Office of the Public Advocate
Systems Advocacy

Strengthening voice

A Scoping Paper about
complaints management systems
for adults with impaired capacity

February 2015

Queensland
Government

This document is available online at www.publicadvocate.qld.gov.au or you may contact our Office for access to a hard copy.

Feedback on this document is welcomed. A publication survey is available online and may be submitted electronically. Alternatively, a hard copy may be requested from our Office.

The Queensland Government is committed to providing accessible services to Queenslanders from all culturally and linguistically diverse backgrounds. If you have difficulty in understanding this document, you can contact us on telephone (07) 3224 7424 or by emailing public.advocate@justice.qld.gov.au and we will arrange an interpreter to effectively communicate the report to you.

Disclaimer

Any views or opinions expressed in this document do not necessarily reflect the views of the Department of Justice and Attorney-General or the Queensland Government.

Every effort has been made to ensure this document is accurate, reliable and up to date at the time of publishing. The Office of the Public Advocate will not accept any responsibility for loss caused by reliance on this information and makes no representation or warranty regarding the quality or appropriateness of the data or information.

This work is copyright, however material from this publication may be copied and published without permission on the condition that the meaning of the material is not altered.

© The State of Queensland (Department of Justice and Attorney-General) 2014

Table of contents

Glossary

Adult
A person aged over 18 years who has been found by the Queensland Civil and Administrative Tribunal (the Tribunal) to have impaired capacity for a matter.

Complaint
An expression of dissatisfaction made to an organisation about its outputs (or the complaint-handling process itself) where a response or resolution is either explicitly or implicitly expected.

Complaints management system
The informal and formal systems and processes employed by organisations to respond to customer expressions of dissatisfaction.

Impaired capacity
Impaired capacity is the inability to follow through the process of reaching a decision and putting the decision into effect.

The capacity of an adult to make decisions may differ according to the nature and extent of the impairment; and the type of decision to be made, including, for example, the complexity of the decisions to be made; and the support available from members of the adult's existing support network.

Impaired capacity may arise from a number of conditions including, but not limited to, intellectual disability, acquired brain injury, mental illness and/or degenerative conditions such as dementia.

There are three elements to making a decision, as articulated in the *Guardianship and Administration Act 2000* (Qld):

- understanding the nature and effect of the decision;
- freely and voluntarily making a decision; and
- communicating the decision in some way.[1]

If an adult is unable to undertake one or more of the above-mentioned functions in relation to a specific matter, the adult may be found to have impaired capacity for that matter.[2]

The Queensland Civil and Administration Tribunal determines whether an adult has impaired capacity.[3]

NDIS
The National Disability Insurance Scheme (NDIS) is a system of support for people (aged under 65 years at the time of first access) with a permanent and significant disability that affects their ability to participate in everyday life.[4] The NDIS is progressively replacing existing state-based systems of support from July 2013.[5]

Support
Support is the assistance provided to a person who is unable to perform an activity unaided.[6] Support may be provided by an unpaid informal carer or be delivered through a formal service such as those provided by government, non-government organisations, or private businesses.[7]

---

[1] *Guardianship and Administration Act 2000* (Qld) sch 4 (definition of 'capacity').
[2] Queensland Civil and Administrative Tribunal (QCAT), *Guardianship for Adults* (2014, ver 2) <http://www.qcat.qld.gov.au/__data/assets/pdf_file/0003/101199/Guardianship-for-adults.pdf>.
[3] Ibid.
[4] National Disability Insurance Agency (NDIA), *What is the National Disability Insurance Scheme?* 2 <http://www.ndis.gov.au/sites/default/files/documents/what_is_the_ndis.PDF>.
[5] National Disability Insurance Scheme (NDIS), *Frequently Asked Questions* [question 1: who is eligible] <http://www.ndis.gov.au/frequently-asked-questions>.
[6] Office of the Public Advocate (Queensland), *Support Needs of People with Impaired Decision-Making Capacity* (2012) 4 <http://www.justice.qld.gov.au/__data/assets/pdf_file/0004/153976/AR_Support-v0.10.pdf>.
[7] Ibid.

Background to the paper

The Public Advocate

The Public Advocate was established by the *Guardianship and Administration Act 2000* (Qld) to undertake systems advocacy on behalf of adults with impaired capacity in Queensland. The primary role of the Public Advocate is to promote and protect the rights, autonomy and participation of Queensland adults with impaired capacity in all aspects of community life.

More specifically, the functions of the Public Advocate are:

- promoting and protecting the rights of adults with impaired capacity;
- promoting the protection of the adults from neglect, exploitation or abuse;
- encouraging the development of programs to help the adults reach their greatest practicable degree of autonomy;
- promoting the provision of services and facilities for the adults; and
- monitoring and reviewing the delivery of services and facilities to the adults.[8]

The Office of the Public Advocate estimates that, in 2014, there were approximately 113,000 Queensland adults with impaired capacity.[9] Of these vulnerable people, most have a mental illness (54 per cent) or intellectual disability (26 per cent).

Queensland adults with impaired capacity are among the most disadvantaged people in the community. An unacceptably high level of disadvantage is experienced across a range of social and economic indicators. This disadvantage significantly reduces quality of life and increases the risk of abuse, neglect and exploitation. The disadvantage experienced by adults with impaired capacity is by no means unique to Queensland.

Objectives of the Queensland Public Advocate in relation to complaints management systems

The Office of the Public Advocate has commenced a project concerning the effectiveness of complaints management systems for adults with impaired capacity. Complaints management systems comprise the mechanisms that enable people to make complaints and provide feedback about the services they receive and/or products they use, and are potentially valuable mechanisms for identifying, progressing and addressing issues of concern for adults with impaired capacity. These systems are one part of the broader system of safeguards that exists to protect the rights and interests of vulnerable persons.

With the planned introduction of the National Disability Insurance Scheme (NDIS) into Queensland from 2016, it is an appropriate time to review the ways in which government and non-government agencies manage and resolve the issues presented by people with disability, and consider how complaints management systems may be conceptualised, structured and delivered to be inclusive of, and responsive to, adults with impaired capacity.

This discussion is also timely given recommendations by the Federal Disability Discrimination Commissioner, Susan Ryan, to overhaul complaints handling procedures in disability services[10] in response to recent revelations of abuse within one of Victoria's largest providers of disability services.

---

[8] *Guardianship and Administration Act 2000* (Qld) s 209.
[9] Office of the Public Advocate (Queensland), *The Potential Population for Systems Advocacy, Fact Sheet* (2014) <http://www.justice.qld.gov.au/__data/assets/pdf_file/0012/100821/potential-population-for-systems-advocacy.pdf>.
[10] Australian Human Rights Commission (AHRC), *Disability Discrimination Commissioner Calls for Urgent Action to Protect People with Disabilities* (25 November 2014) <https://www.humanrights.gov.au/news/media-releases/disability-discrimination-commissioner-calls-urgent-action-protect-people-0>. See also 'Former Disability Discrimination Commissioner Calls for National Inquiry into Disability Sector Amid Sexual Abuse Claims' (ABC News, 24 November 2014) <http://www.abc.net.au/worldtoday/content/2014/s4134600.htm>.

Central to the project being undertaken by the Office of the Public Advocate is an interest in identifying and articulating what may constitute best practice in complaints management for the systems that people with disability may interact with. Specific objectives of the project include:

1. broadly mapping the nature of complaints management systems for people with disability in Queensland;

2. identifying characteristics of best practice within complaints management systems that enable adults with impaired capacity to effectively pursue complaints to satisfactory resolution; and

3. determining what may need to change within complaints management systems in Queensland, and for the NDIS more broadly, to provide adequate safeguards for people with disability, particularly those who may have impaired capacity.

The findings in this scoping paper, along with the findings from the systems mapping exercise and subsequent recommendations for systems development, will be presented in the form of a Final Report and fact sheets/resources. These documents will be uploaded on to the Office of the Public Advocate's website, and will inform the Public Advocate's position and subsequent advocacy with relevant agencies in pursuing the development and implementation of adequate and appropriate systemic safeguards for adults with impaired capacity, particularly within the context of supports that may be accessed through the NDIS.

Parameters for the paper

This paper explores the benefits and challenges associated with current complaints management processes for adults with impaired capacity.

The first stage of the scoping exercise for this project comprised a review of the literature published since 1990 in relation to the efficacy of complaints mechanisms for adults with impaired capacity. Due to the relatively small number of academic studies about the experience of making complaints and the efficacy of complaints mechanisms for these individuals, the review was expanded to incorporate a broader base of literature that encompassed non-peer-reviewed studies and the inclusion of studies about people with disability (and other vulnerable groups where appropriate).

The review did not incorporate an analysis of statistical data such as the nature and types of complaints typically made by, or on behalf of, people with disability to statutory bodies such as the Public Guardian, largely because these figures reflect only a fraction of potential complainants with impaired capacity. It instead targets the processes that underpin the making of complaints by adults with impaired capacity, and draws on literature that may have relevance to adults with impaired capacity who undertake this activity within the context of contemporary human service provision.

This stage of the scoping exercise was supplemented by interviews with eight individuals from metropolitan and regional areas of Queensland who provided input from within their respective knowledge bases and experiences. These eight individuals identified as: representatives of peak and statutory bodies; people with disability; parents of people with disability; service providers; frontline staff; and systems advocates. Contributors to the consultation[11] were invited to add their perspectives to the discussion paper by responding to three key questions:

1. Discuss complaints processes with which you are familiar. What do you see as being the key strengths of these processes for adults with impaired capacity who want to make complaints? How do these processes hinder the making, progression and resolution of complaints for these individuals?

2. What do you see as being some of the complexities of making complaints (and expressing concerns and dissatisfaction) for adults with impaired capacity, and what could be put in place at a systems level to resolve/ameliorate the impact of these complexities?

3. What features should the NDIS complaints management process have in order to meet the needs of adults with impaired capacity? Please consider the varying capabilities of individuals within this group (e.g. individuals with a high capacity for independent action and self-advocacy through to individuals who predominantly express themselves using non-verbal forms of communication).

---

[11] referred to from this point onwards as 'contributor(s)'

Data from these discussions was used to identify issues in relation to complaints management systems and the making of complaints by adults with impaired capacity, and identify possible avenues for improving complaints management systems for use by this group.

The paper then aligns this material and existing literature with good-practice principles of complaints management in order to identify the strengths and areas for development that exist within current complaints management systems for adults with impaired capacity.

In doing so, this paper contributes to the existing body of knowledge in this area by synthesising the relevant literature on the topic with the perspectives of a range of stakeholders who have considerable experience in the area of complaints management within the disability service system.

Complaints management systems – an overview

Complaints and complaints management systems

The international standards program for complaints, or ISO 10002:2004,[12] defines a complaint as an expression of dissatisfaction made to an organisation about its outputs (or the complaint-handling process itself) where a response or resolution is either explicitly or implicitly expected.[13] Definitions of complaint typically include notions of 'concerns', 'issues' or expressions of unhappiness about a product or service, all of which are embedded in the notion of 'dissatisfaction'.[14] Cook emphasises the centrality of dissatisfaction to the complaints management process, and argues that all expressions of dissatisfaction, irrespective of form and content,[15] should be attended to within a framework of complaints management excellence.[16]

The systems and processes used to respond to expressions of dissatisfaction are generally referred to as complaints management systems. The Queensland Government Public Service Commission defines a complaints management system as the "policy, procedures, personnel and technology used by an agency in receiving, recording, responding to and reporting about complaints."[17] The operation of complaints management systems is mandated for government agencies[18] and for funded non-government disability service providers,[19] with federal and state legislation providing a number of protections for consumers of non-government-provided goods and services.[20] Multiple avenues exist for complaining about products and services provided by government-funded agencies, regulated industries, and non-regulated suppliers.

Complaints management systems can be both formal and informal in nature. Formal systems comprise the organisational mechanisms and structures that facilitate the systematic progression of complaints through an established and ordered process; in most cases, this is driven primarily by administrative personnel. Informal systems of complaints management also play a vital role in addressing dissatisfaction, and involve the reporting of dissatisfaction at the local level of operations (for example, to support workers and managers). This form of complaints reporting exists separate to non-frontline administrative processes.

At the individual level, complaints management systems provide opportunities for redress in response to perceived wrongdoings and/or expressions of disappointment regarding organisational performance.[21] At a systems level, complaints management models have been conceptualised as a bureaucratic approach to conflict resolution[22] that is designed to manage growing volumes of complaints and instigate self-correction of systems,[23] while generating a source of feedback to service providers and policy makers.[24]

---

[12] The latest version of the international standards, ISO 10002:2004 MOD, was revised and redesignated for the Australian context as AS ISO 10002–2006. See Standards Australia, *Australian Standard: Customer Satisfaction – Guidelines for Complaints Handling in Organizations* (ISO 10002:2004, MOD, 2006).

