

EXPOSURE DRAFT



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National Disability Insurance Scheme (Incident Management and Reportable Incidents) Amendment Rules 2021

I, Graeme Head, as delegate of the Minister for the National Disability Insurance Scheme, make the following rules.

Dated 2021

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

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

1	Name.....	1
2	Commencement.....	1
3	Authority.....	1
4	Schedules.....	1
	Schedule 1—Amendments	2
	<i>National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018</i>	2

EXPOSURE DRAFT

1 Name

This instrument is the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Amendment Rules 2021*.

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 day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

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

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

EXPOSURE DRAFT

Schedule 1 Amendments

Schedule 1—Amendments

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

1 Section 5

Omit:

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

The incidents that must be recorded and managed are:

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

substitute:

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

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; and
- (d) reportable incidents that consist of the death of a person with disability that occur in the circumstance prescribed by section 15A.

2 At the end of section 9

Add:

- (4) The incident management system must also cover reportable incidents that consist of the death of a person with disability that occur in the circumstance prescribed by section 15A.

EXPOSURE DRAFT

Amendments Schedule 1

3 Section 14

Omit:

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

substitute:

Certain incidents that happen, or are alleged to have happened, in connection with the provision of supports or services by registered NDIS providers, or in other circumstances prescribed by this Part, 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.

4 Subsection 15(2)

Omit “in connection with the provision of supports or services by registered NDIS providers”, substitute “in connection with the provision of supports or services by registered NDIS providers or in other circumstances prescribed by this Part”.

5 After section 15

Insert:

15A Reportable incidents occurring in prescribed circumstances

- (1) For the purposes of subsection 73Z(1) of the Act, the circumstance set out in subsection (2) of this section is prescribed.

Note: Subsection 73Z(1) of the Act provides that the National Disability Insurance Scheme rules must prescribe arrangements relating to registered NDIS providers notifying and managing reportable incidents that occur, or are alleged to have occurred, in connection with the provision of supports or services by registered NDIS providers or in other circumstances prescribed by the rules.

- (2) The circumstance is that a reportable incident, being the death of a person with disability, occurs while that person was absent from accommodation:
- (a) at which the person was accommodated immediately before the absence; and
 - (b) at which the person and at least one other person are provided, by a registered NDIS provider, with support with daily living activities.

Note 1: The accommodation might be specialist disability accommodation (within the meaning of the National Disability Insurance Scheme rules).

Note 2: Support with daily living activities may include the classes of support referred to in table item 4 (high intensity daily personal activities), table item 7 (assistance with daily personal activities) or table item 15 (assistance with daily life tasks in a group or shared living arrangement) of the table in subsection 20(3) of the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*.

- (3) A reference in section 18, 19, 20, 25, 26 or 27 to a reportable incident that occurs in connection with the provision of supports or services by a registered NDIS

EXPOSURE DRAFT

Schedule 1 Amendments

provider includes a reference to a reportable incident that occurs in the circumstance prescribed by this section in relation to the NDIS provider referred to in subsection (2) of this section.

6 Subsection 16(1) (paragraph (b) of note 1)

Omit “of”, substitute “to”.

7 After subsection 16(1)

Insert:

(1A) An act, omission or event that causes a real and immediate risk of the death of or of serious injury to a person with disability, where the death or serious injury did not occur, is a *reportable incident*.

8 At the end of sections 18 and 19

Add:

Note: This section also applies in relation to reportable incidents that occur in the circumstance prescribed by section 15A: see subsection 15A(3).

9 Subparagraph 20(1)(b)(ii)

Omit “the serious injury of”, substitute “serious injury to”.

10 Subsection 20(1) (note)

Omit “Note”, substitute “Note 1”.

11 At the end of subsection 20(1)

Add:

Note 2: This section also applies in relation to reportable incidents that occur in the circumstance prescribed by section 15A: see subsection 15A(3).

12 At the end of subsection 25(1)

Add:

Note: This section also applies in relation to reportable incidents that occur in the circumstance prescribed by section 15A: see subsection 15A(3).

13 Subsection 26(1) (note)

Omit “Note”, substitute “Note 1”.

14 At the end of subsection 26(1)

Add:

Note 2: This section also applies in relation to reportable incidents that occur in the circumstance prescribed by section 15A: see subsection 15A(3).

15 At the end of subsections 27(2) and (3)

Add:

Note: This subsection also applies in relation to reportable incidents that occur in the circumstance prescribed by section 15A: see subsection 15A(3).

EXPOSURE DRAFT

Amendments **Schedule 1**

16 Paragraph 29(a)

After “disability”, insert “or in circumstances prescribed by these Rules”.

EXPOSURE DRAFT