

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

Disability Services and Inclusion Act 2023

Disability Services and Inclusion (Complaints and Incidents Management) Rules 2023

Purpose

It is a statutory funding condition that all persons receiving funding under the *Disability Services and Inclusion Act 2023* (Act) must have in place a complaints management and resolution system and an incident management system. The *Disability Services and Inclusion (Complaints and Incidents Management) Rules 2023* (the instrument) sets out the requirements for those systems, including how to deal with reportable incidents.

Background

Complaint and incident reporting and management are important mechanisms in ensuring the ethical and safe delivery of supports and services under the Act. This instrument establishes the minimum requirements for complaints and incident management systems to ensure that they contribute to upholding the rights of people with disability. They act as an important component of the quality and safeguarding arrangements that apply to all eligible persons receiving funding under the Act.

A failure to comply with the requirements set out in this instrument is a breach of a statutory funding condition under the Act. The Minister may take action in relation to such breaches under subsection 14(6) of the Act, including the termination or variation of a funding agreement or the imposition of additional conditions.

Objects of the Act that are particularly relevant to complaints management and resolution and incident management include the following:

- Paragraph 3(d) provides that an object of the Act is to support people with disability to exercise choice and control in matters that affect their lives, including by participating in the development and review of policy and programs.
- Subparagraph 3(f)(ii) provides that an object of the Act is to protect the rights of people with disability who receive supports or services from persons funded under this Act (referred to as ‘covered persons’ in this instrument), including by requiring covered persons to implement and maintain appropriate complaints management and resolution systems and incident management systems.
- Subparagraph 3(h)(i) provides that an object of the Act is that supports and services provided under the Act are safe and provided in a way that does not expose people with disability to violence, abuse, neglect or exploitation.
- Subparagraph 3(h)(viii) provides that an object of the Act is that supports and services provide accurate and sufficient information about the supports and services available and the quality of those supports and services.

To achieve these objects, it is a statutory funding condition for a person who is a party to a funding agreement to implement and maintain a complaints management and resolution system and an incident management system under subsections 15(4) and 15(5) of the Act respectively.

Effective complaints and incident management systems are an important means for service providers to improve their services and supports. Through an effective complaints management and resolution system, service providers are able to identify, understand and respond to issues. Individuals raising complaints (whether or not they are the person affected by the matter) may themselves be uncertain about what has taken place, what their rights are, and what might happen if they speak up. An effective complaints management and resolution system will support complainants and build confidence that the service provider takes complaints seriously and works to resolve them fairly. This, in turn, will encourage complainants to come forward with confidence that when something has gone wrong, something will be done about it.

Incident reporting requirements help to ensure that when something goes wrong, it does not rely on a complainant coming forward for the provider to investigate and take corrective action. An effective incident management system ensures that service providers, including their key personnel and employees, are aware of their duties and responsibilities when incidents take place. It also places reporting obligations on the service provider, ensuring that the Department of Social Services (Department) has visibility of both the incidents themselves and the response to the incident.

The requirements established by this instrument aligns with the requirements on registered NDIS providers established by the following instruments under the *National Disability Insurance Scheme Act 2013* (NDIS Act):

- *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018* (NDIS Complaints Rules)
- *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018* (NDIS Incident Rules).

Aligning with these established requirements will also reduce the regulatory burden on persons receiving funding under the Bill, in particular for people who deliver services and supports both inside and outside the NDIS. The alignment is also beneficial for people with disability accessing services and supports as it clarifies that the same expectations apply regardless of the source of funding. It also ensures that the outcomes of prior valuable consultation are reflected in this instrument.

Complaints and incident reporting functions will be managed through existing complaints mechanisms, rather than through a separate regulatory body. Where relevant this will include reporting through the Complaints Resolution and Referral Service, the National Customer Service Line and the Department's complaints line. This will minimise disruption for people with disability accessing existing services and supports.

Commencement

The instrument commences on the later of the day on which the Act commences and the day after this instrument is registered.

The instrument is made in reliance on subsection 4(2) of the *Acts Interpretation Act 1901*, which allows for the exercise of a power following enactment but before the commencement of an Act.

Consultation

The instrument were circulated to Disability Representative Organisations along with all service providers who are currently funded by the department to provide disability services and supports outside the NDIS for input. The Australian Services Union was also given opportunity to comment. The combined feedback from this consultation was considered for the final version of the instrument.

The department will continue to work and engage with stakeholders in relation to individual programs so that they deliver the intended outcomes for people with disability into the future.

Further, as discussed above, this instrument is based heavily on the NDIS Complaints Rules and NDIS Incident Rules. Those instruments form part of the NDIS Quality and Safeguards Commission's regulatory framework for the NDIS and were developed following extensive consultation with people with disability, Disability Representative Organisations, service providers, State and Territory governments and regulatory bodies and the National Disability Insurance Agency.

Regulation Impact Analysis (RIA)

A RIA is not required for this instrument (OIA23-05099).

Explanation of the provisions

Part 1 - Preliminary

Section 1 - Name

Section 1 provides the name of the instrument being the *Disability Services and Inclusion (Complaints and Incidents Management) Rules 2023*.

Section 2 - Commencement

Section 2 provides that the instrument commences on the later of:

- the day on which the Act commences
- the day after this instrument is registered.

The Act commences 28 days after it receives the Royal Assent.

Section 3 - Authority

Section 3 provides that the authority for the instrument is the *Disability Services and Inclusion Act 2023*.

Specifically, it is made under paragraph 15(4)(d), which provides that a person's complaints management and resolution system must comply with the requirements (if any) prescribed by the rules, and paragraph 15(5)(b), which provides that a person's incident management system must comply with the requirements (if any) prescribed by the rules, and section 36 of the Act, which allows the Minister to make the relevant rules.

Section 4 - Definitions

Section 4 sets out the definitions for terms used in the instrument.

