



Australian Government

Comcare

# 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.

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

## DETAILS:

Site location:	All NQSC workplaces
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I, **Ljiljana Straga**, 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:

 Signature	Inspector: Ljiljana Straga Email: Straga.Ljiljana@comcare.gov.au Phone: (08) 81240509 Postal Address: GPO Box 1993, Canberra, ACT 2601
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Inspector ID: 084

### 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:

- |   |   |   |
|---|---|---|
| • 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](mailto:privacy@comcare.gov.au).

**[www.comcare.gov.au](http://www.comcare.gov.au) | 1300 366 979**



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# APPLICATION FOR INTERNAL REVIEW

Complete this form to apply for an internal review of decision under the *Work Health and Safety Act 2011* (WHS Act) or *Work Health Safety Regulations 2011*.

Please read the *Internal Review of Decisions: Guidance for applicants* information sheet prior to completing this form.

It is your responsibility to ensure you have completed the required fields and supplied all required documents. Incomplete applications may be returned to you and may result in delays in the review process. The review timeframes only apply from the date when all required information is received.

## SECTION A—TYPE OF APPLICANT

Are you making this application:

- ☐ as an individual applicant?
- ☐ on behalf of a company, government department or other body corporate?

Provide your details below—if you are the *applicant's legal representative* you will also need to provide your details.

## SECTION B—DETAILS OF APPLICANT

Name of applicant

Name of contact person (if not the same as applicant)

Postal address

Telephone/Facsimile

Email

Can we send the decision by email? ☐ Yes ☐ No

## SECTION C—DETAILS OF DECISION TO BE REVIEWED

(Tick boxes as applicable)

1. Under which Legislation are you applying for review?

- ☐ WHS Act 2011
- ☐ WHS Regulations 2011

2. Which decision would you like reviewed? (If the decision is not on this list it cannot be reviewed by Comcare)

(a) An inspector's decision under the WHS Act in relation to the:

- ☐ Failure of negotiations—section 54(2)
- ☐ Training of health and safety representatives—section 72(6)
- ☐ Health and safety committees—section 76(6)
- ☐ Review of a provisional improvement notice—section 102
- ☐ Issue of an improvement notice—section 191
- ☐ Extension of time for an improvement notice—section 194
- ☐ Issue of a prohibition notice—section 195
- ☐ Issue of a non-disturbance notice—section 198
- ☐ Issue of a subsequent notice—section 201

(b) ☐ A decision of Comcare in relation to a licence, an accreditation, a registration, an induction, an authorisation, a determination or exemption to any of the WHS regulations (refer to Internal Review Guidance for Applicants to see full list)

3. (a) Date the decision was made or the notice was issued

(b) Name of Inspector issuing notice or decision

(c) Notice number (if applicable)

4. Which of the following applies to you as being eligible to seek review?

- ☐ A worker whose interests are affected by the decision, or their representative
- ☐ A person conducting a business or undertaking whose interests are affected by the decision
- ☐ The person with management or control of the workplace
- ☐ A health and safety representative who represents a worker whose interests are affected by the decision
- ☐ A person who received a notice
- ☐ A health and safety representative who issued a provisional improvement notice or directed work to cease
- ☐ A person prescribed by the Regulation 676 as eligible

If the above categories of eligible persons do not apply to you, please provide the grounds/reasons for which you claim to be an eligible person

5. If this application is lodged outside the prescribed time limit (see section 224 or regulation 678 for the timeframes) you must provide a reasonable explanation for the delay before it will be accepted. Please give your explanation:

## 6. Decision you want reviewed

- ☐ Attached is a copy of the decision to be reviewed, OR
- ☐ Provide a description of the decision to be reviewed:

## 7. Why you think the decision should be reviewed (you may attach other information to support your request)

8. Are you seeking a stay of the decision? ☐ Yes ☐ No

If yes, why should the operation of the decision be stayed during the determination of the review? (Note: this is not applicable to decisions made under the Regulations)

## SECTION D—DECLARATION

I declare that, to the best of my knowledge, the information provided in this application and supporting documentation is true and correct in every particular.

