must afford procedural fairness.....	5
10 Documentation, record keeping and statistics	5
11 Roles, responsibilities, compliance and training of workers	6
12 Referring complaints.....	6
Part 3—Complaints to, and inquiries by, the Commissioner	7
Division 1—Introduction	7
13 Simplified outline of this Part	7
14 Purposes of this Part.....	7
Division 2—Complaints to the Commissioner	8
Subdivision A—Complaints	8
15 Making a complaint to the Commissioner	8
16 Dealing with a complaint	8
17 No further action, or deferring action, in relation to a complaint	9
18 Withdrawal of a complaint.....	10
19 Confidentiality	11
Subdivision B—Resolution process	11
20 Resolution process	11
21 Notifying NDIS provider	12
22 Ending the resolution process	12
Subdivision C—Notices relating to outcome of resolution processes	13
23 Notice of decision to take no further action	13
24 Notice of outcome of resolution process.....	13
25 Provision of information to other persons.....	14
Subdivision D—Reconsideration of decisions	14
26 Application for reconsideration by the Commissioner	14
27 Reconsideration by the Commissioner on application	15
28 Reconsideration by the Commissioner on own motion.....	16
Division 3—Inquiries by the Commissioner	18
29 Inquiries by the Commissioner in relation to complaints.....	18
Division 4—Other matters	19
30 Commissioner must comply with procedural fairness rules.....	19
31 Referral to other organisations	19
32 Commissioner may take action under the Act.....	19

Preamble

The National Disability Insurance Scheme (NDIS) represents a fundamental change to how supports for people with disability are funded and delivered across Australia. The NDIS is designed to produce major benefits for people with disability, their families and the broader community.

The NDIS Quality and Safeguards Commission is responsible for a range of functions under the National Quality and Safeguarding Framework aimed at protecting and preventing harm to people with disability in the NDIS market. The Commission will build the capability of NDIS participants and providers to uphold the rights of people with disability and realise the benefits of the NDIS. The legislation underpinning the NDIS is intended to support participants to be informed purchasers and consumers of NDIS supports and services and to live free from abuse, neglect, violence and exploitation.

Registered NDIS providers are required to have complaints management arrangements in place and support people with disability to understand how to make a complaint to the provider and to the NDIS Commissioner.

The NDIS Quality and Safeguards Commissioner will be responsible for supporting the resolution of complaints about the provision of supports and services by all NDIS providers.

In addition to addressing specific issues, complaints can enable systemic issues to be identified and drive improvements in the quality of NDIS supports and services.

The Commission will build the capability of people with disability to pursue complaints and build NDIS provider capability to respond to complaints.

These rules will ensure providers are responsive to the needs of people with disability through the timely resolution of issues and will promote continuous improvement.

Part 1—Preliminary

1 Name

This instrument is the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2018.	1 July 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *National Disability Insurance Scheme Act 2013*.

4 Definitions

Note: A number of expressions used in this instrument are defined in section 9 of the Act.

In this instrument:

Act means the *National Disability Insurance Scheme Act 2013*.

complainant means a person who makes a complaint to the Commissioner under section 15.

Part 2—Complaints management and resolution system for registered NDIS providers

5 Simplified outline of this Part

This Part requires all registered NDIS providers to implement and maintain a system to manage and resolve complaints about the supports and services they provide.

The complaints management and resolution system must make sure that people can easily make a complaint and that all complaints are dealt with fairly and quickly.

Providers must make available information about how to make a complaint to the provider and to the Commissioner, and must keep records about complaints that they receive.

6 Purpose of this Part

- (1) This Part is made for the purposes of paragraph 73W(b) of the Act.
- (2) It sets out what must be included in the complaints management and resolution systems of registered NDIS providers.

Note 1: Failure by a registered NDIS provider to comply with the requirements of this Part is a breach of condition of registration (see paragraph 73F(2)(e) of the Act) and may lead to compliance and enforcement action under Division 8 of Part 3A of the Act.

Note 2: A registered NDIS provider also has obligations in relation to incident management systems and reportable incidents that may apply to a complaint if it raises an issue that is an incident or a reportable incident (see sections 73Y and 73Z of the Act and the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*).