[13] Cited in Sarah Cook, *Complaint Management Excellence: Creating Customer Loyalty Through Service Recovery* (electronic version, Kogan Page, 2012).

[14] Ibid.; Queensland Ombudsman, *10 Steps to Developing an Effective Complaints Management System (CMS): Councils* <http://www.ombudsman.qld.gov.au/Portals/0/QO_10_Steps_to_Effective_CMS_V4.pdf>; Queensland Government Public Service Commission, *Directive no. 13/06. Complaints Management Systems* <http://www.psc.qld.gov.au/publications/directives/assets/2006-13-complaints-management-systems.pdf>.

[15] Cook, above n 13.

[16] Ibid.

[17] Queensland Government Public Service Commission, above n 14, 1.

[18] See Queensland Ombudsman, *Effective Complaints Management* (2013) [4] <http://www.ombudsman.qld.gov.au/PublicAgencies/Resources/EffectiveComplaintsManagement/tabid/89/Default.aspx>.

[19] Department of Communities, Child Safety and Disability Services (DCCSDS), *Human Services Quality Standards* (2013) <http://www.communities.qld.gov.au/resources/funding/human-services-quality-framework/human-services-quality-standards.pdf>.

[20] Australian Government, *Consumer Guarantees: A Guide for Businesses and Legal Practitioners* (2010a) <http://www.fairtrading.qld.gov.au/__data/assets/pdf_file/0004/257143/acl-consumer-guarantees.pdf>; Australian Government, *The Australian Consumer Law: An Introduction* (2010b) <http://www.fairtrading.qld.gov.au/__data/assets/pdf_file/0004/257152/acl-introduction.pdf>.

[21] Matthew P Bunker and Matthew S Bradley, 'Toward Understanding Customer Powerlessness: Analysis of an Internet Complaint Site' (2007) 20 *Journal of Consumer Satisfaction and Complaining Behavior* 54-71, 55.

[22] Michael J Opuda, *A Comparison of Parents who Initiated Due Process Hearings and Complaints in Maine* (PhD Thesis, Virginia Polytechnic Institute and State University, 1999) 8.

[23] R Javetz and Z Stern, 'Patients' Complaints as a Management Tool for Continuous Quality Improvement' (1996) 10(3) *Journal of Management in Medicine* 39-48, 41; Thomas L Powers and Dawn Bendall-Lyon, 'Using Complaint Behavior to Improve Quality Through the Structure and Process of Service Delivery' (2002) 15 *Journal of Consumer Satisfaction, Dissatisfaction and Complaining Behavior* 13-21.

[24] Javetz and Stern, above n 23, 47.

As good-practice in complaints management recommends that resolution of issues be attempted first at the local level,[25] this paper views complaints management systems as comprising both formal and informal complaints processes.

Good practice principles for complaints management for adults with impaired capacity

Academic research has not targeted issues associated with the making of complaints by adults with impaired capacity specifically. To date, the limited research conducted in this area has tended to discuss complaints management systems in relation to people with disability more broadly, and has predominantly focused on the inputs and outputs of complaints management systems rather than the effectiveness of the process for systems users.[26]

For instance, research has typically explored the number, nature of, and/or broad reasons for the making of complaints;[27] analysed complaint trends in order to explore systems failure and/or the need for systems improvement;[28] and used the existence and prevalence of complaints to ascertain systems compliance with legislation.[29]

Thus research in relation to people with disability (and the smaller group of adults with impaired capacity) has predominantly focused on how complaints have been used to improve systems rather than ascertaining how effective they are at generating improvements in individual circumstances.

There is, therefore, a lack of targeted, peer-reviewed research in relation to the making of complaints by adults with impaired capacity. This lack of knowledge is problematic given that complaints management systems are often promoted by government and non-government agencies as being a key vehicle through which citizens can pursue remedy for grievances.

The lack of support for the effectiveness of complaints management systems for members of this group is further compounded by anecdotal evidence that generally concludes that formal complaints mechanisms are largely ineffective at resolving concerns and improving outcomes for vulnerable people.[30]

Overall, the lack of robust evidence on this issue highlights the need to view complaints mechanisms for adults with impaired capacity as one component of a broader network of systems that may be employed to safeguard the rights and wellbeing of vulnerable members of this group and ensure the quality of supports and services provided to them.

This paper acknowledges the importance of intersectionality in relation to safeguards for adults with impaired capacity, and discusses complaints management systems for this group within this context.

---

[25] See, for example, Queensland Ombudsman, *Make A Complaint* [1] <http://www.ombudsman.qld.gov.au/MakeaComplaint.aspx>.

[26] See, for example, Kathryn Moss and Matthew C Johnsen, 'Employment Discrimination and the ADA: A Study of the Administrative Complaint Process' (1997) 21(2) *Psychiatric Rehabilitation Journal* 111-121; Opuda, above n 22.

[27] See, for example, Joseph Conway, *Workplace Discrimination and Learning Disability: The National EEOC ADA Research Project* (PhD Thesis, Virginia Commonwealth University, 2009); Cristin A Hammel, *Faculty Knowledge of Disability Law and its Relationship to Attitude, Education and Experience* (PhD Thesis, Hofstra University, 2009).

[28] See, for example, Carolyn A Kennedy, *A Qualitative, Narrative, Phenomenological Case Study: Why Litigation is Frequent in Special-Education Disputes* (PhD Thesis, University of Phoenix, 2007); Song Ee Kim and Xinran Y Lehto, 'The Voice of Tourists with Mobility Disabilities: Insights from Online Customer Complaint Websites' (2012) 24(3) *International Journal of Contemporary Hospitality Management,* 451-476; Judith Hale Robertson, *The Influence of the Monitoring Process on Special Education Services in West Virginia* (PhD Thesis, West Virginia University, 2003) 66; Wangyang Wu, *Optimization Models for Selecting Bus Stops for Accessibility Improvements for People with Disabilities* (PhD Thesis, Florida International University, 2009).

[29] See, for example, Marla F Crawford, *Individuals with Disabilities Education Improvement Act of 2004 Noncompliance Determination Complaints in Commonwealth States* (PhD Thesis, Capella University, 2013); Joanna M Ferrie, *The Impact of the Disability Discrimination Act Part 4 on Scottish Schools* (PhD Thesis, University of Glasgow, 2008); Kim and Lehto, above n 28; Laura Michelle Seese, *Connecticut Compliance with Section 04: Policies and Procedures* (PhD Thesis, University of Connecticut, 2004); Armand Spurgin, Suzanne Wilson and Terri Steffes, *Section 504 Compliance in Missouri School Districts: A Problem-Based Discrepancy Analysis* (Postgraduate Thesis, Saint Louis University, 2013).

[30] See, for example, 'Nursing Home Deaths Spark Concerns Over Aged Care Complaints System' (ABC News*,* 7 November 2013) <http://www.abc.net.au/news/2013-11-07/nursing-home-deaths-spark-concerns-over-aged-care-complaints-sy/5075260>; 'Elder Abuse' (Second Report of Session 2003-04, Vol. 1, House of Commons Health Committee (HCHC)) 29 <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmhealth/111/111.pdf>; Calla Wahlquist, 'System Urged for Disability Complaints' (The Examiner (Tasmania), 23 February 2013).

Broadly recognised good-practice principles in complaints management

As discussed above, research on the efficacy of complaints management systems for adults with impaired capacity, and for people with disability generally, is limited. It is therefore difficult to make evidence-based determinations about what aspects of existing complaints management systems are and are not currently working well for adults with impaired capacity.

In the absence of a strong evidence base, the discussion within the next section of the paper is based upon what are broadly recognised as good-practice principles for use in complaints management systems.

These good-practice principles have primarily been drawn from the frameworks outlined by three key statutory complaints-appeals bodies: the Commonwealth Ombudsman (national level);[31] the Queensland Ombudsman (state level);[32] and the Disability Services Commissioner Victoria (DSCV) (disability-specific).[33] Each of these agencies has constructed a good-practice framework that promotes key complaints management principles outlined in the international standard for complaints management.[34] [35]

It is important to note that the degree to which good-practice principles of complaints management are incorporated within organisational systems – and the administrative approaches with which they are implemented – varies considerably across organisations.[36] Similarly, the key principles articulated within the above-mentioned frameworks vary slightly in wording but broadly encapsulate the following constructs:

- accessibility;
- fairness;
- customer focus;
- efficiency; and
- systems improvement.

The Appendix to this paper details key features of these principles as derived from the three frameworks identified above.

The next section of the paper also discusses the findings of the literature review and interviews with contributors in relation to strengths, complexities and barriers for adults with impaired capacity and complaints management systems. In particular it identifies those features of complaints management systems identified as working or not working well for adults with impaired capacity.

---

[31] See, for example, Commonwealth Ombudsman, *Better Practice Guide to Complaint Handling* (2009) <http://www.ombudsman.gov.au/docs/better-practice-guides/onlineBetterPracticeGuide.pdf>.

[32] Refer to the Queensland Ombudsman website (Queensland Ombudsman (2013) <http://www.ombudsman.qld.gov.au/>).

[33] See Disability Services Commissioner Victoria (DSCV), *Good Practice Guide and Self Audit Tool: Developing an Effective Person Centred Complaints Resolution Culture and Process* (2nd ed, 2013) <http://www.odsc.vic.gov.au/public/editor_images/GoodPracticeG_10FINALWeb_02.pdf>.

[34] See Standards Australia, above n 12.

[35] Government agencies are required to enact Ombudsmen standards (see, for example, Queensland Government – Public Service Commission, above n 14), although it is important to note that Directive 13/06, which required Queensland government agencies to implement complaints mechanisms, was repealed in August 2013 (see Office of Information Commissioner Queensland, *Privacy in Complaint Handling Systems* (2014) 9 <http://www.oic.qld.gov.au/__data/assets/pdf_file/0005/24485/Report_on_privacy_in_complaint_handling_systems.pdf?bcsi_scan_31154f8021ef dec5=0&bcsi_scan_filename=Report_on_privacy_in_complaint_handling_systems.pdf>). Alternative options for confirming the responsibility of agencies to operate effective complaint management systems are currently being explored. In the meantime, government agencies are expected to maintain their current complaints systems (see Office of Information Commissioner Queensland, *Privacy in Complaint Handling Systems* (2014) 9 <http://www.oic.qld.gov.au/__data/assets/pdf_file/0005/24485/Report_on_privacy_in_complaint_handling_systems.pdf?bcsi_scan_31154f8021ef dec5=0&bcsi_scan_filename=Report_on_privacy_in_complaint_handling_systems.pdf>).

[36] According to the Queensland Ombudsman, there is no single model of complaints management appropriate for use in all contexts (Queensland Ombudsman, *Effective Complaints Management* (2006) 7 <http://www.ombudsman.qld.gov.au/Portals/0/docs/Publications/CM_Resources/CMP%20Fact%20Sheet%20Series%20(total%2016)_1.pdf>). Similarly, the Queensland Office of the Public Service Commissioner does not recommend any particular model of complaints management, but requires agencies to implement systems that incorporate accepted best-practice principles (see Queensland Ombudsman, *Effective Complaints Management* (2006) 2 <http://www.ombudsman.qld.gov.au/Portals/0/docs/Publications/CM_Resources/CMP%20Fact%20Sheet%20Series%20(total%2016)_1.pdf>..

Good-practice principles in complaints management for adults with impaired capacity

Accessibility

Broadly the concept of accessibility describes a system that welcomes and promotes complaints; makes it easy for service users to make complaints (which includes providing easy-to-understand information about how to make a complaint); and is open and transparent in the complaints process. Both the literature and most of the contributors identified that facilitating entry into the complaint-making process is a key issue impacting the effectiveness of complaints management systems for adults with impaired capacity.

Visibility

One of the primary factors in relation to accessibility is the visibility of complaints processes. A highly visible complaints process is a key feature of good complaints management practice.[37] The Queensland Ombudsman recommends that organisations actively publicise their organisational complaints functions to customers and potential complainants. Visibility is generally thought to be strengthened using approaches such as displaying brochures or notices about customer rights and complaint-making processes in service outlets, and providing easily retrievable information about how to make complaints on websites.

Some contributors, however, identified that typical strategies for promoting visibility may be insufficient for adults with impaired capacity. For instance, supplying information about how to make complaints in formats such as brochures may have little value for some individuals, particularly those with a pronounced cognitive disability who may not have adequate literacy skills to read such documents or their easy-English accompaniments; may be unable to understand the written content; or may not grasp the significance that making a complaint may have as a means by which to improve their lives. In effect, the usual 'passive' methods of promoting the right to complain and the pathways to enacting that right may be largely ineffective for many members of this group, and may be insufficient to assist them with taking the next step, that is accessing complaints management systems.

