



**Government  
of South Australia**

**Minister for Human Services**

Level 12 South  
1 King William Street  
Adelaide SA 5000  
GPO Box 2832  
Adelaide SA 5001  
DX 115  
Tel 08 8463 6560  
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**Our ref:** A1908428  
**Your ref:** 696593

Ms Nat Cook MP  
Member for Hurtle Vale  
PO Box 158  
WOODCROFT SA 5162

Sent by email: [tristan.rust@parliament.sa.gov.au](mailto:tristan.rust@parliament.sa.gov.au)

Dear Ms Cook

### **Freedom of information application**

I refer to your application under the *Freedom of Information Act 1991* (the Act), received by the Office of the Minister for Human Services on 20 June 2018 seeking access to:

*Copies of any and all documents (including but not limited to physical and electronic material) regarding DHS Signed Briefing by Minister Lensink 18MDIS/0278.*

Unfortunately, the Minister's Office was unable to make a determination on your application within the 30 days, therefore it is considered to be a 'deemed refusal' under section 19(2)(b) of the Act. However, our office has continued to process your application outside of this timeframe. Section 19(2)(a) of the Act provides that an agency can release documents outside of the thirty day timeframe, and this is still taken to be a determination under the Act.

Nineteen documents have been discovered that are relevant to the scope of this application and I have determined to release all documents in full. Please find enclosed a copy of the documents, and a document schedule containing a brief description of the documents.

In accordance with the requirements of Premier and Cabinet Circular PC045, details of your FOI application, and the documents to which you are given access, will be published on the agency's disclosure log. A copy of PC045 can be found at <http://dpc.sa.gov.au/what-we-do/services-for-government/premier-and-cabinet-circulars>.

If you have any questions in relation to this matter, please contact Amanda Hockings, Office Manager, on telephone 8463 3388 or by email at

[amanda.hockings2@sa.gov.au](mailto:amanda.hockings2@sa.gov.au). If you disagree with publication, you will need to advise the Office Manager within two weeks of the date of this determination.

Yours sincerely



**Amanda Hockings**  
ACCREDITED FOI OFFICER

10 / 8 / 2018

### SCHEDULE OF DOCUMENTS – A19108428

Freedom of information application from Nat Cook MP seeking access to *Copies of any and all documents (including but not limited to physical and electronic material) regarding DHS Signed Briefing by Minister Lensink 18MDIS/0278.*

No	Author	Addressee	Date	Description of document	Determination	Reason
1.	NDIS Reform, Department for Human Services (DHS)	Minister for Human Services	24/4/2018	Briefing – Rules proposed to be made under the National Disability Insurance Scheme Act 2013	Released in full	
2.	Minister for Human Services	Graeme Head, Commissioner Designate, NDIS Quality and Safeguards Commission	26/4/2018	Attachment 1 - Recommended Position on Rules	Released in full	
3.				Attachment 2 – Draft response letter to the Commissioner Designate	Released in full	
4.	Minister for Human Services	Graeme Head, Commissioner Designate, NDIS Quality and Safeguards Commission		Attachment 3 – Letter from Commissioner Designate	Released in full	
5.				Attachment 4 – Email – Quality and Safeguards Secretariat	Released in full	
6.				Attachment 5 – NDIS Quality and Safeguards Rules and Product Summary	Released in full	
7.				Attachment 6 – NDIS Quality and Safeguards Rules table	Released in full	
8.				Attachment 7 – NDIS Amendment (Specialist Disability Accommodation – Participating Jurisdictions) Rule 2018	Released in full	
9.				Attachment 8 – NDIS (Restrictive Practices and Behaviour Support) Rules 2018	Released in full	
10.				Attachment 9 - NDIS (Provider Registration and Practice Standards) Rules 2018	Released in full	
11.				Attachment 10 – NDIS (Specialist Disability Accommodation – Conditions) Rules 2018	Released in full	
12.				Attachment 11 – NDIS (Provider Definition) Rules 2018	Released in full	
13.				Attachment 12 – NDIS (Code of Conduct) Rules 2018	Released in full	
14.				Attachment 13 – NDIS (Complaints Management and Resolution) Rules 2018	Released in full	
15.				Attachment 14 – NDIS (Incident Management and Reportable Incidents) Rules 2018	Released in full	

**SCHEDULE OF DOCUMENTS – A19108428**

No	Author	Addressee	Date	Description of document	Determination	Reason
16.				Attachment 15 – NDIS (Protection and Disclosure of Information – Commissioner) Rules 2018	Released in full	
17.				Attachment 16 – NDIS (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018	Released in full	
18.				Attachment 17 – NDIS (Quality Indicators) Guidelines 2018	Released in full	
19.	Minister for Human Services	Graeme Head, Commissioner Designate, NDIS Quality and Safeguards Commission	26/4/2018	Letter – Response to Commissioner Designate re NDIS rules	Released in full	

18MDIS/0278




**Government of South Australia**  
Department of Human Services

**TO MINISTER FOR HUMAN SERVICES**

**RE: RULES PROPOSED TO BE MADE UNDER THE NATIONAL DISABILITY INSURANCE SCHEME ACT 2013**

**Decision/action required by: 27 / 4 /2018**

**Reason: Response due to Commissioner Designate**

Recommendation	Response
1. That you note the information in the briefing relating to the rules proposed to be made under the National Disability Insurance Scheme Act 2013 (NDIS Act).	Approved / Not Approved / <u>Noted</u>
2. That you note the Commissioner Designate will seek your agreement if any amendments are made to the National Disability Insurance Scheme (NDIS) (Specialist Disability Accommodation – Participating Jurisdictions) Rules and any further amendments to the NDIS (Restrictive Practices and Behaviour Support) Rules, following consultation with senior officials.	Approved / Not Approved / <u>Noted</u>
3. That you approve the recommended advice and/or position in attachment 1.	<u>Approved</u> / Not Approved / Noted
4. That you approve the draft response to the Commissioner Designate, Mr Graeme Head.	<u>Approved</u> / Not Approved / Noted
<b>Comments:</b> ..... ..... ..... ..... ..... ..... ..... .....	 _____ Hon Michelle Lensink MLC 26/4/2018

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## KEY POINTS

- On 1 July 2018, the NDIS Quality and Safeguards Commission assumes responsibility for quality and safeguarding measures under the NDIS in South Australia.
- The NDIS Commissioner Designate has written to you about the proposed Rules to be made under the NDIS Act, as amended by the *National Disability Insurance Scheme (Quality and Safeguards and Other Measures) Act 2017* (the NDIS Act); and is seeking agreement and/or feedback to these rules by 27 April 2018 to enable them to be finalised by the end of April.
- The Rules will enable timely guidance to providers and participants about the transition in South Australia and New South Wales.
- Of the ten rules provided for your consideration, there are two that will be made by the Minister for Social Services. These two rules respectively relate to transitional arrangements and amendments to the current National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016. In addition, there are eight rules that the Commissioner Designate will make as delegate of the Minister in order to establish the operations of the Commission.
- On 16 April, a revised version of the NDIS (Restrictive Practices and Behaviour Support) Rules 2018 was provided to the Quality and Safeguards Sub-Senior Officials Working Group to enable you to be briefed on amendments, and seek your agreement of the updated version following consultation at the NDIS Rules Forum on 6 April with officials (attachment 3).

## DISCUSSION

The Commissioner Designate is seeking agreement from all host jurisdictions to the *National Disability Insurance Scheme Amendment (Specialist Disability Accommodation – Participating Jurisdictions) Rule 2018* and seeking your agreement to *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018 (Restrictive Practices and Behaviour Support Rules)*, which is required by the host jurisdiction.

The remaining Rules requires the Commissioner Designate to consult with all host jurisdictions and would appreciate feedback on any matters that are critical to the effective operation of these Rules.

The recommended advice and/or position is outlined in attachment 1 for your consideration.

A draft response to the Commissioner Designate has been prepared for your consideration at attachment 2.

A summary of each rule is provided in attachment 6.

The Commonwealth through the Department of Social Services (DSS) has led significant consultations on the development of the Rules with states and territories, and peak bodies representing people with disability, providers and carers. The Department of Human Services (DHS) has contributed to the development of the Rules. DHS, through NDIS Reform, has also consulted with key stakeholders across DHS and government departments as well as statutory bodies, including the Public Advocate, the South Australian Civil and Administrative Tribunal (SACAT), the Health and Community Services Complaints Commissioner, the Commissioner for Consumer and Business services and the Ombudsman SA.

A Rule for worker screening is also being drafted, which will require your agreement. The Commissioner Designate will seek your agreement once it is finalised. These Rules will largely be based on the proposed Intergovernmental Agreement on NDIS Worker Screening (IGA). DHS is currently drafting a Cabinet Submission regarding the IGA for your consideration.

There is joint responsibility for worker screening and restrictive practices under the already agreed Framework, including roles and responsibilities. It is considered that agreement to the restrictive practices and behaviour support and specialist disability accommodation – participating jurisdiction Rules is an administrative act and does not require South Australian Cabinet approval.

South Australia became a participating jurisdiction under section 10A of the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Act 2017*, in February 2018.

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**BUDGET**

Are there financial implications No  
 Is there a budget impact No  
 Is there an FTE impact No

Chief Financial Officer noted: ...N/A.....

**MEDIA/SENSITIVE:**

No

<b>Division</b>	NDIS Reform		
<b>A/Director NDIS Implementation</b>	Cassie Bouyer	...../...../..... <i>signature</i>	
<b>Executive Director</b>	Nick Ashley	...../...../..... <i>signature</i>	
<b>Deputy Chief Executive</b>	Lois Boswell	...../...../..... <i>signature</i>	

**ATTACHMENTS**

1. Recommended Position on Rules
2. Draft response to the Commissioner Designate
3. Letter from Commissioner Designate
4. Email from DSS – Quality and Safeguards Secretariat
5. NDIS Quality and Safeguards Rules and Product Summary
6. NDIS Quality and Safeguards Rules table
7. National Disability Insurance Scheme Amendment (Specialist Disability Accommodation – Participating Jurisdictions) Rule 2018
8. National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018
9. National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018 (Provider Registration and Practice Standards Rules)
10. National Disability Insurance Scheme (Specialist Disability Accommodation – Conditions) Rules 2018
11. National Disability Insurance Scheme (Provider Definition) Rule 2018
12. National Disability Insurance Scheme (Code of Conduct) Rules 2018
13. National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018
14. National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018
15. National Disability Insurance Scheme (Protection and Disclosure of Information - Commissioner) Rules 2018
16. National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018
17. National Disability Insurance Scheme (Quality Indicators) Guidelines 2018

<b>Contact Officer:</b>	Jo Tilbrook, Principle Project Officer, NDIS Implementation 8415 4273 / <a href="mailto:jo.tilbrook@sa.gov.au">jo.tilbrook@sa.gov.au</a>
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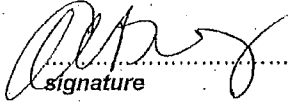
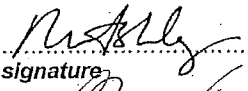

Is there an FTE impact

No

Chief Financial Officer noted:.....N/A.....

MEDIA/SENSITIVE:

No

Division	NDIS Reform		
A/Director NDIS Implementation	Cassie Bouyer	 signature	20/4/18
Executive Director	Nick Ashley	 signature	20/4/18
Deputy Chief Executive	Lois Boswell	 signature	24/4/18

## ATTACHMENTS

1. Draft response to the Commissioner Designate
2. Letter from Commissioner Designate
3. Email from DSS – Quality and Safeguards Secretariat
4. NDIS Quality and Safeguards Rules and Product Summary
5. NDIS Quality and Safeguards Rules table.
6. National Disability Insurance Scheme (Provider Definition) Rule 2018
7. National Disability Insurance Scheme (Code of Conduct) Rules 2018
8. National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018
9. National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018
10. National Disability Insurance Scheme (Protection and Disclosure of Information - Commissioner) Rules 2018
11. National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018; (Provider Registration and Practice Standards Rules)
12. National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018
13. National Disability Insurance Scheme (Quality Indicators) Guidelines 2018
14. National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018
15. National Disability Insurance Scheme Amendment (Specialist Disability Accommodation – Participating Jurisdictions) Rule 2018
16. National Disability Insurance Scheme (Specialist Disability Accommodation – Conditions) Rules 2018

Contact Officer: Jo Tilbrook, Principle Project Officer, NDIS Implementation  
8415 4273 / [jo.tilbrook@sa.gov.au](mailto:jo.tilbrook@sa.gov.au)

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18MDIS/0278

Mr Graeme Head  
Commissioner Designate  
NDIS Quality and Safeguards Commission  
PO Box 210  
PENRITH NSW 2750  
[NDISQS.Program@dss.gov.au](mailto:NDISQS.Program@dss.gov.au)

Dear Commissioner Designate

Thank you for your letter about the proposed rules to be made under the *National Disability Insurance Scheme Act 2013, (as amended by the National Disability Insurance Scheme (Quality and Safeguards and Other Measures) Act 2017)* (the NDIS Act). I also note you have been authorised by the Minister for Social Services to seek my agreement to make amendments to the NDIS Specialist Disability Accommodation – Participating Jurisdiction Rules.

I note that amendments were made to the Restrictive Practices and Behaviour Support Rules, which you provided me, following consultation with officials on 6 April.

I am pleased to confirm the South Australian Government's agreement to the Specialist Disability Accommodation – Participating Jurisdictions Rules and the **amended** Restrictive Practices and Behaviour Support Rules, which was provided to my department on 16 April.

I appreciate you consulting with me on the other Rules, which are classed as Category D Rules. The following critical issues need to be resolved before they are lodged in the Commonwealth Parliament:

- Provider Registration and Practice Standards Rules

Clause 9 Suitability of applicant (3), and Clause 10 Suitability of Key Personnel (3), under Part 3-Becoming a registered NDIS Provider, relate to the Crimes Act 1914, which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them. Officials from my department have requested advice from the Department of Social Services (DSS) officials, relating to the operability of these Clauses and



the interface with initial draft of the NDIS Worker Screening Rules. Under the policy intent of NDIS worker screening, spent convictions will be considered as part of a risk-based assessment. An applicant and key personnel as described within Clause 9 and 10 will be required to be screened if they hold an executive, senior management and operational positions. My department is yet to receive advice. As these are two critical areas relating to the requirements of registered NDIS providers, we need to ensure the Rules are not at odds with each other.

- Specialist Disability Accommodation Conditions Rules

The current wording, drawn from the earlier SDA Rule made in 2017, does not refer to the *Community Titles Act 1996* that covers new construction that would previously have been covered by the *Strata Titles Act 1988* in South Australia. To ensure that South Australian legislative references are up to date, I request that the SDA Conditions Rules be amended under Part 3 – Density Restrictions, Division 2 – Definitions, Clause 19 (6) under Meaning of Single Parcel of Land to reflect the following:

*for land located in South Australia, all of the land: comprised within an 'allotment' within the meaning of section 223LA(1)(a) of the Real Property Act 1886 (SA), unless the land forms part of;*

- a) a 'strata plan' within the meaning of section 5 of the Strata Titles Act 1988 (SA); or;*
- b) a 'plan of community division' (also referred to as a 'community plan'), including 'strata plans', within the meaning of Part 2 of the Community Titles Act 1996 (SA)*

*in which case 'parcel of land' means all of the land comprised within that arrangement.*

I would like to acknowledge the commitment from the Department of Social Services to consulting with my department on the drafting of the Rules and the significant work that has gone into the drafting. I support your proposal to provide revised drafts to my officials for consultation if, as a result of feedback, the Rules are amended. I also note if any changes are made to the Specialist Disability Accommodation – Participating Jurisdictions Rules and any further amendments to the Restrictive Practices and Behaviour Support Rules, you will seek further agreement.

I look forward to working with you to ensure people with disability in South Australia and Australia are kept safe from harm.

Yours sincerely



**Hon Michelle Lensink MLC**  
MINISTER FOR HUMAN SERVICES

26 4 / 2018

Rule	Att	Commentary	Recommendation
<b>Your approval is required for the Commonwealth to make the following NDIS Rules / Amendments</b>			
National Disability Insurance Scheme Amendment (Specialist Disability Accommodation – Participating Jurisdictions) Rules 2018	7	<p>These rules relate to the funding of Specialist Disability Accommodation (SDA) for participants under the NDIS.</p> <p>The proposed amendment seeks to make technical amendments to clarify references to “registered NDIS providers” in the Rules.</p> <p>Advice from the Commonwealth Department of Social Services is that, in the absence of the amendment, there is a risk that payments to SDA providers, or NDIS quality and safeguarding requirements may not have a legal basis after the establishment of the Quality and Safeguards Commission on 1 July 2018.</p>	Approve – amendments are technical in nature only and support operation of the scheme.
National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018	8	<p>These rules set out the conditions relating to the use of regulated restrictive practices that apply to all registered NDIS providers.</p> <p>This Rule is a joint responsibility that requires your agreement. The Rules put an onus on registered NDIS providers under the new quality and safeguarding arrangements to seek consent and/or approval for the use of restrictive practices.</p> <p>In South Australia, consent for adults can be given by the person with disability with the capacity to make their own decisions, person responsible, or consent of an appointed substitute decision-maker or an appointed guardian with relevant special powers under Section 32 of the Guardianship and Administration Act 1993. Restrictive practices applied in the support of minors can be consented to by parent or guardian.</p> <p>DHS has been involved in the development of the Rules and the underpinning principles. DHS also consulted across state government departments and key statutory bodies. Any issues DHS or stakeholders may have had in the development of the Rules and principles have been addressed.</p>	Approve – DHS has participated in consultation and supports the proposed rule.

<b>The Commonwealth is required to consult with you on the following Rules / Amendments (NB: your approval is not required)</b>			
National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018)	9	<p>These rules set out some of the conditions that providers must comply with to become and remain register NDIS providers. They also set out the NDIS Practice Standards that apply to all registered NDIS providers, and those that apply to providers delivering more complex supports. These rules also deal with the provider register.</p> <p>DHS has been involved in the development of these Rules and the principles that underpin them. DHS has consulted with relevant state government departments and key statutory bodies in relation to these Rules during this process.</p> <p>DHS is awaiting advice from the Commonwealth in relation to two clauses of the proposed Rules, relating to spent convictions in the context of NDIS workers screening. These specific clauses in the Rules relate to provisions of the Commonwealth Crimes Act 1914 which relieve a person from disclosing spent convictions and require persons aware of such convictions to disregard them. The Intergovernmental Agreement on NDIS Worker Screening (IGA), however, includes a requirement for spent convictions to be included in the scope of an NDIS worker screening. DHS is yet to receive advice from the Commonwealth clarifying this point.</p> <p><i>Please note, the former Minister for Disabilities provided in-principle support of the IGA, subject to formal Cabinet approval.</i></p>	Support – Noting that DHS is yet to receive advice from the Commonwealth as requested. DHS has rearticulated this request in your draft response to Commonwealth (Attachment 2).
National Disability Insurance Scheme (Specialist Disability Accommodation – Conditions) Rules 2018	10	<p>The proposed Rules seeks to incorporate the existing SDA Rules (made in early 2017) within provisions that relate specifically to the new NDIS Quality and Safeguards Commission. For example, the existing SDA Rules requires providers to undertake certain activities while the proposed rules would provide authority for the Commissioner to determine how providers may be required to report on, or provide evidence of, these activities.</p> <p>It is further recommended that, in responding to the Commissioner Designate, you request the proposed Rule be amended such that section 19 states:</p> <p style="padding-left: 40px;"><i>for land located in South Australia, all of the land: comprised within an ‘allotment’ within the meaning of section 223LA(1)(a) of the Real Property Act 1886 (SA), unless the land forms part of;</i></p> <p style="padding-left: 80px;">a) <i>a ‘strata plan’ within the meaning of section 5 of the Strata Titles Act 1988 (SA); or;</i></p>	Support – DHS has been involved in consultation and supports the rules.  As discussed, DHS recommend that an amendment be made to the rules to refer to South Australian legislation currently omitted. Appropriate wording has been included in your draft response (Attachment 2).

		<p>b) a 'plan of community division' (also referred to as a 'community plan'), including 'strata plans', within the meaning of Part 2 of the Community Titles Act 1996 (SA)</p> <p><i>in which case 'parcel of land' means all of the land comprised within that arrangement.</i></p> <p>The current wording, drawn from the earlier SDA Rule made in 2017, does not refer to the <i>Community Titles Act 1996</i> that covers new construction that would previously have been covered by the <i>Strata Titles Act 1988</i>.</p>	
National Disability Insurance Scheme (Provider Definition) Rule 2018	11	These rules extend the jurisdiction of the NDIS Quality and Safeguarding Commission under the definition of "NDIS provider" to cover providers of supports or services to older people with disability who are receiving continuity of supports under the Commonwealth Continuity of Support Programme relating to Specialist Disability Services for Older People.	Support – DHS has been involved in consultation and support the rules.
National Disability Insurance Scheme (Code of Conduct) Rules 2018	12	These rules set out the NDIS Code of Conduct, which applies to all NDIS providers and persons employed or otherwise engaged by them, regardless of whether they are registered.	Support – DHS has been involved in consultation and support the rules.
National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018	13	These rules set out what must be included in the complaints management and resolution system of registered NDIS providers. The rules also prescribe arrangements relating to the management and resolution of complaints.	Support – DHS has been involved in consultation and support the rules.
National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018	14	These rules set out what must be included in the incident management systems of registered NDIS providers, including what constitutes a reportable incident and how they must be notified and managed. These rules also set out how the Commissioner can make inquiries in relation to reportable incidents.	Support – DHS has been involved in consultation and support the rules.
National Disability Insurance Scheme (Protection and Disclosure of Information - Commissioner) Rules 2018	15	These rules set out the information handling requirements for the NDIS Quality and Safeguarding Commission, including the use and disclosure of NDIS information.	Support – DHS has been involved in consultation and support the rules.

Recommended Position on Rules

Attachment 1

National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018	16	These rules provides for existing registered providers to transition as registered NDIS providers into the NDIS Quality and Safeguarding Commission by modifying some provisions of the Act.	Support – DHS has been involved in consultation and support the rules.
National Disability Insurance Scheme (Quality Indicators) Guidelines 2018	17	These guidelines set the criteria by which the NDIS providers demonstrate compliance with the NDIS Practice Standards.	Support – DHS has been involved in consultation and support the rules.



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Mr Graeme Head  
Commissioner Designate  
NDIS Quality and Safeguards Commission  
PO Box 210  
PENRITH NSW 2750  
[NDISQS.Program@dss.gov.au](mailto:NDISQS.Program@dss.gov.au)

Dear Commissioner Designate

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I note that amendments were made to the Restrictive Practices and Behaviour Support Rules, which you provided me, following consultation with officials on 6 April.

I am pleased to confirm the South Australian Government's agreement to the Specialist Disability Accommodation – Participating Jurisdictions Rules and the **amended** Restrictive Practices and Behaviour Support Rules, which was provided to my department on 16 April.

I appreciate you consulting with me on the other Rules, which are classed as Category D Rules. The following critical issues need to be resolved before they are lodged in the Commonwealth Parliament:

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Clause 9 Suitability of applicant (3), and Clause 10 Suitability of Key Personnel (3), under Part 3-Becoming a registered NDIS Provider, relate to the Crimes Act 1914, which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them. Officials from my department have requested advice from the Department of Social Services (DSS) officials, relating to the operability of these Clauses and



the interface with initial draft of the NDIS Worker Screening Rules. Under the policy intent of NDIS worker screening, spent convictions will be considered as part of a risk-based assessment. An applicant and key personnel as described within Clause 9 and 10 will be required to be screened if they hold an executive, senior management and operational positions. My department is yet to receive advice. As these are two critical areas relating to the requirements of registered NDIS providers, we need to ensure the Rules are not at odds with each other.

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- a 'strata plan' within the meaning of section 5 of the Strata Titles Act 1988 (SA); or;*
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*in which case 'parcel of land' means all of the land comprised within that arrangement.*

I would like to acknowledge the commitment from the Department of Social Services to consulting with my department on the drafting of the Rules and the significant work that has gone into the drafting. I support your proposal to provide revised drafts to my officials for consultation if, as a result of feedback, the Rules are amended. I also note if any changes are made to the Specialist Disability Accommodation – Participating Jurisdictions Rules and any further amendments to the Restrictive Practices and Behaviour Support Rules, you will seek further agreement.

I look forward to working with you to ensure people with disability in South Australia and Australia are kept safe from harm.

Yours sincerely

**Hon Michelle Lensink MLC**  
MINISTER FOR HUMAN SERVICES

/ / 2018



# LIMITED CIRCULATION



## **EXPOSURE DRAFT**

**This is a limited circulation exposure draft. It is supplied in confidence and should be given appropriate protection.**

# **National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018**

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I, Graeme Head, as delegate of the Minister for Social Services, make the following rules.

Dated

Graeme Head [**DRAFT ONLY—NOT FOR SIGNATURE**]  
Commissioner of the NDIS Quality and Safeguards Commission

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## **Preamble**

- (1) The National Disability Insurance Scheme (NDIS) represents a fundamental change to how supports for persons with disability are funded and delivered across Australia. The NDIS has potential to produce major benefits for persons with disability, their families and the broader community.
- (2) The NDIS Quality and Safeguards Commission is responsible for a range of functions under the National Quality and Safeguarding Framework aimed at protecting and preventing harm to persons with disability in the NDIS market. The Commission will build the capability of NDIS participants and providers to uphold the rights of persons with disability and realise the benefits of the NDIS. The rules are intended to support participants to be informed purchasers and consumers of NDIS supports and services and to live free from abuse, neglect, violence and exploitation.
- (3) The Commissioner of the NDIS Quality and Safeguards Commission will provide leadership in relation to behaviour support, and in the reduction and elimination of the use of regulated restrictive practices by NDIS providers.

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## Part 1—Preliminary

### 1 Name

This instrument is the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*.

### 2 Commencement

This instrument commences on 1 July 2018.

### 3 Authority

This instrument is made under the *National Disability Insurance Scheme Act 2013*.

### 4 Application

This instrument applies in a host jurisdiction that is a participating jurisdiction, subject to the transitional arrangements in Part 4 of this instrument.

Note: Obligations in this instrument do not affect any obligation a person has under a law of a State or Territory to the extent that such a law is capable of operating concurrently with the obligations created under the *National Disability Insurance Scheme Act 2013* (NDIS Act), see section 207 of the NDIS Act.

### 5 Definitions

Note: A number of expressions used in this instrument are defined in section 9 of the Act, including the following:

- (a) Commission;
- (b) Commissioner;
- (c) NDIS provider;
- (d) NDIS Practice Standards;
- (e) participant;
- (f) registered NDIS provider;
- (g) reportable incident.

In this instrument:

*Act* means the *National Disability Insurance Scheme Act 2013*.

*behaviour support plan* means:

- (a) a comprehensive behaviour support plan; or
- (b) an interim behaviour support plan.

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**NDIS behaviour support practitioner** means a person the Commissioner considers is suitable to undertake behaviour support assessments (including functional behavioural assessments) and to develop behaviour support plans that may contain the use of restrictive practices.

**functional behavioural assessment** means the process for determining and understanding the function or purpose behind a person's behaviour, and may involve the collection of data, observations, and information to develop an understanding of the relationship of events and circumstances that trigger and maintain the behaviour.

**regulated restrictive practice**: see section 6.

**specialist behaviour support provider** means a registered NDIS provider whose registration includes the provision of specialist behaviour support services.

## 6 Rules apply only to specified kinds of restrictive practices

A restrictive practice is a **regulated restrictive practice** if it is or involves any of the following:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) 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.
- (e) environmental restraint, which restrict a person's free access to all parts of their environment, including items and activities.

Note: For the definition of **restrictive practice**, see section 9 of the Act. Only regulated restrictive practices are covered by this instrument.

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## Part 2—Conditions of registration and regulated restrictive practices

### 7A Simplified outline of this part

This part sets out the conditions of registration that apply to all registered NDIS providers who use restrictive practices in the course of delivering NDIS supports.

These conditions include requiring the use of restrictive practices to:

- not occur where the relevant State and Territory prohibits such use;
- be undertaken in accordance with State and Territory authorisation processes and a behaviour support plan;
- be recorded by the provider and reported to the Commissioner so that the Commissioner can effectively monitor the use of regulated restrictive practices in the NDIS.

## Division 1—Introduction

### 7 Purpose of this Part

- (1) This Part is made for the purpose of section 73H of the Act.
- (2) It sets out conditions relating to the use of regulated restrictive practices that apply to all registered NDIS providers.

Note 1: A registered NDIS provider may be liable to a civil penalty if the provider breaches a condition to which the provider's registration is subject (see section 73J of the Act).

Note 2: The conditions in this Part are in addition to those set out in the Act (see subsection 73F(2) of the Act), those imposed by the Commissioner under subsection 73G(1) of the Act and those imposed under the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*.

Note 3: Part 4 of this instrument contains special rules that apply instead of, or as well as, some of the rules in this Part in certain circumstances.

Note 4: In some cases, using a regulated restrictive practice in the circumstances covered by this Part is a reportable incident (see subsection 73ZK(4) of the Act and section XX of the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*).

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- (2) The registration of the registered NDIS provider is subject to the following conditions:
- (a) the regulated restrictive practice must be used only in accordance with the behaviour support plan;
  - (b) the provider must notify a specialist behaviour support provider if there has been a change in circumstances that requires the behaviour support plan to be reviewed.
- (3) The registration of the registered NDIS provider is also subject to the condition that the provider agrees to demonstrate compliance with subsection (2) if required to do so by the Commissioner.

Note: Part 7.4 of the *Criminal Code* provides offences in relation to false or misleading statements, information and documents.

## 11 Use of a regulated restrictive practice in accordance with State or Territory authorisation but not a behaviour support plan

- (1) This section applies if:
- (a) a registered NDIS provider uses a regulated restrictive practice in relation to a person with disability (the *first use*); and
  - (b) an authorisation (however described) is required by the State or Territory in which the use occurs; and
  - (c) the use of the restrictive practice is authorised in accordance with the authorisation process; and
  - (d) the use is not in accordance with a behaviour support plan for the person with disability; and
  - (e) the use (the *ongoing use*) of the regulated restrictive practice in relation to the person with disability will, or is likely to, continue.
- (2) The registration of the registered NDIS provider is subject to the condition that the provider must:
- (a) take all reasonable steps to facilitate the development of an interim behaviour support plan for the person with disability by a specialist behaviour support provider that covers the use of the practice within 1 month after the first use of the regulated restrictive practice; and
  - (b) take all reasonable steps to facilitate the development of a comprehensive behaviour support plan for the person with disability by a specialist behaviour support provider that covers the use of the practice within 6 months after the first use of the regulated restrictive practice.
- (3) The registration of the registered NDIS provider is also subject to the condition that the provider agrees to demonstrate compliance with subsection (2) if required to do so by the Commissioner.

Note: Part 7.4 of the *Criminal Code* provides offences in relation to false or misleading statements, information and documents.

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## 12 Use of a regulated restrictive practice other than in accordance with behaviour support plan or State or Territory authorisation

- (1) This section applies if:
  - (a) a registered NDIS provider uses a regulated restrictive practice in relation to a person with disability (the *first use*); and
  - (b) the use is not in accordance with a behaviour support plan for the person with disability; and
  - (c) an authorisation (however described) is required by the State or Territory in which the use occurs; and
  - (d) the use of the restrictive practice is not authorised in accordance with the authorisation process; and
  - (e) the use (the *ongoing use*) of the regulated restrictive practice in relation to the person with disability will, or is likely to, continue.
- (2) The registration of the registered NDIS provider is subject to the condition that the provider must:
  - (a) obtain authorisation (however described) for the ongoing use of the regulated restrictive practice from the relevant State or Territory as soon as reasonably practicable; and
  - (b) lodge evidence of that authorisation with the Commissioner as soon as reasonably practicable after it is received; and
  - (c) take all reasonable steps to facilitate the development of an interim behaviour support plan for the person with disability by a specialist behaviour support provider that covers the use of the practice within 1 month after the first use of the regulated restrictive practice; and
  - (d) take all reasonable steps to facilitate the development of a comprehensive behaviour support plan for the person with disability by a specialist behaviour support provider that covers the use of the practice within 6 months after the first use of the regulated restrictive practice.
- (3) The registration of the registered NDIS provider is also subject to the condition that the provider agrees to demonstrate compliance with subsection (2) if required to do so by the Commissioner.

Note: Part 7.4 of the *Criminal Code* provides offences in relation to false or misleading statements, information and documents.

## 13 Use of a regulated restrictive practice when not covered by a behaviour support plan and State or Territory authorisation not required

- (1) This section applies if:
  - (a) a registered NDIS provider uses a regulated restrictive practice in relation to a person with disability (the *first use*); and

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- (b) the use is not in accordance with a behaviour support plan for the person with disability; and
  - (c) an authorisation (however described) is not required by the State or Territory in which the use occurs; and
  - (d) the use of the regulated restrictive practice in relation to the person with disability will, or is likely to, continue.
- (2) The registration of the registered NDIS provider is subject to the condition that the provider will:
- (a) take all reasonable steps to facilitate the development of an interim behaviour support plan for the person with disability by a specialist behaviour support provider that covers the use of the practice within 1 month after the first use of the regulated restrictive practice;
  - (b) take all reasonable steps to facilitate the development of a comprehensive behaviour support plan for the person with disability by a specialist behaviour support provider that covers the use of the practice within 6 months after the first use of the regulated restrictive practice.
- (3) The registration of the registered NDIS provider is also subject to the condition that the provider agrees to demonstrate compliance with subsection (2) if required to do so by the Commissioner.

Note: Part 7.4 of the *Criminal Code* provides offences in relation to false or misleading statements, information and documents.

## 14 Reporting requirements

- (1) The registration of a registered NDIS provider is subject to the following conditions:
- (a) subject to paragraph (b)—the provider must give monthly reports to the Commissioner regarding the use of regulated restrictive practices by the provider;
  - (b) if a registered NDIS provider obtains a short term approval from a State or Territory for the use of a regulated restrictive practice—the provider must report to the Commissioner on the use of the regulated restrictive practice every 2 weeks while the approval is in force.

Note: If the use of the regulated restrictive practice is also a reportable incident, it must also be reported in accordance with Part 3 of the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*.

- (2) A report under this section must:
- (a) be in the form approved by the Commissioner; and
  - (b) include any information, and be accompanied by any documents, required by the Commissioner.
- (3) The Commissioner must approve a form for the purposes of this section.

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## 15 Record keeping

- (1) The registration of a registered NDIS provider is subject to the condition that the registered NDIS provider must keep written information relating to the use by the provider of regulated restrictive practices in relation to persons with disability.
- (2) Without limiting subsection (1), the following information must be kept:
  - (a) a description of the use of the regulated restrictive practice, including:
    - (i) the impact on to the person with disability or another person;
    - (ii) any injury to the person with disability or another person;
    - (iii) whether the use of the restrictive practice was a reportable incident;  
and
    - (iv) why the regulated restrictive practice was used;
  - (b) a description of the behaviour of the person with disability that lead to the use of the regulated restrictive practice;
  - (c) the time, date and place at which the use of the regulated restrictive practice started and ended;
  - (d) the names and contact details of the persons involved in the use of the regulated restrictive practice;
  - (e) the names and contact details of any witnesses to the use of the regulated restrictive practice;
  - (f) the actions taken in response to the use of the regulated restrictive practice;
  - (g) what other less restrictive options were considered or used before using the regulated restrictive practice;
  - (h) the actions taken leading up to the use of the regulated restrictive practice, including any strategies used to prevent the need for the use of the practice.
- (3) A record made for the purpose of this section must be kept for seven years from the day the record is made.

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## Part 3—Conditions of registration relating to the provision of specialist behaviour support services

### 16A Simplified outline of this part

This part sets out the conditions of registration that apply to specialist behaviour support providers, including that specialist behaviour support services are to be provided, and plans are to be developed by NDIS behaviour support practitioners.

This part also sets out minimum requirements for behaviour support plans and imposes obligations on providers to review and prepare plans, and then lodge behaviour support plans that contain a regulated restrictive practice with the Commissioner, to enable monitoring of the use of such practices in the NDIS.

### Division 1—Introduction

#### 16 Purpose of this Part

- (1) This Part is made for the purposes of section 73H of the Act.
- (2) It sets out the conditions that apply to specialist behaviour support providers.
  - Note 1: A registered NDIS provider may be liable to a civil penalty if the provider breaches a condition to which the provider's registration is subject (see section 73J of the Act).
  - Note 2: The conditions in this Part are in addition to those set out in the Act (see subsection 73F(2) of the Act), those imposed by the Commissioner under subsection 73G(1) of the Act and those imposed under the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*.
  - Note 3: Part 4 of this instrument contains special rules that apply instead of, or as well as, some of the rules in this Part in certain circumstances.

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## **Division 2—Conditions of registration**

### **17 Requirement to use an NDIS behaviour support practitioner**

The registration of a specialist behaviour support provider is subject to the condition that the specialist behaviour support services are provided by an NDIS behaviour support practitioner.

### **18 Who can develop behaviour support plans containing a restrictive practice**

The registration of a specialist behaviour support provider is subject to the condition that a behaviour support plan for a person with disability that contains a regulated restrictive practice must be developed by:

- (a) an NDIS behaviour support practitioner engaged by the provider; or
- (b) if the provider is an NDIS behaviour support practitioner—that person.

### **19 Period within which behaviour support plan containing a restrictive practice must be developed**

- (1) Subsection (2) applies if:
  - (a) a regulated restrictive practice is used in relation to a person with disability; and
  - (b) as a result of that use, the specialist behaviour support provider is engaged to develop a behaviour support plan for the person with disability.
- (2) The registration of the specialist behaviour support provider is subject to the condition that the provider must develop:
  - (a) an interim behaviour support plan that includes provision for the use of the regulated restrictive practice within 1 month after being engaged to develop the plan; and
  - (b) a comprehensive behaviour support plan that includes provision for the use of the regulated restrictive practice within 6 months after being engaged to develop the plan.

### **20 How behaviour support plans containing a regulated restrictive practice must be developed**

- (1) The registration of a specialist behaviour support provider is subject to the conditions in this section in relation to behaviour support plans developed by the provider.
- (2) A behaviour support plan for a person with disability that contains a regulated restrictive practice must be developed in accordance with any authorisation

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process (however described) in the State or Territory in which the regulated restrictive practice is, or is proposed to be, used.

- (3) In developing and reviewing a behaviour support plan for a person with disability, the specialist behaviour support provider must take all reasonable steps to:
  - (a) reduce and eliminate the need for the use of regulated restrictive practices in relation to the person with disability; and
  - (b) take into account any previous behaviour support assessments and other assessments; and
  - (c) make changes within the environment of the person with disability that may reduce or remove the need for the use of regulated restrictive practices; and
  - (d) consult with the person with disability; and
  - (e) consult with the person with disability's family, carers, guardian or other relevant person; and
  - (f) consult with the registered NDIS provider who may use the regulated restrictive practice and other relevant specialists.
- (4) When consulting in accordance with paragraph (3)(d) or (e), the specialist behaviour support provider must provide details of the intention to include a regulated restrictive practice in the behaviour support plan, in an appropriately accessible format, to:
  - (a) the person with disability subject to the plan; and
  - (b) the person with disability's family, carers, guardian or other relevant person.
- (5) In developing a comprehensive behaviour support plan for a person with disability, the specialist behaviour support provider must undertake a behaviour support assessment, including a functional behavioural assessment of, the person with disability.