A number of terms are defined in the Act, including:

- funding agreement
- key personnel
- NDIS Act
- statutory funding conditions

The instrument also provides for the following definitions:

Act means the *Disability Services and Inclusion Act 2023*.

covered person means a person:

- to whom money may be payable under an arrangement made under section 13 of the Act; or
- who receives a grant of financial assistance under section 13 of the Act.

employee, of a covered person, means a person who is employed or otherwise engaged by the covered person.

reportable incident has the meaning given by subsection 22(2).

Part 2 – Complaints management and resolution

Division 1 - Introduction

Section 5 – Simplified outline of this Part

Section 5 provides a simplified outline of Part 2 of the instrument to help readers understand the substantive provisions. This is included as a navigation aid for the reader and is not intended to be comprehensive. The reader should consult the substantive provisions to understand the rights and obligations that arise under this Part.

Section 6 – Purpose of this Part

Section 6 provides that Part 2 of this instrument is made for the purposes of paragraph 15(4)(d) of the Act. It sets out the requirements for the complaints management and resolution systems.

A failure by a covered person to comply with the requirements of Part 2 of the instrument may constitute a breach of a statutory funding condition under the Act and may lead to the Minister taking compliance action under subsection 14(6) of the Act.

Division 2 – Complaints management and resolution system requirements

Section 7 – System must comply with this Part

Section 7 requires a covered person to implement and maintain a complaints management and resolution system that complies with the requirements set out in Part 2 of this instrument.

A legislative note advises the reader that the complaints management and resolution system must also be appropriate for the person's size and the kinds of eligible activities provided and make provision in relation to advocates and other representatives of people with disability (see paragraphs 15(4)(a), (b) and (c) of the Act).

While all complaints management and resolution systems must comply with the requirements set out in the instrument and the Act, the nature of the systems will vary. For example, a large organisation with numerous staff and key personnel providing one-on-one supports to people with disability would be expected to have a detailed and comprehensive complaints management and resolution system. On the other hand, it would be appropriate for smaller providers with little direct contact with people with disability to have a less detailed system, so long as it still meets the basic requirements.

Section 8 – Complaints management and resolution system requirements

Section 8 sets out the basic requirements for a covered person's complaints management and resolution system. A covered person may have additional requirements or procedures in place if appropriate to the type and size of the

provider. The procedures for managing and resolving complaints should be transparent and affected people with disability should have a central role in the process of managing and resolving a complaint, while acknowledging the role of advocates and other representatives and facilitating their participation in the process.

Subsection 8(1) provides that the complaints management and resolution system of a covered person must:

- enable any person to make a complaint (including an anonymous complaint) to the covered person about the supports or services provided by the provider. This supports the 'no wrong-door' approach to managing complaints.
- provide for an easy and accessible process for the making and resolving of complaints. This may include facilitating communication in languages other than English, braille or via audio recording and taping.
- ensure appropriate support and assistance is provided to any person who wishes to make, or has made, a complaint. This may include facilitating the participation of an advocate or other representative or support person of an affected person with disability.

Subsection 8(2) provides that the processes provided for in the system may vary depending on the nature of the complaint. For example, the processes for managing a complaint relating to a minor issues may be more streamlined than the process for dealing with a more serious complaint, such as one relating to the failure to provide supports or services as required.

Subsection 8(3) provides that the system must require that:

- complaints are acknowledged, assessed and resolved in a fair, efficient and timely manner
- appropriate action is taken in relation to issues raised in complaints
- reasonable steps are taken to ensure that any person who makes a complaint to the covered person, and each person with disability affected by an issue raised in such a complaint, is advised how that complaint or issue may be raised through other complaint or referral pathways.

Although complaints should generally be raised first with covered persons, it is crucial that complainants, and affected people with disability, are aware that they have further avenues of complaint or referral pathways, and that they are given assistance to use those avenues where necessary.

Reasonable steps to ensure that a person is advised how a complaint may be raised with Departmental complaints mechanisms may include providing information about making complaints to the Department in the manner that the person is most likely to understand. Appropriate support and assistance in contacting the Department may include ensuring that a person has access to an independent advocate and/or other support persons.

- appropriate support and assistance is provided to any person who makes a complaint, and each person with disability, affected by an issue raised in a

complaint to raise the complaint through, or otherwise engage with, other complaint or referral pathways.

Subsection 8(4) provides that the system must also require that reasonable steps are taken to ensure that:

- 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
- information provided in a complaint is kept confidential and only disclosed if required by law or authorised by law.

A covered person is obliged to adhere to privacy laws and other applicable laws which protect the privacy and confidentiality of information, including the secrecy provisions of the Act.

It is a crucial to the effective operation of a complaints management and resolution system that a person who makes a complaint, or an affected person with disability, is protected from any adverse consequences that could arise as a result of making a complaint such as retribution or the withdrawal of services.

Subsection 8(5) provides that the system must provide that persons making a complaint:

- are appropriately involved in the resolution of the complaint
- 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.

This ensures that persons making a complaint are involved in the process of managing and resolving the complaint which will help lead to more satisfactory outcomes for the person who has made a complaint.

Subsection 8(6) provides that the system must provide that, unless it is inappropriate to do so, a person with disability affected by an issue raised in a complaint:

- 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
- is kept appropriately involved in the resolution of the complaint.

Noting that the complainant may or may not be a person with disability, it is important that the complainant and any affected people with disability play a central role in the resolution and management of a complaint. This will help to ensure that an outcome can be reached that satisfies those affected by issues raised in the complaint and improves supports and services for them and for others. However, there may be circumstances where it is not appropriate for a person with disability to be directly involved in the resolution of a complaint, for example where that person is a child or where there is a risk of re-traumatisation.

Subsection 8(7) provides that the system must provide the following details to be readily available and accessible to the public:

- how a complaint about the covered person can be made to the covered person
- how a complaint about the covered person can be made through another complaint or referral pathway.

Any person can make a complaint to a covered person, or to another complaint or referral pathway. As such, it is crucial that this information is readily available to any person who may wish to make a complaint. For example, a member of the community may wish to make a complaint as a result of information that they have received, or issues that they are aware of.

Subsection 8(8) provides that the system must provide for the periodic review of the system to ensure its effectiveness.

