



**NDIS Quality
and Safeguards
Commission**

Infringement Notice Policy

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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 services and supports, 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.

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 has a range of tools for responding to non-compliance. These are set out in the NDIS Commission's *Compliance and Enforcement Policy*.

This policy concerns the NDIS Commission's power to give infringement notices in response to alleged breaches of certain provisions of the NDIS Act.

Infringement notices are an efficient way of dealing with non-compliance, without the matter needing to go to court.

This policy provides background information and guidance on the NDIS Commission's general approach to the use of infringement notices.

A decision-maker is not bound to exercise his or her discretion to give an infringement notice only in accordance with this policy. Each case will be considered on its particular facts.

What is an infringement notice?

An infringement notice is a notice given to a person setting out brief details of an alleged breach of the law by that person, a penalty amount, and the period within which to pay the penalty amount. It provides the person given the notice the option of choosing whether or not to pay the penalty amount stated in the notice.

Infringement notices are a timely and efficient means for the NDIS Commission to respond to breaches of the NDIS Act.

The types of compliance matters for which the NDIS Commission can give infringement notices concern:

- failure of an NDIS provider to be registered to provide certain supports
- providing false or misleading information when applying for registration as an NDIS provider
- NDIS provider breaching a condition of its registration
- former registered NDIS provider failing to keep records
- NDIS providers or workers not complying with their obligations under the NDIS Code of Conduct
- NDIS providers or workers breaching notices or orders issued by the NDIS Commission
- causing or threatening detriment to a person because of a protected disclosure

The NDIS Commission's power to give an infringement notice is discretionary and offers an alternative to taking court action in relation to the breach.

Paying an infringement notice is not an admission of liability. If the recipient of the notice pays the amount stated in the notice, then court proceedings cannot be brought against that person in relation to the alleged breach of the law.

However, if the recipient of the notice chooses not to pay the infringement notice, then the NDIS Commission may initiate proceedings to have the court order the person to pay a financial penalty. This is known as a 'civil penalty order' and the court may impose a greater penalty amount than that stated in the infringement notice.

Infringement notice provisions

The provisions relevant to the NDIS Commission's use of infringement notices are section 73ZL of the NDIS Act and Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*.

The Commissioner of the NDIS Commission, or his or her delegate, may give a person an infringement notice if he or she believes on reasonable grounds that a particular civil penalty provision of the NDIS Act has been breached.

Annexure A to this policy lists the civil penalty provisions of the NDIS Act for which an infringement notice may be given in relation to an alleged breach.

The Commissioner must give the infringement notice within 12 months of the alleged breach. The notice can only relate to an alleged breach of one provision of the NDIS Act – either for a single breach of that provision, or multiple breaches of a provision that required a person to do something within a particular period or before a particular time.

The penalty amount in each infringement notice will depend on whether it is for single or multiple alleged breaches of a provision, and whether the recipient is an individual or body corporate. The amount payable will be less than the maximum amount that a court could order a person to pay if it found that the provision was breached. **Annexure A** lists the maximum penalty that a court could impose for each breach of the relevant provision.

Annexure A also lists the penalty amount to be included in an infringement notice for an alleged breach. That amount is determined by the legislation and the NDIS Commission is unable to change the amount of the penalty.

The NDIS Commission's approach to the use of infringement notices

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

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- 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
 - potential to return the provider to full compliance, and as soon as possible.

The NDIS Commission's use of infringement notices forms part of its consideration of the most appropriate mechanism to address non-compliance. The NDIS Commission may consider giving an infringement notice in conjunction with, or as an alternative to, using other compliance and enforcement tools.

Once the decision maker at the NDIS Commission establishes that there are reasonable grounds to form a belief that a person has breached a provision of the NDIS Act, he or she can consider whether it is appropriate in all of the circumstances to give an infringement notice.

There is no obligation on the NDIS Commission to give an infringement notice in relation to an alleged breach of the NDIS Act. The giving of an infringement notice will be determined on a case-by-case basis. The NDIS Commission may give multiple infringement notices where it considers it appropriate to do so and may give infringement notices as part of a program responding to industry-wide conduct.

The NDIS Commission will turn its mind to the prospect of bringing court proceedings in respect of the alleged breach and its preparedness to do so if the infringement notice is not paid. A benefit of giving an infringement notice is that it allows for a timely and efficient response to non-compliance without the need for bringing court action. If a person pays the infringement notice amount, then court proceedings cannot be brought against that person in respect of the alleged breach for which the notice was given.

