



IMPROVEMENT NOTICE

This notice is issued under the Commonwealth *Work Health and Safety Act 2011* (**WHS Act**), s 191. This notice requires the person to whom it is issued to remedy a contravention of the WHS Act or the Commonwealth *Work Health and Safety Regulations 2011* (**WHS Regulations**).

The WHS Act, s 210 requires that the person to whom an improvement notice is issued must, as soon as possible, display a copy of the notice in a prominent place, at or near the workplace or part of the workplace, at which work is being carried out that is affected by the notice.

NOTICE ISSUED TO:	Notice Number: MC00028634 -NT03-C1		
Legal name of person:	NDIS Quality and Safeguards Commission		
ABN:	40293545182	ACN:	
Trading as:	NDIS Quality and Safeguards Commission (NQSC)		
Address line 1:	P O Box 210		
Address line 2:	Penrith NSW 2750		

DETAILS:

Site location:	All NQSC workplaces
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I, **s 22**, being an Inspector appointed under the WHS Act s 156 reasonably believe that on **21/04/2023**, at **04.00 PM** you:

☒ are contravening a provision, or ☐ have contravened a provision in circumstances that make it likely that the contravention will continue or be repeated, of the:

☒ *Work Health and Safety Act 2011* (Cth), s 19(1), s19(3)(a) & s19(3)(c) ☐ *Work Health and Safety Regulations 2011* (Cth), r number

BRIEF DESCRIPTION OF HOW THE PROVISION IS BEING OR HAS BEEN CONTRAVENED:

1. In November 2022 Comcare received information about concerns regarding NQSC management of the risks to workers health arising from the psychosocial hazard of Job Demands in NQSC workplaces.
2. The concerns were that the NQSC risk management system in relation to psychosocial hazard of work demands, specifically extremely high workloads (**Work Demands Hazard**) is ineffective or failing, and that NQSC had been aware for the past three years of negative health impacts of prolonged and extreme exposure to work related stress from Work demands.
3. On 3 November 2022 Comcare commenced MC00028634 Inspection (**the Inspection**) in response to the WHS Concern. I requested and was provided with information and documents from NQSC (**NQSC documentation**) in relation to their system for managing risks to workers' health and safety arising from the Work Demands Hazard.
4. I reviewed the NQSC documentation and formed a reasonable belief that the NQSC lack a psychosocial hazard risk management system compliant with the *Work Health and Safety Act 2011* (Cth) (**WHS Act**). My belief is based on the following observations:

- a. The NQSC was aware of workers' concerns regarding the Work Demands Hazard since 2021 because Australian Public Service (**APS**) Employee Census results from 2021 and 2022 indicated that a high number of respondents described their workloads as above their capacity, and there were ongoing communications expressing those concerns to NQSC between end of 2021 and the end of 2022.
- b. The NQSC advised that the 'Actions on a page' document (**NQSC Plan**) was developed in response to the APS Census results and the NQSC Culture Review which was undertaken in August/September 2021. This included:
 - i. *"Implementation of a Buddy System"*, due to commence in the first quarter of 2022; and
 - ii. *"Competency framework developed"* due to commence in the second quarter of 2022 in relation to the finding of *"Performance and areas having the appropriate skills, capabilities and knowledge"*.
- c. However, NQSC's response dated 20 February 2023 to statutory notice MC00028634-NT01 did not provide any evidence that any actions outlined in the NQSC Plan were implemented (either fully or in part), or are being implemented. Further, it advised that the NQSC Plan was superseded by *"the Commission's Future State program of work that has been undertaken and implemented since the appointment of a new Commissioner. The Future State work includes the implementation of the Commission's Strategic Plan, Corporate Plan and Workforce Plan"*.
- d. I consider that those NQSC documents did not describe any specific actions to address the issues identified in the APS Census results, or explain how risks to health and safety of workers arising from psychosocial hazards, including the Work Demands Hazard, are to be identified, or eliminated or minimised, so far as is reasonably practicable. The documents do not demonstrate how NQSC is meeting its duty to ensure, so far as is reasonably practicable, that workers are not exposed to risks to their psychological health and safety arising from psychosocial hazards, including the Work Demands Hazard. In my view:
 - i. The documents are corporate and strategic in character. For example, the 'NQSC Corporate Plan 2022-23' only provides mission statements regarding core functions/services to customers.
 - ii. The 'Data and Digital Roadmap' document does not indicate how risks to health and safety of workers arising from psychosocial hazards, including Work Demand Hazard, are to be identified, eliminated or minimised.
 - iii. The 'NDIS Quality and Safeguards Commission - High Level Regulatory Approach' document outlines NQSC's regulatory approach regarding NQSC core business. It does not indicate how risks to health and safety of workers arising from psychosocial hazards, including the Work Demands Hazard will be identified, eliminated or minimised.
- e. NQSC provided information to me on 11 April 2023 indicates that, based on the review of Complaints Commissioner Division (**CCD**), NQSC has:
 - i. Implemented a new service model in CDD with 'manageable levels' of workload. However, no information was provided about when the new service model would commence (or had commenced), how 'manageable' workload levels were determined and how the new structure / operating model will be monitored and maintained.
 - ii. Approved an *"initial program of work"* based on the findings from the Reportable Incidents functions review. This includes a *"shift from reactive to proactive compliance strategies"* and implementing a *"Triage function"*. However, no information was provided about when this program will be implemented or how it will assist with managing workload demands.
 - iii. As part of the Reportable Incidents Review, NQSC formed three Working Groups including the 'Workforce Support working group'. The purpose of the Working Groups includes to *"establish inputs and suggestions on how to baseline and measure outputs. This will include understanding workloads and the*

