



NDIS Quality
and Safeguards
Commission

Regulator Performance Framework

Self-assessment Report 2020–21

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About the NDIS Commission

The NDIS Quality and Safeguards Commission (NDIS Commission) is a statutory agency established under an amendment to the *National Disability Insurance Scheme Act 2013* (the NDIS Act).

The NDIS Commission's rollout schedule saw it commencing operation in New South Wales and South Australia during 2018–19, then commencing in Victoria, Queensland, Tasmania, the Northern Territory and the Australian Capital Territory from 1 July 2019, and finally commencing in Western Australia on 1 December 2020.

The NDIS Commission delivers functions vested in our Commissioner by the NDIS Act. These include a variety of activities relating to quality and safeguarding, most notably our core functions of provider registration, reportable incidents, complaints, and behaviour support. We also engage in other relevant activities including provider regulation, compliance and enforcement, market oversight, partnering with relevant entities, and communications and engagement.

Our compliance and enforcement activities are supported by appropriate powers that allow us to investigate complaints, reports of non-compliance and other apparent breaches, and to impose appropriate sanctions.

More detailed information about the NDIS Commission can be found at www.ndiscommission.gov.au.

Regulator Performance Framework

All regulatory agencies are required to undertake an annual self-assessment against the Regulator Performance Framework (the Framework) as part of the Australian Government's commitment to reducing unnecessary and inefficient regulation while balancing the need to protect the community.

The Framework measures the performance of Australian Government regulators via six key performance indicators (KPIs), giving confidence to businesses and the community that regulators are managing risk with the minimum impact necessary to achieve regulatory objectives. The KPIs are:

- regulators do not unnecessarily impede the efficient operation of regulated entities
- communication with regulated entities is clear, targeted and effective
- actions undertaken by regulators are proportionate to the regulatory risk being managed
- compliance and monitoring approaches are streamlined and coordinated
- regulators are open and transparent in their dealings with regulated entities
- regulators actively contribute to the continuous improvement of regulatory frameworks.

Undertaking our self-assessment against the Framework

To support our self-assessment we have developed metrics that detail how we interpret and report against the Framework's KPIs and measures. In undertaking our self-assessment, we have gathered and used evidence from multiple sources including:

- feedback from providers and disability industry groups
- feedback from Joint Accreditation System Australia New Zealand (JAS–ANZ)
- survey responses from registered providers who have undergone the audit process
- market monitoring and oversight activities
- information and advice published on our website
- community consultation.

We provided our draft self-assessment to a stakeholder consultative mechanism (SCM) in the form of a committee composed of industry representatives. This Industry Consultative Committee (ICC) provided their review and feedback on our performance during the reporting period. Their comments contribute to informing our continuous improvement strategy, and enhancing our efficiency and our responsiveness to the entities we regulate.

Our regulatory approach

The NDIS Commission prioritises the upholding of the rights of people with disability, and the objects of the NDIS Act, which sets the tone for our regulatory approach.



Figure 1: Pyramid diagram demonstrating the range of compliance and enforcement actions available to, and undertaken by, the NDIS Commission in accordance with our approach (detailed below).

We take a responsive and proportionate approach to regulation, with the above diagram demonstrating our ability to escalate actions if an initial response does not achieve the intended outcome. While it is open to the NDIS Commission to proceed directly with the strongest actions should the case require, the primary approach to achieving ongoing compliance and building the capacity of the sector is to educate, advise and encourage NDIS providers and workers to identify and understand their obligations and improve their practice. Measures may include targeted education and outreach activities, engaging with the regulated community at the earliest possible stage, and providing timely information and advice through the NDIS Commission website, social media, and information sessions.




Such measures help to:

- raise awareness of the benefits of compliance, and the various measures that will be taken to address non-compliance
- remove barriers to compliance, such as lack of awareness about obligations, confusion with other regulators, or particular accessibility needs
- promote the objects of the Act, Practice Standards and NDIS Code of Conduct
- support a reduction in restrictive practices
- reduce the risk that people will inadvertently take action that constitutes a breach.













Having provided advice or guidance to achieve compliance and being satisfied a provider has taken timely and satisfactory steps to remedy a breach we may decide to take no further action. If a provider is not making timely progress to rectify non-compliance we will consider what additional action may be required to ensure the provider meets their responsibilities.

Our self-assessment results for 2020–21

The criteria we used for our 2020–21 self-assessment were the Framework’s six key KPIs and 20 measures of good regulatory performance (performance measures), and the NDIS Commission’s agreed evidence metrics. The self-assessment ratings we use are:

Status	Meaning	Symbol
Achieved	We have demonstrated a strong performance against <u>all</u> performance measures under the KPI	
Substantially Achieved	We have demonstrated good performance against <u>the majority</u> of performance measures under the KPI	
Achievement Progressing	We have demonstrated improvable performance against some performance measures under the KPI	