This requirement will ensure that the complaints system remains fit for purpose as the covered person develops and evolves and will enable the covered person to respond to emerging risks.

Section 9 –System must afford procedural fairness

Procedural fairness is a common expectation that people have when decisions that may affect them are being made by government, employers and other organisations. People expect that a decision will be based on relevant facts and circumstances, that they will have an opportunity to contribute to the decision and to contest any adverse material, the decision-maker will be impartial and even-handed and an adverse decision will be explained.

Section 9 provides that complaints system of a covered person must require that people are afforded procedural fairness when a complaint is dealt with by the covered person.

Section 10 – Documentation, record keeping and statistics

Section 10 sets out how a complaints system must be documented and how records of complaints must be kept.

Subsection 10(1) provides that a covered person must:

- document the complaints management and resolution system; and
- provide copies of the documented system, and the information required by subsection 8(7), in a form that is accessible to the following persons
 - persons with disability receiving supports or services from the covered person, and their families, carers and advocates;
 - each person employed or otherwise engaged by the covered person; and

- assist persons referred to above to understand how the documented system operates.

The requirement to document the complaints management and resolution system relates to a requirement to put into writing (or other appropriate format) how the provider will meet all of the requirements of Part 2 of this instrument.

This requirement is fundamental to the proper functioning of a complaints management and resolution system as it ensures that persons with disability and their families and carers are aware of their rights and can advocate for their needs and safety where appropriate.

It is also crucial that each person employed or otherwise engaged by the covered person understands and is able to utilise the complaints management and resolution system. This ensures that such people know how to make a complaint if they become aware of issues or have concerns with the covered person.

Providing the documented system in a manner that is accessible may include, for example, providing the system in languages other than English, in braille or via an audio recording.

The requirement to document the system relates only to the system itself, as information provided in individual complaints must generally be kept confidential, as required by paragraph 8(4)(b) of this instrument.

Subsection 10(2) provides that the system must also provide that appropriate records of complaints received by the covered person are kept by them, including the following, where appropriate:

- information about the complaints;
- any action taken to resolve complaints;
- the outcome of any action taken.

It is necessary for covered persons to keep accurate records to enable them to identify any systemic issues and to be able to provide those records to the Department, or other regulatory body, if necessary.

Subsection 10(3) provides that records made for the purposes of subsection 2 must be kept for 7 years from the day that the record is made.

Covered persons are required to provide records of complaints to the Department upon request. It is therefore expected that all records are kept in an organised, accessible and legible manner.

In addition to this requirement, a covered person may be required to comply with other Commonwealth, State or Territory laws in relation to the retention of records, for example, laws relating to the maintenance of medical records. A legislative note is included to this effect.

Subsection 10(4) provides that the system must provide for the collection of statistical and other information relating to complaints made to the provider to enable the provider to:

- review issues raised in complaints; and
- identify and address systemic issues raised through the complaints management and resolution process; and
- report information relating to complaints to the Department, if requested to do so by the Department; and
- report information relating to complaints to other bodies that deal with complaints, if requested to do so by those bodies.

This will assist the covered person to identify any systemic issues that may exist within their organisation, including those relating to supports or services that they provide, workforce, or organisational practices or procedures. The identification of systemic issues means that they can be addressed in a timely manner to ensure that eligible activities are consistently provided in a safe manner.

Section 11 – Roles, responsibilities, compliance and training of workers

In order for a complaints management and resolution system to operate effectively people employed or otherwise engaged by a covered person play a crucial role in implementing the system. Section 11 sets out how employees play a role in implementing a complaints management and resolution system.

Subsection 11(1) provides that the complaints management and resolution system must set out the roles and responsibilities of employees of the covered person in relation to the receipt, management and resolution of complaints made to the covered person.

The development and supervision of staff should include the promotion and execution of a positive complaints culture. Large organisations should demonstrate clear decision making frameworks for responding quickly and ensuring appropriate management attention to the feedback received.

Subsection 11(2) provides that the system must provide that each employee of the covered person must comply with the system.

Subsection 11(3) provides that the system must include requirements relating to the provision of training to employees of a covered person in the use of, and compliance with, the system.

The form, method and extent of training should be appropriate to the size of the covered person and the kinds of eligible activities provided. For example, a large organisation who provides supports or services in several jurisdictions or locations, may be expected to have a formal training program. Alternatively, persons that provide supports or services to people with disability that may face additional barriers in communicating should have specific training in how to assist them to make a complaint.

Section 12 – Referring complaints

Section 12 provides that the complaints management and resolution system 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, where appropriate. Such bodies may include:

- child protection agencies;
- work health and safety agencies;
- consumer protection agencies;
- medical or professional accreditation or monitoring bodies; and
- other appropriate bodies.

Part 3 – Incidents management

Division 1 – Introduction

Section 13 – Simplified outline of this Part

Section 13 provides a simplified outline of Part 3 of the instrument to help readers understand the substantive provisions. This is included as a navigation aid for the reader and is not intended to be comprehensive. The reader should consult the substantive provisions to understand the rights and obligations that arise under this Part.

Section 14 – Purpose of this Part

Section 14 provides that Part 3 of the instrument is made for the purpose of paragraph 15(5)(b) of the Act. Part 3 sets out what must be included in the incident management system of a covered person.

One legislative note provides that a failure to implement an incident management system may constitute a breach of the fourth statutory funding condition of a funding agreement under the Act to which the covered person is a party and may lead to the Minister taking action in relation to that agreement under subsection 14(6) of the Act.

A second legislative note provides that this Part covers reportable incidents that are alleged to have occurred, as well as reportable incidents that have actually occurred.

Section 15 – Incidents that are also reportable incidents

Section 15 provides that if an incident is also a reportable incident, the requirements of both Division 2 (dealing with the requirements of incident management systems) and Division 3 (dealing with reportable incidents) must be complied with.

Division 2 – Incident management system requirements

Section 16 – System must comply with this Division

Section 16 requires a covered person to implement and maintain an incident management system that complies with the requirements set out in this Division.