7 Complaints management and resolution system must comply with this Part

A registered NDIS provider must implement and maintain a complaints management and resolution system that complies with the requirements set out in this Part.

Note: The complaints management and resolution system must also be appropriate for the provider's size and classes of supports or services provided and make provision in relation to advocates and other representatives of persons with disability (see paragraphs 73W(a), (aa) and (ab) of the Act).

8 Complaints management and resolution system requirements

- (1) The complaints management and resolution system of a registered NDIS provider must:

Section 8

- (a) enable any person to make a complaint (including an anonymous complaint) to the registered NDIS provider about the supports or services provided by the provider; and
 - (b) provide for an easy and accessible process for making and resolving complaints; and
 - (c) ensure appropriate support and assistance is provided to any person who wishes to make, or has made, a complaint.
- (2) The process provided for in the system may vary, depending on the nature of the complaint.
- (3) The system must require that:
 - (a) complaints are acknowledged, assessed and resolved in a fair, efficient and timely manner; and
 - (b) appropriate action is taken in relation to issues raised in complaints; and
 - (c) reasonable steps are taken to ensure that any person who makes a complaint to the provider, and each person with disability affected by an issue raised in such a complaint, is advised how that complaint or issue may be raised with the Commissioner; and
 - (d) appropriate support and assistance in contacting the Commissioner in relation to a complaint is provided to any person who makes a complaint and each person with disability affected by an issue raised in a complaint.
- (4) The system must also require that reasonable steps are taken to ensure that:
 - (a) a person who makes a complaint, or a person with disability affected by an issue raised in a complaint, is not adversely affected as a result of the making of the complaint; and
 - (b) information provided in a complaint is kept confidential and only disclosed if required by law or if the disclosure is otherwise appropriate in the circumstances.
- (5) The system must provide that persons making a complaint:
 - (a) are appropriately involved in the resolution of the complaint; and
 - (b) are kept informed of the progress of the complaint, including any action taken, the reasons for any decisions made and options for review of decisions in relation to the complaint.
- (6) The system must provide that a person with disability affected by an issue raised in a complaint:
 - (a) is kept appropriately informed of the progress of the complaint, including any action taken, the reasons for any decisions made and options for review of decisions; and
 - (b) is kept appropriately involved in the resolution of the complaint.
- (7) The system must provide for the following details to be readily available and accessible to the public:
 - (a) how a complaint about the registered NDIS provider can be made to the provider;
 - (b) how a complaint about the registered NDIS provider can be made to the Commissioner.

-
- (8) The system must also provide for the periodic review of the system to ensure its effectiveness.

9 System must afford procedural fairness

- (1) The complaints management and resolution system of a registered NDIS provider must require that people are afforded procedural fairness when a complaint is dealt with by the provider.
- (2) The Commissioner may, by notifiable instrument, make guidelines relating to procedural fairness for the purposes of subsection (1).

10 Documentation, record keeping and statistics

- (1) The registered NDIS provider must:
- (a) document the complaints management and resolution system; and
 - (b) provide copies of the documented system, and the information required by subsection 8(7), in a form that is accessible to the following persons:
 - (i) persons with disability receiving supports or services from the registered NDIS provider, and their families, carers and advocates;
 - (ii) each person employed or otherwise engaged by the registered NDIS provider; and
 - (c) assist persons referred to in paragraph (b) to understand how the documented system operates.

Note: The documentation required by this subsection must relate only to the complaints management and resolution system itself, as information provided in individual complaints must generally be kept confidential (see paragraph 8(4)(b)).

- (2) The system must provide that appropriate records of complaints received by the registered NDIS provider are kept by the provider, including the following, where appropriate:
- (a) information about complaints;
 - (b) any action taken to resolve complaints;
 - (c) the outcome of any action taken.
- (3) A record made for the purposes of subsection (2) must be kept for 7 years from the day the record is made.

Note: A registered NDIS provider may be required to comply with other Commonwealth, State or Territory laws in relation to the retention of records.

- (4) The system must provide for the collection of statistical and other information relating to complaints made to the provider to enable the provider to:
- (a) review issues raised in complaints; and
 - (b) identify and address systemic issues raised through the complaints management and resolution process; and
 - (c) report information relating to complaints to the Commissioner, if requested to do so by the Commissioner.

