



**NDIS Quality  
and Safeguards  
Commission**

# Compliance Notices Policy

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**NDIS Quality  
and Safeguards  
Commission**

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

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. 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 that are provided for in Chapter 4, Part 3A of the NDIS Act. 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 compliance notices.

Compliance notices are a non-punitive mechanism that allow the NDIS Commission to take action, without requiring the matter to go to court. This policy provides background information and guidance on the NDIS Commission's general approach to the use of compliance notices.

The NDIS Commissioner is not bound to exercise his or her discretion to give a compliance notice only in accordance with this policy. Each case will be considered on its particular facts.

## What is a compliance notice?

A compliance notice is a written direction given to an NDIS provider (as a person or entity under the NDIS Act) by the NDIS Commissioner requiring the NDIS provider to take certain action, or not take action, within a reasonable timeframe, to address one or more issues of identified non-compliance, or possible non-compliance, with the NDIS Act. It may also require the NDIS provider to produce evidence that it has taken, or refrained from taking, the specified action. The NDIS Commissioner may also delegate this power to a Commission officer, in writing.

Compliance notices offer a timely compliance tool that can be given by the NDIS Commissioner, to respond to contraventions of the NDIS Act by an NDIS provider, and address quality and safeguarding concerns. The NDIS Commissioner's power to give a compliance notice is discretionary and offers a non-punitive mechanism to address contraventions of the NDIS Act, without requiring the matter to go to court. The NDIS Commissioner may choose to give a compliance notice prior to, or in tandem with, another compliance and enforcement tool.

Failure to comply with a compliance notice may result in the NDIS Commissioner issuing an

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infringement notice, commencing legal proceedings to seek a civil penalty order, and in the circumstance of a registered NDIS provider, giving consideration to suspending or revoking the provider's registration.

For further information concerning the NDIS Commission's approach to infringement notices, seeking civil penalties and the suspension or revocation of registration, please refer to the NDIS Commission's [\*Compliance and Enforcement Policy\*](#).

## Legislative provisions

The provisions relevant to the NDIS Commissioner's use of compliance notices are contained in section 73ZM of the NDIS Act.

The NDIS Commissioner may give an NDIS provider a written compliance notice if the Commissioner is:

- satisfied that an NDIS provider is not complying with the NDIS Act; or
- aware of information suggesting that an NDIS provider may not be complying with the NDIS Act.

A compliance notice given by the NDIS Commissioner must:

- (a) set out the name of the provider to which the notice is given; and
- (b) set out brief details of the non-compliance or possible non-compliance; and
- (c) specify action that the provider must take, or refrain from taking, in order to address the non-compliance or possible non-compliance; and
- (d) specify a reasonable timeframe within which the provider must take, or refrain from taking, the specified action; and
- (e) if the NDIS Commissioner considers it appropriate – specify a reasonable timeframe within which the provider must provide the NDIS Commissioner with evidence that the provider has taken, or refrain from taking, the specified action; and
- (f) state that a failure to comply with the notice is subject to a civil penalty; and
- (g) where a registered NDIS provider is concerned – state that a failure to comply with the notice may lead to the suspension or revocation of the provider's registration; and
- (h) set out any other matters specified in the relevant NDIS rules.

The NDIS Commissioner may, by written notice given to an NDIS provider, vary or revoke a compliance notice if the NDIS Commissioner considers that it is appropriate in all the circumstances to do so. In deciding whether to vary or revoke a compliance notice, the NDIS Commissioner must consider any submissions received from the provider before the end of the timeframe (as per (d) above).

The NDIS Commissioner will provide written notice of any decision to vary or revoke a compliance notice.

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## The NDIS Commission's approach to the use of compliance notices

As noted above, the NDIS Act provides that the NDIS Commissioner may give a compliance notice to an NDIS provider in two key circumstances:

- Firstly, as provided by section 73ZM (1)(a), where the NDIS Commissioner is satisfied that an NDIS provider is not complying with the NDIS Act. In this circumstance, a compliance notice will specify action that the provider must take, or refrain from taking, within a reasonable timeframe, to address the non-compliance.
- Secondly, as provided by section 73ZM (1)(b), where the NDIS Commissioner is aware of information that suggests an NDIS provider may not be complying with the NDIS Act. In this circumstance, a compliance notice will also specify action that the provider must take, or refrain from taking, within a reasonable timeframe, to address the possible non-compliance.

