



NDIS Quality
and Safeguards
Commission

Vary, Suspend or Revoke Registration 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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Contents

Purpose of this policy.....	4
Registration with the NDIS Commission	4
Legislative provisions	5
Variation of registration.....	5
Suspension of registration	6
Revocation of registration	6
Revocation by the Commissioner	6
Revocation by an NDIS provider	7
Relevant time periods.....	7
The NDIS Commission’s approach to varying, suspending or revoking registrations	8
When a variation of registration is an appropriate compliance tool	8
Suspension or revocation of registration	8
When a suspension of registration is an appropriate compliance tool.....	9
When a revocation of registration is an appropriate compliance tool	9
Notice of decision	9
Record keeping and publication	10
Review of decisions.....	10

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* (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 varying, suspending, or revoking the registration of an NDIS provider.

The variation, suspension or revocation of an NDIS provider's registration is an administrative process available to the NDIS Commission that provides a compliance mechanism without requiring court action.

The suspension or revocation of a registered NDIS provider's registration is considered a strong compliance action, in that it prevents the provider from continuing to offer services to NDIS participants in specific circumstances, and therefore is only considered appropriate in instances where serious issues or breaches have occurred.

The NDIS Commissioner is not bound to vary, suspend or revoke registration and may exercise his or her discretion in accordance with this policy. Each case will be considered on its particular facts.

Registration with the NDIS Commission

In order for a provider to deliver supports and services to participants whose plans are managed by the National Disability Insurance Agency (NDIA), a provider must be registered with the NDIS (including a plan manager). Further, a provider that delivers specialist disability accommodation, uses restrictive practices, or develops behaviour support plans must also be registered with the NDIS Commission.

The registration process will depend on the provider's size and scope, as well as service delivery risk. The NDIS Commission will assess the suitability of a provider and their key personnel to deliver NDIS supports and services and notify a prospective NDIS provider of their decision.

Once the NDIS Commissioner makes a decision to allow a provider to be registered, a certificate of registration will be issued which specifies the classes of supports or services the person is registered

to provide, the period for which the registration is in force, and any conditions imposed under section 73G of the NDIS Act. A registered NDIS provider must comply with a range of conditions contained in the NDIS Act and accompanying Rules, including complying with the NDIS Code of Conduct, the NDIS Practice Standards, and the provision of information on the request of the Commissioner.

Legislative provisions

The provisions relevant to the ability of the NDIS Commissioner to vary, suspend or revoke registrations of registered NDIS providers are:

- variation of registration - sections 73L and 73M of the NDIS Act;
- suspension of registration - section 73N of the NDIS Act; and
- revocation of registration - section 73P of the NDIS Act.

The NDIS Commissioner may issue a notice in accordance with the NDIS Act to vary, suspend or revoke the registration of an NDIS provider. The NDIS Commissioner may also delegate this power to a Commission officer, in writing.

Variation of registration

Under section 73L of the NDIS Act, the NDIS Commissioner can vary the registration of a registered NDIS provider by written notice given to the provider:

- (a) at any time, on the Commissioner's own initiative; or
- (b) on application by the provider under section 73M of the NDIS Act.

The NDIS Commissioner may vary the registration of a registered NDIS provider if the Commissioner considers it is appropriate in all the circumstances to do so. Specifically, the Commissioner may vary the registration of an NDIS provider to:

- (a) impose, vary or revoke conditions to which the registration is subject under section 73G of the NDIS Act; or
- (b) reduce or extend the period for which the registration is in force; or
- (c) extend, modify or reduce the supports or services the provider is registered to provide.

If the NDIS Commissioner decides to vary the registration of a registered NDIS provider, the NDIS Commissioner must provide a certificate of registration as varied to the provider. A variation of the registration takes effect on the date specified in the notice provided by the Commissioner.

The NDIS Act provides a registered NDIS provider with the option to apply for a variation to the provider's registration. The variation would allow the NDIS provider to expand or limit the range of supports and services that it is registered to provide. For the variation request, the NDIS Commissioner will assess the NDIS provider in accordance with the *NDIS Practice Standards* which includes taking into account the *Quality Indicators Guidelines*.

The application must:

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- (a) be in writing;
 - (b) be in a form (if any) approved in writing by the Commissioner; and
 - (c) include any information, and be accompanied by any documents, required by the Commissioner.

The NDIS Commissioner may, by written notice, require an applicant for a variation to give the NDIS Commissioner further information or documents in relation to the application as the NDIS Commissioner reasonably requires. The notice may specify a period which must not be less than 14 days.