Barriers to making a complaint

Irrespective of the degree to which complaints mechanisms are made visible, the literature on making complaints consistently states that most people, regardless of disability, choose not to complain,[38] with only four to five per cent of dissatisfied customers opting to pursue grievances using formal complaints processes.[39] The rates of making complaints by people with disability are reported by the Disability Services Commissioner Victoria (DSCV) to be similarly low at around four per cent.[40] Thus, actual complainants are thought to represent only the tip of the iceberg of dissatisfied service users. The low level of complaints made by people generally is indicative of numerous attitudinal and structural barriers.[41]

In their investigation into the rationale behind non-complaint-making behaviour, Voorhees, Brady and Horowitz found five key influences on why people do not complain: the time and effort required to do so; perceptions of service provider responsiveness; individual personality characteristics (such as lack of assertiveness or an unwillingness to be seen as a whinger); actions by the organisation to remedy dissatisfaction prior to complaint; and changing service providers. They also identified other miscellaneous reasons such as late realisation of failure, loyalty, reputation of the firm, attributions of blame to another cause, and social factors.[42]

---

[37] See, for example, Cook, above n 13); Commonwealth Ombudsman, above n 31, 11-12; Queensland Ombudsman, above n 32, 9. See also HCHC, above n 30, 28, regarding the lack of visibility of complaints mechanisms for older people.

[38] Tor W Andreassen and Sandra Streukens, 'Online Complaining: Understanding the Adoption Process and the Role of Individual and Situational Characteristics (2013) 23(1) *Managing Service Quality* 4-24, 4; Cook, above n 13; Iddo Gal, Pnina Weisberg-Yosub, Maya Shavit and Israel Doron, 'Complaints on Health Services: A Survey of Persons with Disabilities' (2010) 21(3) *Journal of Disability Policy Studies* 181-188, 181.

[39] See, for example, DSCV, above n 33, 18; Queensland Ombudsman, above n 32, 2. SAI Global and Neill Buck (2008) also state that, for every single customer who does complain, there are 26 others with problems and six with serious problems who do not (cited in DSCV, above n 33, 18.

[40] DSCV, above n 33, 18.

[41] See, for example, Gal et al., above n 38.

[42] Clay M Voorhees, Michael K Brady and David M Horowitz, 'A Voice from the Silent Masses: An Exploratory and Comparative Analysis of Noncomplainers' (2006) 34(4) *Journal of the Academy of Marketing Science* 514-527, 524-525.

Other sources confirm these reasons and contribute additional ones. Cook, for instance, states that people do not complain because: they do not believe that anything will happen as a result; complaint-making is too much hassle; it is too difficult to reach the right area; and/or the person has insufficient time.[43] The Commonwealth Ombudsman confirms lack of time; a belief that making a complaint will take too much effort, or the agency will not act on it; a concern that the agency will send the person on a 'wild goose chase'; and complaint fatigue as reasons why people do not complain.[44] Overall, the reluctance to complain is, at least in part, based on individual factors as well as perceptions about process complexity, and the worth and inconvenience of the exercise relative to the personal investment required.

The DSCV identified a number of additional reasons why people with disability do not complain. A consultation over a five-year period by this statutory office found that: people with disability may not complain because they may not want to be viewed as a 'troublemaker'; potential complainants may not be aware of their right to complain or may lack information about how to make a complaint; they may be concerned about the way in which complaining might affect their relationship with the service provider; they may have had previous negative experiences with making complaints that deter them from making subsequent ones; and/or they fear retribution or the withdrawal of service.[45]

Additionally, Milne argues that family members – who may be the only individuals aside from service personnel and residents to regularly enter accommodation service settings – often fear complaining in case their family member is 'punished' for their actions,[46] a point also made by Queensland Parents for People With A Disability (QPPD) in relation to people with disability living in supported accommodation.[47] The reasons why vulnerable people do not complain are often related to fear and are therefore considerably more concerning than they are for the general population. This contention was supported by several contributors who similarly agreed that fear of retribution was likely to be a significant reason behind why adults with impaired capacity living in supported accommodation do not complain about the services they receive. This fear is exacerbated by the high degrees of reliance some adults with impaired capacity may have on service providers who provide support across multiple aspects of everyday living. Reprisal – which may be hidden and/or subtle in nature and thus difficult to identify, let alone prove – may have far greater impact upon an adult with impaired capacity than it would for a person who is not as reliant on others to support their access to the essentials of life.[48]

In addition to discussing fear of retribution as a barrier to making complaints, contributors confirmed a number of the complaint-making barriers identified in the literature.[49] These barriers included: the complexity and confusing nature of formal systems and appeals processes;[50] not knowing or understanding that they could complain; difficulties in communicating complaints as a result of pronounced cognitive or communication disabilities;[51] and the inherent power imbalance between adults with impaired capacity and their service providers[52] that prevented issues from being raised and resolved.

---

[43] Cook, above n 13.

[44] Commonwealth Ombudsman, above n 31, 12-13.

[45] DSCV, above n 33, 18; see also Queensland Parents for People with a Disability (QPPD), *Papering Over the Cracks: The Veneer of Prevention* (2005) 39 <http://www.qppd.org/images/docs/ci_report_2005.pdf>.

[46] Alisoun Milne, 'Commentary on Protecting My Mother' (2011) 13(1) *The Journal of Adult Protection* 53-56.

[47] QPPD, above n 45, 39. See also HCHC, above n 30, 23.

[48] Jingree and Finlay (2011) stress that complaining about the support received by a person with a disability is both a sensitive and potentially dangerous undertaking. For instance, some service users in their study talked about criticism, fear and threats when providing feedback to staff about aspects of support they did not like (see Treena Jingree and W M L Finlay, 'Expressions of Dissatisfaction and Complaint by People with Learning Disabilities: A Discourse Analytic Study' (2011) 52 *British Journal of Social Psychology,* 255-272).

[49] See in particular Voorhees et al., above n 42; DSCV, above n 33, 18-19; AHRC, *Background Paper on Access to Justice for People with Disability in the Criminal Justice System* (DLA Piper, 2013) 86-87 <https://www.humanrights.gov.au/sites/default/files/document/publication/2013_DLA_Piper_Background-Paper-on-Access-to-Justice-for-People-with-a-Disability-in-the-Criminal-Justice-System.pdf>.

[50] See also Wahlquist, above n 30; Byrne (cited in 'Draft Report on Caring for Older Australians' (Transcript of Proceedings at Brisbane on Friday, 25th March 2011, at 8.29 am, Australian Government Productivity Commission (AGPC), 2011e) 732, 733, 735, <http://www.pc.gov.au/__data/assets/pdf_file/0019/107443/20110325-brisbane.pdf>).

[51] For example 'Beyond Doubt: The Experiences of People with Disabilities Reporting Crime' (Summary Report, Victorian Equal Opportunity and Human Rights Commission (VEOHRC), 2014) 51-52 <http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/reports/item/894-beyond-doubt-the-experiences-of-people-with-disabilities-reporting-crime>. Further to this point, contributors stated that, because people with pronounced communication disabilities or unique communication needs were sometimes unable to communicate issues using more conventional forms of language, complaints officers needed to accept complaints in whatever form they were presented, including those expressed via behaviour – see Cook, above n 13. The Commonwealth Ombudsman also recognises that complaint-receiving officers must respond professionally to aggressive behaviour by complainants (aggressive behaviour may constitute a form of complaint-making for some few people with impaired capacity) – see Commonwealth Ombudsman, above n 31.

[52] For example, Milne, above n 46.

Thus barriers to complaint-making for adults with impaired capacity encompass a considerable range of factors that both parallel those of their non-disabled peers and contribute an additional range of more complex and serious barriers to being heard.

In conclusion, many people with disability may not complain due to a range of intersecting factors that diminish awareness about, and access to, mechanisms that can generate meaningful resolution of their issues, and reinforce existing cultures of powerlessness.[53] Their ability to complain may be impeded by insufficiently accessible complaints management systems, with even the broadest mechanisms of access insufficient for some adults with impaired capacity, particularly those individuals with severe cognitive or communication disabilities who have few external, facilitative strategies (such as unpaid supports and allies, and well-maintained assistive communication devices) in their lives. There is, therefore, considerable need to develop and implement systems and strategies that improve awareness amongst adults with impaired capacity about their right to complain, and ameliorate the numerous barriers to the making of complaints that exist within both formal and informal complaints management systems.

Fairness

Fairness, as it is approached within complaints management systems, incorporates a number of concepts (including impartiality, confidentiality and transparency), but broadly refers to the enactment of natural justice, also known as procedural fairness. It is one of the key principles underpinning the administration of complaints management systems.

Procedural fairness

Procedural fairness ensures that both complainant and respondent are treated impartially, and that an unbiased decision will be made based on the evidence. It comprises three main principles or rules: the hearing rule (which requires that decision-makers provide opportunities for individuals whose interests may be adversely affected by a decision to have their cases heard); the bias rule (which requires that the judgment not be made by someone with an interest in the matter); and the no-evidence rule (which requires that decisions be based on logical evidence).[54]

It was identified by contributors that the no-evidence rule may be particularly problematic for some adults with impaired capacity who may have their complaints and concerns dismissed as invalid or un-credible because they are unable, or do not know how, to relay their experiences as a substantive and compelling argument that fits within existing intellectual and legal notions of evidence.

Some of the issues faced by adults with impaired capacity in this regard were identified by Keilty and Connelly who explored the barriers experienced by women with intellectual disability who were victims of sexual assault and who were attempting to make statements to police.[55] The authors reported that police officers tended to stereotype women with intellectual disability; were sometimes sceptical of the veracity of their claims; and perceived that complainants had low believability and exaggerated their complaints.[56] Police also considered their evidence insufficient in terms of detail and chronological accuracy.[57] Further, whether or not the issue was progressed was often dependent upon officers' beliefs about how well the evidence would stand up under scrutiny from the legal system.[58]

Fairness for adults with impaired capacity is, therefore, integrally linked to the concept of access, with the Australian Human Rights Commission stating that if people with disability are not able to present their cause in accordance with the rules of evidence, they may lose meaningful access to justice.[59]

---

[53] For example, Dan Goodley, *Self-Advocacy in the Lives of People with Learning Difficulties* (Open University Press, 2000); Jingree and Finlay, above n 48; Treena Jingree, W M L Finlay and C Antaki, 'Empowering Words, Disempowering Actions: An Analysis of Interactions Between Staff Members and People with Learning Disabilities in Residents' Meetings' (2006) 50(3) *Journal of Intellectual Disability Research,* 212-226.
[54] LexisNexis, *Encyclopaedic Australian Legal Dictionary* (at 27 October 2014) 'Procedural Fairness'.
[55] Jennifer Keilty and Georgina Connelly, 'Making a Statement: An Exploratory Study of Barriers Facing Women with an Intellectual Disability when Making a Statement about Sexual Assault to Police' (2001) 16(2) *Disability & Society* 273-291.
[56] Ibid 283.
[57] Ibid 285.
[58] See also AHRC, above n 49, 9>; Office of the Public Advocate Queensland, *Submission to the Australian Human Rights Commission for the Investigation into Access to Justice in the Criminal Justice System for People with Disability*, August 2013, 6 <http://www.justice.qld.gov.au/__data/assets/pdf_file/0012/208101/AHRC-Submission-Disability-and-Criminal-Law.pdf>; VEOHRC, above n 51, 35.
[59] AHRC, above n 49, 7.

Contributors similarly voiced concerns about the devaluation of evidence provided by adults with impaired capacity, explaining how complaints were often dismissed prior to objective investigation because they were not considered credible.[60] Further, some contributors argued that the body of information and the evidence held and presented by organisations is, in contrast to that of adults with impaired capacity, often voluminous and is generally weighted in favour of the organisation and its processes.

Adults with impaired capacity may have considerable difficulty articulating their concerns, and their issues may therefore not be perceived as substantial enough to warrant change.[61] Limited and prejudicial conceptions about what constitutes credibility may result in the failure to properly investigate expressed concerns or reports of abuse, and a lack of fair consideration of the issues presented by people who may have a limited ability to manage and articulate 'evidence'.

Transparency and objectivity

Fairness in the making of complaints also encompasses the notions of transparency and objectivity: fair decisions are available for scrutiny and are made without prejudice (see the bias rule). One contributor highlighted transparency as one of the strengths of government departments' handling of complaints. Several contributors agreed that complaints management processes that were independent in both policy and practice were essential to a fair and effective complaints system.

