

Leaving people with nowhere to go: EJA issues paper on complaints processes in employment services

About Economic Justice Australia

Economic Justice Australia (EJA) is the peak organisation for community legal centres providing specialist advice to people on their social security issues and rights. Our members across Australia have provided people with free and independent information, advice, education and representation in the area of social security for over 30 years.

EJA provides expert advice to government on social security reform to make it more effective and accessible. Our law and policy reform work:

- Strengthens the effectiveness and integrity of our social security system
- Educates the community
- Improves people's lives by reducing poverty and inequality

About this issues paper

EJA understands that the government will be undertaking consultation on how to create a more effective employment services complaints process in the last quarter of 2024. This issues paper provides feedback on specific concerns reported by EJA members and background on current employment services complaints processes. The purpose of this paper is to ensure that the barriers to an effective complaints process have been documented and inform the scope of the review of complaints processes. EJA anticipates further developing this issues paper with specific recommendations when the complaints process commences.

Employment services are responsible for the administration of an important part of the social security system. They set requirements in job plans, and routinely make decisions that lead to compliance penalties. Lack of access to a fair and effective complaints process in employment services has been a longstanding issue for employment services participants, as well as the community legal centres that assist them when they have problems with employment services.

EJA's view is that the current process is seriously inadequate. It is not independent and does not provide access to administrative justice as provided for in the relevant legislation, guidelines and according to the Employment Services Deed.

What community legal centres see

These structural issues relating to complaints are seen by EJA members in their daily interactions with people affected. Our members have reported the following issues:

- Complaints go to the provider where they are never heard of again

- Provider is not contactable by telephone/email
- Specific worker is not available
- Person must make appointment to speak to someone
- Provider won't accept complaint
- Person can't get through to manager
- Not being provided with the correct information or training to comply with mutual obligations (e.g. how to download and use the Workforce Australia app)
- Not being provided with an interpreter or information in their language
- Feeling coerced into signing a job plan or agreeing to activities they are unable to comply with due to caring responsibilities or medical issues
- Not being respected or feeling discriminated against
- Privacy issues (e.g. provider stating they must contact doctors, psychologists etc. when not relevant)
- Not being referred or not receiving the training necessary to find a new job
- Being told it was a Centrelink decision when the provider has provided misinformation to Centrelink
- Not being advised it's possible to change service providers
- Being unfairly exited from a service
- Not being allowed to make a complaint or having a complaint ignored

Complaints outcomes

EJA members reported problems finding out what happens when a complaint has been made, for example:

- What action came about because of the complaint
- Whether the worker has been disciplined or trained
- Whether a social security decision was made that it is possible to review

Impact on individual making a complaint

Individuals affected by incidents of mistreatment experience the effects of the inbuilt and unchecked power imbalances, due to threats made by providers relating to payment suspensions. EJA members reported that individuals often give up on making complaints due to:

- Lack of clarity around whether it's a provider issue or a policy issue
- Fear of retribution
- Feels like a waste of time
- Confusion over ownership of complaints about mutual obligation failures

Systemic issues

The ineffectiveness of the complaints process results in systemic issues that hamper continuous improvement and responsiveness to customer feedback. Overall, EJA members reported that:

- Complaints do not lead to identification of overall systemic issues
- Complaints culture is resistant to complaints
- Complaints do not lead to change of mutual obligation rules
- There is a lack ownership of complaints about policy

Additionally, complaints do not result in systemic change because the action that is taken is limited to addressing an individual participant's immediate situation. For example, if a person has been able to resolve a complaint with a provider it will most likely result in:

- Change to job plan requirements
- Reversal of job referral or work refusal
- Overturn of payment suspension, demerit point or compliance action (e.g. reconnection appointment)
- Change of provider – although the process can be difficult to access (see Attachment B.4 for information on transfer of provider in both Workforce Australia and DES).

