



**NDIS Quality  
and Safeguards  
Commission**

# Practice guide

Expectations of workers providing services in incident management and reporting incidents

June 2019



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# Key terms

Table 1: Key terms and definition

Term	Definition
<b>Act</b>	The National Disability Insurance Scheme Act 2013.
<b>NDIS Commission</b>	The NDIS Quality and Safeguards Commission.
<b>Impacted person</b>	A person with disability who has been affected by an incident that has occurred during the provision of NDIS supports and services.
<b>Incident</b>	An incident is defined as an act, omission, event or circumstance. It may mean any of the following: <ul style="list-style-type: none"><li>• Acts, omissions, events or circumstances that occur in connection with providing NDIS supports or services to a person with disability and have, or could have, caused harm to the person with disability</li><li>• Acts by a person with disability that occur in connection with providing NDIS supports or services to the person with disability and which have caused serious harm, or a risk of serious harm, to another person</li><li>• Reportable incidents that have or are alleged to have occurred in connection with providing NDIS supports or services to a person with disability</li></ul>
<b>Key personnel</b>	A member of the group of persons who is responsible for the executive decisions of the registered NDIS provider and any other person who has authority or responsibility for (or significant influence over) planning, directing or controlling the activities of the registered NDIS provider. See s 11A of the Act.
<b>NDIS</b>	National Disability Insurance Scheme.
<b>NDIS provider</b>	A person (other than the NDIA) who receives: <ul style="list-style-type: none"><li>• funding under the arrangements set out in Chapter 2 of the Act; or</li><li>• NDIS amounts (other than as a participant); or</li><li>• a person or entity who provides supports or services to people with disability other than under the NDIS and who is prescribed by the NDIS rules as an NDIS provider. See s 9 of the Act.</li></ul>
<b>NDIS (Incident Management and Reportable Incident) Rules 2018</b>	The Rules require registered NDIS providers to establish an incident management system that meets minimum requirements and that is appropriate for the size of a registered NDIS provider and the supports or services they provide. The rules also set out the obligations on registered NDIS providers to notify, investigate and respond to reportable incidents.
<b>NDIS Practice Standards</b>	Consist of a core module and several supplementary modules that apply according to the types of supports and services NDIS providers deliver, and the corporate structure of the organisation. The NDIS Practice Standards are included in the NDIS (Provider Registration and Practice Standards) Rules and in the NDIS (Practice Standards – Worker Screening) Rules.

Term	Definition
<b>Person with disability</b>	A person with disability who is an NDIS participant and receives supports or services from an NDIS provider.
<b>Registered NDIS provider</b>	Means a person or entity registered under s 73E of the Act to provide supports and services to people with disability.
<b>Relevant Personnel</b>	<ul style="list-style-type: none"> <li>• A member of the registered NDIS provider's key personnel.</li> <li>• A supervisor or manager of the person</li> <li>• The person specified in the incident management system as being responsible for reporting incidents that are reportable incidents to the NDIS Commission (Specified personnel).<sup>1</sup></li> </ul>
<b>Reportable incidents</b>	<p>Reportable incidents are serious incidents or alleged incidents which result in harm to an NDIS participant and occur in connection with NDIS supports and services. Specific types of reportable incidents include:</p> <ul style="list-style-type: none"> <li>• The death of a person with disability.</li> <li>• Serious injury of a person with disability.</li> <li>• Abuse or neglect of a person with disability.</li> <li>• Unlawful sexual or physical contact with, or assault of, a person with disability (excluding, in the case of unlawful physical assault, contact with, and impact on, the person that is negligible).</li> <li>• Sexual misconduct committed against, or in the presence of, a person with disability, including grooming of the person for sexual activity.</li> <li>• The use of a restrictive practice in relation to a person with disability, other than where the use is in accordance with an authorisation (however described) of a State or Territory in relation to the person or a behaviour support plan for the person.</li> </ul>
<b>Specified personnel</b>	Person named in the incident management system of a registered NDIS provider as being responsible for taking all reasonable steps to ensure that reportable incidents that occur in connection with the provision of supports or services are notified to the NDIS Commission.
<b>Subject of the allegation</b>	A worker, person with disability or any other person who has been accused of being involved with an incident that has occurred in connection with the provision of NDIS supports and services to a person with disability.
<b>Trauma informed care</b>	The provision of care that acknowledges how trauma affects people's lives and their service needs. Awareness and sensitivity to the way in which people with disability may experience trauma differently.
<b>Worker</b>	Includes employees, contractors and people otherwise engaged for example, on a volunteer basis, by an NDIS provider.

<sup>1</sup> NDIS (Incident Management and Reportable Incidents) Rules 2018 s19.

## Overview

The workers delivering support and services in the National Disability Insurance Scheme (NDIS) are critical to people with disability, their families and carers. As a worker delivering services, you are also the person most likely to witness an incident or have something disclosed to you. When this happens your response matters.

When you are working for a registered NDIS provider there are some important things you need to know.

Incident management is an important part of improving service delivery and you should feel confident in responding and reporting on incidents.

As a registered NDIS provider (your provider), your provider is required to have an incident management system to record and manage incidents that occur while providing supports or services to people with disability.

Your provider's incident management system must cover:

- Acts, omissions, events or circumstances that occur in connection with providing NDIS supports or services to a person with disability and have, or could have, caused harm to the person with disability
- Acts by a person with disability that occur in connection with providing NDIS supports or services to the person with disability and which have caused serious harm, or a risk of serious harm, to another person
- 'Reportable incidents' that have or are alleged to have occurred in connection with providing NDIS supports or services to a person with disability

As a worker, you are responsible for preventing, responding and reporting on these incidents. Your provider's incident management system needs to include procedures that you understand and can follow. You must know what to look for, how to respond and what to record for all incidents. Your response matters because your provider needs the right information so they can also respond to, manage, resolve and report incidents.

This guidance has been developed to assist you in understanding your critical role, improve practice in responding to people with disability and what you need to do to support your provider to meet the requirements.

There is further guidance for registered NDIS providers on the NDIS Commission website, including detailed guidance on incident management systems and about reportable incidents.



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# Part 1: Introduction

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## 1.1 The National Disability Insurance Scheme

The National Disability Insurance Scheme (NDIS) is one of the largest social and economic policy reforms in Australian history. The NDIS supports Australians who are born with, or acquire, a permanent and significant disability before the age of 65 to lead a more independent and inclusive life.

The NDIS represents a fundamental change to how supports for people with disability are funded and delivered across Australia. It is also a significant shift where people with disability are the purchasers and consumers of services from a diverse market.

## 1.2 The NDIS Commission

We are an independent government body that works to improve the quality and safety of NDIS services and supports, investigate and resolve problems relating to those services and supports, and strengthen the skills and knowledge of NDIS providers and people with disability.

We:

- Register and regulate NDIS providers and oversee NDIS provider quality
- Monitor compliance with the NDIS Practice Standards and NDIS Code of Conduct
- Respond to concerns, complaints and reportable incidents
- Advise NDIS providers on their own complaints management and support people with disability to make complaints
- Advise NDIS providers on incident management systems and how to report serious incidents to the NDIS Commission
- Work with people with disability, NDIS providers and their workers to improve their skills and knowledge
- Monitor providers' use of restrictive practices in relation to people with disability and educate providers and people with disability about behaviour support strategies
- Work with States and Territories to implement nationally consistent NDIS worker screening
- Provide NDIS market oversight by monitoring changes in the market that need attention
- Share information with other regulatory bodies

At full rollout, we will deliver a new, nationally consistent approach to quality and safeguards in the NDIS. This work is guided by the NDIS Quality and Safeguarding Framework

## 1.3 The foundations for our approach

Our approach is underpinned by the *UN Convention on the Rights of Persons with Disabilities* and the *National Disability Insurance Scheme Act 2013* (the Act). We support the rights of people with disability to:

- Realise their potential for physical, social, emotional and intellectual development
- Participate in and contribute to community life, including socially and economically

- Exercise choice and pursue their goals including taking reasonable risks and pursuing any grievance
- Be included in making decisions about their life
- Live a life of dignity, free from abuse, neglect and exploitation
- Have the roles of families, carers, and other significant persons in their lives recognised and respected
- Have the roles of advocates in representing the interests of people with disability acknowledged and respected

## 1.4 Our expectations of NDIS providers

There are incidents that can threaten the health, safety or wellbeing of people with disability. Incidents can have a significant impact on people with disability, workers, families, carers, community members and NDIS providers.

All NDIS providers – registered or unregistered - of supports and services to people with disability are subject to the NDIS Code of Conduct. Registered NDIS providers are also subject to the NDIS Practice Standards. The Code of Conduct sets out the expectations for safe and ethical services and supports for both NDIS providers and workers. The NDIS Practice Standards create benchmarks by which registered providers can assess their performance and demonstrate how they provide quality and safe supports and services to people with disability. These rules that set out the NDIS Code of Conduct and NDIS Practice Standards are available on our website.

Even where registered NDIS providers and you adhere to these frameworks, incidents may still occur in the course of service delivery. In these instances, registered NDIS providers can learn and actively improve to prevent harm, abuse and neglect of people with disability.