Suspension of registration

Under section 73N of the NDIS Act, the NDIS Commissioner may suspend the registration of an NDIS provider for a specific period if:

- (a) the NDIS Commissioner reasonably believes that the person has contravened, is contravening, or is proposing to contravene the NDIS Act;
- (b) the NDIS Commissioner reasonably believes that the application for registration by the person contained information that was false or misleading;
- (c) the person is an insolvent under administration;
- (d) the NDIS Commissioner is satisfied that the person is no longer suitable to provide supports or services to people with disability, having regard to any matters prescribed by the NDIS Rules;
- (e) the NDIS Commissioner is no longer satisfied the key personnel of the person (if any) are suitable to be involved in the provision of supports or services to people with disability, having regard to any matters prescribed by the NDIS Rules.
- (f) a circumstance exists that is a circumstance prescribed by the NDIS Rules.

The period of suspension must be no longer than 30 days, however the NDIS Commissioner may suspend the registration of a person more than once. The NDIS Commissioner must provide written notice of the suspension, and the reasons for the suspension, to the suspended person. The NDIS Commissioner may also seek to revoke registration during a suspension period.

Revocation of registration

Revocation by the Commissioner

Under section 73P of the NDIS Act, the NDIS Commissioner may, in writing, revoke the registration of an NDIS provider if:

- (a) the NDIS Commissioner reasonably believes that the person has contravened, is contravening, or is proposing to contravene the NDIS Act;
- (b) the application for registration by the person contained information that was false or misleading;

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- (c) the person is an insolvent under administration;
 - (d) The NDIS Commissioner is satisfied that the person is no longer suitable to provide supports or services to people with disability, having regard to any matters prescribed by the NDIS Rules;
 - (e) The NDIS Commissioner is no longer satisfied that the key personnel of the person (if any) are suitable to be involved in the provision of supports or services for which the NDIS provider is registered to provide, having regard to any matters prescribed by the NDIS Rules; or
 - (f) a circumstance exists that is a circumstance prescribed by the NDIS rules.

Before deciding to revoke the registration of a person, the NDIS Commissioner must notify the person that revocation is being considered. The notice must be in writing and must:

- (a) include the NDIS Commissioner's reasons for considering the revocation;
- (b) invite the person to make submissions, in writing, to the NDIS Commissioner within 28 days of receiving the notice; and
- (c) inform the person that if no submissions are made within the prescribed period, any revocation may take effect as early as 7 days after the end of that period.

Revocation by an NDIS provider

Additionally, a registered NDIS provider may voluntarily request that the Commissioner revoke its registration. If a registered NDIS provider seeks a revocation, it must do so in writing. The Commissioner may, in writing, revoke the registration of a person as a registered NDIS provider. The written notice will include the date the revocation takes effect. The written notification will ensure the provider knows, in advance, the date that registration will be revoked. This means the provider can continue the provision of services for a period of time, to ensure NDIS participants are not immediately without access to their necessary supports and services.

Relevant time periods

In deciding whether to revoke a registration, the NDIS Commissioner must consider any submissions given to him/her within the period prescribed following receipt of the notice advising that revocation is being considered.

The NDIS Commissioner must then notify the person in writing of the decision that has been made with respect to revocation. The notice of decision must be given within 28 days after the end of the earlier prescribed submission period. If no submissions are made within the 28-day period, a revocation can take effect as early as seven days after the end of the submission period.

If the notice of revocation is not given by the NDIS Commissioner within the 28-day period, the NDIS Commissioner is taken to have decided to *not* revoke the provider's NDIS registration.

The NDIS Commission's approach to varying, suspending or revoking registrations

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. In accordance with the *NDIS Quality and Safeguarding Framework*, the NDIS Commissioner must balance the need for appropriate protections that meet the government's duty of care obligations, with the need to enable participants to take reasonable risks so they can make informed choices, exercise control and maximise their independence in relation to the supports they receive.

Powers such as the suspension or revocation of an NDIS provider's registration, are stronger regulatory tools, typically used after other powers (such as the giving of compliance notices) have been used unsuccessfully.

The NDIS Commissioner may decide to vary, suspend or revoke a provider's registration to address non-compliant conduct or other inappropriate practices. Such action is a protective measure and may be undertaken even where steps have been taken to remedy a contravention or where a provider has otherwise been the subject of other compliance action. A suspension or revocation of a registration may also be used as successive tools (i.e. an initial suspension followed by a revocation) or in tandem with other compliance tools.