Some contributors consequently argued that organisations operating their own complaints and investigations systems had an inherent conflict of interest in relation to the impartial resolution of complaints,[62] and a number of contributors discussed how employment of independent investigators was an important approach for lessening the appearance of this conflict. So too was ensuring that complainants were made aware of and were encouraged and supported to seek external, independent review of decisions. Some contributors also identified that the appearance of fairness – and thus independence – was sometimes compromised by government departments and appeals bodies that referred complaints back to respondent organisations for investigation and decision-making.

In essence, complainants with impaired capacity may find themselves disadvantaged within organisational systems and cultures that nurture attitudinal biases towards adults with impaired capacity (which unduly limit expectations in relation to credibility and the giving of evidence), and make determinations about the worth of complaints based on the partial exploration of claims.

Fairness may therefore be compromised by a lack of robust and unbiased investigatory process, and the failure to situate judgment with agencies that are sufficiently independent of the matter. As such, complaints management systems for adults with impaired capacity need to incorporate robust processes that ensure individuals within this group are afforded maximum access to justice in making complaints.

Customer focus

Customer-focused complaints management systems demonstrate high degrees of responsiveness towards the needs of all complainants. Some of the features of a responsive complaints management system include being able to contact the organisation using complainants' preferred means; being treated like a person not a number; dealing with polite and professional staff; dealing with someone who takes complainants' expressions of unhappiness and dissatisfaction seriously and who shows understanding of the issue; being dealt with honestly; and receiving an apology if the organisation is at fault.[63] Customer-focused complaints management systems therefore require strongly personalised approaches to working with complainants.

---

[60] QPPD also found that users of disability services who made complaints were often treated with disbelief (see QPPD, above n 45, 40). See additional discussions on the perceived credibility of witnesses with a disability, for example: AHRC, above n 53, 16; Office of the Anti-Discrimination Commissioner Tasmania (OADCT), *Submission of the Anti-Discrimination Commissioner, Tasmania, to the Australian Law Reform Commission, Inquiry into Equality, Capacity and Disability in Commonwealth Laws* (2014) 39 <http://www.antidiscrimination.tas.gov.au/__data/assets/pdf_file/0006/277449/14.01.30-ADC_Submission_to_ALRC_re_capacity.pdf>.
[61] See, for example, AHRC, above n 49, 7-21.
[62] See, for example, ABC News, above n 10.
[63] Cook, above n 13.

Engagement

In support of this position, most contributors considered that responsive complaints management systems need to be based on a strong platform of engagement. One of the key issues in this regard was the ability of organisational and complaints-handling staff to identify and adapt to the communication needs of complainants, and communicate with them in accordance with those needs. In some instances, this meant working with others who could provide communication support for the person.[64]

Another approach identified by some contributors as being important within the complaints-handling process is the ability to work thoughtfully and empathetically with complainants so as to acknowledge the emotional aspect of making complaints,[65] and move people through the complaints process with dignity.[66] The ability of complaint managers to balance multiple tensions (for instance, showing empathy while also gathering essential facts about the issue; responding positively but not promising more than could be realistically delivered; and adapting to unique needs while still following due process) were considered by some to be important features of a customer-focused complaints management process for adults with impaired capacity. Contributors also identified the need for complainants to be kept informed about progress (in preference to working to a pre-determined timetable of contact) so that they were not left feeling anxious and forgotten during sometimes long and drawn-out complaints management activities.

Responsiveness

The issue of systemic responsiveness towards complainants with impaired capacity also relies on recognition of their decision-making limitations and the concomitant need for decision-making support, along with assessment of their ability to manage information and navigate systems.

Some contributors identified the considerable vulnerability of adults with impaired capacity within systems that failed to identify and respond to their need for decision-making support. For example, researchers Keilty and Connelly found that the police in their study lacked appropriate assessment tools for identifying intellectual disability, and were inconsistent in their attempts to make reasonable accommodation for people who may have had difficulties with decision-making and/or managing the facts of their allegations.[67] The apparent lack of decision-making support provided to complainants with impaired capacity is not consistent with the Commonwealth Ombudsman's recommendation that operators of complaints management systems identify vulnerable clients, recognise their need for decision-making support, and establish mechanisms to support their unique requirements.[68]

In general, the broad consensus amongst contributors was for the entity that receives complaints to: operate with maximum possible flexibility; ensure that adults with impaired capacity are provided with appropriate communication, personal and decision-making supports; and communicate with people according to their stipulated needs throughout the complaints management process. These findings suggest that complaints management systems need to be operated more flexibly and responsively if they are to be sufficiently inclusive of adults with impaired capacity.

Efficiency

Efficiency refers to the resourcing, structuring and operationalisation of complaints management systems that enable the proficient and accountable handling of complaints. The Queensland Ombudsman and Commonwealth Ombudsman both identify adequate resources as being important to the resolution of complaints in a timely, efficient and professional manner.[69] Within a good-practice framework, efficiency includes such elements as the implementation of complaints policy and procedure, and providing a dedicated complaints unit that is staffed by trained personnel.[70]

---

[64] The Victorian Equal Opportunity and Human Rights Commission, however, found that this approach could sometimes be problematic for people with disability, and reported one instance where the perpetrator of the crime was used as the person's interpreter (see VEOHRC, above n 51, 22.

[65] Ibid 20.

[66] Cook, above n 13.

[67] Keilty and Connelly, above n 55, 279-280, 282-4.

[68] Commonwealth Ombudsman, above n 31, 13-14.

[69] Rapid turnaround of issues is a particularly important aspect of efficient complaint management practice, with Cook stating that complaints should be resolved quickly in order to maximise customer satisfaction (see Cook, above n 13).

[70] Ibid.

Resources

In support of this position, research identifies that a lack of resources can impede the resolution of issues. For instance, an early study on employment-related discrimination of people with disability identified that the processing of complaints was hindered by understaffing, inadequate funding for travel and staff training, insufficient time to undertake investigations, and complexities related to investigation.[71]

Contributors similarly supported the proposition that complaints management systems need to be appropriately structured and adequately resourced, with some highlighting the existence of dedicated complaints management units as a strength of complaints management systems in government agencies and large disability service providers.

Some contributors also highlighted the importance of being appropriately resourced in order to develop and operate efficient complaints management systems that employed personnel who were experienced in receiving and managing complaints; were adequately funded to conduct thorough and, ideally, independent investigations; and could progress issues quickly.

Resourcing adequate complaints systems under an NDIS

Several contributors raised the point, however, that disability service organisations are unlikely to receive funding to support organisational administration under the NDIS. Thus administrative expenses – such as operating complaint units – may need to be passed on to consumers through a unit-cost of service.

Some services may choose, however, to operate with less well resourced systems in order to deliver maximum hours of direct service provision per package. Further, without funding for administration, smaller disability service organisations may find the costs of operating good-practice complaints management systems prohibitive. They may, therefore, focus their complaint resolution efforts on localised approaches which, as identified throughout this paper, provide both benefit (e.g. early identification of issues and the incorporation of relationship-based approaches) and risk (e.g. lack of scrutiny, independence and appropriately trained complaint-handling staff).

The requirements and resourcing associated with disability service providers ensuring appropriate complaints management systems under the NDIS will likely require ongoing attention and monitoring. As will the quality of any such systems that are put in place.

Processes versus outcomes for people

Another concern about the efficiency of complaints management systems relates to how well agencies manage the tension between promoting efficiency and following correct administrative procedure; and resolving client concerns.

Some contributors suggested that this tension is not currently being managed well,[72] with formal complaints management systems often being more oriented towards managing process than delivering outcomes for individuals.[73] The prioritisation of efficiency (process) over outcomes is evidenced within the Queensland Human Services Quality Standard 5[74] which requires disability service providers to operate "effective feedback, complaints and appeals processes that lead to improvements in service delivery".[75] The four performance indicators of this standard place considerable emphasis on correct administrative process yet none prioritises the resolution of complaints. While service providers implementing these directives may pass quality audits, they may still evidence low levels of complaint resolution for those who make complaints.

While there is evidently a need for well-resourced organisational and appeals-based complaints management systems that balance the tensions between process and outcome, the nature and structure of

---

[71] Moss and Johnsen, above n 26, 111.

[72] M Pirini, 'The Citizen and Administrative Justice: Reforming Complaint Management in New Zealand (2010) 8(2) *New Zealand Journal of Public and International Law* 239-265.

[73] See also Office of the Public Advocate (Queensland), *Annual Report 2007-2008* (2008) 28-30 <http://www.justice.qld.gov.au/__data/assets/pdf_file/0018/29007/public-advocate-annual-report-2007-2008.pdf>.

[74] See *Department of Communities* (DoC), *Human Services Quality Framework: User Guide* <http://www.hdaau.com.au/includes/files_cms/file/HSQF_UserGuideForServices_jul6_12.pdf>; DCCSDS, above n 19, 5.

[75] Ibid 26.

future NDIS complaints management mechanisms is currently unclear. At present, participants in NDIS trial sites are continuing to use existing organisational complaints management systems, and state- and territory-based appeals mechanisms, to address their issues with service provision,[76] and may also lodge complaints about services with the NDIA.[77] There is, as such, some ambiguity regarding how complaints management systems are operating in trial-site locations.

This confusion was also reflected amongst contributors, with several querying whether state- and territory-based complaint mechanisms would continue to exist post-introduction of the NDIS and, if so, how they would be structured. Discussions with contributors highlighted a lack of knowledge within the sector regarding key features of the landscape for the making of complaints by individuals who are likely to participate in the NDIS once it is introduced. They also identified an urgent need to develop and implement legislation, policy, a quality framework, and funding mechanisms in order to establish the foundation for systems that are critical to service provision.

Systems improvement

The good-practice standard for addressing complaints in organisations is to treat complaints as an opportunity for systems improvement, and to establish complaints-handling as a way of improving organisational responsiveness.[78] Thus, high-quality complaints management processes blend the core elements of customer engagement with the analysis of data to improve systems.[79]

Low rate of complaints

The use of complaints data to inform systems improvement is, however, confounded by the low rates of making complaints (discussed earlier in this paper). According to some researchers, reticence to complain has considerable implications for service improvement.[80] If only five per cent of aggrieved individuals make their grievances known,[81] then systems improvement is based on minimalist data and, as most issues remain hidden (and considering that complainants are self-selected and not randomly selected), it cannot be argued that reported complaints are reflective of the unresolved issues of the larger non-complaint-making population. Thus analyses of complaints provide, at best, only a snapshot of the systemic issues that generate dissatisfaction.[82]

Do all complaints have relevance to system improvement?

Additionally, several contributors argued that not all complaints are reflective of systemic issues. Service user dissatisfaction may be attached to a range of causes specific to the local context, such as the nature of the individual client-worker relationship. Presuming that all complaints have a systemic basis may, some contributors argued, detract from the individual resolution of issues by situating them as systemically-based problems requiring wide-scale responses.

They may be more appropriately viewed as one-off in nature (for instance, the result of a support worker mistake), and resolved using informal and relational approaches. These contributors thus argued that it was important to treat complaints primarily as problems that negatively impact on the quality of life for unique individuals rather than as data that informs systems change.[83]

---

[76] See NDIS, *Quality and Best Practice Framework* [6] <http://www.ndis.gov.au/providers-6>.

[77] See NDIS, *Feedback, Complaints and Review* (2013) <http://www.ndis.gov.au/document/672>.

[78] See, for example, Commonwealth Ombudsman, above n 31, 27-28.

[79] Sarah Cook, above n 13.

[80] Gal et al., above n 38, 186.

[81] See the section in this paper entitled *Barriers to making a complaint*.

[82] Javetz and Stern also discuss the problematic nature of common tools used to collect this data (see Javetz and Stern, above n 23, 47).

[83] Overcamp Martini (2002) similarly found that while systems improvements via such mechanisms as complaints management systems may contribute to improved services generally (through, for instance, reducing the impact of institutional disempowerment), improvements for individuals tended to be slight, mixed or non-existent, and more indirect than direct (Mary Ann Overcamp Martini, *The Protection and Advocacy for Individuals with Mental Illness Act: Stakeholder Perceptions in the State of Utah* (PhD Thesis, The University of Utah, 2002), 257. There is, as such, a danger in assuming that the process of systems improvement is sufficient to translate to tangible improvements in real people's lives apart from targeted, local intervention.

Importance of processes and strategies for reviewing complaints

Some contributors did, however, argue the importance of developing rigorous internal strategies for reviewing complaints management processes and outcomes, and demonstrating continuous improvement. Several discussed how their employing organisations undertook regular reviews of complaint patterns, with one organisation recruiting an external panel made up of individuals with considerable professional expertise in complaints management to provide independent critique of its internal complaints management systems.

Eliciting feedback from service users was also considered to be an important aspect of systems improvement. Two contributors discussed their organisations' strategies for obtaining service user feedback at the systems level, and discussed how its use of service user satisfaction surveys – which consistently produced exceptionally high ratings – were unlikely to be reflective of actual satisfaction levels.[84] This organisation also provided opportunities for service users to participate in consumer forums and give feedback during a facilitated process.