The NDIS Act and the NDIS (Incident Management and Reportable Incident) Rules require your provider to have an incident management system that meets minimum requirements. The incident management system must be appropriate for the size of your provider's organisation and the supports or services you provide. The Rules also set out your obligations to respond to, notify and investigate reportable incidents.

All incidents that happen in the delivery of NDIS supports and services will be recorded and managed in your provider's incident management system. Registered NDIS providers will **identify** any incident and **respond**, including the immediate activities undertaken to ensure the safety and wellbeing of people with disability and workers. Registered NDIS providers are required to appropriately assess and/or investigate all incidents.

If an incident is found to be a **reportable incident**, it must be notified to us by the relevant personnel using the required form. Registered NDIS providers may be required to **give information** to us in connection with any internal or external investigation or assessment that has been undertaken. Your provider will need to respond to any **corrective and restorative actions** made by us following a reportable incident.

If an incident is deemed not to be a reportable incident, you are required to refer back to your **internal incident management** systems in order to manage the incident.

## 1.5 Reportable incidents in the NDIS

A registered NDIS provider must take all reasonable steps to ensure that the NDIS Commission is notified of certain types of incidents referred to as reportable incidents.

For an incident to be deemed a reportable incident it must satisfy the following two requirements:

- The incident must involve an act, event or omission defined in section 73Z(4) of the Act and section 16 of the NDIS (Incident Management and Reportable Incidents) Rules 2018, and
- The incident must have occurred or is alleged to have occurred in connection with the provision of your provider's supports or services.

Registered NDIS providers must notify the NDIS Commission of **all** reportable incidents (including allegations), even when you have acted and responded appropriately.

A failure to comply with the requirement to notify, investigate and manage reportable incidents is a breach of your provider's conditions of registration and may lead to regulatory action.<sup>2</sup>

Subsection 73Z(4) of the NDIS Act states that reportable incidents include:<sup>3</sup>

- a. the death of a person with disability; or
- b. serious injury of a person with disability; or
- c. abuse or neglect of a person with disability; or
- d. unlawful sexual or physical contact with, or assault of, a person with disability; or
- e. sexual misconduct committed against, or in the presence of, a person with disability, including grooming of the person for sexual activity; or
- f. the use of a restrictive practice in relation to a person with disability, other than where the use is in accordance with an authorisation (however described) of a State or Territory in relation to the person.

The definition of *reportable incident* captures not only confirmed incidents that have occurred, but also allegations of the incidents described above.<sup>4</sup>

When your provider notifies the NDIS Commission of a reportable incident we may take action or require more information. Your provider will set timeframes that you will need to work to and you may need to provide additional information during this process.

All reportable incidents, except for the unauthorised use of a restrictive practice, must be notified to the NDIS Commission within 24 hours of the registered NDIS provider becoming aware of the incident. Any unauthorised use of restrictive practices must be notified within 5 days

The earlier the response to a reportable incident, the more likely the impact will be reduced, and this can have a significant impact on people with disability, workers, the organisation and the investigation. Early steps can be taken by you to ensure the person with disability is provided with appropriate care and support immediately following, and throughout an incident.

The next section provides detailed guidance for you about your responsibilities for reporting and following up incidents that impact on people with disability.

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<sup>2</sup> National Disability Insurance Scheme Act 2013 s 73F(2)(g) and s 73J

<sup>3</sup> National Disability Insurance Scheme Act 2013, s 73Z(4); NDIS (Incident Management and Reportable Incident) Rules 2018 s 16

<sup>4</sup> National Disability Insurance Scheme Act 2013 s 73Z(1)



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# Part 2: Your roles and responsibilities

## Part 2: Your roles and responsibilities

You are often the first person to identify that an incident has occurred and play a key role in responding promptly and appropriately to incidents. As a worker providing services, there are standard steps you should take following the identification of an incident. You should ensure that you follow incident notification and information collection procedures set out in your provider's internal incident management system, and that you continue to provide appropriate care and support immediately following and throughout the management of an incident.

If you are a registered NDIS provider that is registered as a sole trader, you are likely to be responsible for the activities set out in this guidance, as well as the roles of other specific people, including key personnel and relevant personnel. More guidance in relation to incident management system and report incident requirements for registered NDIS providers of all sizes, and the roles of these other personnel are located on our [website](#).

### 2.1 Your internal incident management system

Your provider's incident management systems need to clearly outline the process that everyone should follow when an incident is identified (whether reportable or not), including who you should report to and what information you should collect. Examples of who may be responsible include, the most senior member of staff or you, as the witness of the incident, or the senior member or worker to whom the incident is reported.

Incidents may be identified in a number of ways, including where you or another person observes the incident, a person with disability makes a disclosure about the incident, or another party informs your provider that the incident occurred. An incident management system must outline your provider's expectation of you in responding to different circumstances of identifying incidents.

Some incidents will be simple to identify, as a worker may witness the incident, or a person with disability may make a disclosure that can be recorded. However, other incidents may be harder to identify, especially where the person involved is afraid to communicate or has limited communication.

In addition to incidents or allegations of incidents that are disclosed by an impacted person, or witnessed by someone, there are also additional signs that may indicate someone is an impacted person. These are indicators of potential incidents, especially where they involve abuse, neglect, sexual misconduct, or unauthorised use of restrictive practices.

The table below sets out the potential indicators and signs, where associated with a change in behaviour, may warrant further exploration to understand why the person is responding as they are. It is important to note that these are only examples and not an exhaustive list.

*Table 1 Indicators of incidents*

Incident types	Behavioural indicators and physical signs
<b>Physical abuse, unlawful physical contact or physical assault</b>	<ul style="list-style-type: none"><li>• Inconsistent, vague, unexplained, or unlikely explanation for the injury.</li><li>• Unexplained injuries – broken bones, fractures, sprains, bruises, burns, scalds, bite marks, scratches or welts.</li><li>• Other bruising and marks that may suggest the shape of the object that caused it.</li><li>• Avoiding or being fearful of a particular person or worker.</li></ul>

Incident types	Behavioural indicators and physical signs
	<ul style="list-style-type: none"> <li>• Being overly compliant with workers.</li> <li>• Frequent and overall drowsiness (associated with head injuries).</li> <li>• Out of character aggression.</li> </ul>
<b>Sexual contact, sexual assault or sexual misconduct</b>	<ul style="list-style-type: none"> <li>• Dropping hints that appear to be about abuse.</li> <li>• Bruises, pain, bleeding – including redness and swelling around breasts and genitals.</li> <li>• Torn, stained, or bloody underwear or bedding.</li> <li>• Repeating a word or sign, such as 'bad', 'dirty'.</li> <li>• Presence of a sexually transmitted disease.</li> <li>• Pregnancy.</li> <li>• Sudden changes in behaviour or character, e.g.: depression, anxiety attacks (crying, sweating, trembling, withdrawal, agitations, anger, violence, absconding, sexually expressive behaviour, seeking comfort and security).</li> <li>• Sleep disturbances, refusing to go to bed, and/or going to bed fully clothed.</li> <li>• Refusing to shower.</li> </ul>
<b>Psychological, emotional or verbal abuse</b>	<ul style="list-style-type: none"> <li>• Depression, withdrawal, crying or emotional behaviour</li> <li>• Being secretive, and trying to hide information and personal belongings.</li> <li>• Speech disorders.</li> <li>• Weight gain or loss.</li> <li>• Feelings of worthlessness about life and themselves; extremely low self-esteem, self-abuse, or self-destructive behaviour.</li> <li>• Extreme attention-seeking behaviour and other behavioural disorders (e.g.: disruptiveness, aggressiveness, bullying).</li> <li>• Being overly compliant.</li> </ul>
<b>Neglect</b>	<ul style="list-style-type: none"> <li>• Inappropriate or inadequate shelter or accommodation, including unclean and unsanitary living conditions.</li> <li>• Weight loss.</li> <li>• Requesting, begging, scavenging, or stealing food.</li> <li>• Being very hungry or thirsty.</li> <li>• Inadequate supply of fresh food.</li> <li>• Constant fatigue, listlessness or falling asleep.</li> <li>• Dropping hints that appear to be about neglect.</li> <li>• Extreme longing for company.</li> <li>• Poor hygiene or poor grooming – overgrown fingernails and toenails, unclean hair, unshaven, unbathed, wearing dirty or damaged clothing.</li> <li>• Inappropriate or inadequate clothing for the weather.</li> <li>• Unattended physical problems, dental, and/or medical needs.</li> <li>• Social isolation.</li> <li>• Loss of social and communication skills.</li> </ul>

<b>Incident types</b>	<b>Behavioural indicators and physical signs</b>
	<ul style="list-style-type: none"> <li>• Removal of means of communication.</li> <li>• Displaying inappropriate or excessive self-comforting behaviours.</li> </ul>
<b>Financial abuse</b>	<ul style="list-style-type: none"> <li>• Sudden decrease in bank balances.</li> <li>• No financial records or incomplete records of payments and purchases.</li> <li>• Person controlling the finances does not have legal authority.</li> <li>• Sudden changes in banking practices.</li> <li>• Sudden changes in wills or other financial documents.</li> <li>• Unexplained disappearance of money or valuables.</li> <li>• Person does not have enough money to meet their budget.</li> <li>• Person is denied outings and activities due to lack of funds.</li> <li>• Borrowing, begging, stealing money or food.</li> </ul>

Your provider should promote a culture where everyone feels comfortable to identify incidents when they occur, in reporting incidents, and recording these incidents in the incident management system. A culture supportive of incident identification helps ensure that your provider is aware of all incidents that occur, and is working towards continuous improvement in the safety of its supports and services.

