



NDIS Quality
and Safeguards
Commission

Injunctions Policy

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**NDIS Quality
and Safeguards
Commission**

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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 (Part 3A). 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 injunctions.

The NDIS Commissioner is not bound to request an injunction only in accordance with this policy. Each case will be considered on its particular facts.

What is an injunction?

An injunction is a court order that can be used to compel a person to take a certain action, or to refrain from taking a certain action. The NDIS Commissioner may seek an injunction from a court to ensure compliance with the NDIS Act by a provider. The NDIS Commissioner may also delegate the ability to seek an injunction to a Commission officer, in writing.

Injunctions can be sought from a court to prevent conduct or require a provider to engage in certain conduct whether the specified conduct is occurring, has occurred in the past, or is likely to give rise to an imminent danger to NDIS participants. This enables the NDIS Commission to prevent harm before it occurs.

Legislative provisions

Section 73ZQ of the NDIS Act and Part 7 of the RP Act provide the legislative basis for the NDIS Commissioner's use of injunctions.

The NDIS Commissioner may apply for an injunction to a relevant court if a person has engaged, is engaging, or is proposing to engage, in conduct in contravention of a provision in Part 3A. Under Part 7 of the RP Act, when the NDIS Commissioner seeks an injunction, the matter may be pursued in:

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- (a) the Federal Court;
 - (b) the Federal Circuit Court; or
 - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

The relevant court may grant an injunction to the NDIS Commissioner to either:

- (a) restrain a person from engaging in the conduct; or
- (b) require a person to do a specific thing.

Restraining Injunctions

Section 121(1) of the RP Act provides that a restraining injunction can be used to prevent a person, who has engaged, is engaging, or is proposing to engage, in conduct that contravenes a provision of Part 3A, from engaging in the conduct. In addition to preventing a person from engaging in contravening conduct, a restraining injunction may also require a person to do a certain thing.

Under the RP Act, a relevant court has the power to grant a restraining injunction irrespective of:

- (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage in conduct of that kind; and
- (b) whether or not the person has previously engaged in conduct of that kind; and
- (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.

Performance Injunctions

Section 121(2) of the RP Act provides that a performance injunction can be used to require a person to do a particular thing, in circumstances where that person has refused or failed to do that thing, is refusing or failing to do that thing, or is proposing to refuse or fail to do that thing. This is in circumstances where the refusal or failure was, is or would be a contravention of a provision of Part 3A.

Similarly to restraining injunctions, the power of the court to grant performance injunctions may be exercised:

- (a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that thing; and
- (b) whether or not the person has previously refused or failed to do that thing; and
- (c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that thing.

Consent Injunctions

Under section 73ZQ(4) of the NDIS Act, the NDIS Commissioner may also seek an injunction from a court by consent of all parties to the proceedings. A relevant court may grant a performance or restraining injunction by consent of all the parties to proceedings, whether or not the court is satisfied that section 121 of the RP Act applies.

Interim Injunctions

Under section 122 of the RP Act, the NDIS Commissioner may also seek an interim injunction while a court considers an application for a restraining injunction or performance injunction. An interim injunction may:

- (a) restrain a person from engaging in conduct; or
- (b) require a person to do a specific thing.

A court may, if in the court's opinion it is desirable to do so, grant an interim injunction pending the determination of the application for an injunction under section 121. The interim injunction will be effective from the time the interim injunction is granted to the time that the court's final decision is made.

The NDIS Commission's approach to the use of injunctions

Injunctions will most commonly be used as an interim and preventative measure to protect the health, safety, or wellbeing of people with disability whilst further investigations are finalised. Once an investigation is finalised, the NDIS Commission will decide whether further compliance and enforcement action is appropriate. An injunction may be used in combination with other regulatory tools.

When an injunction is an appropriate compliance tool

An injunction will rarely be used as a final compliance solution. Rather, injunctions are more generally used as an interim solution for non-compliance before a final compliance solution (such as a banning order or revocation of registration) has been determined. Circumstances in which the NDIS Commissioner may seek an injunction include where:

- there is a serious risk to the health, safety or wellbeing of a person with disability that cannot be otherwise remedied; or
- other powers available to the NDIS Commissioner have not resulted in, or are unlikely likely to result in, compliance being achieved.

When an injunction would not be considered an appropriate compliance tool

An injunction will generally not be an appropriate compliance tool if:

- an NDIS provider is cooperating with the NDIS Commission and remedying any conduct of concern; or
- other powers available to the NDIS Commission have, or will likely, be used successfully in compelling compliance from an NDIS provider or a person employed or engaged by an NDIS provider; or
- there is no serious risk to the health, safety or wellbeing of a person with disability.

Who can be the subject of an injunction?

The NDIS Commissioner may seek an injunction with respect to an NDIS provider where the provider's conduct contravenes a provision of Part 3A.

The NDIS Commissioner may also seek an injunction against a person who is employed or engaged by an NDIS provider in those limited circumstances where such a person is capable of contravening, and has contravened, a provision of Part 3A (for example, where they have contravened section 73V of the NDIS Act by breaching the NDIS Code of Conduct).

Depending on the circumstances, the NDIS Commissioner may consider it appropriate to pursue an injunction against a person employed or engaged by the NDIS provider, rather than the NDIS provider itself.

Non-compliance with an injunction order

In the event that a person refuses to comply with a granted injunction, the NDIS Commissioner may apply to the court to seek a further order directing the person to comply with the injunction, and for the court to supervise compliance with the order if necessary. The Federal Court of Australia and the Federal Circuit Court of Australia also have the power to make the other orders where a person fails to comply with an injunction, including orders to take a person's property.

Record keeping and publication

The NDIS Commission will keep records of injunctions sought and granted by a court. The NDIS Commissioner may include information about granted injunctions on the NDIS Provider Register, which is published on the NDIS Commission's website. Where permitted by law, the NDIS Commission may also provide information about persons subject to an injunction to other regulators to assist those regulators in carrying out their responsibilities.