Summary of self-assessment results 2020–21

Regulator Performance Framework KPI	(Rating 2019–20)	Rating 2020–21
<p>KPI 1 - Regulators do not unnecessarily impede the efficient operation of regulated entities</p>	<p>Rating: Substantially Achieved</p> 	<p>Rating: Achieved</p> 
<p>KPI 2 - Communication with regulated entities is clear, targeted and effective</p>	<p>Rating: Achieved</p> 	<p>Rating: Achieved</p> 
<p>KPI 3 - Actions undertaken by regulators are proportionate to the regulatory risk being managed</p>	<p>Rating: Substantially Achieved</p> 	<p>Rating: Achieved</p> 
<p>KPI 4 - Compliance and monitoring approaches are streamlined and coordinated</p>	<p>Rating: Substantially Achieved</p> 	<p>Rating: Substantially Achieved</p> 
<p>KPI 5 - Regulators are open and transparent in their dealings with regulated entities</p>	<p>Rating: Achieved</p> 	<p>Rating: Achieved</p> 
<p>KPI 6 - Regulators actively contribute to the continuous improvement of regulatory frameworks</p>	<p>Rating: Substantially Achieved</p> 	<p>Rating: Substantially Achieved</p> 

Self-assessment results 2020-21

KPI 1 - Regulators do not unnecessarily impede the efficient operation of regulated entities

Rating:

2019–20 (previous year)	2020–21
Substantially Achieved 	Achieved 

Summary

Engagement activities doubled from 2019-20 to 2020-21, and the advent of the NDIS Commission's National Engagement team, established in October 2020, underlined the agency's commitment to proactive communications with key stakeholders surrounding important planning and policy measures. Pre-emptive engagement with providers and workers specifically showed an aim to assist, not impede, as the national transition to the NDIS Commission was completed and regulatory standards and frameworks, and training, continued to be developed and established.

In particular during the period, the NDIS Commission utilised feedback from residential aged care providers supporting NDIS participants to inform streamlined approaches to worker screening for employees working across both the NDIS and aged care sectors and the NDIS registration cycle. Further, the NDIS Commission focused on reducing compliance costs for regulated entities via the Support for NDIS Providers Grants Program, which the agency administers and which funds the development of tools and resources for the benefit of providers, including supporting businesses and individuals to meet quality assurance requirements.

Measure 1.1: We demonstrate an understanding of the operating environment of our industry or organisation, or the circumstances of individuals and the current and emerging issues that affect the sector

Requirement	Response
1.1.1 Completeness and availability of the NDIS Quality and Safeguards Commission Communications and Engagement Framework	<ul style="list-style-type: none"> The 2018–2020 NDIS Quality and Safeguards Commission Engagement Framework is published on the NDIS Commission intranet. This guides the approach taken to communicating with the sector in a structured and considered manner.

Requirement	Response
<p>1.1.2 Evidence of regular consultations or engagement with stakeholders on policies and procedures</p>	<ul style="list-style-type: none"> • To date, we have conducted more than 1,000 engagement activities across Australia (online and face-to-face, depending on COVID restrictions), involving approximately 23,600 attendees – predominantly NDIS participants, their supporters, representatives and advocates. • In October 2020, the National Engagement Team was commenced to proactively reach out directly to NDIS participants, their families and carers, advocates and representatives. The team developed the National Engagement Plan 2021 and the Aboriginal and Torres Strait Islander Engagement Plan 2021, which set out priorities and approaches, methods and main messages for engagement with people with disability. Collaborative working relationships were established with key representative and advocacy bodies, and significant strategic interactions were conducted with several branches of the National Disability Insurance Agency (NDIA). • We have two consultative committees, representing the disability sector – comprising national organisations representing the interests of people with disability – and the industry, comprising national peak bodies and associations representing the various industries that make up the NDIS market. Each committee meets three times a year, with agendas including a mixture of Commission updates on the progressive implementation and development of functions, and discussion on issues identified by members or Commission executives. • In consultation with relevant Commonwealth agencies and state jurisdictions, we initiate and participate in a rolling program of policy and operational issues. During 2020–21, we instigated initiatives such as a targeted project with the objectives of strengthening supports and protections for people with disability at risk of harm, progressing the development of information disclosure schedules with state/territory and Commonwealth agencies, and providing input into Australia’s Disability Strategy 2021–2031. • All phases of the NDIS Workforce Capability Framework (WCF) Project were underpinned by solid stakeholder consultation with NDIS participants, providers and workers, peak bodies and advocacy groups, researchers and sector experts, education and training providers, and government representatives. In the first quarter of 2020-21, 92 engagement activities were conducted with 308 stakeholders as part of finalising the development stage. From October 2020 to June 2021, an additional 130 stakeholders from across the disability sector were consulted regarding WCF implementation and the development of a purpose built website to house an interactive version of the WCF.

Measure 1.2: We take actions to minimise the potential for unintended negative impacts of regulatory activities on regulated entities or affected supplier industry or supply chains

Requirement	Response
<p><i>1.2.1 Documented use of the feedback received from regulated entities, including feedback from existing complaint mechanisms</i></p>	<ul style="list-style-type: none"> • There was significant engagement throughout 2020-21 with providers, disability industry groups and disability specialists in relation to a number of regulatory activities including: <ul style="list-style-type: none"> – the transition of residential aged care providers to the regulatory purview of the NDIS Commission – development of additional NDIS Practice Standards for mealtime management, severe dysphagia, and emergency and disaster management. • Negative feedback received from providers regarding the Commission’s processes and functions was escalated for assessment and action where appropriate. • We implemented a change program to better prioritise and improve responsiveness to complaints to (and about) the Commission. As of the end of 2020–21, we had completed implementing the model and begun work on the development and implementation of a Quality Assurance Framework, which will include a more assertive feedback process for NDIS providers. • Our Advocacy Fora strengthened our relationships with advocates across Australia, providing us with feedback about people’s experience with the Commission, and quality and safety issues affecting people with disability.
<p><i>1.2.2 An accessible complaint mechanism is maintained¹</i></p>	<p>Our accessible feedback and complaints mechanism is maintained on the NDIS Commission’s website. It provides several options for an accessible, direct line to the NDIS Commission for providers and participants wanting to inform us of concerns they may have about our decisions or activities, as well as information about their communications and how they will be handled, and a link to our complaints and feedback policy.</p>



¹ For clarity, this refers to complaints about the NDIS Commission to the NDIS Commission, not the exercise of the NDIS Commission’s complaints function.

