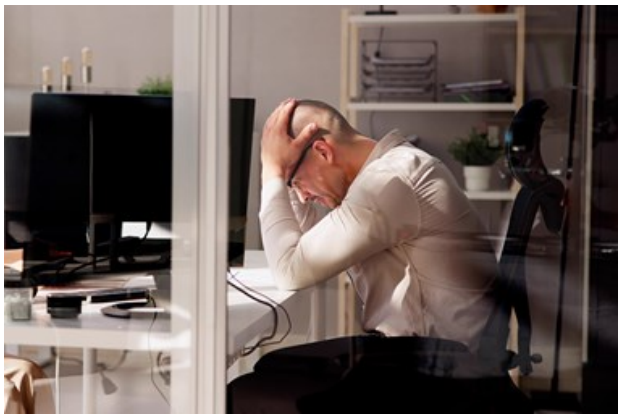
GILSHENAN & LUTON
LEGAL PRACTICE



NDIS fraud – investigations and penalties

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The NDIS Commission uses a range of compliance and enforcement tools to prevent and address breaches of the *National Disability Insurance Scheme Act 2013* (**NDIS Act**), including NDIS fraud and other non-compliance activities.

The NDIS Act provides the Commission with a range of compliance and enforcement powers, including:

- suspension of an NDIS provider's registration;
- banning orders prohibiting or restricting an NDIS provider to deliver supports and services;
- civil penalties; and
- criminal charges.

If you're being investigated by the NDIS for fraud or non-compliance, you should seek legal advice before proceeding further as the most serious result of an NDIS investigation can be criminal charges.

GET ADVICE FROM A CRIMINAL LAWYER: 07 3361 0222 (available 24/7)

What is NDIS fraud?

According to the **National Disability Insurance Agency (NDIA)**, NDIS fraud and non-compliance are actions that hurt participants and the NDIS.

NDIS fraud and non-compliance can take many forms, including:

- providing misleading information;
- using fraudulent invoices and documents;
- theft;
- unlawfully procuring and using NDIS information;
- misuse of funds;
- falsely claiming travel or other entitlements; and
- making claims for services that are not provided.

The repercussions of such conduct can include administrative action, civil penalties, and even being charged with criminal offences .

Fraud Fusion Taskforce to detect, resolve and prevent fraud in the NDIS

The Fraud Fusion Taskforce is a partnership between the NDIA, Services Australia and 14 other government agencies including the NDIS Quality and Safeguards Commission, the Australian Federal Police and the Australian Criminal Intelligence Commission. A primary function of the Taskforce is to detect, resolve and prevent fraud and serious organised crime in the NDIS and other government programs.

The Taskforce commenced in November 2022 and has led to a dramatic increase in NDIS fraud tip offs and has already led to two prosecutions for NDIS fraud. It is likely that with the introduction of the Taskforce and the increase in tip offs, there will be more prosecutions to follow.

NDIS powers to investigate fraud

The NDIS Act provides the NDIS Quality and Safeguards Commission with certain powers to obtain information to assist with its investigations into fraud and non-compliance.

The types of matters the NDIS Commission may investigate include:

- whether a registered NDIS provider is complying with the conditions of their registration;
- whether a registered NDIS provider or a person employed or otherwise engaged by them (‘a worker’) is complying with the NDIS Code of Conduct;
- whether a registered NDIS provider is complying with the NDIS Practice Standards;
- where a person is subject to a banning order (prohibiting or restricting their ability to provide services or support under the scheme), whether the person is providing supports or services in contravention of that order.

Under Section 55A of the NDIS Act, the NDIS Commissioner has the power to obtain information from others to ensure the integrity of the NDIS.

Under section 55A of the NDIS Act it is a requirement to comply with that notice.

It is an offence to refuse or fail to comply with a notice under S55A unless a person has a reasonable excuse, such as incriminating an individual or exposing them to a penalty.

NDIS compliance and enforcement powers

Suspension of NDIS provider registration

The NDIS Commissioner has the power to vary, suspend or revoke an NDIS provider's registration.

The NDIS Commissioner may seek to suspend the registration of an NDIS provider if:

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

NDIS banning order

The effect of a banning order is that the individual or organisation that is the subject of the order is prohibited from providing NDIS supports and services, or their provision of NDIS supports or services is restricted.

For example, a banning order may be made against an individual on the ground that he or she is believed not to be suitable to provide supports or services to people with disability.

The basis for that belief might be the fact that the individual has been charged with a criminal offence. In such a case, the NDIS Commissioner needs to ensure that the making of the order

would not prejudice, in any way, criminal proceedings relating to the charge and that it would not be inconsistent with the presumption of the individual's innocence.

Consequently, the order would initially be for a period long enough for the criminal proceedings to be concluded. At the conclusion of the proceedings, the length of the banning order would be revisited, having regard to the outcome of the proceedings and other relevant factors. The result could range from making the order permanent to revoking it.

Civil penalties for NDIS fraud or non-compliance

Civil penalties are provided for in the NDIS Act and do not result in criminal sanctions. Civil penalty provisions are prosecuted to a different standard of proof than criminal matters.

Where an NDIS provider, participant or other relevant entity does not comply with Agency requests, they may be subject to a civil penalty. The Agency may also commence civil proceedings, as provided by subsection 183(1) of the NDIS Act, to recover any debt owed to the Agency under the NDIS Act.

Criminal charges for NDIS fraud or non-compliance

Criminal activity against the NDIA or the scheme may be referred to the Commonwealth Director of Public Prosecutions for prosecution. Criminal penalties are provided for in the NDIS Act.

For example, it is an offence for a person to refuse or fail to comply with a section 55 request to give information or produce a document.

In addition to the criminal offences found in the NDIS Act, Part 7.3 of the *Criminal Code Act 1995 (Cth)* outlines a number of offences relating to fraud against the Commonwealth.

Get help from a criminal lawyer

As outlined above, the most serious of conduct can result in a provider being charged with a criminal offence.

Accordingly, if you are:

- issued with a notice to provide certain information to the NDIA; or
- you are invited to make a submission in relation to the possible suspension of your NDIS registration; or
- you are charged with any offending arising out of the NDIA,

we recommend that you obtain legal advice immediately.

Contacting Gilshenan &Luton Criminal Defence Lawyers

07 3361 0222 (24/7)

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This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.