A legislative note states that it is a requirement of the Act that the incident management system must also be appropriate to the size of the covered person and for the kinds of eligible activities to which the arrangement or grant relates (see paragraph 15(5)(a) of the Act).

This means that, while all covered persons have the same minimum obligations, the nature of the procedures in place will differ between covered persons.

Section 17 – Incidents that must be covered

Section 17 prescribes the incidents that must be covered by the incident management system.

An incident management system must cover incidents that consist of acts, omissions, events or circumstances that occur in connection with the provision of supports or services to a person with disability where that incident has, or could have, caused harm to the person with disability.

The concept of harm in this context is broad and is not limited to serious harm or injury. It encompasses emotional and psychological as well as physical harm.

An incident management system must also cover all incidents that consist of acts by a person with disability that occur in connection with the provision of supports or services to a person with disability and have caused serious harm, or a risk of serious harm, to another person.

Another person may include (but is not limited to) a worker, other persons with disability or member of the community.

An 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 as though that incident was a 'confirmed' incident. This is to ensure that all potential reportable incidents are adequately assessed and addressed. Many reportable incidents will initially be 'alleged' reportable incidents until an assessment or investigation takes place.

The phrase 'in connection with' is broad and includes incidents that may have occurred during the course of supports or services being provided or the alteration or withdrawal of supports or services. An incident may not have occurred during the provision of supports, but is connected because it arose out of the provision of supports or services. For example, an incident would be in connection with the provision of supports or services if the person with disability was under the supervision of a covered person or at the premises of a covered person when the incident occurred.

If an incident did not occur in connection with the provision of supports or services, it is not required to be recorded in an incident management system.

Section 18 – Incident management system procedures

Section 18 sets out the minimum requirements for a covered person's incident management system. A covered person may have additional procedures and requirements if appropriate to the type and size of the covered person. The procedures for managing incidents should be transparent and affected people with disability should have a central role in the process of addressing and responding to an incident.

Subsection 18(1) prescribes that the incident management system must establish procedures to be followed in identifying, managing and resolving incidents. This must include procedures that specify the following:

- how incidents are identified, recorded and reported. An incident may be identified through a variety of ways including through witnessing an incident

and being told about an alleged incident by a person with disability or their representative.

- to whom incidents must be reported. For example, an incident management system may require incidents to be reported to a supervisor, manager or member of the key personnel. The person to whom an incident must be reported may vary depending on the type and nature of the incident.
- the person who is responsible for reporting incidents that are reportable incidents to the Department. For example, this could be the person who first becomes aware of the incident, the manager or supervisor on duty at the time of the incident, or a specific person who holds that responsibility.
- how the covered person 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. One of the ways in which support and assistance may be provided to a person with disability is by facilitating contact with specified persons, such as family members or carers, and providing those persons with support and assistance. The incident management system may also set out how information will be obtained from a person with disability, having regard to the nature of their disability (for example, if they have a cognitive impairment).
- how the covered person will provide support and assistance to employees of the covered person affected by an incident (including information about access to advocates such as independent advocates), to ensure their health, safety and wellbeing.
- how persons with disability affected by an incident will be involved in the management and resolution of the incident. This may differ depending on the nature of the incident and the characteristics of relevant persons with disability.
- when an investigation by the covered person 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.
- when corrective action is required and the nature of that action. For example, if system failure or worker actions contributed to an incident, the incident management system should set out a process for addressing those issues.

An incident management system may include additional procedures if a covered person considers that it is appropriate or necessary.

Subsection 18(2) provides that the procedures may vary depending on the seriousness of the incident. For example, there may be different procedures in place regarding to who incidents must be reported and how it should be recorded where an incident is a minor incident as opposed to a more significant or reportable incident.

Subsection 18(3) provides that the incident management system must require all incidents to be assessed in relation to the following:

- whether the incident could have been prevented;
- how well the incident was managed and resolved;
- what, if any, remedial action needs to be undertaken to prevent further similar incidents from occurring, or to minimise their impact;
- whether other persons or bodies need to be notified of the incident.

In assessing an incident, the covered person must take into consideration the views of persons with disability affected by the incident. Where appropriate, the views of persons with disability affected by an incident should be sought after an incident has occurred, during the management, assessment or investigation of an incident, and at the conclusion of the incident management process.

Subsection 18(4) provides that the incident management system must set out procedures for ensuring that the requirements of subsection 3 are complied with.

Subsection 18(5) provides that 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 Division 3 (explained below).

Subsection 18(6) provides that the incident management system must also provide for the periodic review of the system to ensure its effectiveness.

This ongoing review will ensure that a covered person's incident management system remains fit for purpose and evolves to meet any emerging risks or changes faced by the provider, or the sector as a whole. It will also ensure that the provider will be able to meet the requirement under the Act that an incident management system must be appropriate to the size of the provider and for the types of supports or services provided.

Section 19 – System must afford procedural fairness

Section 19 provides that the incident management system of a covered person must require that people are afforded procedural fairness when an incident is dealt with by the covered person.

Section 20 – Documentation, record keeping and statistics

Section 20 provides that a covered person must document its incident management system. It sets out the minimum requirements in relation to record keeping. It is necessary for covered person to keep accurate records to enable them to identify any systemic issues and to be able to provide those records to the Department if necessary.

It is expected that all records are kept in an organised, accessible and legible manner. The incident management system should provide for the records to be kept in a manner that is appropriate to the covered person. For example, a smaller covered person may have a centralised file or document for keeping records, while large covered person may be expected to have an appropriate ICT system in place.

Subsection 20(1) provides that a covered person must document its incident management system and that a copy of the documented system must be provided in an accessible form to the following persons:

- persons with disability receiving supports or services from the covered person; and

- each employee of the covered person; and
- the family members, carers, independent advocates of persons with disability receiving supports or services from the covered person.

A covered person must assist the above individuals to understand how the documented system operates.

Employees of a covered person must have ready access to a documented copy of the incident management system to ensure that they are able to understand and comply with the requirements of the system.

