



What Happens if I Don't Comply?

Not complying with the NDIS Quality and Safeguarding Framework is commonly called 'non-compliance'.

The consequences of not complying will differ based on the type and severity of the non-compliance.

The way non-compliances are identified will also influence the consequences of the non-compliance and the way you are required to manage them.

There are three common ways that non-compliances can be identified: internal review; audit and through the NDIS Quality and Safeguards Commission.

Managing Non-Compliances Identified Internally

Non-compliances identified internally are commonly discovered through:

- reports by staff, clients or others;
- complaints;
- internal audits or self-assessments;
- reviews of policies and procedures.

A non-compliance can include anything that is a departure from what is required by legislation, industry requirements and internal policies and procedures. It also includes when a Provider's policy and practice has not kept up to date with changes to legislation or industry requirements that have not been acted upon.

Non-compliances identified internally should:

- ✓ be rectified as quickly as possible based on an assessment of its cause and risk;
- ✓ be recorded in the business' Compliance Register, noting the issue identified and the steps taken or to be taken to resolve the issue; and
- ✓ inform updates to internal policies and procedures and any subsequent staff training or education.

Non-compliances identified internally may also need to be reported externally depending on their nature and severity.





Provider Resource — What a 'Best Practice Compliance' Provider Looks Like

Example

ABC Care receives a complaint from an employee that their superannuation has not been paid for the previous few months. Upon reviewing the last quarter's financial records, the Accounts Manager identifies that ABC Care's Payroll Officer has not paid superannuation at the same time as processing fortnightly payroll. This is required by ABC Care's Financial Management Policy and Procedure in order to meet quarterly payment and reporting requirements set down by the Australian Tax Office.

In response, the Accounts Manager:

- contacts the ATO to report the non-compliance and seek guidance on how to rectify it;
- work with the business' CEO to make sure there is enough cash at bank to pay all employees their unpaid superannuation;
- advise all employees of the oversight;
- processes the payments during the next pay run;
- provides the Payroll Officer with additional training and monitors the next few pay runs to make sure superannuation is paid as required,

The Accounts Manager keeps an ongoing record of the non-compliance and their response to it in ABC Care's Compliance Register.

Managing Non-Compliances Identified During Audit

NDIS audits are not about simply 'passing' or 'failing'. They also support Providers to improve their business and understand the gaps between the legislated requirements (e.g. the NDIS Practice Standards) and best practice policies, procedures or actions. These gaps are called 'non-conformities'.

Non-Conformities

Non-conformities identified during audit are categorised as minor and major. NDIS Provider must respond to each non-conformity detailed in their audit report within the timeframe specified in that report by their auditor. The timeframes differ for minor and major non conformities.





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Minor Non-Conformities

Minor non-conformities are findings that reveal an isolated incident of non-compliance, where either:

- there is evidence of a process documented within a policy, procedure or guideline but the required supporting documentation is missing or not documented appropriately (for instance, a complaints management system is in place and has been documented, but the business does not have a Complaints Register to record complaints received); or
- a process is documented within a policy, procedure or guideline but there is not evidence to show that review or evaluation of the document has been completed (for instance, the business' policies and procedures state they are to be updated annually, however this has not been done).

In response to findings of minor non-conformities, NDIS Providers must submit a Corrective Action Plan to their auditor within **5 days** of receiving their audit report.

Corrective Action Plans must include:

- how the business will address each non-conformity;
- why the non-conformity occurred;
- how they business will prevent the non-conformity from occurring in the future; and
- timeframes and staff members responsible for actioning the Corrective Action Plan.

After submitting their Corrective Action Plan, NDIS Providers have **18 months** to rectify, or 'close out', minor non-conformities and in the meantime, the auditor can submit their audit recommendation to the NDIS Quality and Safeguards Commission.

Remember!

- Minor non-conformities must be closed out within **18 months** of audit. Failure to do so will result in a major non-conformity.
- Minor non-conformities are quite common and should be used as an opportunity for improvement.
- **Three or more** minor non-conformities within the same module of the NDIS Practice Standards will equal a major non-conformity.

Major Non-Conformities

Major non-conformities are found when an NDIS Provider is unable to demonstrate that their processes meet the outcomes and indicators of the NDIS Practice Standards. For instance, a Complaints Management Policy and Procedure is in place, but staff are not trained in the processes it contains and therefore it is not followed.





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As with minor non-conformities, in response to findings of major non-conformities, NDIS Providers must submit a Corrective Action Plan to their auditor within **5 days** of receiving their audit report. However, major non-conformities must be addressed within **3 months** of audit and the auditor cannot recommend the business for Verification or Certification until this is done.

To close out major non-conformities, NDIS Providers will need to undergo a review of their implemented Corrective Action Plan, which may involve the auditor visiting the business again (at an additional cost to the business).

Remember!

- Major non-conformities must be closed out within **3 months** of audit. Failure to do so will result in the auditor being unable to recommend Verification or Certification to the NDIS Quality and Safeguards Commission.
- If, at review, the major non-conformity is downgraded to a minor non-conformity, it is required to be rectified within a further **nine months**.

Managing Non-Compliances Identified by the NDIS Quality and Safeguards Commission

The NDIS Quality and Safeguards Commission can identify non-compliances through:

- monitoring Registered NDIS Providers' compliance with their conditions of registration (set out on their Certificate of Registration);
- reviewing audit outcomes; and
- investigating complaints, incidents and other reports made to it by NDIS Participants, NDIS Workers or others.

It can investigate **both** registered and unregistered NDIS Providers and NDIS Workers.

Consequences of non-compliance

The NDIS Quality and Safeguards Commission can use a mix of strategies to respond to non-compliance with the NDIS Act 2013, its associated legislative Rules and the NDIS Quality and Safeguarding Framework. The types of strategies used will depend on:

- the seriousness of the non-compliance;
- potential harm to NDIS Participants caused by the non-compliance; and
- the NDIS Providers' willingness to rectify the non-compliance.





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Strategies will also be either administrative, or court-based:

Administrative

- education
- warning letters
- complaints resolution
- compliance notices
- infringement notices
- registration revocation
- bans

Court Based

- injunctions
- enforcement
- civil penalties

More information about the actions the NDIS Quality and Safeguarding Commission can take is provided in its [Compliance and Enforcement Policy](#).

Remember!

When responding to an NDIS Provider's non-compliance, the NDIS Quality and Safeguards Commission will:

- where possible, initially focus on supporting the NDIS Provider to comply; and
- exercise procedural fairness with all parties involved (meaning it will act impartially and objectively and
- give all parties the chance to tell their side of the story.

Preventing Non-Compliances

There are a range of ways NDIS Providers can work to prevent non-compliances. These include, but are not limited to:

- ✓ having policies and procedures that meet all requirements of the NDIS Practice Standards that apply to their operations;
- ✓ proactively keeping policies and procedures up to date in line with changes in industry and legislative requirements;
- ✓ providing all staff an Induction that covers their compliance obligations;
- ✓ providing all staff with ongoing training in the obligations that relate to their role;
- ✓ conducting regular risk assessments across all areas of their business;
- ✓ establishing and adhering to complaints and incident management systems;
- ✓ fostering a culture of compliance, where all staff are responsible for monitoring and managing compliance within their areas of influence and reporting issues as soon as they are identified; and
- ✓ setting and following a schedule of internal reviews of key risk areas (such as health and safety, financial management, participant safety, etc.) and external audits.