Name

Date

Signature—applicant, or applicant's legal representative





## SECTION E—LODGING YOUR APPLICATION

This form must be lodged with Comcare by email, fax or post together with any supporting documentation. You can do this via:

- a) email to—[statutory.oversight@comcare.gov.au](mailto:statutory.oversight@comcare.gov.au) (providing you have scanned this form and any attachments)
- b) post to—Comcare, Attention: Statutory Oversight Team, GPO Box 1993, Canberra ACT 2601

If you have any questions about completing this form, please telephone Comcare on 1300 366 979 or visit [www.comcare.gov.au](http://www.comcare.gov.au).

### Note to applicant

Comcare will use the information provided by you in conjunction with your application for the purpose of assessing and administering an internal review. The information may also be used for other purposes permitted by the *Work Health and Safety Act 2012*.

If you do not provide all of the information required, your application may be returned to you for completion.

Please be advised that the review timeframes only apply from the date when all required information is received.

### Privacy information

Your privacy is important to us. We will only collect, use or disclose your personal information in accordance with the *Privacy Act 1988*. 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.

Comcare is the Commonwealth agency authorised by the *Work, Health and Safety Act 2011* (WHS Act) to collect personal information relevant to the exercise of functions and powers under the WHS Act, *Work Health and Safety Regulations 2011* and other legislation, and the administration and evaluation of Comcare's WHS programs. Any personal information collected in these forms will be used for those purposes.

In exercising those functions, we 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:

- |   |   |
|---|---|
| > Comcare's legal advisers                                      | > enforcement agencies (including police investigating or conducting an interview in connection with the application) |
| > the Safety, Rehabilitation and Compensation Commission        | > state and territory Coroners  |
| > contractors and agents  | > commonwealth, state or territory industry regulators  |
| > a court or tribunal   | > any other person where there is an obligation under law to do so  |
| > state or territory work health and safety regulatory agencies |   |

We want to ensure personal information collected, used, stored or disclosed is accurate, up-to-date and complete. Comcare's Privacy Policy contains information on how you can request access to personal information held about you and how to seek correction of that information.

You may make a complaint to us if you consider that Comcare has interfered with your privacy or otherwise breached its obligations under the *Privacy Act 1988*. Our Privacy Policy contains more information about how to make a complaint and how we will respond.

Comcare is not likely to disclose personal information to a person who is not in Australia or an external Territory, unless the information relates to an incident, investigation, injury or illness sustained while overseas, or treatment provided by an overseas practitioner. If disclosure of personal information is made to an overseas recipient, Comcare will comply with obligations regarding disclosure to overseas entities (Australian Privacy Principle 8).

For further information about our information handling practices, for a copy of our Privacy Policy, to request an amendment of your personal information or to make a privacy complaint, please refer to [www.comcare.gov.au/privacy](http://www.comcare.gov.au/privacy), contact us on 1300 366 979 or email [privacy@comcare.gov.au](mailto:privacy@comcare.gov.au)

## END OF APPLICATION

### OFFICE USE ONLY

Internal reference number

Comments

The NDIS Quality and Safeguards Commission (the Commission) seeks internal review of the decision by Inspector Ljiljana Straga to issue an Improvement Notice to the Commission, notice number MC00028634-NT03-C1.

The reasons that the decision should be reviewed are as follows:

- 1) Paragraph 8 refers to the 'evident psychosocial risks currently being experienced by relevant workers'. While the notice accurately describes APS census results, there is no substantiation of, nor has the Commission been made aware of any specific incident. The notice does not provide information regarding actual specific incidents reported to Comcare, the Commission does not receive ongoing or regular complaints regarding workload through its incident reporting system, and standard indicators such as unscheduled leave do not indicate an issue that would amount to a psychosocial hazard.
- 2) The Commission provided evidence of the risk framework in place as requested by the Inspector, including those documents mentioned in paragraph 4f(i) and (ii). The fact that these documents have not been updated for some time does not automatically result in them being not fit for purpose, nor does the lack for a specified review cycle. The absence of the words 'psychosocial hazards', makes the framework, policy and guidelines no less relevant or applicable to those risks.
- 3) Paragraph 8 notes that the actions mentioned in paragraph 4e have not been taken and no timeframe has been provided for those actions to take place. In fact, the actions described at:
  - a. 4e(i) were implemented on 20 February 2023, and are being actively monitored through the newly developed complaints dashboard, fortnightly leadership group meetings and on an individual level by team leaders conducting weekly file reviews with staff.
  - b. those in 4e(ii) were undertaken in March 2023
  - c. working groups and management are currently undertaking the actions at 4e(iii) and 4e(iv), which are necessary to ensure our ability to manage workloads more effectively in the future.

