



**NDIS Quality
and Safeguards
Commission**

Publishing Regulatory Activity Policy

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NDIS Quality and Safeguards Commission

PO Box 210, Penrith NSW 2751

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Definitions

Definitions, key terms and abbreviations used in this document.

Term or Abbreviation	Description
Harm	Includes physical, psychological, emotional and financial harm arising from abuse, exploitation and neglect
NDIS	National Disability Insurance Scheme
NDIS Act	<i>National Disability Insurance Scheme Act 2013</i>
NDIS Code of Conduct	The standards of behaviour and practice for workers and providers who deliver NDIS supports and services. It covers topics such as rights, privacy, safety, integrity, quality, and price differentiation. More information is set out in the National Disability Insurance Scheme (Code of Conduct) Rules 2018
NDIS Commission	NDIS Quality and Safeguards Commission
NDIS Disclosure Rules	National Disability Insurance Scheme (Protection and Disclosure of Information–Commissioner) Rules 2018
NDIS Information	Information obtained by a person in the performance of the person's functions or duties or in the exercise of the person's powers under the NDIS Act (see section 4 of the NDIS Disclosure Rules)
NDIS Rules	All Rules made pursuant to the NDIS Act
Participant	People receiving supports and services under the NDIS
Person	A natural person or a body corporate
Protected Commission information	Information about a person (including a deceased person) that is or was held in the records of the NDIS Commission, but does not include information on the NDIS Provider Register
Provider	Registered and unregistered NDIS Providers, key personnel, and workers
Provider Register	As defined under section 73ZDA of the NDIS Act
Regulatory activity	The exercise of the NDIS Commissioner's regulatory functions under the NDIS Act, including compliance and enforcement functions and taking statutory compliance and enforcement action
Statutory compliance or enforcement action	Compliance or enforcement action that involves the exercise of a power under the NDIS Act, including information and evidence gathering activities, seeking civil penalties, revocation, suspension or variation of a registration, refusal of a registration application, banning orders, seeking an injunction, enforceable undertakings, compliance notices and infringement notices

Purpose

1. This policy sets out the principles of why we make decisions about publishing information relevant to regulatory activity.

Policy scope

2. This policy applies to the areas of the NDIS Commission that undertake regulatory activities.
3. Together with our [Regulatory Approach](#), Operating Model and [Human Rights Principles](#), this policy provides the reasoning for how decisions to publish regulatory activity under the NDIS Provider Register Part 2 are made.
4. We may use discretion to also publish information about regulatory activities that do not include protected Commission information, including information about specific compliance and enforcement activities, targeted compliance campaigns, and other priorities.
5. This policy should be read alongside the [Compliance and Enforcement Policy](#), and the Publishing Regulatory Activity Procedure for practical guidance for staff, and the drafting of information about compliance and enforcement action for publication on the Provider Register Part 2.

Relevant legislative provisions

The NDIS Act and Provider Registration Rules

6. The NDIS Act and Rules provide a framework of the protections for NDIS participants and the NDIS. The NDIS Act and Rules establish the legal obligations of NDIS providers, registered and unregistered, their key personnel and workers.
7. Under section 73ZDA(1) and 73ZDA(2) of the NDIS Act, the NDIS Commissioner is required to establish and maintain a NDIS Provider Register, in a form that the NDIS Commissioner considers appropriate.
8. The information that must be contained in the NDIS Provider Register and published is outlined under section 73ZDA of the NDIS Act.
9. The publication of regulatory activity under the NDIS Provider Register Part 2 is organised into:
 - banning orders; and
 - other statutory compliance and enforcement actions including compliance notices, enforceable undertakings, revocation, suspension and refusals of registration.
10. Infringement notices are also a discretionary compliance action that are published.
11. Under section 7 of the NDIS Act, rules may be made to provide for the correction of entries in the NDIS Provider Register, the publication of the NDIS Provider register in whole or part, or with specified information, and other matters relating to administration or operation of the NDIS Provider Register.

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12. As such, section 17 of the Provider Registration Rules, specifies that the whole of the NDIS Provider Register may be published on the NDIS Commission's website.
 13. Section 18 of the Provider Registration Rules specifies that certain parts of the NDIS Provider Register may not be published if the NDIS Quality and Safeguards Commissioner considers that the publication is contrary to the public interest, or the interests of one or more persons of disability receiving supports and services.

The NDIS Act and the disclosure of information on the NDIS Provider Register

14. The NDIS Act prohibits the unauthorised use or disclosure of protected Commission information which is information about a person (including a deceased person) that is or was held in the records of the NDIS Commission. **The information contained in the NDIS Provider Register is not protected Commission information.**
15. The NDIS Commission and its officers are bound by the provisions of the NDIS Act and Rules and the disclosure of information that it holds about a person.