Service provider contributors did not, however, identify ways whereby individual service users might provide systems feedback anonymously; the usual mechanisms of feedback boxes or online mechanisms generally insufficient for those individuals who could not write or did not have access to the internet. There is, in summary, a need for developers and managers of complaints management systems to carefully balance the tension between systems improvement and efficiency, and generating genuine outcomes and resolving issues for individuals. Discussions with contributors also highlighted the need for the implementation of mechanisms that can be used to elicit feedback from individuals who tend not to complain formally and/or who encounter considerable barriers to contributing their perspectives about service provision.

---

[84] See also Florence Simon and Meera Roy, 'Consumer Audit of Community Learning Disability Teams' (1996) 24(4) *British Journal of Learning Disabilities* 145-149 for an early study about the incorporation of service user feedback amongst individuals with severe learning disabilities and their carers. Simon and Roy discussed the use of a consumer audit to obtain feedback of service provision in relation to recently implemented quality standards. The study evidenced several limitations, not the least of which was the tool's use of closed-ended questions that invited 'yes'/'no' responses only and sought responses to issues of concern to the organisation, such as whether or not the individuals had received a copy of their organisational care plan. The study highlighted the need to develop innovative processes for eliciting robust feedback from people with severe learning disabilities, and that tapped into their personal experiences of service use.

Strengthening complaints processes for adults with impaired capacity

Good-practice complaints management frameworks identify the need for agencies to develop, implement and maintain systems that can accommodate the differing abilities and needs of all complainants. Yet the discussion undertaken in the previous section of this paper indicates that there are many barriers within existing frameworks and systems to the identification and resolution of complaints for vulnerable adults with impaired capacity.[85]

It is apparent that members of this group may experience the following:

1. They do not always have meaningful access to complaints mechanisms.

2. They may not be afforded fair and equal hearing during the complaint making process.

3. They may not be responded to with sufficient flexibility.

4. They may not have access to sufficiently resourced complaints management systems.

5. They may find 'resolution of their issues to reasonable satisfaction' is given lesser priority than using complaints data for systems improvement.

While the *Convention on the Rights of Persons with Disabilities* places obligations on states parties to make reasonable adjustments to supports, systems and processes to ensure they are accessible to people with disability, arguably adults with impaired capacity require significantly more responsiveness than is currently afforded within existing feedback and complaints management systems.

The following section of the paper discusses key points identified from within the literature and by contributors that may enhance the supports provided to, and outcomes generated for, adults with impaired capacity who make complaints. It highlights principles, strategies and mechanisms that are currently being used within the sector (and that align with good practice principles), and which could be used to strengthen the voices of vulnerable members of this group within the disability service provision context more broadly. These concepts are discussed in line with the theme of systems integration and have numerous implications for the broader system of safeguards that will be required by adults with impaired capacity who participate in the NDIS.

Prioritising satisfaction

The introduction of a customer-driven marketplace of disability service provision offers a number of challenges for existing complaints management systems. As discussed earlier in this paper, the current orientation of complaints management systems for adults with impaired capacity was thought by contributors to be more strongly focused on adhering to correct administrative process than on delivering satisfactory outcomes for complainants. In contrast, the literature on good practice in complaints management requires that the resolution of customer dissatisfaction remains the key priority during the complaints-handling process.[86]

In support of this point, several contributors stated that complainant satisfaction will need to become an important priority when processing complaints associated with the provision of supports through the NDIS. For instance, one contributor argued that the customer-focused orientation of the NDIS heralded a paradigm shift in the way disability service providers will need to respond to complaints made by adults with impaired capacity, with failure to generate service user satisfaction potentially resulting in the loss of customers.[87]

---

[85] See, for example, HCHC, above n 30, 29.
[86] Cook, above n 13.
[87] Ibid.

Benefits and challenges of a market-driven system

The customer-focused orientation has the potential to drive stronger efforts by service providers to improve satisfaction with service provision, and promote the development of more user-friendly and responsive feedback systems. From this perspective, the customer-driven nature of the NDIS and its associated imperative to respond to individual needs and goals makes the resolution of client dissatisfaction and rebalancing the process-outcome tension of complaints management key priorities for service providers.

Some contributors, however, stated that a market-driven system may continue to work against vulnerable adults with impaired capacity. They suggested that contracts with service providers are likely to come with cooling-off periods and exit fees, and that exiting unsatisfactory services may become a potentially lengthy and expensive undertaking as a result.

Two contributors also highlighted the potentially low take-up rates of self-directed funding by people with disability,[88] a point that highlights the relative fragility of the notion of 'marketplace'. Thus, without designated supports that assist participants with navigating contractual complexities, the notions of 'customer satisfaction' and 'service provision marketplace' may have relatively little meaning for many adults with impaired capacity.

Additionally, several contributors discussed how a shift towards customer satisfaction and subsequent promotion of the right to make complaints may have negative consequences for some service users. For instance, individuals who frequently express dissatisfaction may eventually become viewed as vexatious complainants or 'too hard to service', and may be strongly encouraged to seek services elsewhere.

Supporting adults with impaired capacity to become 'savvy consumers'

While the achievement of complainant satisfaction may strongly underpin the complaints management process within consumer-driven industries, it also brings considerable complexity with respect to some adults with impaired capacity.

As identified by a number of contributors, service provider agencies will be contracted to provide supports to people in accordance with negotiated arrangements. If participants are not educated and/or supported to understand the contractual stipulations of service provision (for instance, that support was contracted for some activities and not others),[89] they may become dissatisfied about issues that are not within the scope of the client-provider agreement.

Similarly, requests by participants to breach legislation (such as requiring workers to undertake support activities that contravene workplace health and safety legislation) may necessitate a negative response from the service provider, thereby contributing to participant dissatisfaction.

This input suggests that the notion of 'satisfaction' in complaints management will need to be revisited for people with disability under the NDIS, with complaints management philosophies and processes requiring closer alignment with consumer-driven models of service delivery.

Further, supporting participant satisfaction will require that adults with impaired capacity are no longer seen as service recipients but are actively assisted to become savvy consumers of the systems that support them. They will, therefore, require education and, where necessary, appropriate supports to assist them with understanding and navigating the nature of their contractual arrangements with service providers; the relationship between personal expectations and the service provider-participant agreement/contract; and their rights within the feedback process.

---

[88] The AGPC reported that only 10 per cent of people with disability in the UK choose to fully manage their own budgets (see 'Disability Care and Support' (Vol. 1, No. 54, AGPC, 31 July 2011a) 31 <http://www.pc.gov.au/__data/assets/pdf_file/0012/111270/disability-support-volume1.pdf?bcsi_scan_a1c99feec31f2dec=0&bcsi_scan_filename=disability-support-volume1.pdf>).

[89] The AGPC recommended that Local Area Co-ordinators (LACs) be assigned to support NDIS participants in the negotiation of support arrangements with prospective service providers (ibid 40).

Proactive identification of dissatisfaction and complaints

The good-practice complaints-management frameworks reviewed for this paper highlighted the importance of establishing accessible feedback systems for potential complainants. However, access to complaints management systems is often limited for adults with impaired capacity, with many from this group encountering significant and numerous barriers to offering feedback. Irrespective of the availability and diversity of mechanisms intended to support access, entering into the complaints-making process may remain inherently problematic for some people with disability, in particular those with impaired capacity.[90]

Establishing effective identification mechanisms

Contributors identified various approaches that assisted service providers to identify dissatisfaction amongst service users and resolve their issues without necessarily requiring them to proactively seek out and engage with formal complaint-making mechanisms. One contributor, for instance, talked about an organisational culture of observation, openness and critical analysis that encouraged support workers to communicate regularly and consistently with service users, each other, management and families about apparent indications of dissatisfaction provided by individuals with highly complex communication needs. This service sought to address issues long before they became complaints, constructing an informal approach that resulted in a high rate of issue resolution. Other contributors supported similarly informal and highly contextualised approaches to identifying issues, arguing that frontline support staff play a critical role in recognising dissatisfaction and assisting service consumers to voice their issues at the local level.[91]

Most contributors recognised, however, that reliance on frontline staff was problematic due to the range of factors discussed in the earlier section in this paper on *Accessibility*. For example, service provider staff must manage implicit conflicts of interest that may act as both overt and subtle barriers to an independent and user-focused approach to complaints resolution. These biases may exist not only at the individual level but also as a result of systemic pressures – staff may negate the seriousness of issues for service users in order to privilege service concerns.[92] Also, as discussed earlier, workers may be required to identify and record instances of service user dissatisfaction but may fail to do so for a variety of reasons.

The importance of external visitors and interested parties

As a counter to these issues, some contributors discussed the value of visitors to the home. Visitors, they argued, provide an opportunity for both service users and their staff to proactively raise issues of concern. They also represent a form of external scrutiny that is typically absent within funded accommodation and support services for people with disability, and yet is often considered necessary for the prevention of abuse and neglect which may occur within the context of institutionalised living.[93]

The literature also points to the great importance of external monitoring and oversight bodies whenever people are supported in 'closed environments', that is where their access to the outside world is limited either due to lawful detention (as in prisons or immigration detention centres) or because of the nature of their disabilities (e.g. in disability residential services).[94] Some people with disability are also held in conditions of detention and restraint through the application of restrictive practices. Further people with complex and severe disabilities are often limited in their independent contact and communication with people and entities outside of their residential service as a result of the level of support that they require. It is therefore vital that people who are independent of these services are able to come into the service and engage residents, while also monitoring the delivery of supports and services in these environments.

---

[90] See also Jingree and Finlay, above n 48.

[91] Given that most individuals who complain do so at the local level, Gal et al. recommend that agencies develop mechanisms for tapping into frontline practitioners' knowledge about the causes of customer dissatisfaction so that this information is incorporated into organisational analyses of complaints. The identification of complaints, and the diligent recording of them, may thus contribute useful data for systems improvement. See Gal et al., above n 38.

[92] See also Jingree and Finlay, above n 48.

[93] See Carolyn Frohmader (cited in Xavier Smerdon, 'Independent Inquiry Call Over Yooralla Abuse' (Pro Bono Australia News, 25 November 2014) [24] <http://www.probonoaustralia.com.au/news/2014/11/independent-inquiry-call-over-yooralla-abuse# >).

[94] Bronwyn Naylor, Julie Debeljak, Inez Dussuyer and Stuart Thomas (eds) Monitoring and Oversight of Human Rights in Closed Environments: Proceedings of a Roundtable (29 November 2010, Monash University Law Chambers, Melbourne).

Contributors identified that although many people living in accommodation services do not have family members or friends who regularly visit them, they are visited periodically by Community Visitors.[95] Several contributors highlighted the Community Visitor Program as a key complaints outreach mechanism for people residing in supported accommodation services, and an important vehicle for addressing issues for adults with impaired capacity who may find it extremely difficult to enter into complaint-making systems, let alone navigate them.[96] According to these contributors, the Community Visitor Program provides an essential safeguard by conducting regular, unannounced visits and offering periodic (and, where identified, more extensive) involvement with service users living in visitable sites in order to identify issues of possible concern; access information and conduct investigations to explore these concerns; and contribute necessary advocacy on their behalf.

The Community Visitor Program was thus viewed as an important safeguard within the disability service system, functioning not only as a form of outreach to some of the most vulnerable adults with impaired capacity and providing a necessary form of external community-based scrutiny, but effectively providing these individuals with access to feedback processes and complaints management systems via the proactive identification of issues by trained and independent visitors.

Contributors did, however, raise questions about the current Community Visitor Program as a sufficient complaints-identification mechanism. They discussed how the infrequency of visits (in many instances, only four times a year) was potentially insufficient for developing a close relationship with people in order to communicate effectively and recognise their more subtly expressed concerns; identifying and responding to issues as they arose; and identifying entrenched and well-hidden abuse, neglect and/or exploitation. Contributors also noted that the Community Visitor Program is limited in jurisdiction, its sphere of impact extending to only a small proportion of potentially vulnerable adults with impaired capacity. Thus, in its current form, the Community Visitor Program was considered to be only partly sufficient for addressing complaints made by adults with impaired capacity, and would require significant expansion, a number of changes, and the introduction of legislation to support its establishment and operation within the NDIS.

The Community Visitor Program – or a similar inspectorate – was, however, considered by a number of contributors to be a vital and necessary contributor to any feedback strategy for adults with impaired capacity (especially if it could ensure timely, safe and robust identification and resolution of urgent and/or less overt participant issues), and comprised a vital form of complaints outreach for service users who experience considerable barriers to accessing feedback mechanisms.