Current problems with complaints processes

1. Lack of independent complaints handling

The most critical problem with the complaints process is that complaints are directed to the provider in the first instance and, in many situations, are referred back to the provider more than once (see Figure 1 below for a visualisation of the process). If the National Customer Service Line is contacted about an issue relating to the provider's administration of employment services (both Workforce Australia and DES), the participant is generally referred to the provider to seek a resolution.

Participants in employment services have reported that complaints they have made directly to providers have not resulted in change, and that they fear retribution from raising matters directly with the worker with whom they are in conflict.

2. Transparency and accountability for complaints

Complaints processes are opaque because there is a lack of transparency about how the complaints are handled, and a lack of accountability to ensure they have been handled appropriately. In fact, complaints about the complaints process is one of the top five reasons for complaints being made to the employment services National Customer Service line.¹

When complaints go directly to providers there is a lack of visibility about how they have been handled unless it is one of a small minority (10 per cent) of the complaints about which DEWR request the provider follow up.

While it is understandable that employment service providers have a role in complaints resolution – and for complaints to be used for continuous improvement – the current process does not provide transparency about the frequency or subject matter of the large volume of complaints that are handled either directly by providers, through the Customer Service Line (NCSL), Services Australia or the Commonwealth Ombudsman. Data provided to Senate Estimates (in Attachment A.1) indicates that the NCSL receives more than 200,000 calls per year. Services Australia deals with approximately 1 million calls about employment services (A.2).

While not all these contacts are necessarily complaint related, there is not enough information in the public domain to understand how these contacts may relate to concerns people have about the

¹ DEWR Senate Estimates Portfolio question number: SQ24-000054

quality of employment services or the appropriateness of social security compliance action made through them.

3. Definition of complaints

The definition of a complaint is limited because only matters that are defined as a formal complaint are counted as complaints. As Table 1 (Attachment A) shows, while the NCSL received 250,000 calls in 2023-24, only 19,000 of these were identified as being complaints, due to the current definition of matters considered to be complaints.

This precludes issues involving decisions relating to mutual obligations, interpretation of guidelines, and application of rules relating to the setting of requirements being defined as complaints.

4. Lack of guidelines around complaints

There is limited advice in the Workforce Australia guidelines on how providers should administer complaints. The guidelines only mention complaints in relation to Demerit points:

By contacting the NCSL to dispute a Demerit decision, the Participant will in effect make a Workforce Australia Services-related complaint. If required and appropriate, the Provider must action complaints that are referred to them by the NCSL. This may include reviewing the Demerit decision-making process, any Valid Reason assessments or information that has been recorded on the Department's IT Systems.

5. Provider performance and quality frameworks

Another limitation of the complaints process is that complaints are not part of the provider performance framework. Providers must maintain a complaints system under the Deed (Attachment B.2) and their provision of it is assessed as part of the Quality Assurance Framework (Quality standards: principle 7 continuous improvement) (Attachment B.3).

Non-conformance to the quality standards does not lead to immediate changes in practices, or to the gathering of information about systemic issues. For example, the guidelines specify any non-conformance raised against a Quality Standard that results in the suspension of certification against that Quality Standard may result in the QAF Certification being suspended and remedial action being taken against the provider.

The performance framework does include a module on Quality of Service to Participants (Attachment B.1). However, the module is based on a survey of participant experience of the quality of service delivered by each provider, which occurs long after the person has left employment services and does not lead to immediate change in practices.

This suggests there need to be stronger links between complaints and the governance of employment services performance.

6. Job plan requirements

EJA members report many complaints are relevant to decisions that providers have made relating to job plan requirements. What can and can't be included in a job plan is subject to the guidance of *Social Security Admin Act: 40F Employment pathway plan matters* and *40H Employment pathway must not contain* and section *40X Circumstances in which paid work is unsuitable*.

The review of the complaints process is therefore related to the guidance by which providers interpret and apply the discretions available to them in relation to employment pathway plan matters 40F, 40H, and 40X.