It is also important that persons with disability and their family members, carers, independent advocates and significant others have access to the documented incident management system. This will allow people to understand the protections that are in place for persons with disability receiving supports or services from the covered person, and their own rights during the incident management process.

Providing the documented system in a manner that is readily accessible may include providing the system in languages other than English, in braille or via an audio recording.

Subsection 20(2) provides that an incident management system must provide for the following details to be recorded in relation to each incident that occurs:

- a description of the incident, including the impact on, or harm caused to, any person with disability affected by the incident;
- whether the incident is a reportable incident;
- if known—the time, date and place at which the incident occurred;
- if the time, date and place at which the incident occurred is not known (that is, if the provider becomes aware of an incident has occurred but they do not know when or where it occurred) —the time and date the incident was first identified;
- the names and contact details of the persons involved in the incident;
- the names and contact details of any witnesses to the incident;
- details of the assessment undertaken in accordance with the requirements of subsection 18(3);
- the actions taken in response to the incident, including actions taken to support or assist persons with disability affected by the incident;
- any consultations undertaken with the persons with disability affected by the incident;
- whether persons with disability affected by the incident have been provided with any reports or findings regarding the incident;
- if an investigation is undertaken by the provider in relation to the incident—the details and outcomes of the investigation;
- the name and contact details of the person making the record of the incident.

A covered person may also decide to record any further information that it deems necessary or appropriate.

Subsection 20(3) provides that the incident management system must provide for the following details to be recorded in relation to each reportable incident that is alleged to have occurred:

- a description of the alleged incident;
- if known – the time, date and place at which the incident is alleged to have occurred;
- the names and contact details of the persons involved in the alleged incident;
- the names and contact details of any witnesses to the alleged incident;
- details of the assessment undertaken in accordance with the requirements of subsection 18(3);
- the actions taken in response to the alleged incident, including actions taken to support or assist persons with disability affected by the incident;
- any consultations undertaken with the persons with disability affected by the alleged incident;
- whether persons with disability affected by the incident have been provided with any reports or findings regarding the alleged incident;
- if an investigation is undertaken by the covered person in relation to the alleged incident—the details and outcomes of the investigation;
- the name and contact details of the person making the record of the alleged incident.

A covered person may also decide to record any further information that they deem necessary or appropriate.

Subsection 20(4) provides that a record made for the purposes of subsection 20(2) or (3) must be kept for a period of 7 years from the day that the record is made.

A legislative note states that a covered person may be required to comply with record keeping requirements imposed under other State, Territory or Commonwealth laws in relation to the retention of records.

The record keeping requirements under this instrument are in addition to record keeping requirements imposed under other State, Territory or Commonwealth laws, for example in relation to medical records. Further, any reportable incident that may also be a criminal offence may have an associated statute of limitations that is longer than 7 years. The covered person may want to consider retaining records in relation to certain reportable incidents until the relevant statute of limitations has expired.

Subsection 20(5) provides that the incident management system must require the collection of statistical and other information in relation to incidents to enable the covered person to review issues raised by the occurrence of incidents, identify and address systemic issues and report information relating to complaints to the Department, if requested to do so by the Department.

Statistical information may include:

- the number and frequency of incidents;
- when and where incidents occur;
- the type of incidents that occur; and

- who is involved in incidents (for example, whether particular employees and/or people with disability are involved in multiple incidents).

The collection of statistical information will enable the provider, if necessary, and the Department, to monitor and identify any ongoing or systemic issues so that they can be dealt with in a timely and effective manner.

Subsection 20(6) provides that this section does not limit paragraph 18(1)(a) (which deals with recording how incidents are identified, recorded and reported).

Section 21 – Roles, responsibilities, compliance and training of workers

Section 21 addresses the roles and responsibilities of employees of covered persons related to the incident management system. In order for an incident management system to operate effectively, employees play a crucial role in implementing the system.

Subsection 21(1) provides that the incident management system must set out the roles and responsibilities of employees in identifying, managing and resolving incidents and in preventing incidents from occurring. This makes sure that the system operates effectively to protect persons with disability.

Subsection 21(2) provides that without limiting subsection (1), the incident management system must provide that each employee must comply with the incident management system.

Subsection 21(3) provides that the incident management system must include requirements relating to the provision of training to employees in the use of, and compliance with, the incident management system.

The form, method and extent of training must be appropriate to the size of the covered person and the kind of eligible activity being undertaken. For example, a large organisation that provides supports or services in several jurisdictions or locations, may be expected to have a formal training program. Alternatively, an organisation that provides supports or services to people with disability that may have specific vulnerabilities, such as children or persons with an intellectual disability, may have specific training in how to obtain information relating to an incident and how to provide associated support.

Division 3 – Reportable incidents

Section 22 – Notifying and managing reportable incidents

Section 22 provides that reportable incidents must be notified and managed in accordance with Division 3.

Subsection 22(2) provides that each of the following is a reportable incident:

- the death of a person with disability; or
- serious injury to a person with disability; or
- abuse or neglect of a person with disability; or

- unlawful sexual or physical contact with, or assault of, a person with disability; or
- sexual misconduct committed against, or in the presence of, a person with disability, including grooming of the person for sexual activity.

Section 23 – Reportable incidents include alleged reportable incidents

Section 23(1) provides that a reference in this Division to a reportable incident that has occurred includes a reference to a reportable incident that is alleged to have occurred.

Given the nature of reportable incidents, it is important that all allegations are taken seriously unless or until it is determined whether or not a reportable incident did in fact occur. This is an important safeguard to ensure that an allegation cannot be dismissed until it has been determined whether or not a reportable incident occurred, or at the minimum, all steps have been taken to look in to the allegation to attempt to determine whether or not a reportable incident occurred.

Section 24 – Duty of key personnel in relation to reportable incidents

Section 24 provides that the following people must take all reasonable steps to ensure that reportable incidents that occur in connection with the provision of supports or services by a covered person are notified to the Department:

- members of the key personnel of the covered person;
- the person specified in the incident management system, for the purposes of paragraph 18(1)(c).

Although employees have a duty to comply with an incident management system, and notify relevant persons of a reportable incident, the responsibility for ensuring that the requirements are met lies with the covered person.

