



**NDIS Quality
and Safeguards
Commission**

Compliance and Enforcement Policy

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**NDIS Quality
and Safeguards
Commission**

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PO Box 210, Penrith NSW 2750

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Compliance and enforcement

Monitoring and compliance is important to the NDIS Quality and Safeguards Commission's work as a regulator. It is one of the ways that the NDIS Commission can encourage best practice among NDIS providers and manage risk to NDIS participants.

The NDIS Commission works with NDIS providers and their workers to help them comply with quality and safeguards requirements, including through education and training about their obligations.

The NDIS Commission monitors registered providers for compliance with the conditions of their registration. Most registered providers must undergo a periodic audit that assesses their performance against the NDIS Practice Standards.

By knowing more about what happens in the NDIS marketplace, the NDIS Commission can work to support ongoing improvement.

The NDIS Commission also investigates complaints and reports of non-compliance with the NDIS Practice Standards, NDIS Code of Conduct and other quality and safeguards requirements where they apply. This includes unregistered providers' compliance with the NDIS Code of Conduct.

The NDIS Commission has the power to investigate any matters relating to registered and unregistered providers and workers. It can impose penalties, including, in the most serious cases, banning workers, de-registering providers and seeking civil penalties.

In determining its response to non-compliance, the NDIS Commission and Commissioner considers a range of factors including:

- 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 it was intentional, reckless, negligent or a mistake; and
- potential to return the provider to full compliance, and as soon as possible.

Regulatory framework

The NDIS Commission's regulatory powers and functions are set out in the *National Disability Insurance Scheme Act 2013* (the Act) and associated Rules.

These functions are developmental, preventive and corrective, and target individuals, the workforce and providers to:

- strengthen and build capacity;
- prevent harm and improve the quality of services; and
- resolve problems and provide oversight.

Non-compliance may be handled using a mix of tools including education, capacity building and development for people with disability (and their NDIS providers and workers), complaints handling, compliance and enforcement functions and related powers.

The NDIS Commission will take a responsive and proportionate approach to regulation, applying the strongest actions to the most serious issues and breaches.

Human Rights

The NDIS Commission undertakes its regulatory functions in accordance with the Act and with due regard to the [United Nations Convention](#) on the Rights of Persons with Disabilities (the Convention).

The NDIS Commission aims to uphold the rights of people with disability, as part of Australia's commitment to the Convention, to prevent exploitation, violence and abuse of people with disability. The NDIS Commission achieves this through:

- balancing the need to provide appropriate protections, with the need to enable people with disability to exercise choice and control;
- focussing on building the capacity of people with disability, their families and carers to make informed decisions about NDIS providers and pursue concerns or complaints; and
- supporting a responsive and effective NDIS market for disability supports and services.

Procedural fairness

In exercising compliance, investigation and enforcement powers, the NDIS Commission adheres to the requirements of procedural fairness which means:

- the Commissioner and staff of the NDIS Commission will avoid actual and perceived conflicts of interest and act in an impartial and objective manner; and
- affording a person an opportunity to be heard before making a decision affecting their interests.

Compliance and enforcement strategy

The NDIS Commission aims to achieve a balance between supporting people with disability to make informed choices, while also promoting high quality supports and services with appropriate safeguards to support the development of a responsive and effective NDIS market.

To achieve these objectives, the NDIS Commission uses the following integrated strategies:

- encourage compliance with the law by educating and informing providers, participants and others about their rights and responsibilities under the Act;
- work with other agencies to implement these strategies, including through coordinated approaches and appropriate referrals;
- analyse emerging risks to identify potential market risks to inform compliance and enforcement measures, and identify priorities for regulation; and

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- enforce the law, including through the use of administrative action and by initiating formal enforcement proceedings where that is necessary and appropriate.

If the NDIS Commission has concerns that an NDIS provider may not be complying with legislative requirements, or may become unable to comply, the initial focus of the NDIS Commission's approach, where appropriate, is to engage with the NDIS provider to support compliance.

Relevant considerations for the NDIS Commission in determining what, if any, further actions are to be taken will include: whether the provider has an understanding of the problem; whether the provider demonstrates a willingness to act to address the problem; whether the provider has a history of non-compliance; whether the non-compliance appears to be serious or systemic.

The compliance pyramid

A wide range of tools, methods and powers are available to the NDIS Commission. The actions to be taken will be determined on a case by case basis, including:

- the seriousness of the issue;
- the appropriateness of the person's response; and
- the likelihood of further harm.

The compliance and enforcement actions available to the NDIS Commission are:

- administrative (these actions include education, corrective action requests, warning letters, compliance notices, infringement notices, enforceable undertakings, varying, suspending or revoking registration, and bans); or
- court-based (these actions include injunctions, taking action to enforce an undertaking, and civil penalties).

Administrative measures may enable earlier resolution than court action, and may also lend themselves to achievement of appropriate and timely outcomes that are in a participant's and/or provider's interests, and/or the public interest.

The NDIS Commission has published a suite of [policies on our website](#) that detail the nature of each compliance and enforcement action and the approach generally taken in respect of each type of action.

Information gathering, inquiry and monitoring powers are used to help prevent people with disability from experiencing harm arising from poor quality or unsafe supports or services.

