



# Our powers to investigate

The National Disability Insurance Scheme (NDIS) Act 2013 provides the NDIS Quality and Safeguards Commission with certain powers to obtain information to assist with our investigations.

## About the NDIS Commission

The NDIS Quality and Safeguards Commission (NDIS Commission) is a new Commonwealth statutory body established under the National Disability Insurance Scheme (NDIS) Act 2013 (the Act). We regulate the quality and safety of NDIS supports and services provided to people with disability.

The NDIS Commission's regulatory powers and functions are set out in the Act associated Rules. These functions are developmental, preventive and corrective, and target individuals, the workforce and providers of NDIS supports and services to:

- strengthen and build capacity
- prevent harm to people with disability and improve the quality of services
- respond and resolve problems and provide oversight.

Monitoring, compliance and enforcement is important to our work as a regulator. It is one of the ways we can encourage best practice among NDIS providers and manage risk to NDIS participants.

NDIS providers include individuals, partnerships and organisations that deliver services and supports to people with disability who are participating in the NDIS. NDIS providers can be registered by the NDIS Commission, or may not be registered and deliver supports directly to NDIS participants who are managing their own support arrangements.

## We investigate events affecting the rights and safety of people with disability

The NDIS Commission will investigate complaints and reports of non-compliance with the new NDIS Practice Standards, NDIS Code of Conduct and other quality and safeguards requirements that apply to all providers delivering supports and services to people with disability participating in the NDIS.

We have the power to investigate any matters relating to any NDIS provider and workers. We can impose penalties, including, in the most serious cases, banning workers or providers, de-registering providers and seeking civil penalties.

An investigation is the process of seeking information about alleged, apparent or potential non-compliance with the NDIS Act 2013 and Rules, and may support, precede or follow other action we take.



The types of matters the NDIS Commission may investigate include:

- whether a registered NDIS provider is complying with the conditions of their registration
- whether an NDIS provider, or a person employed or otherwise engaged by them ('a worker'), is complying with the NDIS Code of Conduct
- whether a registered NDIS provider is complying with the NDIS Practice Standards
- where a person is subject to a banning order, whether the person is providing supports or services in contravention of that order.

When investigating these matters, we speak to the parties involved and may request or require them, or other relevant parties, to provide information or documents that we reasonably believe may be relevant to the matters being investigated. Examples of this could include records held by health professionals, other government agencies and regulators, or other businesses.

## We gather information to assist with investigations

Like other regulators in Australia, we have a number of methods available to us to seek and, and at times compel, the provision of information or documents. We will consider the most appropriate method of seeking or compelling the provision of information or documents depending on the circumstances of the matter that we are investigating. These methods include:

- requests for voluntary production of documents or information
- requesting the production of, and taking extracts from or copies of, documents when entering premises under consent under the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act)
- executing monitoring or investigation warrants under the Regulatory Powers Act
- using statutory powers under the NDIS Act 2013.

## We can compel the provision of information

Under Section 55A of the Act, the NDIS Commissioner has the power to obtain information from others to ensure the integrity of the NDIS. If the Commissioner believes that a person has information that might be relevant to the following matters, the Commissioner can require the person to provide that information.

This power can be used for a number of reasons, including to assist in the investigation of whether an NDIS provider or one of its workers is complying with the requirements of the NDIS Code of Conduct or whether a registered NDIS provider is meeting its conditions of registration.

This power is important to enable the NDIS Commission to gain access to information that is essential to determining the facts of a particular matter and contributing to the protection of people with disability experiencing harm or other risks in the course of participating in the NDIS.



When we issue a notice under S55A it is a requirement under the Act to comply with that notice. It is an offence to refuse or fail to comply with a notice under S55A, unless a person has a reasonable excuse, such as incriminating an individual or exposing them to a penalty.

When requiring the provision of information or documents under section 55A, we will:

- clearly state the information or documents required to be provided
- outline how it is to be provided and to whom
- provide a timeframe for this to be done
- include details of an NDIS Commission officer with whom the notice can be discussed.

We are developing guidelines and fact sheets on the use of S55A for release in 2020.

## More information

More information about the NDIS Commission is on our website: [www.ndiscommission.gov.au](http://www.ndiscommission.gov.au)

For more information about our Compliance and Enforcement activities, visit [www.ndiscommission.gov.au/document/666](http://www.ndiscommission.gov.au/document/666)