Section 11

11 Roles, responsibilities, compliance and training of workers

- (1) The complaints management and resolution system of a registered NDIS provider must set out the roles and responsibilities of any persons employed or otherwise engaged by the registered NDIS provider in relation to the receipt, management and resolution of complaints made to the provider.
- (2) Without limiting subsection (1), the system must provide that each person employed or otherwise engaged by the registered NDIS provider must comply with the system.
- (3) The system must include requirements relating to the provision of training to any persons employed or otherwise engaged by the registered NDIS provider in the use of, and compliance with, the system.

12 Referring complaints

The complaints management and resolution system of a registered NDIS provider must require a complaint to be referred or notified to any other bodies in accordance with any requirements under relevant Commonwealth, State or Territory laws.

Part 3—Complaints to, and inquiries by, the Commissioner

Division 1—Introduction

13 Simplified outline of this Part

A person can make a complaint to the Commissioner about any issue connected with supports or services provided by an NDIS provider. Complaints can be made orally, in writing or by any other appropriate means, and can be made anonymously. A complaint can be withdrawn at any time.

If a person makes a complaint, the Commissioner must decide what to do. The Commissioner may decide to:

- (a) take no action, or defer taking action, in some cases (for example, if the complaint was not made in good faith or there is not enough information to continue); or
- (b) help the complainant and other affected people to work with the NDIS provider to resolve the complaint; or
- (c) undertake a resolution process.

In some cases, the Commissioner must give written notice of the decision and the Commissioner can be asked to reconsider the decision.

If the Commissioner decides to undertake a resolution process, the Commissioner can take certain action such as requiring the NDIS provider to attempt to resolve the complaint, or request the affected people to take part in a conciliation process. Information about the outcome of the resolution process must generally be provided to the people involved in the complaint.

The Commissioner has the power to authorise inquiries into issues connected with complaints, or into a series of complaints, about supports or services provided by NDIS providers. An inquiry can be carried out even if a complaint has not been made to the Commissioner.

The Commissioner can publish a report setting out his or her findings in relation to an inquiry.

14 Purposes of this Part

- (1) This Part is made for the purposes of subsection 73X(1) of the Act.
- (2) It prescribes arrangements relating to the management and resolution of complaints arising out of, or in connection with, the provision of supports or services provided by NDIS providers.

Note: Failure by a registered NDIS provider to comply with the requirements of this Part is a breach of condition of registration (see paragraph 73F(2)(f) of the Act) and may lead to compliance and enforcement action under Division 8 of Part 3A of the Act.

Division 2—Complaints to the Commissioner

Subdivision A—Complaints

15 Making a complaint to the Commissioner

- (1) A person may 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.
- (2) A complaint:
 - (a) may be made orally, in writing or by any other means which is appropriate in the circumstances; and
 - (b) may be made anonymously.
- (3) The complainant may ask the Commissioner to keep any of the following information confidential:
 - (a) the identity of the complainant;
 - (b) the identity of a person identified in the complaint;
 - (c) any other details included in the complaint.
- (4) The Commissioner must take reasonable steps to ensure that:
 - (a) appropriate support and assistance is provided to any person who wishes to make a complaint; and
 - (b) a person making a complaint, and persons with disability affected by a complaint, are provided with information about accessing an independent advocate.

16 Dealing with a complaint

- (1) If the Commissioner receives a complaint under section 15, the Commissioner must acknowledge receipt of the complaint.

Note: Notices, forms and information given under the Act, the regulations or this instrument to a person with disability must be explained by the giver of the notice, form or information to the maximum extent possible to the person in the language, mode of communication and terms which that person is most likely to understand (see section 7 of the Act).
- (2) However, subsection (1) does not apply if:
 - (a) the complaint was received anonymously; or
 - (b) the contact details of the complainant were not provided.
- (3) The Commissioner must, in relation to each issue raised in the complaint, decide to do one of the following:
 - (a) take no further action, or defer taking action, on the issue on the basis that section 17 applies to the issue;
 - (b) give assistance and advice to the complainant, a person with disability affected by the issue and the NDIS provider to which the issue relates;
 - (c) undertake a resolution process.