appropriate allocation of work". However, NQSC advised that "*a detailed change plan*" is yet to be developed or implemented, and no information was provided about a timeframe for its completion.

- iv. Commenced "*consulting with staff on changes to structure*" including "*Creating multifunctional teams, implementing a comprehensive review of policies, procedures and work instructions, Developing a regulatory capability learning and development program, Implementing a whole of organisation Regulatory Risk Framework*". However, information was not provided to indicate if these actions have been endorsed/approved, what their completion timeframes are, and how the ongoing monitoring/maintenance of these actions will be achieved.
- f. I also note that the NQSC provided copies of its Risk Management Framework and Risk Management Policy as evidence of its psychosocial hazard and risk management system. Both of these documents were approved in 2018 but have not been reviewed since, and neither has a specified review cycle.
 - i. The NQSC 'Risk Management Policy' is a policy statement ("*a statement of the overall intentions*") concerning organisational risk management with no information or references regarding psychosocial hazards risk management, including the Work Demands Hazard.
 - ii. The NQSC 'Risk Management Framework' outlines a broad risk management framework which does not describe how the risk management process is to be applied in relation to any hazards/risks at the workplace, including psychosocial hazards, such as the Work Demands Hazard.
- 5. As a person conducting a business or undertaking (PCBU), NQSC has a duty under the WHS Act to ensure, so far as is reasonably practicable:
 - a. 19(1) – that the health and safety of workers is not put at risk from the work carried out as part of conduct of the business or undertaking.
 - b. 19(3)(a) – the provision and maintenance of a work environment without risks to health and safety.
 - c. 19(3)(c) – the provision and maintenance of safe systems of work.
 - 6. This includes a duty to ensure, so far as is reasonably practicable, that its workers are not exposed to psychological health and safety risks arising from the conduct of the business or undertaking.
- 7. There is a risk to health and safety, being a risk to psychological health and safety associated with excessive workload demands.
- 8. I am not satisfied the NQSC has a system in place to manage the risks to psychological health and safety associated with high work demands. For example, while I note that the NQSC has committed to implementing a range of measures as discussed at paragraph 4e above, such measures have not been taken and no timeframes have been identified for doing so. Given the nature of the risks identified, I am not satisfied that the NQSC has identified, assessed and controlled the risks associated with the evident psychosocial risks currently being experienced by the relevant workers.
- 9. The NQSC is required to do what is reasonably practicable to ensure health and safety having regard to arrange of factors including the likelihood of the hazard or risk occurring, the degree of harm that might result, what is known or ought to be known about the risk and the availability and suitability of ways to eliminate or minimise the risk. On balance, I consider that there are suitable and available measures which the NQSC could take in order to address the immediate risks associated with psychosocial hazards including excessive workload. This includes a review of workload levels and the implementation of interim controls regarding the immediate risks arising from excessive or unmanageable workloads. This might also include implementing the measures identified at paragraph 4e above.
- 10. Taking into account all of the above, I have formed a reasonable belief that NQSC is contravening subsections 19(1), 19(3)(a) and 19(3)(c) of the WHS Act

DIRECTIONS (if any) AS TO THE MEASURES TO BE TAKEN TO REMEDY OR PREVENT THE CONTRAVENTION OR LIKELY CONTRAVENTION: *(Compliance is **mandatory**)*(Select one:) ☒ Remedy the contravention by:☐ Prevent a likely contravention from occurring by:☐ Remedy the things or operations causing the contravention or likely contravention by:

1. Conduct, in consultation with workers, a review of the NQSC's workload levels, Risk Management Framework and Risk Management Policy to ensure that they:
 - a. Identify psychosocial hazards and risks at the workplace, including the Work Demands Hazard; and
 - b. Identify reasonably practicable control measures that eliminate or minimise, so far as is reasonably practicable, the identified psychosocial hazards and risks, including the Work Demands Hazard.
2. Implement the revised NQSC Risk Management Framework and Risk Management Policy so that the identified reasonably practicable control measures are implemented at the workplace.
3. Provide workers with the necessary information, training, instruction and supervision in relation to the revised Risk Management Framework and Risk Management Policy.

