



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

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I, Amanda Rishworth, Minister for Social Services, make the following rules.

Dated 15 December 2023

Amanda Rishworth  
Minister for Social Services

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## Part 1—Preliminary

### 1 Name

This instrument is the *Disability Services and Inclusion (Complaints and Incidents Management) Rules 2023*.

### 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	The later of: (a) the day on which the <i>Disability Services and Inclusion Act 2023</i> commences; and (b) the day after this instrument is registered.	1 January 2024 (paragraph (a) applies)

Note: This table relates only to the provisions of this instrument as originally made.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 *Disability Services and Inclusion Act 2023*.

### 4 Definitions

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

- (a) funding agreement;
- (b) key personnel;
- (c) NDIS Act;
- (d) statutory funding condition.

In this instrument:

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

*covered person* means a person:

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



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## **Part 2—Complaints management and resolution**

### **Division 1—Introduction**

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

This Part requires a person (a covered person) who is a party to a funding agreement under the Act 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.

Covered persons must make available information about how to make complaints to the covered person and how to raise complaints through other complaint and referral pathways, and must keep records about complaints that they receive.

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

- (1) This Part is made for the purposes of paragraph 15(4)(d) of the Act.
- (2) It sets out the requirements for the complaints management and resolution system of a covered person.

**Note:** Failure by a covered person to comply with the requirements of this Part may constitute a breach of the third statutory funding condition of the funding agreement under the Act to which the covered person is a party (see subsection 14(2) of the Act) and may lead to the Minister taking action in relation to that agreement under subsection 14(6) of the Act.

## **Division 2—Complaints management and resolution system requirements**

### **7 System must comply with this Part**

A covered person 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 person's size and the kinds of eligible activities provided and make provision in relation to advocates and other representatives of persons with disability (see paragraphs 15(4)(a), (b) and (c) of the Act).

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

- (1) The complaints management and resolution system of a covered person must:
  - (a) enable any person to make a complaint (including an anonymous complaint) to the covered person about the supports or services provided by the covered person; 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 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; and
  - (d) 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.
- (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 or authorised by law.
- (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 a person with disability affected by an issue raised in a complaint:
  - (a) is kept appropriately 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 covered person can be made to the covered person;
  - (b) how a complaint about the covered person can be made through another complaint or referral pathway.
- (8) The system must also provide for the periodic review of the system to ensure its effectiveness.

## **9 System must afford procedural fairness**

The complaints management and resolution system of a covered person must require that people are afforded procedural fairness when a complaint is dealt with by the covered person.

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

- (1) The covered person 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 covered person, and their families, carers and advocates;
    - (ii) each employee of the covered person; 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 covered person are kept by the covered person, including the following, where appropriate:
  - (a) information about complaints;
  - (b) any action taken to resolve complaints;
  - (c) the outcomes of any action taken.

**Part 2** Complaints management and resolution

**Division 2** Complaints management and resolution system requirements

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- (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 covered person 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 covered person to enable the covered person to:
- (a) review issues raised in complaints; and
  - (b) identify and address systemic issues raised through the complaints management and resolution process; and
  - (c) report information relating to complaints to the Department, if requested to do so by the Department; and
  - (d) report information relating to complaints to other bodies that deal with complaints, if requested to do so by those bodies.

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

- (1) The complaints management and resolution system of a covered person 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.
- (2) Without limiting subsection (1), the system must provide that each employee of the covered person must comply with the system.
- (3) The system must include requirements relating to the provision of training to employees of the covered person in the use of, and compliance with, the system.

**12 Referring complaints**

The complaints management and resolution system of a covered person 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.

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## **Part 3—Incident management**

### **Division 1—Introduction**

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

This Part requires all covered persons 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.

Covered persons 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 covered person.

Certain incidents that happen, or are alleged to have happened, in connection with the provision of supports or services by covered persons 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 covered person must give details about the incident to the Department. Details of certain incidents (such as the death of a person with disability) must be notified within 24 hours.

Covered persons must keep records about reportable incidents.

If the Department is notified about a reportable incident, the Department may take certain action, including requiring the covered person 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.

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**14 Purpose of this Part**

- (1) This Part is made for the purposes of paragraph 15(5)(b) of the Act.
- (2) It sets out what must be included in the incident management system of a covered person.
- (3) It also provides for how reportable incidents that occur in connection with the provision of supports or services by covered persons are to be dealt with.

Note 1: Failure by a covered person to comply with the requirements of this Part may constitute a breach of the fourth statutory funding condition of the funding agreement under the Act to which the covered person is a party (see subsection 14(2) of the Act) and may lead to the Minister taking action in relation to that agreement under subsection 14(6) of the Act.

Note 2: This Part covers reportable incidents that are alleged to have occurred, as well as reportable incidents that have actually occurred (see section 23).

**15 Incidents that are also reportable incidents**

The requirements of Division 2 and the requirements of Division 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 (see section 17); and
- (b) a reportable incident.

## **Division 2—Incident management system requirements**

### **16 System must comply with this Division**

A covered person 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 covered person and for the classes of supports or services provided (see paragraph 15(5)(a) of the Act).

### **17 Incidents that must be covered**

- (1) The incident management system of a covered person 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.