-
- (4) Before making a decision under subsection (3), the Commissioner may do one or more of the following:
- (a) review documents provided to the Commissioner;
 - (b) visit the location at which the supports or services are provided by the NDIS provider, or the offices of the NDIS provider;
 - (c) discuss the issues raised in the complaint with the complainant, a person with disability affected by an issue raised in the complaint, the NDIS provider or any other person;
 - (d) work with the complainant, a person with disability affected by an issue raised in the complaint, the NDIS provider or a person employed or otherwise engaged by the NDIS provider to:
 - (i) provide advice and assistance; and
 - (ii) where possible and appropriate, assist the persons involved in the complaint to come to a mutually agreed resolution;
 - (e) request information relating to the issues raised in the complaint from any person;
 - (f) take any other action that the Commissioner considers is appropriate in the circumstances.
- (5) In dealing with the complaint, the Commissioner must:
- (a) consider the views of any person with disability affected by the complaint, if the Commissioner considers it is reasonable and appropriate to do so; and
 - (b) take action under this Division with due regard to procedural fairness, including by allowing a person employed or otherwise engaged by an NDIS provider reasonable opportunity to comment on any proposed adverse finding in relation to the person; and
 - (c) seek to resolve the complaint as quickly, and with as little formality, as a proper consideration of the issues raised in the complaint allows.

Note: The Commissioner must also comply with the rules of procedural fairness when dealing with complaints (see section 30).

17 No further action, or deferring action, in relation to a complaint

Decision to take no further action

- (1) The Commissioner may decide to take no further action in relation to a complaint, or an issue raised in a complaint, if the Commissioner is satisfied that one or more of the following apply:
- (a) the complaint or issue was not raised in good faith;
 - (b) the complaint or issue has been, or is being, dealt with under this instrument;
 - (c) the complaint has been withdrawn under section 18;
 - (d) a person with disability affected by an issue raised in the complaint does not wish the issue to be considered by the Commissioner;
 - (e) the complaint or issue is better dealt with by another person or body;
 - (f) there is insufficient information about the complaint, the issue or the complainant to take any further action;

Section 18

- (g) having regard to all the circumstances, further action in relation to the complaint or issue is not appropriate or warranted.
- (2) In deciding whether to take no further action in accordance with paragraph (1)(d), the Commissioner must consider:
 - (a) whether the health, safety or welfare of any person with disability affected by an issue raised in the complaint will be negatively impacted by a decision to take no further action; and
 - (b) whether the person with disability referred to in paragraph (1)(d) has been subject to victimisation, coercion or duress in deciding that the person does not wish the issue to be considered.
- (3) The Commissioner may decide to take no further action in relation to a complaint, or an issue raised in a complaint, if the complaint or issue:
 - (a) is, or has been, the subject of a legal proceeding; or
 - (b) is, or has been, the subject of a coronial inquiry;and the Commissioner is satisfied that that complaint or issue is being, or has been, adequately dealt with.

Decision to defer taking action

- (4) The Commissioner may decide to defer taking action in relation to a complaint or an issue raised in a complaint if the complaint or issue is the subject of a legal proceeding or a coronial inquiry.
- (5) The Commissioner may decide to defer taking action in relation to a complaint or an issue raised in a complaint to enable the complainant or a person with disability affected by the complaint or issue to deal directly with the NDIS provider in relation to the complaint or issue.
- (6) The Commissioner may provide advice and assistance to the complainant, the person with disability or any other person for the purposes of subsection (5).

18 Withdrawal of a complaint

- (1) A complainant may withdraw his or her complaint at any time by advising the Commissioner orally, in writing or by any other means which is appropriate in the circumstances.
- (2) The Commissioner must acknowledge, in writing, receipt of the withdrawal of the complaint.
- (3) Despite the withdrawal of a complaint, the Commissioner may deal, or continue to deal, with the complaint.
- (4) In deciding whether to deal, or continue to deal, with the complaint under subsection (3), the Commissioner may consider the following matters:
 - (a) the wishes of the person or persons with disability affected by an issue raised in the complaint;
 - (b) the health, safety or welfare of any person with disability affected by an issue raised in the complaint;

- (c) whether the complaint may have been withdrawn on the basis of victimisation, coercion or duress.

Note: The Commissioner is not required to give notice of the outcome of a complaints process to a complainant if the complainant withdraws his or her complaint (see Subdivision C).