## **21 Contents of behaviour support plan containing a regulated restrictive practice**

- (1) This section applies if a specialist behaviour support provider develops or reviews a behaviour support plan for a person with disability that contains the use of a regulated restrictive practice.
- (2) The registration of the specialist behaviour support provider is subject to the condition that the plan must include strategies that are evidence-based, person-centred and proactive and that address the person with disability's needs and the functions of the behaviour.
- (3) The registration of the specialist behaviour support provider is also subject to the condition that the regulated restrictive practice must:

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- (a) be clearly identified in the behaviour support plan; and
  - (b) if the State or Territory in which the regulated restrictive practice is to be used has an authorisation process (however described) in relation to that practice—be authorised in accordance with that process; and
  - (c) be used only as a last resort in response to risk of harm to the person with disability or others, and after the provider has explored and applied evidence-based, person-centred and proactive strategies; and
  - (d) be the least restrictive response possible in the circumstances to ensure the safety of the person or others; and
  - (e) reduce the risk of harm to the person with disability or others; and
  - (f) be in proportion to the potential negative consequence or risk of harm; and
  - (g) be used for the shortest possible time to ensure the safety of the person with disability or others.
- (4) The registration of the specialist behaviour support provider is also subject to the condition that the person with disability to whom the behaviour support plan applies must be given opportunities to participate in community activities and develop new skills that have the potential to reduce or eliminate the need for regulated restrictive practices in the future.

## **22 Review of comprehensive behaviour support plans containing a regulated restrictive practice**

The registration of a specialist behaviour support provider is subject to the condition that a comprehensive behaviour support plan developed by the provider that contains a regulated restrictive practice must be reviewed by an NDIS behaviour support practitioner:

- (a) if there is a change in circumstances which requires the plan to be amended—as soon as practicable after the change occurs; or
- (b) in any event—at least every 12 months while the plan is in force.

## **23 Form of behaviour support plan containing a regulated restrictive practice**

- (1) The registration of a specialist behaviour support provider is subject to the condition that any behaviour support plan prepared by or on behalf of the provider that contains a regulated restrictive practice must:
- (a) be in the form approved by the Commissioner; and
  - (b) include any information, and be accompanied by any documents, required by the Commissioner.
- (2) The Commissioner must approve a form for the purposes of this section.



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## **24 Behaviour support plan containing a regulated restrictive practice must be lodged with the Commissioner**

- (1) The registration of a specialist behaviour support provider is subject to the condition that a behaviour support plan for a person with disability that contains a regulated restrictive practice, including a reviewed plan, must be lodged with the Commissioner as soon as practicable after it is developed.

Note: See section 19 for the period within which behaviour support plans must be developed and section 22 for when plans must be reviewed.

- (2) To avoid doubt, a behaviour support plan that contains a regulated restrictive practice must be lodged with the Commissioner, regardless of whether State or Territory authorisation (however described) is required to be obtained, or has been obtained, for the use of the practice in the relevant State or Territory.
- (3) A behaviour support plan that is required to be lodged under this section must be lodged in the manner required by the Commissioner.

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## Part 4—Special arrangements during the transition period

### This 25A Simplified outline of this part

This part sets out the special arrangements for a registered NDIS provider during the transition time.

This part takes priority over certain specified provisions of these rules during the transition time for these providers as set out in this part. These arrangements are necessary for the orderly transition of providers into the jurisdiction of the NDIS Quality and Safeguards Commission, by having regard to existing use of restrictive practices and existing plans addressing the use of restrictive practices.

### 25 Purpose of this Part

This Part is made for the purpose of section 73H of the Act.

### 26 Special arrangements during the transition period—use regulated restrictive practice with a behaviour support plan and in accordance with an authorisation process

- (1) This section applies to a person or entity if:
- (a) at a particular time (the *transition time*):
    - (i) the person or entity is a registered NDIS provider for a participant; and
    - (ii) the supports are provided under a behaviour support plan (the *existing plan*) that contains a regulated restrictive practice; and
    - (iii) the behaviour support plan controls the use of the regulated restrictive practice and contains alternative behaviour support strategies; and
    - (iv) the host jurisdiction in which the supports are provided has an authorisation process (however described) in relation to the use of the regulated restrictive practice; and
    - (v) the use of the regulated restrictive practice is authorised in accordance with the authorisation process; and
  - (b) at the transition time, the host jurisdiction in which the participant lives becomes a participating jurisdiction.

Note 1: For the meaning of *host jurisdiction* and *participating jurisdiction*, see sections 10 and 10A of the Act.

Note 2: Any provider approved as a registered provider of supports in a participating jurisdiction will automatically transition to be a registered NDIS provider in accordance with the *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018*.

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- (2) The person or entity is not required to comply with sections 9 to 15 of this instrument in relation to the person with disability and the use of the regulated restrictive practice during the period:
  - (a) starting at the start of the transition time; and
  - (b) ending at the earliest of the following:
    - (i) if the provider does not comply with subsection (3) within the period required by paragraph (4)(b)—the end of that period;
    - (ii) if the existing plan is reviewed for any reason, including as directed by the Commissioner—the day the review of the plan is completed;
    - (iii) if the Commissioner gives a written notice to the provider that this subsection no longer applies to the provider—the day specified in the notice (which must be at least 14 days after the notice is given);
    - (iv) the end of 12 months after the transition time.
- (3) The person or entity must notify the Commissioner of the existence of the behaviour support plan, including the regulated restrictive practices that it contains and the expiry date of the plan.
- (4) A notification under subsection (3):
  - (a) must be given in the form approved by the Commissioner; and
  - (b) must be given within 3 months after the start of the transition time, or such longer period as the Commissioner allows.
- (5) The registration of the person or entity as a registered NDIS provider is subject to the following conditions:
  - (a) the provider must comply with subsection (3);
  - (b) if requested by the Commissioner—the person or entity must provide a copy of the behaviour support plan to the Commissioner within the period requested by the Commissioner.

## **27 Special arrangements during the transition period—use regulated restrictive practice in accordance with an authorisation process but not a behaviour support plan**

- (1) This section applies to a person or entity if:
  - (a) at a particular time (the *transition time*):
    - (i) the person or entity is a registered NDIS provider for a participant; and
    - (ii) the provision of supports involves the use of a regulated restrictive practice; and
    - (iii) the use is not in accordance with a behaviour support plan for the person with disability; and

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- (iv) the host jurisdiction in which the supports are provided has an authorisation process (however described) in relation to the use of the regulated restrictive practice; and
  - (v) the use of the regulated restrictive practice is authorised in accordance with the authorisation process; and
  - (b) at the transition time, the host jurisdiction in which the participant lives becomes a participating jurisdiction.

Note 1: For the meaning of *host jurisdiction* and *participating jurisdiction*, see sections 10 and 10A of the Act.

Note 2: Any provider approved as a registered provider of supports in a participating jurisdiction will automatically transition to be a NDIS provider in accordance with the *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018*.

- (2) The person or entity is not required to comply with sections 9 to 15 of this instrument in relation to the person with disability and the use of the regulated restrictive practice during the period:
  - (a) starting at the start of the transition time; and
  - (b) ending at the earliest of the following:
    - (i) if the provider does not comply with subsection (3) within the period required by that subsection—the end of that period;
    - (ii) if the Commissioner gives a written notice to the provider that this subsection no longer applies to the provider—the day specified in the notice (which must be at least 14 days after the notice is given);
    - (iii) the end of 12 months after the transition time.
- (3) The person or entity must facilitate the development of a behaviour support plan for the person with disability that contains the use of the regulated restrictive practice and that meets the requirements of Division 2 of Part 3:
  - (a) within 6 months after the start of the transition time; or
  - (b) such longer period as directed by the Commissioner.
- (4) The registration of the person or entity as a registered NDIS provider is subject to the following conditions:
  - (a) the person or entity must comply with subsection (3);
  - (b) if requested by the Commissioner—the person or entity must provide a copy of the behaviour support plan developed in accordance with subsection (3) to the Commissioner within the period requested by the Commissioner.

## **28 Special arrangements during the transition period – use regulated restrictive practice where no authorisation process or behaviour support plan**

- (1) This section applies to a person or entity if:
  - (a) at a particular time (the transition time):

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- (i) the person or entity is a registered NDIS provider for a participant; and
  - (ii) the provision of supports involves the use of a regulated restrictive practice; and
  - (iii) the use is not in accordance with a behaviour support plan for the person with disability; and
  - (iv) the host jurisdiction in which the supports are provided does not have an authorisation process (however described) in relation to the use of the regulated restrictive practice; and
- (b) at the transition time, the host jurisdiction in which the participant lives becomes a participating jurisdiction.

Note 1: For the meaning of host jurisdiction and participating jurisdiction, see sections 10 and 10A of the Act.

Note 2: Any provider approved as a registered provider of supports in a participating jurisdiction will automatically transition to be a NDIS provider in accordance with the National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018.

- (2) The person or entity is not required to comply with section 9 to 15 in relation to the use of the regulated restrictive practice.
- (3) The person or entity must notify the Commissioner of the regulated restrictive practice used by the person or entity:
  - (a) in the form approved by the Commissioner; and
  - (b) within 1 month after the start of the transition time, or such longer period as the Commissioner allows.
- (4) The registration of the person or entity as a registered NDIS provider is subject to the following conditions:
  - (a) the person or entity must comply with subsection (3);
  - (b) within 3 months after the transition time—the person or entity must take all reasonable steps to facilitate the development of an interim behaviour support plan for the person with disability that meets the requirements of Division 2 of Part 3;
  - (c) within 6 months after the transition time—the person or entity must take all reasonable steps to facilitate the development of a comprehensive behaviour support plan for the person with disability that meets the requirements of Division 2 or Part 3.
- (5) The registration of the registered NDIS provider is also subject to the condition that the provider agrees to demonstrate compliance with paragraph (4)(b) or (c) if required to do so by the Commissioner.

Note 3: Part 7.4 of the Criminal Code provides offences in relation to false or misleading statements, information and documents.

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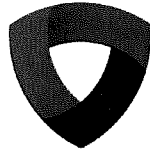
## 29 Special arrangements during the transition period—specialist behaviour support service providers

- (1) This section applies to a person or entity if:
- (a) at a particular time (the *transition time*), the person or entity is approved to deliver specialist behaviour support services to a person with disability in a host jurisdiction; and
  - (b) at the transition time, the host jurisdiction in which the participant lives becomes a participating jurisdiction.

Note 1: For the meaning of *host jurisdiction* and *participating jurisdiction*, see sections 10 and 10A of the Act.

Note 2: Any provider approved as a registered provider of supports in a participating jurisdiction will automatically transition to be a NDIS provider in accordance with the *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018*.

- (2) The registration of the person or entity as a specialist behaviour support provider is subject to the condition that the person or entity must notify the Commissioner of the names and details of the behaviour support practitioners that, at the transition time, the person or entity employs or otherwise engages to undertake behaviour assessments (including functional behavioural assessments) and to develop behaviour support plans.
- (3) A notification under subsection (2) must be given:
- (a) in the form approved by the Commissioner; and
  - (b) within 1 month after the start of the transition time, or such longer period as the Commissioner allows.



**NDIS Quality  
and Safeguards  
Commission**

**Attachment 6 FOI**

29 March 2018

The Hon Michelle Lensink MP  
Minister for Human Services  
Parliament House  
ADELAIDE SA 5000

Dear Minister,

I am writing in my capacity as Commissioner Designate of the NDIS Quality and Safeguards Commission (the Commission) about rules proposed to be made under the *National Disability Insurance Scheme Act 2013*, (as amended by the *National Disability Insurance Scheme (Quality and Safeguards and Other Measures) Act 2017*) (the NDIS Act).

I have enclosed the following documents:

- ten proposed NDIS Quality and Safeguards rules
- quality indicators underpinning the NDIS Practice Standards
- three diagrams to assist in consideration of the package: a high level summary of the rules; an overview of how different elements apply to NDIS providers; and an illustration of how key guidance and other supporting documents relate to each of the rules.

Of the ten rules provided for your consideration, there are two that will be made by the Minister for Social Services, the Hon. Dan Tehan MP. These two rules respectively relate to: transitional arrangements; and amendments to the current *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016*. In addition, there are eight rules that I will make as delegate of the Minister in order to establish the operations of the Commission.

The rules fall into four broad groups (with more detail provided in the attached table):

1. Category A rules, which require the agreement of all host jurisdictions:
  - *National Disability Insurance Scheme Amendment (Specialist Disability Accommodation – Participating Jurisdictions) Rule 2018*, which makes technical amendments to the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* that enable supported disability accommodation (SDA) supports to be funded where they are provided in participating jurisdictions by registered NDIS providers.

2. Category B rules which require the agreement of each host jurisdiction to which the rule will apply, in this instance any jurisdiction that is to become a participating jurisdiction:
  - *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*, which set out the conditions of registration for registered NDIS providers delivering specialist behaviour support and who use restrictive practices in the course of delivering supports or services.
3. Category D rules, which require consultation with all host jurisdictions:
  - *National Disability Insurance Scheme (Code of Conduct) Rules 2018*;
  - *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*;
  - *National Disability Insurance Scheme (Specialist Disability Accommodation – Commissioner) Rules 2018*;
  - *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*;
  - *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018*;
  - *National Disability Insurance Scheme (Provider Definition) Rule 2018*;
  - *National Disability Insurance Scheme (Protection and Disclosure of Information - Commissioner) Rules 2018*.
4. Rules setting out transitional arrangements for existing registered providers of supports transferring into the Commission's regulatory arrangements. These are not subject to categorisation because they modify the application of Part 3A, Chapter 4 of the NDIS Act during transition and are made under *the National Disability Insurance Scheme Amendment (Quality and Safeguards and Other Measures) Act 2017*:
  - *National Disability Insurance Scheme NDIS (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018*.

I have been authorised by the Minister for Social Services to seek your agreement to make amendments to the NDIS SDA rules, enabling payments to be made to registered NDIS providers for supported disability accommodation (item 1 above). I would be also grateful if you could provide your agreement to the rules relating to the use of restrictive practices and behaviour supports in the NDIS (item 2 above).

In relation to the remaining rules, I would like to acknowledge the significant assistance we have had to date from your senior officials in inputting to drafts. I would appreciate feedback on any matters that are critical to the effective operation of these rules.

I would be grateful if you could provide your feedback and/or agreement to these rules by 27 April 2018 in order to allow me to finalise them by the end of April. Please provide responses by email to [NDISQS.Program@dss.gov.au](mailto:NDISQS.Program@dss.gov.au)



This will enable timely guidance to be provided to providers and participants about the transition in New South Wales and South Australia, as well as assisting with final adjustments of the Commission's ICT systems. Officials of the Department of Social Services will be available to clarify any aspect of these rules should you or your officials require additional advice.

If, as a result of feedback, the rules are amended, I propose to provide revised drafts to your officials for consultation. If any changes are made to the rules in items 1 and 2 above, your further agreement must be sought before they can be made.

I also intend in the near future to make NDIS rules regarding worker screening, which will be Category B rules. I will circulate these separately for the input of officials and your agreement in the coming weeks. These rules will be based largely on the proposed Intergovernmental Agreement on NDIS Worker Screening.

I am committed to ongoing consultations about the rules and operational policy consistent with my obligations under section 181D of the NDIS Act. The Department will also begin consultations with your officials and other stakeholders on supporting documentation and guidance material to operationalise the rules.

Sincerely,

Graeme Head  
NDIS Commissioner Designate  
NDIS Quality and Safeguards Commission

# NDIS Quality & Safeguards Rules and Product Summary

## Rules

## Notifiable Instruments

## Other Support Products

NDIS (Code of Conduct) Rule



Worker Guidelines

Provider Guidelines

NDIS (Provider Registration and Practice Standards) Rules

Quality Indicators – NDIS Practice Standards 2018

NDIS Quality Assurance Scheme

NDIS (Behaviour Support) Rules

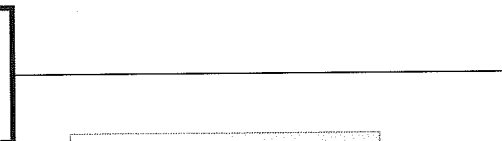
Behaviour Support Practitioner Competency Framework

NDIS (Specialist Disability Accommodation – Amendment) Rule 2018

NDIS (Specialist Disability Accommodation Commission Registration) Rule 2018

Section 81 Transitional Rules

NDIS (Incident Management) Rules



Commission Reportable Incidents Guidance

Provider Incident Management Guidance

Procedural Fairness Guidelines

NDIS (Complaints) Rules



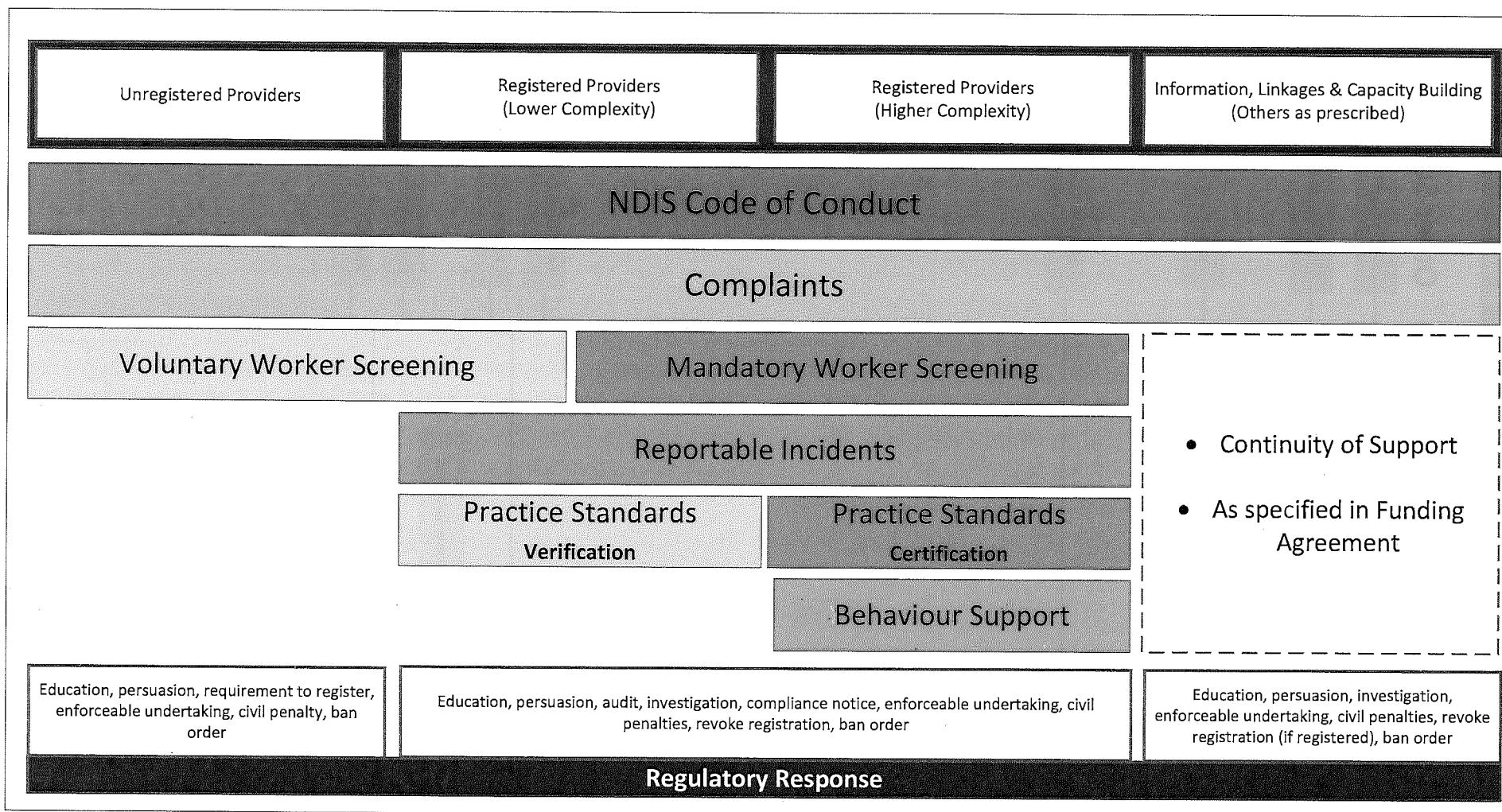
Commission Complaints Guidelines

Provider Complaints Management Guidelines

NDIS (NDIS Provider Definition) Rule 2018

NDIS (Protection and Disclosure of Information) Rules

# NDIS Quality & Safeguards Provider Regulatory Scope



## National Disability Insurance Scheme (Quality and Safeguards Commission) Rules

Rule	Regulatory Powers	Enforcement
<p><b>1 NDIS Code of Conduct and Guidelines for NDIS providers and workers</b></p> <ul style="list-style-type: none"> <li>• Sets out the NDIS Code of Conduct which applies to all NDIS providers and persons employed or otherwise engaged by them, regardless of whether they are registered.</li> <li>• The Guidelines explain the expectations of NDIS providers and workers in complying with the NDIS Code of Conduct.</li> </ul>	<p><b>Compliance monitoring</b></p> <ul style="list-style-type: none"> <li>• An authorised inspector can commence compliance monitoring investigations on own motion to check compliance with the Act and rules, including powers of entry, search and seizure under the <i>Regulatory Powers (Standard Provisions) Act 2014</i>.</li> </ul>	<p><b>Compliance notices</b></p> <p><b>Enforceable undertakings</b></p>
<p><b>2 Provider Registration and NDIS Practice Standards, Quality Indicators</b></p> <ul style="list-style-type: none"> <li>• Sets out which NDIS providers must be registered.</li> <li>• Outlines the suitability requirements for providers and key personnel to become registered.</li> <li>• Requires providers to notify the NDIS Commission of material changes.</li> <li>• Incorporate the NDIS Practice Standards, which establish the national standards and expectations of a provider relevant to the supports or services provided.</li> <li>• Provides for the publication of an NDIS Register to include details about a provider's registration and relevant compliance action.</li> <li>• The Quality Indicators are the criteria by which NDIS providers demonstrate compliance with the NDIS Practice Standards.</li> </ul>		<p><b>Injunctions</b></p> <p><b>Civil penalties</b></p> <ul style="list-style-type: none"> <li>• Up \$210,000 for individuals and \$1,050,000 for organisations.</li> </ul>
<p><b>3 Behaviour Support and Restrictive Practices</b></p> <ul style="list-style-type: none"> <li>• Sets out the conditions of registration for providers delivering specialist behaviour support and providers who use restrictive practices in the course of delivering NDIS supports and transition arrangements for transitioning providers.</li> <li>• Requires providers to comply with any state and territory authorisation arrangements in relation to the use of restrictive practice.</li> <li>• Outlines reporting and oversight arrangements to reduce and eliminate the use of restrictive practices in the NDIS.</li> </ul>		<p><b>Suspension and revocation of registration</b></p>
<p><b>4 Specialist Disability Accommodation (SDA) – Conditions of Registration</b></p> <ul style="list-style-type: none"> <li>• Sets out the conditions of registration for NDIS Commission registered NDIS providers of SDA.</li> </ul>	<p><b>Investigation</b></p> <ul style="list-style-type: none"> <li>• An authorised investigator may utilise investigation and monitoring powers including powers of entry, search and seizure under the Regulatory Powers Act.</li> </ul>	<p><b>Banning orders</b></p> <ul style="list-style-type: none"> <li>• In the most serious cases.</li> </ul>
<p><b>5 Specialist Disability Accommodation (SDA) – Amendment Rule</b></p> <ul style="list-style-type: none"> <li>• Amends the current SDA rules to enable SDA payments to be made by the NDIA to the NDIS Commission registered NDIS providers of SDA.</li> </ul>		
<p><b>6 Transitional Rules</b></p> <p>Provides for existing registered providers to transition as registered NDIS providers into the NDIS Commission by modifying some provisions of the Act.</p>		
<p><b>7 Incident Management and Reportable Incidents</b></p> <ul style="list-style-type: none"> <li>• Requires all registered NDIS providers to implement and maintain a system to record and manage certain incidents that happen in connection with providing supports or services to people with disability.</li> <li>• Specifies the decisions and actions the NDIS Commission can take in relation to a reportable incident, including requiring the provider to undertake specified remedial action, carry out an internal investigation about the incident, or engage an independent expert to investigate and report on the incident.</li> </ul>	<p><b>Inquiries</b></p> <ul style="list-style-type: none"> <li>• Broad inquiry power in the context of complaints and reportable incidents and able to use information gathering and disclosure powers contained in the Act and information rules.</li> </ul>	
<p><b>8 Complaints Management and Resolution</b></p> <ul style="list-style-type: none"> <li>• Requires all registered NDIS providers to implement and maintain a system to manage and resolve complaints about the supports and services they provide.</li> <li>• Providers must make information available about how to make a complaint to the provider and to the NDIS Commissioner, and must keep records about complaints that they receive.</li> <li>• Provides for decisions and actions the NDIS Commission can take in responding to a complaint about any issue connected with supports or services provided by an NDIS provider.</li> </ul>		
<p><b>9 Provider Definition</b></p> <ul style="list-style-type: none"> <li>• Defines an NDIS provider to include a person or entity who is providing supports or services to older people with disability who are receiving continuity of support under the Commonwealth Continuity of Support Programme relating to Specialist Disability Services for Older People.</li> </ul>	<p><b>Referral</b></p> <ul style="list-style-type: none"> <li>• No wrong door.</li> </ul>	
<p><b>10 Protection and Disclosure of Information</b></p> <ul style="list-style-type: none"> <li>• Prescribes state and territory laws that may mean that a person is not required to give information or evidence or produce a document, despite a requirement from the NDIS Commissioner.</li> <li>• Prescribes rules and guidance in relation to the NDIS Commissioner's disclosure powers in paragraph 67E(1)(a) and subparagraphs 67E(1)(b)(i), (iii) and (iv) of the Act.</li> </ul>		
<p><b>11 Worker screening (under development and not included in pack)</b></p>		

## National Disability Insurance Scheme (Quality and Safeguards Commission) Rules

	Rule	Regulatory Powers	Enforcement
1	<b>NDIS Code of Conduct and Guidelines for NDIS providers and workers</b> <ul style="list-style-type: none"> <li>Sets out the NDIS Code of Conduct which applies to all NDIS providers and persons employed or otherwise engaged by them, regardless of whether they are registered.</li> <li>The Guidelines explain the expectations of NDIS providers and workers in complying with the NDIS Code of Conduct.</li> </ul>	<b>Compliance monitoring</b> <ul style="list-style-type: none"> <li>An authorised inspector can commence compliance monitoring investigations on own motion to check compliance with the Act and rules, including powers of entry, search and seizure under the <i>Regulatory Powers (Standard Provisions) Act 2014</i>.</li> </ul> <b>Investigation</b> <ul style="list-style-type: none"> <li>An authorised investigator may utilise investigation and monitoring powers including powers of entry, search and seizure under the Regulatory Powers Act.</li> </ul> <b>Inquiries</b> <ul style="list-style-type: none"> <li>Broad inquiry power in the context of complaints and reportable incidents and able to use information gathering and disclosure powers contained in the Act and information rules.</li> </ul> <b>Referral</b> <ul style="list-style-type: none"> <li>No wrong door.</li> </ul>	<b>Compliance notices</b>  <b>Enforceable undertakings</b>  <b>Injunctions</b>  <b>Civil penalties</b> <ul style="list-style-type: none"> <li>Up \$210,000 for individuals and \$1,050,000 for organisations.</li> </ul> <b>Suspension and revocation of registration</b>  <b>Banning orders</b> <ul style="list-style-type: none"> <li>In the most serious cases.</li> </ul>
2	<b>Provider Registration and NDIS Practice Standards, Quality Indicators</b> <ul style="list-style-type: none"> <li>Sets out which NDIS providers must be registered.</li> <li>Outlines the suitability requirements for providers and key personnel to become registered.</li> <li>Requires providers to notify the NDIS Commission of material changes.</li> <li>Incorporate the NDIS Practice Standards, which establish the national standards and expectations of a provider relevant to the supports or services provided.</li> <li>Provides for the publication of an NDIS Register to include details about a provider's registration and relevant compliance action.</li> <li>The Quality Indicators are the criteria by which NDIS providers demonstrate compliance with the NDIS Practice Standards.</li> </ul>		
3	<b>Behaviour Support and Restrictive Practices</b> <ul style="list-style-type: none"> <li>Sets out the conditions of registration for providers delivering specialist behaviour support and providers who use restrictive practices in the course of delivering NDIS supports and transition arrangements for transitioning providers.</li> <li>Requires providers to comply with any state and territory authorisation arrangements in relation to the use of restrictive practice.</li> <li>Outlines reporting and oversight arrangements to reduce and eliminate the use of restrictive practices in the NDIS.</li> </ul>		
4	<b>Specialist Disability Accommodation (SDA) – Conditions of Registration</b> <ul style="list-style-type: none"> <li>Sets out the conditions of registration for NDIS Commission registered NDIS providers of SDA.</li> </ul>		
5	<b>Specialist Disability Accommodation (SDA) – Amendment Rule</b> <ul style="list-style-type: none"> <li>Amends the current SDA rules to enable SDA payments to be made by the NDIA to the NDIS Commission registered NDIS providers of SDA.</li> </ul>		
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8	<b>Complaints Management and Resolution</b> <ul style="list-style-type: none"> <li>Requires all registered NDIS providers to implement and maintain a system to manage and resolve complaints about the supports and services they provide.</li> <li>Providers must make information available about how to make a complaint to the provider and to the NDIS Commissioner, and must keep records about complaints that they receive.</li> <li>Provides for decisions and actions the NDIS Commission can take in responding to a complaint about any issue connected with supports or services provided by an NDIS provider.</li> </ul>		
9	<b>Provider Definition</b> <ul style="list-style-type: none"> <li>Defines an NDIS provider to include a person or entity who is providing supports or services to older people with disability who are receiving continuity of support under the Commonwealth Continuity of Support Programme relating to Specialist Disability Services for Older People.</li> </ul>		
10	<b>Protection and Disclosure of Information</b> <ul style="list-style-type: none"> <li>Prescribes state and territory laws that may mean that a person is not required to give information or evidence or produce a document, despite a requirement from the NDIS Commissioner.</li> <li>Prescribes rules and guidance in relation to the NDIS Commissioner's disclosure powers in paragraph 67E(1)(a) and subparagraphs 67E(1)(b)(i), (iii) and (iv) of the Act.</li> </ul>		
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## National Disability Insurance Scheme (Quality and Safeguards Commission) Rules

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# LIMITED CIRCULATION



## EXPOSURE DRAFT

This is a limited circulation exposure draft. It is supplied in confidence and should be given appropriate protection.

# National Disability Insurance Scheme Amendment (Specialist Disability Accommodation - Participating Jurisdictions) Rule 2018

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I, Dan Tehan, Minister for Social Services, make the following Rule.

Dated

Dan Tehan **DRAFT ONLY—NOT FOR SIGNATURE**  
Minister for Social Services

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LIMITED CIRCULATION

# LIMITED CIRCULATION

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**LIMITED CIRCULATION**

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## 1 Name

This instrument is the *National Disability Insurance Scheme Amendment (Specialist Disability Accommodation - Participating Jurisdictions) Rule 2018*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2018.	1 July 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *National Disability Insurance Scheme Act 2013*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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## Schedule 1—Amendments

### *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016*

#### 1 Paragraph 2.7

After “registered provider of supports” insert “or a registered NDIS provider”.

#### 2 Paragraph 2.13

After “under the NDIS” insert “in host jurisdictions that are not participating jurisdictions”.

#### 3 After Part 6 Requirements for SDA to be funded

Insert:

### Division 1 General Requirements

#### 4 Subparagraph 6.1(a)

Omit “registered provider (see Part 7)”, substitute “registered provider of supports or a registered NDIS provider”.

#### 5 Subparagraph 6.1(e)

After “see paragraphs 6.5-6.13” insert “in relation to registered providers of supports and see the *National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rules 2018* for registered NDIS providers”.

#### 6 After paragraph 6.4

Repeal heading after paragraph 6.4, substitute:

### Division 2 Enrolment of dwellings by registered providers of supports

#### 7 Paragraph 6.5

Omit “registered provider may enrol a dwelling”, substitute “registered provider of supports may enrol a dwelling in a host jurisdiction that is not a participating jurisdiction”.

#### 8 Part 7 Registration of SDA providers

After “SDA providers” insert “who are registered providers of supports”.

#### 9 Paragraph 7.1

At the end of the paragraph insert “This part applies to registered providers of supports and does not apply to registered NDIS providers.”

#### 10 Paragraph 7.4

After “with which registered providers” insert “of supports”.

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## **11 After paragraph 7.5**

Insert:

7.5A For the registration of SDA providers who are registered NDIS providers see the *National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rules 2018*.

## **12 Paragraph 7.6**

After “under the NDIS” insert “in a host jurisdiction that is not a participating jurisdiction”.

## **13 Note after paragraph 7.6**

After “under the NDIS” insert “in a host jurisdiction that is not a participating jurisdiction”.

## **14 Note after paragraph 7.33**

Omit “registered provider’s”, substitute “registered provider of supports”.



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# National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018

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I, Graeme Head, as delegate of the Minister for Social Services, make the following rules.

Dated 2018

Graeme Head [DRAFT ONLY—NOT FOR SIGNATURE]  
Commissioner of the NDIS Quality and Safeguards Commission

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## Preamble

The National Disability Insurance Scheme (NDIS) represents a fundamental change to how supports for people with disability are funded and delivered across Australia. The NDIS is designed to produce major benefits for people with disability, their families and the broader community.

The NDIS Quality and Safeguards Commission is responsible for a range of functions under the National Quality and Safeguarding Framework aimed at protecting and preventing harm to people with disability in the NDIS market.

The Commission will build the capability of NDIS participants and providers to uphold the rights of people with disability and realise the benefits of the NDIS. The legislation underpinning the NDIS is intended to support participants to be informed purchasers and consumers of NDIS supports and services and to live free from abuse, neglect, violence and exploitation.

These rules set out some of the conditions that providers must comply with to become and remain registered NDIS providers. They also set out the NDIS Practice Standards that apply to all registered NDIS providers, and those that apply to providers delivering more complex supports in areas such as behaviour support, early childhood supports, specialist support coordination and specialist disability accommodation.

These rules also deal with the Provider Register. To support people with disability to exercise choice and control, the Provider Register will include details about an NDIS provider's registration and any relevant compliance action taken in relation to the provider.

Together with the NDIS Code of Conduct, these rules will enable people with disability participating in the NDIS to be aware of what quality service provision they should expect from registered NDIS providers.

The Commissioner works with providers to continuously improve the quality of the supports and services provided to NDIS participants.

# LIMITED CIRCULATION

## Part 1 Preliminary

### Section 1

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## Part 1—Preliminary

### 1 Name

This instrument is the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2018.	1 July 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under the *National Disability Insurance Scheme Act 2013*.

### 4 Definitions

Note: A number of expressions used in this instrument are defined in section 9 of the Act, including the following:

- (a) approved quality auditor;
- (b) key personnel;
- (c) NDIS Practice Standards;
- (d) registered NDIS provider;
- (e) registered provider of supports.

In this instrument:

*Act* means the *National Disability Insurance Scheme Act 2013*.

*applicable standards* means the NDIS Practice Standards that apply to a specified class of supports under Part 6.

*applicant* means a person or entity who has made an application for registration under section 73C of the Act.

# LIMITED CIRCULATION

Preliminary Part 1

## Section 5

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**certification:** see section 5.

**National Disability Insurance Scheme (Quality Indicators) Guidelines:** see subsection 24(2).

**regulated restrictive practice** means a restrictive practice that is or involves any of the following:

- (a) seclusion, which is the solitary 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;
- (b) chemical restraint, which is the use of a chemical substance for the primary purpose of influencing a person's behaviour but 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;
- (c) 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;
- (d) physical restraint, which is the use of physical force to prevent, restrict or subdue movement of a person's body, or part of the person's body, for the primary purpose of influencing the person's behaviour but does not include the use of a hands-on technique in a reflexive way to guide or redirect a person away from potential harm or injury, consistent with what could reasonably be considered the exercise of care towards a person;
- (e) environmental restraints, which restrict a person's free access to all parts of the person's environment, including items and activities.

Note: For the definition of **restrictive practice**, see section 9 of the Act.

**verification** means an assessment by an approved quality auditor of an applicant, or of a registered NDIS provider, against an applicable standard by conducting a desk audit of the applicant or provider, including reviewing the applicant's or provider's relevant documentation, in relation to the standard.

**worker** means a person employed or otherwise engaged by a registered NDIS provider.

### 5 Meaning of **certification**

- (1) **Certification** is an assessment by an approved quality auditor of an applicant, or of a registered NDIS provider, against an applicable standard by conducting:
  - (a) a desk audit of the applicant or provider, including reviewing the applicant's or provider's relevant documentation, in relation to the standard; and
  - (b) an inspection of the sites, facilities, equipment and services used, or proposed to be used, in the delivery of supports or services by the applicant or provider in relation to the standard; and



# LIMITED CIRCULATION

## Part 1 Preliminary

### Section 5

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- (c) interviews with relevant persons, including key personnel of the applicant or provider and persons receiving, or to receive, supports or services from the applicant or provider in relation to the standard.
- (2) The assessment may be conducted by sampling that is appropriate for the size of the provider or applicant and for the classes of supports or services provided or to be provided.
- (3) Despite subsection (1), the Commissioner may, in writing, authorise an approved quality auditor to assess an applicant or a registered NDIS provider against an applicable standard by conducting a review of the outcomes and evidence from a comparable quality audit process undertaken in relation to the applicant or provider, if the Commissioner considers it is appropriate to do so.
- (4) If the Commissioner gives an authorisation under subsection (3), the applicant or provider is taken, for the purposes of this instrument, to be assessed using certification.

# LIMITED CIRCULATION

When an NDIS provider must be registered **Part 2**

Section 6

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## **Part 2—When an NDIS provider must be registered**

### **6 Purpose of this Part**

- (1) This Part is made for the purposes of subsection 73B(1) of the Act.
- (2) NDIS providers of certain classes of supports under participants' plans must be registered under section 73E of the Act to provide those classes of supports. This Part sets out what those classes of supports are.

Note 1: If an NDIS provider provides a class of support set out in this Part but is not registered to provide that class of support, the provider may be liable to a civil penalty (see subsection 73B(2) of the Act).

Note 2: In addition to the circumstances provided for in this Part, a person must be registered under section 73E of the Act to provide supports to a participant in a participating jurisdiction and whose funding for supports is managed by the Agency (see subsection 33(6) of the Act).

### **7 Classes of supports for which NDIS providers must be registered**

- (1) A person must be registered under section 73E of the Act to provide specialist disability accommodation under a participant's plan.
- (2) A person must be registered under section 73E of the Act to provide a class of supports to a participant if, during the provision of the supports, there is, or is likely to be, an interim or ongoing need to use a regulated restrictive practice in relation to the participant.
- (3) A person must be registered under section 73E of the Act to provide specialist behaviour support services to a participant if the person will, as part of the provision of the services:
  - (a) undertake a behaviour support assessment (including a functional behavioural assessment) of the participant; or
  - (b) develop a behaviour support plan for the participant.

# LIMITED CIRCULATION

## Part 3 Becoming a registered NDIS provider

### Section 8

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## Part 3—Becoming a registered NDIS provider

### 8 Purpose of this Part

This Part sets out requirements that an applicant must meet in order to be registered as a registered NDIS provider.

Note: These requirements are in addition to the requirements set out in section 73E of the Act.

