



NDIS Quality
and Safeguards
Commission

Regulator Performance Framework

Self-Assessment Report 2019–2020

To contact the NDIS Quality and Safeguards Commission

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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. Our self-assessment report describes how we performed against each KPI and individual performance measure based on our evidence metrics. The report also provides our self-assessment rating of the NDIS Commission’s overall performance. We have adopted streamlined ratings of ‘achieved’, ‘substantially achieved’ or ‘achievement progressing’ based on the strength and quality of our evidence.

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 self-assessment results for 2019–2020

The criteria we used for our 2019–20 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:

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 of</u> performance measures under the KPI	
Achievement Progressing	We have demonstrated improvable performance against some performance measures under the KPI	

Summary of self-assessment results 2019–20

Regulator Performance Framework KPI	Rating 2019–20	(Rating 2018–19)
KPI 1 - Regulators do not unnecessarily impede the efficient operation of regulated entities	Rating: Substantially Achieved 	Rating: Substantially Achieved 
KPI 2 - Communication with regulated entities is clear, targeted and effective	Rating: Achieved 	Rating: Substantially Achieved 
KPI 3 - Actions undertaken by regulators are proportionate to the regulatory risk being managed	Rating: Substantially Achieved 	Rating: Substantially Achieved 
KPI 4 - Compliance and monitoring approaches are streamlined and coordinated	Rating: Substantially Achieved 	Rating: Achievement Progressing 
KPI 5 - Regulators are open and transparent in their dealings with regulated entities	Rating: Achieved 	Rating: Achieved 
KPI 6 - Regulators actively contribute to the continuous improvement of regulatory frameworks	Rating: Substantially Achieved 	Rating: Substantially Achieved 

Self-assessment results

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

Rating: Substantially Achieved

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

- **1.1.1 Completeness and availability of the NDIS Quality and Safeguards Commission Communications and Engagement Framework**

The 2018–2020 NDIS Quality and Safeguards Commission Communications and 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.

- **1.1.2 Evidence of regular consultations or engagement with stakeholders on policies and procedures**

In 2019–20, staff from the NDIS Commission’s state and territory offices, including the national office, presented at 456 engagement activities. Activities between April and June 2020 were conducted largely via teleconference and virtual meeting due to restrictions surrounding the COVID-19 pandemic. The NDIS Commission held meetings with the NDIS Commission Industry Consultative Committee and the NDIS Commission Disability Sector Consultative Committee in November 2019, March 2020 and June 2020. Also in March 2020 – and in lieu of scheduled in-person roadshows that had to be cancelled due to COVID-19 – a livestreamed information webinar was held for NDIS providers in Western Australia, in advance of its transition to the NDIS Commission in December 2020.

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

- **1.2.1 Documented use of the feedback received from regulated entities, including feedback from existing complaint mechanisms**

The NDIS Commission actively sought feedback from registered providers and disability industry groups throughout 2019–20. In January 2020, this feedback was used to inform amendments to the NDIS Provider Registration and Practice Standards Rules (for more on this, see **1.3.1**).

Negative feedback received from providers regarding the NDIS Commission’s complaint handling or reportable incident functions was escalated for assessment and action as considered appropriate.

- **1.2.2 An accessible complaint mechanism is maintained¹**

The NDIS Commission's [feedback and complaints mechanism](#) is on our website, and 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. Complainants can use email, phone (free call from landlines), text telephone or the national relay service to be in touch, and interpreters can be arranged if needed. The webpage provides a broad explanation of how we manage complaints and explains what happens once a complaint is made. Included is information about the nature and amount of contact a complainant might expect to receive from the NDIS Commission in return, and how long those processes should reasonably take. The page also links to a detailed complaints and feedback policy to ensure that people wanting to contact the NDIS Commission are aware of their rights, and that NDIS Commission staff are best placed to respond to complainants in a fair and efficient manner. The policy is provided in both standard and Easy Read formats, for increased accessibility.

