



**NDIS Quality  
and Safeguards  
Commission**

# Warning Letter Policy

V1.0 – May 2022

NDIS Quality and Safeguards Commission  
PO Box 210, Penrith NSW 2750.

## Copyright

© Commonwealth of Australia 2022



The NDIS Quality and Safeguards Commission encourages the dissemination and exchange of information provided in this policy. The material in this policy is licensed under a Creative Commons Attribution 4.0 International licence, with the exception of:

- the Commonwealth Coat of Arms
- the NDIS Quality and Safeguards Commission logo
- any third party material
- any material protected by a trademark
- any illustration, diagram, photograph or graphic over which the NDIS Quality and Safeguards Commission does not hold copyright, but which may be part of or contained within this policy.

More information on this CC BY licence is set out at the creative commons website: [www.creativecommons.org](http://www.creativecommons.org). Enquiries about this licence and any use of this policy can be sent to: [communications@ndiscommission.gov.au](mailto:communications@ndiscommission.gov.au)

## Attribution

Use of all or part of these guidelines must include the following attribution:

© Commonwealth of Australia 2022

### Using the Commonwealth Coat of Arms

Terms of use for the Coat of Arms are available at this website:  
<https://www.pmc.gov.au/government/commonwealth-coat-arms>

## Important notice

The information in this policy is for general guidance only. It does not constitute legal or other professional advice, and should not be relied on as a statement of a law in any jurisdiction. You should obtain professional advice if you have any specific concern.

The NDIS Quality and Safeguards Commission has made every reasonable effort to provide current and accurate information, but it does not make any guarantees regarding the accuracy, currency or completeness of that information.

Parties wishing to re-publish or otherwise use the information in this policy must check this information for currency and accuracy prior to publication. This should be done prior to each publication edition, as NDIS Quality and Safeguards Commission guidance and relevant legislation may change. Any queries should be addressed to [communications@ndiscommission.gov.au](mailto:communications@ndiscommission.gov.au)

---

## Contents

Purpose of this policy.....	4
What is a warning letter?.....	4
Legislative provisions .....	5
The NDIS Commission’s approach to the use of warning letters .....	5
When a warning letter is an appropriate compliance tool.....	6
When a warning letter would not be considered an appropriate compliance tool.....	6
Responding to a warning letter .....	6
Record keeping and publication .....	6

## 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 NDIS Commission's regulatory powers and functions are set out in the *National Disability Insurance Scheme Act 2013* (the NDIS Act), and associated Rules, as well as the *Regulatory Powers (Standard Provisions) Act 2014*.

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.<sup>1</sup> 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. 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 warning letters.

The provision of warning letters to entities and individuals can be an effective means of addressing non-compliance in circumstances where other administrative or court-based actions are not appropriate.

In deciding whether or not to provide a warning letter to a suspected wrongdoer, each case will be considered on its particular facts, having regard to other forms of enforcement action that might also be available.

## What is a warning letter?

A warning letter is correspondence given to a person—whether an individual or entity—setting out:

- brief details of one or more contraventions of the NDIS Act by that person that the NDIS Commission is satisfied has occurred; and
- a warning that if the NDIS Commission were to be satisfied that the person has contravened the NDIS Act in a similar, or the same, manner in the future, that more formal compliance or enforcement action may be taken.

The provision of a warning letter is a discretionary, non-statutory action that may be taken in circumstances where the NDIS Commission is satisfied that a person has contravened one or more sections of the NDIS Act. This includes:

- a failure by a registered NDIS provider to comply with their conditions of registration under section 73F of the NDIS Act, thereby contravening section 73J of the NDIS Act, including:
  - a breach of the NDIS Practice Standards;
  - a breach of the NDIS Code of Conduct;
  - a contravention of an applicable law of a state, territory or the Commonwealth; and

---

<sup>1</sup> *National Disability Insurance Scheme Act 2013* (Cth) s181D(4)(b)).

- a breach of incident management, prevention and notification obligations;
- a failure by an unregistered provider or worker involved in the delivery of NDIS supports and services to comply with the NDIS Code of Conduct, thereby contravening section 73V of the NDIS Act; and
- the failure of an NDIS provider to be registered to provide certain classes of disability supports and services under section 73B of the NDIS Act.

A warning letter is a non-statutory mechanism for responding to non-compliance with the law.

Warning letters may be:

- used by the NDIS Commission to inform future decisions made in relation to non-compliance by NDIS providers or workers; and/or
- provided to NDIS Worker Screening Units for the purpose of conducting risk-assessments of workers who have applied for an NDIS Worker Screening Check.

## Legislative provisions

Under section 181E of the NDIS Act, the core functions of the NDIS Commissioner includes to secure compliance with the NDIS Act through effective compliance and enforcement arrangements. To assist in the fulfilment of this core function, a wide range of tools, methods and powers are available to the NDIS Commission under the NDIS Act.

In addition to statutory forms of enforcement action available to the NDIS Commission, it is open to the NDIS Commission to use non-statutory forms of enforcement action in response to suspected non-compliance with the NDIS Act.

Such measures, which can include warning letters (amongst other things), can be an appropriate regulatory response to non-compliance in some cases, serving as a useful alternative to more time consuming and expensive forms of action (particularly court action).

## The NDIS Commission's approach to the use of warning letters

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;
- how far below acceptable standards the conduct falls and the extent to which the person contributed to the risk, including whether the conduct was intentional, reckless, negligent or a mistake; and
- the potential to return the provider to full compliance, and as soon as possible.

There is no obligation on the NDIS Commission to give a warning letter in relation to a contravention of the NDIS Act. The giving of a warning letter will be determined on a case-by-case basis with a view to the considerations outlined below.

---

## When a warning letter is an appropriate compliance tool

Examples of where the NDIS Commission may be more likely to consider the use of a warning letter include where:

- the recipient's non-compliance is isolated or non-systemic; and/or
- the recipient's non-compliance is minor or technical in nature; and/or
- the recipient has accepted their conduct was non-compliant and discontinued it; and/or
- the risk of harm or detriment to NDIS participants is low; and/or
- giving the warning letter is expected to improve the compliance of the recipient.

## When a warning letter would not be considered an appropriate compliance tool

Examples of circumstances where a warning letter may not be appropriate include where:

- the NDIS Commission has concerns that the alleged conduct may be continuing; and/or
- the NDIS Commission has previously taken action against the recipient for similar non-compliance; and/or
- the recipient's non-compliance is serious in nature; and/or
- the recipient's non-compliance is exposing NDIS participants to potential harm or detriment; and/or
- the NDIS Commission considers the non-compliance warrants consideration by a court (due to its potential novelty or complexity); and/or
- there are alternative, more appropriate compliance or enforcement actions that could be taken in response to the recipient's conduct.

## What happens after a warning letter is issued

There is no obligation for a recipient of a warning letter to respond to the NDIS Commission. However, it is open to a recipient of a warning letter to provide comments to the NDIS Commission about it if they so choose. As a non-statutory mechanism for responding to non-compliance, warning letters cannot be reviewed under the NDIS Act. The NDIS Commission will monitor the impact of warning letters issued, and assess whether they have had an impact on the compliance of recipients with the NDIS Act. Where the NDIS Commission identifies continued non-compliance, consideration will be given to alternative forms of compliance or enforcement action, which may include making banning orders, applying to a court for a civil penalty, suspending and/or revoking a provider's registration, giving a provider a compliance notice or giving a person an infringement notice.

## Record keeping and publication

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