### 9 Suitability of applicant

- (1) This section is made for the purposes of paragraph 73E(1)(d) of the Act.
- (2) In determining whether the Commissioner is satisfied that the applicant is suitable to provide supports or services to people with disability, the Commissioner must have regard to the following matters:
  - (a) whether the applicant has previously been registered as a registered NDIS provider or a registered provider of supports;
  - (b) whether a banning order has ever been in force in relation to the applicant;
  - (c) whether the applicant has been convicted of an indictable offence against a law of the Commonwealth or of a State or Territory;
  - (d) whether the applicant is or has been an insolvent under administration;
  - (e) whether the applicant has been the subject of adverse findings or enforcement action by a Department of, or an authority or other body established for a public purpose by, the Commonwealth, a State or a Territory, including one with responsibilities relating to the quality or regulation of services provided to people with disability, older people or children;
  - (f) whether the applicant has been the subject of adverse findings or enforcement action by any of the following:
    - (i) the Australian Securities and Investment Commission;
    - (ii) the Australian Charities and Not-for-profits Commission;
    - (iii) the Australian Competition and Consumer Commission;
    - (iv) the Australian Prudential Regulation Authority;
    - (v) the Australian Crime Commission;
    - (vi) AUSTRAC;
    - (vii) a body of a State or Territory that is equivalent to a body mentioned in any of subparagraphs (i) to (vi);
    - (viii) a work health and safety authority of a State or Territory;
  - (g) whether the applicant has been the subject of any findings or judgment in relation to fraud, misrepresentation or dishonesty in any administrative, civil or criminal proceedings, or is currently party to any proceedings that may result in the applicant being the subject of such findings or judgment;
  - (h) whether the applicant has ever been disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*;

# LIMITED CIRCULATION

Becoming a registered NDIS provider **Part 3**

Section 10

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- (i) any other matter the Commissioner considers relevant.
- (3) Paragraph (2)(c) does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

## 10 Suitability of key personnel

- (1) This section is made for the purposes of paragraph 73E(1)(e) of the Act.
- (2) In determining whether the Commissioner is satisfied that a member of the applicant's key personnel is suitable to be involved in the provision of supports or services for which the applicant will be registered to provide, the Commissioner must have regard to the following matters:
  - (a) whether a banning order has ever been in force in relation to the member;
  - (b) whether the member has been convicted of an indictable offence against a law of the Commonwealth or of a State or Territory;
  - (c) whether the member is or has been an insolvent under administration;
  - (d) whether the member has been the subject of adverse findings or enforcement action by a Department of, or an authority or other body established for a public purpose by, the Commonwealth, a State or a Territory, including one with responsibilities relating to the quality or regulation of services provided to people with disability, older people and children;
  - (e) whether the member has been the subject of adverse findings or enforcement action following an investigation by any of the following:
    - (i) the Australian Securities and Investment Commission;
    - (ii) the Australian Charities and Not-for-profits Commission;
    - (iii) the Australian Competition and Consumer Commission;
    - (iv) the Australian Prudential Regulation Authority;
    - (v) the Australian Crime Commission;
    - (vi) AUSTRAC;
    - (vii) a body of a State or Territory that is equivalent to a body mentioned in any of subparagraphs (i) to (vi);
    - (viii) a work health and safety authority of a State or Territory;
  - (f) whether the member has been the subject of any findings or judgment in relation to fraud, misrepresentation or dishonesty in any administrative, civil or criminal proceedings, or is currently party to any proceedings that may result in the member being the subject of such findings or judgment;
  - (g) whether the member has ever been disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*;
  - (h) any other matter the Commissioner considers relevant.
- (3) Paragraph (2)(b) does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

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# LIMITED CIRCULATION

**Part 3** Becoming a registered NDIS provider

Section 11

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## **11 Applicant must have an ABN**

- (1) This section is made for the purposes of paragraph 73E(1)(f) of the Act.
- (2) The applicant must have an ABN (within the meaning of the *A New Tax System (Australian Business Number) Act 1999*).

# LIMITED CIRCULATION

Responsibilities of registered NDIS providers **Part 4**

Section 12

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## **Part 4—Responsibilities of registered NDIS providers**

### **12 Purpose of this Part**

- (1) This Part is made for the purposes of section 73H of the Act.
- (2) It sets out the conditions to which each registration, or each registration included in a specified class of registration, is subject.

Note 1: A registered NDIS provider may be liable to a civil penalty if the provider breaches a condition to which the provider's registration is subject (see section 73J of the Act).

Note 2: The conditions in this Part are in addition to those set out in the Act (see subsection 73F(2) of the Act) and those imposed by the Commissioner under subsection 73G(1) of the Act.

### **13 Notifying material changes to the Commissioner**

- (1) The registration of each registered NDIS provider is subject to the condition that the provider must notify the Commissioner of a change of circumstances that materially affects the provider's ability, or the ability of any of the provider's key personnel, to provide the supports or services the provider is registered to provide.
- (2) The change must be notified to the Commissioner:
  - (a) in the form approved by the Commissioner; and
  - (b) within 28 days after the change occurs.
- (3) Without limiting subsection (1), the following are taken to be changes of circumstances that materially affect a provider's ability, or the ability of any of the provider's key personnel, to provide the supports or services the provider is registered to provide:
  - (a) the occurrence of an event that significantly affects the provider's ability to comply with the provider's conditions of registration;
  - (b) a change that adversely affects access to supports or services by persons with disability currently receiving those supports or services from the provider;
  - (c) an adverse change in the provider's financial capacity to provide the supports or services the provider is registered to provide;
  - (d) a significant change in the organisation or governance arrangements of the provider.

**LIMITED CIRCULATION**

# LIMITED CIRCULATION

**Part 5** Register of NDIS providers

**Division 1** Introduction

Section 14

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## **Part 5—Register of NDIS providers**

### **Division 1—Introduction**

#### **14 Purpose of this Part**

- (1) This Part is made for the purposes of subsection 73ZS(7) of the Act.
- (2) It makes provision for and in relation to the correction and publication of the NDIS Provider Register.

# LIMITED CIRCULATION

Register of NDIS providers **Part 5**  
Correction of entries **Division 2**

Section 15

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## Division 2—Correction of entries

### 15 Corrections on the Commissioner's initiative

- (1) This section applies if:
  - (a) the Commissioner becomes aware of a matter; and
  - (b) based on the matter, the Commissioner considers that an entry in the NDIS Provider Register in relation to an NDIS provider or former NDIS provider requires a correction.
- (2) The Commissioner must give a written notice to the provider:
  - (a) setting out the details of the matter and the proposed correction; and
  - (b) inviting the provider to give written comments on the matter and the proposed correction within the period specified in the notice.
- (3) The period specified for the purposes of paragraph (2)(b) must not end earlier than 28 days after the day on which the notice is given.
- (4) As soon as practicable after the earlier of:
  - (a) when the Commissioner receives comments from the provider; or
  - (b) the end of the period specified for the purposes of paragraph (2)(b);the Commissioner must:
  - (c) make the proposed correction; or
  - (d) make a different correction requested by the provider; or
  - (e) decide not to make a correction.
- (5) The Commissioner must give the provider written notice of a correction or decision made under subsection (4).

### 16 Requests for corrections

- (1) An NDIS provider or former NDIS provider may request that the Commissioner make a correction to the NDIS Provider Register in relation to the provider.
- (2) A request under subsection (1):
  - (a) must be in a form approved by the Commissioner; and
  - (b) must be accompanied by any information or documents required by the form.
- (3) If a request is made under subsection (1), the Commissioner may, by written notice, require the provider to give the Commissioner such further information or documents in relation to the request as the Commissioner reasonably requires.

Note: The Commissioner is not required to make a correction or decision on the request if subsection (2) or (3) of this section are not complied with (see section 197B of the Act).

- (4) If the Commissioner receives a request, the Commissioner must:
  - (a) make the correction to the NDIS Provider Register; or

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# LIMITED CIRCULATION

**Part 5** Register of NDIS providers

**Division 2** Correction of entries

## Section 16

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- (b) decide to not make the correction to the NDIS Provider Register.
- (5) The Commission must notify the provider of a correction or decision made under subsection (4).

# LIMITED CIRCULATION

Register of NDIS providers **Part 5**  
Publication of the NDIS Provider Register **Division 3**

Section 17

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## **Division 3—Publication of the NDIS Provider Register**

### **17 NDIS Provider Register generally to be published in full**

Subject to section 18, the whole of the NDIS Provider Register may be published on the Commission's website.

### **18 Certain parts of the NDIS Provider Register not to be published**

A part of the NDIS Provider Register must not be published if:

- (a) the Commissioner considers that the publication of the part would be contrary to the public interest; or
- (b) the Commissioner considers that the publication of the part would be contrary to the interests of one or more persons with disability receiving supports or services.

LIMITED CIRCULATION

# LIMITED CIRCULATION

## Part 6 NDIS Practice Standards

### Division 1 NDIS Practice Standards

#### Section 19

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## Part 6—NDIS Practice Standards

### Division 1—NDIS Practice Standards

#### 19 Purpose of this Division

- (1) This Division is made for the purposes of section 73T of the Act.

Note: Rules made for the purposes of section 73T of the Act are the *NDIS Practice Standards* (see section 9 of the Act).

- (2) It specifies the standards concerning the quality of supports and services to be provided by registered NDIS providers.

Note 1: Applicants must be assessed by an approved quality auditor as meeting the applicable standards and other requirements prescribed by the NDIS Practice Standards in order to be registered as a registered NDIS provider (see paragraph 73E(1)(c) of the Act).

Note 2: Non-compliance with the NDIS Practice Standards by a registered NDIS provider constitutes a breach of a condition of registration (see paragraph 73F(2)(c) and section 73J of the Act).

Note 3: Division 2 contains special rules that apply instead of, or as well as, some of the rules in this Division in certain circumstances.

#### 20 NDIS Practice Standards—class of supports, applicable standards and assessment process

- (1) To be registered to provide a class of supports specified in column 1 of an item in the table in subsection (3), an applicant must:

(a) be assessed by an approved quality auditor as meeting the standards specified in column 2 of that item, using the method specified in column 3 of that item; and

(b) if the supports are to be provided in circumstances described in subsection 7(2)—be assessed by an approved quality auditor as meeting the standards specified in Schedule 4, using certification.

Note: The circumstances described in subsection 7(2) involve the use, or possible use, of a regulated restrictive practice in providing the supports.

- (2) To remain registered to provide a class of supports specified in column 1 of an item in the table in subsection (3), a registered NDIS provider must comply with the standards specified in:

(a) column 2 of that item; and

(b) if the supports are provided in circumstances described in subsection 7(2)—Schedule 4.

Note: The circumstances described in subsection 7(2) involve the use of a regulated restrictive practice in providing the supports.

- (3) The following table has effect.

# LIMITED CIRCULATION

NDIS Practice Standards **Part 6**  
NDIS Practice Standards **Division 1**

Section

<b>NDIS Practice Standards—class of supports, standards and assessment method</b>			
	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>To be registered, or remain registered, to provide this class of supports...</b>	<b>the applicable standards are specified in...</b>	<b>and the assessment method is....</b>
1	accommodation/tenancy assistance	Schedule 8	verification.
2	assistance to access and maintain employment or higher education	Schedule 1	certification.
3	assistive products for personal care and safety	Schedule 8	verification.
4	high intensity daily personal activities	Schedules 1 and 2	certification.
5	personal mobility equipment	Schedule 8	verification.
6	assistance in coordinating or managing life stages, transitions and supports	Schedule 1	certification.
7	assistance with daily personal activities	Schedule 1	certification.
8	assistance with travel/transport arrangements	Schedule 8	verification.
9	vehicle modifications	Schedule 8	verification.
10	specialist positive behaviour support	Schedules 1 and 3	certification.
11	home modifications	Schedule 8	verification.
12	assistive equipment for recreation	Schedule 8	verification.
13	vision equipment	Schedule 8	verification.
14	community nursing care	Schedule 8	verification.
15	assistance with daily life tasks in a group or shared living arrangement	Schedule 1	certification.
16	innovative community participation	Schedule 8	verification.
17	development of daily care and life skills	Schedule 1	certification.
18	early intervention supports for early childhood	Schedules 1 and 5	certification.
19	specialised hearing services	Schedule 8	verification.
20	household tasks	Schedule 8	verification.
21	interpreting and translating	Schedule 8	verification.
22	hearing equipment	Schedule 8	verification.

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# LIMITED CIRCULATION

## Part 6 NDIS Practice Standards

### Division 1 NDIS Practice Standards

#### Section

<b>NDIS Practice Standards—class of supports, standards and assessment method</b>			
	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>To be registered, or remain registered, to provide this class of supports...</b>	<b>the applicable standards are specified in...</b>	<b>and the assessment method is....</b>
23	assistive products in household tasks	Schedule 8	verification.
24	communication and information equipment	Schedule 8	verification.
25	participation in community, social and civic activities	Schedule 1	certification.
26	exercise physiology and personal training	Schedule 8	verification.
27	management of funding for supports in participant's plans	Schedule 8	verification.
28	therapeutic supports	Schedule 8	verification.
29	specialised driver training	Schedule 8	verification.
30	assistance animals	Schedule 8	verification.
31	specialist disability accommodation only	Schedule 7	certification.
32	specialist disability accommodation and one or more other classes of supports	Schedules 1 and 7	certification.
33	specialised support coordination	Schedule 6	certification.
34	specialised supported employment	Schedule 1	certification.
35	hearing services	Schedule 8	verification.
36	customised prosthetics	Schedule 8	verification.
37	group and centre-based activities	Schedule 1	certification.

(4) Despite column 2 of item 18 of the table in subsection (3), an individual or a partnership that applies to provide early intervention supports for early childhood is required to be assessed by an approved quality auditor as meeting the standards specified in:

- (a) clause 7 of Schedule 1; and
- (b) Schedule 5.

(5) Despite column 2 of item 18 of the table in subsection (3), to remain registered to provide early intervention supports for early childhood, an individual or partnership is required to comply with the standards specified in:

# LIMITED CIRCULATION

NDIS Practice Standards **Part 6**  
NDIS Practice Standards **Division 1**

Section 21

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- (a) clause 7 of Schedule 1; and
- (b) Schedule 5.

## **21 NDIS Practice Standards—requirements for providers that are bodies corporate**

- (1) To be registered as a registered NDIS provider to provide any class of supports, an applicant that is a body corporate must be assessed by an approved quality auditor as meeting the standards specified in Schedule 1 using certification.
- (2) To remain registered as a registered NDIS provider to provide any class of supports, a provider that is a body corporate must comply with the standards specified in Schedule 1.
- (3) This section applies to a body corporate in addition to section 20.

## **22 NDIS Practice Standards—requirements for government providers**

- (1) To be registered as a registered NDIS provider to provide any class of supports, an applicant covered by subsection (3) must be assessed by an approved quality auditor as meeting the standards specified in Schedule 1 using certification.
- (2) To remain registered as a registered NDIS provider to provide any class of supports, a provider covered by subsection (3) must comply with the standards specified in Schedule 1.
- (3) The applicants and providers covered by this subsection are as follows:
  - (a) the Commonwealth;
  - (b) an authority of the Commonwealth;
  - (c) a State or Territory;
  - (d) an authority of a State or Territory;
  - (e) a local government authority.
- (4) This section applies to an applicant or provider in addition to section 20.

## **23 Assessment by certification meets requirement to be assessed by verification**

For the purposes of this instrument, if compliance with an applicable standard must be assessed using verification, the requirement is met if compliance with the standard is assessed using certification.

## **24 National Disability Insurance Scheme (Quality Indicators) Guidelines**

- (1) The Commissioner may, by notifiable instrument, make guidelines setting out indicators and other matters to be taken into account when assessing compliance with the NDIS Practice Standards.
- (2) The guidelines are to be known as the *National Disability Insurance Scheme (Quality Indicators) Guidelines*.

# LIMITED CIRCULATION

## Part 6 NDIS Practice Standards

### Division 2 Transitional arrangements relating to the NDIS Practice Standards

#### Section 25

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## Division 2—Transitional arrangements relating to the NDIS Practice Standards

### 25 Purpose of this Division

- (1) This Division is made for the purposes of section 73T of the Act.
- (2) It modifies the application of the NDIS Practice Standards in Division 1 of this Part for a limited period in relation to providers who transition from being registered providers of supports under Part 3 of Chapter 4 of the Act to being registered NDIS providers under Part 3A of Chapter 4 of the Act.

Note: These providers are known as *transitioned providers*, and the transition takes place when the host jurisdiction in which the provider is providing supports or services becomes a participating jurisdiction (see the *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018*).

### 26 Transitional arrangements for certain providers requiring certification

- (1) This section applies to a person or entity (the *provider*) if:
  - (a) at a particular time (the *transition time*), the provider is approved under section 70 of the Act to provide one or more of the following classes of supports to a participant:
    - (i) assistance to access and maintain employment or higher education;
    - (ii) high intensity daily personal activities;
    - (iii) assistance in coordinating or managing life stages, transitions and supports;
    - (iv) assistance with daily personal activities;
    - (v) specialist positive behaviour support;
    - (vi) assistance with daily life tasks in a group or shared living arrangement;
    - (vii) development of daily care and life skills;
    - (viii) participation in community, social and civic activities;
    - (ix) specialised support coordination;
    - (x) specialised supported employment;
    - (xi) group and centre-based activities; and
  - (b) at the transition time, the host jurisdiction in which the participant lives becomes a participating jurisdiction.

Note 1: For the meaning of *host jurisdiction* and *participating jurisdiction*, see sections 10 and 10A of the Act.

Note 2: The provider will be deemed to be a registered NDIS provider in accordance with the *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018*.

- (2) Despite sections 20, 21 and 22, to remain registered to provide the class of supports during the transition period for the provider, the provider comply with the standards specified in clauses 2 to 7, 14, 15, 20 and 24 of Schedule 1.

# LIMITED CIRCULATION

NDIS Practice Standards **Part 6**  
Transitional arrangements relating to the NDIS Practice Standards **Division 2**

Section 27

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- (3) For the purposes of subsection (2), the transition period for the provider:
- (a) starts at the transition time; and
  - (b) ends at the earliest of the following:
    - (i) if the Commissioner gives a written notice to the provider that this subsection no longer applies to the provider—the day specified in the notice (which must be at least 14 days after the notice is given);
    - (ii) if the provider makes an application under section 73C of the Act and the Commissioner makes a decision under section 73E of the Act to register, or not to register, the provider as a registered NDIS provider—the day after the day the decision is made;
    - (iii) if the registration of the provider is revoked under section 73P of the Act—at the start of the day the revocation takes effect;
    - (iv) unless section 73K of the Act applies—the expiry of the period specified for the purposes of paragraph 73E(5)(e) of the Act.

## 27 Transitional arrangements for providers providing specialist disability accommodation and one or more other classes of supports

- (1) This section applies to a person or entity (the *provider*) if:
- (a) at a particular time (the *transition time*), the provider is approved under section 70 of the Act to provide:
    - (i) specialist disability accommodation to a participant; and
    - (ii) one or more other classes of supports; and
  - (b) at the transition time, the host jurisdiction in which the participant lives becomes a participating jurisdiction.

Note 1: For the meaning of *host jurisdiction* and *participating jurisdiction*, see sections 10 and 10A of the Act.

Note 2: The provider will be deemed to be a registered NDIS provider in accordance with the *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018*.

- (2) Despite sections 20, 21 and 22, to remain registered to provide those supports during the transition period for the provider, the provider must comply with the standards specified in:
- (a) clauses 2 to 7, 14, 15, 20 and 24 of Schedule 1; and
  - (b) Schedule 7.
- (3) For the purposes of subsection (2), the transition period for the provider:
- (a) starts at the transition time; and
  - (b) ends at the earliest of the following:
    - (i) if the Commissioner gives a written notice to the provider that this subsection no longer applies to the provider—the day specified in the notice (which must be at least 14 days after the notice is given);
    - (ii) if the provider makes an application under section 73C of the Act and the Commissioner makes a decision under section 73E of the Act to register, or not to register, the provider as a registered NDIS provider—the day after the day the decision is made;

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## Part 6 NDIS Practice Standards

### Division 2 Transitional arrangements relating to the NDIS Practice Standards

#### Section 28

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- (iii) if the registration of the provider is revoked under section 73P of the Act—at the start of the day the revocation takes effect;
- (iv) unless section 73K of the Act applies—the expiry of the period specified for the purposes of paragraph 73E(5)(e) of the Act.

#### **28 Transitional arrangements for providers of early intervention supports for early childhood**

- (1) This section applies to a person or entity (the *provider*) if:
    - (a) at a particular time (the *transition time*), the provider is approved under section 70 of the Act to provide early intervention supports for early childhood to a participant; and
    - (b) at the transition time, the host jurisdiction in which the participant lives becomes a participating jurisdiction.
- Note 1: For the meaning of *host jurisdiction* and *participating jurisdiction*, see sections 10 and 10A of the Act.
- Note 2: The provider will be deemed to be a registered NDIS provider in accordance with the *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018*.
- (2) Despite sections 20, 21 and 22, to remain registered to provide the supports during the transition period for the provider, the provider must comply with the standards specified in:
    - (a) if the provider is an individual or a partnership—clause 7 of Schedule 1; or
    - (b) otherwise—clauses 2 to 7, 14, 15, 20 and 24 of Schedule 1.
  - (3) For the purposes of subsection (2), the transition period for the provider:
    - (a) starts at the transition time; and
    - (b) ends at the earliest of the following:
      - (i) if the Commissioner gives a written notice to the provider that this subsection no longer applies to the provider—the day specified in the notice (which must be at least 14 days after the notice is given);
      - (ii) if the provider makes an application under section 73C of the Act and the Commissioner makes a decision under section 73E of the Act to register, or not to register, the provider as a registered NDIS provider—the day after the day the decision is made;
      - (iii) if the registration of the provider is revoked under section 73P of the Act—at the start of the day the revocation takes effect;
      - (iv) unless section 73K of the Act applies—the expiry of the period specified for the purposes of paragraph 73E(5)(e) of the Act.

#### **29 Transitional arrangements for providers requiring verification**

- (1) This section applies to a person or entity (the *provider*) if:
  - (a) at a particular time (the *transition time*), the provider is approved under section 70 of the Act to provide one or more of the following classes of supports to a participant:
    - (i) accommodation/tenancy assistance;

# LIMITED CIRCULATION

NDIS Practice Standards **Part 6**  
Transitional arrangements relating to the NDIS Practice Standards **Division 2**

Section 29

- (ii) assistive products for personal care and safety;
  - (iii) personal mobility equipment;
  - (iv) assistance with travel/transport arrangements;
  - (v) vehicle modifications;
  - (vi) home modifications;
  - (vii) assistive equipment for recreation;
  - (viii) vision equipment;
  - (ix) community nursing care;
  - (x) innovative community participation;
  - (xi) specialised hearing services;
  - (xii) household tasks;
  - (xiii) interpreting and translating;
  - (xiv) hearing equipment;
  - (xv) assistive products for household tasks;
  - (xvi) communication and information equipment;
  - (xvii) exercise physiology and personal training;
  - (xviii) management of funding for supports in participant's plans;
  - (xix) therapeutic supports;
  - (xx) specialised driver training;
  - (xxi) assistance animals;
  - (xxii) hearing services;
  - (xxiii) customised prosthetics; and
- (b) at the transition time, the host jurisdiction in which the participant lives becomes a participating jurisdiction.

Note 1: For the meaning of *host jurisdiction* and *participating jurisdiction*, see sections 10 and 10A of the Act.

Note 2: The provider will be deemed to be a registered NDIS provider in accordance with the *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018*.

- (2) Sections 20, 21 and 22 do not apply to the provider during the transition period in relation to the provision of the class of supports.
- (3) For the purposes of subsection (2), the transition period for the provider:
- (a) starts at the transition time; and
  - (b) ends at the earliest of the following:
    - (i) if the Commissioner gives a written notice to the provider that this subsection no longer applies to the provider—the day specified in the notice (which must be at least 14 days after the notice is given);
    - (ii) if the provider makes an application under section 73C of the Act and the Commissioner makes a decision under section 73E of the Act to register, or not to register, the provider as a registered NDIS provider—the day after the day the decision is made;
    - (iii) if the registration of the provider is revoked under section 73P of the Act—at the start of the day the revocation takes effect;

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**Part 6** NDIS Practice Standards

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- (iv) unless section 73K of the Act applies—the expiry of the period specified for the purposes of paragraph 73E(5)(e) of the Act.

# LIMITED CIRCULATION

Core module **Schedule 1**  
Preliminary **Part 1**

Clause 1

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## Schedule 1—Core module

Note: See sections 20, 21, 22, 26, 27 and 28.

### Part 1—Preliminary

#### 1 Application of standards to applicants, providers, participants and others

- (1) This Schedule applies to a person or entity who is applying to become a registered NDIS provider in the same way as it applies to a provider.

Note: See sections 20, 21, 22, 26, 27 and 28 for the applicants and providers that must comply with the NDIS Practice Standards specified in this Schedule.

- (2) This Schedule applies to the following in the same way as it applies to a participant:
- (a) a prospective participant;
  - (b) a person with disability receiving supports or services from a provider under the arrangements set out in Chapter 2 of the Act;
  - (c) a person with disability receiving supports or services from a person included in a class of persons prescribed for the purposes of subparagraph (b)(ii) of the definition of **NDIS provider** in section 9 of the Act.

LIMITED CIRCULATION

# LIMITED CIRCULATION

**Schedule 1** Core module

**Part 2** Rights of participants and responsibilities of providers

Clause 2

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## **Part 2—Rights of participants and responsibilities of providers**

### **2 Standards relating to the rights of participants and the responsibilities of providers**

This Part specifies the NDIS Practice Standards relating to the rights of participants and the responsibilities of providers who deliver supports and services to them.

### **3 Person-centred supports**

- (1) Each participant can access supports that promote, uphold and respect their legal and human rights.
- (2) Each participant is enabled to exercise informed choice and control.
- (3) The provision of supports promotes, upholds and respects individual rights to freedom of expression, self-determination and decision-making.

### **4 Individual values and beliefs**

Each participant can access supports that respect their culture, diversity, values and beliefs.

### **5 Privacy and dignity**

Each participant can access supports that respect and protect their dignity and right to privacy.

### **6 Independence and informed choice**

Each participant is supported by the provider to make informed choices, exercise control and maximise their independence in relation to the supports provided.

### **7 Freedom from violence, abuse, neglect, exploitation or discrimination**

Each participant can access supports free from violence, abuse, neglect, exploitation or discrimination.

# LIMITED CIRCULATION

Core module **Schedule 1**  
Provider governance and operational management **Part 3**

Clause 8

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## **Part 3—Provider governance and operational management**

### **8 Standards relating to provider governance and operational management**

This Part specifies the NDIS Practice Standards relating to the governance and operational management arrangements for registered NDIS providers.

### **9 Governance and operational management**

Each participant's support is overseen by robust governance and operational management systems relevant and proportionate to the size and scale of the provider and the scope and complexity of the supports being delivered.

### **10 Risk management**

Risks to participants, workers and the provider are identified and managed.

### **11 Quality management**

Each participant benefits from a quality management system that is relevant and proportionate to the size and scale of the provider and that promotes continuous improvement of support delivery.

### **12 Information management**

- (1) Management of each participant's information ensures that it is identifiable, accurately recorded, current and confidential.
- (2) Each participant's information is easily accessible to the participant and appropriately utilised by relevant workers.

### **13 Complaints management and resolution**

- (1) Each participant has knowledge of and access to the provider's complaints management and resolution system.
- (2) Complaints are welcomed, acknowledged, respected and well managed.

### **14 Incident management**

Each participant is safeguarded by the provider's incident management system, ensuring that incidents are acknowledged, responded to, well managed and learned from.

### **15 Human resource management**

Each participant's support needs are met by workers who are competent in relation to their role, hold relevant qualifications and have relevant expertise and experience to provide person-centred support.

# LIMITED CIRCULATION

**Schedule 1** Core module

**Part 3** Provider governance and operational management

Clause 16

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## **16 Continuity of supports**

Each participant has access to timely and appropriate supports without interruption.

# LIMITED CIRCULATION

Core module **Schedule 1**  
Provision of supports **Part 4**

Clause 17

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## **Part 4—Provision of supports**

### **17 Standards relating to the provision of supports to participants**

This Part specifies the NDIS Practice Standards relating to the provision of supports to participants.

### **18 Access to supports**

Each participant can access the most appropriate supports that meet the participant's needs, goals and preferences.

### **19 Support planning**

- (1) Each participant is actively involved in the development of their support plans.
- (2) Support plans reflect participant needs, requirements, preferences, strengths and goals, and are regularly reviewed.

### **20 Service agreements**

Each participant has a clear understanding of the supports they have chosen and how the supports will be provided.

### **21 Responsive support provision**

Each participant can access responsive, timely, competent and appropriate supports to meet their needs, desired outcomes and goals.

### **22 Transitions to and from a provider**

Each participant experiences a planned and coordinated transition to or from the provider.



# LIMITED CIRCULATION

Schedule 1 Core module

Part 5 Support provision environment

Clause 23

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## Part 5—Support provision environment

### 23 Standards relating to the provision of supports to participants

This Part specifies the NDIS Practice Standards relating to the environment in which supports are provided to participants.

### 24 Safe environment

Each participant can access supports in a safe environment that is appropriate to their needs.

### 25 Participant money and property

Participant money and property is secure and each participant uses their own money and property as they determine.

### 26 Medication management

- (1) This standard applies to a provider that is responsible for administering medication to participants.
- (2) Each participant requiring medication is confident that their provider administers, stores and monitors the effects of the participant's medication and works to prevent errors and incidents.

### 27 Waste management

- (1) This standard applies to a provider that is required to manage waste, or infectious or hazardous substances.
- (2) Each participant, each worker and any other person in the support environment is protected from harm as a result of exposure to waste or infectious or hazardous substances generated during the delivery of supports.

# LIMITED CIRCULATION

Module 1: High intensity daily personal activities **Schedule 2**

Clause 1

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## Schedule 2—Module 1: High intensity daily personal activities

Note: See section 20.

### 1 Application of standards to applicants, providers, participants and others

- (1) This Schedule applies to a person or entity who is applying to become a registered NDIS provider in the same way as it applies to a provider.

Note: See section 20 for the applicants and providers that must comply with the NDIS Practice Standards specified in this Schedule.

- (2) This Schedule applies to the following in the same way as it applies to a participant:
- (a) a prospective participant;
  - (b) a person with disability receiving supports or services from a provider under the arrangements set out in Chapter 2 of the Act;
  - (c) a person with disability receiving supports or services from a person included in a class of persons prescribed for the purposes of subparagraph (b)(ii) of the definition of *NDIS provider* in section 9 of the Act.

### 2 Standards relating to high intensity daily personal activities

This Schedule specifies the NDIS Practice Standards relating to the provision of high intensity daily personal activities.

### 3 Complex bowel care

- (1) This standard applies to a provider that is registered to provide complex bowel care.
- (2) Each participant requiring complex bowel care receives appropriate support that is relevant and proportionate to their individual needs.

### 4 Enteral (naso-gastric tube-jejunum or duodenum) feeding and management

- (1) This standard applies to a provider that is registered to provide enteral (naso-gastric tube-jejunum or duodenum) feeding and management.
- (2) Each participant requiring enteral feeding and management receives appropriate nutrition, fluids and medication that are relevant and proportionate to their individual needs.

### 5 Tracheostomy management

- (1) This standard applies to a provider that is registered to provide tracheostomy management.

# LIMITED CIRCULATION

Schedule 2 Module 1: High intensity daily personal activities

## Clause 6

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- (2) Each participant with a tracheostomy receives appropriate suctioning and management of their tracheostomy that are relevant and proportionate to their individual needs.

### **6 Urinary catheter management (in-dwelling urinary catheter, in-out catheter and suprapubic catheter)**

- (1) This standard applies to a provider that is registered to provide urinary catheter management (in-dwelling urinary catheter, in-out catheter, and suprapubic catheter).
- (2) Each participant with a catheter receives appropriate catheter management that is relevant and proportionate to their individual needs.

### **7 Ventilator management**

- (1) This standard applies to a provider that is registered to provide ventilator management.
- (2) Each participant requiring ventilator management receives appropriate support that is relevant and proportionate to their individual needs and the specific ventilator used.

### **8 Subcutaneous injections**

- (1) This standard applies to a provider that is registered to provide subcutaneous injections.
- (2) Each participant requiring subcutaneous injections receives appropriate support that is relevant and proportionate to their individual needs and the specific subcutaneous injections and medication administered.

### **9 Complex wound management**

- (1) This standard applies to a provider that is registered to provide complex wound management.
- (2) Each participant requiring complex wound management receives appropriate support that is relevant and proportionate to their individual needs.

# LIMITED CIRCULATION

Module 2A: Specialist behaviour support **Schedule 3**

Clause 1

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## Schedule 3—Module 2A: Specialist behaviour support

Note: See section 20.

### 1 Application of standards to applicants, providers, participants and others

- (1) This Schedule applies to a person or entity who is applying to become a registered NDIS provider in the same way as it applies to a provider.

Note: See section 20 for the applicants and providers that must comply with the NDIS Practice Standards specified in this Schedule.

- (2) This Schedule applies to the following in the same way as it applies to a participant:
- (a) a prospective participant;
  - (b) a person with disability receiving supports or services from a provider under the arrangements set out in Chapter 2 of the Act;
  - (c) a person with disability receiving supports or services from a person included in a class of persons prescribed for the purposes of subparagraph (b)(ii) of the definition of *NDIS provider* in section 9 of the Act.

### 2 Standards relating to specialist behaviour support

This Schedule specifies the NDIS Practice Standards relating to the provision of specialist behaviour support.

### 3 Behaviour support in the NDIS

Each participant can access behaviour support that:

- (a) is appropriate to their needs; and
- (b) incorporates evidence-informed practice; and
- (c) complies with relevant Commonwealth, State and Territory laws and policies.

### 4 Regulated restrictive practices

Each participant is subject only to a regulated restrictive practice that meets:

- (a) the State or Territory authorisation and consent requirements (if any) in the State or Territory in which the practice will be used; and
- (b) the relevant requirements and safeguards provided for in relevant Commonwealth, State and Territory laws and policies.

### 5 Behaviour support plans

Each participant's quality of life is maintained and improved by person-centred, evidence-informed behaviour support plans that are responsive to their needs.

# LIMITED CIRCULATION

Schedule 3 Module 2A: Specialist behaviour support

Clause 6

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## **6 Supporting the implementation of a behaviour support plan**

Each participant's behaviour support plan is implemented effectively to meet the participant's behaviour support needs.

## **7 Behaviour support plan monitoring and review**

Each participant has a current behaviour support plan that:

- (a) reflects their needs, improves their quality of life and supports their progress toward positive change; and
- (b) progresses toward the reduction and elimination of the use of the regulated restrictive practice, where one is in place for the participant.

## **8 Reportable incidents involving the use of a regulated restrictive practice**

Each participant that is subject to an emergency or unauthorised use of a regulated restrictive practice by a provider has the use of that practice reported to the Commissioner and reviewed by the provider.

## **9 Interim behaviour support plans**

Each participant with an immediate need for a behaviour support plan receives an interim behaviour support plan that minimises the risk to the participant and others.

# LIMITED CIRCULATION

Module 2B: Use of regulated restrictive practices **Schedule 4**

Clause 1

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## Schedule 4—Module 2B: Use of regulated restrictive practices

Note: See section 20.

### 1 Application of standards to applicants, providers, participants and others

- (1) This Schedule applies to a person or entity who is applying to become a registered NDIS provider in the same way as it applies to a provider.

Note: See section 20 for the applicants and providers that must comply with the NDIS Practice Standards specified in this Schedule.

- (2) This Schedule applies to the following in the same way as it applies to a participant:
- (a) a prospective participant;
  - (b) a person with disability receiving supports or services from a provider under the arrangements set out in Chapter 2 of the Act;
  - (c) a person with disability receiving supports or services from a person included in a class of persons prescribed for the purposes of subparagraph (b)(ii) of the definition of *NDIS provider* in section 9 of the Act.

### 2 Standards relating to the use of regulated restrictive practices

This Schedule specifies the NDIS Practice Standards relating to the use of regulated restrictive practices.

### 3 Behaviour support in the NDIS

Each participant can access behaviour support that:

- (a) is appropriate to their needs; and
- (b) incorporates evidence-informed practice; and
- (c) complies with relevant Commonwealth, State and Territory laws and policies.

### 4 Regulated restrictive practices

Each participant is subject only to a regulated restrictive practice that meets:

- (a) the State or Territory authorisation and consent requirements (if any) in the State or Territory in which the practice will be used; and
- (b) the relevant requirements and safeguards provided for in Commonwealth legislation and policies.

### 5 Supporting the assessment and development of behaviour support plans

Each participant's quality of life is maintained and improved by tailored, evidence-informed behaviour support plans that are responsive to their needs.

# LIMITED CIRCULATION

Schedule 4 Module 2B: Use of regulated restrictive practices

Clause 6

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## **6 Supporting the implementation of a behaviour support plan**

Each participant's behaviour support plan is implemented effectively to meet the participant's behaviour support needs.

## **7 Monitoring and reporting the use of regulated restrictive practices**

Each participant that is subject to the use of a regulated restrictive practice by a provider has the use of that practice reported to the Commissioner and reviewed by the provider.

## **8 Behaviour support plan monitoring and review**

Each participant's behaviour support plan is regularly monitored and reviewed to ensure that the plan:

- (a) reflects their needs, improves their quality of life and supports their progress toward positive change; and
- (b) if a regulated restrictive practice is used in relation to the participant— supports the reduction and elimination of the use of the regulated restrictive practice.

## **9 Reportable incidents involving the use of a regulated restrictive practice**

Each participant that is subject to an emergency or unauthorised use of a regulated restrictive practice by a provider has the use of that practice reported to the Commissioner and reviewed by the provider.

## **10 Interim behaviour support plans**

Each participant with an immediate need for a behaviour support plan receives an interim behaviour support plan that minimises the risk to the participant and others.

# LIMITED CIRCULATION

Module 3: Early childhood supports **Schedule 5**

Clause 1

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## Schedule 5—Module 3: Early childhood supports

Note: See section 20.

### 1 Application of standards to applicants, providers, participants and others

- (1) This Schedule applies to a person or entity who is applying to become a registered NDIS provider in the same way as it applies to a provider.

Note: See section 20 for the applicants and providers that must comply with the NDIS Practice Standards specified in this Schedule.

- (2) This Schedule applies to the following in the same way as it applies to a participant:
- (a) a prospective participant;
  - (b) a person with disability receiving supports or services from a provider under the arrangements set out in Chapter 2 of the Act;
  - (c) a person with disability receiving supports or services from a person included in a class of persons prescribed for the purposes of subparagraph (b)(ii) of the definition of *NDIS provider* in section 9 of the Act.

### 2 Standards relating to early childhood supports

This Schedule specifies the NDIS Practice Standards relating to the provision of early childhood supports.

### 3 The child

Each participant can access supports that promote and respect their legal and human rights, support their development of functional skills and enables them to participate meaningfully and be included in everyday activities with their peers.

### 4 The family

Each participant can access family-centred supports that are culturally inclusive and responsive and that focus on their strengths.

### 5 Inclusion

Each participant can access supports that engage their natural environments and enable inclusive and meaningful participation in their family and community life.

### 6 Collaboration

Each participant receives coordinated supports from a collaborative team comprising their family, the provider and other relevant providers, to facilitate the participant's development and address the family's needs and priorities.