Had the Inspector approached the Commission for this information, or clarification, it could have been provided immediately.

- 4) Paragraph 4e(i) also states that the Inspector had no information regarding how manageable workloads were determined. Information had in fact been provided to the Inspector that '*Managable levels were set based on engagement with staff across the function.*' This information may have been overlooked by the Inspector.
- 5) Paragraph 9 notes that the Commission is required to do what is reasonably practicable to ensure health and safety but fails to consider any of the information provided to the Inspector regarding the externally driven workloads experienced by

the Commission, or the limited resourcing available to the Commission based on the budget.

The Commission's workload is consistently higher than the workload envisaged when budgets were set, and is to a very great extent driven by provider and participant numbers, which the Commission has no ability to influence. The Commission operated at a loss in 2020-21 and 2021-22 and expects to make a loss in the current year exhausting all unspent prior year appropriations. The Commission has, as far as is possible, maximised the budget available for workforce in 2022-23, and has sought to undertake targeted investment in projects that will provide the ability to streamline work. The Commission is unable to increase its workforce without further investment by Government, which was explained to the Inspector verbally, and information regarding the budget position was also provided in writing. The notice provides no evidence that this information was taken into account when the Inspector considered what was 'reasonably practicable', despite this being a necessary component of deliberations.



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<b>NOTICE ISSUED TO:</b>	Notice Number: MC00028634 -NT03		
Legal name of person:	NDIS Quality and Safeguards Commission		
ABN:	40293545182	ACN:	
Trading as:	NDIS Quality and Safeguards Commission ( <b>NQSC</b> )		
Address line 1:	C/o Department of Social Services		
Address line 2:	GPO BOX 9820, Canberra, ACT, 2601		

## DETAILS:

Site location:	All NQSC workplaces
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I, **Ljiljana Straga**, 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:

<ol style="list-style-type: none"><li>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.</li><li>2. The concerns were that the NQSC risk management system in relation to psychosocial hazard of work demands, specifically extremely high workloads (<b>Work Demands Hazard</b>) 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.</li><li>3. On 3 November 2022 Comcare commenced MC00028634 Inspection (<b>the Inspection</b>) in response to the WHS Concern. I requested and was provided with information and documents from NQSC (<b>NQSC documentation</b>) in relation to their system for managing risks to workers' health and safety arising from the Work Demands Hazard.</li><li>4. I reviewed the NQSC documentation and formed a reasonable belief that the NQSC lack a psychosocial hazard risk management system compliant with the <i>Work Health and Safety Act 2011</i> (Cth) (<b>WHS Act</b>). My belief is based on the following observations:</li></ol>
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- 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.
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  - 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.
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*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.

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- 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:

 Signature	Inspector: Ljiljana Straga Email: Straga.Ljiljana@comcare.gov.au Phone: (08) 81240509 Postal Address: GPO Box 1993, Canberra, ACT 2601
--	---

Inspector ID: 084

### 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:

- |   |   |   |
|---|---|---|
| • 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](mailto:privacy@comcare.gov.au).

**[www.comcare.gov.au](http://www.comcare.gov.au) | 1300 366 979**



Australian Government

Comcare

# 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.

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

## DETAILS:

Site location:	All NQSC workplaces
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I, **Ljiljana Straga**, 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.
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- 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

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- ☒ Remedy the contravention by:  
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In remedying the contravention you may consider the following:

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## NOTICE ISSUED BY:

 Signature	Inspector: Ljiljana Straga Email: Straga.Ljiljana@comcare.gov.au Phone: (08) 81240509 Postal Address: GPO Box 1993, Canberra, ACT 2601
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Inspector ID: 084

### 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

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

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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                |   |

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**[www.comcare.gov.au](http://www.comcare.gov.au) | 1300 366 979**