It is important to ensure that provider training and guidelines reflect the intent of 40F, 40H and 40X, which is to provide customisation of job plan requirements according to the personal circumstances of the participant, and that a clear path for independent review of these requirements is available during the process of setting up and signing the job plan. While the current two days' 'think time' is helpful, it is not sufficient to enable the person to seek independent advice about the extent to which the job plan is appropriate to them.

7. Power imbalance

There is a significant power imbalance between employment services providers and participants that leaves many people who believe they are being mistreated with nowhere to go for help. The people who experience the power imbalance are often the most financially disadvantaged and vulnerable people in the community, and do not have the knowledge or resources to maintain and challenge decisions made by providers.

8. Coercive use of payment suspensions

EJA members are all too familiar with the dire consequences their clients face if their employment service provider makes a mistake, is too inflexible or there is a personality clash. The consequences are that people are forced to sign inappropriate job plans, attend activities, or appointments at times that are not convenient or difficult to get to, under threat of having their payment suspended and eventually cancelled. The amount of discretion available to individual provider staff members is too broad and this problem is exacerbated by the lack of an effective and fair complaints mechanism.

9. Privatisation and administrative integrity

Problems with complaints processes date back to privatisation when there was a fragmentation of responsibilities and social security decision-making was delegated to private sector actors. There are stark differences between the complaints process available in employment services, and processes available through Services Australia. In Services Australia's processes people have access to three levels of review, including two levels at the AAT. However, in the case of employment services, payment suspensions and demerit points are applied automatically because of a provider's processes and/or inflexibility in administering guidelines and social security law appropriately. There is no similar formal access to administrative review in employment services.

Workforce Australia inquiry view on complaints

The limitations of the current complaints process were identified in the Workforce Australia review, which recommended that an Employment Services Quality Commission (ESQC) be established (Rec 7.118). As part of the recommendation to establish an ESQC, the Workforce inquiry also identified weaknesses in complaints processes. It recommended that the ESQC be responsible for:

complaints management, including a public facing complaints handling function. This function should also include the development of a complaints procedure that is user-friendly and accessible to participants.

And to

...ensure that its complaints functions in particular are understood by all employment services clients and that complaints data and other feedback are used to inform ongoing improvements to the system.

The ingredients of an effective complaints process

According to administrative law, where a complaint relates to a social security decision, the person should have access to reasons and be provided with information about avenues for review.

In addition, the Commonwealth Ombudsman's Better Practice guide² says that effective complaints processes should:

- Recognise the Complaint: Acknowledge complaints promptly and treat them seriously.
- Assess Complexity: Evaluate the complexity of the complaint to determine the appropriate response.
- Resolve If Possible: Aim to resolve the complaint at an early stage if feasible.
- Plan the Investigation: If resolution isn't immediate, plan a thorough investigation.
- Investigate: Gather relevant information and assess the complaint thoroughly.
- Respond: Provide a clear, respectful response to the complainant.