The types of compliance matters for which the NDIS Commissioner may give compliance notices to NDIS providers include, but are not limited to:

- an NDIS provider or worker not complying with their obligations under the *NDIS Code of Conduct*, particularly including failing to promptly take steps to raise and act on concerns about matters that may impact the quality and safety of supports and services provided to people with disability;
- a registered NDIS provider using a regulated restrictive practice without State or Territory authorisation, and/or not in accordance with an appropriate behaviour support plan;
- a registered NDIS provider failing to implement and maintain an appropriate and compliant incident management scheme, or to comply with all applicable requirements relating to reportable incidents;
- a registered NDIS provider failing to support participants to make informed choices, exercise control and maximise their independence in relation to supports provided; or
- any other contravention, or alleged contravention, of the NDIS Act.

The NDIS Commission's [Compliance and Enforcement Policy](#) provides further broad guidance concerning the factors the NDIS Commission considers when determining whether a compliance notice is suitable, to address non-compliance or possible non-compliance with the NDIS Act.

### When a compliance notice is an appropriate compliance tool

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

- the NDIS provider does not have a history of non-compliance;
- there is a risk to health, safety and wellbeing of people with disability and others in the community arising from the non-compliant conduct;

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- a compliance notice can be issued to encourage a change in conduct to improve compliance quickly, compared with other compliance tools which may require legal proceedings and will not be immediately available;
  - a compliance notice is being issued prior to, or in tandem with, the NDIS Commission taking other action to address concerns of immediate danger or harm;
  - the NDIS provider has previously failed to address the relevant non-compliance voluntarily; or
  - the non-compliance with the NDIS Act is systemic in nature.

For the avoidance of doubt, the giving of a compliance notice does not preclude the NDIS Commission from taking further compliance action against a person.

## When a compliance notice would not be considered an appropriate compliance tool

Examples of circumstances where a compliance notice may not be appropriate include where:

- the NDIS provider has a history of non-compliance; or
- the NDIS Commission has previously taken action(s) against the provider for similar contraventions of the NDIS Act.

In these circumstances, it may be appropriate for the NDIS Commission to issue a compliance notice, and to consider other compliance or enforcement measures such as a civil penalty order, an injunction, variation, suspension or revocation of an NDIS Provider's registration, or a banning order.

## Record keeping and publication

The NDIS Commission will keep records of all circumstances where a compliance notice has been given to an NDIS provider. Where permitted by law, the NDIS Commission may provide information about its use of compliance notices to other regulators, to assist those regulators in carrying out their responsibilities.

Section 73ZS of the NDIS Act requires that the NDIS Commission must establish and maintain a register known as the NDIS Provider Register, which includes:

- if a compliance notice is in force in relation to a registered NDIS provider – information about the compliance notice; or
- if an NDIS provider is, or was, subject to a compliance notice – information about the compliance notice.

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## Review of decisions

A person can seek a review of certain decisions made by the NDIS Commissioner if they are directly affected by that 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 must be made within three months of receiving written notice of the decision 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.

If the person seeking an internal review receives a decision and they are not satisfied with the outcome, the person may apply for the decision to be reviewed by the Administrative Appeals Tribunal (AAT). The request for review by the AAT must be made within 28 days of receiving written notice of an internal review decision.

The decision made by the NDIS Commissioner will remain until or unless another decision is made by the AAT. However, a person may request that the AAT make an order staying or otherwise affecting the implementation of the decision made by the NDIS Commission.

Relevant to this policy, a decision to give a compliance notice to an NDIS provider is reviewable by the AAT.

A person may also seek a review of decisions made by the NDIS Commissioner under the *Administrative Decisions (Judicial Review) Act* (ADJR Act). The application for review can be made to the Federal Court or the Federal Circuit Court, and can only be made if certain grounds under section 5 of the ADJR Act are present in the application for review.