19 Confidentiality

- (1) The Commissioner must take reasonable steps to ensure that a request for confidentiality under subsection 15(3) is complied with.
- (2) However, the Commissioner may decide not to comply with the confidentiality request if the Commissioner considers that doing so will, or is likely to, place at risk the safety, health or wellbeing of any of the following persons:
 - (a) the complainant;
 - (b) a person with disability affected by an issue raised in the complaint;
 - (c) any other person.
- (3) The Commissioner must take all reasonable steps to notify the complainant before deciding not to keep information confidential that the complainant has requested be kept confidential.

Subdivision B—Resolution process

20 Resolution process

- (1) If the Commissioner decides to undertake a resolution process in relation to a complaint or an issue raised in a complaint, the Commissioner may:
 - (a) require the NDIS provider to which the complaint or issue relates to examine and attempt to resolve the complaint or issue and report back to the Commissioner; or
 - (b) request the complainant, the NDIS provider and any other person to participate in a conciliation process; or
 - (c) provide advice to the NDIS provider in relation to the complaint or issue; or
 - (d) require the NDIS provider to undertake remedial action in relation to the complaint or issue and report back to the Commissioner; or
 - (e) take any other action the Commissioner considers appropriate in the circumstances.
- (2) In taking action under subsection (1), the Commissioner may do one or more of the following:
 - (a) review documents;
 - (b) visit the location at which the supports or services are provided by the NDIS provider;
 - (c) visit the offices of the NDIS provider;
 - (d) discuss the complaint or issue with the complainant, the person with disability affected by the issue, the NDIS provider or any other person;

Section 21

- (e) request information relating to the issues raised by the complaint from any person.
- (3) Evidence of anything said or done by a person in the course of the conciliation of a complaint under this section is not admissible in any legal proceedings relating to the complaint.
- (4) Subsection (3) does not apply in relation to any proceedings commenced under, or in connection with, the Act.

21 Notifying NDIS provider

- (1) If the Commissioner decides to undertake a resolution process in relation to a complaint or an issue arising out of a complaint, the Commissioner must notify the NDIS provider to which the complaint or issue relates about the issue as soon as practicable.
- (2) Subsection (1) does not apply if the Commissioner considers that the notification will, or is likely to:
 - (a) impede the resolution of the complaint or issue; or
 - (b) place the safety, health or wellbeing of the complainant, a person with disability or any other person at risk; or
 - (c) place the complainant or a person with disability at risk of victimisation, intimidation or harassment.

22 Ending the resolution process

- (1) The Commissioner may decide to end a resolution process in relation to a complaint, or an issue raised in a complaint, if one or more of the following circumstances apply:
 - (a) the complaint or issue has been resolved because the complainant, and the NDIS provider to which the complaint or issue relates, have agreed on an outcome;
 - (b) the NDIS provider has addressed the complaint or issue to the satisfaction of the Commissioner;
 - (c) the Commissioner has required the NDIS provider to undertake remedial action within a specified period in relation to the complaint or issue;
 - (d) the Commissioner has initiated action under Division 8 of Part 3A of the Act which relates to the complaint or issue;
 - (e) the complaint has been withdrawn under section 18;
 - (f) the complaint or issue is better dealt with by another person or body;
 - (g) continuation of the resolution process is not appropriate or warranted because the Commissioner is satisfied that:
 - (i) despite reasonable inquiry by the Commissioner, the circumstances giving rise to the complaint or issue cannot be determined; or
 - (ii) information given by the complainant was not given in good faith; or
 - (iii) the complaint or issue has already been, or is already being, dealt with under this instrument; or

- (iv) a person with disability affected by an issue raised in the complaint does not wish the resolution process to continue;
- (h) the Commissioner is satisfied that, because the complaint or issue is, or has been, the subject of a legal proceeding or a coronial inquiry, the complaint or issue has been, or will be, adequately dealt with;
- (i) having regard to all the circumstances, continuation of the resolution process is not appropriate or warranted.

Note: Requirements to provide a notice relating to a decision under this section to end a resolution process are in Subdivision C.

- (2) In deciding whether to end a resolution process in accordance with subparagraph (1)(g)(iv), the Commissioner must consider:
 - (a) 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
 - (b) whether the complaint may have been withdrawn on the basis of victimisation, coercion or duress.