Section 25 – Duty of workers to notify covered person of reportable incidents

Section 25 provides that if an employee of a covered person becomes aware that a reportable incident has occurred in connection with the provision of supports or services by the covered person, the employee must notify one of the following of that fact as soon as possible:

- a member of the covered person’s key personnel;
- a supervisor or manager of the covered person;
- the person specified in the incident management system for the purposes of paragraph 18(1)(c).

It is expected that ‘as soon as possible’ will be considered with a sense of urgency. For example it would not be appropriate for an employee who becomes aware of a reportable incident at the end of a shift to wait for the next shift to notify the relevant person.

Section 26 – Certain reportable incidents must be notified to the Department

Section 26 applies if a covered person becomes aware that a reportable incident has occurred in connection with the provision of supports or services by the covered person.

Subsection 26(2) provides that the covered person must notify the Department of the following information within 24 hours:

- the name and contact details of the covered person;
- a description of the reportable incident;
- except for a reportable incident that is the death of a person with disability—a description of the impact on, or harm caused to, the person with disability;
- 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;
- the name and contact details of the person making the notification;
- if known – the time, date and place at which the reportable incident occurred;
- the names and contact details of the persons involved in the reportable incident;
- any other information required by the Department.

Although 24 hours is the maximum timeframe for reporting, covered persons will be encouraged to notify the Department of a reportable incident as soon as possible after the incident has occurred, particularly in the case of serious incidents having a major impact on a person with disability. The 24 hour timeframe recognises that a covered person's first priority should be ensuring the health, safety and wellbeing of any affected person with disability.

A legislative note states that certain information required under paragraphs (b), (c), (f) and (g) may not need to be given in the circumstances described in section 27 of this instrument.

Subsection 26(3) provides that if, within 24 hours after the covered person became aware that the incident occurred, the covered person does not have sufficient information to inform the Department of the time, date and place at which the reportable incident occurred, and/or the names and contact details of the persons involved in the reportable incident, the covered person may provide that information within 5 business days after they became aware that the incident occurred. All other information listed above still needs to be provided within 24 hours.

It is important that, in the aftermath of a reportable incident, a covered person's first priority is managing with the consequences of the incident including ensuring the health, safety and wellbeing of people with disability, obtaining necessary medical attention, contacting support people for an affected person with disability and reporting incidents to law enforcement agencies where required. As such, it may not be possible to notify the Department of all of the required information within 24 hours, and the remaining information can be provided within 5 business days. The information that must be provided within 24 hours is required to enable the Department to determine whether the covered person has taken the appropriate action.

Subsections 26(4) to (6) provide that a notification under subsection 26(2) may be given by telephone or in writing. If the notification is given in writing, the Department must acknowledge its receipt within 24 hours. If the notification is given by telephone, the Department is not required to acknowledge receipt as it is considered that by speaking with the provider on the phone, receipt of the notification has been acknowledged.

Subsection 26(7) provides that the Department may approve a form for the purposes of giving notifications in writing under this section.

Section 27 – Circumstance in which certain information relating to reportable incidents need not be obtained

Section 27 provides that a covered person is not required to notify the Department of certain information if:

- the person does not have the information; and
- obtaining the information would, or could reasonably be expected to:
 - prejudice the conduct of a criminal investigation; or
 - expose a person with disability to a risk of harm.

The relevant information is the information mentioned in paragraphs 26(2)(b), (c), (f) or (g), specifically:

- a description of the reportable incident;
- except for a reportable incident that is the death of a person with disability —a description of the impact on, or harm caused to, the person with disability;
- the names and contact details of the persons involved in the reportable incident;
- the time, date and place at which the reportable incident occurred;
- names and contact details of any witnesses to the reportable incident.

This does not exempt a covered person from disclosing information to the Department if the person has that information. The exemption only applies where a covered person does not already have the relevant information and obtaining it would prejudice the conduct of a criminal investigation or expose a person with disability to a risk of harm.

For example, in the event that a person with disability makes a disclosure about abuse, a worker asking questions to obtain the above information may interfere in the proper conduct of a subsequent criminal or other investigation. Alternatively, an employee not specifically trained to seek information from a person with disability about, for example a sexual assault, may cause harm to that person if they ask questions to obtain the required information.

Section 28 – Keeping the Department updated

Section 28 provides that a covered person must keep the Department updated in relation to reportable incidents.

Subsection 28(1) provides that this section applies if a covered person gives notification under section 26 at a particular time, and the covered person becomes aware of significant new information in relation to the incident after that time, and the significant new information:

- is or relates to a change in the kind of reportable incident; or
- is a further reportable incident.

For example, if the initial notification relates to the assault of a person with disability, and that person with disability later dies, the category of reportable incident has changed and the provider must notify the Department.

Alternatively, if the initial notification relates to a physical assault, and during the course of investigating the incident, the covered person identifies that a sexual assault also occurred as part of the same incident, that information would be considered significant new information in relation to the initial reportable incident and the provider must notify the Department under this section.

Subsection 28(2) provides that a covered person must notify the Department of significant new information as soon as reasonably practicable after becoming aware of the information. Subsection 28(3) provides that the notification must be given in writing.

Subsection 28(4) provides that if notification is given under this section of a further reportable incident, the covered person is not required to notify the Department of that incident under section 26. That is, the covered person is not required to make an additional notification, over and above the one required under this section.

Subsection 28(5) provides that the Department may approve a form for the purposes of giving notifications in writing under this section.

Section 29 – Providing the Department with a final report

Section 29 imposes a requirement on a covered person to provide a final report to the Department in relation to a reportable incident, and sets out the requirements of such a report.

Subsection 29(1) provides that if a covered person gives notification of a reportable incident under subsection 26(4), the Department may require the covered person to give the information specified in subsection 29(2) to the Department. That information must be given within 60 business days after the initial notification is given under subsection 26(4), or a longer period specified by the Department.