A monitoring activity, such as a site visit or regular contact with people working in the NDIS market, may assess compliance with the Act generally or may target particular responsibilities or obligations. This helps the NDIS Commission to make decisions about any further regulatory actions or support that may be necessary.

The Ayres & Braithwaite regulatory pyramid¹ helps to illustrate how the NDIS Commission works to support participants' choice and control and to support a responsive and effective NDIS market.

Figure 1: Compliance Pyramid



The pyramid helps to show how the NDIS Commission takes a responsive and proportionate approach to regulation, applying the strongest actions to the most serious issues and breaches. It also demonstrates the ability to escalate actions if an initial response does not achieve the intended outcome.

Some actions or regulatory tools are alternatives, while others are used in combination. Using a range of tools from the base of the pyramid may often achieve compliance fairly quickly without needing to escalate to more serious enforcement action, if appropriate. However, it is also open to the NDIS Commission to proceed directly with the strongest actions in a particular case.

Educate and persuade

The primary approach to achieving ongoing compliance and building the capacity of the sector is to educate, advise and encourage NDIS providers and workers to identify and understand their obligations and improve their practice.

Measures may include practical advice to improve outcomes, targeted education and outreach activities, engaging with the regulated community at the earliest possible stage, and providing timely information and advice through the NDIS Commission website, social media, and information sessions.

¹ I. Ayres and J. Braithwaite (1992) *Responsive Regulation: Transcending the Deregulation Debate*. New York: Oxford University Press. <http://johnbraithwaite.com/monographs/>

Such measures help to:

- raise awareness of the benefits of compliance, and the various measures that will be taken to address non-compliance;
- remove barriers to compliance, such as lack of awareness about obligations, confusion with other regulators, or particular accessibility needs;
- promote the objects of the Act, NDIS Practice Standards and NDIS Code of Conduct;
- support a reduction in restrictive practices; and
- reduce the risk that people will inadvertently take action that constitutes a breach.

Having provided advice or guidance to achieve compliance and being satisfied a provider has taken timely and satisfactory steps to remedy a breach, the NDIS Commission may decide to take no further action.

If a provider is not making timely progress to rectify non-compliance the NDIS Commission will consider what additional action may be required to ensure the provider meets their responsibilities.

Investigations

The NDIS Commission will work with NDIS providers to support compliance with quality and safeguards requirements, including through education and training about their obligations.

The NDIS Commission may also investigate complaints and reports of non-compliance with the NDIS Practice Standards, NDIS Code of Conduct and other legislative requirements. The NDIS Commission can commence an own motion investigation into any matter relating to compliance by registered and unregistered providers and workers.

The NDIS Commission can exercise monitoring investigation powers (under Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act) to check compliance with the Act or whether any information provided pursuant to the Act is correct. Broader investigation powers under Part 3 of the Regulatory Powers Act can be used where there is a suspicion that there has been non-compliance with any civil penalty or offence provision.

The NDIS Commission's information gathering powers under section 55A of the Act can be utilised regardless of whether or not there has been non-compliance in accordance with the functions of the NDIS Commission.

An investigation is the process of seeking information about alleged, apparent or potential non-compliance, and may support, precede or follow other action taken by the NDIS Commission.

NDIS Commission staff follow the [Australian Government Investigations Standards](#) and a range of other statutory requirements and policies, including:

- Regulatory Powers Act
- Legal Services Directions under the *Judiciary Act 1903*
- Australian Public Service (APS) values and APS Code of Conduct.

Reviewable decisions

A person can seek review of certain types of decisions if they are directly affected by the decision. When the NDIS Commission undertakes this review, it is known as an internal review.

An internal review must be undertaken by an officer of the NDIS Commission who was not involved in making the original decision.

A request for review may be made to the NDIS Commission by:

- sending or delivering a written request by mail or email; or
- making an oral request, in person or by phone, or other means to the Commissioner.

A person affected by a decision who is not satisfied with the outcome of an internal review may apply for the decision to be reviewed by the Administrative Appeals Tribunal (AAT).

The decision stays in place until and unless another decision is made. However, a person may request that the AAT make an order staying or otherwise affecting the implementation of the decision.

Table 1: Decisions subject to review

Decision	Section
A decision to refuse to register a person as a registered NDIS provider	s 73E
A decision to impose conditions to which a person's registration as a registered NDIS provider is subject	s 73G
A decision to vary, or refuse to vary, the registration of a registered NDIS provider	s 73L
A decision to suspend the registration of a registered NDIS provider	s 73N
A decision to revoke, or not to revoke, the registration of a person as a registered NDIS provider	s 73P
A decision to give a compliance notice to an NDIS provider	s 73ZM
A decision to make a banning order	s 73ZN
A decision to vary, or to refuse to vary or revoke, a banning order	s 73ZO

Appendix

Accessible version of the compliance pyramid:

A pyramid diagram, with a list of actions for the most serious breaches to less serious issues:

1. Ban
2. Revoke registration
3. Civil penalties
4. Injunction, infringement notice, suspend registration
5. Compliance notice, enforceable undertaking, vary registration
6. Registration, audit, investigation, corrective action request, warning
7. Education, persuasion, compliance support.