In conclusion, the existence of diverse and entrenched barriers to access poses a considerable challenge to the development of effective complaints management systems within the NDIS. The inability for some adults with impaired capacity to proactively engage in making complaints at the formal systems level presupposes a need for the reconceptualisation of 'access.'

This conclusion is pre-empted by the Commonwealth Ombudsman, who identifies outreach activities as one way of identifying complainants,[97] and Gal et al., who recommend that organisations develop ways of proactively seeking out the causes of dissatisfaction for people with disability.[98] In this way, 'accessibility' (which requires the complainant to seek out the system) becomes 'identification' (where the complaint system seeks out the dissatisfied customer). An NDIS participant with a significant communicative or cognitive disability would therefore not be required to actively seek out a passively oriented complaints process, but would be regularly sought out as a source of possible unresolved concerns.

Reconceptualising 'access to complaints management systems' as 'identification of complaints', and operationalising this principle via robust informal and formal outreach mechanisms, may offer a significant safeguard to adults with impaired capacity and serve to strengthen the process of making complaints for many NDIS participants with impaired capacity.

---

[95] The Community Visitor Program independently monitors a range of visitable sites where people with impaired capacity may live. These sites include: supported accommodation services provided or funded by the Queensland Department of Communities, Child Safety and Disability Services; authorised mental health facilities; and private hostels (The Public Guardian, *Community Visitors* <http://www.publicguardian.qld.gov.au/adult-guardian/adult-community-visitors>).

[96] The value of the Community Visitor Program is identified in other jurisdictions, with the Office of the Anti-Discrimination Commissioner Tasmania (OADCT) recommending that "all jurisdictions make provision for the establishment of an independent Official Visitors program for people with disability to enable independent third parties to have regular, unannounced and direct contact with persons with disability in congregate or supported care settings" (see OADCT, above n 60, 6).

[97] Commonwealth Ombudsman, above n 31, 11.

[98] Gal et al., above n 38, 186.

Ensuring access to independent advocacy

The literature identifies that advocacy plays a critical role in supporting vulnerable people to voice their issues and complaints.[99] Recent Australian Government Productivity Commission reports into disability support[100] and aged care[101] reiterate the importance, and recommend the implementation, of funded independent advocacy supports for users of these systems.[102] High-quality, independent advocacy was similarly viewed by most contributors as fundamental to promoting the rights and interests of vulnerable individuals during the process of making complaints. They confirmed the importance of providing access to advocacy for adults with impaired capacity – particularly individuals with a pronounced cognitive and/or communication disability – in order to raise and progress their complaints to satisfactory resolution.

Existence of adequate advocacy services now and under an NDIS

Contributors highlighted, however, that the number of independent advocacy services and employed advocates within Queensland was insufficient to address existing demand for independent advocacy, let alone the level of need that would be generated through full implementation of the NDIS. In acknowledging the scarcity of advocacy organisations and the lack of clarity regarding the nature and funding of advocacy under the NDIS,[103] contributors identified a range of supplementary forms of advocacy for possible use by adults with impaired capacity. They included: strengthening participants' capacity for self-advocacy; engaging family/unpaid support; encouraging frontline staff to incorporate advocacy into their support practice; and strengthening the Community Visitor Program.

Self-advocacy

With respect to self-advocacy, contributors held divergent views about its worth. Some contributors promoted self-advocacy as a viable alternative to paid advocacy, with two contributors discussing their organisations' efforts to develop service users' skills in self-advocacy, thereby strengthening the latter's ability to raise and progress issues themselves.

In contrast, one contributor argued that self-advocacy may be relatively ineffective in some instances, especially where people experienced considerable barriers to communicating their concerns or were attempting to engage with formal appeals processes. This individual proposed that formal complaints management mechanisms were typically too complex and adversarial in nature for some adults with impaired capacity to navigate, and that members of this group would need to engage legal advocacy in order to best represent and argue their standpoint.[104] [105]

Further, while some authors argue that self-advocacy is an effective approach to advocacy for people with cognitive disabilities,[106] other authors highlight the disempowering nature of service provision and, more particularly, formal systems,[107] which may interfere with efforts of people to construct complaints and then advocate sufficiently strongly to ensure their resolution.

---

[99] See, for example, Deane (cited in AGPC, above n 50, 737-738); Colin Goble, '"Like the Secret Service isn't it." People with Learning Difficulties,' Perceptions of Staff and Services: Mystification and Disempowerment' (1999) 14(4) *Disability & Society* 449-461; HCHC, above n 30, 29; Overcamp Martini, above n 83; Odette Parry, Andy Pithouse, Cathy Anglim and Claire Batchelor, 'The Tip of the Ice Berg': Children's Complaints and Advocacy in Wales – An Insider View from Complaints Officers' (2008) 38 *British Journal of Social Work* 5-19; Andrew Pithouse et al., 'A Study of Advocacy Services for Children & Young People in Wales' (A Key Messages Report, Cardiff University School of Social Sciences, the Social Inclusion Research Unit at University of Wales NEWI, Department of Child Health Wales College of Medicine, July 2005) 16 <http://www.aqvx59.dsl.pipex.com/advocacy-services-children-e.pdf>.

[100] AGPC, above n 50, 26; 'Disability Care and Support' (Vol. 2, No. 54, AGPC, 31 July 2011b) 560 <http://www.pc.gov.au/__data/assets/pdf_file/0013/111271/disability-support-volume2.pdf>.

[101] 'Draft Report on Caring for Older Australians' (Vol. 1, No. 53, AGPC, 28 June 2011c) LXIX, LXXXVI, XXXII, XLIX <http://www.pc.gov.au/__data/assets/pdf_file/0004/110929/aged-care-volume1.pdf>; 'Draft Report on Caring for Older Australians' (Vol. 2, No. 53, AGPC, 28 June 2011d) 129, 136, 165-166, 168, 170-1, 173 <http://www.pc.gov.au/__data/assets/pdf_file/0014/110930/aged-care-volume2.pdf>.

[102] The *Disability Services Act 2006* (Qld) s 32 also requires services to provide service users with access to necessary independent advocacy support.

[103] The National Disability Advocacy Program is currently funded by the Australian Government. Additional funding for individual advocacy services is also provided by State and Territory governments (NDIS, *Advocacy* <http://www.ndis.gov.au/community-2>). It is unclear through which agency these services will continue to be funded, and also whether the existing system will be expanded to meet growing demand for independent advocacy once the NDIS becomes fully operational.

[104] See also Overcamp Martini (above n 83) in relation to advocacy for people with a mental illness.

[105] The cost of securing lawyers may be prohibitive for many (see Byrne, cited in AGPC, above n 50, 732), including people with impaired capacity.

[106] For example Goble, n 99; Goodley, above n 53.

[107] Jingree and Finlay, above n 48.

Conversely, diminishing the importance of self-advocacy may position some adults with impaired capacity, such as those individuals with a learning disability, as overly vulnerable and reliant on others to pursue issues on their behalf.[108] As the Law Reform Commission Ireland wrote, even *benign* paternalism may undermine autonomy.[109] Thus advocacy has the potential to become oppressive and requires careful attention to consultation and engagement with the complainant and his/her allies,[110] carefully balancing the tension between strengthening voice and limiting agency.

So while self-advocacy may support the efforts of some complainants with disability, it may be disadvantageous if it is not adequately supported within organisations that promote it[111] or if it is relied upon as the primary form of advocacy for those individuals who struggle to manage information and/or communicate their argument effectively.

Other sources of advocacy

A number of contributors also identified the potential for support workers in disability services to act as advocates. However, relying on frontline staff to act as advocates is fundamentally problematic for the reasons that were outlined earlier in this paper. One of the most obvious reasons is the presence of an entrenched conflict of interest: workers are required to adhere to organisational directives as part of their employment, and may thus perpetuate the very systems that contribute to consumer disempowerment.[112] Some contributors did suggest, however, that workers could hold roles as initiators and supporters of the process involved in making complaints, and could facilitate access to advocacy services.

In lieu of professional or self-advocacy, some contributors identified the potentially valuable contribution of unpaid advocacy by family and community members. Others, however, raised the point that many individuals supported by the disability service system do not have families/allies who are regularly involved in their lives. An advocacy strategy based primarily within a non-paid framework may thus leave many individuals significantly disadvantaged.

Finally, some contributors viewed the Community Visitor Program as providing an essential and supplemental form of advocacy for members of this group living in supported accommodation services. However, whether Community Visitors will continue to operate within the NDIS is not clear; nor is it apparent whether the Program will receive additional funding to accommodate a substantial increase in the number of people living in visitable sites. In any event, contributors argued that discontinuation of the Community Visitor Program under the NDIS would result in the loss of a valuable source of independent advocacy for many adults with impaired capacity.

In general, the literature and contributors agreed that facilitating access to high-quality, independent advocacy was necessary for strengthening the voices of vulnerable people throughout the process of making complaints. According to this position, advocacy is an important safeguard for NDIS participants with impaired capacity and, according to contributors, should continue to be supported – and ideally expanded – in its various forms within the NDIS.

The adoption of facilitative and inquisitorial approaches

Despite the difficulties with informal approaches to complaints management outlined earlier in this paper, contributors were generally in favour of more facilitative and relational approaches to resolving issues. Several argued that the adoption of highly localised, yet robust and independent, processes was much more likely to resolve conflict congenially, generate solutions for all parties, and strengthen the relationship between service provider and customer than the adversarial approaches adopted by some advocates.

---

[108] See Katrina Scior, 'Using Discourse Analysis to Study the Experiences of Women with Learning Disabilities' (2003) 18(6) *Disability & Society* 779-795.

[109] Cited in L Griggs, 'The Consumer with an Intellectual Disability – Do we Respond, if so, how?' (2013) 12(2) *Competition & Consumer Law Journal* [3].

[110] See Overcamp Martini, above n 83, 276.

[111] See Jenny Slater, 'Self-Advocacy and Socially Just Pedagogy' (2012) 32(1) *Disability Studies Quarterly* [discussion: 4] <http://dsq-sds.org/article/view/3033/3061>.

[112] See, for instance, Jingree et al., above n 48.

Most contributors highlighted the importance of mediation and conciliation in the complaints resolution process, and praised advocates and complaints management personnel who were effective at actively exploring the background to issues, researching the facts, unpacking misunderstandings, educating all parties with regard to the issues, and negotiating solutions on behalf of the complainant in strongly relationally-based ways.[113] Contributors were predominantly supportive of more facilitative and responsive approaches to resolving concerns that involved scoping mutually acceptable possibilities.[114]

Robust but flexible processes for gathering evidence

As part of this facilitative approach to issue resolution, some contributors highlighted the need for robust processes of evidence gathering to ensure that adults with impaired capacity were not disadvantaged during their efforts to construct complaints. Several contributors discussed the importance of conducting independent investigations that incorporated the complainant and respondent perspectives, and also involved the identification and exploration of multiple other sources of information (the triangulation of evidence) such as service and/or medical records, statements from all available witnesses, and delving into background scenarios. Thus, no complaint would be dismissed without comprehensive investigation.

This approach to complaint resolution recognises one of the more entrenched barriers to justice within for the making of complaints by adults with impaired capacity: the clash between what constitutes 'evidence' and 'natural justice', and the right of adults with impaired capacity to have their cases heard and be treated justly. As Keilty and Connelly concluded in their article about women with intellectual disability who sought justice in relation to sexual assault: "obtaining sufficient and accurate evidence is an extremely difficult task requiring skill and planning".[115] Ensuring that adults with impaired capacity are not disadvantaged by limited or prejudiced notions of credibility and evidence[116] requires a committed, thorough and inquisitorial approach to identifying and ascertaining the full body of facts and experiences.

Facilitative and inquisitorial approaches to complaint resolution were broadly acknowledged by contributors as having considerable value for adults with impaired capacity by providing flexibility and bypassing the distanced and bureaucratic approaches of formal complaints management systems; generating robust bodies of evidence; facilitating understanding between the parties; and negotiating actionable outcomes. While external scrutiny and independent advocacy were critical for reducing the risk that dominant agendas would take precedence, resolving issues in less formal ways was much more likely to contribute to strong and equitable relationships between the service provider and service user.

Providing guarantees of safety

Complaint guidelines provided by the Commonwealth Ombudsman state that organisational material provided to customers about making complaints should guarantee they will not experience victimisation in doing so.[117] As such, the making of complaints should be free from fear of retribution. However, as outlined in the section in this paper on accessibility, concerns about safety comprise one of the key reasons why people with disability do not complain about the services they receive.

Further to this, and as indicated by one contributor, fear of retribution may also be a key reason why staff of disability services to not report suspected abuse by colleagues. Despite the Commonwealth Ombudsman's directive, there appears to be some incongruence with respect to providing guarantees of safety in the complaints management standards for disability services.