Measure 1.3: We implement continuous improvement strategies to reduce the costs of compliance for the entities we regulate

Requirement	Response
<p><i>1.3.1 Feedback from regulated entities is used to identify improvement opportunities</i></p>	<ul style="list-style-type: none"> • Extensive consultation with various stakeholder groups assisted and informed the transition of residential aged care providers supporting NDIS participants to the regulatory purview of the NDIS Commission. • We used feedback from residential aged care providers supporting NDIS participants to inform streamlined approaches to worker screening for employees working across both the NDIS and aged care sectors and the NDIS registration cycle. Engagement with the Department of Health and the Aged Care Quality and Safety Commission was essential to achieving these initiatives' outcomes. The changes were proportionate to the level of sector risk and aligned with the Australian Government's broader commitment to reduce regulatory burden across the care and support sector. • Changes were made to the NDIS Practice Standards in relation to mealtime management, severe dysphagia, and emergency and disaster management, following engagement with registered providers, disability industry groups and disability specialists.
<p><i>1.3.2 Documented evidence of how the NDIS Commission responds to complaints made to the Ombudsman about the NDIS Commission</i></p>	<ul style="list-style-type: none"> • We respond to all complaints about the Commission that the Commonwealth Ombudsman receives in accordance with our complaints and feedback policy. During 2020–21, the Commonwealth Ombudsman's office finalised 19 complaints after making preliminary inquiries of the NDIS Commission, and finalised three investigations without proceeding to formal findings and recommendations. The Ombudsman was generally satisfied with our explanation of any relevant action taken, or with further action the NDIS Commission proposed to take to address concerns raised. • Numbers or issue trends raised in complaints received by the Commonwealth Ombudsman about the NDIS Commission are an agenda item at quarterly liaison meetings held between the Commonwealth Ombudsman and the NDIS Commission's Complaints Commissioner.
<p><i>1.3.3 Policies and procedures include consideration of reducing compliance costs</i></p>	<ul style="list-style-type: none"> • In 2020–21, we awarded \$3.498 million in grants via the Support for NDIS Providers Program, to projects supporting national information and education initiatives for NDIS providers. The Commission administers the program to develop tools and resources for the benefit of providers, including supporting businesses and individuals to meet quality assurance requirements.

KPI 2 - Communication with regulated entities is clear, targeted and effective

Rating:

2019–20 (previous year)	2020–21
Achieved 	Achieved 

Summary

Throughout 2020-21, the NDIS Commission continued its provision of quality, timely internal and external communications to the benefit of all stakeholders, including regulated entities. Resources surrounding NDIS provider and worker guidance, including COVID-19 updates and related procedural/operational information were provided via letters, emails, newsletters, social media, eLearning modules for NDIS workers on broad and targeted topics, and on our website. The Commission also printed and distributed 3,020 provider information packs over the year and made fact sheets available that addressed complaints and incident management, reportable incidents, and resolution guidance.

Our regulatory decisions regarding provider applications for registration and variation were communicated clearly via a written notice of reasons. For further transparency, the NDIS Commissioner publishes the NDIS Provider Register and compliance and enforcement actions on the NDIS Commission website, in accordance with the National Disability Insurance Scheme (Provider Registration and Practice Standards) Rule 2018. The NDIS Provider Register is regularly updated by the NDIS Commission and includes reference to its last update.

Measure 2.1: We provide guidance and information that is up to date, clear accessible and concise through media appropriate to the target audience

Requirement	Response
2.1.1 Percentage of published / produced guidance materials that complies with government accessibility standards	<ul style="list-style-type: none"> We aim to achieve 100% accessibility; noting that due to the urgency of certain circumstances, on occasion an accessible version of a resource may follow shortly after publishing rather than immediately appearing alongside the published document.

Requirement	Response
<p>2.1.2 Education materials, engagement activities are provided to inform the sector of changes via a variety of channels</p>	<ul style="list-style-type: none"> • We developed an internal education framework (available on the Commission’s intranet) to guide staff in relation to the educational resources we produce and the activities we undertake. • A range of accessible information is also available on the NDIS Commission website for providers, people with disability, advocates, peak bodies and the general public, to support interested and invested parties’ knowledge and understanding of the NDIS Commission’s role and functions, including informing of changes that affect our stakeholders. • A wide range of information and resources relating to COVID-19, separate to those included on the website, were made available throughout 2020–21. These included provider alerts, provider and participant newsletters, provider and participant information packs, fact sheets, and social media posts.

Measure 2.2: We consider the impact on regulated entities and engage with industry groups and representatives of the affected stakeholders before changing policies, practices or service standards

Requirement	Response
<p>2.2.1 Sector stakeholders are consulted on proposed regulatory policy changes through formal and informal mechanisms</p>	<ul style="list-style-type: none"> • In 2020–21 we continued to consult with stakeholders through formal mechanisms such as: <ul style="list-style-type: none"> – inter-jurisdictional governance groups – Disability Ministers meeting – Deputy Department Heads meeting – inter-jurisdictional sub-committees and working groups – the Commonwealth Action Working Group (Australia’s Disability Strategy) – Strengthening Supports for Participants at Risk (led by the Department of Social Services) – portfolio governance committees – NDIA Operational Protocol Working Groups. • We continued to consult through more informal mechanisms via our engagement, communications and feedback processes and initiatives – as detailed previously in this document.