Examples of where the NDIS Commission may be more likely to consider the use of infringement notices include where:

- the recipient's non-compliance is isolated or non-systemic;
- the recipient has accepted their conduct was non-compliant and discontinued it;
- the detriment to participants and others in the community arising from the non-compliant conduct is at a lower level; and/or
- giving the infringement notice is expected to improve the compliance of the recipient, related entities or others in the industry.

Examples of circumstances where an infringement notice may not be appropriate include where:

- the NDIS Commission has previously taken action against the recipient for similar breaches;
- the NDIS Commission considers the breaches warrant consideration by the court;
- the recipient has, as a consequence of the alleged conduct, obtained a financial or other advantage, to the detriment of others;
- the lack of response by the recipient to other mechanisms used by the NDIS Commission to address non-compliance;
- the NDIS Commission has concerns that the alleged conduct may be continuing;
- the matter raises questions about the interpretation of a provision of the NDIS Act, whether the alleged conduct occurred within the relevant period, and potential defences to the breach; and/or

- the NDIS Commission is taking other compliance or enforcement action in relation to the recipient's conduct.

How to respond to an infringement notice

Content of an infringement notice

An infringement notice given by the NDIS Commission will, among things:

- (a) be identified by a unique number;
- (b) state the name of the person to whom the notice is given;
- (c) state the date on which the notice is given;
- (d) set out the name and contact details of the infringement officer who gave the notice;
- (e) set out brief details of the alleged breach, or each alleged breach, of a provision of the NDIS Act, including the time (if known), day and place of each alleged breach;
- (f) state the amount payable under the notice and how it can be paid;
- (g) state that, if the person given the notice pays the amount within 28 days after the day the notice is given, then proceedings seeking a civil penalty order will not be brought in relation to the alleged breach;
- (h) state that payment of the amount is not an admission of liability;
- (i) state that the person given the notice may apply to have the period in which to pay extended;
- (j) state that the person may choose not to pay the amount, in which case, proceedings seeking a civil penalty order may be brought in relation to the alleged breach;
- (k) set out how the notice can be withdrawn and state that if the notice is withdrawn, proceedings seeking a civil penalty order may be brought in relation to the alleged breach; and
- (l) state that the person may make written representations seeking the withdrawal of the notice.

Payment of the infringement notice amount

The person that is given the infringement notice can choose whether or not to pay the amount stated in the notice.

Payment of the amount in the notice prevents the NDIS Commission from commencing court proceedings for a civil penalty order in respect of the alleged breach of the NDIS Act.

The infringement notice will indicate the timeframe and method for payment. Payment of the full amount stated in the notice (and not payment by instalment) is required.

If a person chooses to pay the infringement notice amount, the person is not, merely because of the payment, to be regarded as having breached the NDIS Act. Payment of the infringement notice amount means that any liability of the person for the alleged breach is discharged.

Non-payment of the infringement notice amount

A person given an infringement notice is not obliged to pay the amount stated in the notice.

Recipients of infringement notices benefit by having the option of paying the infringement notice and avoiding the prospect of legal proceedings. Infringement notice amounts are lower than the maximum penalty a court could impose if the person was found to have breached the NDIS Act.

If the person given the infringement notice chooses not to pay the infringement notice amount, then the NDIS Commission may decide to commence legal proceedings seeking a civil penalty order in respect of the alleged breach.

Request for an extension of time to pay the penalty

Generally, a person given an infringement notice must pay the amount within 28 days after the notice is given. However, the Commissioner (or his or her delegate) may extend the time for payment.

Applications for an extension of time must be received before the expiry of the period for payment and will be considered on a case-by-case basis.

In applying for an extension of time, the recipient should set out the reasons why such an extension should be granted, including any intention the recipient has to pay the infringement notice amount.

The NDIS Commission will notify the recipient in writing of its decision whether or not to extend the period for payment.

Withdrawal of an infringement notice

The Commissioner may withdraw an infringement notice on his or her own initiative or after receiving a request from the recipient of the notice seeking its withdrawal.

The notice recipient must make any request for withdrawal in writing and should provide any reasons as to why they think the notice should be withdrawn.

This might include any evidence or information to show that the person has not engaged in the alleged conduct. Any information provided to the NDIS Commission should be provided with care. It is a serious criminal offence to provide false or misleading information.