As the variation, suspension or revocation of a provider's registration may have serious consequences for persons with disability, workers as well as the provider, the NDIS Commissioner will balance these considerations with the paramount need to prevent harm to people with disability when making a decision.

When a variation of registration is an appropriate compliance tool

Imposing a variation of registration on a provider can be an effective compliance tool, particularly to address lower risk contraventions of the NDIS Act. A variation of registration can impose new conditions, and limit or expand the support services an NDIS provider can provide as a registered NDIS provider, to address risks to the health, safety, and wellbeing of persons with disability.

The variation of registration can also be used in conjunction with other compliance tools, such as an infringement notice or a civil penalty, to compel compliance from a NDIS provider.

Suspension or revocation of registration

The suspension or revocation of an NDIS provider's registration is a stronger compliance tool and will most likely be used in circumstances where other compliance tools designed to encourage compliance have already been used without success, or where an immediate threat to the health, safety and wellbeing of a person with disability exists. In deciding whether to suspend or revoke the registration of a person, the NDIS Commissioner must consider the following:

- (a) the nature, significance and persistence of any contravention, or proposed contravention, of the NDIS Act;
- (b) the action that can be taken to address any contravention, or proposed contravention, of the NDIS Act;

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- (c) the extent (if any) to which the person is conducting its affairs as a registered NDIS provider in a way that may cause harm to, or jeopardise, public trust in the National Disability Insurance Scheme;
 - (d) the health, safety or wellbeing of people with disability receiving supports or services from the person; and
 - (e) any other matters the Commissioner considers relevant.

When a suspension of registration is an appropriate compliance tool

In circumstances where there is an immediate and significant risk to the safety, health and well-being of a person with disability due to non-compliance or other concerns, it may be appropriate to suspend the registration of the provider for 30 days as the suspension can be enacted quickly, subject to procedural fairness obligations. If, after the 30 day period, the NDIS Commissioner is unsatisfied with the progress made by the NDIS provider to achieve compliance or address other concerns, a decision to impose a further suspension, or apply an alternative compliance tool such as a revocation of registration, can be made.

When a revocation of registration is an appropriate compliance tool

If the NDIS Commissioner makes a determination to revoke the registration of a registered NDIS provider, the NDIS provider will no longer be able to provide services to NDIS participants that have funding managed by the National Disability Insurance Agency, provide specialist disability accommodation, implement restrictive practices, or provide specialist behaviour support services.

Given the severity of a revocation of registration, and the detrimental impact it may have on NDIS participants, the NDIS Commissioner should exercise caution before revoking a provider's registration and carefully consider whether other compliance and enforcement tools could achieve a better outcome. Revocation of registration may be considered an appropriate tool in circumstances where other compliance action, such as a suspension of registration, have already been used, and there has been an ongoing failure on the part of the provider to rectify the non-compliance or properly address any other concerns.

Notice of decision

When exercising the power to vary, suspend or revoke the registration of a provider, the NDIS Commissioner must give the provider a written notice of the decision.

For a variation of registration, in addition to providing notice of the decision, the NDIS Commissioner must give a certificate of registration as varied to the provider. The variation will take effect on the day specified in the notice.

For a suspension of registration, the NDIS Commissioner must provide reasons for the suspension of registration in the notice.

If the NDIS Commissioner decides to revoke a provider's registration, the notice of decision must include the NDIS Commissioner's reasons for considering the revocation and invite the provider to make written submissions to the NDIS Commissioner within 28 days of receiving the notice. In the

notice, the NDIS Commissioner must also inform the provider that, where no submissions are received within 28 days, the revocation of the provider's registration may take effect as early as 7 days after the end of that 28-day period.

Record keeping and publication

The NDIS Commission will keep records of all decisions made to vary, suspend or revoke the registration of NDIS providers. Where permitted by law, the NDIS Commission may provide information about persons, who have had their NDIS registration varied, suspended or revoked, 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:

- (a) any conditions to which the registration of the person is subject under section 73G; and
- (b) if the registration of the person is suspended – information about the suspension.

The NDIS Commissioner may include information about a former NDIS provider, who has had its registration revoked, on the NDIS Provider Register, which is published on the NDIS Commission's website.

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.

Relevant to this policy, the following decisions are reviewable by the AAT:

- a decision to impose conditions person's registration as a registered NDIS provider;
- a decision to vary, or refuse to vary, the registration of a registered NDIS provider;
- a decision to suspend the registration of a registered NDIS provider, and

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- a decision to revoke, or not to revoke, the registration of a person as a registered NDIS provider.

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.