---

[113] Whether or not resolution should always be conciliated or mediated is not clear, however, with Cook arguing that mediation is not appropriate or successful in situations where the complaint is very serious and the customer is too upset to discuss it; the customer intends to keep the conflict active; mediation could escalate conflict; or the complaint issues are insurmountable (see Cook, above n 13). Thus, a facilitative approach to managing complaints may not be appropriate in instances where people with impaired capacity feel particularly aggrieved about an issue or where their voices may be further subjugated during the complaints-resolution process.

[114] This approach is congruent with industry-based mechanisms for complaints resolution such as the Telecommunications Industry Ombudsman whose primary role is to deliver independent dispute resolution (Telecommunications Industry Ombudsman, *About Us* (2014) <https://www.tio.com.au/about-us>).

[115] Keilty and Connelly, above n 55, 286.

[116] See Griggs, above n 109.

[117] Commonwealth Ombudsman, above n 31, 10.

For instance, while the *National Standards for Disability Services* require disability services to support service users to make complaints "without fear of adverse consequences",[118] existing standard indicators for Standard 5 of the Queensland *Human Services Quality Standards* place no such onus on services.[119]

The lack of safeguards for complainants within Queensland standards are offset to some degree by legislative provisions that offer protections for members of the public who complain on behalf of people with disability,[120] and the efforts of some disability service providers to introduce systems that protect service users who complain and staff who report issues on their behalf. For instance, representatives from one disability service provider discussed their employer's implementation of a whistleblower policy, and the introduction of sessions in staff inductions that promote the expectation that support workers will confront and report poor and abusive support practices of co-workers. In general, however, protections for complainants and whistleblowers do not appear to be particularly robust[121] or well publicised, with one contributor acknowledging that whistleblowing requires courage; the implication being that standing up for people with disability as the colleague of a perpetrator of abuse inevitably means putting oneself at risk.[122]

It is presently unclear as to what policy positions and legislative protections will be established to ensure the safety of complainants within the NDIS. It is apparent, however, that protecting complainants from potential retribution remains one of the more serious aspects of providing feedback for people with disability and their supporters, and is an aspect that must be addressed and managed if members of this group are to be afforded more than tokenistic access to NDIS complaints management mechanisms, and workers are protected when they report the abusive practices of co-workers.

Informal complaint-making processes

One of the key points identified within the literature and by contributors in relation to circumventing some of the aforementioned barriers was the potential value of informal approaches to complaint-making.

The importance of informal complaints management systems is supported by research identifying that most people who complain do so at the local level. Gal, Weisberg-Yosub, Shavit and Doron[123] studied 1,199 adults[124] who made complaints about their health care providers, and found that people with disability were more likely to submit their complaints informally: 53 per cent complained at the point of contact and another 12 per cent complained at senior management level, resulting in almost two-thirds of complainants with a disability complaining orally at the local level.

Gal also found that, despite the increased likelihood that members of this group would access health services as a result of their disability, people with disability used formal complaints mechanisms only slightly more than individuals without disability. Overall, this study highlighted the need for agencies to develop strong mechanisms for accepting and managing complaints at the local level of submission.

There is some evidence to suggest that informal and highly relational approaches to resolving complaints may be of benefit to vulnerable groups, and are preferred by advocates[125] and complainants alike.[126] Pithouse, Parry and Crowley, for example, identified that frontline service personnel prefer to resolve issues at local levels in order to avoid the bureaucratic processes that often accompany engagement with formal mechanisms.[127]

---

[118] Australian Government, *National Standards for Disability Services: Full Version* 18
<http://www.dss.gov.au/sites/default/files/documents/12_2013/national_standards_for_disability_services_-_full_standards_2.pdf>.
[119] See DCCSDS, above n 19, 6.
[120] See the *Public Interest Disclosure Act* (2010) Qld, ss 36-41.
[121] See, for example, QPPD, above n 45, 42.
[122] See also Federal Opposition Leader Bill Shorten's comment that "It is important to acknowledge the courage of those who speak out. It is this courage that will ensure that abuse is exposed and those responsible held to account" as one response to identifying and addressing institutional abuse of people with disability. See Frohmader, above n 93 [17].
[123] Gal et al., above n 38.
[124] Approximately 20 per cent of this number had a disability, 9.2 per cent of whom reported having a mental impairment (ibid 183).
[125] Mary Ann Overcamp Martini, above n 83.
[126] See, for example, Gal et al., above n 38; Pithouse et al., above n 99.
[127] Pithouse et al., above n 99, 31.

Benefits of informal processes

Several contributors highlighted key benefits of informal complaints resolution processes including: the avoidance of bureaucracy; minimisation of distress for service users who engage with formal systems; the relationship-based and facilitative orientation of local approaches; the avoidance of adversarial processes; and the speed with which resolution at the local level could be achieved. Some contributors also identified the potentially pre-emptive nature of local approaches to complaints management. They explained how workers with a strong sense of commitment to, and considerable experience working with, adults who have impaired capacity were able to identify issues early and develop effective responses and/or address the issues long before they became formal complaints.

Drawbacks of informal processes

Conversely, contributors also raised a key risk of informal resolution mechanisms: the failure of frontline workers to identify and respond to service user dissatisfaction. Unlike non-disabled citizens, who often have multiple pathways to making complaints (such as revisiting the location where the problem originated in order to pursue remedy, searching the internet for information about how to make complaints, making online complaints, completing forms, and/or writing letters of complaint), an individual with a pronounced cognitive or communication disability may be largely reliant on workers to initiate the process of making a formal complaint and subsequently to pursue issues on their behalf.

As several contributors pointed out, this arrangement is fundamentally problematic if a service user wishes to complain about the very person who must assist him/her to do so.[128] The significant power imbalance present between service providers and their staff and people with disability (along with the culture of defensiveness that often exists amongst human services workers[129]) amplifies the risk that the assessment of situations will be undertaken from the perspective of the power-holder, and the issues of adults with impaired capacity will be subsumed within other agendas.

However, reporting issues locally may continue to be difficult even if the person's concern does not relate to the worker. Contributors identified how support workers were often prone to ignoring expressions of dissatisfaction by service users. A number discussed how frontline staff of disability and mental health services often negate the concerns of adults with impaired capacity (including complaints about illegal activities such as assault), and fail to follow through on clarifying, progressing and/or resolving their issues. Three contributors discussed how service users would raise issues multiple times only to be labelled as 'vexatious complainants' or have their repeated expressions of dissatisfaction ignored. This apparent rejection of complaints occurred both unintentionally[130] and intentionally.[131] Regardless, ignoring expressions of dissatisfaction for adults with impaired capacity was highlighted as being a significant weakness of informal complaint processes, and may act as a considerable barrier to making complaints.

An important consideration is the often isolated or closeted nature of accommodation service provision to people with disability. Many people with a pronounced disability have relatively little engagement with the wider community apart from the structured support provided to them by their paid workers. As such, they may not have a broad network of unpaid people in their lives who can generate external, alternative perspectives on service provision. Without external scrutiny, informal complaints mechanisms may become oriented towards resolving people's issues from the worker and systemic standpoints.

---

[128] See also ABC News, above n 10, [12].

[129] See, for example, Parry et al, above n 99.

[130] See, for example, Marty Laforest, 'Scenes of Family Life: Complaining in Everyday Conversation' (2002) 34(10-11) *Journal of Pragmatics* 1595-1620. Laforest investigated the naturally-occurring complaint-making interactions that occur within close relationships where there is a high degree of familiarity (as may occur between paid workers and people with impaired capacity who live in disability-based accommodation and support services, and receive support on a 24-hour, seven-days-a-week basis). The researcher identified a type of acclimatisation that occurs in complaining behaviour which is embedded in ordinary interactions, and found that partial acceptance, disregarding of concerns, or rejection of complaint-making behaviours may constitute as much as 90 per cent of responses to expressions of dissatisfaction. See also Derek Edwards, 'Moaning, Whinging and Laughing: The Subjective Side of Complaints' (2005) 7(1) *Discourse Studies* 5-29. Edwards (2005) similarly found that less overt declarations of dissatisfaction (such as those made using passive or indirect means such as whingeing or joking) may undermine the recognition process. Thus the types of everyday complaints that may be made by a person with a decision-making disability to or about staff may simply be perceived by the worker as part of ordinary engagement and, from their perspective, do not constitute an issue requiring resolution.

[131] See Gil Luria, Iddo Gal and Dana Yagil, 'Employees' Willingness to Report Service Complaints' (2009) 12(2) *Journal of Service Research* 156-174. These authors found that, even when workers recognised service users' communications as complaints, only 21 per cent were submitted formally. More than half (53 per cent) were passed on to management for advice or action, and one-quarter (26 per cent) were not reported in any form.

Strengthening informal processes

In any event, it is apparent that, since people with disability complain predominantly at the local level, direct service providers must ensure that the informal component of their complaints management systems is particularly strong. Openness to receiving complaints and the ability to progress issues to resolution need to be priority activities for frontline staff of disability services if adults with impaired capacity are to have the fullest possible access to complaints mechanisms.

According to contributors, however, it is likely that few workers are sufficiently prepared for this task or have sufficiently high levels of expertise in identifying and resolving complaints satisfactorily. Thus, while some frontline workers may manage these activities well,[132] relying on this group of workers more broadly as receiving agents for complaints may situate adults with impaired capacity at considerable disadvantage, and leave some of the most vulnerable service users (for instance, those subject to poor practice or abusive behaviour from staff) without meaningful access to remedy or justice.

Establishing appropriate and responsive systems

As discussed earlier in this paper, good-practice principles of complaints management require appropriate resourcing and operationalisation of customer feedback systems, and adults with impaired capacity will, under the NDIS, require access to appropriately structured local and appeals-based complaint resolution mechanisms. According to contributors, however, little is known about the nature and structure of NDIS-based administrative supports and systems generally, nor complaints management systems specifically.

Further, several contributors questioned whether or not feedback systems, along with other safeguards mentioned in this paper (such as state-based advocacy services and the Community Visitor Program) would continue to exist within the NDIS. If they did, contributors were unclear as to which agencies would have administrative oversight – for example, would a NDIS complaints appeals body be operated by the NDIA or some other government department, and would that agency be nationally or state/territory based?

One contributor argued that local structures (e.g. a Queensland-based complaints appeals body with regional centres) would be needed so that responses to, and decisions about, people's complaints would be responded to with an understanding of the local context. There is still a considerable lack of understanding amongst service providers about the interface between the NDIS and existing federal, state and local mechanisms of administration and support, and how the final structure will impact on service operations.

Establishing and funding administrative systems under an NDIS

Service provider contributors identified a number of challenges involved in developing locally operated systems in readiness for the NDIS. They discussed how the change in funding structure will have multiple implications for the development, implementation and maintenance of administrative systems, including those connected with complaints management. For instance, some highlighted the likelihood that, without funding for the administrative aspects of service provision, small disability service providers will find it cost-prohibitive to operate dedicated complaints units that adhere to good-practice standards.

Additionally, if disability service organisations were to increase their emphasis on customer satisfaction and improve their responses in line with good practice,[133] the costs of operating both formal and informal complaints management systems may increase considerably. Some contributors did, however, discuss existing arrangements for sharing complaints management resources with other organisations (for instance, conducting investigations for other disability services). They also highlighted the possibility that smaller disability service organisations could purchase administrative services, such as complaints resolution at the formal level, from the larger service providers. As noted, this would still come at a cost, however, and is only likely to be pursued if either there is a legislative mandate to have such a system and/or if the service organisation places sufficient value on having a robust and responsive system.

---

[132] See the section in this paper entitled *Proactive Identification of Dissatisfaction and Complaints*.
[133] Such as supporting the professional development of frontline staff to recognise, report and resolve complaints, and implementing facilitative and inquisitorial approaches to resolving issues.

Irrespective of the work being undertaken by service providers to develop local mechanisms for complaints management, there is an evident and urgent need for clarity within the broader disability sector in a number of areas including: key NDIS systems (and the agencies that will be assigned administrative oversight); legislative mechanisms to establish these mechanisms; and the regulatory obligations that will be placed on service providers.

Linking what works to principles of good-practice in complaints management

The specific needs of adults with impaired capacity offer particular challenges to the conceptualisation and operationalisation of complaints management systems, and necessitate expansion of the underlying strategies for achieving good practice in order to adequately accommodate adults with impaired capacity.

The suggested strategies in this section have been discussed as a way of potentially strengthening existing good-practice principles of complaints management for use within the NDIS.