# LIMITED CIRCULATION

Schedule 5 Module 3: Early childhood supports

Clause 7

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## **7 Capacity building**

Each participant receives supports that build the knowledge, skills and abilities of their family and other persons to support the participant's learning and development.

## **8 Evidence-informed supports**

Each participant receives evidence-informed supports from providers with quality standards and validated practices.

## **9 Outcome based approach**

Each participant receives supports that are outcome-based and goal-focused.

# LIMITED CIRCULATION

Module 4: Specialised support coordination **Schedule 6**

Clause 1

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## Schedule 6—Module 4: Specialised support coordination

Note: See section 20.

### 1 Application of standards to applicants, providers, participants and others

- (1) This Schedule applies to a person or entity who is applying to become a registered NDIS provider in the same way as it applies to a provider.

Note: See section 20 for the applicants and providers that must comply with the NDIS Practice Standards specified in this Schedule.

- (2) This Schedule applies to the following in the same way as it applies to a participant:
- (a) a prospective participant;
  - (b) a person with disability receiving supports or services from a provider under the arrangements set out in Chapter 2 of the Act;
  - (c) a person with disability receiving supports or services from a person included in a class of persons prescribed for the purposes of subparagraph (b)(ii) of the definition of *NDIS provider* in section 9 of the Act.

### 2 Standards relating to specialised support coordination

This Schedule specifies the NDIS Practice Standards relating to the provision of specialised support coordination.

### 3 Specialised support coordination

Each participant receiving specialised support coordination receives tailored support to implement, monitor and review their support plans and reduce the risk and complexity of their situation.

### 4 Management of supports

Each participant exercises meaningful choice and control over their supports and maximises the value for money they receive from their supports.

### 5 Conflict of interest

Each participant receives transparent, factual advice about their support options and that promotes choice and control.

# LIMITED CIRCULATION

Schedule 7 Module 5: Specialist disability accommodation

Clause 1

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## Schedule 7—Module 5: Specialist disability accommodation

Note: See sections 20 and 27.

### 1 Application of standards to applicants, providers, participants and others

- (1) This Schedule applies to a person or entity who is applying to become a registered NDIS provider in the same way as it applies to a provider.

Note: See sections 20 and 27 for the applicants and providers that must comply with the NDIS Practice Standards specified in this Schedule.

- (2) This Schedule applies to the following in the same way as it applies to a participant:
- (a) a prospective participant;
  - (b) a person with disability receiving supports or services from a provider under the arrangements set out in Chapter 2 of the Act;
  - (c) a person with disability receiving supports or services from a person included in a class of persons prescribed for the purposes of subparagraph (b)(ii) of the definition of *NDIS provider* in section 9 of the Act.

### 2 Standards relating to specialist disability accommodation

This Schedule specifies the NDIS Practice Standards relating to the provision of specialist disability accommodation.

### 3 Rights and responsibilities

- (1) Each participant's access to specialist disability accommodation is consistent with their legal and human rights.
- (2) Each participant is supported to exercise informed choice and control.

### 4 Conflict of interest

Each participant's right to exercise choice and control over other NDIS support provision is not limited by the participant's choice of specialist disability accommodation dwelling.

### 5 Service agreements with participants

Each participant is supported to understand the terms and conditions that apply to their specialist disability accommodation dwelling and the associated service or tenancy agreements.

# LIMITED CIRCULATION

Module 5: Specialist disability accommodation **Schedule 7**

Clause 6

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## **6 Enrolment of specialist disability accommodation dwellings**

Each participant's specialist disability accommodation dwelling meets the requirements of the design type, category and other standards that were identified through the dwelling enrolment process.

## **7 Tenancy management**

Each participant accessing a specialist disability accommodation dwelling is able to exercise choice and control and is supported by effective tenancy management.

# LIMITED CIRCULATION

Schedule 8 Module 6: Verification

Clause 1

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## Schedule 8—Module 6: Verification

Note: See section 20.

### 1 Application of standards to applicants, providers, participants and others

- (1) This Schedule applies to a person or entity who is applying to become a registered NDIS provider in the same way as it applies to a provider.

Note: See section 20 for the applicants and providers that must comply with the NDIS Practice Standards specified in this Schedule.

- (2) This Schedule applies to the following in the same way as it applies to a participant:
- (a) a prospective participant;
  - (b) a person with disability receiving supports or services from a provider under the arrangements set out in Chapter 2 of the Act;
  - (c) a person with disability receiving supports or services from a person included in a class of persons prescribed for the purposes of subparagraph (b)(ii) of the definition of *NDIS provider* in section 9 of the Act.

### 2 Standards relating to assessment by verification

This Schedule specifies the NDIS Practice Standards that providers of certain classes of support that must be assessed using verification are required to comply with.

### 3 Risk management

Risks to participants, workers and the provider are identified and managed.

### 4 Complaints management and resolution

- (1) Each participant has knowledge of and access to the provider's complaints management and resolution system.
- (2) Complaints are welcomed, acknowledged, respected and well-managed.

### 5 Incident management

Each participant is safeguarded by the provider's incident management system, ensuring that incidents are acknowledged, responded to, well-managed and learned from.

### 6 Human resource management

Each participant's support needs are met by workers who are competent in relation to their role, hold relevant qualifications and have relevant expertise and experience to provide person-centred support.

# LIMITED CIRCULATION

Module 6: Verification **Schedule 8**

Section 6

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**LIMITED CIRCULATION**

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## EXPOSURE DRAFT

This is a limited circulation exposure draft. It is supplied in confidence and should be given appropriate protection.

# National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rule 2018

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I, Graeme Head, as delegate of the Minister for Social Services, make the following Rules.

Dated

Graeme Head **DRAFT ONLY—NOT FOR SIGNATURE**  
Commissioner of the NDIS Quality and Safeguards Commission

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# LIMITED CIRCULATION

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## Part 1 - Preliminary

### 1 Name

This instrument is the *National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rule 2018*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2018.	1 July 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under the *National Disability Insurance Scheme Act 2013*.

### 4 Definitions

Note: A number of expressions used in this instrument are defined in section 9 of the Act, including the following:

- (a) Commissioner;
- (b) NDIS
- (b) participant.
- (c) plan
- (c) registered NDIS provider

In this instrument:

*Act* means the *National Disability Insurance Scheme Act 2013*.

*applicant* means a person or entity who has made an application for registration under section 73C of the Act.

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**building authority** means a body or entity established by a State or Territory to administer or regulate the design, construction, renovation, alteration or extension of buildings, including plumbing and other service installations.

**complex home modification** means modifications to a dwelling that are designed to address multiple complex needs of a participant that:

- (a) require structural alteration to the building; and
- (b) may require permits.

**existing stock** has the meaning provided by section 22.

**intentional community** has the meaning provided by section 20.

**legacy stock** has the meaning provided by section 623.

**long-term accommodation** means a dwelling that is to be used as a permanent home and it is not to be used only for respite, emergency or temporary accommodation.

**new build** has the meaning provided by section 21.

**permanent dwellings** means a dwelling that is fixed to the land and would not include a mobile home.

**SDA** means specialist disability accommodation.

**SDA building type** has the meaning provided by section 25.

**SDA design category** has the meaning provided by section 24.

**SDA type** means the SDA design category and SDA building type.

**single parcel of land** has the meaning provided by section 19.

**specialist disability accommodation** means accommodation for people who require specialist housing solutions, including to assist with the delivery of supports that cater for their extreme functional impairment or very high support needs.

**specialist disability accommodation provider** means a registered NDIS provider whose registration includes the provision of specialist disability accommodation supports.

**supported independent living** means assistance with and/or supervising tasks of daily life to develop the skills of individuals to live as autonomously as possible.

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## Part 2 – Conditions of registration

### Division 1 – Introduction

#### 5 Purpose of this Part

- (1) This Part is made for the purpose of section 73H of the Act.
- (2) It sets out the conditions that apply to specialist disability accommodation providers.

Note 1: A registered NDIS provider may be liable to a civil penalty if the provider breaches a condition to which the provider's registration is subject (see section 73J of the Act).

Note 2: The conditions in this Part are in addition to those set out in the Act (see subsection 73F(2) of the Act), those imposed by the Commissioner under subsection 73G(1) of the Act and those imposed under the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*.

Note 3: The Commissioner may vary the registration of a specialist disability accommodation provider to extend, modify or reduce the supports or services the provider is registered to provide under section 73L of the Act.

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## Division 2 – Conditions of registration

### 6 Delivery of SDA only in enrolled dwellings

- (1) The registration of a specialist disability accommodation provider is subject to the condition that the provider must not provide SDA in a dwelling, unless that dwelling has been enrolled in accordance with this section.
- (2) The Commissioner may enrol a dwelling to house a specified number of residents, if the Commissioner considers the dwelling is suitable having regard to this Rule and any other matter the Commissioner considers relevant.
- (3) A specialist disability accommodation provider may apply to the Commissioner to enrol a dwelling as an SDA dwelling.
- (4) The Commissioner may approve a form for the purposes of an application under subsection (3).
- (5) The Commissioner may require specialist disability accommodation providers applying to enrol a dwelling to provide information, including:
  - (a) whether and how the dwelling meets eligibility criteria under section 7;
  - (b) the SDA type of the dwelling and its location;
  - (c) that the dwelling meets the minimum requirements for the SDA design category of the dwelling;
  - (d) if the dwelling is a New Build, or Existing Stock, whether a density restriction applies;
  - (e) the number of bedrooms or similar sized private rooms suitable for residents;
  - (f) the number of residents for which the dwelling is being enrolled;
  - (g) the number of participants with SDA in their plan intended to reside in the dwelling (which may be lower than the number of residents for which the dwelling is being enrolled);
  - (h) details of other features, allowances or factors (such as on-site overnight assistance rooms or fire sprinklers);
  - (i) whether the provider is a participant who intends to provide SDA to themselves;
  - (j) any other information required by the Commissioner.
- (6) The Commissioner may require a specialist disability provider to provide evidence of any of the information specified in subsection (5):
  - (a) in the manner, form and timeframe prescribed by the Commissioner; and
  - (b) from any person or entity prescribed by the Commissioner.

### 7 Eligibility for enrolment

- (1) The registration of a specialist disability accommodation provider is subject to the condition that provider:

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- (a) must not apply to enrol a dwelling unless it is eligible for enrolment in accordance with this section; and
  - (b) must not apply enrol a dwelling to house more residents than the number of bedrooms, or similar sized private rooms, in the dwelling; and
  - (c) ensures that all dwellings that the provider enrolls continue to meet the eligibility requirements for the enrolment of those dwellings after enrolment.
- (2) In order for a dwelling to be eligible for enrolment, the dwelling must meet each of the following requirements:
- (a) the dwelling is a permanent dwelling;
  - (b) the dwelling will provide long-term accommodation for at least one participant;
  - (c) the Commonwealth and participating jurisdictions do not (as at the date of application for enrolment) provide funding for accommodation in respect of the dwelling under a scheme unrelated to disability;  
*Note:* Such funding may still be provided to residents of the dwelling.
  - (d) the dwelling meets all relevant building codes, standards and laws;
  - (e) if a density restriction applies to the dwelling, the density restriction for the relevant parcel of land must be satisfied immediately before the enrolment;  
*Note:* For an explanation of density restrictions, see Part 3.
  - (f) either:
    - (i) the specialist disability accommodation provider owns the dwelling to be enrolled; or
    - (ii) the owner of the dwelling:
      - (A) has acknowledged in writing that the dwelling is to be enrolled as an SDA dwelling; and
      - (B) has not separately enrolled the dwelling as SDA;
  - (g) the dwelling is one of the following:
    - (i) a New Build;
    - (ii) Existing Stock; or
    - (iii) Legacy Stock.
- (3) Despite subsection (2), a dwelling is not eligible for enrolment if:
- (a) the NDIS has funded, as complex home modifications, home modifications for the dwelling at any time after 1 December 2016 and less than 10 years before the day of the enrolment of the dwelling; or
  - (b) the NDIS has funded home modifications, other than complex home modifications, for the dwelling at any time after 1 December 2016 and less than 5 years before the date of the enrolment of the dwelling.

## 8 Compliance with Laws

The registration of a specialist disability accommodation provider is subject to the following conditions:

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- (a) the specialist disability accommodation provider must ensure that each SDA dwelling provided, and the management of it, complies at all times with:
  - (i) the landlord, tenancy, building, and health and safety laws of the State or Territory and local government area in which the SDA dwelling is located; and
  - (ii) applicable building standards; and
  - (iii) any other applicable laws or standards of the Commonwealth, State or Territory and local government area in which the SDA dwelling is located; and
- (b) the specialist disability accommodation provider must ensure that any persons employed or otherwise engaged by the provider comply at all times with:
  - (i) the landlord, tenancy, building, and health and safety laws of the State or Territory and local government area in which the SDA dwelling is located; and
  - (ii) applicable building standards and codes; and
  - (iii) any other applicable laws or standards of the Commonwealth, State or Territory and local government area in which the SDA dwelling is located.

## 9 Service agreements

- (1) Subject to subsection (3), the registration of a specialist disability accommodation provider is subject to a condition that the specialist disability accommodation provider must not provide SDA for a participant unless either:
  - (a) a written service agreement has been entered into between the specialist disability accommodation provider and the participant in relation to the provision of the SDA; or
  - (b) the specialist disability accommodation provider:
    - (i) has worked with the participant to establish a written service agreement in relation to the provision of SDA;
    - (ii) has provided a copy of the proposed agreement to the participant; and
    - (iii) provides SDA to the participant in accordance with the terms of the proposed agreement.
- (2) The service agreement must include terms that set out the rights and responsibilities for the specialist disability accommodation provider and the participant.
- (3) This section does not apply, if the specialist disability accommodation provider is also the participant, receiving SDA from himself or herself.

## 10 Access for providers of other supports

- (1) The section applies where a registered specialist disability accommodation provider, provides this support to a participant that also requires supports from other NDIS providers.

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- (2) The registration of a specialist disability accommodation provider is subject to the following conditions:
- (a) where possible, that provider must enter into written agreements with each participant, and each participant's other NDIS providers who deliver supported independent living in an SDA dwelling; and
  - (b) that the specialist disability accommodation provider ensures that access to an SDA dwelling is provided to providers of other supports to participants residing in each SDA dwelling that they provide.
- (3) If an agreement is entered into pursuant to paragraph (2)(a), the agreement must:
- (a) establish parameters that facilitate a collaborative working arrangement between the participant and all of the participants' NDIS providers to ensure smooth delivery of services; and
  - (b) set out the rights and responsibilities of the specialist disability accommodation provider, the participant's other NDIS providers and the participant.

## 11 Number of residents

The registration of a specialist disability accommodation provider is subject to the following conditions:

- (a) a specialist disability accommodation provider must ensure that no more residents are housed in an SDA dwelling than the number for which the dwelling is enrolled; and
- (b) in the case of dwellings that are enrolled to house more than five long-term residents on the basis that the provider is a participant providing SDA to themselves, the specialist disability accommodation provider must not house any resident in the dwelling other than the participant's spouse or de facto partner and children.

## 12 Notifying the Commissioner

- (1) The registration of a specialist disability accommodation provider is subject to a condition that the specialist disability accommodation provider must notify the Commissioner if any of the following circumstances arise in relation to an SDA dwelling that is currently enrolled:
- (a) there is a change in the SDA design category or SDA building type of an SDA dwelling; and
  - (b) the SDA dwelling is no longer suitable to be used for SDA; and
  - (c) there are circumstances that are likely to change the SDA design category, SDA building type or the suitability of a dwelling they have enrolled for providing SDA.
- (2) The above information must:
- (a) be given in writing; and
  - (b) be given as soon as possible, or within 5 working days, of any of the events set out in subsection (1) occurring.

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- (3) The Commissioner may approve a form for the purposes of giving a notification under subsection (1).

## **13 Good state of repair**

- (1) The registration of a specialist disability accommodation provider is subject to the following conditions:
- (a) the provider must ensure that dwellings enrolled by the specialist disability accommodation provider are in a good state of repair and are being appropriately maintained, having regard to the safety, security and privacy of the residents; and
  - (b) the provider must provide an annual declaration that they meet the condition set out in paragraph (1)(a).
- (2) A declaration made for the purposes of paragraph (1)(b) must be given in the manner and form (if any) specified by the Commissioner.



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## Part 3 – Density Restrictions

### Division 1 – Application of density restrictions

#### 14 Application of density restrictions

- (1) A density restriction applies where:
  - (a) a single parcel of land has multiple dwellings (whether or not they all provide SDA); and
  - (b) at least one of those dwellings is either:
    - (i) a New Build; or
    - (ii) Existing Stock of the sort described in subsection 22(2).

#### 15 Density Restrictions – three or more residents

- (1) This section applies if:
  - (a) there is one or more SDA dwellings on a single parcel of land; and
  - (b) at least one of those dwellings is enrolled to house three or more residents.
- (2) The density restriction is satisfied if the number of participants with SDA in their plan who reside in an SDA dwelling on the single parcel of land, and receive SDA funding, is no more than the greater of:
  - (a) 10 participants; and
  - (b) 10% of the total number of residents capable of residing on the single parcel of land, assuming one resident per bedroom.

#### 16 Density Restrictions – one or two residents

- (1) This section applies if:
  - (a) there is one or more SDA dwelling on a single parcel of land; and
  - (b) none of the SDA dwellings on that single parcel or land are enrolled to house more than two residents.
- (2) The density restriction is satisfied if the number of participants with SDA in their plan who reside in an SDA dwelling on the parcel and receive SDA funding is no more than the greater of:
  - (a) 15 participants; and
  - (b) 15% of the total number of residents capable of residing on the parcel, assuming one resident per bedroom

#### 17 Intentional communities – three or more residents

- (1) This section applies if:
  - (a) there is one or more SDA dwellings on a single parcel of land; and
  - (b) at least one of those dwellings is enrolled to house three or more residents; and

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- (a) the single parcel of land forms part of an intentional community.
- (2) The density restriction is satisfied if the number of participants with SDA in their plan who reside in an SDA dwelling on the parcel and receive SDA funding is no more than the greater of:
  - (a) 10 participants; and
  - (b) 10% of the total number of residents capable of residing on the parcel, assuming one resident per bedroom.

## **18 Intentional communities – one or two residents**

- (1) This section applies if:
  - (a) there is one or more SDA dwellings on a single parcel of land; and
  - (b) none of the SDA dwellings on that single parcel or land are enrolled to house more than two residents; and
  - (a) the single parcel of land forms part of an intentional community.
- (3) The density restriction is satisfied if the number of participants with SDA in their plan who reside in an SDA dwelling on the parcel and receive funding is no more than the greater of:
  - (a) 15 participants; and
  - (b) 25% of the total number of residents capable of residing on the parcel, assuming one resident per bedroom.

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## Division 2 - Definitions

### 19 Meaning of Single Parcel of Land

- (1) For land located in the Australian Capital Territory, all the land comprised within a parcel of land for which a certificate of title has been issued under the *Land Titles Act 1925* (ACT) unless the land forms part of:
- (a) a 'parcel' within the meaning of section 5 of the *Unit Titles Act 2001* (ACT); or
  - (b) a 'community title scheme' as that term is defined for the *Community Title Act 2001* (ACT);

in which case 'parcel of land' means all of the land comprised within that arrangement.

- (2) for land located in New South Wales, all the land comprised in a 'folio of the Register' within the meaning of the *Real Property Act 1900* (NSW) unless the land forms part of:
- (a) a 'parcel' within the meaning of section 5 of the *Strata Schemes (Freehold Development) Act 1973* (NSW);
  - (b) a 'parcel' within the meaning of section 4 of the *Strata Scheme (Leasehold Development) Act 1986* (NSW);
  - (c) a 'parcel' within the meaning of section 4 of the *Strata Schemes Development Act 2015* (NSW); or
  - (d) a 'community parcel', 'neighbourhood parcel' or 'precinct parcel' within the meaning of section 3 of the *Community Land Development Act 1989* (NSW);

in which case 'parcel of land' means all the land comprised within that arrangement;

- (3) for land located in the Northern Territory, all of the land comprised within a 'lot' within the meaning of section 4 of the *Land Title Act* (NT), unless the land forms part of a 'unit titles scheme' within the meaning of section 10(1) of the *Unit Title Schemes Act* (NT), in which case 'parcel of land' means all of the land comprised within that arrangement;
- (4) for land located in Queensland, all the land comprised within a 'lot' within the meaning of the *Land Title Act 1994* (Qld) unless the land forms part of:
- (a) a 'mixed use scheme' within the meaning of section 3 of the *Mixed Use Development Act 1993* (Qld);
  - (b) a 'building units plan' or a 'group titles plan' within the meaning of section 7 of the *Building Units and Group Titles Act 1980* (Qld); or
  - (c) a 'community titles scheme' within the meaning of section 10 of the *Body Corporate and Community Management Act 1997* (Qld);

in which case 'parcel of land' means all of the land comprised in that arrangement.

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- (5) for land located in Tasmania, all of the land comprised within a ‘folio of the Register’ as that term is used in the *Land Titles Act 1980* (Tas) unless the land forms part of a ‘scheme’ within the meaning of section 3 of the *Strata Titles Act 1998* (Tas), in which case ‘parcel of land’ means all of the land comprised within that arrangement;
- (6) for land located in South Australia, all of the land comprised within an ‘allotment’ within the meaning of section 223LA(1)(a) of the *Real Property Act 1886* (SA) unless the land forms part of a ‘strata plan’ within the meaning of section 5 of the *Strata Titles Act 1988* (SA), in which case ‘parcel of land’ means all of the land comprised within that arrangement;
- (7) for land located in Victoria, all of the land comprised within a ‘folio of the Register’ within the meaning of the *Transfer of Land Act 1958* (Vic) unless it forms part of a ‘registered plan’ within the meaning of section 3(1) of the *Subdivision Act 1988* (Vic), in which case ‘parcel of land’ means all of the land comprised within that arrangement; and
- (8) for land located in Western Australia, all of the land comprised within a certificate of title registered under the *Transfer of Land Act 1892* (WA), unless the land forms part of a registered ‘strata/survey-strata plan’ within the meaning of section 3 of the *Strata Titles Act 1985* (WA), in which case ‘parcel of land’ means all of the land comprised within that arrangement.

## 20 Meaning of intentional communities

- (1) An intentional community is a residential community designed to have a high degree of social cohesion, achieved through teamwork and agreed shared values.
- (2) The members of an intention community have chosen to live together based on common social values and have committed to the principle of mutual support.
- (3) An intentional community:
  - (a) has a defined and explicit agreement under which residents have agreed to live in accordance with shared common values, including the principle of mutual support; and
  - (b) is controlled by the members or residents and is not governed by a single entity such as a support provider; and
  - (c) includes general market housing, and is not solely designed to provide supported accommodation services.

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## Part 4 – Dictionary

### 21 New builds

A dwelling is a new build if all of the following apply:

- (a) a certificate of occupancy (or equivalent) was either:
  - (i) first issued in relation to it on or after 1 April 2016; or
  - (ii) issued in relation to it on or after 1 April 2016 following renovations or refurbishments resulting in the dwelling meeting the relevant minimum requirements in the SDA Design Category Requirements Guidelines for one or more of the design categories other than Basic design; and
- (b) one of the following applies:
  - (i) it is enrolled or will be enrolled to house five or fewer long-term residents (excluding support staff); or
  - (ii) it is the home of a participant who intends to provide SDA to themselves (as a specialist disability accommodation provider) and to reside there with, and only with, the participant's spouse or de facto partner and children; and
- (c) all of the dwellings shared areas and the majority of its bedrooms and similar sized private rooms comply with the relevant minimum requirements in the SDA Design Category Requirements Guidelines.

Note: The SDA Design Category Requirements Guidelines may be found on the Commission's website.

### 22 Existing stock

- (1) A dwelling can only be existing stock if it is not a new build and either subsection (2) or (3) apply.
- (2) A dwelling is existing stock if it is not a new build, and all of the following apply:
  - (a) the dwelling does not have a certificate of occupancy issued as described in paragraph 610(a) above;
  - (b) the dwelling is enrolled or will be enrolled to house five or fewer long term residents (excluding support staff);
  - (c) the dwelling has been, at some time between 1 July 2013 and 1 December 2016, primarily used as accommodation for people with disability who have an extreme functional impairment or very high support needs;
  - (d) the dwelling is not an aged care, health care or other facility that is not specifically intended for use as disability accommodation;
  - (e) the dwelling housed at least one resident who received disability related supported accommodation (or equivalent) payments from a State, Territory or Commonwealth Government at some time between 1 July 2013 and 1 December 2016; and
  - (f) all of the dwelling's shared areas and the majority of its bedrooms and similar sized private rooms comply or substantially comply with the

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relevant minimum requirements in the SDA Design Category Requirements Guidelines.

Note: The SDA Design Category Requirements Guidelines may be found on the Commission's website.

- (3) A dwelling is existing stock if it is not a new build, and all of the following apply:
- (a) the dwelling does not have a certificate of occupancy issued as described in paragraph 610(a);
  - (b) one of the following applies:
    - (i) it is enrolled or will be enrolled to house five or fewer long-term residents (excluding support staff); or
    - (ii) it is the home of a participant who intends to provide SDA to themselves (as a specialist disability accommodation provider) and to reside there with, and only with, the participant's spouse or de facto partner and children; and
  - (c) all of the dwelling's shared areas and the majority of its bedrooms and similar sized private rooms comply with the relevant minimum requirements in the SDA Design Category Requirements Guidelines.

Note: The SDA Design Category Requirements Guidelines may be found on the Commission's website.

## 23 Legacy Stock

- (1) A dwelling may only be legacy stock if it is not a new build.
- (2) A dwelling is legacy stock if the dwelling:
  - (a) does not have a certificate of occupancy issued as described in paragraph 610(a);
  - (b) is enrolled or will be enrolled to house more than five long-term residents (excluding support staff);
  - (c) has been, at some time between 1 July 2013 and 1 December 2016, primarily used as accommodation for people with disability who have an extreme functional impairment or very high support needs;
  - (d) has housed at least one resident who received disability related supported accommodation (or equivalent) payments from a State, Territory or Commonwealth Government at some time between 1 July 2013 and 1 December 2016;
  - (e) is not an aged care, health care or other facility that is not specifically intended for use as disability accommodation; and
  - (f) all its shared areas and the majority of its bedrooms and similar sized private rooms comply or substantially comply with the relevant minimum requirements in the SDA Design Category Requirements Guidelines.

Note: The SDA Design Category Requirements Guidelines may be found on the Commission's website.

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## 24 SDA design category

SDA design category means one of the following design types:

- (a) **basic** design, which refers to housing without specialist design features but with a location or other features that cater for the needs of people with disability and assist with the delivery of support services;
- (b) **improved liveability** design, which refers to housing that has been designed to improve 'liveability' by incorporating a reasonable level of physical access and enhanced provision for people with sensory, intellectual or cognitive impairment;
- (c) **fully accessible** design, which refers to housing that has been designed to incorporate a high level of physical access provision for people with significant physical impairment;
- (d) **robust** design, which refers to housing that has been designed to incorporate a high level of physical access provision and to be very resilient, reducing the likelihood of reactive maintenance and reducing the risk to the participant and the community;
- (e) **high physical support** design, which refers to housing that has been designed to incorporate a high level of physical access provision for people with significant physical impairment and requiring very high levels of support.

Note: Further details regarding the minimum requirements for each SDA design category is set out in the SDA Design Category Requirements Guidelines, which may be found on the Commission's website.

## 25 SDA building type

SDA building type means one of the following:

- (a) **apartments**, which are self-contained units occupying only part of a larger residential building. Apartments are typically classified as Building Class 2 under the Building Code of Australia;
- (b) **duplexes, villas and townhouses**, which are separate but semi-attached properties within a single land title or strata titled area. The dwellings will be separated from one or more adjoining dwellings by a fire-resisting wall (although fire resistance is not required for Existing Stock). These may also include ancillary dwellings that are located on the same parcel of land as another dwelling (such as standalone villas or 'granny flats'). These types of buildings are typically classified as Building Class 1(a)(i), 1(a)(ii) or 3 under the Building Code of Australia;
- (c) **houses**, which are detached low-rise dwellings with garden or courtyard areas. Houses are typically classified as Building Class 1(a)(i), 1(b)(i) or 3 under the Building Code of Australia;
- (d) **group homes**, which are houses that are enrolled (or will be enrolled) to house four or five long-term residents. Group homes are typically classified as Building Class 1(b)(i) or 3 under the Building Code of Australia;
- (e) **larger dwellings**, which are enrolled (or will be enrolled) to house more than five long-term residents.

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## Part 5 –Transitional arrangements relating to enrolled dwellings

### 26 Purpose of this part

- (1) This part is made for the purpose of section 73H of the Act.

### 27 Dwellings previously enrolled

- (1) This section applies to a specialist disability accommodation provider if:
  - (a) at a particular time (the *transition time*):
    - (i) a person or entity is approved as a registered provider of supports to provide specialist disability accommodation; and
    - (ii) that registered provider of supports has one or more dwellings enrolled as SDA dwellings under the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016*;
  - (b) at the transition time, the host jurisdiction in which the SDA dwelling is located becomes a participating jurisdiction.

Note: For the meaning of *host jurisdiction* and *participating jurisdiction*, see sections 10 and 10A of the Act.

- (2) Immediately after the transition time the Commissioner is taken to have decided to enrol any dwellings that the person or entity has enrolled as SDA at the transition time.



# LIMITED CIRCULATION



## EXPOSURE DRAFT

This is a limited circulation exposure draft. It is supplied in confidence and should be given appropriate protection.

## National Disability Insurance Scheme (NDIS Provider Definition) Rule 2018

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I, Graeme Head, as delegate of the Minister for Social Services, make the following rule.

Dated

Graeme Head **DRAFT ONLY—NOT FOR SIGNATURE**  
Commissioner of the NDIS Quality and Safeguards Commission

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# LIMITED CIRCULATION

# LIMITED CIRCULATION

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**LIMITED CIRCULATION**

# LIMITED CIRCULATION

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## Preamble

- (1) The National Disability Insurance Scheme (NDIS) represents a fundamental change to how supports for people with disability are funded and delivered across Australia. The NDIS was designed to produce major benefits for people with disability, their families and the broader community.
- (2) The NDIS Quality and Safeguards Commission is responsible for a range of functions under the National Quality and Safeguarding Framework aimed at protecting and preventing harm to people with disability in the NDIS market. The Commission will build the capability of NDIS participants and providers to uphold the rights of people with disability and realise the benefits of the NDIS. The legislation underpinning the NDIS is intended to support participants to be informed purchasers and consumers of NDIS supports and services and to live free from abuse, neglect, violence and exploitation.
- (3) The *National Disability Insurance Scheme (NDIS Provider Definition) Rule 2018* extends the jurisdiction of the NDIS Quality and Safeguards Commission under the definition of **NDIS provider** to cover providers of supports or services to older people with disability who are receiving continuity of supports under the Commonwealth Continuity of Support Programme relating to Specialist Disability Services for Older People. The people receiving these supports and services were found to be ineligible for the NDIS at the time of transition in their State or Territory due to age.

LIMITED CIRCULATION

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## 1 Name

This instrument is the *National Disability Insurance Scheme (NDIS Provider Definition) Rule 2018*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2018.	1 July 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *National Disability Insurance Scheme Act 2013*.

## 4 Definitions

In this instrument:

*Act* means the *National Disability Insurance Scheme Act 2013*.

## 5 Definition of NDIS Provider

For the purposes of the Act, NDIS provider is prescribed to include a person or entity who is providing supports or services to older people with disability who are receiving continuity of support under the Commonwealth Continuity of Support Programme relating to Specialist Disability Services for Older People.

Note 1: Pursuant to section 9 of the Act, the National Disability Insurance Scheme rules may prescribe a person or entity to be an NDIS provider.

Note 2: The *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* specify classes of supports for which NDIS providers must be registered.

Note 3: Pursuant to subsection 73C(2) a person prescribed to be an NDIS provider may apply to be a registered NDIS provider in relation to the provision of services or supports to people with disability.

# LIMITED CIRCULATION



## EXPOSURE DRAFT

This is a limited circulation exposure draft. It is supplied in confidence and should be given appropriate protection.

## National Disability Insurance Scheme (Code of Conduct) Rules 2018

---

I, Graeme Head, as delegate of the Minister for Social Services, make the following rules.

Dated 2018

Graeme Head [DRAFT ONLY—NOT FOR SIGNATURE]  
Commissioner of the NDIS Quality and Safeguards Commission

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# LIMITED CIRCULATION

**LIMITED CIRCULATION**

**LIMITED CIRCULATION**

# LIMITED CIRCULATION

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LIMITED CIRCULATION

# LIMITED CIRCULATION

Preamble

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## Preamble

- (1) The National Disability Insurance Scheme (NDIS) represents a fundamental change to how supports for people with disability are funded and delivered across Australia. The NDIS has potential to produce major benefits for people with disability, their families and the broader community.
- (2) The NDIS Quality and Safeguards Commission is responsible for a range of functions under the National Quality and Safeguarding Framework aimed at protecting and preventing harm to people with disability in the NDIS market. The Commission will build the capability of NDIS participants and providers to uphold the rights of people with disability and realise the benefits of the NDIS. The rules are intended to support participants to be informed purchasers and consumers of NDIS supports and services and to live free from abuse, neglect, violence and exploitation.
- (3) The *National Disability Insurance Scheme (Code of Conduct) Rules 2018* set out the NDIS Code of Conduct, which applies to all NDIS providers and persons employed or otherwise engaged by them, regardless of whether they are registered. The NDIS Code of Conduct supports the rights of people with disability in the National Disability Insurance Scheme to have access to safe and ethical supports, and reflects the core values and principles set out in the National Standards for Disability Services, the National Mental Health Standards and the *National Disability Insurance Scheme Act 2013*.
- (4) To ensure the safety and quality of supports within the emerging NDIS market, the NDIS Code of Conduct sets minimum expectations, shapes the behaviour and culture of NDIS providers and persons employed or otherwise engaged by NDIS providers, and empowers consumers in relation to their rights.
- (5) Anyone can raise a complaint about potential breaches of the NDIS Code of Conduct. When NDIS providers, or persons employed or otherwise engaged by NDIS providers, are found to have breached the NDIS Code of Conduct, the Commissioner is able to take a range of actions as appropriate, including education, compliance and enforcement action or prohibiting them from operating in the NDIS market.

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# LIMITED CIRCULATION

## Part 1 Preliminary

### Section 1

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## Part 1—Preliminary

### 1 Name

This instrument is the *National Disability Insurance Scheme (Code of Conduct) Rules 2018*.

### 2 Commencement

This instrument commences on 1 July 2018.

### 3 Authority

This instrument is made under the *National Disability Insurance Scheme Act 2013*.

### 4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) National Disability Insurance Scheme;
- (b) NDIS Code of Conduct;
- (c) NDIS provider.

In this instrument:

*Act* means the *National Disability Insurance Scheme Act 2013*.

*Code-covered person* has the meaning given under subsection 5(2) of this instrument.

# LIMITED CIRCULATION

NDIS Code of Conduct **Part 2**

Section 5

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## Part 2—NDIS Code of Conduct

### 5 Persons covered by the NDIS Code of Conduct

- (1) This Part is made for the purposes of section 73V of the Act.
- (2) Each of the following persons is a *Code-covered person* for the purposes of this instrument:
  - (a) NDIS providers;
  - (b) all persons employed or otherwise engaged by an NDIS provider.
- (3) Code-covered persons must comply with the NDIS Code of Conduct set out in section 6 of this instrument.

Note: Compliance with the NDIS Code of Conduct is a civil penalty provision (see section 73V of the Act). A civil penalty provision can be enforced by obtaining an order for a person to pay a pecuniary penalty.

### 6 NDIS Code of Conduct

In providing supports or services to people with disability, a Code-covered person must:

- (a) act with respect for individual rights to freedom of expression, self-determination and decision-making in accordance with applicable laws and conventions; and
- (b) respect the privacy of people with disability; and
- (c) provide supports and services in a safe and competent manner, with care and skill; and
- (d) act with integrity, honesty and transparency; and
- (e) promptly take steps to raise and act on concerns about matters that may impact the quality and safety of supports and services provided to people with disability; and
- (f) take all reasonable steps to prevent and respond to all forms of violence against, and exploitation, neglect and abuse of, people with disability; and
- (g) take all reasonable steps to prevent and respond to sexual misconduct or other inappropriate relationships against, with or between people with disability.

# LIMITED CIRCULATION



## EXPOSURE DRAFT

This is a limited circulation exposure draft. It is supplied in confidence and should be given appropriate protection.

# National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018

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I, Graeme Head, as delegate of the Minister for Social Services, make the following rules.

Dated 2018

Graeme Head [DRAFT ONLY—NOT FOR SIGNATURE]  
Commissioner of the NDIS Quality and Safeguards Commission

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# LIMITED CIRCULATION

## Preamble

The National Disability Insurance Scheme (NDIS) represents a fundamental change to how supports for people with disability are funded and delivered across Australia. The NDIS is designed to produce major benefits for people with disability, their families and the broader community.

The NDIS Quality and Safeguards Commission is responsible for a range of functions under the National Quality and Safeguarding Framework aimed at protecting and preventing harm to people with disability in the NDIS market. The Commission will build the capability of NDIS participants and providers to uphold the rights of people with disability and realise the benefits of the NDIS. The legislation underpinning the NDIS is intended to support participants to be informed purchasers and consumers of NDIS supports and services and to live free from abuse, neglect, violence and exploitation.

Registered NDIS providers are required to have complaints management arrangements in place and support people with disability to understand how to make a complaint to the provider and to the NDIS Commissioner.

The NDIS Quality and Safeguards Commissioner will be responsible for supporting the resolution of complaints about the provision of supports and services by all NDIS providers.

In addition to addressing specific issues, complaints can enable systemic issues to be identified and drive improvements in the quality of NDIS supports and services.

The Commission will build the capability of people with disability to pursue complaints and build NDIS provider capability to respond to complaints.

These rules will ensure providers are responsive to the needs of people with disability through the timely resolution of issues and will promote continuous improvement.

# LIMITED CIRCULATION

## Part 1 Preliminary

### Section 1

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## Part 1—Preliminary

### 1 Name

This instrument is the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2018.	1 July 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under the *National Disability Insurance Scheme Act 2013*.

### 4 Definitions

Note: A number of expressions used in this instrument are defined in section 9 of the Act.

In this instrument:

*Act* means the *National Disability Insurance Scheme Act 2013*.

**complainant** means a person who makes a complaint to the Commissioner under section 15.

# LIMITED CIRCULATION

Complaints management and resolution system for registered NDIS providers **Part 2**

Section 5

## **Part 2—Complaints management and resolution system for registered NDIS providers**

### **5 Simplified outline of this Part**

This Part requires all registered NDIS providers to implement and maintain a system to manage and resolve complaints about the supports and services they provide.

The complaints management and resolution system must make sure that people can easily make a complaint and that all complaints are dealt with fairly and quickly.

Providers must make available information about how to make a complaint to the provider and to the Commissioner, and must keep records about complaints that they receive.

### **6 Purpose of this Part**

- (1) This Part is made for the purposes of paragraph 73W(b) of the Act.
- (2) It sets out what must be included in the complaints management and resolution systems of registered NDIS providers.

Note 1: Failure by a registered NDIS provider to comply with the requirements of this Part is a breach of condition of registration (see paragraph 73F(2)(e) of the Act) and may lead to compliance and enforcement action under Division 8 of Part 3A of the Act.

