



Direction to the NDIS Quality and Safeguards Commissioner under section 181K of the *National Disability Insurance Scheme Act 2013* – No. 1/2023

I, Bill Shorten, Minister for the National Disability Insurance Scheme, acting under subsection 181K(1) of the *National Disability Insurance Scheme Act 2013*, direct the Commissioner of the NDIS Quality and Safeguards Commission to undertake the actions set out in the schedule to this instrument.

Dated 13 October 2023

Bill Shorten
Minister for the National Disability Insurance Scheme

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1 Name

This instrument is the *Direction to the NDIS Quality and Safeguards Commissioner under section 181K of the National Disability Insurance Scheme Act 2013 –No. 1/2023*

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

3 Authority

This instrument is made under subsection 181K(1) of the *National Disability Insurance Scheme Act 2013*.

4 Definitions

In this instrument:

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

Agency means the National Disability Insurance Agency.

Commission means the NDIS Quality and Safeguards Commission established by section 181A of the Act.

Commissioner means the Commissioner of the NDIS Quality and Safeguards Commission referred to in section 181C of the Act.

NDIS means the National Disability Insurance Scheme.

NDIS provider means:

- (a) a person (other than the Agency) who receives:
 - (i) funding under the arrangements set out in Chapter 2 of the Act; or
 - (ii) NDIS amounts (other than as a participant); or
- (b) a person or entity:
 - (i) who provides supports or services to people with disability other than under the NDIS; and
 - (ii) who is prescribed by the NDIS rules for the purpose of the definition of NDIS provider in section 9 of the Act.

registered NDIS provider means a person or entity who is registered under section 73E of the Act.

5 Schedule

The schedule to this instrument sets out the directions given to the Commissioner about the performance of their functions and the exercise of their powers.

Schedule 1— Directions

1 Commissioner must review and/or develop policies and procedures

- (1) The Commissioner is directed to ensure the Commission has policies and procedures in place that require its staff to take timely, firm and appropriate compliance and enforcement action against NDIS providers who fail to comply with applicable requirements under the Act concerning the use of restrictive practices in relation to a person with disability.
- (2) The Commissioner may comply with subsection (1) by doing one or both of the following:
 - (a) reviewing, updating and implementing existing policies and procedures;
 - (b) developing and implementing new policies and procedures.

2 Content of policies and procedures

The policies and procedures mentioned in section 1 must include:

- (a) procedures that require staff of the Commission to:
 - (i) make timely, appropriate and reasonable use of all available powers under the Act, including, but not limited to, making banning orders, suspending and revoking registration of providers and pursuing civil penalties, and referring appropriate matters to the police for investigation of potential breaches of criminal law;
 - (ii) swiftly responding to complaints and notifications of reportable incidents concerning the use of restrictive practices and conducting timely and appropriate investigations into the issues raised;
 - (iii) work collaboratively with the Agency to ensure the safety of people with a disability by sharing information (as permitted by law); and
 - (iv) actively monitor registered NDIS providers' compliance with the conditions of registration relating to behaviour support plans and restrictive practices;
- (b) service standards setting out timeframes within which the Commission aims to respond to complaints and notifications of reportable incidents;
- (c) a procedure to support the timely and efficient collection, analysis, and dissemination of information relating to the use of behaviour supports and restrictive practices by NDIS providers, to the extent that the law permits such information to be collected, analysed and disseminated.

3 Publication of policies and procedures

The Commissioner is directed to ensure that all policies and procedures in place under section 1 are published on the Commission's website as soon as practicable after coming into effect.

4 Statements of expectations

If the Minister issues a statement of expectations to the Commissioner, the Commissioner is directed to respond within 28 days of the date of that statement

by providing to the Minister a statement of intent detailing how the Commissioner intends to meet the Minister's expectations.

5 Reporting requirements

- (1) The Commissioner is directed to provide a report to the Minister by 31 October 2023 and every three months thereafter (the *reporting date*), outlining the steps they have taken to implement this direction.
- (2) A report given under subsection (1) must contain information about the implementation of and compliance with the policies and procedures mentioned in section 1.
- (3) A report given under subsection (1) must contain a summary of all compliance and enforcement action taken during the three-month period ending one month prior to the reporting date, including information about the following:
 - (a) the number and kinds of compliance and enforcement actions taken
 - (b) in relation to actions in response or related to a complaint received by the Commission, the average time between the receipt of a complaint and any compliance or enforcement action
 - (c) in relation to actions in response or related to a reportable incident notified to the Commission, the average time between the notification of a reportable incident and any compliance or enforcement action.
- (4) If the Commissioner has provided a statement of intent to the Minister, whether under section 4 or otherwise, the Commissioner is directed to provide a report to the Minister addressing their progress against the intended actions on the reporting date.