Subdivision C—Notices relating to outcome of resolution processes

23 Notice of decision to take no further action

- (1) If the Commissioner decides to take no further action in relation to a complaint or an issue arising out of a complaint under paragraph 16(3)(a), the Commissioner must, as soon as practicable, give the complainant:
 - (a) the reasons for the Commissioner's decision to take no further action and any appropriate feedback for the complainant in relation to that decision; and
 - (b) information about how the complainant may apply for reconsideration of the decision by the Commissioner.
- (2) However, the Commissioner is not required to comply with subsection (1) if:
 - (a) the complaint was made anonymously; or
 - (b) the complaint was withdrawn under section 18.
- (3) In complying with subsection (1), the Commissioner may, on request from a person with disability affected by an issue raised in the complaint, exclude information.
- (4) The Commissioner may exclude information under subsection (3) only if the Commissioner is satisfied that such an exclusion will not materially affect the complainant's ability to seek reconsideration of the decision or be afforded procedural fairness.

24 Notice of outcome of resolution process

- (1) This section applies if the Commissioner decides to end a resolution process in relation to a complaint or an issue raised in a complaint under section 22.
- (2) The Commissioner must, as soon as practicable, give the complainant, each person with disability affected by an issue raised in the complaint, the relevant

Section 25

NDIS provider and any person employed or otherwise engaged by the provider who may have adverse findings made against the person, the following information, in writing:

- (a) notice of the outcome of the resolution process including:
 - (i) any key findings or outcomes of the resolution process; and
 - (ii) any actions agreed to be taken by an NDIS provider or complainant in relation to the issue; and
 - (iii) any remedial action in relation to the complaint or issue that the Commissioner requires the NDIS provider to undertake within a specified period; and
 - (iv) the Commissioner's decision to end the resolution process and the reasons for that decision;
 - (b) information about how the complainant or the NDIS provider may apply for reconsideration of the Commissioner's decision;
 - (c) any other information the Commissioner considers relevant.
- (3) However, the Commissioner is not required to comply with subsection (2) in relation to the complainant if:
- (a) the complaint was made anonymously; or
 - (b) the complaint was withdrawn under section 18.
- (4) In complying with subsection (2), the Commissioner may, on request from a person with disability affected by an issue raised in the complaint, exclude information.
- (5) The Commissioner may exclude information under subsection (4) only if the Commissioner is satisfied that such an exclusion will not materially affect the complainant's ability to seek reconsideration of the decision.
- (6) The Commissioner may include different information in a notice given under this section to the complainant, a person with disability affected by an issue raised in the complaint, the NDIS provider and a person employed or otherwise engaged by the provider.

25 Provision of information to other persons

The Commissioner may give information, including about action taken in relation to an issue raised in a complaint, to any person or body that the Commissioner considers has a sufficient interest in the matter.

Subdivision D—Reconsideration of decisions

26 Application for reconsideration by the Commissioner

Reconsideration of a decision to take no further action

- (1) A complainant, or a person with disability affected by an issue raised by a complaint, may apply to the Commissioner for reconsideration of a decision by the Commissioner under paragraph 16(3)(a) to take no further action on the complaint or an issue raised in the complaint.

-
- (2) However, an application cannot be made under subsection (1) if the decision was made because of the circumstance mentioned in paragraph 17(1)(c) (complaint has been withdrawn).

Reconsideration of a decision made to end a resolution process

- (3) If the Commissioner makes a decision under section 22 to end a resolution process in relation to a complaint or an issue, any of the following persons may apply to the Commissioner for reconsideration of the decision:
- (a) the complainant;
 - (b) a person with disability affected by the issue;
 - (c) the NDIS provider to which the complaint or issue relates;
 - (d) a person employed or otherwise engaged by the NDIS provider who may have an adverse finding made against the person.
- (4) However, an application cannot be made under subsection (3) if:
- (a) the decision was made in the circumstances mentioned in paragraph 22(1)(f) (issue better dealt with by another person or body); or
 - (b) the decision was made after a reconsideration decision under paragraph 27(1)(b) and one or more of the circumstances in section 22 applies.