Measure 2.3: Our decisions and advice are provided in a timely manner, clearly articulating expectations and the underlying reasons for our decisions

Requirement	Response
<p>2.3.1 Percentage of registration decisions and suitability assessments of practitioners processed within benchmarked timeframes</p>	<ul style="list-style-type: none"> During 2020–21, there was an increase in registration processing times, mainly due to a substantial increase in the volume of applications received, alongside a high volume of applications for variations to existing registrations. On 1 December 2021, 1,672 registered NDIS providers from Western Australia transitioned to the NDIS Commission. On the same date, 627 residential aged care providers delivering NDIS services and supports to NDIS participants across all states and territories also transitioned to the NDIS Commission. Over 2020–21, we did not meet our KPI for completion of 80% of registration applications within 90 days. Achievement of this goal remained out of reach this year due to a focus on backlog management in relation to the aged matters mentioned in the point above, and inadequate resourcing that remained unaddressed after the budget uplift.
<p>2.3.2 All regulatory decisions are supported with reasons for decision and where applicable information on review or appeal mechanisms</p>	<ul style="list-style-type: none"> The Commission has a legal requirement to provide reasons for several decisions under the Act involving the use of compliance and/or enforcements powers, and it is our practice to do so in other cases. We are transparent with all of our regulatory decisions. All decisions regarding provider applications for registration and variation are communicated via a written notice of reasons for the decision, and include review rights where applicable.



Measure 2.4: Our advice is consistent and supports predictable outcomes

Requirement	Response
<p>2.4.1 Standard operating procedures for decision making are used by staff</p>	<ul style="list-style-type: none"> The NDIS Commission Operational Guidance Manual is published on the NDIS Commission’s intranet and is a live document that outlines how we operate as an integrated regulator. It represents the top level of operational guidance that cascades down to our Operational Guides and Detailed Process Blueprints, which position each operational function within our operating model. Below that sit our Standard Operating Procedures, which support our staff to deliver in their day-to-day roles. Detailed templates, forms and guidance material are available to assist staff in their decision-making across an array of internal and outward-facing processes.

Requirement	Response
<p>2.4.2 <i>Third parties engaged in the regulatory model are provided with consistent direction on activities</i></p>	<ul style="list-style-type: none"> • The NDIS Act and Rules require a provider, who is applying for registration as a provider, to be assessed by a third-party approved quality auditor as meeting established quality standards. • To be approved by the NDIS Commissioner as a quality auditor for the NDIS, audit bodies are accredited by the Joint Accreditation Scheme Australia and New Zealand (JAS-ANZ) and individual assessors must complete training provided by the NDIS Commission. The NDIS Commission provides guidance for auditors through the <i>National Disability Insurance Scheme (Approved Quality Auditors Scheme) Guidelines 2018 (AQA Guidelines)</i>, and provides training for individual auditors to drive consistency in the market.
<p>2.4.3 <i>Best practice guides and training available publicly</i></p>	<ul style="list-style-type: none"> • We provide best-practice guides, training, and educational content throughout the year, with guidance materials including examples of good and poor practice. We also deliver targeted education campaigns designed to build the capability of providers and behaviour support practitioners in identified focus areas. • Significant guidance and training during the 2020–21 period included: <ul style="list-style-type: none"> – the Worker Orientation Module – Quality, Safety and You – five practice alerts published to support providers in identifying and reducing risks associated with the avoidable deaths of NDIS participants, developed in response to related research undertaken by Professor Julian Trollor and Dr Carmela Salomon into physical and pharmacological contributors – a New Worker - NDIS Induction e-learning program, which was developed to support providers to induct new staff who may be unfamiliar with the disability sector – the promotion of the Australian Government Department of Health’s free online training module, ‘Infection prevention and control for COVID-19’ via various communication channels.

KPI 3 - Actions undertaken by regulators are proportionate to the regulatory risk being managed

Rating:

2019–20 (previous year)	2020–21
Substantially Achieved 	Achieved 

Summary

The NDIS Commission further established its risk-based approach to registration and compliance/enforcement action across all jurisdictions throughout 2020-21.

Provider assessments were based on the level of risk inherent in their activities. In particular over the period, the Commission ensured appropriate engagement with the residential aged care sector in order to inform and ensure risk-based regulatory approaches, including worker screening and audit processes, following the transition of aged care providers supporting NDIS participants to the NDIS Commission on 1 December 2020.

For a clear picture of our regulatory model, please see [‘Our regulatory approach’](#) on page 8.

COVID-19 required regular and fast changes in the Commission’s regulatory response. We closely monitored public health outcomes and orders in all states and territories and responded within any resultant parameters. Participant welfare remained the overarching priority; however, the Commission continued to consider the challenges faced by providers during the pandemic, and to assist them in meeting their obligations within the changing health conditions of each state and territory.

While progress against the overall KPI has been achieved, there is space for the NDIS Commission to continue to refine risk-based regulatory processes, in order to enable greater autonomy for providers where earned and possible.