When an incident occurs all workers should follow their provider's internal incident management processes. This will include your provider's process for notifying the NDIS Commission about reportable incidents. For further guidance on definitions for each type of reportable incident is provided in Appendix A: Reportable incidents in the NDIS

## 2.2 What is a reportable incident?

Subsection 73Z(4) of the NDIS Act states that reportable incidents means:<sup>5</sup>

- a. the death of a person with disability; or
- b. serious injury of a person with disability; or
- c. abuse or neglect of a person with disability; or
- d. unlawful sexual or physical contact with, or assault of, a person with disability; or
- e. sexual misconduct committed against, or in the presence of, a person with disability, including grooming of the person for sexual activity; or
- f. the use of a restrictive practice in relation to a person with disability, other than where the use is in accordance with an authorisation (however described) of a State or Territory in relation to the person.

These incidents must occur 'in connection with' NDIS supports and services to be a reportable incident.

The definition of *reportable incident* captures not only incidents that are confirmed to have occurred, but also allegations of the incidents described above.<sup>6</sup>

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<sup>5</sup> National Disability Insurance Scheme Act 2013 s 73Z(4); NDIS (Incident Management and Reportable Incident) Rules s16

<sup>6</sup> National Disability Insurance Scheme Act 2013 s 73Z(1)

Information about the term ‘in connection with’ and some high level descriptions of the types of reportable incidents is provided below. More detailed descriptions of each type of reportable incident are contained in Appendix A.

### **2.2.1 What does ‘in connection with the provision of supports or services by a registered NDIS provider’ mean?**

A registered NDIS provider is only required to notify the Commission of reportable incidents which have occurred, or are alleged to have occurred, if those incidents happened **in connection with** the provision of supports or services by that provider.

This meaning of the phrase ‘in connection with’ is intended to be broad.

It covers incidents that:

- may have occurred during the course of supports or services being provided;
- arise out of the provision, alteration or withdrawal of supports or services; and/or
- may not have occurred during the provision of supports but are connected because it arose out of the provision of supports or services.

Reportable incidents could occur in a variety of settings but as long as there is a connection with the service delivery by a registered NDIS provider, then they must be notified to the Commission.

Examples of where these incidents might occur include:

- In the private home of a person with disability
- In a residential care setting
- In supported accommodation
- In the premises of the registered NDIS provider (for example, the rooms where therapy services are provided)
- In the community where the registered NDIS provider is supporting the person with disability to access the community

Although a reportable incident may happen to a person at the time they are receiving a service from a registered NDIS provider, this will not mean, on its own, that the incident occurred in connection with the service. If it was merely a coincidence that the incident happened at that time, then it is not ‘in connection with’ the service delivery and does not need to be notified to the Commission.

### **2.2.2 Categories of reportable incidents**

#### *The death of a person with disability*

All deaths of people with disability that occur in connection with the provision of NDIS supports or services must be notified to the NDIS Commission.

Once the connection between the NDIS supports/service and the person’s death is established, then the cause of the death (natural or unnatural) or whether the death was expected or not does not change whether the death is a reportable incident.

The place of death does not affect whether the death is a reportable incident so long as there is the required connection between the death and the service provision.

Once the connection is established, deaths are reportable if the person dies:

- In their own private home
- In supported accommodation
- In the community during community access
- In hospital or other health care facility

Registered NDIS providers do not need to establish the cause of death before reporting the death to the NDIS Commission. Providers are only required to consider if the death happened in the course of their involvement in providing supports or services to the person.

### *Serious injury of a person with disability*

The serious injury of a person with disability must be notified to the NDIS Commission if it occurs or is alleged to have occurred in connection with the provision of NDIS supports and services.

In determining whether an injury is ‘serious’, consideration should be given to the level of harm caused. A serious injury includes, but is not limited to:

- Fractures
- Burns
- Deep cuts
- Extensive bruising, including large individual bruises, or a number of small bruises over the impacted person
- Head or brain injuries which might be indicated by concussion or loss of consciousness
- Any other injury requiring hospitalisation

If a person with disability is hospitalised in relation to a serious injury the incident should be classified as reportable. There will be instances in which a person with disability is hospitalised for reasons unrelated to serious injury, these instances are not reportable incidents.

Hospitalisation includes a person with disability’s presentation or admission to an emergency or other ward within a hospital facility, including short-stay admissions if they are related to the injury acquired.

### *Abuse or neglect of a person with disability*

Incidents involving the abuse or neglect of a person with disability, either by a worker, another person with disability, or any other person, that have occurred in connection with the provision of NDIS supports and services must be notified to the NDIS Commission.

#### **Abuse of a person with disability**

Types of abuse that meet the criteria for being a reportable incident, include:

- Physical abuse – non-accidental physical acts towards a person with disability that are intended to cause hurt or harm. Acts that result in that person experiencing significant pain, shock or other unpleasant sensation. In some circumstances, acts of physical abuse will also amount to unlawful physical contact or assault, and may cause a serious injury to the person with disability
- Psychological or emotional abuse – verbal or non-verbal acts that cause significant emotional or psychological anguish, pain or distress including verbal taunts, threats of maltreatment, harassment, humiliation or intimidation, or a failure to interact with a person with disability or acknowledge the person with disability’s presence

- Financial abuse – improper or illegal use of money (including NDIS funds where they are managed by the individual person with disability), property, resources or assets of a person with disability, including improperly withholding finances from that person, and coercing or misleading the person with disability as to how the funds or property will be used
- Systemic abuse – a failure to recognise, provide, or attempt to provide adequate or appropriate services, including services that are appropriate to the person’s age, gender, culture, disability support needs or preferences, that has a significant physical, emotional or psychological impact on the person with disability

### **A pattern of abuse**

In addition to single instances of these types of abuse, there may also be a pattern of abuse that occurs in any or all of these categories. Patterns of abuse involve repeated behaviour towards a person with disability, which may not seem like instances of abuse when considered in isolation. For example, a worker may repeatedly verbally abuse a person with disability by shouting or constantly criticising the person. While this may not cause significant harm or suffering to the individual in each instance, the repetitive nature of the abuse constitutes a pattern of abuse. A pattern of abuse may also occur where the subject of the allegation seeks to abuse several people with disability over time or simultaneously, using a similar pattern of behaviour. A registered NDIS providers’ incident management systems must be able to record incidents in a way that allows for repeated minor instances of these types of behaviour to be identified easily so that any pattern of abuse can be identified and reported as a single reportable incident.

### **Neglect of a person with disability**

Neglect includes an action, or a failure to act, by a person who has care or support responsibilities towards a person with disability. In determining neglect, the nature of a registered NDIS provider’s or worker’s care responsibilities provides the context against which the incident or allegation needs to be assessed.

Neglect can be a single significant incident where a registered NDIS provider or worker fails to fulfil a duty, resulting in actual harm to a person with disability, or where there is the potential for significant harm to a person with disability. Neglect can also be ongoing, repeated failures by a registered NDIS provider or worker to meet a person with disability’s physical or psychological needs.

You must report to the NDIS Commission all incidents of neglect of a person with disability that are occurred or alleged to have occurred in connection with the provision of supports and services.

Neglect can include a number of specific categories that must be reported including:

- Grossly inadequate care
- Failure to access medical care
- Supervisory neglect
- A reckless act or failure to act
- Failure to protect from abuse

### ***Unlawful physical contact with, or assault of, a person with disability***

Any unlawful physical contact with, or assault of, a person with disability that occurs, or is alleged to have occurred, in connection with the provision of supports or services must be notified to the NDIS Commission.

This category encompasses any physical behaviour towards a person with disability that is an offence under any criminal statute, of a state or territory. While the types of physical contact and assault offences that are unlawful will differ between each state and territory, a physical assault generally includes any act by which a person intentionally uses unjustified physical force against a person without the person's consent. A physical assault can also occur if a person causes another person to reasonably fear that unjustified force would be used against them.

Even if a person who inflicts, or causes, the fear of physical harm does not intend to inflict the harm or cause the fear, they may still have committed an assault if they acted recklessly (i.e. the person ought to have known that their actions would cause physical harm or the fear of such harm).

There are also types of assault, such as common assault, that involve contact but that will not result in any physical injury to a person. Therefore, if a person is assaulted but does not sustain any injury, the assault is still unlawful, and must be reported as a reportable incident.

Assaults could include hitting, pushing, shoving, spitting, throwing objects towards other people or making threats of physical harm. There is publicly available information about the specific offences that constitute unlawful physical contact or assault in each state and territory.

Some acts of physical contact with people with disability are not unlawful even if the person does not consent to these. In some situations, there is a lawful justification for these acts such as:

It is important to note that alleged unlawful physical contact or assault incidents should be reported to the NDIS Commission when they occur, or when they are disclosed by a person with disability or other person. A registered NDIS provider should not wait for the conclusion of any police investigation into the incident before notifying the NDIS Commission.