The Commissioner will consider all requests for withdrawal on a case-by-case basis.

Factors that may have a bearing on whether a notice should be withdrawn (whether on the Commissioner's own initiative or after receiving a request) include whether there is further information or evidence that suggests that:

- the recipient of the notice did not breach the relevant provision of the NDIS Act or
- the conduct is more serious than initially believed and the matter would be more appropriately dealt with by the court.

As the legislation sets out the amount of the penalty to be paid under an infringement notice, the NDIS Commission is unable to reduce the amount of the penalty for a notice.

The NDIS Commission will provide written notice of any decision to withdraw an infringement notice.

If the infringement notice had already been paid at the time that it is withdrawn, then the amount paid will be refunded.

If an infringement notice is withdrawn, then the NDIS Commission will consider whether other action, including commencing legal proceedings for a civil penalty order in respect of the alleged breach, is appropriate.

Record-keeping and publication

The NDIS Commission will keep records of the giving of infringement notices and the payment or non-payment of the amount specified in the notice. Where permitted by law, the NDIS Commission may provide information about its use of infringement notices to other regulators, to assist those regulators in carrying out their responsibilities.

In accordance with the principle of transparency, the NDIS Commission's general approach is to publish aggregated information concerning the giving, and payment of infringement notices, without identification of the recipients of the notices.

However, information about specific infringement notices, including identifiable information, may be released:

- in response to a request for access under the *Freedom of Information Act 1982* or for other lawful reasons; or
- where there is lawful authority for release of the information and the NDIS Commission considers its release would be appropriate.

Factors where the NDIS Commission may be more likely to publish specific or identifiable information include where:

- there is a strong public interest in knowing what enforcement action has been taken in response to the alleged conduct of a particular person; and/or
- the NDIS Commission considers there would be a significant deterrent effect in publicising the use of an infringement notice in a particular case, such as where the conduct raises novel or industry-wide issues.

Annexure A – Provisions of the NDIS Act subject to an infringement notice and penalty amounts

Provision of NDIS Act	Description of Provision	Maximum penalty units that a court might impose for breaching the provision*	Penalty payable under an infringement notice* (based on a single contravention of the provision)
S 73B	Providing supports under a participant's plan where the NDIS rules require the person to be registered but the person is not so registered.	250 penalty units (individual) 1250 penalty units (corporation)	12 penalty units (individual) 60 penalty units (corporation)
S 73D	Providing false or misleading information or a document in, or in connection with, an application for registration.	60 penalty units (individual) 300 penalty units (corporation)	12 penalty units (individual) 60 penalty units (corporation)
S 73J	Registered NDIS provider breaches a condition of registration.	250 penalty units (individual) 1250 penalty units (corporation)	12 penalty units (individual) 60 penalty units (corporation)

Provision of NDIS Act	Description of Provision	Maximum penalty units that a court might impose for breaching the provision*	Penalty payable under an infringement notice* (based on a single contravention of the provision)
s 73R	Former registered NDIS provider fails to comply with requirement to retain records	60 penalty units 300 penalty units (corporation)	12 penalty units (individual) 60 penalty units (corporation)
S 73V	Failure of person to comply with a requirement under the NDIS Code of Conduct	250 penalty units (individual) 1250 penalty units (corporation)	12 penalty units (individual) 60 penalty units (corporation)
S 73ZC	Engaging in conduct that causes detriment to another person because that person or another person has made a protected disclosure.	500 penalty units (individual) 2500 penalty units (corporation)	12 penalty units (individual) 60 penalty units (corporation)
S 73ZC	Threatening to cause detriment to another person because that person or another person has or may make a protected disclosure.	500 penalty units (individual)	12 penalty units (individual)

Provision of NDIS Act	Description of Provision	Maximum penalty units that a court might impose for breaching the provision*	Penalty payable under an infringement notice* (based on a single contravention of the provision)
		2500 penalty units (corporation)	60 penalty units (corporation)
S 73ZM	NDIS provider fails to comply with a compliance notice.	60 penalty units (individual) 300 penalty units (corporation)	12 penalty units (individual) 60 penalty units (corporation)
S 73ZN	Person engages in conduct that breaches a banning order.	1000 penalty units (individual) 5000 penalty units (corporation)	12 penalty units (individual) 60 penalty units (corporation)

* Currently, one penalty unit equals \$275.