Note 2: A registered NDIS provider also has obligations in relation to incident management systems and reportable incidents that may apply to a complaint if it raises an issue that is an incident or a reportable incident (see sections 73Y and 73Z of the Act and the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*).

### **7 Complaints management and resolution system must comply with this Part**

A registered NDIS provider must implement and maintain a complaints management and resolution system that complies with the requirements set out in this Part.

Note: The complaints management and resolution system must also be appropriate for the provider's size and classes of supports or services provided and make provision in relation to advocates and other representatives of persons with disability (see paragraphs 73W(a), (aa) and (ab) of the Act).

### **8 Complaints management and resolution system requirements**

- (1) The complaints management and resolution system of a registered NDIS provider must:

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## Part 2 Complaints management and resolution system for registered NDIS providers

### Section 8

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- (a) enable any person to make a complaint (including an anonymous complaint) to the registered NDIS provider about the supports or services provided by the provider; and
  - (b) provide for an easy and accessible process for making and resolving complaints; and
  - (c) ensure appropriate support and assistance is provided to any person who wishes to make, or has made, a complaint.
- (2) The process provided for in the system may vary, depending on the nature of the complaint.
- (3) The system must require that:
- (a) complaints are acknowledged, assessed and resolved in a fair, efficient and timely manner; and
  - (b) appropriate action is taken in relation to issues raised in complaints; and
  - (c) reasonable steps are taken to ensure that any person who makes a complaint to the provider, and each person with disability affected by an issue raised in such a complaint, is advised how that complaint or issue may be raised with the Commissioner; and
  - (d) appropriate support and assistance in contacting the Commissioner in relation to a complaint is provided to any person who makes a complaint and each person with disability affected by an issue raised in a complaint.
- (4) The system must also require that reasonable steps are taken to ensure that:
- (a) a person who makes a complaint, or a person with disability affected by an issue raised in a complaint, is not adversely affected as a result of the making of the complaint; and
  - (b) information provided in a complaint is kept confidential and only disclosed if required by law or if the disclosure is otherwise appropriate in the circumstances.
- (5) The system must provide that persons making a complaint:
- (a) are appropriately involved in the resolution of the complaint; and
  - (b) are kept informed of the progress of the complaint, including any action taken, the reasons for any decisions made and options for review of decisions in relation to the complaint.
- (6) The system must provide that, unless it is inappropriate to do so, a person with disability affected by an issue raised in a complaint:
- (a) is kept informed of the progress of the complaint, including any action taken, the reasons for any decisions made and options for review of decisions; and
  - (b) is kept appropriately involved in the resolution of the complaint.
- (7) The system must provide for the following details to be readily available and accessible to the public:
- (a) how a complaint about the registered NDIS provider can be made to the provider;



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Complaints management and resolution system for registered NDIS providers **Part 2**

Section 9

- (b) how a complaint about the registered NDIS provider can be made to the Commissioner.
- (8) The system must also provide for the periodic review of the system to ensure its effectiveness.

## 9 System must afford procedural fairness

- (1) The complaints management and resolution system of a registered NDIS provider must require that people are afforded procedural fairness when a complaint is dealt with by the provider.
- (2) The Commissioner may, by notifiable instrument, make guidelines relating to procedural fairness for the purposes of subsection (1).

## 10 Documentation, record keeping and statistics

- (1) The registered NDIS provider must:
  - (a) document the complaints management and resolution system; and
  - (b) provide copies of the documented system, and the information required by subsection 8(7), in a form that is accessible to the following persons:
    - (i) persons with disability receiving supports or services from the registered NDIS provider, and their families, carers and advocates;
    - (ii) each person employed or otherwise engaged by the registered NDIS provider; and
  - (c) assist persons referred to in paragraph (b) to understand how the documented system operates.

Note: The documentation required by this subsection must relate only to the complaints management and resolution system itself, as information provided in individual complaints must generally be kept confidential (see paragraph 8(4)(b)).

- (2) The system must provide that appropriate records of complaints received by the registered NDIS provider are kept by the provider, including the following, where appropriate:
  - (a) information about complaints;
  - (b) any action taken to resolve complaints;
  - (c) the outcome of any action taken.
- (3) A record made for the purposes of subsection (2) must be kept for 7 years from the day the record is made.

Note: A registered NDIS provider may be required to comply with other Commonwealth, State or Territory laws in relation to the retention of records.

- (4) The system must provide for the collection of statistical and other information relating to complaints made to the provider to enable the provider to:
  - (a) review issues raised in complaints; and
  - (b) identify and address systemic issues raised through the complaints management and resolution process; and

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# LIMITED CIRCULATION

## Part 2 Complaints management and resolution system for registered NDIS providers

### Section 11

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- (c) report information relating to complaints to the Commissioner, if requested to do so by the Commissioner.

#### **11 Roles, responsibilities, compliance and training of workers**

- (1) The complaints management and resolution system of a registered NDIS provider must set out the roles and responsibilities of persons employed or otherwise engaged by the registered NDIS provider in relation to the receipt, management and resolution of complaints made to the provider.
- (2) Without limiting subsection (1), the system must provide that each person employed or otherwise engaged by the registered NDIS provider must comply with the system.
- (3) The system must include requirements relating to the provision of training to persons employed or otherwise engaged by the registered NDIS provider in the use of, and compliance with, the system.

#### **12 Referring complaints**

The complaints management and resolution system of a registered NDIS provider must require a complaint to be referred or notified to any other bodies in accordance with any requirements under relevant Commonwealth, State or Territory laws.

# LIMITED CIRCULATION

Complaints to, and inquiries by, the Commissioner **Part 3**  
Introduction **Division 1**

Section 13

## **Part 3—Complaints to, and inquiries by, the Commissioner**

### **Division 1—Introduction**

#### **13 Simplified outline of this Part**

A person can make a complaint to the Commissioner about any issue connected with supports or services provided by an NDIS provider. Complaints can be made orally, in writing or by any other appropriate means, and can be made anonymously. A complaint can be withdrawn at any time.

If a person makes a complaint, the Commissioner must decide what to do. The Commissioner may decide to:

- (a) take no action, or defer taking action, in some cases (for example, if the complaint was not made in good faith or there is not enough information to continue); or
- (b) help the complainant and other affected people to work with the NDIS provider to resolve the complaint; or
- (c) undertake a resolution process.

In some cases, the Commissioner must give written notice of the decision and the Commissioner can be asked to reconsider the decision.

If the Commissioner decides to undertake a resolution process, the Commissioner can take certain action such as requiring the NDIS provider to attempt to resolve the complaint, or request the affected people to take part in a conciliation process. Information about the outcome of the resolution process must generally be provided to the people involved in the complaint.

The Commissioner has the power to authorise inquiries into issues connected with complaints, or into a series of complaints, about supports or services provided by NDIS providers. An inquiry can be carried out even if a complaint has not been made to the Commissioner.

The Commissioner can publish a report setting out his or her findings in relation to an inquiry.

#### **14 Purposes of this Part**

- (1) This Part is made for the purposes of subsection 73X(1) of the Act.
- (2) It prescribes arrangements relating to the management and resolution of complaints arising out of, or in connection with, the provision of supports or services provided by NDIS providers.

**Note:** Failure by a registered NDIS provider to comply with the requirements of this Part is a breach of condition of registration (see paragraph 73F(2)(f) of the Act) and may lead to compliance and enforcement action under Division 8 of Part 3A of the Act.

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**Part 3** Complaints to, and inquiries by, the Commissioner

**Division 2** Complaints to the Commissioner

Section 15

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## **Division 2—Complaints to the Commissioner**

### **Subdivision A—Complaints**

#### **15 Making a complaint to the Commissioner**

- (1) A person may make a complaint to the Commissioner in relation to an issue arising out of, or in connection with, the provision of supports or services provided by an NDIS provider.
- (2) A complaint:
  - (a) may be made orally, in writing or by any other means which is appropriate in the circumstances; and
  - (b) may be made anonymously.
- (3) The complainant may ask the Commissioner to keep any of the following information confidential:
  - (a) the identity of the complainant;
  - (b) the identity of a person identified in the complaint;
  - (c) any other details included in the complaint.
- (4) The Commissioner must take reasonable steps to ensure that:
  - (a) appropriate support and assistance is provided to any person who wishes to make a complaint; and
  - (b) a person making a complaint, and persons with disability affected by a complaint, are provided with information about accessing an independent advocate.

#### **16 Dealing with a complaint**

- (1) If the Commissioner receives a complaint under section 15, the Commissioner must acknowledge receipt of the complaint.

Note: Notices, forms and information given under the Act, the regulations or this instrument to a person with disability must be explained by the giver of the notice, form or information to the maximum extent possible to the person in the language, mode of communication and terms which that person is most likely to understand (see section 7 of the Act).
- (2) However, subsection (1) does not apply if:
  - (a) the complaint was received anonymously; or
  - (b) the contact details of the complainant were not provided.
- (3) The Commissioner must, in relation to each issue raised in the complaint, decide to do one of the following:
  - (a) take no further action, or defer taking action, on the issue on the basis that section 17 applies to the issue;
  - (b) give assistance and advice to the complainant, a person with disability affected by the issue and the NDIS provider to which the issue relates;

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Complaints to, and inquiries by, the Commissioner **Part 3**  
Complaints to the Commissioner **Division 2**

Section 17

- (c) undertake a resolution process.
- (4) Before making a decision under subsection (3), the Commissioner may do one or more of the following:
  - (a) review documents provided to the Commissioner;
  - (b) visit the location at which the supports or services are provided by the NDIS provider, or the offices of the NDIS provider;
  - (c) discuss the issues raised in the complaint with the complainant, a person with disability affected by an issue raised in the complaint, the NDIS provider or any other person;
  - (d) work with the complainant, a person with disability affected by an issue raised in the complaint, the NDIS provider or a person employed or otherwise engaged by the NDIS provider to:
    - (i) provide advice and assistance; and
    - (ii) where possible and appropriate, assist the persons involved in the complaint to come to a mutually agreed resolution;
  - (e) request information relating to the issues raised in the complaint from any person;
  - (f) take any other action that the Commissioner considers is appropriate in the circumstances.
- (5) In dealing with the complaint, the Commissioner must:
  - (a) consider the views of any person with disability affected by the complaint, if the Commissioner considers it is reasonable and appropriate to do so; and
  - (b) take action under this Division with due regard to procedural fairness, including by allowing a person employed or otherwise engaged by an NDIS provider reasonable opportunity to comment on any proposed adverse finding in relation to the person; and
  - (c) seek to resolve the complaint as quickly, and with as little formality, as a proper consideration of the issues raised in the complaint allows.

Note: The Commissioner must also comply with the rules of procedural fairness when dealing with complaints (see section 30).

## 17 No further action, or deferring action, in relation to a complaint

### *Decision to take no further action*

- (1) The Commissioner may decide to take no further action in relation to a complaint, or an issue raised in a complaint, if the Commissioner is satisfied that one or more of the following apply:
  - (a) the complaint or issue was not raised in good faith;
  - (b) the complaint or issue has been, or is being, dealt with under this instrument;
  - (c) the complaint has been withdrawn under section 18;
  - (d) a person with disability affected by an issue raised in the complaint does not wish the issue to be considered by the Commissioner;

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**Part 3** Complaints to, and inquiries by, the Commissioner

**Division 2** Complaints to the Commissioner

## Section 18

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- (e) the complaint or issue is better dealt with by another person or body;
  - (f) there is insufficient information about the complaint, the issue or the complainant to take any further action;
  - (g) having regard to all the circumstances, further action in relation to the complaint or issue is not appropriate or warranted.
- (2) In deciding whether to take no further action in accordance with paragraph (1)(d), the Commissioner must consider:
- (a) whether the health, safety or welfare of any person with disability affected by an issue raised in the complaint will be negatively impacted by a decision to take no further action; and
  - (b) whether the person with disability referred to in paragraph (1)(d) has been subject to victimisation, coercion or duress in deciding that the person does not wish the issue to be considered.
- (3) The Commissioner may decide to take no further action in relation to a complaint, or an issue raised in a complaint, if the complaint or issue:
- (a) is, or has been, the subject of a legal proceeding; or
  - (b) is, or has been, the subject of a coronial inquiry;
- and the Commissioner is satisfied that that complaint or issue is being, or has been, adequately dealt with.

### *Decision to defer taking action*

- (4) The Commissioner may decide to defer taking action in relation to a complaint or an issue raised in a complaint if the complaint or issue is the subject of a legal proceeding or a coronial inquiry.
- (5) The Commissioner may decide to defer taking action in relation to a complaint or an issue raised in a complaint to enable the complainant or a person with disability affected by the complaint or issue to deal directly with the NDIS provider in relation to the complaint or issue.
- (6) The Commissioner may provide advice and assistance to the complainant, the person with disability or any other person for the purposes of subsection (5).

## **18 Withdrawal of a complaint**

- (1) A complainant may withdraw his or her complaint at any time by advising the Commissioner orally, in writing or by any other means which is appropriate in the circumstances.
- (2) The Commissioner must acknowledge, in writing, receipt of the withdrawal of the complaint.
- (3) Despite the withdrawal of a complaint, the Commissioner may deal, or continue to deal, with the complaint.
- (4) In deciding whether to deal, or continue to deal, with the complaint under subsection (3), the Commissioner may consider the following matters:

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Complaints to, and inquiries by, the Commissioner **Part 3**  
Complaints to the Commissioner **Division 2**

## Section 19

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- (a) the wishes of the person or persons with disability affected by an issue raised in the complaint;
- (b) the health, safety or welfare of any person with disability affected by an issue raised in the complaint;
- (c) whether the complaint may have been withdrawn on the basis of victimisation, coercion or duress.

Note: The Commissioner is not required to give notice of the outcome of a complaints process to a complainant if the complainant withdraws his or her complaint (see Subdivision C).

### 19 Confidentiality

- (1) The Commissioner must take reasonable steps to ensure that a request for confidentiality under subsection 15(3) is complied with.
- (2) However, the Commissioner may decide not to comply with the confidentiality request if the Commissioner considers that doing so will, or is likely to, place at risk the safety, health or wellbeing of any of the following persons:
  - (a) the complainant;
  - (b) a person with disability affected by an issue raised in the complaint;
  - (c) any other person.
- (3) The Commissioner must take all reasonable steps to notify the complainant before deciding not to keep information confidential that the complainant has requested be kept confidential.

### Subdivision B—Resolution process

#### 20 Resolution process

- (1) If the Commissioner decides to undertake a resolution process in relation to a complaint or an issue raised in a complaint, the Commissioner may:
  - (a) require the NDIS provider to which the complaint or issue relates to examine and attempt to resolve the complaint or issue and report back to the Commissioner; or
  - (b) request the complainant, the NDIS provider and any other person to participate in a conciliation process; or
  - (c) provide advice to the NDIS provider in relation to the complaint or issue; or
  - (d) require the NDIS provider to undertake remedial action in relation to the complaint or issue and report back to the Commissioner; or
  - (e) take any other action the Commissioner considers appropriate in the circumstances.
- (2) In taking action under subsection (1), the Commissioner may do one or more of the following:
  - (a) review documents;
  - (b) visit the location at which the supports or services are provided by the NDIS provider;

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**Part 3** Complaints to, and inquiries by, the Commissioner

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- (c) visit the offices of the NDIS provider;
  - (d) discuss the complaint or issue with the complainant, the person with disability affected by the issue, the NDIS provider or any other person;
  - (e) request information relating to the issues raised by the complaint from any person.
- (3) Evidence of anything said or done by a person in the course of the conciliation of a complaint under this section is not admissible in any legal proceedings relating to the complaint.
- (4) Subsection (3) does not apply in relation to any proceedings commenced under, or in connection with, the Act.

### **21 Notifying NDIS provider**

- (1) If the Commissioner decides to undertake a resolution process in relation to a complaint or an issue arising out of a complaint, the Commissioner must notify the NDIS provider to which the complaint or issue relates about the issue as soon as practicable.
- (2) Subsection (1) does not apply if the Commissioner considers that the notification will, or is likely to:
- (a) impede the resolution of the complaint or issue; or
  - (b) place the safety, health or wellbeing of the complainant, a person with disability or any other person at risk; or
  - (c) place the complainant or a person with disability at risk of victimisation, intimidation or harassment.

### **22 Ending the resolution process**

- (1) The Commissioner may decide to end a resolution process in relation to a complaint, or an issue raised in a complaint, if one or more of the following circumstances apply:
- (a) the complaint or issue has been resolved because the complainant, and the NDIS provider to which the complaint or issue relates, have agreed on an outcome;
  - (b) the NDIS provider has addressed the complaint or issue to the satisfaction of the Commissioner;
  - (c) the Commissioner has required the NDIS provider to undertake remedial action within a specified period in relation to the complaint or issue;
  - (d) the Commissioner has initiated action under Division 8 of Part 3A of the Act which relates to the complaint or issue;
  - (e) the complaint has been withdrawn under section 18;
  - (f) the complaint or issue is better dealt with by another person or body;
  - (g) continuation of the resolution process is not appropriate or warranted because the Commissioner is satisfied that:
    - (i) despite reasonable inquiry by the Commissioner, the circumstances giving rise to the complaint or issue cannot be determined; or



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## Section 23

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- (ii) information given by the complainant was not given in good faith; or
- (iii) the complaint or issue has already been, or is already being, dealt with under this instrument; or
- (iv) a person with disability affected by an issue raised in the complaint does not wish the resolution process to continue;
- (h) the Commissioner is satisfied that, because the complaint or issue is, or has been, the subject of a legal proceeding or a coronial inquiry, the complaint or issue has been, or will be, adequately dealt with;
- (i) having regard to all the circumstances, continuation of the resolution process is not appropriate or warranted.

Note: Requirements to provide a notice relating to a decision under this section to end a resolution process are in Subdivision C.

- (2) In deciding whether to end a resolution process in accordance with subparagraph (1)(g)(iv), the Commissioner must consider:
  - (a) whether the health, safety or welfare of any person with disability affected by an issue raised in the complaint will be negatively impacted by the decision; and
  - (b) whether the complaint may have been withdrawn on the basis of victimisation, coercion or duress.

### **Subdivision C—Notices relating to outcome of resolution processes**

#### **23 Notice of decision to take no further action**

- (1) If the Commissioner decides to take no further action in relation to a complaint or an issue arising out of a complaint under paragraph 16(3)(a), the Commissioner must, as soon as practicable, give the complainant:
  - (a) the reasons for the Commissioner's decision to take no further action and any appropriate feedback for the complainant in relation to that decision; and
  - (b) information about how the complainant may apply for reconsideration of the decision by the Commissioner.
- (2) However, the Commissioner is not required to comply with subsection (1) if:
  - (a) the complaint was made anonymously; or
  - (b) the complaint was withdrawn under section 18.
- (3) In complying with subsection (1), the Commissioner may, on request from a person with disability affected by an issue raised in the complaint, exclude information.
- (4) The Commissioner may exclude information under subsection (3) only if the Commissioner is satisfied that such an exclusion will not materially affect the complainant's ability to seek reconsideration of the decision or be afforded procedural fairness.

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**Part 3** Complaints to, and inquiries by, the Commissioner

**Division 2** Complaints to the Commissioner

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### **24 Notice of outcome of resolution process**

- (1) This section applies if the Commissioner decides to end a resolution process in relation to a complaint or an issue raised in a complaint under section 22.
- (2) The Commissioner must, as soon as practicable, give the complainant, each person with disability affected by an issue raised in the complaint, the relevant NDIS provider and any person employed or otherwise engaged by the provider who may have adverse findings made against the person, the following information, in writing:
  - (a) notice of the outcome of the resolution process including:
    - (i) any key findings or outcomes of the resolution process; and
    - (ii) any actions agreed to be taken by an NDIS provider or complainant in relation to the issue; and
    - (iii) any remedial action in relation to the complaint or issue that the Commissioner requires the NDIS provider to undertake within a specified period; and
    - (iv) the Commissioner's decision to end the resolution process and the reasons for that decision;
  - (b) information about how the complainant or the NDIS provider may apply for reconsideration of the Commissioner's decision;
  - (c) any other information the Commissioner considers relevant.
- (3) However, the Commissioner is not required to comply with subsection (2) in relation to the complainant if:
  - (a) the complaint was made anonymously; or
  - (b) the complaint was withdrawn under section 18.
- (4) In complying with subsection (2), the Commissioner may, on request from a person with disability affected by an issue raised in the complaint, exclude information.
- (5) The Commissioner may exclude information under subsection (4) only if the Commissioner is satisfied that such an exclusion will not materially affect the complainant's ability to seek reconsideration of the decision.
- (6) The Commissioner may include different information in a notice given under this section to the complainant, a person with disability affected by an issue raised in the complaint, the NDIS provider and a person employed or otherwise engaged by the provider.

### **25 Provision of information to other persons**

The Commissioner may give information, including about action taken in relation to an issue raised in a complaint, to any person or body that the Commissioner considers has a sufficient interest in the matter.

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Section 26

## Subdivision D—Reconsideration of decisions

### 26 Application for reconsideration by the Commissioner

#### *Reconsideration of a decision to take no further action*

- (1) A complainant, or a person with disability affected by an issue raised by a complaint, may apply to the Commissioner for reconsideration of a decision by the Commissioner under paragraph 16(3)(a) to take no further action on the complaint or an issue raised in the complaint.
- (2) However, an application cannot be made under subsection (1) if the decision was made because of the circumstance mentioned in paragraph 17(1)(c) (complaint has been withdrawn).

#### *Reconsideration of a decision made to end a resolution process*

- (3) If the Commissioner makes a decision under section 22 to end a resolution process in relation to a complaint or an issue, any of the following persons may apply to the Commissioner for reconsideration of the decision:
  - (a) the complainant;
  - (b) a person with disability affected by the issue;
  - (c) the NDIS provider to which the complaint or issue relates;
  - (d) a person employed or otherwise engaged by the NDIS provider who may have an adverse finding made against the person.
- (4) However, an application cannot be made under subsection (3) if:
  - (a) the decision was made in the circumstances mentioned in paragraph 22(1)(f) (issue better dealt with by another person or body); or
  - (b) the decision was made after a reconsideration decision under paragraph 27(1)(b) and one or more of the circumstances in section 22 applies.

#### *Applications*

- (5) A person making an application under subsection (1) or (3) for reconsideration of a decision must:
  - (a) state the reasons why reconsideration is sought; and
  - (b) unless subsection (7) applies—make the application within 42 days of the person being notified of the decision.
- (6) The Commissioner may extend the period under paragraph (5)(b) if the Commissioner is satisfied it is appropriate to do so.
- (7) An application under subsection (1) or (3) may be made orally, in writing or by any other means which is appropriate in the circumstances.
- (8) If satisfied it is reasonable in all the circumstances to do so, the Commissioner may:

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**Part 3** Complaints to, and inquiries by, the Commissioner

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- (a) notify any other person of an application made under subsection (1) or (3); and
- (b) provide any other person with a copy of the application; and
- (c) provide an opportunity for any other person to provide comments on the application within the period specified by the Commissioner.

### **27 Reconsideration by the Commissioner on application**

- (1) Within 28 days of receiving an application under section 26 to reconsider a decision, the Commissioner must:
  - (a) confirm the decision in relation to which reconsideration has been sought; or
  - (b) decide to undertake a new resolution process.
- (2) If the Commissioner is satisfied that the application for reconsideration raises an issue that was not part of, or not related to, the original complaint, the Commissioner may treat the application as a fresh complaint.
- (3) If the Commissioner confirms the original decision under paragraph (1)(a), the Commissioner must notify the following, in writing, of the Commissioner's decision:
  - (a) the applicant;
  - (b) a person with disability affected by an issue raised in the complaint.
- (4) If the Commissioner decides to undertake a new resolution process in relation to a complaint or an issue under paragraph (1)(b):
  - (a) the Commissioner must notify the following, in writing, of the Commissioner's decision:
    - (i) the complainant;
    - (ii) unless the Commissioner is satisfied it would be inappropriate to do so—a person with disability affected by the issue;
    - (iii) the NDIS provider to which the complaint or issue relates;
    - (iv) a person employed or otherwise engaged by the NDIS provider who may have an adverse finding made against the person; and
  - (b) the Commissioner must complete the new resolution process:
    - (i) in accordance with Subdivisions B and C; and
    - (ii) within 90 days of receiving the application under section 26 to reconsider the decision.
- (5) The Commissioner may, before the end of the period referred to in subparagraph (4)(b)(ii), extend the period by up to 14 days.
- (6) If the Commissioner decides to extend the period under subsection (5), the Commissioner must notify the following of the decision, including reasons for the decision:
  - (a) the complainant;
  - (b) a person with disability affected by an issue raised in the complaint;
  - (c) the NDIS provider to which the issue relates;

# LIMITED CIRCULATION

Complaints to, and inquiries by, the Commissioner **Part 3**  
Complaints to the Commissioner **Division 2**

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- (d) any person employed or otherwise engaged by the NDIS provider who may have an adverse finding made against the person.

## **28 Reconsideration by the Commissioner on own motion**

- (1) The Commissioner may reconsider a decision (the *original decision*) made by the Commissioner in relation to a complaint if the Commissioner becomes aware of new information that, had the Commissioner been aware of it at the time the original decision was made, may have affected the original decision.
- (2) In exercising the power under subsection (1), the Commissioner must have regard to the following matters:
  - (a) the time period that has elapsed since the original decision was made;
  - (b) the effect a reconsideration of the original decision would have on any relevant party, including the complainant, a person with disability affected by an issue raised in the complaint, the NDIS provider or a person employed or otherwise engaged by the NDIS provider;
  - (c) any other matter the Commissioner considers relevant.
- (3) If the Commissioner decides to reconsider the original decision, the Commissioner:
  - (a) must give written notice of the decision to each person who was provided with notice in relation to the original decision; and
  - (b) must undertake a new resolution process.

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**Part 3** Complaints to, and inquiries by, the Commissioner

**Division 3** Inquiries by the Commissioner

Section 29

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## **Division 3—Inquiries by the Commissioner**

### **29 Inquiries by the Commissioner in relation to complaints**

- (1) The Commissioner may, on his or her own initiative, authorise an inquiry in relation to an issue arising out of, or connected with, a complaint about the provision of supports or services by an NDIS provider.
- (2) The Commissioner may, on his or her own initiative, authorise an inquiry in relation to a series of complaints that have occurred in connection with the provision of supports or services by one or more NDIS providers.
- (3) An inquiry may be carried out whether or not a complaint has been received under section 15.
- (4) An inquiry may be carried out as the Commissioner thinks fit and the Commissioner is not bound by any rules of evidence.
- (5) Without limiting subsection (4), the Commissioner may:
  - (a) consult with other persons, bodies and governments on matters relating to the inquiry; or
  - (b) request information that is relevant to the inquiry from any person; or
  - (c) provide opportunities for people with disability to participate in the inquiry.
- (6) The Commissioner may prepare and publish a report setting out his or her findings in relation to the inquiry.

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Complaints to, and inquiries by, the Commissioner **Part 3**  
Other matters **Division 4**

Section 30

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## **Division 4—Other matters**

### **30 Commissioner must comply with procedural fairness rules**

In dealing with a complaint, the Commissioner must have due regard to the rules of procedural fairness.

Note: The Commissioner may make guidelines for the purposes of dealing with complaints, including in relation to matters of procedural fairness (see subsection 181D(2) of the Act).

### **31 Referral to other organisations**

- (1) Nothing in this instrument prevents the Commissioner from referring an issue raised in a complaint to the Minister, the Agency, or any other person or body.
- (2) The Commissioner may continue to deal with an issue raised in a complaint even if the Commissioner has referred the issue under subsection (1).

### **32 Commissioner may take action under the Act**

Nothing in this instrument prevents the Commissioner from taking action under Division 8 of Part 3A of the Act in relation to an issue raised in a complaint or an issue raised in information received by the Commissioner.

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# LIMITED CIRCULATION



## EXPOSURE DRAFT

This is a limited circulation exposure draft. It is supplied in confidence and should be given appropriate protection.

# National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018

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I, Graeme Head, as delegate of the Minister for Social Services, make the following rules.

Dated 2018

Graeme Head [DRAFT ONLY—NOT FOR SIGNATURE]  
Commissioner of the NDIS Quality and Safeguards Commission

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# LIMITED CIRCULATION

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# LIMITED CIRCULATION

## Preamble

The National Disability Insurance Scheme (NDIS) represents a fundamental change to how supports for people with disability are funded and delivered across Australia. The NDIS is designed to produce major benefits for people with disability, their families and the broader community.

The NDIS Quality and Safeguards Commission is responsible for a range of functions under the National Quality and Safeguarding Framework aimed at protecting and preventing harm to people with disability in the NDIS market. The Commission will build the capability of NDIS participants and providers to uphold the rights of people with disability and realise the benefits of the NDIS. The legislation underpinning the NDIS is intended to support participants to be informed purchasers and consumers of NDIS supports and services and to live free from abuse, neglect, violence and exploitation.

Registered NDIS providers must establish incident management arrangements to enable the identification of systemic issues and drive improvements in the quality of the supports they deliver. Providers must also notify, investigate and respond to reportable incidents.

The NDIS Quality and Safeguards Commissioner will receive notifications of reportable incidents and oversee providers' responses to these incidents.

The Commissioner will work with providers to build their capability to respond appropriately to incidents and improve their systems to prevent incidents from occurring and minimise their impact on people with disability when they do occur.

Oversight, combined with effective provider practice, can reduce preventable deaths, serious injuries and other serious incidents through early intervention and capacity-building.

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# LIMITED CIRCULATION

## Part 1 Preliminary

### Section 1

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## Part 1—Preliminary

### 1 Name

This instrument is the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2018.	1 July 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under the *National Disability Insurance Scheme Act 2013*.

### 4 Definitions

Note: A number of expressions used in this instrument are defined in section 9 of the Act, including the following:

- (a) key personnel;
- (b) registered NDIS provider;
- (c) reportable incident.

In this instrument:

*Act* means the *National Disability Insurance Scheme Act 2013*.

# LIMITED CIRCULATION

Incident management systems for registered NDIS providers **Part 2**  
Introduction **Division 1**

Section 5

## **Part 2—Incident management systems for registered NDIS providers**

### **Division 1—Introduction**

#### **5 Simplified outline of this Part**

This Part requires all registered NDIS providers to implement and maintain a system to record and manage certain incidents that happen in connection with providing supports or services to people with disability.

The incidents that must be recorded and managed are:

- (a) incidents that have, or could have, caused harm to a person with disability receiving supports or services; and
- (b) acts by a person with disability that happen in connection with the provision of supports or services and that have caused serious harm, or a risk of serious harm, to another person; and
- (c) reportable incidents that are alleged to have occurred in connection with the provision of supports or services.

The incident management system must set up procedures for identifying, assessing, managing and resolving such incidents. These procedures must specify things such as the people to whom incidents must be reported, how people with disability affected by an incident will be supported and involved in resolving the incident and when corrective action is required.

Registered NDIS providers must keep records about incidents, and must document their incident management system. Copies of the documented system must be available to certain people, including workers and persons with disability receiving supports or services from the provider.

#### **6 Purpose of this Part**

- (1) This Part is made for the purposes of paragraph 73Y(b) of the Act.
- (2) It sets out what must be included in the incident management systems of registered NDIS providers.

Note 1: Failure by a registered NDIS provider to comply with the requirements of this Part constitutes a breach of condition of registration (see paragraph 73F(2)(g) of the Act) and may lead to compliance and enforcement action under Division 8 of Part 3A of the Act.

Note 2: A registered NDIS provider has additional obligations if an incident is the subject of a complaint (see sections 73W and 73X of the Act and the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018*).

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# LIMITED CIRCULATION

**Part 2** Incident management systems for registered NDIS providers

**Division 1** Introduction

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## **7 Incidents that are also reportable incidents**

The requirements of this Part and the requirements of Part 3 must be complied with in relation to an incident if the incident is both:

- (a) of a kind that is required to be covered by an incident management system;  
and
- (b) a reportable incident.

Note: For the kinds of incidents required to be covered by an incident management system, see section 9 of this instrument. For the meaning of *reportable incident*, see subsection 73Z(4) of the Act and section 16 of this instrument.

# LIMITED CIRCULATION

Incident management systems for registered NDIS providers **Part 2**  
Incident management system requirements **Division 2**

Section 8

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## Division 2—Incident management system requirements

### 8 System must comply with this Division

A registered NDIS provider must implement and maintain an incident management system that complies with the requirements set out in this Division.

Note: The incident management system must also be appropriate for the size of the provider and for the classes of supports or services provided (see paragraph 73Y(a) of the Act).

### 9 Incidents that must be covered

- (1) The incident management system of a registered NDIS provider must cover incidents that consist of acts, omissions, events or circumstances that:
  - (a) occur in connection with providing supports or services to a person with disability; and
  - (b) have, or could have, caused harm to the person with disability.
- (2) The incident management system must also cover incidents that consist of acts by a person with disability that:
  - (a) occur in connection with providing supports or services to the person with disability; and
  - (b) have caused serious harm, or a risk of serious harm, to another person.
- (3) The incident management system must also cover reportable incidents that are alleged to have occurred in connection with providing supports or services to a person with disability.

### 10 Incident management system procedures

- (1) The incident management system of a registered NDIS provider must establish procedures to be followed in identifying, managing and resolving incidents, including procedures that specify the following:
  - (a) how incidents are identified, recorded and reported;
  - (b) to whom incidents must be reported;
  - (c) the person who is responsible for reporting incidents that are reportable incidents to the Commissioner;
  - (d) how the registered NDIS provider will provide support and assistance to persons with disability affected by an incident (including information about access to advocates such as independent advocates), to ensure their health, safety and wellbeing;
  - (e) how persons with disability affected by an incident will be involved in the management and resolution of the incident;
  - (f) when an investigation by the registered NDIS provider is required to establish the causes of a particular incident, its effect and any operational issues that may have contributed to the incident occurring, and the nature of that investigation;
  - (g) when corrective action is required and the nature of that action.

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# LIMITED CIRCULATION

## Part 2 Incident management systems for registered NDIS providers

### Division 2 Incident management system requirements

#### Section 11

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- (2) The procedures may vary, depending on the seriousness of the incident.
- (3) The incident management system must require all incidents to be assessed in relation to the following, with the assessment considering the views of persons with disability affected by the incident:
  - (a) whether the incident could have been prevented;
  - (b) how well the incident was managed and resolved;
  - (c) what, if any, remedial action needs to be undertaken to prevent further similar incidents from occurring, or to minimise their impact;
  - (d) whether other persons or bodies need to be notified of the incident.
- (4) The incident management system must set out procedures for ensuring that the requirements of subsection (3) are complied with.
- (5) The incident management system must provide that, if the incident is a reportable incident, the incident must also be notified and managed in accordance with Part 3.
- (6) The incident management system must also provide for the periodic review of the system to ensure its effectiveness.

#### **11 System must afford procedural fairness**

- (1) The incident management system of a registered NDIS provider must require that people are afforded procedural fairness when an incident is dealt with by the provider.
- (2) The Commissioner may, by notifiable instrument, make guidelines relating to procedural fairness for the purposes of subsection (1).

#### **12 Documentation, record keeping and statistics**

- (1) A registered NDIS provider must:
  - (a) document its incident management system; and
  - (b) provide copies of the documented system, in an accessible form, to the following persons:
    - (i) persons with disability receiving supports or services from the registered NDIS provider;
    - (ii) each person employed or otherwise engaged by the registered NDIS provider;
    - (iii) the family members, carers, independent advocates and significant others of persons with disability receiving supports or services from the registered NDIS provider; and
  - (c) assist persons referred to in paragraph (b) to understand how the documented system operates.
- (2) The incident management system of a registered NDIS provider must provide for the following details, as a minimum, to be recorded in relation to each incident that occurs:

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Incident management systems for registered NDIS providers **Part 2**  
Incident management system requirements **Division 2**

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- (a) a description of the incident, including the impact on, or harm caused to, any person with disability affected by the incident;
  - (b) whether the incident is a reportable incident;
  - (c) if known—the time, date and place at which the incident occurred;
  - (d) if paragraph (c) does not apply—the time and date the incident was first identified;
  - (e) the names and contact details of the persons involved in the incident;
  - (f) the names and contact details of any witnesses to the incident;
  - (g) details of the assessment undertaken in accordance with the requirements of subsection 10(3);
  - (h) the actions taken in response to the incident, including actions taken to support or assist persons with disability affected by the incident;
  - (i) any consultations undertaken with the persons with disability affected by the incident;
  - (j) whether persons with disability affected by the incident have been provided with any reports or findings regarding the incident;
  - (k) if an investigation is undertaken by the provider in relation to the incident—the details and outcomes of the investigation;
  - (l) the name and contact details of the person making the record of the incident.
- (3) The incident management system must provide for the following details, as a minimum, to be recorded in relation to each reportable incident that is alleged to have occurred:
- (a) a description of the alleged incident;
  - (b) if known—the time, date and place at which the incident is alleged to have occurred;
  - (c) the names and contact details of the persons involved in the alleged incident;
  - (d) the names and contact details of any witnesses to the alleged incident;
  - (e) details of the assessment undertaken in accordance with the requirements of subsection 10(3);
  - (f) the actions taken in response to the alleged incident, including actions taken to support or assist persons with disability affected by the incident;
  - (g) any consultations undertaken with the persons with disability affected by the alleged incident;
  - (h) whether persons with disability affected by the incident have been provided with any reports or findings regarding the alleged incident;
  - (i) if an investigation is undertaken by the provider in relation to the alleged incident—the details and outcomes of the investigation;
  - (j) the name and contact details of the person making the record of the alleged incident.
- (4) A record made for the purposes of this section must be kept for 7 years from the day the record is made.

Note: A registered NDIS provider may be required to comply with other Commonwealth, State or Territory laws in relation to the retention of records.

LIMITED CIRCULATION



# LIMITED CIRCULATION

**Part 2** Incident management systems for registered NDIS providers

**Division 2** Incident management system requirements

## Section 13

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- (5) The incident management system must require the collection of statistical and other information in relation to incidents to enable the registered NDIS provider to report information relating to incidents to the Commissioner, if requested by the Commissioner.
- (6) This section does not limit paragraph 10(1)(a).

### **13 Roles, responsibilities, compliance and training of workers**

- (1) The incident management system of a registered NDIS provider must set out the roles and responsibilities of persons employed or otherwise engaged by the registered NDIS provider in identifying, managing and resolving incidents and in preventing incidents from occurring.
- (2) Without limiting subsection (1), the incident management system must provide that each person employed or otherwise engaged by the registered NDIS provider must comply with the incident management system.
- (3) The incident management system must include requirements relating to the provision of training to persons employed or otherwise engaged by the registered NDIS provider in the use of, and compliance with, the incident management system.

# LIMITED CIRCULATION

Reportable incidents **Part 3**

Section 14

## Part 3—Reportable incidents

### 14 Simplified outline of this Part

Certain incidents that happen, or are alleged to have happened, in connection with the provision of supports or services by registered NDIS providers are known as **reportable incidents**. These incidents include the death, serious injury, abuse or neglect of a person with disability and the use of restrictive practices in particular circumstances.

If a reportable incident occurs, or is alleged to have occurred, the registered NDIS provider must give details about the incident to the Commissioner. Details of certain incidents (such as the death of a person with disability) must be notified within 24 hours, while others must be notified within 5 business days.

Registered NDIS providers must keep records about reportable incidents.

If the Commissioner is notified about a reportable incident, the Commissioner may take certain action, including requiring the provider to undertake specified remedial action, carry out an internal investigation about the incident or engage an independent expert to investigate and report on the incident.