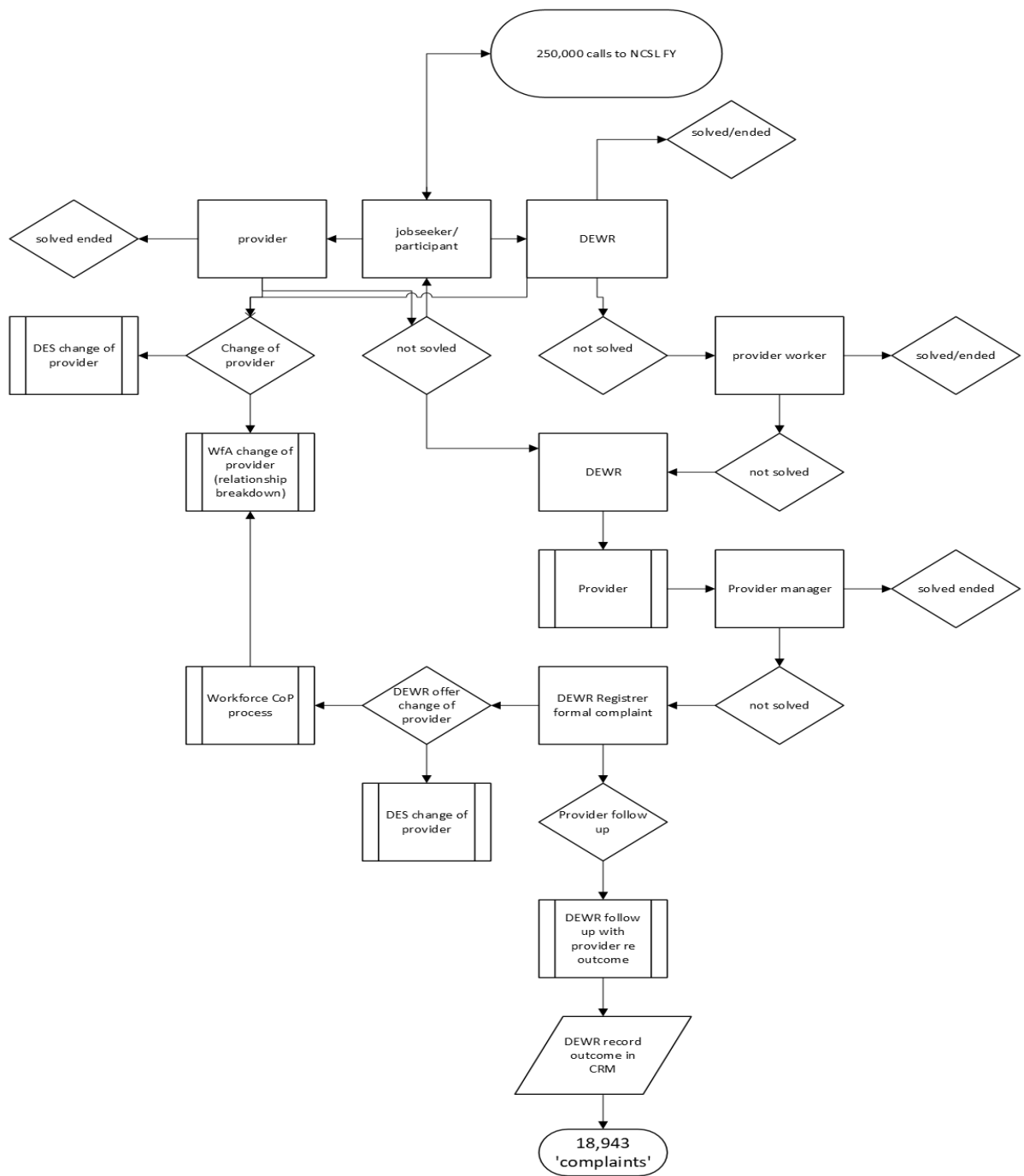
The effective treatment of complaints also requires the application of administrative justice. That is, the correct application of correct rules to correct data; the capacity to form a judgment that the decision may be wrong; clear and accessible information about administrative justice rights; capacity to know the basis for the decision; capacity to explain your case, including a capacity to correct errors of fact and errors of application of rules; and capacity to appeal and overturn decisions and seek redress.³

Conclusion

There is a considerable amount of work to be done to improve the complaints processes so that they are fair, independent, transparent and provide access to administrative justice. This paper summarises the issues raised by EJA members for the purpose of informing the government's review of employment services complaints processes. Specific recommendations as to how to resolve these issues will be developed to inform the complaints review process.