The Rules specify that in some circumstance an act of unlawful physical contact with a person with disability is not a reportable incident and therefore is not required to be reported to the NDIS Commission. Unlawful physical contact with a person with disability is not a reportable incident where the contact with, and impact on, the person with disability is deemed negligible.

**Negligible means that the contact made, and the impact of it on the person with disability, were too small to consider, or were insignificant to the person with disability.** For example, moving a person with disability out of harm's way and the person is not upset about this or holding onto a person briefly to assist them to safely attend to their hygiene or care needs, the person resists but only momentarily.

### *Unlawful sexual contact with, or assault of, a person with disability*

Any unlawful sexual contact or assault of a person with disability that occurs, or is alleged to have occurred, in connection with the provision of supports or services must be notified to the NDIS Commission. Unlawful sexual contact or assault encompasses any behaviour of a sexual nature that is an offence under any criminal statute of a state, territory or the Commonwealth.

Unlawful sexual contact and assault offences include, but are not limited to, the following:

- Sexual assault
- Indecent assault

### *Sexual misconduct committed against, or in the presence of, a person with disability, including grooming of the person for sexual activity*

For sexual misconduct to constitute a reportable incident, the alleged misconduct must have been committed against, or in the presence of, a person with disability, in connection with the provision

of NDIS supports or services. Given the nature of sexual misconduct, it could be a worker who is the subject of allegation.

The term sexual misconduct is designed to address conduct of a sexual nature that can, but does not necessarily amount to a criminal offence. It also includes those sexual offences which are unlawful, but do not include any physical contact between the person and the subject of the allegation. These offences are not examples of unlawful sexual contact or assault as there is no contact present, however they constitute unlawful sexual conduct.

Sexual misconduct incidents include the following:

- Unlawful sexual conduct
- Sexually explicit comments and overtly sexual behaviour
- Crossing professional boundaries in a way that has sexual implications or connotations
- Grooming of the person for sexual activity

### *The unauthorised use of a restrictive practice in relation to a person with disability*

Restrictive practices involve the use of practices that have the effect of restricting the rights or freedom of movement of a person with disability. This can include restraint (chemical, mechanical, social or physical) and seclusion (keeping someone in isolation).

#### **The unauthorised use of a restrictive practice**

The use or alleged use of a restrictive practice in relation to a person with disability, other than where the use is in accordance with an authorisation (however described) of a state or territory in relation to the person with disability must be notified to the NDIS Commission. This includes the emergency use of a restrictive practice.

There are four occasions when this means that the use of a restrictive practice is reportable to the NDIS Commission:

- When the use of the restrictive practice for a person with disability does not have authorisation (however described) by the relevant state or territory body
- When the restrictive practice is used for a person with disability in a state or territory which does not have an authorisation process for that practice AND the practice is not used according to a behaviour support plan
- When the restrictive practice is used for a person with disability according to an authorisation (however described) by the relevant state or territory body BUT the practice is not used according to a behaviour support plan or interim behaviour support plan because the person does not have such a plan
- When the restrictive practice is being used according to an authorisation (however described) by the relevant state or territory body, but the restrictive practice used was not included in the person with disability's behaviour support plan
- When a restrictive practice is being used according to an authorisation (however described) by the relevant state or territory body, but the restrictive practice is being applied in a way which is inconsistent or contrary to the requirements or directions in the person's behaviour support plan

However, in circumstances where the state or territory in which the restrictive practice is used does not have an authorisation process for restrictive practices, and the restrictive practice is used according to the person's behaviour support plan, then this is not a reportable incident.

If one of the above situations apply, then the type of restrictive practice used, for example whether it was chemical restraint or physical restraint, does not affect whether its use should be reported as a reportable incident.

## 2.3 Ensuring the person is immediately safe

When an incident occurs – irrespective of whether it is reportable or not – your provider’s incident management system may require you to take action to ensure the safety and wellbeing of people involved in the incident (including NDIS people with disability, and workers and other people where the incident involves an act by a person with disability). For example, if a person with disability suffers a serious injury and requires medical treatment, you must immediately contact appropriate emergency services.

Your provider should have a response plan for when incidents occur, to ensure the health, safety and wellbeing of people with disability. You should have information about this plan and follow the required steps.

Where it is alleged or suspected that a criminal offence has occurred, or where there is ongoing danger, your provider’s incident management system may require you to contact the Police and other relevant emergency services. To ensure safety immediately after an alleged or suspected criminal conduct toward a person with disability, or where there is ongoing danger the provider should:

- Ensure the impacted person and other NDIS participants are safe from harm
- Contact Police if there is a risk of immediate harm which requires their assistance or if there are assault allegations
- Contact the ambulance if someone is injured
- Notify the relevant key personnel, and the NDIS Commission if required
- Notify your duty manager, supervisor or key personnel to enable them to notify the NDIS Commission, if required

An impacted person may decide not to participate in an interview or provide a witness statement regarding the incident or alleged incident, and you should respect the impacted person’s decisions.

## 2.4 Responding to disclosures

Sometimes you will not observe the incident directly, but a person with disability will tell you ('make a disclosure') about it. It is important to consider that each person with disability will disclose information regarding an incident in different ways and times e.g. weeks or months following the occurrence of the incident. When people with disability feel supported during initial disclosure, they are more likely to engage with a review and investigation process.

Sometimes people with disability will disclose information directly to you about:

- What happened to them
- Where it took place
- When it happened and if they are still in danger
- Who was involved

You should record and report this information in accordance with your provider’s incident management system and report to relevant personnel as soon as possible.

Your role is to reassure and support the person with disability and then report. Do not get the person with disability to ‘go over’ information they have already given you. Once a person with disability has provided information that gives you a clear understanding of their allegation you should not question them any further. Further questioning can make the person with disability think that you doubt what they have said, and can lead them to change their response. It can also lead to problems in court, with suggestions that the person with disability was ‘led’ due to repeated questioning.

However, if the person with disability is giving you information that is not clear, take time to listen. Sometimes, the person with disability can reveal important details without you having to ask any questions or interrupt their flow of information.

People with disability will sometimes ask you to promise ‘not to tell’ before they disclose. It is important that you do not make promises and that you are transparent with the person with disability about this. Be sure to reassure the person with disability that although you can’t keep the disclosure to yourself you will do everything you can to keep them safe. This can reassure the person with disability and encourage them to speak about the abuse, incident, event or concern.

A person with disability may disclose quickly and then want to return to another other activity. Other people with disability will take their time to make a disclosure. It is important that you make sure that you have adequate time to spend with the person with disability making a disclosure. To do this, you may need a colleague to take over what you are doing so you can give the person with disability your full attention. Towards the end of the disclosure, clearly explain to the person with disability what will happen next.

## 2.4.1 Supporting the person during a disclosure

You may ask questions when someone is disclosing information to you. However, any questions you ask must be open-ended questions and limited to ensuring you have a clear understanding so that it can be reported and investigated. When you have the basic details, it is important that you stop questioning. Your ongoing role is to provide support and reassurance to the person with disability, and you shouldn't get the impacted person to 'go over' information they have already told you.

*Table 2 Guiding questions to support a disclosure*

Guiding questions to support a disclosure	
<b>Open questions you can use</b>	<p>If you need more information to get a clear picture, the best questions to ask are 'open ended Questions' because they give the person with disability the chance to give all of their information. Open-ended questions are questions that can't be answered with yes or no.</p> <p>Examples of open-ended prompts include:</p> <ul style="list-style-type: none"><li>• 'Tell me more about that'</li><li>• 'What do you mean by...?'</li><li>• 'Can you tell me...?'</li><li>• 'Can you tell me about that in more detail?'</li><li>• 'What happened next?'</li></ul> <p>If open-ended questions don't give enough basic information you can (as a last resort) ask questions starting with who, what, when and where.</p> <p>Examples of questions include:</p> <ul style="list-style-type: none"><li>• 'What happened?'</li><li>• 'When did this last happen?'</li><li>• 'Who was it?'</li><li>• 'Where did it happen?'</li></ul>
<b>What questions shouldn't I ask?</b>	<p>You shouldn't ask leading questions that suggest an answer to the impacted person. Be careful not to 'lead' an impacted person by saying something they haven't said first. Examples include:</p> <ul style="list-style-type: none"><li>• Don't ask 'Was it John who did this to you?'</li><li>• Instead ask 'Who did this to you?'</li><li>• Don't ask 'Did this happen today?'</li><li>• Instead ask 'What day did this happen?'</li><li>• Don't ask 'Did this happen in the kitchen?'</li><li>• Instead ask 'Where were you when this happened?'</li></ul>

It is the responsibility of Police, other external agencies, appointed investigators and registered NDIS providers to investigate allegations. However, you must not close down a disclosure – the person with disability needs to have confidence that you are listening to them. The subject of the allegation may have led them to believe that no-one would listen to them.

If you believe something has happened you should report it, regardless of whether the information you have received from a person with disability is clear or unclear. Police or your provider may be

aware of other allegations, and your additional information could help them to ‘put the pieces together’.