The Commissioner has the power to authorise inquiries in relation to reportable incidents. An inquiry can be carried out even if a reportable incident has not been notified to the Commissioner.

The Commissioner can publish a report setting out his or her findings in relation to an inquiry.

### 15 Purpose of this Part

- (1) This Part is made for the purposes of section 73Z of the Act.
- (2) It is about reportable incidents that occur in connection with the provision of supports or services by registered NDIS providers.
  - Note 1: This Part covers reportable incidents that are alleged to have occurred, as well as reportable incidents that have actually occurred (see section 17).
  - Note 2: For the meaning of **reportable incident**, see subsection 73Z(4) of the Act and section 16 of this instrument.
- (3) These reportable incidents must be notified and managed in accordance with this Part.
  - Note: Failure by a registered NDIS provider to comply with the requirements of this Part constitutes a breach of condition of registration (see paragraph 73F(2)(h) of the Act) and may lead to compliance and enforcement action under Division 8 of Part 3A of the Act.

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# LIMITED CIRCULATION

## Part 3 Reportable incidents

### Section 16

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#### 16 What is a *reportable incident*?

- (1) This section is made for the purposes of subsection 73Z(5) of the Act.
- (2) An act specified in paragraph 73Z(4)(d) of the Act that occurs in relation to a person with disability is not a *reportable incident* if:
  - (a) the act is unlawful physical contact with a person with disability; and
  - (b) the contact with, and impact on, the person with disability is negligible.
- (3) Despite paragraph 73Z(4)(f) of the Act, the use of a restrictive practice in relation to a person with disability where the use is in accordance with an authorisation (however described) of a State or Territory is a *reportable incident* if the use is not in accordance with a behaviour support plan for the person with disability.

Note: See also subsection 73Z(4) of the Act, which sets out the definition of *reportable incidents*.

- (4) Despite paragraph 73Z(4)(f) of the Act, the use of a restrictive practice in relation to a person with disability where the use is not in accordance with an authorisation (however described) of a State or Territory is not a *reportable incident* if:
  - (a) the use is in accordance with a behaviour support plan for the person with disability; and
  - (b) the State or Territory in which the restrictive practice is used does not have authorisation process in relation to the use of the restrictive practice.

#### 17 Reportable incidents include alleged reportable incidents

A reference in this Part to a reportable incident that has occurred includes a reference to a reportable incident that is alleged to have occurred.

#### 18 Duty of key personnel of registered NDIS providers in relation to reportable incidents

The following must take all reasonable steps to ensure that reportable incidents that occur in connection with the provision of supports or services by a registered NDIS provider are notified to the Commissioner:

- (a) members of the key personnel of the provider;
- (b) the person specified for the purposes of paragraph 10(1)(c) for the provider.

#### 19 Duty of workers to notify registered NDIS provider of reportable incidents

If a person employed or otherwise engaged by a registered NDIS provider becomes aware that a reportable incident has occurred in connection with the provision of supports or services by the provider, the person must notify one of the following of that fact as soon as possible:

- (a) a member of the provider's key personnel;
- (b) a supervisor or manager of the person;

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Reportable incidents **Part 3**

Section 20

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- (c) the person specified for the purposes of paragraph 10(1)(c) for the provider.

## **20 Certain reportable incidents must be notified to the Commissioner within 24 hours**

- (1) This section applies if:
  - (a) a registered NDIS provider becomes aware that a reportable incident has occurred in connection with the provision of supports or services by the provider; and
  - (b) the reportable incident is:
    - (i) the death of a person with disability; or
    - (ii) the serious injury of a person with disability; or
    - (iii) the abuse or neglect of a person with disability; or
    - (iv) the unlawful sexual or physical contact with, or assault of, a person with disability; or
    - (v) sexual misconduct committed against, or in the presence of, a person with disability, including grooming of the person for sexual activity.

Note: For the purposes of subparagraph (b)(iv), certain physical contact is not a reportable incident and so is not covered by the requirements of this section (see subsection 16(2)).

- (2) Subject to subsection (3), the registered NDIS provider must notify the Commissioner of the following information within 24 hours:
  - (a) the name and contact details of the registered NDIS provider;
  - (b) a description of the reportable incident;
  - (c) except for a reportable incident of a kind covered by subparagraph (1)(b)(i)—a description of the impact on, or harm caused to, the person with disability;
  - (d) the immediate actions taken in response to the reportable incident, including actions taken to ensure the health, safety and wellbeing of persons with disability affected by the incident and whether the incident has been reported to police or any other body;
  - (e) the name and contact details of the person making the notification;
  - (f) the time, date and place at which the reportable incident occurred;
  - (g) the names and contact details of the persons involved in the reportable incident;
  - (h) any other information required by the Commissioner.

Note: The information required by paragraphs (b), (c), (f) and (g) may not need to be given in certain circumstances (see section 22).

- (3) If, within 24 hours after the provider became aware that the incident occurred, insufficient information is available to comply with subsection (2), the provider must:
  - (a) provide the information mentioned in paragraphs (2)(a) to (e) within the 24 hour period; and

# LIMITED CIRCULATION

## Part 3 Reportable incidents

### Section 21

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- (b) provide the remaining information required by that subsection within 5 business days after the provider became aware that the incident occurred.
- (4) The registered NDIS provider must notify the Commissioner of the following information within 5 business days after the provider became aware that the incident occurred:
  - (a) the names and contact details of any witnesses to the reportable incident;
  - (b) any further actions proposed to be taken in response to the reportable incident.
- (5) A notification in accordance with subsection (2) may be given by telephone or in writing.
- (6) A notification given in accordance with paragraph (3)(a) or (b) or subsection (4) must be given in writing.
- (7) If a notification is given in writing, the Commissioner must acknowledge its receipt within 24 hours.
- (8) The Commissioner must approve a form for the purposes of giving notifications in writing under this section.

#### **21 Other reportable incidents must be notified to the Commissioner within 5 business days**

- (1) A registered NDIS provider must notify the Commissioner in accordance with this section if:
  - (a) the registered NDIS provider becomes aware that a reportable incident has occurred in connection with the provision of supports or services by the provider; and
  - (b) the reportable incident is not of a kind covered by paragraph 20(1)(b).
- (2) The notification must:
  - (a) be given in writing; and
  - (b) be given within 5 business days after the provider became aware that the reportable incident occurred; and
  - (c) include all of the information required by subsection (3).
- (3) The information required is as follows:
  - (a) the name and contact details of the registered NDIS provider;
  - (b) a description of the reportable incident, including the impact on, or harm caused to, the person with disability;
  - (c) if known—the time, date and place at which the reportable incident occurred;
  - (d) the names and contact details of the persons involved in the reportable incident;
  - (e) the names and contact details of any witnesses to the reportable incident;
  - (f) the immediate actions taken in response to the reportable incident, including actions taken to ensure the health, safety and wellbeing of

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Reportable incidents **Part 3**

## Section 22

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persons with disability affected by the incident and whether the incident has been reported to police or any other body;

- (g) any further actions proposed to be taken in response to the reportable incident;
- (h) the name and contact details of the person making the notification;
- (i) any other information required by the Commissioner.

Note: The information required by paragraphs (b) to (e) may not need to be given in certain circumstances (see section 22).

- (4) The Commissioner must acknowledge receipt of the notification within 24 hours after receiving it.
- (5) The Commissioner must approve a form for the purposes of giving notifications under this section.

### **22 Circumstances in which certain information relating to reportable incidents need not be obtained or notified**

A registered NDIS provider is not required to obtain, or notify the Commissioner of, the information mentioned in paragraph 20(2)(b), (c), (f) or (g), or 21(3)(b), (c), (d) or (e) if obtaining the information would, or could reasonably be expected to:

- (a) prejudice the conduct of a criminal or other investigation; or
- (b) expose a person with disability to a risk of harm.

### **23 Keeping the Commissioner updated**

- (1) This section applies if:
  - (a) a registered NDIS provider gives notification of a reportable incident under section 20 or 21 at a particular time; and
  - (b) the provider becomes aware of significant new information in relation to the incident after that time; and
  - (c) the significant new information:
    - (i) is or relates to a change in the kind of reportable incident; or
    - (ii) is a further reportable incident.
- (2) The provider must notify the Commissioner of the significant new information as soon as reasonably practicable after becoming aware of the information.
- (3) The notification must be given in writing.
- (4) If notification is given under this section of a further reportable incident, the registered NDIS provider is taken to have complied with section 20 or 21 (as the case requires).
- (5) The Commissioner may approve a form for the purposes of giving notifications in writing under this section.

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## Part 3 Reportable incidents

### Section 24

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#### 24 Providing the Commissioner with a final report

- (1) If a registered NDIS provider gives notification of a reportable incident under subsection 20(4) or section 21, the Commissioner may require the provider to give the information required by subsection (2) to the Commissioner, within 60 business days after the notification is given under subsection 20(4) or section 21, or a longer period specified by the Commissioner.
- (2) The information required is as follows:
  - (a) details of any internal or external investigation or assessment that has been undertaken in relation to the incident, including:
    - (i) the name and position of the person who undertook the investigation; and
    - (ii) when the investigation was undertaken; and
    - (iii) details of any findings made; and
    - (iv) details of any corrective or other action taken after the investigation;
  - (b) a copy of any report of the investigation or assessment;
  - (c) whether persons with disability affected by the incident (or their representative) have been kept informed of the progress, findings and actions relating to the investigation or assessment;
  - (d) any other information required by the Commissioner.
- (3) The information must be given in writing.
- (4) The Commissioner must approve a form for the purposes of giving information under this section.

#### 25 Record keeping

- (1) If a registered NDIS provider becomes aware that a reportable incident has occurred in connection with the provision of supports or services by the provider, the provider must keep a record of the incident.
- (2) The record must be kept for 7 years from the day that notification of the reportable incident is given under subsection 20(2), paragraph 21(2)(b) or subsection 23(2) (as the case requires).

Note: A registered NDIS provider may be required to comply with other Commonwealth, State or Territory laws in relation to the retention of records.
- (3) It is sufficient compliance with this section if the provider keeps the record of the reportable incident required to be made under section 12.

#### 26 Action by the Commissioner in relation to reportable incidents

- (1) The Commissioner may, upon receiving notification that a reportable incident has occurred in connection with the provision of supports or services by a registered NDIS provider, do one or more of the following:
  - (a) provide information in relation to the incident to the Australian Federal Police or the police force of a State or Territory;

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Reportable incidents **Part 3**

Section 26

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- (b) refer the incident to another person or body with responsibility in relation to the incident (such as a State or Territory agency responsible for child protection);
- (c) require or request the provider to undertake specified remedial action in relation to the incident within a specified period, including remedial action to ensure the health, safety and wellbeing of persons with disability affected by the incident;
- (d) require the provider to carry out an internal investigation in relation to the incident, in the manner and within the timeframe specified in by the Commissioner, and to provide a report on the investigation to the Commissioner;
- (e) require the provider to engage an appropriately qualified and independent expert, at the expense of the provider, to carry out an investigation in relation to the incident, in the manner and within the timeframe specified in by the Commissioner, and to provide a report on the investigation to the Commissioner;
- (f) carry out an inquiry in relation to the incident in accordance with section 27;
- (g) take any other action that the Commissioner considers reasonable in the circumstances.

Note: The Commissioner may also share information in relation to a reportable incident in accordance with section 67E of the Act and the *National Disability Insurance Scheme (Protection and Disclosure of Information) Rules 2018*.

- (2) If an investigation is carried out under paragraph (1)(d) or (e) in relation to a reportable incident, the Commissioner may take any action that the Commissioner considers appropriate.
- (3) Without limiting subsection (2), the Commissioner may provide, or require the registered NDIS provider to provide, information on the progress or outcome of the investigation to:
  - (a) the person with disability involved in the incident (or a representative of the person); and
  - (b) with the consent of the person with disability (or a representative of the person)—any other person.

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## Part 4 Inquiries by the Commissioner

### Section 27

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## Part 4—Inquiries by the Commissioner

### 27 Inquiries by the Commissioner in relation to reportable incidents

- (1) This section is made for the purposes of section 73Z of the Act.
- (2) The Commissioner may authorise an inquiry in relation to a reportable incident that has occurred in connection with the provision of supports or services by a registered NDIS provider.
- (3) The Commissioner may authorise an inquiry in relation to a series of reportable incidents that have occurred in connection with the provision of supports or services by one or more registered NDIS providers.
- (4) An inquiry may be carried out whether or not notification of the reportable incident or reportable incidents has been received under section 20 or 21.
- (5) An inquiry may be carried out as the Commissioner thinks fit and the Commissioner is not bound by any rules of evidence.
- (6) Without limiting subsection (5), the Commissioner may:
  - (a) consult with other persons, organisations and governments on matters relating to the inquiry; or
  - (b) request information that is relevant to the inquiry from any person; or
  - (c) provide opportunities for people with disability to participate in the inquiry.
- (7) The Commissioner may prepare and publish a report setting out his or her findings in relation to the inquiry.

# LIMITED CIRCULATION

Other matters **Part 5**

Section 28

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## **Part 5—Other matters**

### **28 Commissioner must comply with procedural fairness rules**

The Commissioner must, in taking action in relation to a reportable incident, have due regard to the rules of procedural fairness.

Note: The Commissioner may make guidelines for the purposes of dealing with reportable incidents, including in relation to matters of procedural fairness (see subsection 181D(2) of the Act).

### **29 Commissioner may take action under the Act**

Nothing in this instrument prevents the Commissioner from taking action under Division 8 of Part 3A of the Act in relation to:

- (a) an incident, including a reportable incident, that occurs in connection with providing supports or services to a person with disability; or
- (b) information received by the Commissioner under this instrument.

### **30 Obligations imposed in this instrument are in addition to other obligations**

Nothing in this instrument:

- (a) affects any obligation a person has under a law of the Commonwealth, or of a State or Territory, to notify another person or body of a reportable incident, or an allegation or suspicion of a reportable incident; or
- (b) prevents a person from reporting to a police officer or any other person or body a reportable incident, or an allegation or suspicion of a reportable incident.

**LIMITED CIRCULATION**

## LIMITED CIRCULATION



### EXPOSURE DRAFT

This is a limited circulation exposure draft. It is supplied in confidence and should be given appropriate protection.

## National Disability Insurance Scheme (Protection and Disclosure of Information— Commissioner) Rules 2018

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I, Graeme Head, delegate of the Minister for Social Services, make the following rules.

Dated 2018

Graeme Head [~~DRAFT ONLY—NOT FOR SIGNATURE~~]  
Commissioner of the NDIS Quality and Safeguards Commission

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## Preamble

- (1) The National Disability Insurance Scheme (NDIS) represents a fundamental change to how supports for people with disability are funded and delivered across Australia. The NDIS was designed to produce major benefits for people with disability, their families and the broader community.
- (2) The NDIS Quality and Safeguards Commission is responsible for a range of functions under the National Quality and Safeguarding Framework aimed at protecting and preventing harm to people with disability in the NDIS market. The Commission will build the capability of NDIS participants and providers to uphold the rights of people with disability and realise the benefits of the NDIS. The rules are intended to support participants to be informed purchasers and consumers of NDIS supports and services and to live free from abuse, neglect, violence and exploitation.
- (3) People have a right to expect that their personal information is protected. The *National Disability Insurance Act 2013* and the *National Disability Insurance Scheme (Protection and Disclosure of Information—Commissioner) Rules 2018* set out the information handling requirements for the NDIS Quality and Safeguards Commission, including the use and disclosure of NDIS information. The Commissioner can only make disclosures of protected information in accordance with these rules.
- (4) The States and Territories will remain responsible for quality and safeguards arrangements for mainstream and other services to people with disability such as health, education and child protection. It is necessary for the Commissioner to work closely with other regulatory bodies in protecting and preventing harm to people with disability.
- (5) These rules provide a balance between protecting the privacy of people and enabling information to be exchanged with relevant bodies to support appropriate regulatory responses, especially where vulnerable people may be at risk of harm.

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## Part 1—Preliminary

### 1 Title

This instrument is the *National Disability Insurance Scheme (Protection and Disclosure of Information—Commissioner) Rules 2018*.

### 2 Commencement

This instrument commences on 1 July 2018.

### 3 Authority

This instrument is made under the *National Disability Insurance Scheme Act 2013*.

### 4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including:

- (a) CEO
- (b) child
- (c) Commission
- (d) Commission officer
- (e) Commissioner
- (f) entity
- (g) National Disability Insurance Scheme
- (h) National Disability Insurance Scheme rules
- (i) nominee
- (j) parent
- (k) participant
- (l) protected Commission information

In this instrument:

*Act* means the *National Disability Insurance Scheme Act 2013*.

*affected individual*, in relation to disclosure or proposed disclosure of NDIS information, means an individual whose personal information is contained in the NDIS information.

*consent* means informed consent.

Note: See subsection 4(9) and section 7 of the Act for rules and principles about how people with disability are to be provided with information and supported in their dealings with the Commission.

*de-identified* has the same meaning as in the *Privacy Act 1988*.

*NDIS information* means information obtained by a person in the performance of the person's functions or duties or in the exercise of the person's powers under the Act.

Note: See paragraphs 66(1)(a) and 67E(1)(a) of the Act.

*personal information* has the same meaning as in the *Privacy Act 1988*.

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**5 Children and participants with a nominee**

*Children*

- (1) Part 4 of the Act applies to a thing these Rules require or permit to be done by or in relation to a child as if that thing were required or permitted to be done by the Act.

*Participants with nominees*

- (2) If a person:
- (a) is a participant; and
  - (b) has a nominee;
- then subsections (3) and (4) apply in relation to the person.
- (3) Sections 79 and 80 of the Act apply to any act that may be done by the person under, or for the purposes of, these Rules as if that thing were an act that may be done under, or for the purposes of, the Act.
- (4) Sections 81 and 82 of the Act apply to any notice the Commissioner is authorised or required by these Rules to give to the person as if:
- (a) references to the CEO in those sections were references to the Commissioner; and
  - (b) the Commissioner was authorised or required to give the notice under the Act.

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## **Part 2—State and Territory laws that may affect a requirement by the Commissioner to give information or evidence or produce documents**

### **6 Simplified outline of this Part**

This Part is made for the purposes of section 58 of the Act. It prescribes State and Territory laws that may mean that a person is not required to give information or evidence or produce a document, despite a requirement from the Commissioner.

The Commissioner has various powers under the Act to require a person to give information or evidence, or produce a document to the Commissioner or a Commission officer.

Generally, a requirement under the Act to give information, produce a document or give evidence to the Commissioner or a Commission officer is not affected by State or Territory laws.

However, a person is not required to give the information or evidence or produce the document if:

- (a) a State or Territory law would otherwise prevent a person from giving information or evidence, or producing a document to the Commissioner or a Commission officer; and
- (b) that law is prescribed by the Rules.

### **7 Prescribed State and Territory laws**

For the purposes of paragraph 58(2)(b) of the Act, the laws listed in Schedule 1 are prescribed in relation to any requirement to give information or evidence or produce a document to the Commissioner or a Commission officer under the Act.



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## Part 3—The Commissioner’s information disclosure powers

### 8 Simplified outline of this Part

This Part is for the purposes of section 67F of the Act. It prescribes rules and guidance in relation to the Commissioner’s disclosure powers in paragraph 67E(1)(a) and subparagraphs 67E(1)(b)(i), (iii) and (iv) of the Act. Subsection 67E(2) of the Act provides that in disclosing information for the purposes of those provisions, the Commissioner must act in accordance with rules made for the purposes of section 67F of the Act.

The Act restricts the circumstances in which protected Commission information can be recorded, disclosed or used.

However, the Commissioner may disclose information acquired by a person in the performance of the person’s functions or duties or in the exercise of the person’s powers under the Act (referred to in these rules as ‘*NDIS information*’).

**Division 1** sets out rules the Commissioner must follow when disclosing NDIS information. Division 1 applies to all disclosures under section 67E, other than to a person who has the express or implied consent of the person to whom the information relates to collect it.

**Division 2** sets out the matters that the Commissioner must consider in deciding whether it is in the public interest to disclose NDIS information. This Division provides a list of matters, including specific examples, that the Commissioner must consider in exercising discretion to disclose NDIS information in the public interest.

**Division 3** provides that the Commissioner may disclose information to Commonwealth, State or Territory Departments and authorities, either following a request for information or of the Commissioner’s own initiative.

### 9 Application

This Part applies in relation to a disclosure of information that contains:

- (a) protected Commission information; or
- (b) personal information.

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## Division 1—Rules about the Commissioner disclosing information

### 10 De-identification of personal information

- (1) Before disclosing NDIS information under section 67E of the Act (other than subparagraph 67E(1)(b)(ii)), the Commissioner must, so far as is reasonably practicable:
  - (a) identify any personal information included in the NDIS information; and
  - (b) consider if the purpose of the proposed disclosure would be adversely affected if the personal information was de-identified; and
  - (c) if the purpose of the proposed disclosure would not be adversely impacted—de-identify the personal information.

#### *Exceptions*

- (2) This section does not apply to the personal information of an affected individual who has consented to the proposed disclosure.
- (3) This section does not apply to a disclosure if the Commissioner is satisfied that:
  - (a) the disclosure is necessary to prevent or lessen a serious threat to an individual's life, health or safety; or
  - (b) complying with subsection (1) would result in an unreasonable delay in the disclosure; or
  - (c) complying with subsection (1) would frustrate the purpose of the disclosure.

### 11 Consultation

- (1) Before disclosing NDIS information under section 67E of the Act (other than under subparagraph 67E(1)(b)(ii)), the Commissioner must, so far as is reasonably practicable:
  - (a) notify any affected individual about the proposed disclosure; and
  - (b) seek the consent of the affected individual to the proposed disclosure; and
  - (c) provide a reasonable opportunity for the affected individual to comment on the proposed disclosure.

Note: The notice must comply with section 7 of the Act.

- (2) When notifying an affected individual for the purposes of paragraph (1)(a), the Commissioner may specify a date the individual must respond by.
- (3) When deciding whether to disclose the information, the Commissioner must consider:
  - (a) any express statement by an affected individual that they do not consent to the proposed disclosure; and
  - (b) any other comment provided, or view expressed, by an affected individual about the proposed disclosure.
- (4) Subsection (3) does not apply in relation to any response to a notice under subsection (1) received after a date specified in the notice for the purposes of subsection (2).

#### *Exceptions*

- (5) Subsection (1) does not apply in relation to an affected individual if the Commissioner is satisfied that:

- 
- (a) the affected individual is aware that the Commissioner may be disclosing the NDIS information; and
  - (b) the affected individual has indicated whether they consent to the proposed disclosure (whether expressly or by implication); and
  - (c) the affected individual has had an opportunity to express their views about the proposed disclosure.
- (6) This section does not apply in relation to an affected individual if:
- (a) the Commissioner is satisfied that giving notice to the affected individual would frustrate the purpose of the proposed disclosure; or
  - (b) the Commissioner, after making reasonable attempts, has been unable to contact the affected individual.
- (7) This section does not apply to disclosure if the Commissioner is satisfied that:
- (a) the disclosure is necessary to prevent or lessen a serious threat to an individual's life, health or safety; or
  - (b) complying with subsections (1) and (3) would result in an unreasonable delay in the disclosure; or
  - (c) complying with subsections (1) and (3) would frustrate the purpose of the disclosure.

## 12 Notice to recipient of NDIS information

If the Commissioner discloses NDIS information under section 67E of the Act (other than subparagraph 67E(1)(b)(ii)), the Commissioner must, at the time of the disclosure, give the person a notice which includes:

- (a) the purpose of the disclosure;
- (b) any limitations on how the person may use, make record of, or disclose the information; and
- (c) a statement that the information is only to be used in accordance with the purpose of the disclosure.

Note 1: Subparagraph 67A(1)(d)(ii) of the Act authorises a person to make a record of, disclose and otherwise use protected Commission information if the person is using the information or making the record or disclosure for the purpose for which the information was disclosed to the person under section 67E.

Note 2: The notice must comply with section 7 of the Act.

## 13 Record of disclosure

- (1) If the Commissioner discloses NDIS information under section 67E of the Act (other than subparagraph 67E(1)(b)(ii)), the Commissioner must ensure that a record of that disclosure is made.
- (2) A record made for the purposes of subsection (1) must include:
  - (a) a description or summary of the information disclosed; and
  - (b) the recipient of the disclosure; and
  - (c) the purpose of the disclosure; and
  - (d) if the disclosure was made following a request for the information—details of the request; and
  - (e) if there was a decision that an exception under subsections 10(3), 11(6) or 11(7) applied in relation to the disclosure—a summary of that decision.

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- (3) A description or summary for the purposes of paragraph (2)(a) may take the form of a list of document or record numbers which would enable the information disclosed to be located in the Commission's record management system.
  - (4) A record made for the purposes of subsection (1) must be kept:
    - (a) if the National Archives of Australia has given permission, or approved a practice or procedure in relation to the record under paragraph 24(2)(b) of the Archives Act 1983—in accordance with that permission or approval, as amended from time to time; or
    - (b) if no such permission or approval has been given—for 7 years.

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## Division 2—Disclosures by the Commissioner in the public interest

### 14 What the Commissioner must consider in determining the public interest

- (1) In deciding whether the Commissioner is satisfied on reasonable grounds that it is in the public interest to disclose NDIS information, the Commissioner must consider:
  - (a) where the information concerns an affected individual's life, health or safety—whether the affected individual would be likely to be in a position to seek assistance themselves or give notice of their circumstances to the proposed recipient of the information; and
  - (b) the purpose for which the information was collected, including any information provided to the affected individual at that time about how the information would or would not be used or disclosed; and
  - (c) whether the affected individual would reasonably expect the Commissioner to disclose the information:
    - (i) for the purpose for which the Commissioner is proposing to make the disclosure; and
    - (ii) to the recipient to whom the Commissioner is proposing to make the disclosure; and
  - (d) whether the disclosure would be contrary to a request by a complainant under subsection 12(3) of the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018*; and
  - (e) whether the recipient has sufficient interest in the information; and
  - (f) if the recipient requested the information—whether the recipient could reasonably obtain the information from a source other than the Commissioner; and
  - (g) whether section 15, 16, 17, 18 or 19 of these Rules applies to the disclosure.

#### *Meaning of sufficient interest*

- (2) For the purposes of paragraph (1)(e), a recipient has sufficient interest in the information if:
  - (a) the Commissioner is satisfied that, in relation to the purpose of the disclosure, the recipient has a genuine and legitimate interest in the information; or
  - (b) the recipient is a Commonwealth, State or Territory Minister.

### 15 Enforcement of laws and related circumstances

This section applies to a disclosure if the Commissioner is satisfied that:

- (a) the disclosure is necessary:
  - (i) for the enforcement of a criminal law of the Commonwealth, a State, a Territory or a foreign country, that relates to an indictable offence punishable by imprisonment of 2 years or more; or
  - (ii) for the enforcement of a law imposing a pecuniary penalty equivalent to 40 penalty units or more; or
  - (iii) to prevent an act that may have a significant adverse impact on the affected individual; or
  - (iv) to prevent an act that may have a significant adverse effect on the public revenue; or

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- (b) the disclosure relates to an offence or threatened offence:
    - (i) against an officer of the Commonwealth, a State or a Territory; or
    - (ii) against Commonwealth, State or Territory property; or
    - (iii) in premises occupied by the Commission.

## **16 Briefing the Minister**

This section applies to a disclosure if the Commissioner is satisfied that the disclosure is necessary to brief the Minister:

- (a) so that the Minister can consider complaints, incidents or issues raised by or on behalf of a person with the Minister (in writing or orally), and, if necessary, respond to that person in relation to the complaints, incident or issues; or
- (b) about an error or delay on the part of the Commission; or
- (c) about an instance of an anomalous or unusual operation of the Act, regulations made under the Act or the National Disability Insurance Scheme rules.

## **17 Missing or deceased persons**

- (1) This section applies to a disclosure of NDIS information if:
  - (a) the information relates to a person who is, or has been reported to be, missing or deceased; and
  - (b) the Commissioner is satisfied that there are no reasonable grounds to believe that the person would not want the information disclosed; and
  - (c) the Commissioner is satisfied that the disclosure is necessary:
    - (i) to locate a person (including the missing or deceased person, or a relative or beneficiary of the person); or
    - (ii) to assist a court, a coronial inquiry, a royal commission or commission of inquiry (however described), a Department or other authority of a State or Territory, or an authority responsible for administering a disability support scheme in another country, with an inquiry related to the missing or deceased person; or
    - (iii) in relation to a deceased person—to assist a person in relation to the administration of the estate of the deceased person.
- (2) This section may apply to the disclosure of NDIS information which is about a person other than the person referred to in paragraph (1)(a).

Note: If the NDIS information contains personal information that is not relevant to the purpose of the disclosure, the Commissioner may be required to de-identify that information under section 10.

## **18 Assisting child welfare agencies**

- (1) This section applies to a disclosure if the Commissioner is satisfied that:
  - (a) the disclosure is necessary to assist a child welfare agency to contact a parent, guardian or relative in relation to a child; or
  - (b) the disclosure is necessary to assist a child welfare agency to carry out its responsibilities relating to the safety, welfare or wellbeing of a child.

*Meaning of child welfare agency*

- (2) For the purposes of this section, a child welfare agency means:
  - (a) a Commonwealth, State or Territory agency; or

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(b) a non-government agency or institution;

that has responsibilities relating to the safety, welfare or wellbeing of children or that provides care for children (even if it also provides care for adults).

Example: A child welfare agency may include a child protection agency, a public or private school or a public or private health facility.

## **19 Assisting professional bodies**

- (1) This section applies to a disclosure if the Commissioner is satisfied that:
- (a) the Commissioner holds information about a person employed or otherwise engaged by an NDIS provider; and
  - (b) the disclosure is necessary to assist a professional body to consider whether the person's conduct meets the standards required to attain or maintain membership of the professional body.

### *Meaning of professional body*

- (2) For the purposes of this section, a professional body means an organisation that is responsible, nationally or in one or more States or Territories, for registering members of a particular profession and monitoring their compliance with specified standards of behaviour.

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### **Division 3—Disclosures by the Commissioner to Secretaries, Chief Executives and other heads of authorities**

#### **20 When the Commissioner may disclose information to Departments or authorities, or heads of Departments or authorities**

The Commissioner may disclose NDIS information to a person, Department or authority under subparagraphs 67E(1)(b)(i), (iii) or (iv) of the Act:

- (a) following a request from the person, Department or authority; or
- (b) of the Commissioner's own initiative.

#### **21 Purposes and responsibilities of a Department or authority**

In considering:

- (a) what the purpose of a Department or authority of the Commonwealth, a State or a Territory is for the purposes of subparagraph 67E(1)(b)(i) or (iv) of the Act; or
- (b) what the responsibilities of a Department or authority of a State or Territory are for the purposes of subparagraph 67E(1)(b)(iii) of the Act;

the Commissioner may have regard to:

- (c) the legislation within the Department or authority's portfolio responsibilities, including the purposes or objects of that legislation; and
- (d) any functions, powers or responsibilities (however described) bestowed on a Commonwealth Department or authority by legislation, or by the Commonwealth Administrative Arrangements Order (as amended from time to time); and
- (e) any functions, powers or responsibilities (however described) bestowed on State or Territory Department or authority by legislation, or by State or Territory administrative arrangements (as amended from time to time).



**Schedule 1—List of State and Territory laws in relation to the  
Commission**

	<b>Title of Law</b>	<b>Provisions</b>
<b>1. Australian Capital Territory</b>		
1.1	<i>Australian Crime Commission (ACT) Act 2003</i>	section 46
1.2	<i>Children and Young People Act 2008</i>	sections 846, 847
1.3	<i>Drugs of Dependence Act 1989</i>	section 201
1.4	<i>Electoral Act 1992</i>	section 63
1.5	<i>Epidemiological Studies (Confidentiality) Act 1992</i>	sections 4, 5, 6, 7, 8
1.6	<i>Human Rights Commission Act 2005</i>	section 66
1.7	<i>Inquiries Act 1991</i>	section 17
1.8	<i>Judicial Commission Act 1994</i>	section 28
1.9	<i>Legal Aid Act 1997</i>	section 92
1.10	<i>Ombudsman Act 1989</i>	section 33
1.11	<i>Royal Commissions Act 1991</i>	section 20
1.12	<i>Territory Records Act 2002</i>	section 52
1.13	<i>Witness Protection Act 1996</i>	section 23
<b>2. New South Wales</b>		
2.1	<i>Adoption Act 2000</i>	section 194
2.2	<i>Assisted Reproductive Technology Act 2007</i>	section 32B
2.3	<i>Children and Young Persons (Care and Protection) Act 1998</i>	section 29
2.4	<i>Crime Commission Act 2012</i>	section 80
2.5	<i>Crimes (Criminal Organisations Control) Act 2012</i>	section 28U
2.6	<i>Crimes (Forensic Procedures) Act 2000</i>	section 109
2.7	<i>Government Information (Information Commissioner) Act 2009</i>	section 35
2.8	<i>Government Information (Public Access) Act 2009</i>	section 91
2.9	<i>Independent Commission Against Corruption Act 1988</i>	section 111
2.10	<i>Law Enforcement Conduct Commission Act 2016</i>	sections 176, 177, 178, 179, 180
2.11	<i>Parliamentary Electorates and Elections Act 1912</i>	section 48
2.12	<i>Privacy and Personal Information Protection Act 1998</i>	section 67
2.13	<i>Public Health Act 2010</i>	section 56
2.14	<i>State Records Act 1998</i>	section 73
2.15	<i>Surrogacy Act 2010</i>	section 52
2.16	<i>Terrorism (Police Powers) Act 2002</i>	section 26P
2.17	<i>Witness Protection Act 1995</i>	sections 24, 32, 33
<b>3. Northern Territory</b>		
3.1	<i>Adoption of Children Act</i>	subsection 71(1)
3.2	<i>Anti-Discrimination Act</i>	section 108
3.3	<i>Audit Act</i>	section 23

	<b>Title of Law</b>	<b>Provisions</b>
3.4	<i>Australian Crime Commission (NT) Act</i>	section 44
3.5	<i>Care and Protection of Children Act</i>	sections 27, 39, 84D, 195, 293D, 293E, subsection 301(1) and section 308
3.6	<i>Child Protection (Offender Reporting and Registration) Act</i>	section 66
3.7	<i>Coroners Act</i>	section 43
3.8	<i>Correctional Services Act</i>	section 189
3.9	<i>Criminal Property Forfeiture Act</i>	section 31
3.10	<i>Criminal Records (Spent Convictions) Act</i>	subsections 12(1) and 12(2)
3.11	<i>Disability Services Act</i>	section 68
3.12	<i>Domestic and Family Violence Act</i>	sections 26 and 124
3.13	<i>Education Act</i>	section 158
3.14	<i>Electoral Act</i>	subsection 293(2)
3.15	<i>Evidence Act</i>	part 3
3.16	<i>Guardianship of Adults Act</i>	section 91
3.17	<i>Health and Community Services Complaints Act</i>	section 97
3.18	<i>Health Services Act</i>	section 70
3.19	<i>Independent Commissioner Against Corruption Bill 2017</i>	sections 71, 76, 106, 142, 143, 144, 150 and 151
3.20	<i>Information Act</i>	section 148
3.21	<i>Inquiries Act</i>	section 14A
3.22	<i>Juries Act</i>	sections 49A and 49B
3.23	<i>Legal Aid Act</i>	section 55
3.24	<i>Mental Health and Related Services Act</i>	section 117
3.25	<i>Mineral Royalty Act</i>	subsection 50(1)
3.26	<i>Misuse of Drugs Act</i>	subsection 24(2)
3.27	<i>Northern Territory Aboriginal Sacred Sites Act</i>	subsection 38(1)
3.28	<i>Northern Territory Civil and Administrative Tribunal Act</i>	section 149
3.29	<i>Ombudsman Act</i>	part 8
3.30	<i>Personal Violence Restraining Orders Act</i>	sections 20 and 24
3.31	<i>Police Administration Act</i>	sections 147B and 155
3.32	<i>Police (Special Investigative and Other Powers) Act</i>	sections 85 and 94
3.33	<i>Prostitution Act</i>	section 50
3.34	<i>Public Interest Disclosure Act</i>	section 53
3.35	<i>Sexual Offences (Evidence and Procedure) Act</i>	sections 11, 11A and subsection 11B(1)
3.36	<i>Supreme Court Act</i>	section 83A
3.37	<i>Supreme Court Rule</i>	orders 33 and 42

	<b>Title of Law</b>	<b>Provisions</b>
3.38	<i>Surveillance Devices Act</i>	subsections 15(1), 16(1), 52(1) and 52(2)
3.39	<i>Taxation Administration Act</i>	subsection 102(1)
3.40	<i>Terrorism (Emergency Powers) Act</i>	sections 21ZO and 27Y
3.41	<i>Transplantation and Anatomy Act</i>	subsection 28(1)
3.42	<i>Witness Protection Act</i>	section 33
3.43	<i>Witness Protection (Northern Territory) Act</i>	subsections 33(1) and 33(3)
3.44	<i>Work Health and Safety (National Uniform Legislation) Act</i>	section 271
3.45	<i>Youth Justice Act</i>	sections 50, 140P and 214
<b>4. Queensland</b>		
4.1	<i>Australian Crime Commission (Queensland) Act 2003</i>	sections 22, 46, 62
4.2	<i>Bail Act 1980</i>	section 12
4.3	<i>Child Protection Act 1999</i>	section 186
4.4	<i>Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004</i>	sections 72, 74F, 74H
4.5	<i>Commissions of Inquiry Act 1950</i>	section 32B
4.6	<i>Coroners Act 2003</i>	sections 52, 53, 54, 56
4.7	<i>Corrective Services Act 2006</i>	section 339
4.8	<i>Crime &amp; Corruption Act 2001</i>	sections 66, 84, 89, 130, 146J, 213, 319, 346A
4.9	<i>Criminal Code Act 1899, Schedule 1—The Criminal Code</i>	section 86
4.10	<i>Criminal Law (Historical Homosexual Convictions Expungement) Act 2017</i>	sections 26 and 40
4.11	<i>Criminal Practice Rules 1999 (under Supreme Court of Queensland Act 1991)</i>	subsection 29(6), section 31, 57, 57A, subsection 58E(3)
4.12	<i>Criminal Proceeds Confiscation Act 2002</i>	section 249C
4.13	<i>Director of Public Prosecutions Act 1984</i>	section 24A
4.14	<i>Disability Services Act 2006</i>	section 227
4.15	<i>Disaster Management Act 2003</i>	section 139
4.16	<i>Domestic and Family Violence Protection Act 2012</i>	sections 160, 161
4.17	<i>Domestic and Family Violence Protection Rules 2014 (made under Magistrates Courts Act 1921)</i>	rule 45
4.18	<i>Drugs Misuse Act 1986</i>	sections 119, 120, 121, 122
4.19	<i>Evidence Act 1977</i>	sections 21AZB, 21AZC, 21I, 21J, 21K, 21KD, 93AA, 93A
4.20	<i>Fire and Emergency Services Act 1990</i>	section 153A
4.21	<i>Guardianship and Administration Act 2000</i>	section 249A
4.22	<i>Health Ombudsman 2013</i>	section 272
4.23	<i>Health Practitioner Regulation National Law Act 2009</i>	section 216
4.24	<i>Hospital and Health Boards Act 2011</i>	sections 118, 119, 132, 138