Subsection 29(2) sets out the information that must be provided as part of the final report. This includes:

- details of any internal or external investigation or assessment that has been undertaken in relation to the incident, including:
 - the name of person who undertook the investigation; and
 - when the investigation was undertaken; and
 - details of any findings made; and
 - details of any corrective or other action taken after the investigation;

- a copy of any report of the investigation or assessment;
- 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; and
- any other information required by Department.

For the purposes of subsection 29(2) ‘assessment’ includes, but is not limited to, an assessment undertaken for the purposes of subsection 18(3) of this instrument. An ‘investigation’ includes, but is not limited to, an investigation undertaken for the purposes of paragraph 18(1)(g) or an investigation required by the Department under paragraph 31(1)(d).

A ‘report’ includes, but is not limited to, a record made for the purposes of paragraphs 20(2)(g) or 20(3)(e), being a record of an assessment that was undertaken for the purposes of subsection 18(3).

Subsection 29(3) provides that the above information must be given in writing. Subsection 29(4) provides that the Department may approve a form for the purposes of giving information under this section.

Section 30 – Record keeping

Section 30 sets out the minimum requirements on a covered person to keep records relating to reportable incidents. These record keeping requirements are in addition to record keeping requirements imposed under other State, Territory or Commonwealth laws, for example in relation to medical records.

Subsection 30(1) provides that if a covered person becomes aware that a reportable incident has occurred in connection with the provision of supports or services by the covered person, the covered person must keep a record of the incident.

Subsection 30(2) provides that the record must be kept for 7 years from the day that notification of the reportable incident is given under subsection 26(2) or subsection 28(2) as the case requires. A legislative note reminds the reader that the covered person may be required to comply with other Commonwealth, State or Territory laws in relation to the retention of records.

Any reportable incident that may also be a criminal offence may have an associated statute of limitations that is longer than 7 years. Covered persons may want to consider retaining records in relation to certain reportable incidents until the relevant statute of limitations has expired.

Subsection 30(3) provides that it is sufficient compliance with this section if the covered person keeps the record of the reportable incident required to be made under section 20.

Section 31 – Action by the Department in relation to reportable incidents

Section 31 sets out the action that the Department may take in relation to a reportable incident.

Subsection 31(1) provides that the Department may, upon receiving notification that a reportable incident has occurred in connection with the provision of supports or services by a covered person, take one or more of the following courses of action:

- (a) 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). Other examples of persons or bodies may include consumer protection agencies, state and territory Coroners and work health and safety regulators. This is subject to the information protections established under the Act.
- (b) require or request the covered person 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. For example, the Department may require a covered person to implement new systems or procedures to provide additional protections or safeguards for people with disability.
- (c) require the covered person to carry out an internal investigation in relation to the incident, in the manner and within the timeframe specified in by the Department, and to provide a report on the investigation to the Department. This may be in addition or instead of an investigation carried out by the covered person under paragraph 18(1)(g). If the Department is not satisfied with the internal investigation, the Department may require the provider to undertake further investigation or work.
- (d) require the covered person to engage an appropriately qualified and independent expert, at the expense of the covered person, to carry out an investigation in relation to the incident, in the manner and within the timeframe specified in by the Department, and to provide a report on the investigation to the Department. This may be in addition to an internal investigation required under paragraph 31(1)(c). The Department may specify the person or body who should carry out the investigation including by requesting a covered person to nominate one or more persons or bodies for the Department to specify.
- (e) take any other action that the Department considers reasonable in the circumstances.

A legislative note reminds the reader that that Department may also share information in relation to a reportable incident in accordance with section 29 of the Act.

Subsection 31(2) provides that if an investigation is carried out under paragraph 31(1)(c) or (d) in relation to a reportable incident, the Department may take any action that the Department considers appropriate. For example, to provide advice, information and direction about responses to the investigation and monitor the implementation of actions taken in response to the findings of an investigation.

Subsection 31(3) provides that, without limiting subsection (2), the Department may provide, or require the covered person to provide, information on the progress or outcome of the investigation to:

- the person with disability involved in the incident (or a representative of the person); and

- with the consent of the person with disability (or a representative of the person)—any other person.

For example, information may be provided to independent advocates, and support people.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Disability Services and Inclusion (Complaints and Incidents Management) Rules 2023

The legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The *Disability Services and Inclusion (Complaints and Incidents Management) Rules 2023* (the instrument) sets out the complaints and resolution system and incident management system required to be in place for all persons receiving funding under the *Disability Services and Inclusion Act 2023* (Act), including how to deal with reportable incidents.

Complaint and incident reporting and management are important mechanisms in ensuring the ethical and safe delivery of supports and services under the Act. This instrument establishes the minimum requirements for complaints and incident management systems to ensure that they contribute to upholding the rights of people with disability. They act as an important component of the quality and safeguarding arrangements that apply to all eligible persons receiving funding under the Act.

Effective complaints and incident management systems are an important means for service providers to improve their services and supports. Through an effective complaints management and resolution system, service providers are able to identify, understand and respond to issues. Individuals raising complaints (whether or not they are the person affected by the matter) may themselves be uncertain about what has taken place, what their rights are, and what might happen if they speak up. An effective complaints management and resolution system will support complainants and build confidence that the service provider takes complaints seriously and works to resolve them fairly. This, in turn, will encourage complainants to come forward with confidence that when something has gone wrong, something will be done about it.

Incident reporting requirements help to ensure that when something goes wrong, it does not rely on a complainant coming forward for the provider to investigate and take corrective action. An effective incident management system ensures that service providers, including their key personnel and employees, are aware of their duties and responsibilities when incidents take place. It also places reporting obligations on the service provider, ensuring that the Department of Social Services (Department) has visibility of both the incidents themselves and the response to the incident.