### **18 Incident management system procedures**

- (1) The incident management system of a covered person 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 Department;
  - (d) 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;
  - (e) 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;
  - (f) how persons with disability affected by an incident will be involved in the management and resolution of the incident;

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- (g) 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;
  - (h) when corrective action is required and the nature of that action.
- (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 Division 3.
  - (6) The incident management system must also provide for the periodic review of the system to ensure its effectiveness.

### **19 System must afford procedural fairness**

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.

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

- (1) A covered person 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 covered person;
    - (ii) each employee of the covered person;
    - (iii) the family members, carers and independent advocates of persons with disability receiving supports or services from the covered person;and
  - (c) assist persons referred to in paragraph (b) to understand how the documented system operates.
- (2) The incident management system of a covered person must provide for the following details, as a minimum, to be recorded in relation to each incident that occurs:

- (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 18(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 covered person 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 18(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 covered person 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 subsection (2) or (3) must be kept for 7 years from the day the record is made.

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

**Part 3** Incident management

**Division 2** Incident management system requirements

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- (5) The incident management system must provide for the collection of statistical and other information relating to incidents to enable the covered person to:
  - (a) review issues raised by the occurrence of incidents; and
  - (b) identify and address systemic issues; and
  - (c) report information relating to complaints to the Department, if requested to do so by the Department.
- (6) This section does not limit paragraph 18(1)(a).

**21 Roles, responsibilities, compliance and training of workers**

- (1) The incident management system of a covered person must set out the roles and responsibilities of employees of the covered person 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 employee of the covered person must comply with the incident management system.
- (3) The incident management system must include requirements relating to the provision of training to employees of the covered person in the use of, and compliance with, the incident management system.



## **Division 3—Reportable incidents**

### **22 Notifying and managing reportable incidents**

- (1) Reportable incidents must be notified and managed in accordance with this Division.
- (2) Each of the following is a *reportable incident*:
  - (a) the death of a person with disability;
  - (b) serious injury to a person with disability;
  - (c) abuse or neglect of a person with disability;
  - (d) unlawful sexual or physical contact with, or assault of, a person with disability;
  - (e) sexual misconduct committed against, or in the presence of, a person with disability, including grooming of the person for sexual activity.

### **23 Reportable incidents include alleged reportable incidents**

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.

### **24 Duty of key personnel 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 covered person are notified to the Department:

- (a) members of the key personnel of the covered person;
- (b) the person specified for the purposes of paragraph 18(1)(c) for the covered person.

### **25 Duty of workers to notify covered person of reportable incidents**

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) a member of the covered person's key personnel;
- (b) a supervisor or manager of the covered person;
- (c) the person specified for the purposes of paragraph 18(1)(c) for the covered person.

### **26 Certain reportable incidents must be notified to the Department**

- (1) This section 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.

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- (2) Subject to subsection (3), the covered person must notify the Department of the following information within 24 hours:
- (a) the name and contact details of the covered person;
  - (b) a description of the reportable incident;
  - (c) except for a reportable incident of a kind covered by paragraph 22(2)(a)—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) if known—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 Department.

Note: The information required by paragraphs (b), (c), (f) and (g) may not need to be given in certain circumstances (see section 27).

- (3) If, within 24 hours after the covered person became aware that the incident occurred, insufficient information is available to comply with subsection (2), the covered person must:
- (a) provide the information mentioned in paragraphs (2)(a) to (e) within the 24 hour period; and
  - (b) provide the remaining information required by that subsection within 5 business days after the covered person became aware that the incident occurred.
- (4) A notification in accordance with subsection (2) may be given by telephone or in writing.
- (5) A notification given in accordance with paragraph (3)(a) or (b) must be given in writing.
- (6) If a notification is given in writing, the Department must acknowledge its receipt within 24 hours.
- (7) The Department may approve a form for the purposes of giving notifications in writing under this section.

### **27 Circumstances in which certain information relating to reportable incidents need not be obtained**

A covered person is not required to notify the Department of the information mentioned in paragraph 26(2)(b), (c), (f) or (g) if:

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

## **28 Keeping the Department updated**

- (1) This section applies if:
  - (a) a covered person gives notification of a reportable incident under section 26 at a particular time; and
  - (b) the covered person 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 covered person must notify the Department 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 covered person is taken to have complied with section 26.
- (5) The Department may approve a form for the purposes of giving notifications in writing under this section.

## **29 Providing the Department with a final report**

- (1) 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 required by subsection (2) of this section to the Department, within 60 business days after the notification is given under subsection 26(4), or a longer period specified by the Department.
- (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 Department.
- (3) The information must be given in writing.
- (4) The Department may approve a form for the purposes of giving information under this section.

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### **30 Record keeping**

- (1) 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.
- (2) 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).

Note: A covered person 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 covered person keeps the record of the reportable incident required to be made under section 20.

### **31 Action by the Department in relation to reportable incidents**

- (1) 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, do one or more of the following:
  - (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);
  - (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;
  - (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;
  - (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 by the Department, and to provide a report on the investigation to the Department;
  - (e) take any other action that the Department considers reasonable in the circumstances.

Note: The Department may also share information in relation to a reportable incident in accordance with section 29 of the Act.

- (2) If an investigation is carried out under paragraph (1)(c) or (d) in relation to a reportable incident, the Department may take any action that the Department considers appropriate.
- (3) 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:
  - (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.