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

- **1.3.1 Feedback from regulated entities is used to identify improvement opportunities**

As mentioned in 1.2.1, changes were made to the NDIS Rules in January 2020 in response to feedback from across the disability sector. The changes reduced the regulatory burden on some NDIS providers, particularly sole traders and small businesses delivering lower risk supports such as therapies, home modifications and specialist equipment. Furthermore, from 1 January 2020, audit processes were adjusted to emphasise a proportionate approach in a diverse NDIS market, with requirements based on the level of risk associated with the supports provided, without reducing the safeguarding effects of regulatory arrangements. The NDIS Commission continues to survey registered providers who have undergone the audit process.

- **1.3.2 Documented evidence of how the NDIS Commission responds to complaints made to the Ombudsman about the NDIS Commission**

Complaints received by the Commonwealth Ombudsman concerning the NDIS Commission are managed in the NDIS Commission by the Office of the General Counsel. They are also an agenda item at quarterly liaison meetings between the Commonwealth Ombudsman and the Complaints Commissioner.

During 2019–20, the Commonwealth Ombudsman's Office notified the NDIS Commission of nine complaints about the NDIS Commission in relation to which the Ombudsman was conducting a preliminary inquiry (eight complaints) or an investigation (one complaint). The Ombudsman subsequently advised with respect to each preliminary inquiry that it would not progress the matter further to an investigation, and, with respect to the complaint that triggered an investigation, that it would not be investigated further.

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.

- **1.3.3 Policies and procedures include consideration of reducing compliance costs**

The Support for NDIS Providers Program, administered by the NDIS Commission, funds the development of tools and resources for the benefit of providers, including supporting businesses and individuals to meet quality assurance requirements.

We awarded \$2.96 million in grants to five recipients in 2019-20, all of which involved the development of resources that can aid providers in complying with standards or improving their services. We also continued to administer grants issued in 2018–19, which also involved provisions of support and resources for providers.

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

Rating: Achieved

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

- **2.1.1 Percentage of published / produced guidance materials that complies with government accessibility standards**

The NDIS Commission has a strong internal procedure that supports the production of content into accessible formats, with processes in place that relate to both the development and desktop publishing stages of document production. The NDIS Commission aims to achieve 100% accessibility where possible; 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.

We are developing an accessibility guide for the use of all staff and third-party suppliers who produce communications on behalf of the NDIS Commission, for release in the first half of 2020–21.

- **2.1.2 Education materials, engagement activities are provided to inform the sector of changes via a variety of channels**

The NDIS Commission developed an internal education framework (available on the NDIS Commission's intranet) to guide NDIS Commission 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. This information aims to support interested and invested parties' knowledge and understanding of the NDIS Commission's role and functions, and the protection of the rights of people with disability under the NDIS Code of Conduct and NDIS Practice Standards.

A wide range of information and resources relating to COVID-19, separate to those included on the website, were also made available throughout 2019–20. These included letters to providers, provider alerts and newsletters, provider and participant information packs, fact sheets, and social media posts.

In 2019–20, the NDIS Commission printed and distributed 33,985 participant welcome packs and 9,029 provider information packs.

Available material available on the NDIS Commission website includes:

- a provider information pack and a participant welcome pack
- behaviour support material, including webinars and the Positive Behaviour Support Capability Framework
- a large number of fact sheets, including those relating to complaints, incident management and reportable incidents, and NDIS participants in residential aged care
- complaints management and resolution guidance
- COVID-19 information pages for providers, workers and participants on the NDIS Commission website
- a range of new Culturally and Linguistically Diverse (CALD) resources
- Easy Read versions of documents.

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

- **2.2.1 Sector stakeholders are consulted on proposed regulatory policy changes through formal and informal mechanisms**

In 2019–20 the NDIS Commission continued to consult with stakeholders through formal mechanisms such as:

- inter-jurisdictional governance groups:
 - Council of Australian Governments (COAG) Disability Reform Council (DRC)
 - DRC Senior Officials Working Group (DRC SOWG)
- inter-jurisdictional sub-committees and working groups:
 - Sub-SOWG Quality and Safeguarding Working Group (Sub-SOWG)
 - Market Oversight Working Group (MOWG)
 - SOWG NDIS School Education Working Group
- portfolio governance committees:
 - NDIS Quality and Safeguards Committee (NDIS Q&S Committee)
 - NDIA Protocol Working Groups.