Human rights implications

The instrument engages the following rights:

- Right to equality and non-discrimination – Articles 3, 4, 5 and 12 of the *Convention on the Rights of Persons with Disabilities* (CRPD) and Articles 2, 16 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR)
- Right of access to justice – Article 13 of the CRPD
- Right to freedom from exploitation, violence and abuse – Article 16 of the CRPD
- Right to freedom of opinion and expression and access to information – Article 21 of the CRPD and Articles 19 of the ICCPR
- Right to privacy and reputation – Articles 22 and 31 of the CRPD and Article 17 of the ICCPR.
- Right to safe and healthy working conditions – Article 7 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)

Right to equality and non-discrimination – Articles 3, 4, 5 and 12 of the CRPD and Articles 2, 16 and 26 of the ICCPR

Article 3 of the CRPD reflects the need for the respect for the inherent dignity, individual autonomy (including the freedom to make one's own choices and the independence of the person), non-discrimination, full and effective participation and inclusion in society, the need for respect for difference and acceptance of persons with disabilities, equality of opportunity, accessibility, gender equality and respect for the evolving capacities of children with disabilities, including their right to preserve their identities.

In addition, Article 4 of the CRPD outlines the obligations of State Parties to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disability without discrimination of any kind on the basis of disability.

Article 5(2) of the CRPD requires State Parties to prohibit all discrimination on the basis of disability and guarantee persons with disabilities equal and effective legal protection against discrimination on all grounds. Article 12 of the CRPD reaffirms that persons with disability have the right to recognition everywhere as persons before the law and shall enjoy legal capacity on an equal basis with others, with appropriate measures being taken to provide access and support in exercising their legal capacity, including appropriate safeguards.

Similarly, Article 16 of the ICCPR states that everyone shall have the right to recognition everywhere as a person before the law, and Article 26 of the ICCPR states that all persons are equal before the law and are entitled, without any discrimination on any grounds, to the equal protection of the law, including protection from discrimination. Article 2(3) of the ICCPR provides State Parties to undertake to ensure that any person whose rights or freedoms are violated shall have an effective remedy, and that competent authorities enforce such remedies when granted.

The instrument implements the above rights by ensuring that any person, but most critically a person with disability, are able, and were necessary or appropriate

supported, to make a complaint about supports or services that they receive under the Act. In particular, this implements the right of people with disability to enjoy legal capacity on an equal basis with others, with appropriate measures being taken to provide access and support in exercising that capacity.

Right to freedom from exploitation, violence and abuse – Article 16 of the CRPD

Article 16 states that States Parties shall take all appropriate measures to protect persons with disabilities from all forms of exploitation, violence and abuse and that to facilitate this. State Parties must ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

The instrument engages with Article 16 of the CRPD by taking legislative and other measures to protect persons with disabilities from all forms of exploitation, violence and abuse and to ensure that instances of exploitation, violence and abuse against persons with disability are identified and investigated.

The instrument will enable people with disability and their families and carers to make complaints about supports and services provided under the Act. The instrument also enables the identification of instances of exploitation, violence and abuse through internal complaints management and resolution systems of the covered person.

The instrument also requires covered persons to document and manage incidents, including reportable incidents, which include the death of a person with disability, serious injury to a person with disability, the abuse or neglect of a person with disability, unlawful sexual or physical contact with, or assault of, a person with disability and sexual misconduct committed against, or in the presence of, a person with disability, including grooming of the person for sexual activity. This ensures that all such incidents are monitored and appropriately dealt with, including by providing support to any affected person with disability.

Right of access to justice – Article 13 of the CRPD

Article 13 of the CRPD provides that States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

The instrument engages the right of people with disability to effective access to justice, by ensuring that people with disability are supported and enabled to make complaints and kept appropriately involved in the management and resolution of complaints.

The instrument also requires that people with disability are kept appropriately involved in the management of incidents, and requires covered persons to take steps to protect people with disability who have been affected by an incident.

Right to freedom of opinion and expression and access to information – Article 21 of the CRPD and Articles 19 of the ICCPR

Article 21 of the CRPD requires that States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice. Similarly, article 19 of the ICCPR provides that everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds.

The instrument establishes requirements for covered persons to have complaint management and resolution systems in place to allow individuals to make a complaint. Complaints are required to be handled in a fair and appropriate manner, without risk of penalising the complainant, thus preserving and protecting freedom of expression and opinion.

The instrument also requires that certain information about complaint management and resolution and about incident management processes are readily available and accessible to the public, including to people with disability.

Right to privacy and reputation – Articles 22 and 31 of the CRPD and Article 17 of the ICCPR

Article 22 of the CRPD provides that no person with disability, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication, or to unlawful attacks on his or her honour and reputation. It also provides that the privacy of personal, health and rehabilitation information of persons with disabilities should be protected on an equal basis with others. This right contains similar protections to those in Article 17 of the ICCPR. The right to privacy in Article 17 includes respect for informational privacy, including in respect of storing, using and sharing private information and the right to control the dissemination of private information.

For interference with privacy not to be arbitrary, it must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances. Reasonableness in this context incorporates notions of proportionality to the end sought and necessity in the circumstances.

The instrument promotes the right to privacy and reputation by ensuring complaints are dealt with confidentially and disclosed only if required or authorised by law.

The instrument does limit the above Articles by allowing the disclosure of relevant information in particular circumstances. In particular, the instrument requires covered persons to notify the Department of certain information about a reportable incident. This limitation is connected to a legitimate objective and is proportionate to the purpose of providing safe and high quality supports and services to people with disability, protecting people with disability from exploitation, violence and abuse and providing equal recognition before the law.

Right to safe and healthy working conditions – Article 7 of the ICESCR

Article 7(b) of the ICESCR provides that people have the right to the enjoyment of just and favourable conditions of work which ensure safe and healthy working conditions.

The instrument requires covered persons to establish procedures in their incident management system in ensuring support and assistance is provided to their employees affected by an incident (including information about access to advocates such as independent advocates), to ensure their health, safety and wellbeing.

This requirement coupled with embedded procedural fairness obligations on the covered person to ensure that people are afforded procedural fairness with the occurrence of an incident promotes the right to safe and healthy working conditions of employees in Article 7(b) of the ICESCR.

Conclusion

The instrument advances the protection of the rights of people with disability in Australia, including in relation to preventing exploitation, violence and abuse in the disability sector. To the extent that the instrument limits human rights, these limitations are proportionate and for a legitimate objective.