## 2.4.2 Using communication aids

Generally, you should use whatever tools assist the person with disability to communicate. However, using tools that only allow a ‘yes or no’ response can be seen as ‘leading’ and result in a person with disability picking a particular response. If you think this is possible, you should ask **your relevant personnel** (if they do not have a conflict of interest) to alert the Police or an expert investigator of the possibility the person with disability has been ‘led’.

In some states and territories, a person with disability will also be able to use their communication aids during court proceedings, or have access to a support person or witness intermediary. Registered NDIS providers should ensure the impacted person can use their communication supports in discussions and in giving evidence to Police and other authorities.

## 2.4.3 Privacy and confidentiality, and informing others

You must treat people with disability with care and respect, and maintain their privacy and confidentiality as far as practicable. Their consent must be gained (or the consent of their legally appointed guardian) prior to informing their family/representative or other support person of an incident occurrence. Based on your provider’s incident management system you may be required to inform guardians, representatives, families, and/or other supporters about incidents. You should only share information about an incident with relevant personnel within your provider and authorities. Exceptions to this are permitted if sharing information is essential to ensure the immediate safety of an individual. You must follow your organisation’s procedures for reporting, which must be documented in your organisation’s incident management system.

## 2.4.4 Other considerations in supporting the disclosure

You should also consider the following in supporting a disclosure from an impacted person:

- You shouldn’t be afraid to say the wrong thing in supporting a person with their disclosure. If they have chosen you to disclose to, it means they trust you, and listening to them supportively will mean they benefit from disclosing to you
- You should try to stay calm when the impacted person is talking to you, so that you appear strong, even if you are distressed or concerned about what you’re hearing. Remaining calm will help ensure the person continues to feel comfortable sharing with you
- Make sure the impacted person knows what will happen next, in a way they understand. It may be useful to say things like *‘It is good that you have told me about this. I need to talk to some people who can help you to be safe in the future. They might want to talk to you about what you’ve told me.’* You should make sure you talk about authorities such as Police in a way the impacted person understands

## 2.4.5 How and when to protect evidence

It is critical that you know how to protect evidence if you are responsible for seeking initial information about a potential reportable incident.

The main forms of evidence include:

- Individual statements from the impacted person, witnesses and any subject of the allegations (including disclosures)

- Hard copy and electronic documents, including emails, such as individual support plans, rosters, progress notes, communication books, restricted practice authorisations, and reviews
- Medical/forensic evidence, which can include:
  - Existing records
  - An examination of an impacted person or subject of an allegation following an alleged incident
  - Examination of samples/swabs taken from the location of the incident
  - Examination of the impacted person's clothing
  - Record of where the incident occurred, including what objects might have been disturbed
  - Medication which has been used or not used

#### **2.4.6 Protecting evidence**

Protecting evidence after a reportable incident is critical to any future investigation. You should consider the following, depending on the nature of the incident:

- If you are at the scene of an incident it is important not to disturb any evidence that may be required in an investigation
- There is potential for evidence to be lost if a victim of sexual assault bathes, showers or wipes themselves clean soon after the assault. Try to delay this until Police arrive or the impacted person has been seen by the relevant Sexual Assault Service in your jurisdiction. This will improve the chances of obtaining forensic evidence
- Encourage the impacted person not to change their clothing unless they have to for their wellbeing. If possible, keep the impacted person's clothing as evidence after any assault. Do not wash bed linen
- Protect the area – do not clean where the incident took place, and, if the incident was one that needed to be reported to the Police, do not allow anyone to enter until Police arrive
- If required explain to impacted person(s) why the above is important
- Keep relevant documents (electronic and hard copy)

#### **2.5 Recording and reporting any incident**

If you become aware of a reportable incident, you have a duty to notify one of the relevant personnel as soon as possible.

Relevant personnel are:

- A member of your provider's key personnel
- Your supervisor or manager
- The person specified in the incident management system as being responsible for reporting incidents that are reportable incidents to the NDIS Commission<sup>7</sup>

You may become aware of a possible reportable incident in numerous ways, including by witnessing signs of possible abuse; disclosure by a person with disability; witnessing the event; and receiving information provided by another person. When you become aware of a reportable incident, you should:

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<sup>7</sup> NDIS (Incident Management and Reportable Incidents) Rules 2018 s19

- Record the details of what the impacted person (or other person) has told you, using their exact words if possible
- Be sure not to interview the person who allegedly committed the abuse. However, if you witness any abuse, you must record what you have seen and heard
- Record details of any witnesses
- Record what you have seen and any actions taken
- If you are a witness be sure not to include anything that you did not directly hear or see
- Be sure not to include your opinions or interpretations

You must give any notes you have taken in relation to an incident to your supervisor or to the relevant personnel – unless you are alleged to be involved in the incident or your supervisor or relevant personnel has a potential conflict of interest, for example a personal relationship with the subject of the allegation. If you have concerns, you must seek advice from a senior manager. You must also keep a copy of your notes in an appropriate place.

## 2.6 Reporting to and working with the Police

Any allegation of a criminal offence against a person with disability must be reported to the Police. Your provider will have procedures for who should make reports to Police, however the urgency of the situation will often determine who makes the report. It is important that reports to Police are made without delay – Police are best able to investigate when the events and evidence are fresh, and some states and territories have specific offences relating to concealment of evidence, or concealment of particular offences such as child abuse. Following a report to the Police, the impacted person has the right to choose whether or not to make a statement or participate as a witness following any report to Police, and this should be respected.

Where the situation requires an urgent report to Police, you should also inform your relevant personnel as soon as possible. If you're unsure as to whether a report needs to be made to Police, talk to your duty manager, supervisor, key personnel or the Police. Based on your provider's incident management system you or relevant personnel will be responsible for making reports in person at a Police station. However, in any emergency you should always call **000**.

### 2.6.1 What Police will need from you, and what to expect from Police

After reporting an alleged criminal offence to Police, there are a range of actions or information the Police may need from you. This includes, but may not be limited to:

- Reporting the alleged or suspected crime as soon as possible
- Being clear about the crime or suspected crime you are reporting (e.g. an assault or a theft)
- Letting the Police know that the impacted person is a vulnerable person
- Providing information about the impacted person's disability and its impact, including if there has been a change in their medication which might impact on a Police interview
- Providing information about the impacted person's communication needs, including whether they need an interpreter or a communication aide
- Supporting the impacted person to tell their story and make their wishes known to Police
- Providing information on whether the impacted person has formal decision-makers or guardians, or support from family or close friends

- Advising Police of any enquiries your provider is planning to make e.g. check who was on duty at specific times or what else happened during a relevant shift
- Providing information on possible sources of information. For example, incident reports, progress notes, communication books, rosters, possible witnesses

### **2.6.2 Important points to remember**

- You must comply with your provider’s incident management system.
- Discussion with the impacted person needs to take place away from the subject of the allegation, and –wherever possible – involve a person they trust and who was not involved in the incident
- Information should be given to the impacted person about what reporting to Police generally involves and what it means for them, and be given in the best way for them to understand (involving any communication aides/other supports they use)
- Do not influence the decision of the impacted person (e.g. by saying what you think they should do; or what you would do in that situation)
- You should record details of discussions had with the impacted person, including who was present and what the person communicated
- If the impacted person is unable to make an informed decision about whether they want the matter reported to Police, all relevant information should be given to the person’s guardian/representative, family member, or other supporter to help them to make an informed decision



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# Part 3: Other considerations

## Part 3: Other considerations

### 3.1 If an incident does not appear to be followed up

If you believe that your report has not been properly dealt with, the NDIS Code of Conduct requires you to take further action to raise and act on concerns and matters that may impact the quality and safety of supports and services provided to people with disability. Every case is different and responses will vary on a case by case basis. At a minimum you should follow up with your supervisor or manager or relevant personnel to determine what actions have been taken. If you believe the report has not been handled correctly you should contact the NDIS Commission directly.

If you believe that you are being targeted or have had negative action taken against you as a result of reporting an incident, raise it as soon as possible with an appropriate person such as one of the relevant personnel. You can also contact the NDIS Commission directly to discuss the matter.

### 3.2 If an allegation is made about you, or you are being investigated as part of a reportable incident

If an allegation is made about you, you should be appropriately supported and afforded procedural fairness throughout any investigation of the allegation<sup>8</sup>.

If an allegation is made about you, you need to make sure that you continue to treat other workers, and people with disability you are supporting, with respect, and otherwise avoid taking any actions which might be considered to be reprisals for the allegation.

While every case is different, you may consider:

- Asking your manager, HR professional or union for advice
- Asking for details of the allegation, noting that all details may not be available – or even appropriate to provide – until they are put to you in a formal interview

You should expect:

- Confidentiality will be maintained during an investigation as far as practicable
- An allegation made against you will be investigated by someone who is impartial and who does not have a conflict of interest

Investigations will comply with procedural fairness requirements i.e. in workplace investigations, you should be given the right to respond to allegations and any adverse finding which an employer might be considering making against you.