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

- **2.3.1 Percentage of registration decisions and suitability assessments of practitioners processed within benchmarked timeframes**

In 2019–20, registered NDIS providers from an additional five states and territories transitioned to the NDIS Commission. This increased the scale of registration activity for the NDIS Commission significantly. During 2019–20, the NDIS Commission received 5,439 new provider applications. We also received 1,857 applications to vary registration. 80% of all registration applications were determined within 49 working

days of receiving the complete application.

- **2.3.2 All regulatory decisions are supported with reasons for decision and where applicable information on review or appeal mechanisms**

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 they include review rights where applicable. Notifications of the commencement of compliance and enforcement activity also include reasons for the decision or the compliance activity, and provide information about applicable review mechanisms. Decisions made by complaints and reportable incident officers are documented in the NDIS Commission's Commission Operation System (COS), linked to the relevant rule(s), and made under appropriate delegated authority. Reasons for decisions are provided to providers and complainants at the closure of a complaint.

Measure 2.4: Our advice is consistent and supports predictable outcomes

- **2.4.1 Standard operating procedures for decision making are used by staff**

The NDIS Commission Operational Guidance Manual was completed and published on the intranet in mid-2019 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.

Templates, forms and guidance material are also available to assist staff in their decision-making. Documents explaining our processes are available on the NDIS Commission website.

- **2.4.2 Third parties engaged in the regulatory model are provided with consistent direction on activities**

The NDIS Commission provides all third parties engaged in the regulatory model with consistent and clear direction on their activities.

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. Providers must meet the cost of engaging an auditor to undertake an audit. The NDIS Commission provides guidance for auditors through the NDIS (Approved Quality Auditors Scheme) Guidelines 2018, and provides training for individual auditors to drive consistency in the market. In January 2020, the NDIS Commission updated this guidance in response to Auditor feedback and the updating of the NDIS (Provider Registration and Practice Standards) Rules 2018. Auditors were updated on the changes to the rules and guidelines through forums and messaging.

In 2019–20 we continued to work closely with Joint Accreditation Systems Australia and New Zealand (JAS–ANZ) to develop the auditor market, including conducting regular forums with approved and prospective quality auditors.

We also continued a project involving relevant bodies to establish nationally consistent principles and procedures for the authorisation of regulated restrictive practices.

- **2.4.3 Best practice guides and training available publicly**

Guidance and training material is available on the NDIS Commission website. New best-practice guides and training in 2019–20 included COVID-19 resources, and new resources to support incident reporting, management and prevention. We have continued to publish practice guides and practice alerts

throughout the year, and are developing a New Worker NDIS Induction module for release in the first half of 2020–21.

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

Rating: Substantially Achieved

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

- **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.**

We use a range of compliance tools to prevent and address breaches of the NDIS Act including education, and working closely with other complaints and regulatory bodies. The NDIS Act also provides us with a range of compliance and enforcement powers, including banning orders, compliance notices and court-based outcomes.

Our response actions are proportionate to the level of risk identified. 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 inspections and interviews) generally applies to higher-risk, more complex supports and services.

In 2019–20, the NDIS Commission's overall regulatory response moved towards an enforcement footing, reflecting the NDIS Commission's maturing as a regulator. The NDIS Commission's interaction with the industry reflects a desire to effect changes in provider conduct, and an expectation that providers make all efforts to comply with legislation within the NDIS Commission's purview. With this increased enforcement footing came a range of internal checking mechanisms to ensure that actions taken are proportionate and consistent. As part of this, entities that the NDIS Commission is considering taking enforcement action against are afforded procedural fairness, except in circumstances where such a delay may present unacceptable risk to the welfare of affected participants.

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

- **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**

The NDIS Commission monitors both the provider market and systemic risk in the NDIS system by leveraging our ongoing monitoring, market oversight and data analytics functions. A whole-of-NDIS Commission view of our data and information allows us to identify systemic trends and risks. We use this intelligence to inform a range of our activities including targeted compliance activity, ongoing conduct monitoring and provider suitability assessment.

The 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. See **3.2.2** for more on strategy amendment in response to evolving risk.

