



NDIS Quality
and Safeguards
Commission

Corrective Action Request Policy

V1.0 – May 2022

NDIS Quality and Safeguards Commission
PO Box 210, Penrith NSW 2750.

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Purpose of this policy

The NDIS Quality and Safeguards Commission (the NDIS Commission) is an independent government body that works to improve the quality and safety of NDIS supports and services, investigates and resolves problems, and strengthens the skills and knowledge of providers and participants.

The NDIS Commission's regulatory powers and functions are set out in the *National Disability Insurance Scheme Act 2013* (the NDIS Act), and associated Rules, as well as the *Regulatory Powers (Standard Provisions) Act 2014*.

The NDIS Commission's compliance and enforcement activities are an important part of its work as a regulator. Those activities enable the NDIS Commission to encourage best practice among NDIS providers and manage risk to NDIS participants.

The NDIS Commission is required to conduct compliance and enforcement activities in a risk responsive and proportionate manner.¹ Actions to be taken are determined on a case by case basis taking into consideration factors such as the seriousness of the issue, the appropriateness of the provider's or other person's response, and the likelihood of further harm to persons with disability.

The NDIS Commission has a range of tools for responding to non-compliance. This policy is one of a suite of policies that expands on the general information provided in the [Compliance and Enforcement Policy](#), and provides guidance on the NDIS Commission's approach to the use of corrective action requests. The policy does not concern remedial action/s that may be required or requested in relation to:

- the health, safety and wellbeing of persons with disability affected by a reportable incident under the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*; or
- a complaint resolution process under the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018*.

A corrective action request provided to a person, whether they are an entity or individual, can be an effective means of addressing non-compliance in circumstances whereby other administrative or court-based actions are not appropriate.

In deciding whether or not to provide a corrective action request to a suspected wrongdoer, each case will be considered on its particular facts, having regard to other forms of enforcement action that might also be available.

What is a corrective action request?

A corrective action request is correspondence given to a person setting out:

- brief details of one or more contraventions, or possible contraventions of the NDIS Act as a result of non-compliant conduct; and
- a request that the recipient takes action(s) to correct the non-compliance, or possible non-compliance, and provide the NDIS Commission with details of such corrective action(s) and, in some circumstances, evidence of their implementation.

The provision of a corrective action request is a discretionary, non-statutory action that may be taken in circumstances where a person has contravened, or may have contravened, is contravening or may be contravening, one or more sections of the NDIS Act. This includes:

¹ *National Disability Insurance Scheme Act 2013* (Cth) s181D(4)(b)).

- a failure of a registered NDIS provider to comply with their conditions of registration under section 73F of the NDIS Act, thereby contravening section 73J of the NDIS Act including a breach of:
 - the NDIS Practice Standards;
 - the NDIS Code of Conduct;
 - conditions imposed under NDIS rules, including in respect of worker screening, behaviour support, complaints management and incident management, prevention and notification obligations; and
- a failure of an unregistered provider or worker involved in the delivery of NDIS supports and services to comply with the NDIS Code of Conduct, thereby contravening section 73V of the NDIS Act.

A corrective action request is a non-statutory mechanism for responding to non-compliance with the law. Corrective action requests may be:

- used by the NDIS Commission to, in a voluntary capacity, return a person to compliance and monitor this return in circumstances whereby the ongoing risk of non-compliance, and risk to NDIS participants, is low; and/or
- used by the NDIS Commission to inform future decisions made in relation to non-compliance by NDIS providers or workers; and/or
- provided to NDIS Worker Screening Units for the purpose of conducting risk-assessments of workers who have applied for an NDIS Worker Screening Check.

Legislative provisions

Under section 181E of the NDIS Act, the core functions of the NDIS Commissioner includes to secure compliance with the NDIS Act through effective compliance and enforcement arrangements. To assist in the fulfilment of this core function, a wide range of tools, methods and powers are available to the NDIS Commission under the NDIS Act.