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<sup>8</sup> NDIS (Incident Management and Reportable Incidents) Rules 2018 s11

## Find out more

You can find out more information and access to resources on the NDIS Commission website [www.ndiscommission.gov.au](http://www.ndiscommission.gov.au)

You can contact the NDIS Commission Reportable Incidents Team at [reportableincidents@ndiscommission.gov.au](mailto:reportableincidents@ndiscommission.gov.au) or 1800 035 544.



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# Appendix A: Definition of reportable incidents

## Appendix A: Reportable incidents in the NDIS

Subsection 73Z(4) of the NDIS Act states that reportable incidents means:<sup>9</sup>

- g. the death of a person with disability; or
- h. serious injury of a person with disability; or
- i. abuse or neglect of a person with disability; or
- j. unlawful sexual or physical contact with, or assault of, a person with disability; or
- k. sexual misconduct committed against, or in the presence of, a person with disability, including grooming of the person for sexual activity; or
- l. the use of a restrictive practice in relation to a person with disability, other than where the use is in accordance with an authorisation (however described) of a State or Territory in relation to the person.

The definition of *reportable incident* captures not only incidents that are confirmed to have occurred, but also allegations of the incidents described above.<sup>10</sup>

Information about the term ‘in connection with’ is provided below. This is followed by more detailed descriptions of the types of reportable incidents to support registered NDIS providers to comply with their reporting obligations.

### What does ‘in connection with the provision of supports or services by a registered NDIS provider’ mean?

A registered NDIS provider is only required to notify the Commission of reportable incidents which have occurred, or are alleged to have occurred, if those incidents happened **in connection with** the provision of supports or services by that provider.

This meaning of the phrase ‘in connection with’ is intended to be broad.

It covers incidents that:

- may have occurred during the course of supports or services being provided;
- arise out of the provision, alteration or withdrawal of supports or services; and/or
- may not have occurred during the provision of supports but are connected because it arose out of the provision of supports or services.

Reportable incidents could occur in a variety of settings but as long as there is a connection with the service delivery by a registered NDIS provider, then they must be notified to the Commission.

Examples of where these incidents might occur include:

- In the private home of a person with disability
- In a residential care setting
- In supported accommodation

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<sup>9</sup> National Disability Insurance Scheme Act 2013 s 73Z(4); NDIS (Incident Management and Reportable Incident) Rules s16

<sup>10</sup> National Disability Insurance Scheme Act 2013 s 73Z(1)

- In the premises of the registered NDIS provider (for example, the rooms where therapy services are provided)
- In the community where the registered NDIS provider is supporting the person with disability to access the community

Although an incident may occur at the time of service delivery, it may not be in connection with the service and is therefore not a reportable incident.

#### *Examples*

- An occupational therapist attends the home of a person with disability to conduct an assessment. While speaking with members of the person's family, the person with disability puts their hand on the stovetop and suffers a serious injury. The incident occurred at the time of service delivery, but was not directly linked with or caused by the service delivery. This is not a reportable incident and does not require notification to the NDIS Commission.
- A person with disability is accompanied by a worker to attend a physiotherapy appointment. As they leave the office building, a tile falls off the roof and hits the person who sustains a serious injury and needs hospitalisation. Although this happened at the time a person was receiving a service from the registered NDIS provider, the service delivery was coincidental to the injury caused. The incident did not occur in connection with the service provision and does not need to be reported to the Commission.

Whether a reportable incident occurs in connection with the provision of services and supports also depends on the nature and extent of services being provided.

Where a person is living in supported accommodation, the registered NDIS provider involved usually has a responsibility for the supervision, health, safety and well-being of residents of the accommodation. This will often mean that reportable incidents which happen in the supported accommodation are in connection with the provision of services and supports and must be notified to the Commission. The exception to this would be where the reportable incident was entirely coincidental and unrelated to the provision of services, for example, a person suffers food poisoning after eating food delivered to the accommodation.

It is also not necessary for the registered NDIS provider to come to a conclusion about whether the service delivery 'caused' the reportable incident before deciding whether to notify the Commission. The phrase 'in connection with' does not mean that the registered NDIS provider directly caused the incident but simply there was some link between service provision and what happened to the person with disability.

An incident might also occur which is connected to the provision of supports or services but does not occur at the time those supports or services were provided. The connection to the service provision might be based in its role in contributing to the incident.

For example, a speech pathologist may develop an eating and drinking plan for a person with a disability who later chokes in their home when following this plan and requires hospitalisation (serious injury). While the incident did not occur at the time the plan was developed and provided by the speech pathologist, there may be connection between the injury and the plan if it did not adequately address choking risks to the person with disability.

## Categories of reportable incidents

### The death of a person with disability

All deaths of people with disability that occur in connection with the provision of NDIS supports or services must be notified to the NDIS Commission.

Once the connection between the NDIS supports/service and the person's death is established, then the cause of the death (natural or unnatural) or whether the death was expected or not does not change whether the death is a reportable incident.

The place of death does not affect whether the death is a reportable incident so long as there is the required connection between the death and the service provision.

Once the connection is established, deaths are reportable if the person dies:

- In their own private home
- In supported accommodation
- In the community during community access
- In hospital or other health care facility

Registered NDIS providers do not need to establish the cause of death before reporting the death to the NDIS Commission. Providers are only required to consider if the death happened in the course of their involvement in providing supports or services to the person.

Usually only one registered NDIS provider providing NDIS support will be required to report the death of a person with disability to the NDIS Commission. There may however be some circumstances where the death occurred in connection with the supports and services provided by more than one registered NDIS provider.

For example, if a person's death was the result of choking and occurred within supported accommodation, and a speech pathologist (also a registered NDIS provider) had in recent days supported the person with disability with a revised eating and drinking plan, then both providers may need to report the death because it occurred in connection with the provision of their services. Both the plan itself and the implementation of the plan by the direct care workers may have had a connection with the person's death.

### Additional reporting obligations for deaths

Each state and territory has specific requirements in relation to the obligations of providers to notify a death to other bodies, such as coroners and police.

If a death is required to be reported to the Coroner of a state or territory, it is their role to determine the date, place and circumstances, and medical cause of those deaths.

The NDIS Commission will work alongside state and territory coroners and other bodies to examine the circumstances of deaths of people with disability which occur in connection with NDIS service provision. The NDIS Commission is establishing strong working relationships and information sharing arrangements with state and territory bodies so it can respond in the most effective and efficient way to reportable incidents involving deaths of people with disability.

As there may be multiple reporting obligations, providers are strongly encouraged to have policies and procedures for managers and workers to understand how to respond to a death including who is responsible for notifying the NDIS Commission and other bodies and the timeframes which apply.

## **Serious injury of a person with disability**

The serious injury of a person with disability must be notified to the NDIS Commission if it occurs or is alleged to have occurred in connection with the provision of NDIS supports and services.

In determining whether an injury is ‘serious’, consideration should be given to the level of harm caused. A serious injury includes, but is not limited to:

- Fractures
- Burns
- Deep cuts
- Extensive bruising, including large individual bruises, or a number of small bruises over the impacted person
- Head or brain injuries which might be indicated by concussion or loss of consciousness
- Any other injury requiring hospitalisation

If a person with disability is hospitalised in relation to a serious injury the incident should be classified as reportable. There will be instances in which a person with disability is hospitalised for reasons unrelated to serious injury, these instances are not reportable incidents.

Hospitalisation includes a person with disability’s presentation or admission to an emergency or other ward within a hospital facility, including short-stay admissions if they are related to the injury acquired.

## **Abuse or neglect of a person with disability**

Incidents involving the abuse or neglect of a person with disability, either by a worker, another person with disability, or any other person, that have occurred in connection with the provision of NDIS supports and services must be notified to the NDIS Commission.

### **Abuse of a person with disability**

Types of abuse that meet the criteria for being a reportable incident, include:

- Physical abuse – non-accidental physical acts towards a person with disability that are intended to cause hurt or harm. Acts that result in that person experiencing significant pain, shock or other unpleasant sensation. In some circumstances, acts of physical abuse will also amount to unlawful physical contact or assault, and may cause a serious injury to the person with disability.
- Psychological or emotional abuse – verbal or non-verbal acts that cause significant emotional or psychological anguish, pain or distress including verbal taunts, threats of maltreatment, harassment, humiliation or intimidation, or a failure to interact with a person with disability or acknowledge the person with disability’s presence.
- Financial abuse – improper or illegal use of money (including NDIS funds where they are managed by the individual person with disability), property, resources or assets of a person with disability, including improperly withholding finances from that person, and coercing or misleading the person with disability as to how the funds or property will be used.
- Systemic abuse – a failure to recognise, provide, or attempt to provide adequate or appropriate services, including services that are appropriate to the person’s age, gender, culture, disability support needs or preferences, that has a significant physical, emotional or psychological impact on the person with disability.

### *A pattern of abuse*

In addition to single instances of these types of abuse, there may also be a pattern of abuse that occurs in any or all of these categories. Patterns of abuse involve repeated behaviour towards a person with disability, which may not seem like instances of abuse when considered in isolation. For example, a worker may repeatedly verbally abuse a person with disability by shouting or constantly criticising the person. While this may not cause significant harm or suffering to the individual in each instance, the repetitive nature of the abuse constitutes a pattern of abuse. A pattern of abuse may also occur where the subject of the allegation seeks to abuse several people with disability over time or simultaneously, using a similar pattern of behaviour. A registered NDIS providers' incident management systems must be able to record incidents in a way that allows for repeated minor instances of these types of behaviour to be identified easily so that any pattern of abuse can be identified and reported as a single reportable incident.