- **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**

The NDIS Commission collaborates regularly with other agencies and provides multiple avenues for stakeholders to provide feedback on policies and procedures. We tailor our risk approach based on this feedback. During 2019–20, the NDIS Commission commenced targeted monitoring of registered NDIS providers who provide personal care supports for people with disability in their own home with a single support worker. Informed by this activity, and the recommendations made by the Hon Alan Robertson SC, the NDIS Commission imposed specific additional conditions of registration on registered NDIS providers providing personal supports to NDIS participants who live alone, to ensure providers assess and manage risks in relation to NDIS participants being supported by a single worker. The NDIS Commission is closely monitoring compliance with these conditions, and welcoming feedback concerning the impacts of the new registration arrangements.

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

- **3.3.1 Available data is used across functions to inform an integrated response to compliance**

Units/branches within the NDIS Commission collaborate closely with each other and external stakeholders to share information and data on activities. The COM outlines the key collaboration points with other NDIS Commission units, providing a description of the purpose of each collaboration and its process. The objectives of these collaborations are varied and include:

- ensuring engagement and communications campaigns are aligned with NDIS Commission priorities and other units
- supporting consistent, targeted and effective messages to participants, providers, practitioners and other stakeholders
- ensuring the registrations team benefits from the expertise in our behaviour support team to support decisions
- ensuring registration approvals are consistent with other NDIS Commission actions
- ensuring registration decisions are consistent with compliance actions
- ensuring data and analytics personnel can identify trends in provider, practitioner and participant behaviour and identify providers of systematic importance to the NDIS Commission
- ensuring our registrations team is informed of cases requiring ongoing monitoring
- ensuring responses to provider and practitioner behaviour are consistent and taken by the appropriate unit
- ensuring the NDIS Commission can exercise statutory tools to compel compliance with conditions of registration and the regulatory framework.

Further information on how information is used across the NDIS Commission can be found in **3.2.1**, **4.2.1** and **4.2.2**.

KPI 4 - Compliance and monitoring approaches are streamlined and coordinated

Rating: Substantially Achieved

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

- **4.1.1 Evidence of collected information being acted upon, stored and re-used where appropriate**

The NDIS Commission stores and re-uses information where appropriate.

Information requests have been restricted to only the core data set for behaviour support: person details, provider details, behaviours of concern, use of restrictive practices. This data has been used internally for risk flagging.

Our registration guidance materials let applicants know what they need to provide with their application, and when collecting information we clearly articulate what is required to complete the process. A due date is given, and received information is uploaded to COS where it can be accessed for other operational needs.

Going forward, the NDIS Commission will require the production of information to assist with its regulatory functions. With the maturing of our operations we have increased the number of investigations we undertake, which has resulted in increased requests for information. These requests are tailored to the requirements of individual investigations, and so the ability to re-use information is limited, however, information obtained through the reportable incidents and complaints functions is used as intelligence for compliance and investigation activity.

- **4.1.2 Information requests are limited to legislated requirements, compliance and enforcement activities and/or registration decisions**

Our formal requests for information are limited to legislated requirements, compliance and enforcement activities and/or registrations decisions.

Information is only requested from providers by the registration team for registration purposes as required under the NDIS Act and Rules, such as for assessing compliance with practice standards and assessing suitability of providers and their key personnel. In assessing applications for registration and variation of registration, the NDIS Commission engages with applicants informally where appropriate.

Requests for information related to matters under investigation are reviewed by the Office of General Counsel 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.

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

- **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**

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.

- **4.2.2 Number of repeat information requests made to providers annually**

The NDIS Commission also continuously works to remove repeat information requests.

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

- **4.3.1 Percentage of monitoring and investigative activities coordinated with similar agencies**

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 88 matters. These agencies included the National Disability Insurance Agency (NDIA), the Australian Federal Police and state/territory police, child protection agencies, consumer law agencies, health departments, aged care authorities and mental health authorities.

Of those, collaborative activity is primarily undertaken with state and territory police. The NDIS Commission's investigative work often involves coordinating with police to take safeguarding action in furtherance of disability workers being charged with and/or convicted of criminal offences.

4.3.2 Information sharing arrangements with other government agencies, law enforcement agencies, industry complaint bodies and child protection agencies are documented

We have a range of protocols, information-sharing schedules and guidance documentation that support our interagency arrangements.