² https://www.ombudsman.gov.au/__data/assets/pdf_file/0025/290365/Better-Practice-Complaint-Handling-Guide-February-2023.pdf
³ Henman, 2021: Administrative Justice in a Digital World: Challenges and Solutions <https://academic.oup.com/edited-volume/38690/chapter-abstract/336007801?redirectedFrom=fulltext>

Figure 1 - Complaints process visualisation



Source: Author's drawing

Attachment A - Data on complaints

A.1 National Customer Services Line (NCSL) / Digital Customer Service Centre (DCSC)

Senate Estimates data indicates

(see DEWR Portfolio question number: S024-000054)

Table 1 - Complaints received by NCSL by financial year from 1 July 2020 to 31 December 2023.

Reason for contact with NCSL	2020-2021		2021-2022		2022-2023		2023-2024 YTD	
	Frequency	% of total	Frequency	% of total	Frequency	% of total	Frequency	% of total
	Complaint	39,831	17.3%	21,827	10.9%	18,943	7.5%	8,184
Total Records	230,392	100.0%	201,021	100.0%	252,882	100.0%	108,442	100.0%

Table 2 – Top three complaint themes related to Provider Service received by NCSL i period of 1 July 2022 to 31 December 2023.

Topic - Provider Service	
1	Inappropriate or inadequate service
2	Dissatisfied with Employment Consultant allocated by Provider
3	Unprofessional behaviour by Provider

Table 5 - Top 10 topics recorded in complaints received by both the NCSL and DSCC in the period 1 July 2022 to 31 December 2023.

Topic	
1	Provider Service
2	Transfer
3	Targeted Compliance Framework
4	Complaint Referral Form (CRF) created ¹
5	Complaints Process
6	Employment Fund
7	Referrals to Centrelink
8	Participation Policy
9	Employment Services Policy
10	Website

¹ A complaint referral form is created where a formal complaint is made about an employment services provider.

A.2 Services Australia data

10e. S023-000427 Participation and Employment Services calls received

During the 2023-24 financial year, as at 31 March 2024, **110,513 (0.26%)** of the total calls received by Services Australia (the Agency) were specifically for Participation related issues.

Participation calls are associated with activity tested customers who may not have met obligations. A large number of customers discuss mutual obligation related issues with their other business via the Employment Services line.

The Employment Services line received **827,772** calls during the 2023-24 financial year, as at 31 March 2024. This is **7.6%** of total Social Security and Welfare received calls and **4.4%** of total received calls to the Agency.

Attachment B

B.1 Quality of Service to Participants (from Workforce Australia guidelines)

This module assesses the success of the Provider in delivering high quality services to Participants via 3 performance measures.

- Service Delivery Assessment – Participants
A qualitative assessment of each Provider’s quality of service to Participants.
- Tailored Servicing
An assessment of:
 - the extent that Participants are receiving a service tailored to their unique circumstances based on the tailoring of their Points Targets under the Points Based Activation System, and
 - the quality of the Provider’s review of the job search efforts submitted by Participants, and whether the review has been completed within the required 5 business day timeframe.
- User Views - Quality
A survey-based assessment of Participant experience of the quality of service delivered by each Provider.

The performance measure ratings are used to determine module ratings as set out in [Table 29-C](#).

Table 29-C: Quality of Service to Participants Module Ratings

Performance Category	Requirements
High Performance	One or more High ratings and no Low ratings
Moderate Performance	All ratings are Moderate
Low Performance	One or more Low ratings

