



**NDIS Quality
and Safeguards
Commission**

Dear Chief Executive Officer,

Supporting you as a registered National Disability Insurance Scheme (NDIS) provider

On 1 December 2020, your organisation became a registered NDIS provider as required under the *National Disability Insurance Scheme Act 2013* (NDIS Act). Your automatic registration with the NDIS Quality and Safeguards Commission (NDIS Commission) from 1 December 2020 meant that your organisation did not have to do anything to comply with the requirement to be registered under the NDIS Act.

Prior to 1 December 2020, residential aged care (RAC) providers and workers providing support to NDIS participants were required to comply with the NDIS Code of Conduct, and the NDIS Commission could handle complaints about such RAC providers and workers in relation to NDIS supports and services. The exemption had been planned to end on 30 June 2020 but was extended due to the impact of the COVID-19 pandemic on the aged care sector.

Since that time we have had inquiries, and received feedback, about your obligations as a registered NDIS provider and how these operate alongside your obligations as an approved provider within the meaning of the *Aged Care Act 1997*.

The purpose of this letter is to provide you with information in response to those issues. The attachment to this letter sets out the main areas of inquiry, and what is being done to support you as a registered NDIS provider to meet your obligations.

We have been working over an extended period with Aged and Community Services Australia (ACSA), other aged care industry peaks and associated stakeholders representing the interests of NDIS participants living in residential aged care. The focus of this work has been to assist the sector meet its obligations to those residents who are in the NDIS, and aligning with the *Australian Government's Strategy on Younger People in Residential Aged Care*.

Several mechanisms have been put in place to minimise undue regulatory burden:

- not requiring RAC providers to do anything to be registered with the NDIS Commission where required to be registered;
- giving RAC providers time to progressively meet obligations to comply with the NDIS Practice Standards and the NDIS worker screening and positive behaviour support requirements for the support of NDIS participants, recognising these obligations are new and providers need time to implement them;
- extended periods of time have been given to the majority of providers to undertake a registration renewal process, with providers that support low numbers of NDIS participants not having to complete that process until March 2023;
- providing a free support service for RAC providers to help them to comply.

You will also receive more information from us shortly about:

- work with the Aged Care Quality and Safety Commission (ACQSC) to develop guidance on how evidence available through an aged care assessment can be used to demonstrate compliance with the NDIS Commission requirements, so as to not duplicate;

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- how to apply NDIS worker screening in the context of aged care settings; and
- how aged care nursing plans can be used in many circumstances to meet your behaviour support obligations to NDIS participants who may have a restrictive practice in place.

How we monitor compliance

Providers have asked us how we go about monitoring compliance. The NDIS Commission monitors compliance in accordance with the NDIS Act, and our *Compliance and Enforcement Policy*, including:

- by investigating complaints that we might receive about the NDIS supports and services you provide;
- by reviewing how your organisation manages serious incidents involving violence, abuse, neglect and other harm to NDIS participants that you are required to report to us;
- considering information that we receive from other regulators including the ACQSC; and
- through period audits that are undertaken as part of the registration process.

We take a proportionate approach to regulation, focussing on reducing risk of harm to a person with disability, and assisting a provider to return to full compliance and as soon as possible.

You can find our *Compliance and Enforcement Policy* on our [website](#).

We will continue to work with RAC providers so that NDIS participants living in residential aged care have the same quality and safeguarding arrangements as other participants living in the wider community.

I strongly encourage your organisation to make use of the [Residential Aged Care Support Hub](#) which provides extensive information and free resources developed exclusively for RAC providers supporting NDIS participants. You can also call 1800 860 640 to arrange for no-cost one-on-one support that meets the specific circumstances of your organisation.

You can also contact the NDIS Commission on 1800 035 544 should you have queries about the unique context of your organisation.