Policy statements

16. By publishing regulatory activity, the NDIS Commission aims to:
 - Provide NDIS participants, NDIS providers, NDIS Commission staff, stakeholders and the public with greater awareness and transparency of matters that affect the quality and safety of NDIS supports and services.
 - Enable NDIS participants and stakeholders to make informed choices, and to be informed and involved in matters that affect the provision of NDIS services and risks to NDIS participants.
 - Inform NDIS providers, NDIS participants and stakeholders about best practice requirements.
 - Provide greater transparency and visibility of the NDIS Commission's regulatory activities and how the outcome of these activities can deliver on the functions of the NDIS Commission.
 - Influence behaviour and deter unscrupulous providers from operating in the NDIS market.
 - Proactively use regulatory levers and tools to uphold the rights of NDIS participants, to encourage high quality and safe services and supports and enabling consumer independence and choice.

Publishing regulatory activity

17. Publishing the NDIS Commission's regulatory activity is central to implementing the NDIS Commission's regulatory functions under the NDIS Act and Rules. It is a valuable tool used to uphold and protect the rights of people with disability and maintain the integrity and sustainability of the NDIS.
18. In making decisions on what information about regulatory activity we will publish, we apply the following principles:

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- We publish information about the NDIS Commission’s regulatory activity in accordance with the NDIS Act and Rules, which is:
 - a) a list of all registered NDIS providers with their registration status, on the NDIS provider register part 1, and
 - b) compliance and enforcement actions on the NDIS provider register part 2.
 - In accordance with section 18 of the Provider Registration Rules, information will not be published on the NDIS Provider Register or by other means if the NDIS Commissioner considers that the publication is contrary to the public interest, or the interests of one or more persons of disability receiving supports and services.
 - Separate to the NDIS Provider Register Part 2, we may publish information about our regulatory activity through other means. This includes publishing:
 - a) copies of decisions and actions, such as banning orders, compliance notices and enforceable undertakings
 - b) media releases, reports, notifications and broader communiques, about planned, in progress and completed regulatory activities, including compliance programs or campaigns, our Regulatory Priorities, information and evidence gathering activities and use of non-statutory regulatory actions, such as education and warnings, and
 - c) through multiple and accessible communication channels, to inform external stakeholders about the regulatory activity we have planned, in progress, and completed.

Outcome principles

19. We maximise opportunities to educate and influence the NDIS market, encouraging compliance and deterring unscrupulous providers from operating in the NDIS market.

Information published on the Provider Register Part 2

20. Statutory compliance and enforcement actions on the Provider Register Part 2 will include:
- a) the legislative provisions on which the compliance and enforcement action was taken, including the legislative provisions that the non-compliance relates to
 - b) a summary of the conduct to which the statutory compliance and enforcement action relates
 - c) a summary of the effect of the compliance and enforcement action prohibits [the person] from [details of the prohibition], and
 - d) if relevant, a summary of why the NDIS Commission took the statutory compliance and enforcement action.

Exceptions to publication

21. Information related to regulatory activity will not be published on the Provider Register Part 2 nor disclosed publicly if the Commissioner or their delegate considers that the publication would be:
- contrary to the public interest
 - contrary to the interests of one or more persons with disability receiving supports
 - contrary to the interests and/or may cause harm to a vulnerable person
 - personal information that may identify a person that is not relevant to the purpose of the disclosure of information (for example a witness or victim)
 - information that is subject to restrictions or prohibitions imposed by any law and/or other government agency
 - information that may compromise the NDIS Commission's operational processes and methodologies and/or may prejudice an ongoing investigation and/or court proceedings
 - discretionary, such as if the person has not been afforded an opportunity to comment or provide submissions on the publication of information about them
 - where the compliance or enforcement action to which the information relates has been revoked, set aside or withdrawn, whether on the NDIS Commission's own initiative, agreed to on the request of a person, or through internal review or review by a court or tribunal
 - information that relates to a revocation of registration requested by a registered NDIS provider, or
 - information that is inconsistent with the NDIS Commission's [Privacy Policy](#).

Removal of published banning orders

22. Section 73ZDA(2B) of the NDIS Act provides that the Commissioner may include banning orders on the register that are no longer in force. The NDIS Commission's policy is that all banning orders continue to be published on the register after they have ceased to be in effect unless a decision to remove is made.
23. An individual or provider may request to have their name or business name removed from the NDIS Provider Register Part 2 once their banning order has ceased to be in effect. The request must be made in writing to the Commission to review@ndiscommission.gov.au, providing reasons why the banning order should be removed from the NDIS Provider Register Part 2.
24. On receiving a request, the NDIS Commission will make a risk-based decision on whether the banning order that has ceased to be in effect should be removed. This decision will be made within 14 days of the request being received.