Measure 3.1: We apply a risk-based, proportionate approach to compliance obligations, engagement and regulatory enforcement actions

Requirement	Response
<p><i>3.1.1 A range of response actions are used that are proportionate to the level of risk identified, including graduated compliance actions depending on the severity of an issue.</i></p>	<ul style="list-style-type: none"> • Audits required as part of the registration process are based on the level of risk associated with the supports or services being provided, and tailored to the size and scope of the provider’s activities. The verification assessment method (a desk audit of the provider’s documents) generally applies to lower-risk, less complex supports and services; while the certification assessment method (a desk audit plus witnessing of service delivery and interviews) generally applies to higher-risk, more complex supports and services. • The Commission uses a wide range of actions in response to the need for compliance and enforcement. While it is open to the NDIS Commission to proceed directly with the strongest actions should the case require, the primary approach to achieving ongoing compliance and building the capacity of the sector is to educate, advise and encourage NDIS providers and workers to identify and understand their obligations and improve their practice. Our regulatory model is available on page 8.

Measure 3.2: We regularly reassess our preferred approach to regulatory risk

Requirement	Response
<p><i>3.2.1 Strategies, activities and enforcement actions are amended to reflect changing priorities that result from new and evolving regulatory threats, without diminishing regulatory certainty or impact</i></p>	<ul style="list-style-type: none"> • We monitor both the provider market and systemic risk in the NDIS system by leveraging our market oversight and data analytics functions. We use this intelligence to inform a range of our activities including targeted compliance activity, ongoing conduct monitoring and provider suitability assessment. • Our Compliance and Enforcement Committee (CEC) has an integral role in determining and setting the NDIS Commission’s compliance and enforcement policy, strategy, and associated operating procedures. Additionally the CEC monitors the progress of compliance and enforcement activity and the progress of regulatory functions and provides advice to the NDIS Commissioner (or their delegate) on compliance and enforcement trends and their alignment to the Commission Operating Model (COM). The Committee also provides recommendations for the commencement of proceedings for any breach of a civil penalty provision. • Throughout 2020-21, urgent regulatory responses to a rapidly changing situation with significant risks for both NDIS participants and registered NDIS providers were required due to the ongoing effects of COVID-19. We carefully monitored the impact that workforce consequences and public health orders had on NDIS participants and providers. This ensured proportionate quality and safeguarding regulation throughout the pandemic. Market oversight activities informed responses at both a federal and state and territory level, and compliance and enforcement priorities were undertaken with a view to safeguarding participant welfare while taking into account the challenges NDIS providers faced during the public health crisis.

Requirement	Response
<p><i>3.2.2 Demonstrated avenues for stakeholders to provide feedback, and processes or policies to incorporate/consider feedback when tailoring approaches to risk including collaboration with other agencies</i></p>	<ul style="list-style-type: none"> • We collaborate regularly with other agencies and provide multiple avenues for stakeholders to provide feedback on policies and procedures, as detailed previously in this document. We tailor our risk and regulatory approach based on this feedback. • Appropriate engagement with the residential aged care sector following the transition of providers supporting NDIS participants to the NDIS Commission on 1 December 2020 informed a number of risk-based regulatory responses, including amendments to worker screening arrangements and audit processes. Close engagement with the Department of Social Services, the Department of Health, the National Disability Insurance Agency, and the Aged Care Quality and Safety Commission were critical to delivering these outcomes. • During 2020–21, the NDIS Commission reviewed its COVID-19 response and lessons learned and adjusted our approach with feedback from our Consultative Committees and other stakeholders. We continually monitored the COVID-19 situation by assessing the preparedness of registered NDIS providers to avoid and manage the risk of infection, and registered NDIS providers’ compliance with state and territory vaccination mandates for staff and NDIS participants.

Requirement	Response
<p><i>3.2.1 Strategies, activities and enforcement actions are amended to reflect changing priorities that result from new and evolving regulatory threats, without diminishing regulatory certainty or impact</i></p>	<ul style="list-style-type: none"> • We monitor both the provider market and systemic risk in the NDIS system by leveraging our market oversight and data analytics functions. We use this intelligence to inform a range of our activities including targeted compliance activity, ongoing conduct monitoring and provider suitability assessment. • Our Compliance and Enforcement Committee (CEC) has an integral role in determining and setting the NDIS Commission’s compliance and enforcement policy, strategy, and associated operating procedures. Additionally the CEC monitors the progress of compliance and enforcement activity and the progress of regulatory functions and provides advice to the NDIS Commissioner (or their delegate) on compliance and enforcement trends and their alignment to the Commission Operating Model (COM). The Committee also provides recommendations for the commencement of proceedings for any breach of a civil penalty provision. • Throughout 2020-21, urgent regulatory responses to a rapidly changing situation with significant risks for both NDIS participants and registered NDIS providers were required due to the ongoing effects of COVID-19. We carefully monitored the impact that workforce consequences and public health orders had on NDIS participants and providers. This ensured proportionate quality and safeguarding regulation throughout the pandemic. Market oversight activities informed responses at both a federal and state and territory level, and compliance and enforcement priorities were undertaken with a view to safeguarding participant welfare while taking into account the challenges NDIS providers faced during the public health crisis.