	<b>Title of Law</b>	<b>Provisions</b>
4.25	<i>Jury Act 1995</i>	sections 30, 70
4.26	<i>Justices Act 1886</i>	section 154
4.27	<i>Justices of the Peace and Commissioners for Declarations Act 1991</i>	sections 35A, 38A
4.28	<i>Legal Aid Queensland Act 1997</i>	sections 75, 82
4.29	<i>Mental Health Act 2016</i>	sections 102, 160, 180B
4.30	<i>Penalties and Sentences Act 1992</i>	sections 13A, 13B
4.31	<i>Police Powers and Responsibilities Act 2000</i>	sections 218, 352, 353, 356, 532, 547, 682, 737, 744
4.32	<i>Police Service Administration Act 1990</i>	Part 5AA, sections 14, 10.1, 10.2A, 10.2C
4.33	<i>Powers of Attorney Act 1998</i>	section 74A
4.34	<i>Prostitution Act 1999</i>	section 133
4.35	<i>Public Guardian Act 2014</i>	sections 31, 47, 70, 124, 140, 141
4.36	<i>Public Health Act 2005</i>	section 292
4.37	<i>Public Health (Medicinal Cannabis) Act 2016</i>	sections 209, 214
4.38	<i>Public Interest Disclosure Act 2010</i>	section 65
4.39	<i>Private Health Facilities Act 1999</i>	section 147
4.40	<i>Surrogacy Act 2010</i>	section 52
4.41	<i>Terrorism (Preventative Detention) Act 2005</i>	sections 64, 65, 66, 67, 68
4.42	<i>Uniform Civil Procedure Rules 1999 (under Supreme Court of Queensland Act 1991)</i>	rules 595F(3), 981
4.43	<i>Weapons Act 1990</i>	section 151B, 151C
4.44	<i>Witness Protection Act 2000</i>	sections 36, 37
4.45	<i>Working with Children (Risk Management and Screening) Act 2000</i>	sections 345, 357R, 384
4.46	<i>Youth Justice Act 1992</i>	section 300
<b>5. South Australia</b>		
5.1	<i>Children's Protection Act 1993</i>	
5.2	<i>Food Act 2001</i>	section 111
5.3	<i>Gene Technology Act 2001</i>	section 187
5.4	<i>Health and Community Services Complaints Act 2004</i>	
5.5	<i>Health Care Act 2008</i>	sections 66 and 73
5.6	<i>Independent Commissioner Against Corruption Act 2012</i>	section 54
5.7	<i>Intervention Orders (Prevention of Abuse) Act 2009</i>	
5.8	<i>Mental Health Act 2009</i>	
5.9	<i>Ombudsman Act 1972</i>	
5.10	<i>Police Complaints and Discipline Act</i>	
5.11	<i>Retirement Villages Act 1987</i>	section 8
5.12	<i>Safe Drinking Water Act 2011</i>	section 45

	<b>Title of Law</b>	<b>Provisions</b>
5.13	<i>South Australian Public Health Act 2011</i>	
5.14	<i>Tobacco Products Regulation Act 1997</i>	section 78
5.15	<i>Witness Protection Act 1996</i>	
5.16	<i>Youth Justice Administrative Act 2016</i>	
<b>6. Tasmania</b>		
6.1	<i>Adoption Act 1988</i>	section 75
6.2	<i>Archives Act 1983</i>	section 16
6.3	<i>Children, Young Persons and Their Families Act 1997</i>	sections 16, 40, 111A
6.4	<i>Commission of Inquiry Act 1995</i>	sections 10, 14
6.5	<i>Community Protection (Offender Reporting) Act 2005</i>	section 45
6.6	<i>Guardianship and Administration Act 1995</i>	section 86
6.7	<i>Health Act 1997</i>	section 4
6.8	<i>Health Complaints Act 1995</i>	section 37, 65
6.9	<i>Health Practitioners Tribunal Act 2010</i>	section 54
6.10	<i>HIV/AIDS Preventive Measures Act 1993</i>	section 18
6.11	<i>Integrity Commission Act 2009</i>	section 94
6.12	<i>Magistrates Court (Children's Division) Act 1998</i>	section 12
6.13	<i>Mental Health Act 1996</i>	sections 85, 90
6.14	<i>Mental Health Act 2013</i>	section 134
6.15	<i>Obstetric and Paediatric Mortality and Morbidity Act 1994</i>	section 15
6.16	<i>Ombudsman Act 1978</i>	section 26
6.17	<i>Public Health Act 1997</i>	sections 61, 147
6.18	<i>Public Interest Disclosures Act 2002</i>	section 23
6.19	<i>Relationships Act 2003</i>	section 22
6.20	<i>Witness Protection Act 2000</i>	section 13
6.21	<i>Youth Justice Act 1997</i>	sections 22, 31, 45
<b>7. Victoria</b>		
7.1	<i>Adoption Act 1986</i>	sections 83, subsection 103(4), sections 120, 121
7.2	<i>Ambulance Services Act 1986</i>	section 38B
7.3	<i>Assisted Reproductive Treatment Act 2008</i>	section 66A, 66B, 66C, 72
7.4	<i>Audit Act 1994</i>	sections 12, 20A
7.5	<i>Australian Crime Commission (State Provisions) Act 2003</i>	section 44
7.6	<i>Business Licensing Authority Act 1998</i>	section 18
7.7	<i>Child Employment Act 2003</i>	section 46

	<b>Title of Law</b>	<b>Provisions</b>
7.8	<i>Children, Youth and Families Act 2005</i>	subsection 36(5), section 41, paragraph 42(e), sections 124, 129-131, 180, 191, paragraph 205(2)(b), subsections 206(2), 207(2), section 209, paragraph 210(2)(b), subsection 211(2), section 213, subsection 226(3), sections 492A, 552, 534, 552
7.9	<i>Child Wellbeing and Safety Act 2005</i>	section 16ZE
7.10	<i>Corrections Act 1986</i>	section 104ZY
7.11	<i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997</i>	section 62
7.12	<i>Criminal Organisations Control Act 2012</i>	sections 84, 85
7.13	<i>Emergency Management Act 2013</i>	section 72, subsection 73(2)
7.14	<i>Equal Opportunity Act 2010</i>	section 176
7.15	<i>Family Violence Protection Act 1982</i>	section 73H, subsection 207(3)
7.16	<i>Freedom of Information Act 1982</i>	section 63D
7.17	<i>Health Complaints Act 2016</i>	sections 150, 151, 152
7.18	<i>Health Records Act 2001</i>	section 90
7.19	<i>Health Services Act 1988</i>	section 63D
7.20	<i>Housing Act 1983</i>	section 128
7.21	<i>Independent Broad-based Anti-corruption Commission Act 2011</i>	Divisions 2 and 3 of Part 2, sections 50, 166, 177
7.22	<i>Major Crime (Investigative Powers) Act 2004</i>	sections 20, 68
7.23	<i>Mental Health Act 2014</i>	sections 128, 140, 141, 175, 225, 249, 265
7.24	<i>Ombudsman Act 1973</i>	sections 16L, 20; Part VA
7.25	<i>Privacy and Data Protection Act 2014</i>	sections 63, 68
7.26	<i>Protected Disclosure Act 2012</i>	sections 52, 53
7.27	<i>Public Health and Wellbeing Act 2008</i>	sections 42, 43, 43B
7.28	<i>Relationships Act 2008</i>	section 20A
7.29	<i>Severe Substance Dependence Treatment Act 2010</i>	subsections 19(4), 19(5)
7.30	<i>Serious Sex Offenders (Detention and Supervision) Act 2009</i>	sections 189–192
7.31	<i>Sex Work Act 1994</i>	sections 24, 87
7.32	<i>Terrorism (Community Protection) Act 2003</i>	sections 12, 23
7.33	<i>Victoria Police Act 2013</i>	sections 184, 185, 225–230
7.34	<i>Victorian Civil and Administrative Tribunal Act 1998</i>	section 34, 35, 36
7.35	<i>Victorian Inspectorate Act 2011</i>	Divisions 2 and 3 of Part 2
7.36	<i>Witness Protection Act 1991</i>	section 10

	<b>Title of Law</b>	<b>Provisions</b>
7.37	<i>Working with Children Act 2005</i>	paragraph 40(2)(g)
7.38	<i>Workplace Injury Rehabilitation and Compensation Act 2013</i>	sections 268, 270
<b>8. Western Australia</b>		
8.1	<i>Adoption Act 1994</i>	sections 124, 127
8.2	<i>Auditor General Act 2006</i>	section 46
8.3	<i>Betting Control Act 1954</i>	section 27E
8.4	<i>Child Care Services Act 2007</i>	section 50
8.5	<i>Children and Community Services Act 2004</i>	sections 124F, 137, 141, subsection 238(5), sections 240, 241
8.6	<i>Children's Court of Western Australia Act 1988</i>	sections 36, 51A
8.7	<i>Combat Sports Act 1987</i>	section 54B
8.8	<i>Community Protection (Offender Reporting) Act 2004</i>	section 82
8.9	<i>Corruption and Crime Commission Act 2003</i>	subsection 76(2), sections 90, 114, 115, 134, 151, 152, 153, 154, 167, 207, 208, 209
8.10	<i>Criminal Investigation Act 2006</i>	section 113
8.11	<i>Criminal Investigation (Covert Powers) Act 2012</i>	section 35
8.12	<i>Criminal Investigation (Identifying People) Act 2002</i>	section 73
8.13	<i>Declared Places Mentally Impaired Accused Act 2015</i>	section 59
8.14	<i>Disability Services Act 1993</i>	section 50, 52
8.15	<i>Education and Care Services National Law (WA) Act 2012</i>	Schedule section 273
8.16	<i>Equal Opportunity Act 1984</i>	section 167
8.17	<i>Fair Trading Act 2010</i>	sections 112, 132A
8.18	<i>Family Court Act 1997</i>	sections 49, 53, 148, 202K
8.19	<i>Freedom of Information Act 1992</i>	section 82
8.20	<i>Gaming and Wagering Commission Act 1987</i>	section 20A
8.21	<i>Guardianship and Administration Act 1990</i>	section 113
8.22	<i>Health (Miscellaneous Provisions) Act 1911</i>	sections 336, 336A, 336B, 340LA, 340LB, 340L, 340M, 340ALA, 340ALB, 340AL, 340AM, 340BLA, 340BLB, 340BL and 340BM
8.23	<i>Health and Disability Services (Complaints) Act 1995</i>	section 71
8.24	<i>Health Practitioner National Law (WA) Act 2010</i>	section 216
8.25	<i>Health Services Act 2016</i>	section 219
8.26	<i>Health Services (Quality Improvement) Act 1994</i>	sections 8, 9, 10
8.27	<i>Human Reproductive Technology Act 1991</i>	sections 49, 53ZK
8.28	<i>Industrial Relations Act 1979</i>	section 97XV

	<b>Title of Law</b>	<b>Provisions</b>
8.29	<i>Liquor Control Act 1998</i>	section 30
8.30	<i>Local Government Act 1995</i>	section 5.123
8.31	<i>Mandatory Testing (Infectious Diseases) Act 2014</i>	section 29
8.32	<i>Medicines and Poisons Act 2014</i>	section 134
8.33	<i>Mental Health Act 2014</i>	sections 342, 576
8.34	<i>Misuse of Drugs Act 1981</i>	section 27B
8.35	<i>Parliamentary Commissioner Act 1971</i>	sections 23, 23A
8.36	<i>Prostitution Act 2000</i>	section 58
8.37	<i>Public Health Act 2000</i>	section 302
8.38	<i>Public Interest Disclosure Act 2003</i>	section 16
8.39	<i>Restraining Orders Act 1997</i>	section 70
8.40	<i>Royal Commission (Custody of Records) Act 1992</i>	section 14
8.41	<i>Royal Commission (Police) Act 2002</i>	sections 12, 13
8.42	<i>School Education Act 1999</i>	section 242
8.43	<i>Sentence Administration Act 2003</i>	section 119
8.44	<i>State Administrative Tribunal Act 2004</i>	sections 157, 158
8.45	<i>State Records Act 2000</i>	section 49, 77
8.46	<i>Supreme Court Act 1935</i>	section 72
8.47	<i>Surrogacy Act 2008</i>	sections 36, 37, 38
8.48	<i>Teacher Registration Act 2012</i>	section 117
8.49	<i>Telecommunications (Interception and Access) Western Australia Act 1996</i>	section 22
8.50	<i>Terrorism (Preventative Detention) Act 2006</i>	section 46
8.51	<i>Witness Protection (Western Australia) Act 1996</i>	sections 27, 28, 32
8.52	<i>Workers Compensation and Injury Management Act 1981</i>	section 57D, subsection 171(3), subsection 5(2) of Schedule 7
8.53	<i>Working with Children (Criminal Record Checking) Act 2004</i>	section 39
8.54	<i>Young Offenders Act 1994</i>	section 17



# LIMITED CIRCULATION



## EXPOSURE DRAFT

This is a limited circulation exposure draft. It is supplied in confidence and should be given appropriate protection.

# National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018

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I, Dan Tehan, Minister for Social Services, make the following rules.

Dated 2018

Dan Tehan [DRAFT ONLY—NOT FOR SIGNATURE]  
Minister for Social Services

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LIMITED CIRCULATION

# LIMITED CIRCULATION

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# LIMITED CIRCULATION

Preliminary Part 1

Section 1

## Part 1—Preliminary

### 1 Name

This instrument is the *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2018.	1 July 2018

Note: This table relates only to the provisions of these Rules as originally made. It will not be amended to deal with any later amendments of these Rules.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under item 81 of Schedule 1 to the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Act 2017*.

### 4 Definitions

- (1) In this instrument:

*Act* means the *National Disability Insurance Scheme Act 2013*.

*transitioned provider*: see subsection 7(4).

- (2) Expressions used in the Act have the same meaning, when used in this instrument, as in the Act.

LIMITED CIRCULATION

# LIMITED CIRCULATION

## Part 2 Transitioning applicants and providers in participating jurisdictions

### Section 5

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## Part 2—Transitioning applicants and providers in participating jurisdictions

### 5 Purpose of this Part

This Part is made for the purposes of item 81 of Schedule 1 to the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Act 2017*.

### 6 Applications for registration pending at transition time are taken to have been refused

- (1) This section sets out what happens to an application to be a registered provider of supports under section 69 of the Act if:
  - (a) the host jurisdiction in which the supports will be provided, or the funding for supports will be managed, becomes a participating jurisdiction at a particular time (the *transition time*); and
  - (b) the application is pending at the transition time.

Note: For the meaning of *host jurisdiction*, see section 10 of the Act and for the meaning of *participating jurisdiction*, see section 10A of the Act.

- (2) To the extent that the application is for either or both of the following:
  - (a) managing the funding of supports under plans for participants in the participating jurisdiction;
  - (b) the provision of supports to participants in the participating jurisdiction;the application is taken, immediately after the transition time, to have been refused by the CEO.
- (3) To the extent that the application is not covered by subsection (2), the application may continue to be dealt with under the Act.

### 7 Transitioning registered providers of supports

*Providers to whom this section applies*

- (1) This section applies to a person or entity if:
  - (a) at a particular time (the *transition time*), the person or entity is approved, as a registered provider of supports, to do either or both of the following:
    - (i) manage the funding for supports under a participant's plan;
    - (ii) provide supports to a participant; and
  - (b) at that time, the host jurisdiction in which the participant lives becomes a participating jurisdiction.

Note: For the meaning of *host jurisdiction*, see section 10 of the Act and for the meaning of *participating jurisdiction*, see section 10A of the Act.

# LIMITED CIRCULATION

Transitioning applicants and providers in participating jurisdictions **Part 2**

## Section 7

### *Transition of registered providers of supports to registered NDIS providers*

- (2) Immediately after the transition time:
- (a) the person or entity ceases to be a registered provider of supports to participants in the participating jurisdiction; and
  - (b) the Commissioner is taken to have decided to register the person or entity as a registered NDIS provider under section 73E of the Act in the participating jurisdiction in relation to:
    - (i) managing the funding for supports under plans that the person or entity was, immediately before the transition time, approved to manage; and
    - (ii) each class of supports in respect of which the person or entity was, immediately before the transition time, approved to provide; and
    - (iii) each class of persons in respect of which the approval, immediately before the transition time, applied.
- Note: The Commissioner must give a certificate of registration to the provider (see paragraph 73E(4)(b) of the Act). The certificate must specify the period for which the registration is in force (see paragraph 73E(5)(e) of the Act).
- (3) Subsection 73E(4) of the Act applies to the decision as if paragraph (a) of that subsection were omitted.
- Note: This means that the Commissioner is not required to give written notice of the decision to register, nor to provide reasons for the decision.
- (4) A person or entity who is a registered NDIS provider under the Act because of paragraph (2)(b) is a **transitioned provider**.
- (5) To avoid doubt, the person or entity ceases to be a transitioned provider if:
- (a) the person or entity makes an application under section 73C of the Act and the Commissioner makes a decision under section 73E of the Act to register, or not to register, the person or entity as a registered NDIS provider; or
  - (b) the registration of the provider is revoked under section 73P of the Act; or
  - (c) unless section 73K of the Act applies—the period specified for the purposes of paragraph 73E(5)(e) of the Act expires.

### *Act applies to transitioned providers, subject to modifications*

- (6) The Act applies in relation to a transitioned provider, subject to the modifications in section 9.

### *Registration in other jurisdictions not affected*

- (7) To avoid doubt, this section does not affect the continuity, on and after the transition time, of the registration of a transitioned provider as a registered provider of supports to participants other than in a participating jurisdiction.

# LIMITED CIRCULATION

## Part 2 Transitioning applicants and providers in participating jurisdictions

### Section 9

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#### 9 Modifications of the Act

- (1) Paragraphs 73N(1)(b) and 73P(1)(b) of the Act apply in relation to a transitioned provider as if the application made by the provider to the CEO under section 69 of the Act were an application made to the Commissioner under section 73C of the Act.
- (2) The following decisions of the Commissioner are not *reviewable decisions* under the Act:
  - (a) a decision under section 73G to impose conditions on the registration of a transitioned provider;
  - (b) a decision under section 73L to vary, or refuse to vary, the registration of a transitioned provider.

#### 15 Matter that must be included in a participant's plan

- (1) This section applies if:
  - (a) at a particular time (the *transition time*), a participant's plan provides that:
    - (i) the funding for supports under the participant's plan is managed by the Agency; and
    - (ii) the supports must be provided only by a registered provider of supports; and
  - (b) the participant is being provided with the supports in a participating jurisdiction at the transition time.
- (2) For the purposes of subsection 33(6) of the Act, the participant's plan is taken, on and after the transition time, to provide that the supports are to be provided only by a registered NDIS provider.

#### 20 NDIS Provider Register

If the Agency held information in relation to a provider at the time the provider became a transitioned provider, the Agency may disclose the information to the Commissioner for the purposes of establishing and maintaining the NDIS Provider Register.



**EXPOSURE DRAFT**

This is a limited circulation exposure draft. It is supplied in confidence and should be given appropriate protection.

**National Disability Insurance Scheme (Quality Indicators) Guidelines 2018**

I, Graeme Head, Commissioner of the NDIS Quality and Safeguards Commission, make the following Guidelines.

Dated

Graeme Head **DRAFT ONLY—NOT FOR SIGNATURE**  
Commissioner of the NDIS Quality and Safeguards Commission

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## Part 1 – Preliminary

### 1 Name

This instrument is the *National Disability Insurance Scheme (Quality Indicators) Guidelines 2018*.

### 2 Commencement

This instrument commences on 1 July 2018.

### 3 Authority

This instrument is made under subsection 181D(2) of the *National Disability Insurance Scheme Act 2013*.

### 4 Definitions

Note: A number of expressions used in this instrument are defined in section 9 of the Act, including the following:

- (a) National Disability Insurance Scheme rules
- (a) nominee
- (b) participant;
- (c) plan;
- (d) restrictive practice

In this instrument:

*Act* means the *National Disability Insurance Scheme Act 2013*.

*behaviour support plan* means:

- (a) a comprehensive behaviour support plan; or
- (b) an interim behaviour support plan.

*NDIS behaviour support practitioner* means a person the Commissioner considers is suitable to undertake behaviour support assessments (including functional behavioural assessments) and to develop behaviour support plans that may contain the use of restrictive practices.

*dignity of risk* means the right of the individual to choose to take some risk in engaging in life experiences.

*functional behavioural assessment* means the process for determining and understanding the function or purpose behind a person's behaviour, and may involve the collection of data, observations, and information to develop an understanding of the relationship of events and circumstances that trigger and maintain the behaviour.

*high intensity support descriptor* means the specific knowledge and skills required to perform the work.

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**key worker** means a person who is chosen by the family of a child receiving early childhood early intervention supports to work with them to coordinate information, services and supports for the child.

**regulated restrictive practice** means a restrictive practice that is or involves any of the following:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) 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;
- (e) environmental restraints, which restrict a person's free access to all parts of their environment, including items and activities.

Note: For the definition of **restrictive practice**, see section 9 of the Act.

**service agreement** means an oral or written agreement on between the provider and the Participant on the supports to be provided and the conditions surrounding those supports

**specialist behaviour support provider** means a registered NDIS provider whose registration includes the provision of specialist behaviour support services.

**support network** means family, friends, carers and other people who have a supportive relationship with a participant.

**support plan** means a document developed in response to a request for supports by the Participant and an appropriately skilled professional within the provider organisation prior to the commencement of supports.

**worker** means a person employed or otherwise engaged by a registered NDIS provider.

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## 4A Interpretation

- (1) A reference in this instrument to a provider includes a reference to a person who is applying to become a registered NDIS provider.
- (2) A reference in this instrument to a participant includes a reference to:
  - (a) a prospective participant; and
  - (b) a person with disability receiving supports or services from a provider under the arrangements set out in Chapter 2 of the Act; and
  - (c) a person with disability receiving supports or services from a person included in a class of persons prescribed for the purposes of subparagraph (b)(ii) of the definition of *NDIS provider* in section 9 of the Act.
- (3) A reference in this instrument to a participant providing consent, includes a nominee providing consent on a participant's behalf.

## Part 2 – Core Module

### 5 Applicable Practice Standards

Schedule 1 to the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* sets out the relevant NDIS Practice Standards that apply to this Part.

## Division 1 – Rights and Responsibilities

### 6 Person-centred supports

Outcome: Each participant accesses supports that promote, uphold and respect their legal and human rights and is enabled to exercise informed choice and control. The provision of supports promotes, upholds and respects individual rights to freedom of expression, self-determination and decision-making.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Each participant's legal and human rights are understood and incorporated into everyday practice.
- (2) Communication with each participant about the provision of supports is responsive to their needs and is provided in the language, mode of communication and terms that the participant is most likely to understand.
- (2) Each participant is supported to engage with their family, friends and chosen community as directed by the participant.

### 7 Individual values and beliefs

Outcome: Each participant accesses supports that respect their culture, diversity, values and beliefs.

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To achieve this outcome, the following indicators should be demonstrated:

- (1) At the direction of the participant, the culture, diversity, values and beliefs of that participant are identified and sensitively responded to.
- (2) Each participant's right to practice their culture, values and beliefs while accessing supports is supported.

## **8 Privacy and Dignity**

Outcome: Each participant accesses supports that respect and protect their dignity and right to privacy.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Consistent processes and practices are in place that respect and protect the personal privacy and dignity of each participant.
- (2) Each participant is advised of confidentiality policies using the language, mode of communication and terms that the participant is most likely to understand.
- (3) Each participant understands and agrees to what personal information will be collected and why, including recorded material in audio and/or visual format.

## **9 Independence and Informed Choice**

Outcome: Each participant is supported by the provider to make informed choices, exercise control and maximise their independence relating to the supports provided.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Active decision-making and individual choice is supported for each participant including the timely provision of information using the language, mode of communication and terms that the participant is most likely to understand.
- (2) Each participant's right to the dignity of risk in decision-making is supported. When needed, each participant is supported to make informed choices about the benefits and risks of the options under consideration.
- (3) Each participant's autonomy is respected, including their right to intimacy and sexual expression.
- (4) Each participant has sufficient time to consider and review their options and seek advice if required, at any stage of support provision, including assessment, planning, provision, review and exit.
- (5) Each participant's right to access an advocate (including an independent advocate) of their choosing is supported, as is their right to have the advocate present.

## **10 Violence, Abuse, Neglect, Exploitation and Discrimination**

Outcome: Each participant accesses supports free from violence, abuse, neglect, exploitation or discrimination.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Policies, procedures and practices are in place which actively prevent violence, abuse, neglect, exploitation or discrimination.
- (2) Each participant is provided with information about the use of an advocate (including an independent advocate) and access to an advocate is facilitated where allegations of violence, abuse, neglect, exploitation or discrimination have been made.
- (3) Allegations and incidents of violence, abuse, neglect, exploitation or discrimination, are acted upon, each participant affected is supported and assisted, records are made of any details and outcomes of reviews and investigations (where applicable) and action is taken to prevent similar incidents occurring again.

Note: A registered NDIS provider has obligations in relation to incident management systems and reportable incidents that may apply to incidents or a reportable incidents (see sections 73Y and 73Z of the Act and the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*).

## **Division 2 – Governance and Operational Management**

### **11 Governance and Operational Management**

Outcome: Each participant's support is overseen by robust governance and operational management systems relevant (proportionate) to the size, and scale of the provider and the scope and complexity of supports delivered.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Opportunities are provided by the governing body for people with disability to contribute to the governance of the organisation and have input into the development of organisational policy and processes relevant to the provision of supports and the protection of participant rights.
- (2) A defined structure is implemented by the governing body to meet a governing body's financial, legislative, regulatory and contractual responsibilities, and to monitor and respond to quality and safeguarding matters associated with delivering supports to participants.
- (3) The skills and knowledge required for the governing body to govern effectively are identified, and relevant training is undertaken by members of the governing body to address any gaps.
- (4) The governing body ensures that strategic and business planning considers legislative requirements, organisational risks, other requirements related to operating under the NDIS (for example Agency requirements and guidance), participants' and workers' needs and the wider organisational environment.

- 
- (5) The performance of management, including responses to individual issues, is monitored by the governing body to drive continuous improvement in management practices.
  - (6) The provider is managed by a suitably qualified and/or experienced persons with clearly defined responsibility, authority and accountability for the provision of supports.
  - (7) There is a documented system of delegated responsibility and authority to another suitable person in the absence of a usual position holder in place.
  - (8) Perceived and actual conflicts of interest are proactively managed and documented, including through development and maintenance of organisational policies.

## 12 Risk Management

Outcome: Risks to participants, workers and the provider are identified and managed.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Risks to the organisation, including risks to participants, financial and work health and safety risks, and risks associated with provision of supports are identified, analysed, prioritised and treated.
- (2) A documented system that effectively manages identified risks is in place, and is relevant and proportionate to the size and scale of the provider and the scope and complexity of supports provided.
- (3) Support delivery is linked to a risk management system which includes:
  - Incident Management;
  - Complaints Management;
  - Work Health and Safety;
  - Human Resource Management;
  - Financial Management;
  - Information Management; and
  - Governance.

## 13 Quality Management

Outcome: Each participant benefits from a quality management system relevant and proportionate to the size and scale of the provider, which promotes continuous improvement of support delivery.

To achieve this outcome, the following indicators should be demonstrated:

- (1) A quality management system is maintained that is relevant and proportionate to the size and scale of the provider and the scope and complexity of the supports delivered. The system defines how to meet the requirements of legislation and these standards. The system is reviewed and updated as required to improve support delivery.

- 
- (2) The provider's quality management system has a documented program of internal audits relevant (proportionate) to the size and scale of the provider and the scope and complexity of supports delivered.
  - (3) The provider's quality management system supports continuous improvement, using outcomes, risk related data, evidence-informed practice and feedback from participants and workers.

## 14 Information Management

Outcome: Management of each participant's information ensures that it is identifiable, accurately recorded, current and confidential. Each participant's information is easily accessible to the participant and appropriately utilised by relevant workers.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Each participant's consent is obtained to collect, use and retain their information or to disclose their information (including assessments) to other parties, including details of the purpose of collection, use and disclosure. Each participant is informed in what circumstances the information could be disclosed, including that the information could be provided without their consent if required or authorised by law.
- (2) Each participant is informed of how their information is stored and used, and when and how each participant can access or correct their information, and withdraw or amend their prior consent.
- (3) An information management system is maintained that is relevant and proportionate to the size and scale of the organisation and records each participant's information in an accurate and timely manner.
- (4) Documents are stored with appropriate use, access, transfer, storage, security, retrieval, retention, destruction and disposal processes relevant and proportionate to the scope and complexity of supports delivered.

## 15 Feedback and Complaints Management

Outcome: Each participant has knowledge of and access to the provider's complaints management and resolution system. Complaints and other feedback made by all parties are welcomed, acknowledged, respected and well-managed.

To achieve this outcome, the following indicators should be demonstrated:

- (1) A complaints management and resolution system is maintained that is relevant and proportionate to the scope and complexity of supports delivered and the size and scale of the organisation. The system follows principles of procedural fairness and natural justice and complies with the requirements under the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018*.
- (2) Each participant is provided with information on how to give feedback or make a complaint, including avenues external to the provider, and their right to access advocates. There is a supportive environment for any person who provides feedback and/or makes complaints.



- 
- (3) Demonstrated continuous improvement in complaints and feedback management by regular review of complaint and feedback policies and procedures, seeking of participant views on the accessibility of the complaints management and resolution system, and incorporation of feedback throughout the provider's organisation.
  - (4) All workers are aware of, trained in, and comply with the required procedures in relation to complaints handling.

Note: A registered NDIS provider has obligations if an incident is the subject of a complaint (see sections 73W and 73X of the Act and the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018*).

## 16 Incident Management

Outcome: Each participant is safeguarded by the provider's incident management system, ensuring that incidents are acknowledged, respond to, well-managed and learned from.

To achieve this outcome, the following indicators should be demonstrated:

- (1) An incident management system is maintained that is relevant and proportionate to the scope and complexity of supports delivered and the size and scale of the organisation. The system complies with the requirements under the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*.
- (2) Each participant is provided with information on incident management, including how incidents involving the participant have been managed.
- (3) Demonstrated continuous improvement in incident management by regular review of incident management policies and procedures, review of the causes, handling and outcomes of incidents, seeking of participant and worker views, and incorporation of feedback throughout the provider's organisation.
- (4) All workers are aware of, trained in, and comply with the required procedures in relation to incident management.

## 17 Human Resource Management

Outcome: Each participant's support needs are met by workers who are competent in relation to their role, hold relevant qualifications, and who have relevant expertise and experience to provide person-centred support.

To achieve this outcome, the following indicators should be demonstrated:

- (1) The skills and knowledge required of each position within a provider are identified and documented together with the responsibilities, scope and limitations of each position.
- (2) Records of worker pre-employment checks, qualifications and experience are maintained.

- 
- (3) An orientation and induction process is in place that is completed by workers including completion of the mandatory NDIS worker orientation program.
  - (4) A system to identify, plan, facilitate, record and evaluate the effectiveness of training and education for workers is in place to ensure that workers meet the needs of each participant. The system identifies training that is mandatory and includes training in relation to staff obligations under the NDIS Practice Standards and other National Disability Insurance Scheme rules.
  - (5) Timely supervision, support and resources are available to workers relevant to the scope and complexity of supports delivered.
  - (6) The performance of workers is managed, developed and documented, including through providing feedback and development opportunities.

## 18 Continuity of Supports

Outcome: Each participant has access to timely and appropriate support without interruption.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Day-to-day operations are managed in an efficient and effective way to avoid disruption and ensure continuity of supports.
- (2) In the event of worker absence or vacancy, a suitably qualified and/or experienced person performs the role.
- (3) Supports are planned with each participant to meet their specific needs and preferences. These needs and preferences are documented and provided to workers prior to commencing work with each participant to ensure the participant's experience is consistent with their expressed preferences.
- (4) Arrangements are in place to ensure support is provided to the participant without interruption throughout the period of their service agreement. These arrangements are relevant and proportionate to the scope and complexity of supports delivered by the provider.
- (5) Where changes or interruptions are unavoidable, alternative arrangements are explained and agreed with the participant.
- (6) Where applicable, disaster preparedness and planning measures are in place to enable continuation of critical supports before, during and after a disaster.

## Division 3 – Provision of Supports

### 19 Access to Supports

Outcome: Each participant accesses the most appropriate supports that meet their needs, goals and preferences.

To achieve this outcome, the following indicators should be demonstrated:

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- (1) The supports available, and any access / entry criteria (including any associated costs) are clearly defined and documented. This information is communicated to each participant using the language, mode of communication and terms that the participant is most likely to understand.
  - (2) Reasonable adjustments to the support delivery environment are made and monitored to ensure it is fit for purpose and each participant's health, privacy, dignity, quality of life and independence is supported.
  - (3) Each participant is supported to understand under what circumstances supports can be withdrawn. Access to supports required by the participant will not be withdrawn or denied solely on the basis of a dignity of risk choice that has been made by the participant.

## 20 Support Planning

Outcome: Each participant is actively involved in the development of their support plans. Support plans reflect participant needs, requirements, preferences, strengths and goals, and are regularly reviewed.

To achieve this outcome, the following indicators should be demonstrated:

- (1) With each participant's consent, work is undertaken with the participant and their support network to enable effective assessment and to develop a support plan. Appropriate information and access is sought from a range of resources to ensure the participant's needs, support requirements, preferences, strengths and goals are included in the assessment and the support plan.
- (2) In collaboration with each participant, a risk assessment is completed and documented for each participant's support plan, then appropriate strategies to treat known risks are planned and implemented.
- (3) Periodic reviews of the effectiveness of risk management strategies are undertaken with each participant to ensure risks are being adequately addressed, and changes are made when required.
- (4) Each support plan is reviewed annually or earlier in collaboration with each participant, according to their changing needs or circumstances. Progress in meeting desired outcomes and goals is assessed, at a frequency relevant and proportionate to risks, the participant's functionality and the participant's wishes.
- (5) Where progress is different from expected outcomes and goals, work is done with the participant to change and update the support plan.
- (6) Where appropriate, and with the consent of the participant, information on the support plan is communicated to family members, carers, other providers and relevant government agencies.

## 21 Service Agreements with Participants

Outcome: Each participant has a clear understanding of the supports they have chosen and how they will be provided.

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To achieve this outcome, the following indicators should be demonstrated:

- (1) Collaboration occurs with each participant to develop a service agreement which establishes expectations, explains the supports to be delivered, and specifies any conditions attached to the delivery of supports, including why these conditions are attached.
- (2) Each participant is supported to understand their service agreement and conditions using the language, mode of communication and terms that the participant is most likely to understand.
- (3) Where the service agreement is created in writing, each participant receives a copy of their agreement signed by the participant and the provider. Where this is not practicable, or the participant chooses not to have an agreement, a record is made of the circumstances under which the participant did not receive a copy of their agreement.
- (4) Where the provider delivers supported independent living supports to participants in specialist disability accommodation dwellings, an agreement is in place with each participant and each specialist disability accommodation provider. The agreement covers at minimum:
  - (a) How a Participant's concerns about the dwelling will be communicated and addressed;
  - (b) How potential conflicts involving participant(s) will be managed;
  - (c) How changes to participant circumstances and/or support needs will be agreed and communicated;
  - (d) In shared living, how vacancies will be filled, including each participant's right to have their needs, preferences and situation taken into account; and
  - (e) How behaviours of concern which may put tenancies at risk will be managed, if this is a relevant issue for the participant.

## **22 Responsive Support Provision**

Outcome: Each participant accesses responsive, timely, competent and appropriate supports to meet their needs, desired outcomes and goals.
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To achieve this outcome, the following indicators should be demonstrated:

- (1) Supports are provided based on the least intrusive options, in accordance with contemporary evidence-informed practices that meet participant needs and help achieve desired outcomes.
- (2) Where agreed in the service agreement, and with the participant's consent or direction, links are developed and maintained through collaboration with other providers to share information and meet participant needs.
- (3) Reasonable efforts are made to involve the participant in selecting their workers, including the preferred gender of workers providing personal care supports.
- (4) Where a participant has specific needs which require monitoring and/or daily support, workers are appropriately trained and understand the participant's needs and preferences.

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## **23 Transitions to or from the provider**

Outcome: Each participant experiences a planned and coordinated transition to or from the provider.

To achieve this outcome, the following indicators should be demonstrated:

- (1) A planned transition to or from the provider is facilitated in collaboration with each participant when possible, and this is documented, communicated and effectively managed.
- (2) Risks associated with each transition to or from the provider are identified, documented and responded to.
- (3) Processes for transitioning to or from the provider are developed, applied, reviewed and communicated.

## **Division 4 – Support Provision Environment**

### **24 Safe Environment**

Outcome: Each participants accesses supports in a safe environment that is appropriate to their needs.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Each participant can easily identify workers engaged to provide the agreed supports.
- (2) Where supports are provided in the participant's home, work is undertaken with the participant to ensure a safe support delivery environment.
- (3) Where relevant, work is undertaken with other providers and services to identify and treat risks, ensure safe environments, and prevent and manage injuries.

### **25 Participant Money and Property**

Outcome: Participant money and property is secure and each participant uses their own money and property as they determine.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Where the provider has access to a participant's money or other property, processes to ensure that it is managed, protected and accounted for are developed, applied, reviewed and communicated. Participants' money or other property is only used with the consent of the participant and for the purposes intended by the participant.
- (2) If required, each participant is supported to access and spend their own money as the participant determines.
- (3) Participants are not given financial advice or information other than that which would reasonably be required under the participant's plan.

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## 26 Management of Medication

Outcome: Each participant requiring medication is confident their provider administers, stores and monitors the effects of their medication and works to prevent errors or incidents.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Records clearly identify the medication and dosage required by each participant, including all information required to correctly identify the participant and to safely administer the medication.
- (2) All workers responsible for administering medication understand the effects and side-effects of the medication and the steps to take in the event of an incident involving medication.
- (3) All medications are stored safely and securely, can be easily identified and differentiated, and are only accessed by appropriately trained workers.

## 27 Management of Waste

Outcome: Each participant, each worker, and any other person in the home is protected from harm as a result of exposure to waste, infectious or hazardous substances generated during the delivery of supports.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Policies, procedures and practices are in place for the safe and appropriate storage and disposal of waste, infectious or hazardous substances that comply with current legislation and local health district requirements.
- (2) All incidents involving infectious material, body substances or hazardous substances are reported, recorded, investigated and reviewed.
- (3) An emergency plan is in place to respond to clinical waste or hazardous substance management issues and/or accidents. Where the plan is implemented, its effectiveness is evaluated, and revisions are made if required.
- (4) Workers involved in the management of waste and hazardous substances receive training to ensure safe and appropriate handling. This includes training on any protective equipment and clothing required when handling waste or hazardous substances.

## Part 3 – Module 1: High Intensity Daily Personal Activities

### 28 Applicable Practice Standards

Schedule 2 to the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* sets out the relevant NDIS Practice Standards that apply to this Part.

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## 29 Complex Bowel Care

Outcome: Each Participant requiring complex bowel care receives appropriate support relevant (proportionate) to their individual needs.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Each participant is involved in the assessment and development of the plan for their complex bowel care management. With their consent, the participant's health status is subject to regular and timely review by an appropriately qualified health practitioner. The plan identifies how risks, incidents and emergencies will be managed, including required actions and escalation to ensure participant wellbeing.
- (2) Appropriate policies and procedures are in place, including a training plan for workers, that relate to the support provided to each participant receiving complex bowel care.
- (3) All workers working with a participant requiring complex bowel care have received training, relating specifically to each participant's needs, type of complex bowel care and high intensity support descriptor for providing complex bowel care, delivered by an appropriately qualified health practitioner or person that meets the high intensity support descriptor for complex bowel care.