B.2 Employment services Deed requirements for complaints processes

Section A2.6 – Customer feedback

1. Customer feedback process

- 1.1 The Provider must establish and publicise to its customers the existence and details of a Customer feedback system that:
 - (a) is visible, user-centred, simple to access and easy to use for Customers;
 - (b) supports early resolution of Complaints lodged by Customers;
 - (c) is integrated within the overall corporate structure of the Provider's organisation, with clearly described advice for Customers on the customer feedback process including, confirmation that any Complaint lodged by any Customer will be investigated by an appropriately senior staff member of the Provider;
 - (d) is recorded in an electronic system capable of producing complaint insights with robust quality assurance and review processes for both internal reporting purposes, as well as for quarterly reporting to the Department or as required; and
 - (e) includes advice about escalation processes of Complaints, including referral of the Customer to the Department's National Customer Service Line for further investigation of the matter.
- 1.2 If a Customer is dissatisfied with the results of the Customer feedback process, the Provider must refer the Customer to the Department's National Customer Service Line for further investigation of the matter.
- 1.3 Upon request, the Provider must give to the Department and Customers copies and details of the process it has established to manage Customer feedback.
- 1.4 The Provider must, when approached by the Department, actively assist:
 - (a) the Department in its investigation of any Complaint, including providing a detailed response to issues Notified by the Department within the timeframe required by the Department;
 - (b) the Department in negotiating a resolution to any Complaint; and
 - (c) other authorities in negotiating a resolution to any Complaint, where the relevant Customer has chosen to utilise legislative or other complaints mechanisms.

B.3 Quality Framework requirements

7.2 The Provider has strategies in place to measure the satisfaction of its Personnel, Participants, Employers and other organisations it works with to deliver Workforce Australia services and supports the raising of feedback and other complaints.

7.2.1 The Provider has policies and processes for monitoring Participant satisfaction with the Services being delivered. The Provider has policies and processes in place for the ongoing, regular, and proactive monitoring of Participant satisfaction with the Services delivered.

7.2.2 The Provider's policies and processes support the raising of complaints and feedback, with no fear of retribution, and facilitates complaints resolution. The Provider has policies and processes in place:

- (a) to support Participants, its Personnel, Employers and other organisations it works with to deliver Workforce Australia services to raise complaints and provide feedback
- (b) that ensure its Personnel manage, address and, where possible, resolve complaints and feedback
- (c) that ensure its Personnel escalate complaints they cannot resolve (where required).

7.2.3 The Provider can demonstrate how feedback and complaints received from a variety of sources inform the implementation of continual improvement activities. The Provider has processes in place:

- (a) for collating Provider-wide information on feedback and complaints received from its Personnel, Participants, Employers, other organisations it works with to deliver Workforce Australia services, auditors and the Department
- (b) to update procedures at a Site and Provider-wide level in consideration of the complaints and feedback received
- (c) to improve the quality of Service using observations and opportunities for improvement from the Quality Standards and/or Quality Principles audits.

B.4 Transfers

Transfer from one provider to another is a common outcome of a complaint. The process for Workforce Australia and DES differs.

In Workforce Australia a transfer is possible if there is a 'Breakdown in relationship with provider', As per the guidelines, this is 'If the job seeker believes they can receive a better service elsewhere, they should talk to their current or proposed provider. Job seekers may be **transferred by agreement** if the losing and gaining providers agree to the transfer. A request for transfer may also be lodged electronically by a job seeker via their Personal Page on the Workforce Australia website, see the [Resources](#) page for a link.

If a job seeker advises Services Australia that they refuse to engage with their Workforce Australia provider due to a [breakdown in relationship](#) with their provider, the job seeker must be advised to contact the Department of Employment and Workplace Relations Customer Service Line, See the [Resources](#) page for a link. This includes situations where the job seeker has been exited from their provider due to threatening, aggressive, or violent behaviour and there is a Job Seeker Incident Report (JSIR) recorded, and they wish to discuss the exit or referral to another provider.

CDP job seekers cannot generally transfer between providers unless they move to another region, however these job seekers may also be referred to the Department of Employment and Workplace Relations National Customer Service Line (NCSL) where they have reported a breakdown in the relationship with their provider. See the [Resources](#) page for a link.

Participant Initiated Transfer (DES only)

In DES participants are able to use a Participant Initiated Transfer at any time up to 5 times over a 2-year period. Participants should contact the National Customer Service Line to help to make this change. They will not be asked to provide a reason for wanting to change DES provider.

If the participant exhausts their 5 initiated transfers, or do not wish to use their initiated transfers, they can still transfer using a Transfer by Agreement but only after ESAt is finalised.