Measure 3.3: We recognise the compliance record of regulated entities, including using earned autonomy where this is appropriate. All available and relevant data on compliance, including evidence of relevant external verification is considered

Requirement	Response
<p>3.3.1 Available data is used across functions to inform an integrated response to compliance</p>	<ul style="list-style-type: none"> • Branches within the NDIS Commission collaborate with each other and external stakeholders to share information and data on activities. The Commission Operating Model (COM) outlines the key collaboration points with other Commission units, providing a description of the purpose of each collaboration and its process and informing our regulatory approach. The objectives of these collaborations are varied and include: <ul style="list-style-type: none"> – ensuring engagement and communications campaigns are aligned with Commission priorities and other units – supporting consistent, targeted and effective messages to stakeholders – ensuring the Registrations team benefits from the expertise in our Behaviour Support team to support decisions – ensuring registration approvals are consistent with other Commission actions – ensuring registration decisions are consistent with compliance actions – ensuring we can identify trends in provider, practitioner and participant behaviour – ensuring Registrations are informed of cases requiring ongoing monitoring – ensuring responses to provider and practitioner behaviour are consistent – ensuring the NDIS Commission can exercise statutory tools to compel compliance with conditions of registration and the regulatory framework.

KPI 4 - Compliance and monitoring approaches are streamlined and coordinated

Rating:

2019–20 (previous year)	2020–21
Substantially Achieved	Substantially Achieved

Summary

The NDIS Commission continues to require the production of information from providers, workers and complainants to assist with the performance of its functions. As we tailor requests to the requirements of individual investigations, our ability to re-use information can sometimes be limited. To counter this, we ensure that to the best of our ability we are requesting only the core information required on each occasion. Further, our investigations and compliance teams work collaboratively with other regulatory and enforcement agencies to refine our approach. This continues to be a work in progress as the Commission matures.

Further coordination and streamlining of approaches and information sharing, where internal systems talk to each other and the Commission obtains a more global view of providers, will embed the achievement of this KPI.

Measure 4.1: Our information requests are tailored and only made when necessary to secure regulatory objectives, and only then in a way that minimises impact

Requirement	Response
4.1.1 Evidence of collected information being acted upon, stored and re-used where appropriate	<ul style="list-style-type: none"> As a regulator, we require the production of information to assist with the performance of our functions. An increased number of investigations in 2020-21 resulted in increased requests for information. These requests are tailored to the requirements of individual investigations, and so the ability to re-use information can at times be limited. We are exploring options to ensure our systems are suitable to allow evidence collected to be used, stored and re-used in the most efficient manner possible. Our registration guidance materials let NDIS providers know what they need to provide with their registration application, and received information is uploaded to the Commission Operating System (COS) where it can be accessed for other operational needs. Behaviour support data has been used internally for risk flagging.

Requirement	Response
<p><i>4.1.2 Information requests are limited to legislated requirements, compliance and enforcement activities and/or registration decisions</i></p>	<ul style="list-style-type: none"> • Formal requests for information are limited to legislated requirements, compliance and enforcement activities and/or registrations decisions. • Information requests in relation to behaviour support are restricted to the core data set: person details, provider details, behaviours of concern, and use of restrictive practices. • Requests for information related to matters under investigation are reviewed by the Office of the General Counsel (OGC) to ensure they are compliant with legislative requirements, and are limited to material that is reasonably necessary for the purposes of the investigation. • Wide-ranging, onerous requests for information not tied to a specific matter under investigation are avoided. The NDIS Commission seeks to work with entities requested to provide information on a voluntary basis, and where compulsion is required, regard is had to the requirements of the NDIS Act.

Measure 4.2: Our frequency of information collection is minimised and coordinated with similar processes including those of other regulators so that, as far as possible, information is only requested once

Requirement	Response
<p><i>4.2.1 Information provided to the NDIS Commission and other sources is systematically recorded and used where practicable before independent information collection is undertaken</i></p>	<ul style="list-style-type: none"> • Our practices and systems are designed to minimise repeat information requests. All information in respect of a provider's application is recorded in the COS, which allows other areas to identify and access information regarding key workers and staff, including any provider policies and procedures that have been collected during the audit or registration process. • Information held in the registered NDIS provider record within the COS is transferred to a provider's application at the point of commencing their renewal application. As such, the provider does not have to re-enter information already held by the NDIS Commission. • Information received from the NDIA is recorded centrally, and used in the monitoring of provider compliance with registration requirements.

Requirement	Response
4.2.2 <i>Number of repeat information requests made to providers annually</i>	<ul style="list-style-type: none"> Where possible, the NDIS Commission takes action to limit repeat requests for information as part of its regulatory functions. At present, our data is not sufficiently matured to capture this specific metric accurately.

Measure 4.3: We utilise existing information to limit the reliance on requests from regulated entities and share information among other regulators where possible

Requirement	Response
4.3.1 <i>Percentage of monitoring and investigative activities coordinated with similar agencies</i>	<ul style="list-style-type: none"> The NDIS Commission’s investigations and compliance activity works collaboratively with other regulatory and enforcement agencies with a goal of achieving optimal outcomes for participants. During the reporting period, we worked with other agencies in relation to 316 matters. These agencies included the NDIA, the Australian Federal Police and state/territory police, child protection agencies, consumer law agencies, health departments, aged care authorities and mental health authorities. This figure is currently unavailable as a percentage of our monitoring and investigative activities. Collaborative activity is primarily undertaken with state and territory police, in investigative work and safeguarding actions in furtherance of disability workers being charged with and/or convicted of criminal offences.