Yours sincerely

Samantha Taylor PSM
Registrar
10 May 2021

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Registration Requirements and Associated Supports – Residential Aged Care Providers supporting NDIS Participants

Obligations	Frequently asked questions
<p>NDIS Code of Conduct</p> <p>All providers delivering NDIS supports and services are required to comply with the <u>NDIS Code of Conduct</u> (the Code).</p> <p>Workers involved in supporting NDIS participants must also comply with the Code.</p> <p>This requirement has been in place since the NDIS Commission commenced in your state or territory.</p>	<p>Do all staff in my residence have to complete the NDIS Commission’s Worker Orientation Module?</p> <p>You should make the NDIS Code of Conduct available to all staff who work with an NDIS participant.</p> <p>For those staff who work regularly and closely with an NDIS participant, you should ask them to complete the NDIS Worker Orientation Module. You can do this over time, for example during team meetings or arranging for staff to complete the module alone. The module is designed in parts that take around 20 minutes each to complete.</p>
<p>Complaints</p> <p>You are required to have a complaints management process that makes it easy for a person to make a complaint to you, and have it resolved.</p> <p>You should support NDIS participants to understand how to make a complaint to the NDIS Commission about their NDIS supports.</p>	<p>Can the complaints management system I have for complaints in aged care be used to meet the NDIS Commission requirements?</p> <p>Yes, generally the complaints management system that you must have to manage complaints in aged care will be sufficient to meet the NDIS Commission requirements. It should:</p> <ul style="list-style-type: none"> • be appropriate to the size of your organisation and the complexity of the services and supports you deliver; • make it easy for people to make a complaint (anonymously if they choose) and ensure that all complaints are dealt with quickly and fairly; • include a system for keeping records of any complaints received.
<p>Behaviour support</p> <p>Some NDIS participants need assistance with managing their behaviour. Sometimes a person with disability can be subject to a restrictive practice. This might be a chemical restraint (a medication specifically prescribe to modify a person’s behaviour, other than a mental illness) or an environmental restraint (such as locked doors).</p> <p>Under the laws in each state and territory, you must obtain authorisation for the use of certain restrictive practices.</p> <p>You must also have a behaviour support plan in place that includes the restrictive practice.</p>	<p>The NDIS participants I support all have nursing care plans in place that include behaviour supports. Is that all I need to have?</p> <p>A nursing care plan that outlines the use of the restrictive practice can be accepted as an interim behaviour support plan if it is reviewed and endorsed by a practitioner engaged by an NDIS specialist behaviour support provider.</p> <p>Once engaged, a specialist behaviour support provider must develop a comprehensive behaviour support within 6 months.</p> <p>The NDIS Commission can help you find a provider, and assist in engaging with the NDIA if funding is not available or the NDIS Participant you support to have a plan developed.</p>

Obligations	Frequently asked questions
<p>Reportable Incidents</p> <p>You are required to report certain serious incidents involving NDIS participants to the NDIS Commission, as well as having an incident management system in place for all incidents impacting NDIS participants.</p> <p>The requirement to report incidents to the NDIS Commission means that the Commission can be satisfied that you managed an incident involving an NDIS participant appropriately, acted to remove any ongoing risk of harm to the participant, and have put in place things to avoid the incident recurring.</p>	<p>Why can't I just report incidents to the Aged Care Quality and Safety Commission (ACQSC)? Isn't it a waste of time to report to both regulators?</p> <p>Reporting certain incidents to both the ACQSC and the NDIS Commission means that both regulators can consider the way in which the incident was managed for the affected person and monitor the provider's management of the incident in accordance with their jurisdiction.</p> <p>For example, if the incident involves serious allegations about a worker abusing an NDIS participant, which are subsequently found to be true, the NDIS Commission may be able to take action against that worker, including where the issues are not pursued by police. It may also take action against the provider in the event that the provider has failed to comply with its conditions of registration. The ACQSC would assess the provider's compliance regarding the incident in relation to its obligations under the <i>Quality of Care Principles 2014</i> (which includes incident management and prevention requirements and the Aged Care Quality Standards). Both the NDIS Commission and the ACQSC have the power to take regulatory action to address non-compliance with provider responsibilities where appropriate.</p> <p>Can the incident management system I have for all incidents be used to meet the NDIS Commission requirements?</p> <p>Yes, generally the incident management system that you must have to manage incidents in aged care will be sufficient to meet the NDIS Commission requirements. It should:</p> <ul style="list-style-type: none"> • be documented • include procedures for identifying, assessing, managing and resolving incidents; • outline processes and procedures for record keeping in relation to incidents. <p>Copies of the documented system must be available to certain people, including workers and persons with disability receiving supports or services from the provider.</p>
<p>Worker Screening</p> <p>The requirement to screen workers who support NDIS participants relates only to those staff who are working directly with the NDIS participant, not all the workers in the facility.</p> <p><u>You do not need to screen all your staff.</u></p> <p>Only workers whose aged care check has expired, or new workers without a valid aged care check, need to get a NDIS Worker Screening clearance.</p> <p>The purpose of NDIS worker screening is to exclude workers who pose an unacceptable risk of harm to people with disability. It is a very thorough check that is continuously monitored, so if new information becomes available a person's check outcome might change.</p> <p>Compliance with worker screening is assessed during the registration process.</p>	<p>How does this work if I have lots of workers supporting an NDIS participant, does this mean I have to screen all my workers?</p> <p>The NDIS Commission will issue further guidance to RAC providers on how to apply worker screening in the context of aged care settings.</p> <p>It is up to each organisation to determine the extent of who should be screened, at the point that a valid aged care check expires. You should have a policy around this so it's clear to the NDIS Commission how you made the decision about who to screen. If a residential aged care provider is supporting one or two NDIS participants, they can determine how broadly they apply this requirement and document their risk assessment accordingly.</p> <p>Why do workers have to have two checks, why can't they have one?</p> <p>The NDIS Commission is working with the Department of Health and the ACQSC to consider how to streamline these arrangements where aged care workers work with NDIS participants.</p> <p>How will the NDIS Commission monitor compliance with worker screening?</p> <p>Compliance with worker screening is assessed during the registration process. Compliance will also be considered in the event that an incident results in harm to an NDIS participant, for example violence, abuse, neglect or exploitation, and in investigating the incident it appears that a valid clearance was not available for a worker, and the check might have flagged that the worker was a risk to people with disability.</p>