Applications

- (5) A person making an application under subsection (1) or (3) for reconsideration of a decision must:
- (a) state the reasons why reconsideration is sought; and
 - (b) unless subsection (6) applies—make the application within 42 days of the person being notified of the decision.
- (6) The Commissioner may extend the period under paragraph (5)(b) if the Commissioner is satisfied it is appropriate to do so.
- (7) An application under subsection (1) or (3) may be made orally, in writing or by any other means which is appropriate in the circumstances.
- (8) If satisfied it is reasonable in all the circumstances to do so, the Commissioner may:
- (a) notify any other person of an application made under subsection (1) or (3); and
 - (b) provide any other person with a copy of the application; and
 - (c) provide an opportunity for any other person to provide comments on the application within the period specified by the Commissioner.

27 Reconsideration by the Commissioner on application

- (1) Within 28 days of receiving an application under section 26 to reconsider a decision, the Commissioner must:
- (a) confirm the decision in relation to which reconsideration has been sought; or

Section 28

- (b) decide to undertake a new resolution process.
- (2) If the Commissioner is satisfied that the application for reconsideration raises an issue that was not part of, or not related to, the original complaint, the Commissioner may treat the application as a fresh complaint.
- (3) If the Commissioner confirms the original decision under paragraph (1)(a), the Commissioner must notify the following, in writing, of the Commissioner's decision:
 - (a) the applicant;
 - (b) a person with disability affected by an issue raised in the complaint.
- (4) If the Commissioner decides to undertake a new resolution process in relation to a complaint or an issue under paragraph (1)(b):
 - (a) the Commissioner must notify the following, in writing, of the Commissioner's decision:
 - (i) the complainant;
 - (ii) unless the Commissioner is satisfied it would be inappropriate to do so—a person with disability affected by the issue;
 - (iii) the NDIS provider to which the complaint or issue relates;
 - (iv) a person employed or otherwise engaged by the NDIS provider who may have an adverse finding made against the person; and
 - (b) the Commissioner must complete the new resolution process:
 - (i) in accordance with Subdivisions B and C; and
 - (ii) within 90 days of receiving the application under section 26 to reconsider the decision.
- (5) The Commissioner may, before the end of the period referred to in subparagraph (4)(b)(ii), extend the period by up to 14 days.
- (6) If the Commissioner decides to extend the period under subsection (5), the Commissioner must notify the following of the decision, including reasons for the decision:
 - (a) the complainant;
 - (b) a person with disability affected by an issue raised in the complaint;
 - (c) the NDIS provider to which the issue relates;
 - (d) any person employed or otherwise engaged by the NDIS provider who may have an adverse finding made against the person.

28 Reconsideration by the Commissioner on own motion

- (1) The Commissioner may reconsider a decision (the *original decision*) made by the Commissioner in relation to a complaint if the Commissioner becomes aware of new information that, had the Commissioner been aware of it at the time the original decision was made, may have affected the original decision.
- (2) In exercising the power under subsection (1), the Commissioner must have regard to the following matters:
 - (a) the time period that has elapsed since the original decision was made;

- (b) the effect a reconsideration of the original decision would have on any relevant party, including the complainant, a person with disability affected by an issue raised in the complaint, the NDIS provider or a person employed or otherwise engaged by the NDIS provider;
 - (c) any other matter the Commissioner considers relevant.
- (3) If the Commissioner decides to reconsider the original decision, the Commissioner:
- (a) must give written notice of the decision to each person who was provided with notice in relation to the original decision; and
 - (b) must undertake a new resolution process.

Division 4—Other matters

30 Commissioner must comply with procedural fairness rules

In dealing with a complaint, the Commissioner must have due regard to the rules of procedural fairness.

Note: The Commissioner may make guidelines for the purposes of dealing with complaints, including in relation to matters of procedural fairness (see subsection 181D(2) of the Act).

31 Referral to other organisations

- (1) Nothing in this instrument prevents the Commissioner from referring an issue raised in a complaint to the Minister, the Agency, or any other person or body.
- (2) The Commissioner may continue to deal with an issue raised in a complaint even if the Commissioner has referred the issue under subsection (1).

32 Commissioner may take action under the Act

Nothing in this instrument prevents the Commissioner from taking action under Division 8 of Part 3A of the Act in relation to an issue raised in a complaint or an issue raised in information received by the Commissioner.