Requirement	Response
<p><i>4.3.2 Information sharing arrangements with other government agencies, law enforcement agencies, industry complaint bodies and child protection agencies are documented</i></p>	<ul style="list-style-type: none"> • We have a range of protocols, information-sharing schedules and guidance documentation that support our interagency arrangements. • In conducting investigations, we seek to utilise the information we holds across our functions to reduce the necessity to seek information from regulated entities. However, this does not negate the need to require information from those regulated entities in circumstances where the accuracy of information needs to be verified or additional detail is required. While recent amendments to the NDIS Act make the sharing of information with the NDIA easier, the ability of the NDIS Commission to share information with other regulators remains subject to the privacy provisions within the Act. • When assessing registration applications and conducting compliance activities, we identifies consult with other regulators that have previously made adverse findings, or taken regulatory action, against a provider. Outcomes of regulatory decisions are shared with the NDIA and state based worker-screening units, to inform their role in the continuity of support for NDIS participants. Our Behaviour Support branch continues to explore legal and technical options for information sharing, in particular with authorising bodies. • In April 2021, changes were made to the Commissioner’s Rule relating to the disclosure of protected Commission information, to allow for the sharing of information to assist with NDIS Worker Screening Checks. The changes created an exception to the requirement to consult a person whose personal information is proposed to be disclosed, where the disclosure is to certain agencies that have specific functions related to national worker screening, as part of the broader NDIS Quality and Safeguarding Framework.



Measure 4.4: We base monitoring and inspection approaches on risk and, where possible, take into account the circumstances and operational needs of the regulated entity

Requirement	Response
<p><i>4.4.1 Operational needs and circumstances of providers are considered when determining when and how to conduct investigative and compliance activities which are comprehensively documented and based on all available information</i></p>	<ul style="list-style-type: none"> • We base our monitoring and investigative approaches on risk. The circumstances and operational needs of regulated entities are considered, but are not prioritised, over any action considered necessary for the effective regulation of the industry and the safeguarding of NDIS participants. • As we mature, we have increasingly engaged our monitoring and investigative powers under the <i>Regulatory Powers (Standard Provisions) Act 2014</i>. These powers are exercised on an ‘informed consent’ and ‘no consent’ basis, depending on the nature of interactions with a specific provider and the seriousness of the allegations being investigated. The use of these powers is restricted to Commission staff who hold the prerequisite experience and qualifications, and have been appointed as authorised officers by the Commissioner. • Our procedures are documented in the NDIS Commission Investigations Operating Guide. When monitoring compliance with registration conditions, the Registrations branch coordinates its approach with other functions including compliance and investigation operational teams. Information gathered is included in regular internal email notifications. Alerts are placed on the COS to allow other NDIS Commission teams to coordinate and prevent providers being approached unnecessarily

Requirement	Response
<p>4.4.2 A risk-based approach is applied to the timing and scope of investigations and compliance monitoring activities</p>	<ul style="list-style-type: none"> • As it continues to mature, the NDIS Commission takes a risk-based approach to compliance and investigation activities. We utilise a variety of measures to manage non-compliance issues including making enquiries and conducting investigations. The selection of a regulatory response or combination of responses is based on determining what action is most likely to secure future compliance by the provider or other person, the objective seriousness of the misconduct, and the risk to participants. • Investigations are generally initiated where information indicates serious or deliberate non-compliance or an emerging issue. The degree and severity of the non-compliance is a major factor in determining the use of compliance or enforcement powers. The Commission has available to it a range of compliance and enforcement powers, tools and methods. Since its inception, the Commission has undertaken the following regulatory activities: <ul style="list-style-type: none"> – educating providers to understand their obligations and achieve ongoing compliance – monitoring and investigating complaints or reports of non-compliance with the NDIS Code of Conduct, the NDIS Practice Standards and other quality and safeguarding requirements where they apply – issuing compliance notices directing a provider to do, or refrain from doing, certain things – issuing infringement notices – varying, suspending or revoking a provider’s registration – making banning orders that prohibit or restrict specified activities by a provider, or a person employed or otherwise engaged by a provider – initiating civil penalty proceedings against a registered NDIS provider in relation to the death of an NDIS participant. <p>The Commission is yet to enter into an enforceable undertaking or seek injunctive relief.</p>

KPI 5 - Regulators are open and transparent in their dealings with regulated entities

Rating:

2019–20 (previous year)	2020–21
Achieved 	Achieved 

Summary

The NDIS Commission takes every measure to provide transparency across its regulatory activities, ensuring both short and long-term policies and priorities are available for access and scrutiny. We have in past years, and continue to, distribute large amounts of information for providers, while creating and attending to engagement opportunities across all states and territories.

We are clear about how complaints can be made about the Commission’s processes or activities, and we provide accessible ways to contact us through varied channels. We publish our regulatory activity as well as our provider register, and we continue to work on our data stores and reporting capacity as the Commission moves towards maturity. Once nationally operational for two years, we will be able to enhance activity reports and annual reports with the use of comparative data, which will serve to extend transparency and accountability.

Measure 5.1: Our risk-based frameworks are publicly available in a format which is clear, understandable and accessible

Requirement	Response
5.1.1 Regulatory model framework is publicly available	<ul style="list-style-type: none"> The NDIS Quality and Safeguarding Framework is publicly available and is operationalised by the work of the NDIS Commission.

Requirement	Response
5.1.2 Compliance and enforcement strategy consistent with risk management policy is publicly available	<ul style="list-style-type: none"> The NDIS Commission Compliance and Enforcement Policy suite is published on our website. The NDIS Commission's Compliance and Enforcement Priorities 2020–21 were also published on our website at the beginning of the period, listing the key quality and safeguarding issues that would be the focus of compliance and enforcement activities during the year. The policy and priorities were determined in light of the considered risk level with respect to various issues.