### *Responsibility for registered NDIS providers to manage incidents of inappropriate behaviour within their internal incident management systems*

When considering whether behaviour constitutes abuse the focus is on the nature of the incident or allegation itself, and the impact on the person with disability. In making a determination regarding abuse by workers it is important to consider relevant codes of conduct that outline the nature of professional conduct and practice by workers which should occur when working with people with disability.

The NDIS Commission as the oversight body for reportable incidents and incident management more broadly has set clear expectations for registered NDIS providers in relation to their role in developing quality practice and providing quality services to people with disability; and in proactively managing incidents and behaviour, and responding promptly when incidents do occur.

There will be occurrences of the types of behaviour described above that do not constitute abuse and therefore are not reportable to the NDIS Commission. These occurrences should be appropriately managed by the registered NDIS provider, without making a reportable incident notification to the NDIS Commission as the first response. For example, where a person with disability pinches another person with disability on multiple occasions as an expression of frustration at their shared living arrangement, this does not amount to a reportable incident. This is an example of low-level negative physical interaction, which should be dealt with through quality service provision and internal incident management. In this circumstance, an appropriate response may be to reconsider whether the people with disability are suited to living together, or if there are additional support and strategies to positively manage the behaviour of the person with disability.

### **Neglect of a person with disability**

Neglect includes an action, or a failure to act, by a person who has care or support responsibilities towards a person with disability. In determining neglect, the nature of a registered NDIS provider's or worker's care responsibilities provides the context against which the incident or allegation needs to be assessed.

Neglect can be a single significant incident where a registered NDIS provider or worker fails to fulfil a duty, resulting in actual harm to a person with disability, or where there is the potential for significant harm to a person with disability. Neglect can also be ongoing, repeated failures by a registered NDIS provider or worker to meet a person with disability's physical or psychological needs.

You must report to the NDIS Commission all incidents of neglect of a person with disability that are occurred or alleged to have occurred in connection with the provision of supports and services.

Neglect can include a number of specific categories that must be reported including:

- Grossly inadequate care
- Failure to access medical care
- Supervisory neglect
- A reckless act or failure to act
- Failure to protect from abuse

### *Grossly inadequate care*

Grossly inadequate care refers to a registered NDIS provider depriving a person with disability of the basic necessities of life, such as food, drink, shelter, medical care or clothing. This can include repeated refusal of required necessities, or a single instance of deprivation of these items.

Allegations of grossly inadequate care do not include instances where a registered NDIS provider deprives a person with disability access to particular food or drink in line with an approved eating and drinking plan, or in line with an authorised restrictive practice that is contained in the person's behaviour support plan.

### *Failure to access medical care*

In these circumstances, a worker or registered NDIS provider deprives the person with disability from receiving required medical attention and care to access and treat a condition, or prevent an illness or condition from worsening. This can include repeated refusal of required medical care, or a single instance of deprivation of medical care. A failure to take a person with disability to a health professional for assessment if they appear unwell or delay in doing this could amount to neglect. Another example is the failure to ensure a person has regular recommended reviews by a general practitioner or medical specialist, such as a psychiatrist so their health needs can be monitored and addressed.

Failing to ensure a person has regular dental check-ups to monitor and maintain their dental health and prevent dental problems such as decay, infection or pain could also be a form of neglect.

### *Supervisory neglect*

Supervisory neglect includes:

- An intentional or reckless failure to adequately supervise or support a person with disability that results in, or has the potential to result in, the death of, or significant harm to, the person with disability
- An intentional or reckless failure to adequately supervise or support a person with disability that also involves a gross breach of professional standards

For example, if a worker of a registered NDIS provider leaves a person with disability enclosed in a car on a hot day where the temperature in the car is likely to increase rapidly and cause significant harm to the person with disability, this intentional failure to adequately support a person with disability would amount to a reportable incident in the form of supervisory neglect.

### *A reckless act or failure to act*

A reckless act, or failure to act, as a form of neglect by a registered NDIS provider or worker includes:

- A gross breach of professional standards
- An act or failure that results in or has the potential to result in the death of, or significant harm to, a person with disability

It is important to note that when a reckless act or failure to act is also an example of an unauthorised restrictive practice, then it must still be reported to the NDIS Commission within 24 hours.

### *Failure to protect from abuse*

A failure to protect from abuse includes an obviously unreasonable failure to respond to information which strongly indicates the actual or potential serious abuse of a person with disability, in connection with the provision of NDIS supports and services by the registered NDIS provider.

## **Unlawful physical contact with, or assault of, a person with disability**

Any unlawful physical contact with, or assault of, a person with disability that occurs, or is alleged to have occurred, in connection with the provision of supports or services must be notified to the NDIS Commission.

This category encompasses any physical behaviour towards a person with disability that is an offence under any criminal statute of a state or territory. While the types of physical contact and assault offences that are unlawful will differ between each state and territory, a physical assault generally includes any act by which a person intentionally uses unjustified physical force against a person without the person's consent. A physical assault can also occur if a person causes another person to reasonably fear that unjustified force would be used against them.

Even if a person who inflicts, or causes, the fear of physical harm does not intend to inflict the harm or cause the fear, they may still have committed an assault if they acted recklessly (i.e. the person ought to have known that their actions would cause physical harm or the fear of such harm).

There are also types of assault, such as common assault, that involve contact but that will not result in any physical injury to a person. Therefore, if a person is assaulted but does not sustain any injury, the assault is still unlawful, and must be reported as a reportable incident.

Assaults could include hitting, pushing, shoving, spitting, throwing objects towards other people or making threats of physical harm. There is publicly available information about the specific offences that constitute unlawful physical contact or assault in each state and territory.

Some acts of physical contact with people with disability are not unlawful even if the person does not consent to these. In some situations, there is a lawful justification for these acts such as pushing a person out of the way of an oncoming car that would otherwise hit them.

It is important to note that alleged unlawful physical contact or assault incidents should be reported to the NDIS Commission when they occur, or when they are disclosed by a person with disability or other person. A registered NDIS provider should not wait for the conclusion of any police investigation into the incident before notifying the NDIS Commission.

## **When does unlawful physical contact not need to be reported to the NDIS Commission?**

The Rules specify that in some circumstance an act of unlawful physical contact with a person with disability is not a reportable incident and therefore is not required to be reported to the NDIS Commission. Unlawful physical contact with a person with disability is not a reportable incident where the contact with, and impact on, the person with disability is deemed negligible.

The impact of the contact on the person with disability must also be negligible. This usually means the person had no reaction to the contact or only a minor reaction which was brief and barely noticeable.

Whether the impact is negligible needs to be assessed in each individual case. Even if the nature of the physical contact is negligible, it may still have a serious impact on the person, depending on their individual situation and the context of the contact.

**Negligible means that the contact made, and the impact of it on the person with disability, were too small to consider, or were insignificant to the person with disability.** For example, moving a person with disability out of harm's way and the person is not upset about this or holding onto a person briefly to assist them to safely attend to their hygiene or care needs, the person resists but only momentarily.

The impact on the person with disability of an unlawful physical contact does not have to be physical in order for an incident to be reportable. Unlawful physical contact may also cause emotional or psychological impacts for a person with disability which are not negligible. For example, a person with disability may become withdrawn, or try to avoid a worker or another person with disability as a result of the unlawful physical contact, and this may have a more than negligible impact on their support needs and emotional wellbeing. In these types of circumstances, the incident would be reportable to the NDIS Commission.

The exclusion of some unlawful physical contact from being a reportable incident does not affect the need for the incident to be appropriately assessed and managed by the registered NDIS provider and dealt with in accordance with the registered NDIS provider's internal incident management system. For example, where a person with disability is disarmed when seeking to harm another person with disability, an assessment or investigation to understand how this occurred, and how it could be prevented in the future should be undertaken.

## **Unlawful sexual contact with, or assault of, a person with disability**

Any unlawful sexual contact or assault of a person with disability that occurs, or is alleged to have occurred, in connection with the provision of supports or services must be notified to the NDIS Commission. Unlawful sexual contact or assault encompasses any behaviour of a sexual nature that is an offence under any criminal statute of a state, territory or the Commonwealth.

Unlawful sexual contact and assault offences include, but are not limited to, the following:

- Sexual assault
- Indecent assault

### **Sexual assault**

Sexual assault refers to:

- Specific offences involving a person having sexual intercourse with another person without their consent (this is sometimes referred to as rape, sexual intercourse without consent, or sexual

penetration without consent depending on the language used in the relevant criminal statute of each state or territory).

- A situation where a person is forced, threatened, coerced or tricked into sexual acts, including those that are committed on the person with disability, against their will, without their consent, or where their consent is negated for other reasons such as those affecting their consciousness.

### **Indecent assault**

Indecent assault usually involves touching (or threatening to touch) a person's body in a sexual manner without the consent of the other person. For example, it can include kissing, or unwanted touching of a person's breast, bottom or genitals. These offences are sometimes referred to as sexual touching depending on the language used in the relevant criminal statute of each state or territory. In Queensland indecent assault is classified as a form of sexual assault.