## 30 Enteral (Naso-Gastric Tube – Jejunum or Duodenum) Feeding and Management

Outcome: Each participant requiring enteral feeding and management receives appropriate nutrition, fluids and medication, relevant and proportionate to their individual needs.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Each participant is involved in the assessment and development of the plan for their enteral feeding and management. With their consent, the participant's health status is subject to regular and timely review by an appropriately qualified health practitioner. The plan identifies how risks, incidents and emergencies will be managed, including required actions and escalation to ensure participant wellbeing.
- (2) Appropriate policies and procedures are in place, including a training plan for workers, that relate to the support provided to each participant who has enteral feeding needs.
- (3) All workers working with a participant who requires enteral feeding have completed training, relating specifically to each participant's needs, type and method of enteral feeding and regime, and high intensity support descriptor for enteral feeding, delivered by an appropriately qualified health practitioner or person that meets the high intensity support descriptor for enteral feeding.

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### **31 Tracheostomy Management**

Outcome: Each participant with a tracheostomy receives appropriate suctioning and management of their tracheostomy relevant and proportionate to their individual needs.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Each participant is involved in the assessment and development of the plan for their tracheostomy suctioning and management. With their consent, the participant's health status is subject to regular and timely review by an appropriately qualified health practitioner. The plan identifies how risks, incidents and emergencies will be managed, including required actions and escalation to ensure participant wellbeing.
- (2) Appropriate policies and procedures are in place, including a training plan for workers, that relate to the support provided to each participant with a tracheostomy.
- (3) All workers have completed training, relating specifically to each participant's needs, managing any tracheostomy related incident and high intensity support descriptor for providing tracheostomy care (without ventilation) and supporting a person dependent on ventilation, delivered by an appropriately qualified health practitioner or person that meets the high intensity support descriptor for tracheostomy suctioning and management.

### **32 Urinary Catheter Management (In-dwelling Urinary Catheter, In-out Catheter, Suprapubic Catheter)**

Outcome: Each participant with a catheter receives appropriate catheter management relevant and proportionate to their individual needs.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Each participant is involved in the assessment and development of the plan for management of their catheter. With their consent, the participant's health status is subject to regular and timely review by an appropriately qualified health practitioner. The plan identifies how risks, incidents and emergencies will be managed, including required actions and escalation to ensure participant wellbeing.
- (2) Appropriate policies and procedures are in place, including a training plan for workers, that relate to the support provided to each participant with a catheter.
- (3) All workers have completed training, relating specifically to each participant's needs, type of catheter and high intensity support descriptor for catheter changing and management, delivered by an appropriately qualified health practitioner or a person that meets the high intensity support descriptor for urinary catheter changing and management.

### **33 Ventilator Management**



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Outcome: Each participant requiring ventilator management receives appropriate support relevant and proportionate to their individual needs and the specific ventilator used.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Each participant is involved in the assessment and development of the plan for their ventilator management. With their consent, the participant's health status is subject to regular and timely review by an appropriately qualified health practitioner. The plan identifies how risks, incidents and emergencies will be managed, including required actions and escalation to ensure participant wellbeing.
- (2) Appropriate policies and procedures are in place, including a training plan for workers, that relate to the support provided to each participant who is ventilator dependent.
- (3) All workers have completed training, relating specifically to each participant's ventilation needs, managing a related incident and the high intensity support descriptor for ventilator management, delivered by an appropriately qualified health practitioner or person who meets the high intensity support descriptor for ventilator management.

### **34 Subcutaneous Injections**

Outcome: Each participant requiring subcutaneous injections receives appropriate support relevant and proportionate to their individual needs and specific subcutaneous injections and medication administered.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Each participant is involved in the assessment and development of the plan for their subcutaneous injections which includes dosage measurement and calculation. With their consent, each participant's health status is subject to regular and timely review by an appropriately qualified health practitioner. The plan identifies how risks, incidents and emergencies will be managed, including required actions and escalation to ensure participant wellbeing.
- (2) There are documented written or phone orders by the health practitioner prescribing the medication that trained workers may administer by subcutaneous injection.
- (3) Appropriate policies and procedures are in place, including a training plan for workers, that relate to the support provided to participants requiring subcutaneous injections and related medication.
- (4) All workers have completed training, relating specifically to the participant's injection and medication needs and high intensity support descriptor for subcutaneous injections, delivered by an appropriately qualified health practitioner or person that meets the high intensity support descriptor for subcutaneous injections. Workers must also have a basic understanding of the participant's related health condition.

### **35 Complex Wound Management**

Outcome: Each participant requiring complex wound management receives appropriate support relevant and proportionate to their individual needs.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Each participant is involved in the assessment and development of the plan for their complex wound management. With their consent, the participant's health status is subject to regular and timely review by an appropriately qualified health practitioner. The plan identifies how risks, incidents and emergencies will be managed, including required actions and escalation to ensure participant wellbeing.
- (2) Appropriate policies and procedures are in place, including a training plan for workers, that relate to the support provided to each participant requiring complex wound management.
- (3) All workers working with a participant requiring complex wound management have received training, relating specifically to the participant's needs that are affected by their wound management regime (for example, showering, toileting and mobility) and high intensity support descriptor for providing complex wound management, delivered by an appropriately qualified health practitioner or person that meets the high intensity support descriptor for complex wound management.

## Part 4 –Module 2: Specialist Behaviour Support

### 36 Applicable Practice Standards

Schedule 3 to the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* sets out the relevant NDIS Practice Standards that apply to this Part.

### 37 Application of Module

This module applies to specialist behaviour support providers. It does not apply to providers implementing behaviour support plans.

### 38 Behaviour Support in the NDIS

Outcome: Each participant accesses behaviour support that is appropriate to their needs which incorporates evidence-informed practice and complies with relevant legislation and policy frameworks.

To achieve this outcome, the following indicators should be demonstrated:

- (1) The *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018* are understood and applied.
- (2) All NDIS behaviour support practitioners have been assessed as suitable to deliver specialised positive behaviour support, including assessments and development of behaviour support plans.

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- (3) Each NDIS behaviour support practitioner undertakes ongoing professional development to remain current with evidence-informed practice and approaches to behaviour support, including positive behaviour support.
  - (4) A specialist behaviour support clinical supervisor provides clinical supervision of each work practice of the NDIS behaviour support practitioner.
  - (5) Demonstrated commitment to reducing and eliminating restrictive practices through policies, procedures and practices.

### 39 Restrictive Practices

Outcome: Each participant is only subject to a restrictive practice that meets any state and territory authorisation (however described) requirements and the relevant requirements and safeguards outlined in Commonwealth legislation and policy.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Knowledge and understanding of regulated restrictive practices as described in the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018* and knowledge and understanding of any relevant state or territory legislation and/or policy requirements and processes for obtaining authorisation (however described) for the use of any restrictive practices included in a behaviour support plan.
- (2) Each Behaviour Support Practitioner undertakes professional development to maintain an understanding of practices considered restrictive and the risks associated with those practices.
- (3) Each participant and, with the participant's consent, their support network, providers implementing behaviour support plans, and other relevant stakeholders are engaged in discussions about the need for restrictive practices and they understand the risks associated with their use. Alternatives to the use of restrictive practices are promoted as part of these discussions.
- (4) Each participant and, with the participant's consent, their support network, their providers implementing behaviour support plans and other relevant stakeholders are engaged in the development of behaviour support strategies that are proportionate to the risk of harm to the participant or others.
- (5) Restrictive practices are only included in a participant's behaviour support plan in accordance with relevant Commonwealth legislation and/or policy requirements and relevant state or territory legislation and/or policy requirements for obtaining authorisation (however described) for the use of any restrictive practices.
- (6) Regulated restrictive practices in behaviour support plans comply with the conditions prescribed in the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*.
- (7) Each participant's behaviour support plan or interim behaviour support plan includes strategies that will lead to the reduction and elimination of any restrictive practices included in the plan.

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- (8) Support is provided to other providers implementing a behaviour support plan, in delivering services, implementing strategies in the plan and evaluating the effectiveness of current approaches aimed at reducing and eliminating restrictive practices.

#### **40 Functional Behaviour Assessments and Behaviour Support Plans**

Outcome: Each participant's quality of life is maintained and improved by tailored, evidence-informed behaviour support plans that are responsive to their needs.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Work is undertaken with each participant and their support network to undertake a behaviour support assessment that identifies unmet participant needs, the function and/or purpose of behaviours, and identify strategies to address behaviours of concern.
- (2) Behaviour support plans take into account all appropriate sources of information such as the behaviour support assessment, and with the consent of the participant, the participant's support network, the providers implementing behaviour support plans, and assessments carried out by other collaborating providers and mainstream service providers.
- (3) Behaviour support plans are consistent with evidence-informed practice, including proactive strategies.
- (4) The interface between a reasonable and necessary supports under a participant's plan and any other supports or services under a general system of service delivery that the participant receives, are considered, and strategies and protocols are developed to integrate supports/services as practicable.
- (5) Behaviour support plans are developed in consultation with the providers implementing behaviour support plans, and the behaviour support plan is given to those providers for their consideration and acceptance.
- (6) All behaviour support plans containing a regulated restrictive practice are provided to the Commissioner in the time and manner prescribed in the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*.

#### **41 Supporting the Implementation of the Behaviour Support Plan**

Outcome: Each participant's behaviour support plan is implemented effectively to meet the participant's behaviour support needs.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Assistance is given to ensure that the providers implementing behaviour support plans understand the relevant state or territory legislative and/or policy requirements for obtaining authorisation (however described) for the use of a restrictive practice included in a behaviour support plan, including any conditions around the use of restrictive practices.

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- (2) Reasonable measures are taken to ensure the participant, and with the participant's consent, the participant's support network, and the providers implementing behaviour support plans, understand the rationale underpinning the behaviour support plan. Instructions and guidance are developed to support the participant, the providers implementing behaviour support plans and the participant's support network to effectively implement the behaviour support plan.
  - (3) Providers implementing behaviour support plans are made aware of the reporting requirements prescribed in the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*.
  - (4) Person-focused training, coaching and mentoring is facilitated or delivered to each of the providers implementing behaviour support plans, and, with each participant's consent, their support network (where applicable). It covers the strategies required to implement a participant's behaviour support plan, including positive behaviour support strategies.
  - (5) Development of behaviour support plans for each participant, in collaboration with the providers implementing the behaviour support plan.
  - (6) Where the specialist behaviour support provider recommends that workers implementing a behaviour support plan receive training on the safe use of a restrictive practice included in a plan, oversight is retained to ensure the training addresses the strategies contained within each participant's behaviour support plan.
  - (7) Ongoing support and advice is offered to providers implementing behaviour support plans, and, with the participant's consent, their support network (where applicable), to address barriers to implementation.

## 42 Behaviour Support Plan Monitoring and Review

Outcome: Each participant has a current behaviour support plan that reflects their needs, improves their quality of life and supports their progress towards positive change. The plan progresses towards the reduction and elimination of restrictive practices, where these are in place for the participant.

To achieve this outcome, the following indicators should be demonstrated:

- (1) The progress and effectiveness of implemented strategies are evaluated through regular engagement with the participant, and by reviewing, recording and monitoring data collected by providers implementing behaviour support plans.
- (2) Modifications to the strategies contained in each participant's behaviour support plan are made based on engagement with the participant and the results of the information and data analysis, and with the participant's consent, these changes are communicated and training is provided (where required) to their support network on the modified strategies.
- (3) Opportunities to reduce the use of restrictive practices based on documented positive change are pursued.
- (4) The Commissioner is notified and work is undertaken with the Commissioner to address such situations:

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- (a) where effective engagement with providers implementing behaviour support plans is not possible for any reason; or
  - (b) if the supports and services are not being implemented in accordance with the behaviour support plan.
- (5) Each participant's behaviour support plan is reviewed at least every twelve months. Consideration is given to whether the participant's needs, situation or progress create a need for more frequent reviews, including if the participant's behaviour changes, or if a new provider is required to implement the plan.
- (6) The Commissioner is notified of changes in each participant's behaviour support plan in the manner and timeframe prescribed in the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*.

#### **43 Reportable Incidents involving the Use of a Restrictive Practice**

Outcome: Each participant that is subject to an emergency or unauthorised use of a restrictive practice has the use of that practice reported and reviewed.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Support is given to the providers implementing each participant's behaviour support plan in responding to a reportable incident involving the use of restrictive practices.
- (2) Each participant, and with the participant's consent, their support network, the providers implementing behaviour support plans and other stakeholders are included in the review of incidents.

#### **44 Interim Behaviour Support Plans**

Outcome: Each participant with an immediate need for a behaviour support plan receives an interim behaviour support plan which minimises the risk to the participant and others.

To achieve this outcome, the following indicators should be demonstrated:

- (1) When a participant develops an immediate need for behaviour support, the participant and the providers implementing behaviour support plans are involved in evaluating the risks posed to the participant and others by the participant's behaviour, and an interim behaviour support plan is developed that appropriately manages that risk.
- (2) Advice and guidance is given to the providers implementing behaviour support plans and, with the participant's consent, their support network on the effective implementation of the interim behaviour support plan.

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## Part 5 –Module 2A: Implementing Behaviour Support Plans

### 45 Applicable Practice Standards

Schedule 4 to the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* sets out the relevant NDIS Practice Standards that apply to this Part.

### 46 Application of Module

This module applies to providers who implement behaviour support plans. It does not apply to specialist behaviour support providers.

### 47 Behaviour Support in the NDIS

Outcome: Each participant accesses behaviour support that is appropriate to their needs which incorporates evidence-informed practice and complies with relevant legislation and policy frameworks.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Knowledge and understanding of the NDIS and state and territory behaviour support legislative and policy frameworks.
- (2) Demonstrated appropriate knowledge and understanding of evidence-informed practice approaches to behaviour support.
- (3) Demonstrated commitment to reducing and eliminating restrictive practices through policies, procedures and practices.

### 48 Regulated Restrictive Practices

Outcome: Each participant is only subject to a regulated restrictive practice that meets any state and territory authorisation (however described) requirements and the relevant requirements and safeguards outlined in Commonwealth legislation and policy.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Knowledge and understanding of regulated restrictive practices as described in the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018* and knowledge and understanding of any relevant state or territory legislation and/or policy requirements and processes for obtaining authorisation (however described) for the use of any regulated restrictive practices included in a behaviour support plan.
- (2) Where state or territory legislation and/or policy requires authorisation (however described) to, the use of a regulated restrictive practice, such authorisation is obtained and evidence submitted.
- (3) Regulated restrictive practices are only used in accordance with a behaviour support plan and all the requirements as prescribed in the *National Disability Insurance Scheme (Restrictive Practices and Behaviour*

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*Support) Rules 2018.* Regulated restrictive practices are implemented, documented and reported in a way that is compliant with relevant legislation and/or policy requirements.

- (4) Work is undertaken with specialist behaviour support providers to evaluate the effectiveness of current approaches aimed at reducing and eliminating restrictive practices, including the implementation of strategies in the behaviour support plan.
- (5) Workers maintain the skills required to use restrictive practices and support the participant and other stakeholders to understand the risks associated with the use of restrictive practices.

#### **49 Supporting the Assessment and Development of Behaviour Support Plans**

Outcome: Each participant's quality of life is maintained and improved by tailored, evidence-informed behaviour support plans that are responsive to their needs.

To achieve this outcome, the following indicators should be demonstrated:

- (1) The specialist behaviour support provider is supported to gather information for the functional behavioural assessment and other relevant assessments.
- (2) Collaboration occurs with the specialist behaviour support provider to develop each participant's behaviour support plan and the clear identification of key responsibilities in implementing and reviewing the plan.
- (3) Relevant workers have the necessary skills to inform the development of the participant's behaviour support plan.
- (4) Relevant workers have access to appropriate training to enhance their skills in, and knowledge of, positive behaviour supports and restrictive practices.

#### **50 Behaviour Support Plan Implementation**

Outcome: Each participant's behaviour support plan is implemented effectively to meet the participant's behaviour support needs.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Policies and procedures that support the implementation of behaviour support plans are developed and maintained.
- (2) Work is actively undertaken with the specialist behaviour support providers to implement each participant's behaviour support plan and to align support delivery with evidence-informed practice and positive behaviour support.
- (3) Workers are supported to develop and maintain the skills required to consistently implement the strategies in each participant's behaviour support plan.
- (4) Specialist behaviour support providers are supported to train the workers of the providers implementing a behaviour support plans in the use and



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monitoring of behaviour support strategies in the behaviour support plan, including positive behaviour support.

- (5) Workers receive training in the safe use of restrictive practices.
- (6) Collaboration is undertaken with other providers that work with the participant to implement strategies in the participant's behaviour support plan.
- (7) Performance management ensures that workers are implementing strategies in the participant's behaviour support plan appropriately.

## 51 Monitoring and Reporting the Use of Regulated Restrictive Practices

Outcome: Each participant is only subject to a restrictive practice that is reported to the Commission.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Demonstrated compliance with monthly online reporting requirements in relation to the use of regulated restrictive practices, as prescribed in the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*.
- (2) Data is monitored to identify actions for improving outcomes.
- (3) Data is used to provide feedback to workers, and with the participant's consent, their support network, and their specialist behaviour support provider about the implementation of the behaviour support plan to inform the reduction and elimination of restrictive practices.

## 52 Behaviour Support Plan Review

Outcome: Each participant has a current behaviour support plan that reflects their needs, and works towards improving their quality of life, reducing behaviours of concern, and reducing and eliminating the use of restrictive practices.

To achieve this outcome, the following indicators should be demonstrated:

- (1) The implementation of the participant's behaviour support plan is monitored through a combination of formal and informal approaches, including through feedback from the participant, team meetings, data collection and record keeping, other feedback and supervision.
- (2) Information is recorded and data is collected as required by the specialist behaviour support provider and as prescribed in the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*.
- (3) Identification of circumstances where the participant's needs, situation or progress create a need for more frequent review, including if the participant's behaviour changes
- (4) Contributions are made to the reviews of the strategies in a participant's behaviour support plan, with the primary focus of reducing or eliminating

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restrictive practices based on observed progress or positive changes in the participant's situation.

### 53 Reportable Incidents involving the Use of a Restrictive Practice

Outcome: Each participant that is subject to an emergency or unauthorised use of a restrictive practice has the use of that practice reported and reviewed.

To achieve this outcome, the following indicators should be demonstrated:

- (1) The participant's immediate referral to, and assessment by a medical practitioner (where appropriate) is supported following an incident.
- (2) Collaboration is undertaken with mainstream service providers, such as police and/or other emergency services, mental health and emergency department, treating medical practitioners and other allied health clinicians, in responding to the unauthorised use of a restrictive practice.
- (3) The Commissioner is notified of all reportable incidents involving the use of an unauthorised restrictive practice in accordance with the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*.
- (4) Where an unauthorised restrictive practice has been used, the workers and management of providers implementing behaviour support plans engage in debriefing to identify areas for improvement and to inform further action. The outcomes of the debriefing are documented.
- (5) Based on the review of incidents, the supports to the participant are adjusted, and where appropriate, the engagement of a specialist behaviour support provider is facilitated to develop or review the participant's behaviour support plan or interim behaviour support plan, if required, in accordance with the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*.
- (6) Authorisation processes (however described) are initiated as required by their jurisdiction.
- (7) The participant, and with the participant's consent, their support network and other stakeholders as appropriate, are included in the review of incidents.

### 54 Interim Behaviour Support Plans

Outcome: Each participant with an immediate need for a behaviour support plan receives an interim behaviour support plan based on evidence-informed practice, which minimises risk to the participant and others.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Collaboration is undertaken with mainstream service providers (such as police and/or other emergency services, mental health and emergency departments, treating medical practitioners and other allied health clinicians) in contributing to an interim behaviour support plan developed by a specialist behaviour support provider.

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- (2) Work is undertaken with the specialist behaviour support provider to support the development of the interim behaviour support plan.
  - (3) Workers are supported and facilitated to receive training in the implementation of the interim behaviour support plan.

## **Part 6 –Module 3: Early Childhood Supports**

### **55 Applicable Practice Standards**

Schedule 5 to the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* sets out the relevant NDIS Practice Standards.

### **56 The Child**

Outcome: Each child participant accesses supports that promote and respect their legal and human rights, support their development of functional skills, and enable them to participate meaningfully and be included in everyday activities with their peers.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Knowledge and understanding of each participant's legal and human rights, and incorporation of those rights into everyday practice.
- (2) Implementation of practices and procedures to manage risk with a focus on creating a safe environment for children.
- (3) Compliance with all relevant state and territory legislation relating to the reporting of risk of harm to children.
- (4) Facilitation of the active involvement of the participant's support network in the participant's development.

### **57 The Family**

Outcome: Each family receives family-centred supports that are culturally inclusive, responsive, and focus on their strengths.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Each support plan is based on child and family choice and control and is undertaken with the family.
- (2) The family's expertise and knowledge about their child is recognised and respected.
- (3) The family's strengths, needs and priorities are identified by working in partnership with the family.
- (4) Each support plan is flexible and individualised to reflect the child's and family members' preferences and learning styles.
- (5) Each support plan is culturally responsive and respectful of the family's cultural beliefs and their community.

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- (6) Information and supports are provided in a clear, easy to understand and flexible manner by integrating the support into the child's everyday routine.
  - (7) The strengths of the family are promoted and developed and the family is assisted to develop their own network of formal and informal resources, with recognition that positive outcomes for children do not rely solely on therapeutic child-focused programs.
  - (8) Work is undertaken with the family to inform and strengthen their participation in, and contribution to, the child's learning and development.

## 58 Inclusion

Outcome: Each participant accesses supports that engage their natural environments and enable inclusive and meaningful participation in their family and community life.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Assessment of each child's development focuses on the child's functions in their everyday routines and activities in their natural learning environments.
- (2) A child's inclusive, meaningful and active participation in their family life, community life and natural environments is promoted.
- (3) Links with each family's community and other support agencies are enabled and built upon.
- (4) Each child's inclusion through participation in daily routines in their natural learning environments is promoted.

## 59 Collaboration

Outcome: Each participant receives coordinated supports from a collaborative team comprising their family, the provider and other relevant providers, to facilitate their development and address the family's needs and priorities.

To achieve this outcome, the following indicators should be demonstrated:

- (1) If the family wishes to engage a key worker, work is undertaken with the family and other providers to identify a suitable key worker.
- (2) Close collaborative links with the family and other collaborating providers are established to coordinate the team around each child.
- (3) With the consent of the family, information, knowledge and skills are communicated and shared between the family, the provider, and other collaborating providers.
- (4) Where relevant, collaboration between supports and services is undertaken to ensure that transition/exit planning meets the needs of each child and their family.

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## 60 Capacity Building

Outcome: Each participant receives supports that build the knowledge, skills and abilities of the family and other collaborating providers in order to support the child's learning and development.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Work is undertaken with the support network in each child's life to build their capacity to achieve the functional outcomes identified in the support plan.
- (2) Each family's confidence is built to understand how their family routines and everyday activities can support their child's development.
- (3) The capacity of the child, family and collaborating providers involved with the child is built through coaching, capacity building supports and collaborative teamwork.
- (4) Collaboration is undertaken to affirm, challenge, and support the child, family and collaborating providers to further develop their skills and to improve practice and relationships.
- (5) Feedback and learnings from the child, family and other professionals is used to improve support delivery.

## 61 Evidence-Informed Practice

Outcome: Each participant receives evidence-informed supports from providers with quality standards and validated practice.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Intervention strategies are based on explicit principles, validated practices, best available research and relevant laws and regulations.
- (2) Appropriate information, knowledge, skills and expertise are in place to deliver quality supports to families.
- (3) Knowledge and skills are maintained through continuing relevant professional development, ongoing self-reflection, self-assessment and monitoring of practices.

## 62 Outcome Based Approach

Outcome: Each participant receives supports that are outcome-based and goal-focused.

To achieve this outcome, the following indicators should be demonstrated:

- (1) The functional outcomes for the child and their family are based on their needs and priorities, and the skills needed to achieve those outcomes are identified through collaboration with the child and their family.
- (2) Each child has a documented support plan that describes the interventions and their functional outcomes.

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- (3) The family is actively involved in the assessment of the child and the development and review of the support plan.
  - (4) A copy of the support plan is provided to the family in the language, mode of communication and terms that they are most likely to understand.
  - (5) The functional outcomes support the child's meaningful participation in family and community life.
  - (6) The assessment, intervention planning and outcomes for the child and the family are measured, evaluated and reported in ways that are meaningful to, and understood by, the family.

## **Part 7 –Module 4: Specialised Support Coordination**

### **63 Applicable Practice Standards**

Schedule 6 to the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* sets out the relevant NDIS Practice Standards that apply to this Part.

### **64 Specialised Support Coordination**

Outcome: Each participant receiving specialised support coordination receives tailored support to implement, monitor and review their support plans and reduce the risk and complexity of their situation.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Demonstrated knowledge and understanding of the risk factors experienced by each participant with high-risk and/or complex needs.
- (2) Participants are involved in the evaluation of their situation and the identification of the supports required to prevent or respond to a crisis, incident or breakdown of support arrangements, and the promotion of safety for the participant and others.
- (3) Consultation is undertaken with the participant and, with the participant's consent, the participant's support network and mainstream services (as appropriate) in planning and coordinating supports to implement the participant's plan, and any plan review.
- (4) In consideration of each participant's individual needs, preferences and circumstances, suitable NDIS providers and mainstream service providers that have the appropriate skills and experience to deliver the required support are identified.
- (5) There is proactive engagement to ensure that all providers implementing the participant's plan understand and respond to the risk and/or complexity of the participant's situation, and collaborate with other relevant providers, where required.
- (6) All monitoring and reporting obligations associated with the participant's plan are managed effectively.

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## 65 Management of a Participant's NDIS Supports

Outcome: Each participant exercises meaningful choice and control over their supports and maximises the value for money they receive from their supports.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Supports and services are arranged using the participant's NDIS amounts as directed by the participant and for the purposes intended by the participant.
- (2) Each participant has been provided with information about their support options using the language, mode of communication and terms that the participant is most likely to understand.
- (3) As appropriate, each participant is supported to build their capacity to coordinate, self-direct and manage their supports and to understand how to participate in Agency planning processes such as establishing agreements with service providers and managing budget flexibility.
- (4) Supports funded under a participant's plan are used effectively and efficiently, and are complemented by community and mainstream services to achieve the objectives of the participant's plan.

## 66 Conflict of Interest

Outcome: Each participant receives transparent, factual advice about their support options which promotes choice and control.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Conflict of interest policies are provided or explained to each participant using the language, mode of communication and terms that the participant is most likely to understand.
- (2) Each participant is supported to understand the distinction between the provision of specialised support coordination and other reasonable and necessary supports funded under a participant's plan using the language, mode of communication and terms that the participant is most likely to understand.
- (3) If the provider has an interest in any support option available to the participant, the participant is aware of this interest. The participant understands that any choice they made about providers of other supports will not impact on the provision of the specialised support coordination.
- (4) Referrals to and from other providers are documented for each participant.

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## Part 8 – Module 5: Specialist Disability Accommodation

### 67 Applicable Practice Standards

Schedule 7 to the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* sets out the relevant NDIS Practice Standards that apply to this Part.

### 68 Rights and Responsibilities

Outcome: Each participant's access to specialist disability accommodation dwellings is consistent with their legal and human rights and they are supported to exercise informed choice and control.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Knowledge and understanding of each participant's legal and human rights, and incorporation of these rights into everyday practice, including through reasonable adjustments or modifications to the dwelling to meet each participant's needs.
- (2) Any agreement or contract entered into with each participant, and any communication with the participant about the provision of specialist disability accommodation, including about rights and responsibilities in relation to the dwelling, is responsive to their needs and provided in the language, mode of communication and terms which that participant is most likely to understand.
- (3) Each participant's autonomy, including their right to privacy, intimacy and sexual expression is respected.

### 69 Conflict of Interest

Outcome: Each participant's right to exercise choice and control over other NDIS support provision is not limited by their choice of specialist disability accommodation dwelling.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Organisational policies are in place that detail how perceived or actual conflicts of interests are managed. The conflict of interest policies are made available to participants in the language, mode of communication and terms which each participant is most likely to understand.
- (2) Conflicts of interest, perceived or actual, are proactively managed and documented.
- (3) The participant is supported to understand the distinction between the provision of specialist disability accommodation and other NDIS supports delivered in the dwelling. Where a specialist disability accommodation provider is delivering both specialist disability accommodation and other NDIS supports to the same participant, there are separate service agreements.



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- (4) The participant's housing rights, including security of tenure, are upheld, irrespective of any decision/s the participant makes about the provision of other NDIS supports within the specialist disability accommodation dwelling (notwithstanding any matters covered by the specialist disability accommodation service agreement).

## 70 Service Agreements with Participants

Outcome: Each participant is supported to understand the terms and conditions that apply to their specialist disability accommodation dwelling and the associated service and/or tenancy agreements.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Work is undertaken with each participant to develop a written service agreement that meets the requirements of the *National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rules 2018*, and any applicable state or territory residential tenancy legislation.
- (2) In the absence of any applicable state or territory residential tenancy legislation, written service agreements should deal with the following matters:
  - (a) specify the rent that must be paid by the participant and the method and timing of making rental payments and arrangements for the issuance of rental payment receipts;
  - (b) specify the value and management arrangements in relation to any bond that is required from the participant;
  - (c) if applicable, specify any board payments that have been agreed with the participant, what the board payments will cover and the method and timing of making the board payments;
  - (e) specify the minimum period of notice that will be given by the provider before the provider increases the amount of rent or board (where applicable) payable by the participant;
  - (f) specify:
    - (i) the name, telephone number and address of the provider's agent (if any) and the responsibilities of the agent; or
    - (ii) if the provider does not have an agent, the address and telephone number, of the provider;
  - (g) require the provider to notify the participant in writing within 5 business days of any change during the agreement of the matters provided for in paragraph (f), unless applicable state or territory law stipulates an alternative notice period;
  - (h) specify the commencement date of the agreement, the duration of the agreement, and the manner in which the agreement can be extended;
  - (j) specify the circumstances in which the agreement can be terminated by either the participant or the provider;
  - (k) require the provider to give the participant a minimum of 90 days' notice before the participant is required to vacate the premises, unless

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shorter notice is required to address risks of harm to the participant or others;

- (1) explain the process for requesting repairs or maintenance to be undertaken.
- (3) The agreement establishes expectations, explains the responsibilities of the specialist disability accommodation provider in relation to the dwelling, and specifies the rights and responsibilities of the participant in accessing the dwelling.
- (4) The agreement includes information about dwelling safety features, including fire alarms and building evacuation procedures, and how this information will be communicated to other providers who deliver supported independent living to each participant in the dwelling.
- (5) Each participant is supported to understand the agreement, including any conditions, by using the language, mode of communication and terms which that participant is most likely to understand.
- (6) Each participant receives a copy of their agreement signed by the participant and the provider. Where this is not practicable, a record is made detailing the circumstances in which the participant did not receive a copy of their agreement.

## 71 Enrolment of SDA Properties

Outcome: Each participant's specialist disability accommodation dwelling meets the requirements of the design type, category and other standards that were identified through the dwelling enrolment process.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Mechanisms are in place to ensure a provider's enrolled specialist disability accommodation dwellings meet the design type, category and density restriction requirements of the *National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rules 2018*.
- (2) Mechanisms are in place to ensure a provider maintains ongoing compliance with the *National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rules 2018* and all relevant laws and standards, including building standards and tenancy laws that apply to specialist disability accommodation dwellings.
- (3) Enrolled dwellings are in a good state of repair and are being appropriately maintained, having regard to the safety, security and privacy of residents.

## 72 Tenancy Management

Outcome: Each participant accessing a specialist disability accommodation dwelling is able to exercise choice and control and is supported by effective tenancy management.

To achieve this outcome, the following indicators should be demonstrated:

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- (1) Demonstrated adherence to the requirements established in the *National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rules 2018*.
  - (2) Where applicable, policies and procedures are in place about how a provider will declare, advertise and fill vacancies in shared living, including how each participant's views, preferences and needs are documented and taken into account. The policies are made available to participants in the language, mode of communication and terms which each participant is most likely to understand.
  - (3) Written agreements are in place with each participant and each participant's other NDIS Providers that deliver supported independent living supports within the dwelling. The agreements should deal with the following matters:
    - (a) How the specialist disability accommodation provider will work with other providers who deliver supported independent living supports to ensure the shared living arrangement is working for all tenants;
    - (b) How potential conflicts involving the participant will be managed;
    - (c) Policies and procedures for responding to violence, abuse, exploitation or conflict involving one or more participant which may impact on the condition of the dwelling;
    - (d) How each participant's concerns about the specialist disability accommodation dwelling will be communicated to and addressed by the specialist disability accommodation provider;
    - (e) How behaviours of concern will be managed, if this a relevant issue for the participant;
    - (f) How changes to a participant's circumstances or supports will be agreed and communicated;
    - (g) Arrangements for continuity of supports (including specialist disability accommodation) in the event of a natural disaster or other emergency; and
    - (h) In shared living, how vacancies will be filled including the participant's right to have their needs, wishes, choices and situation taken into account.

Where the participant does not consent to an agreement, the specialist disability accommodation provider has a documented record of this.

- (4) Allegations and incidents of violence, abuse, neglect, exploitation or discrimination, are acted upon, each participant affected is supported and assisted, records are made of any details and outcomes of reviews and investigations (where applicable), and action is taken to prevent similar incidents occurring in the future.
- (5) Where a change in participant needs or circumstances occurs, reasonable adjustments are made to accommodate the changes. If the changed support needs exceed the design category or functionality of the dwelling, work is undertaken to modify the dwelling, following consideration of the impact of the modifications on the other tenants (if applicable). Where the participant's needs or circumstances cannot be accommodated, the participant, and any relevant support providers are made aware of the need to find alternative accommodation.

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- (6) A complaints management and resolution system is maintained that meets the requirements of the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018* and follows the principles of procedural fairness and natural justice.
  - (7) An incident management system is maintained in accordance with the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*.
  - (8) State or territory legislative requirements regarding the provision of tenancy-related notices are adhered to and each participant is aware of their right to seek review of a decision, where applicable.
  - (9) Policies, procedures and agreements relating to any tenancy management are provided in the language, mode of communication and terms which each participant is most likely to understand.

## **Part 9 – Verification**

### **73 Applicable Practice Standards**

Schedule 8 to the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* sets out the relevant NDIS Practice Standards that apply to this Part.

### **74 Human Resource Management**

Outcome: Each participant's support needs are met by workers who are competent in relation to their role, hold relevant qualifications, and who have relevant expertise and experience to provide person-centred support.

To achieve this outcome, the following indicators should be demonstrated:

- (1) Records of worker identity, right to work, pre-employment checks, qualifications and or experience are maintained.
- (2) Workers complete mandatory NDIS orientation module and records of continuing professional development are maintained.

### **75 Incident Management**

Outcome: Each participant is safeguarded by the provider's incident management system, ensuring that incidents are acknowledged, respond to, well-managed and learned from.

To achieve this outcome, the following indicators should be demonstrated:

- (1) An incident management system is maintained that is relevant and proportionate to the scope and complexity of supports delivered and the size and scale of the organisation. The system complies with the requirements under the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*.

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## 76 Complaints Management

Outcome: Each participant has knowledge of and access to the provider's complaints management and resolution system. Complaints made by all parties are welcomed, acknowledged, respected and well-managed.

To achieve this outcome, the following indicators should be demonstrated:

- (1) A complaints management and resolution system is maintained that is relevant and proportionate to the scope and complexity of supports delivered and the size and scale of the organisation. The system follows principles of procedural fairness and natural justice and complies with the requirements under the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018*.

## 77 Risk Management

Outcome: Risks to participants, workers and the provider are identified and managed.

To achieve this outcome, the following indicators should be demonstrated:

- (1) A documented system that effectively manages work health and safety risks is in place, and is relevant and proportionate to the size and scale of the provider and the scope and complexity of supports.
- (2) Appropriate insurance is in place, including professional indemnity, public liability and accident insurance.



**Government  
of South Australia**

**Minister for Human Services**

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18MDIS/0278

Mr Graeme Head  
Commissioner Designate  
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Dear Commissioner Designate

Thank you for your letter about the proposed rules to be made under the *National Disability Insurance Scheme Act 2013, (as amended by the National Disability Insurance Scheme (Quality and Safeguards and Other Measures) Act 2017)* (the NDIS Act). I also note you have been authorised by the Minister for Social Services to seek my agreement to make amendments to the NDIS Specialist Disability Accommodation – Participating Jurisdiction Rules.

I note that amendments were made to the Restrictive Practices and Behaviour Support Rules, which you provided me, following consultation with officials on 6 April.

I am pleased to confirm the South Australian Government's agreement to the Specialist Disability Accommodation – Participating Jurisdictions Rules and the **amended** Restrictive Practices and Behaviour Support Rules, which was provided to my department on 16 April.

I appreciate you consulting with me on the other Rules, which are classed as Category D Rules. The following critical issues need to be resolved before they are lodged in the Commonwealth Parliament:

- Provider Registration and Practice Standards Rules

Clause 9 Suitability of applicant (3), and Clause 10 Suitability of Key Personnel (3), under Part 3-Becoming a registered NDIS Provider, relate to the Crimes Act 1914, which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them. Officials from my department have requested advice from the Department of Social Services (DSS) officials, relating to the operability of these Clauses and



the interface with initial draft of the NDIS Worker Screening Rules. Under the policy intent of NDIS worker screening, spent convictions will be considered as part of a risk-based assessment. An applicant and key personnel as described within Clause 9 and 10 will be required to be screened if they hold an executive, senior management and operational positions. My department is yet to receive advice. As these are two critical areas relating to the requirements of registered NDIS providers, we need to ensure the Rules are not at odds with each other.

- Specialist Disability Accommodation Conditions Rules

The current wording, drawn from the earlier SDA Rule made in 2017, does not refer to the *Community Titles Act 1996* that covers new construction that would previously have been covered by the *Strata Titles Act 1988* in South Australia. To ensure that South Australian legislative references are up to date, I request that the SDA Conditions Rules be amended under Part 3 – Density Restrictions, Division 2 – Definitions, Clause 19 (6) under Meaning of Single Parcel of Land to reflect the following:

*for land located in South Australia, all of the land: comprised within an 'allotment' within the meaning of section 223LA(1)(a) of the Real Property Act 1886 (SA), unless the land forms part of;*

- a) a 'strata plan' within the meaning of section 5 of the Strata Titles Act 1988 (SA); or;*
- b) a 'plan of community division' (also referred to as a 'community plan'), including 'strata plans', within the meaning of Part 2 of the Community Titles Act 1996 (SA)*

*in which case 'parcel of land' means all of the land comprised within that arrangement.*

I would like to acknowledge the commitment from the Department of Social Services to consulting with my department on the drafting of the Rules and the significant work that has gone into the drafting. I support your proposal to provide revised drafts to my officials for consultation if, as a result of feedback, the Rules are amended. I also note if any changes are made to the Specialist Disability Accommodation – Participating Jurisdictions Rules and any further amendments to the Restrictive Practices and Behaviour Support Rules, you will seek further agreement.

I look forward to working with you to ensure people with disability in South Australia and Australia are kept safe from harm.

Yours sincerely



**Hon Michelle Lensink MLC**  
MINISTER FOR HUMAN SERVICES

26/4/2018