Measure 5.2: We are open and responsive to requests from regulated entities regarding the operation of the regulatory framework, and approaches implemented by us



Requirement	Response
5.2.1 Information and education sessions about provider registration and obligations are available	<ul style="list-style-type: none"> In 2020–21, we printed and distributed 3,020 provider information packs containing information about provider registration and obligations. Information was made available for all providers across a range of other channels during the period, including via our website, fact sheets, guides and other resources for providers. We also issued a bi-monthly newsletter to all registered NDIS providers and subscribers. These newsletters explain provider obligations on a number of topics, and provide guidance on compliance. We provided education on more than 1,000 occasions (education is provided where a knowledge gap or opportunity exists to improve a provider or person's understanding of broad or specific obligations). We participated in engagement activities in all jurisdictions to promote the role and functions of the NDIS Commission and to support providers by providing information on their obligations in the NDIS.
5.2.2 Feedback and complaints mechanisms are in place	<ul style="list-style-type: none"> The NDIS Commission's website explains how people can complain about the NDIS Commission, or seek a review of a decision made in relation to a complaint about a provider. The Registrar branch has operational arrangements in place to respond to NDIS provider enquiries in respect of registration matters, and to provider and worker enquiries about worker screening matters.

Measure 5.3: Our performance measurement results are published in a timely manner to ensure accountability to the public

Requirement	Response
<p><i>5.3.1 Our regulatory outputs are publicly available</i></p>	<ul style="list-style-type: none"> • Regulatory outputs are reported in the NDIS Commission's Annual Performance Statements / Annual Report and published on our website. Our regulatory activity (including registration, complaints, reportable incidents, compliance and enforcement activity) is also published on our website. We publish an NDIS Provider Register in two parts. Part 1 contains information about the registration status of the provider and its registration renewal date, the supports and services it is registered to deliver and its conditions of registration. Part 2 contains information on compliance activities we have undertaken, including banning orders, compliance notices, suspensions of registration, revocations of registration and refusals to re-register previously registered NDIS providers. • Our reporting capacity continues to be developed as refinements are made to COS. Six-monthly Activity Reports available on the NDIS Commission's website give breakdowns of key data including registrations, complaints and reportable incidents. This information is also incorporated into our annual report.

KPI 6 - Regulators actively contribute to the continuous improvement of regulatory frameworks

Rating:

2019–20 (previous year)	2020–21
Substantially Achieved 	Substantially Achieved 

Summary

Our responses to measures in this category vary little from the previous year, bearing in mind their prescriptive nature and coverage in other KPIs above.

We have established cooperative and collaborative relationships with a vast array of stakeholders over our first three years of operation, as we spread across the states and territories initiating the Commission and established ties with government, advocacy and peak bodies. Through these relationships, we are establishing our place in the federal regulatory environment, by working to contribute to the continuous improvement of both internal and external regulatory frameworks. We continue to mature in this area of our practice.

Measure 6.1: We establish cooperative and collaborative relationships with stakeholders to promote trust and improve the efficiency and effectiveness of the regulatory framework

Requirement	Response
6.1.1 Consultation and engagement mechanisms are in place to promote activities with stakeholders	<ul style="list-style-type: none"> We have developed and operationalised an engagement framework that helps guide engagement and related communication activities for stakeholders including advisory groups, expert panels, time-limited focus groups, and people who have experience with different disability sub-types. In addition, provider alerts and practice alerts are issued to ensure providers are kept informed of events that can affect the regulatory regime.

Measure 6.2: We engage stakeholders in the development of options to reduce compliance costs. This could include industry self-regulation, changes to the overarching regulatory framework, or other strategies to streamline monitoring and compliance approaches

Requirement	Response
<i>6.2.1 Feedback mechanisms are available and made known to all stakeholders</i>	<ul style="list-style-type: none"> Feedback mechanisms are promoted and available on our website, and are included in most of our published materials, for example fact sheets, newsletters and provider alerts. These mechanisms include information on how to make a complaint, how to contact us to provide feedback, and the locations of our social media channels.
<i>6.2.2 Sector stakeholders are consulted on proposed regulatory policy, procedural and system changes through formal and informal mechanisms</i>	<ul style="list-style-type: none"> The NDIS Commission held meetings with the NDIS Commission Industry Consultative Committee and the NDIS Commission Disability Consultative Committee in November 2020 and March 2021. The NDIS Commission’s Policy & Strategy team oversee Secretariat for both of these committees.

Measure 6.3: We regularly share feedback from stakeholders and performance information (including from inspections) with policy departments to improve the operation of the regulatory framework and administrative processes.

Requirement	Response
<i>6.3.1 Information about performance of services is provided to the Department of Social Services (DSS)</i>	<ul style="list-style-type: none"> The NDIS Commission sits on a number of interagency committees and working groups led by the DSS, including the Commonwealth Action Working Group (Australia’s Disability Strategy) and Strengthening Support for Participants at Risk of Harm. Further, the Commission is an active contributor to the passage of amendments to the NDIS Act and the making of amendments to the NDIS rules – amendments that go towards clarifying and reducing inconsistencies in provisions in those statutes. We are active in proposing these recommendations to the DSS and then active in their development and supporting their way through parliament. The amendments help to make the administration of legislation more efficient and timely.