In addition to statutory forms of enforcement action available to the NDIS Commission, it is open to the NDIS Commission to use non-statutory forms of enforcement action in response to suspected non-compliance with the NDIS Act.

Such measures, which can include corrective action requests (amongst other things), can be an appropriate regulatory response to non-compliance in some cases, serving as a useful alternative to more time consuming and expensive forms of action (particularly court action).

The NDIS Commission's approach to the use of corrective action requests

The NDIS Commission's [Compliance and Enforcement Policy](#) states that the NDIS Commission considers a range of factors in determining its response to non-compliance with the NDIS Act and Rules, which include:

- the impact of non-compliance on the person with disability, and the broader community;
- whether there is any immediate or ongoing risk to the well-being of the NDIS participant;
- the seriousness of any non-compliance and the actual or potential harm or consequences;

- how far below acceptable standards the conduct falls and the extent to which the person contributed to the risk, including whether the conduct was intentional, reckless, negligent or a mistake; and
- the potential to return the provider to full compliance, and as soon as possible.

There is no obligation on the NDIS Commission to give a corrective action request in relation to a contravention, or possible contravention, of the NDIS Act. The giving of a corrective action request will be determined on a case-by-case basis with a view to the considerations outlined below.

When a corrective action request is an appropriate compliance tool

Examples of where the NDIS Commission may be more likely to consider the use of a corrective action request include where:

- the recipient has displayed an understanding of their non-compliance and/or indicated a willingness to address non-compliance on a voluntary basis; and/or
- the recipient's non-compliance is isolated or non-systemic; and/or
- the recipient has accepted their conduct is or was non-compliant and has discontinued it; and/or
- there is low ongoing risk to NDIS participants and/or the integrity of the NDIS of continued non-compliance; and/or
- providing the corrective action request is expected to improve the compliance of the recipient; and/or
- any detriment to participants arising from the non-compliant conduct is at a lower level.

When a corrective action request would not be considered an appropriate compliance tool

Examples of circumstances where a corrective action request may not be appropriate include where:

- the NDIS Commission has previously taken action against the recipient for a similar contravention; and/or
- the NDIS Commission considers other compliance or enforcement action to be more appropriate in the circumstances (including court action); and/or
- there is a lack of response by the recipient to other mechanisms used by the NDIS Commission to address the relevant non-compliance; and/or
- the NDIS Commission has concerns that the relevant conduct may be continuing, the person has not taken action to remediate, and where ongoing non-compliance presents medium- to high-level risks to NDIS participants.

What happens after a corrective action request is issued

There is no obligation for the recipient of a corrective action request to respond to the NDIS Commission². However, a lack of response from a person to a corrective action request issued to them may lead to the escalation of the NDIS Commission's compliance or enforcement response to the relevant non-compliance that has been identified.

Corrective action requests cannot be reviewed under the NDIS Act. However, the recipient of a corrective action request may choose to respond to it by making representations to the NDIS Commission, including representations about the related non-compliance, the corrective actions that are specified, or corrective actions the recipient may have already implemented. In such circumstances, the NDIS Commission will consider any representations and decide whether to amend or withdraw the corrective action request.

Corrective action requests may ask the recipient to develop a plan to undertake the corrective actions outlined in the request, including the timeframes for completion of those actions. The NDIS Commission may also request that evidence of the corrective actions be provided to it. Subject to how a recipient responds to a corrective action request, the NDIS Commission may request that further action be taken, or escalate outstanding matters of concern for consideration of further compliance or enforcement action being taken, such as the giving of a compliance notice.

The NDIS Commission will otherwise monitor the impact of corrective action requests issued, and assess whether they have had an impact on the compliance of recipients with the NDIS Act.

Record keeping and publication

The NDIS Commission will keep records of all circumstances where a corrective action request has been given to a person. Where permitted by law, the NDIS Commission may provide information about its use of corrective action requests to other regulators, to assist those regulators in carrying out their responsibilities.

² Note – this does not apply to remedial action requirements under the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018* or the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018*.