### **Sexual misconduct committed against, or in the presence of, a person with disability, including grooming of the person for sexual activity**

For sexual misconduct to constitute a reportable incident, the alleged misconduct must have been committed against, or in the presence of, a person with disability, in connection with the provision of NDIS supports or services. Given the nature of sexual misconduct, a worker would generally be the subject of allegation.

The term sexual misconduct is designed to address conduct of a sexual nature that can, but does not necessarily amount to a criminal offence. It also includes those sexual offences which are unlawful, but do not include any physical contact between the person and the subject of the allegation.

Sexual misconduct incidents include the following:

- Unlawful sexual conduct
- Sexually explicit comments and overtly sexual behaviour
- Crossing professional boundaries in a way that has sexual implications or connotations
- Grooming of the person for sexual activity

### **Unlawful sexual conduct**

There are other types of unlawful sexual offences that do not involve sexual or physical contact, which must be reported to the Police, and are also a reportable incident. Even though these sexual conduct offences may be named or defined differently in state and territory legislation, they are still reportable incidents that must be notified to the Commission.

### *Acts of indecency*

An act of indecency is when a person does something of a sexual nature with or towards another person but does not have any physical contact with them. For example, it can include the subject of the allegation acting out sexually in front of another person. Where these acts occur in connection with the provision of NDIS supports and services a reportable incident notification must be made to the NDIS Commission.

### *Other unlawful sexual conduct offences*

There are a range of other unlawful non-contact sexual offences in each jurisdiction which involve conduct that must be notified to the NDIS Commission. These include but are not limited to:

- Grooming a child for sexual purposes
- Filming a person for sexual purposes without consent
- A pornography offence or an offence involving child abuse material

Some jurisdictions also have specific sexual offences that are designed to prevent the sexual exploitation of people with a cognitive impairment by their carers, or by anyone else who has knowledge of the person's impairment and enters into a sexual relationship with the intent of taking advantage of the person.<sup>11</sup> These offences may or may not involve conduct that comes within this category of reportable incidents.

Crimes which involve encouraging another person to commit a sexual offence against a person with disability (such as offences involving aiding, abetting, counselling or procuring) also constitute unlawful sexual conduct, and are required to be reported to the Police. These are also reportable incidents.

### **Sexually explicit comments and other overtly sexual behaviour**

While it is not possible to provide a complete and definitive list of unacceptable sexual comments or behaviour involving people with disability, the following types of behaviour give strong guidance:

- Sexualised behaviour with or towards a person with disability (including sexual exhibitionism)
- Inappropriate conversations of a sexual nature (sexual discussions as part of life skills development are an example of an appropriate conversation)
- Inappropriate comments relating to sexual acts
- Personal correspondence and communications (including emails, social media and web forums) with a person with disability concerning the worker's romantic, intimate or sexual feelings for the person with disability
- Inappropriate exposure of people with disability to sexual behaviour of others
- Watching people with disability undress in circumstances where supervision is not required, it does not relate to assistance with undertaking activities of daily living, and it is clearly inappropriate

Where these behaviours occur in connection with the provision of NDIS supports and services a reportable incident notification must be made to the NDIS Commission.

### **Crossing professional boundaries**

The support relationship between a worker and a person with disability relies on a high degree of trust. All forms of sexual misconduct constitute a breach of this trust and a breach of the NDIS Code of Conduct.

It is important to distinguish between sexual misconduct and legitimate conversations around a person with disability's sexual support needs, family planning or that which serve to meet a worker's duty of care.

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<sup>11</sup> See, e.g., s 66F *Crimes Act 1900* (NSW).

Sexual misconduct includes behaviour with a sexual aspect to it that can reasonably be construed as involving an inappropriate and overly personal or intimate relationship with, conduct towards, or focus on, a person with disability or group of people with disability.

The crossing of professional boundaries can only occur in the context of a worker-person with disability relationship.

A single serious example of boundaries being crossed, or where there are multiple examples over time of less serious breaches of this type, may constitute professional misconduct – particularly if the worker either knew, or ought to have known, that their behaviour was unacceptable, and should be notified as a reportable incident to the NDIS Commission.

The NDIS Code of Conduct, as well as other codes of conduct that might apply in your workplace, outline the expectations of workers in respect of their relationships with people with disability.

## Grooming behaviour

Grooming refers to behaviour that is intended to befriend a person, in order to persuade them to engage in sexual activity. Behaviour should only be seen as ‘grooming’ where there is evidence of a pattern of conduct that is consistent with grooming a person with disability for sexual activity, and there is no other reasonable explanation for that pattern.

The types of behaviours that may lead to such a conclusion include, but are not limited to:

- Persuading a person with disability that they have a ‘special’ relationship with the worker, for example by:
  - Inappropriately giving gifts
  - Inappropriately showing special favours to them but not other people with disability
  - Asking the person with disability to keep the relationship to themselves
- ‘Testing boundaries’, for example by:
  - Undressing in front of a person with disability
  - Encouraging inappropriate physical contact (even where it is not overtly sexual)
  - ‘Accidental’ intimate touching
  - Showing the person indecent sexual images or written material
- Extending a relationship with a person with disability outside of work (except where it may be appropriate, for example, where there was a pre-existing friendship with the person with disability’s family, or as part of regular social interactions in the community)
- Inappropriate personal communication (including emails, telephone calls, text messaging, social media and web forums) that inappropriately explores sexual feelings or intimate personal feelings with a person with disability

A worker or another person in the context of NDIS support provision requesting that a person with disability keep any aspect of their relationship secret, or using tactics to keep any aspect of the relationship secret, would generally increase the likelihood that grooming is occurring.

## The unauthorised use of a restrictive practice in relation to a person with disability

Restrictive practices involve the use of practices that have the effect of restricting the rights or freedom of movement of a person with disability. This can include restraint (chemical, mechanical, social or physical) and seclusion (keeping someone in isolation).

## **Role of the NDIS Commission in relation to the use of restrictive practices generally**

In addition to oversight of the unauthorised use of restrictive practices, the NDIS Commission also aims to reduce and eliminate the use of restrictive practices in the NDIS. State and territory authorisation arrangements are intended to protect people with disability from being inappropriately treated or controlled. The NDIS (Restrictive Practices and Behaviour Support) Rules also regulate the following restrictive practices through behaviour support plans:

- **Seclusion**, which is the sole confinement of a person with disability in a room or a physical space at any hour of the day or night where voluntary exit is prevented, or not facilitated, or it is implied that voluntary exit is not permitted
- **Chemical restraint**, which is the use of medication or chemical substance for the primary purpose of influencing a person's behaviour. It does not include the use of medication prescribed by a medical practitioner for the treatment of, or to enable treatment of, a diagnosed mental disorder, a physical illness or a physical condition
- **Mechanical restraint**, which is the use of a device to prevent, restrict, or subdue a person's movement for the primary purpose of influencing a person's behaviour but does not include the use of devices for therapeutic or non-behavioural purposes
- **Physical restraint**, which is the use or action of physical force to prevent, restrict or subdue movement of a person's body, or part of their body, for the primary purpose of influencing their behaviour. Physical restraint does not include the use of a hands-on technique in a reflexive way to guide or redirect a person away from potential harm/injury, consistent with what could reasonably be considered the exercise of care towards a person
- **Environmental restraints**, which restrict a person's free access to all parts of their environment, including items and activities

### **The unauthorised use of a restrictive practice**

The use or alleged use of a restrictive practice in relation to a person with disability, other than where the use is in accordance with an authorisation (however described) of a state or territory in relation to the person with disability must be notified to the NDIS Commission. This includes the emergency use of a restrictive practice.

There are four occasions when this means that the use of a restrictive practice is reportable to the NDIS Commission:

- When the use of the restrictive practice for a person with disability does not have authorisation (however described) by the relevant state or territory body
- When the restrictive practice is used for a person with disability in a state or territory which does not have an authorisation process for that practice AND the practice is not used according to a behaviour support plan
- When the restrictive practice is used for a person with disability according to an authorisation (however described) by the relevant state or territory body BUT the practice is not used according to a behaviour support plan or interim behaviour support plan because the person does not have such a plan
- When the restrictive practice is being used according to an authorisation (however described) by the relevant state or territory body, but the restrictive practice used was not included in the person with disability's behaviour support plan

- When a restrictive practice is being used according to an authorisation (however described) by the relevant state or territory body, but the restrictive practice is being applied in a way which is inconsistent or contrary to the requirements or directions in the person's behaviour support plan

However, in circumstances where the state or territory in which the restrictive practice is used does not have an authorisation process for restrictive practices, and the restrictive practice is used is according to the person's behaviour support plan, then this is not a reportable incident.

If one of the above situations apply, then the type of restrictive practice used, for example whether it was chemical restraint or physical restraint, does not affect whether its use should be reported as a reportable incident.

Whenever the use of a restrictive practice, whether or not authorised, results in serious injury to a person, this is a reportable incident requiring notification to the NDIS Commission as would be the case for any other incident resulting in serious injury to a person with disability.