RECOMMENDATIONS (if any): *(Compliance is **not mandatory**)*

In remedying the contravention you may consider the following:

1. Approved Work Health and Safety (How to Manage Work Health and Safety Risks) Code of Practice 2015.
2. Approved Code of Practice Work Health and Safety Consultation, Co-operation and Co-ordination, 2015.
3. Safe Work Australia guide '[How to determine what is reasonably practicable to meet a health and safety duty](#)'. May 2013.
4. SafeWork Australia '[Managing psychosocial hazards at work Code of Practice](#)'
5. Work Demands - Practical guidance for Employers by Comcare at [Work demands - Practical guidance for employers \(comcare.gov.au\)](#)

NOTICE ISSUED BY:

s 22

Inspector: s 22

Inspector ID: 084

Email: s 22

Phone: s 22

Postal Address: GPO Box 1993, Canberra, ACT 2601

Signature

DATE OF ISSUE 21/04/2023

This section is completed if the notice is to be delivered in person by a Comcare Inspector.

Name of person notice was personally delivered to:

Relationship to the person issued the notice:

THIS CONTRAVENTION MUST BE REMEDIED NO LATER THAN 24/08/23

PENALTIES

You must comply with this notice. Failure to comply may incur a maximum penalty of:

- \$50,000 for an individual
- \$250,000 for a body corporate.

It is an offence to fail to display the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being carried out; or to remove, destroy, damage or deface a notice displayed while it is in force. Penalty for non-compliance is:

- \$5,000 for an individual
- \$25,000 for a body corporate.

INTERNAL REVIEW OF DECISION

The inspector's decision to issue an improvement is reviewable under the WHS Act, Part 12. To request a review, you must be an 'eligible person', which is:

- the person to whom the notice was issued
- a person conducting a business or undertaking whose interests are affected by the decision
- a worker whose interests are affected by the decision
- a health and safety representative who represents a worker whose interests are affected by the decision.

How to apply for a review of a decision on the notice

An *Application for Internal Review* form must be lodged with Comcare by the eligible person, before the compliance date on the notice or within 14 calendar days of becoming aware of the notice. The form is available from Comcare's website.

Stays on the operation of the notice

Once an application for a review of the improvement notice is made, the original decision is suspended (a stay is granted). This stay continues to have effect until either of the following occur:

- the decision is made by the internal reviewer and the period to apply for an external review has expired
- an application for an external review is made.

Review process

Comcare will review your application within calendar 14 days unless additional information is required. You will receive written confirmation of the outcome of the internal review including the reasons for the decision.

EXTERNAL REVIEW

If you do not agree with the internal review decision made by the reviewing officer and you are an eligible person, you may apply to Fair Work Australia for an external review. Your application must be made within 14 days of first becoming aware of Comcare's internal review officer's decision. See our website for information on how to apply for reviews of decisions.

PRIVACY STATEMENT

Comcare will only collect, use or disclose personal information in accordance with the Commonwealth *Privacy Act 1988* and if it is reasonably necessary for, or directly related to, one or more of our functions, powers and/or activities. Comcare is the Commonwealth agency authorised by the WHS Act to collect personal information relevant to the exercise of functions and powers under the WHS Act, the WHS Regulations, and the administration and evaluation of Comcare's WHS programmes. Any personal information collected in these forms will be used for those purposes. In exercising its functions and powers, Comcare may disclose personal information, subject to confidentiality of information provisions under the WHS Act, to the following bodies and agencies, including but not limited to:

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| • Comcare's internal and external legal advisers | • personnel engaged by Comcare to conduct research related activities | • any other person assisting Comcare in the performance of its functions or exercise of its powers, including contractors and consultants |
| • the Safety, Rehabilitation and Compensation Commission | • enforcement agencies or bodies | • any other person where there is an obligation under law to do so (for example but not limited to, responding to the direction of a court to produce documentation). |
| • a court or tribunal | • state and territory Coroners | |
| • state or territory work health and safety regulatory agencies | • Commonwealth, state or territory industry regulators | |

If Comcare does not collect personal information from you, for the purposes of its legislated functions or related functions, we may not be able to respond appropriately. For further information on how Comcare handles personal information, please read our Privacy Policy on our website. To request a change to your personal information or to make a complaint, please phone or email privacy@comcare.gov.au.