When assessing registration applications, and conducting compliance and investigation activities, the NDIS Commission identifies and consults other regulators that have previously made adverse findings, or taken regulatory action, against the provider. Outcomes of regulatory decisions (i.e. decisions to suspend, revoke or not renew registration) are shared with the NDIA and state based worker-screening units, to inform their role in the continuity of support for participants. Our Behaviour Support branch

continues to explore legal and technical options for information sharing, in particular with authorising bodies.

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

- **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**

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.

The maturing of the NDIS Commission has seen it increasingly engage its warrant powers under the *Regulatory Powers (Standard Provisions) Act 2014*. The agency exercises these powers 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 NDIS 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.

Guidance, templates and training material is available on the NDIS Commission website. New best practice guides and training in 2019–20 included COVID-19 resources, and new resources to support incident reporting, management and prevention. We have continued to publish practice guides and practice alerts throughout the year, and progressed development of a New Worker NDIS Induction module for release in the first half of 2020–21.

- **4.4.2 A risk-based approach is applied to the timing and scope of investigations and compliance monitoring activities**

As it matures, the NDIS Commission continues to take 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 made on the basis of 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 a complaint 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 information gathering or enforcement powers. The NDIS Commission has available to it a range of compliance and enforcement powers, tools and methods. Since its inception, the NDIS Commission has undertaken the following regulatory activities:

- 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.

The NDIS Commission is yet to enter into an enforceable undertaking, seek injunctive relief or undertake civil penalty proceedings.

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

Rating: Achieved

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

- **5.1.1 Regulatory model framework is publicly available**

The NDIS Quality and Safeguarding Framework is publicly available and is operationalised by the work of the NDIS Commission.

- **5.1.2 Compliance and enforcement strategy consistent with risk management policy is publicly available**

The NDIS Commission Compliance and Enforcement Policy is published on our website. The NDIS Commission compliance priorities for 2019–20 were also published on our website, listing the key quality and safeguarding issues that would be the focus of compliance and enforcement activities during 2019–20. The policy and priorities were determined in the 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

- **5.2.1 Information and education sessions about provider registration and obligations are available**

Information was available for all providers registered with the NDIS Commission during the period, and to Western Australian providers prior to their transition into the NDIS Commission's jurisdiction on 1 December 2020. We updated our website and developed fact sheets, guides and other resources for providers. Engagement activities were held in all jurisdictions to promote the role 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**

The NDIS Commission has published various resources, including reportable-incidents and complaint-handling guidance for providers and workers. The NDIS Commission contact centre routinely provides information and explanations to NDIS providers about our processes and operations. When they cannot

assist, they will direct calls and emails through to the relevant area or executive level officer for their action and response. The contact centre regularly receives compliments on their prompt and detailed assistance. The website also 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. In addition, the Registrations branch has operational arrangements in place to respond by telephone and email to NDIS provider enquiries, requests for assistance and complaints about registration processes.

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

- **5.3.1 Our regulatory outputs are publicly available**

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.

The NDIS Commission's reporting capacity continues to be developed as refinements are made to COS. The six-monthly activity report available on the NDIS Commission website gives breakdowns of key data including registrations, complaints and reportable incidents. This information is also incorporated into the annual report.

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

Rating: Substantially Achieved

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

- **6.1.1 Consultation and engagement mechanisms are in place to promote activities with stakeholders**

The NDIS Commission has 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

- **6.2.1 Feedback mechanisms are available and made known to all stakeholders**

Feedback mechanisms are promoted and available on the NDIS Commission's 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.

- **6.2.2 Sector stakeholders are consulted on proposed regulatory policy, procedural and system changes through formal and informal mechanisms**

The NDIS Commission held meetings with the NDIS Commission Industry Consultative Committee and the NDIS Commission Disability Sector Consultative Committee in November 2019, March 2020 and June 2020.

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.

- **6.3.1 Information about performance of services is provided to the Department of Social Services (DSS)**

The NDIS Commission sits on a number of interagency committees and working groups led by DSS, including the Commonwealth Action Working Group (Review of the National Disability Strategy) and the upcoming review of the Quality and Safeguarding Framework.