In essence, each of the features identified in this section can align with existing key principles of good-practice for complaints management. For instance, the proactive identification of complaints via such mechanisms as the Community Visitor Program may assist with:
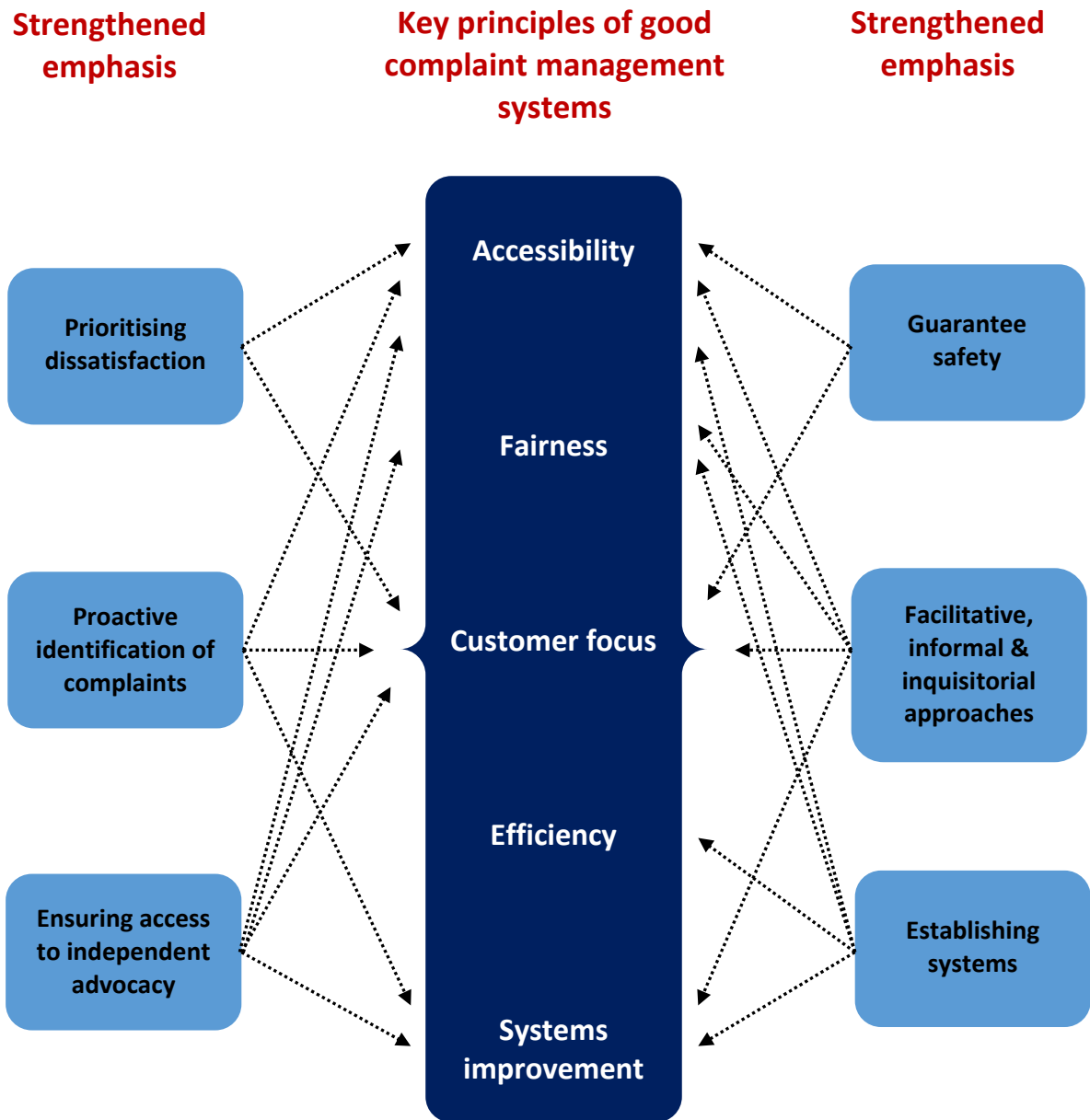
1) contributing to increased access to complaints mechanisms for people with pronounced cognitive and communicative disabilities by bringing the complaint system to the service user;

2) demonstrating a more customer-focused approach to managing people's concerns by customising complaints management processes to suit individual abilities, circumstances and needs; and

3) contributing robust data from the external perspective on the nature of issues affecting adults with impaired capacity, thus identifying issues for systems improvement.

Maintaining awareness of good complaints management practice is a useful platform for this discussion as it acknowledges the potentially vast and divergent landscape of feedback mechanisms through which adults with impaired capacity may progress their issues under the NDIS.

It simultaneously recognises that complaints management systems will need to offer more personalised and responsive approaches to engaging with people and issues if they are to be inclusive of adults with impaired capacity. Finally, this approach highlights the importance of an integrated approach and the need to incorporate a broad suite of strategies with respect to establishing safeguards in the lives of people with an intellectual disability.

Figure 1 (on the next page) illustrates the relationship between the preliminary strategies identified to strengthen complaints management systems for adults with impaired capacity and the five core principles of good-practice in complaints management.

Figure 1: Strengthening good-practice complaints management principles for adults with impaired capacity

Strengthened emphasis	Key principles of good complaint management systems	Strengthened emphasis
Prioritising dissatisfaction	Accessibility	Guarantee safety
Proactive identification of complaints	Fairness	Facilitative, informal & inquisitorial approaches
Ensuring access to independent advocacy	Customer focus	Establishing systems
	Efficiency	
	Systems improvement	

Conclusions

Despite widespread promotion of complaints management systems as useful mechanisms for resolving issues for adults with impaired capacity and generating systems improvements, the available evidence suggests that, in and of themselves, they are somewhat limited with respect to addressing individual concerns and complaints, and delivering systemic change.

This scoping paper identifies a number of reasons why complaints management systems for adults with impaired capacity are not as effective as they might be, and highlights the need for significantly improved responsiveness in line with recognised good-practice principles of complaints management.

The paper outlines a number of features, identified by contributors and the literature, that may be used to strengthen responsiveness for adults with impaired capacity within complaints management systems. These features include:

- prioritising service user satisfaction by rebalancing the current process orientation of complaints management systems with a stronger focus on customer satisfaction;

- proactively identifying complaints by maintaining and, ideally expanding, complaints outreach mechanisms (such as the Community Visitor Program) that have the potential to seek out participant issues, rather than requiring complainants with impaired decision-making capacity to access formal systems;

- strengthening informal processes for raising complaints with the addition of appropriate safeguards;

- providing independent advocacy by maintaining and, ideally, expanding advocacy strategies and services so that adults with impaired capacity have guaranteed access to independent support when making a complaint;

- supporting facilitative and inquisitorial processes of complaints resolution that promote positive consumer-provider relationships, strengthen the investigatory process, and generate satisfactory outcomes for complainants;

- guaranteeing complainant safety by requiring service providers to ensure complainant wellbeing during and after the making of a complaint, and implementing legislation (and associated mechanisms) that support these protections; and

- resourcing the complaints management system by:

  1. clarifying the nature, structure and scope of complaints management systems and supporting a broad range of safeguards for people with disability within the NDIS;

  2. establishing clear requirements of service providers through legislation and a quality management framework that emphasises good-practice complaints management; and

  3. establishing an NDIS-oriented independent appeals mechanism.

In conclusion, strengthening the voices of adults with impaired capacity within NDIS-based complaints management systems will require the development and implementation of carefully constructed principles and strategies that facilitate their engagement in the systems that support them. Complaints management systems should thus be viewed as one element of a multi-faceted, comprehensive and interfacing suite of systemic safeguards that are grounded in a sound base of legislation, policy, programs, and funding.

Appendix

Key principles and accompanying features of complaints management systems according to the Commonwealth Ombudsman, Queensland Ombudsman, and DSCV [134]

Principle	Accompanying features
Accessibility	▪ Welcome complaints ▪ Promote the complaints process ▪ Be open and transparent about complaints processes ▪ Inform the public and staff about the complaints process ▪ Make it easy to complain ▪ Ensure service users know how to complain ▪ Information about how to complain is easy to understand ▪ Inform clients about options to complain and how to access them ▪ The organisation offers different ways to make a complaint – provide a range of contact options that are clearly identified, easily used, and well maintained ▪ Undertake outreach activities to identify complaints ▪ Take responsibility for directing dissatisfied clients to complaints processes ▪ People can get support to make a complaint ▪ There is no charge for making a complaint ▪ Avoid defensiveness ▪ Search out and address barriers to complaining
Fairness	▪ Impartiality: ensure impartiality of judges; avoid any perception of bias; repeated complaints from the same person should not be dismissed; complaints should be investigated by someone other than the respondent; material disseminated to customers should guarantee that complainants will not be victimised; principles of natural justice are applied ▪ Confidentiality: complaints will be investigated in private and privacy legislation should be complied with; disclose only the information required by relevant parties; accept anonymous complaints; enact special measures to ensure confidentiality of whistleblowers' complaints ▪ Transparency: complainants should be informed about processes and timelines; be provided with an agency contact; be provided with a report about progress; have delays, outcomes and reasons for the outcomes explained to them; be provided with opportunities to respond ▪ Remedies: when a complaint is considered to be justified, the complainant should ideally be restored to a position prior to when things went wrong

---

[134] All three sources identify and classify features of good/best practice complaint management principles differently. This appendix represents a broad synthesis of key features of these principles. It should be noted that these features may be classified slightly differently within each of the three frameworks.

Principle	Accompanying features
Customer focus	▪ Respond quickly, courteously and seriously to complaints, and ensure complainants are treated respectfully and sensitively
	▪ Ensure parties are communicated with throughout the complaints process
	▪ Be responsive to the needs of all complainants
	▪ Support responsiveness by providing staff training, adequate resources, and systems review
	▪ Clients from different backgrounds should have access to complaint information using mechanisms appropriate to their needs
	▪ Agencies must be flexible in responding to complaints from people with varying levels of capacity and deal with guardians/representatives if necessary
	▪ Complaints staff must deal professionally with aggressive complainant behaviour
	▪ Staff are empowered to respond to complaints quickly and fairly
	▪ Ensure staff, including complaints staff, can communicate well to minimise and deal with complaints
	▪ Ensure staff are aware of and, if directly involved in the system, are thoroughly familiar with its operation to maximise effectiveness
	▪ All staff should be skilled listeners with excellent interpersonal and problem solving skills, be receptive to receiving complaints and feedback, and be competent at conflict resolution
	▪ People with disability should be afforded a person-centred approach: process ensures that the voice of the person with a disability (including goals and aspirations) are considered in how the matter is resolved
	▪ Complaints are recognised as opportunities to maintain and strengthen the relationship between service user and provider
	▪ Feedback in relation to the conclusion of an investigation/review – provide reasons for the decision, and admit when the organisation is in the wrong
	▪ Complaints should be dealt with in a manner befitting the matter
	▪ Complaints should receive continuing attention, be resolved as quickly as possible, and be re-assessed if unresolved
	▪ Keep people informed about the progress of the complaint
	▪ Inform complainants of avenues for external review
Efficiency	▪ There is a clear process for acknowledging complaints immediately
	▪ The process for resolving complaints is clear and people know what to expect
	▪ Understand the complaint first and then assess it
	▪ Simple complaints should be dealt with at first contact. Complex and sensitive complaints require specialised handling
	▪ Refer complaints if appropriate (e.g. to police)
	▪ Have a quality complaints policy and procedure, and complaints should be handled according to written guidelines

Principle	Accompanying features
	▪ Complaints management should have its own unit
	▪ People are informed about decisions
	▪ Processes for review and appeal are clear
	▪ The complaints management process should reflect the agency's vision, mission and values
	▪ The organisation has accountability processes with regard to actions taken and decisions made
	▪ Monitor the complaints process
	▪ Use modern information and communication technology to respond more quickly and easily to complaints
	▪ Management need to be committed to providing the necessary resources for efficient complaints operations
	▪ Ensure a well-structured complaints management model that is simple, frontline oriented, and facilitates review of decisions
	▪ Ensure the methodical dealing of complaints, including systematic recording and communication of data and outcomes
	▪ Ensure integration of the complaints system within the organisation (agencies should treat complaints from clients and members of the public as core business, and an agency should draw on the knowledge of all of its members to resolve issues)
	▪ Agencies that work together should consider how their complaints management systems can be integrated and streamline the making and resolution of complaints
	▪ Complaints trends should be regularly brought to the attention of senior executives
	▪ Staff are empowered to respond to complaints quickly and fairly
	▪ Monitor the process and undertake regular reviews of the system to evaluate its effectiveness
Systems improvement	▪ Identify areas where the agency's business processes can be improved
	▪ The complaints process is positioned as part of a quality culture that views complaints as contributions to continual improvement and assists the movement towards more person-centred service provision
	▪ Develop and maintain processes to accept feedback, and monitor and review complaints