Obligations

Maintaining Registration

The Certificate of Registration that your organisation received on 1 December included an important date.

This is the date that you must start an application to renew your registration with the NDIS Commission.

You will then have 9 months to complete the application including being assessed by an approved quality auditor against the NDIS Practice Standards.

Most RAC providers must start an application by 1 July 2022 and finish it by March 2023.

RAC providers who need to start their renewal application earlier support a greater number of NDIS participants.

RAC providers can ask the NDIS Commission to consider changing this date to align with your aged care accreditation processes.

When you start your application the NDIS Commission will issue you with a scope of audit. This will tell you the NDIS Practice Standards you must be audited against and the number of people that need to be involved. If you only support one NDIS participant then only that person will be involved. If you support more, then a sample of participants and the workers who support them will be involved.

Frequently asked questions

I want to be ready for my audit and to make sure I'm meeting the NDIS standards. Should I make contact with an approved auditor now?

Do not start any audit or other processes before you have started an application. You won't be able to start your application in our portal until 6 months before the date we've asked you to start. Don't get quotes from auditors until you have a NDIS Commission approved scope of audit (you get a scope of audit by commencing the renewal process on the NDIS Commission's Operating System)

Is the audit for the whole of my organisation, doesn't that duplicate the aged care assessment?

The NDIS commission audit is about the support you provide to NDIS participants only. It does not look at supports you provide to other aged care residents. Broader evidence about your organisation can be used from your aged care assessment to show that you have important measures in place, such as good human resource practices, governance and quality management systems. We will soon give you information about how the aged care standards and the NDIS standards line up, and where you can use the evidence for an aged care accreditation audit to meet the requirements of your NDIS commission audit.

Should I employ consultants to make sure I am compliant?

The NDIS Commission does not require, nor recommend, the engagement of consultants to assist with a registration application. You can get all the information you need at no cost from the [Residential Aged Care Support Hub](#), or the NDIS Commission.

What if the person I am supporting has a transition plan to move out of the facility when I am due to renew my registration?

We don't want you to do anything that is not necessary. You can contact us if you are due to start the registration renewal process and the NDIS participants you support are planning to relocate. We will work that through with you and may vary your registration to accommodate that if necessary.

I've heard the audit is really expensive, is that true?

The costs of the audit will be determined by the number of NDIS participants you support. This drives the number of interviews that the auditor will need to undertake as part of the audit. The cost for RAC providers will also be less than for many other NDIS providers because you will be able to use evidence from your aged care audit to inform your NDIS audit. It is important that you compare quotes from a number of approved quality auditors once you have received your scope of audit document from the NDIS Commission, as prices will vary.