



INQUIRY INTO ASPECTS OF SUPPORTED ACCOMMODATION IN THE NDIS

The NDIS Quality and Safeguards Commission (NDIS Commission) is established under the *National Disability Insurance Scheme Act 2013 (the NDIS Act)*. The functions and powers of the NDIS Commission and the Commissioner are set out in Chapter 6A and Part 3A of Chapter 4 of the NDIS Act. The NDIS Commission's functions and powers reflect the relevant provisions of the NDIS Quality and Safeguarding Framework, which was agreed to by all Australian governments.

The NDIS Commission commenced operating on 1 July 2018 and its jurisdiction has been established progressively across Australia since that date as follows:

- from 1 July 2018, New South Wales and South Australia only;
- from 1 July 2019, all other Australian states and territories, excluding Western Australia; and
- from 1 December 2020, full national coverage.

Inquiry into aspects of supported accommodation

Now that the NDIS Commission is operating nationally and has gathered substantial information in the performance of its functions, the acting Commissioner has determined to authorise an inquiry in relation to a series of Reportable Incidents and a series of Complaints that have occurred in connection with the provision of supports or services by a number of specified registered NDIS providers.

The purpose of this inquiry is to enable the NDIS Commission to identify:

- from Reportable Incidents and Complaints it has received:
 - the issues and incidents that are occurring in supported accommodation;
 - any trends in those issues and incidents; and
 - the underlying factors that are causing or contributing to those issues and incidents;
- models of best practice in supported accommodation that could help to eliminate or address those issues and incidents; and
- how best to promote the continuous improvement amongst NDIS providers of supported accommodation and the delivery of higher standards of supports and services in supported accommodation.

The inquiry is to be conducted under the following provisions of the NDIS rules:

- Section 27 of the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*, which is made for the purposes of section 73Z of the NDIS Act; and
- Section 29 of the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018*, which is made for the purposes of section 73X of the NDIS Act.¹

The Reportable Incidents and the Complaints that are the subject of this inquiry have occurred in connection with the provision of supported accommodation. The inquiry will examine the experiences of participants living in supported accommodation through examining Reportable Incidents and Complaints relating to supported accommodation.

For the purposes of this inquiry, 'supported accommodation' means support that is often referred to in the NDIS as 'supported independent living', as well as 'specialist disability accommodation'. The focus here is on the provision of supported accommodation that involves congregate living, which is a form of accommodation sometimes referred to as 'group homes'.

Supported accommodation is a support setting of particular interest to the NDIS Commission because people living in supported accommodation can have a relatively heightened exposure to risks of violence, abuse, neglect and exploitation due to a number of factors, including the following:

- many residents have an intellectual disability;
- many residents have high physical support needs, and/or dependence on others for most aspects of their daily living needs;
- participants who display what are termed 'behaviours of concern' or 'challenging behaviours' commonly reside in supported accommodation;
- residents may have fewer connections to family, community and a range of informal safeguards; and
- residents may have considerable difficulty in making complaints, including because of a number of the factors listed above.

Selection of providers

The inquiry will focus on Reportable Incidents and Complaints that involve a small number of NDIS providers that are large providers of supported accommodation.

Particular providers have been selected based on a number of factors:

¹ As a matter of law there will be two inquiries: one under section 27 of the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018* and a second under section 29 of the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018*. However, for ease of reference and because the inquiries are to be conducted concurrently, these terms of reference refer to them jointly as the one inquiry

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- the NDIS Commission has received notifications of Reportable Incidents and received Complaints related to supported accommodation provided by the provider;
 - the provider has a significant market share in respect of supported accommodation, either nationally or in a specific jurisdiction; and
 - the provider delivers supported accommodation across a wide geographic area including in regional and metropolitan locations.

Reportable Incidents and Complaints the subject of the inquiry

The inquiry will focus on Reportable Incidents and Complaints that have occurred in connection with the supported accommodation services provided by the following registered NDIS providers:

- Life Without Barriers
- Aruma
- Scope
- The Disability Trust
- Lifestyle Solutions
- Minda
- Endeavour Foundation

Structure of the inquiry

The NDIS Commission will conduct a detailed examination of the Reportable Incidents and the Complaints and also to identify any available models for the delivery of supported accommodation that demonstrate best practice.

A significant component of the inquiry will involve an examination of the Reportable Incidents and the Complaints that are the subject of the inquiry.

At the end of the inquiry, the NDIS Commissioner intends to prepare and publish a report setting out the Commissioner's findings in relation to the inquiry.

The terms of reference for the examination of the Reportable Incidents and the Complaints are set out below.

Terms of reference for the detailed examination of reportable incidents and complaints

1. The Inquiry Lead is to examine:

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- a. Reportable Incidents notified to the NDIS Commission by the provider who provides the supported accommodation where an impacted person is an NDIS participant residing in the supported accommodation² ('the Reportable Incidents'); and
 - b. Complaints made to the NDIS Commission by or on behalf of one or more NDIS participants residing in the supported accommodation arising out of or in connection with the provision of supports or services by the provider of the supported accommodation ('the Complaints').
2. The Inquiry Lead is to identify:
- a. the issues and incidents that are the subject of the Reportable Incidents and Complaints;
 - b. any trends or patterns in those issues and incidents, whether in relation to the provider concerned or across one or more of the providers selected for the inquiry;
 - c. to the extent possible, the underlying factors (or 'root causes') that are causing or contributing to those issues and incidents; and
 - d. any differences in the matters identified under paragraphs 2(a), (b) or (c) between different supported accommodation premises operated by a provider and any apparent reasons for those differences.
3. The Inquiry Lead is to identify whether and to what extent the Reportable Incidents and the Complaints:
- a. raise issues of possible non-compliance with the NDIS Practice Standards, or would have raised issues of possible non-compliance with the NDIS Practice Standards if the relevant NDIS provider had ceased to be a transitioned provider³ at the time the Reportable Incidents or the circumstances the subject of the Complaints occurred;
 - b. raise issues of possible non-compliance with the NDIS Code of Conduct; and
 - c. raise issues of possible breaches of any other conditions of the provider's registration, or would have raised issues of possible breaches of the conditions of the provider's registration if the provider had ceased to be a transitioned provider⁴ at the time the Reportable Incidents or the circumstances the subject of the Complaints occurred.
4. The Inquiry Lead is to consider:

² The Inquiry Lead may examine the number and nature of reportable incidents notified solely as unauthorised uses of restrictive practices, and the length of time for which such uses are notified as reportable incidents without being brought within the reporting requirements under the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*, but the Inquiry Lead is not expected to examine in detail reportable incidents that according to the notification relate solely to the use of a restrictive practice.

³ Under Division 2 of Part 6 of the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*.

⁴ Under Division 2 of Part 6 of the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*.

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- a. the adequacy of the provider's management of the Reportable Incidents under both its own incident management system (as required by section 73Y of the NDIS Act and Part 2 of the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*) and as a reportable incident (under section 73Z of the NDIS Act and Part 3 of the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*); and
 - b. whether any of the Complaints had been the subject of prior complaints to the provider and, if so, the adequacy of the provider's handling of them under the provider's complaints system (as required by section 73W of the NDIS Act and Part 2 of the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018*).
5. The Inquiry Lead is to identify, through an examination of local and international resources, models of best practice for the delivery of supported accommodation that might be appropriate for consideration by the NDIS Commission in its capacity building work with providers and in to the context of development of any future amendments to relevant practice standards and quality indicators.

Conduct of the detailed examination of reportable incidents and complaints

The Inquiry Lead will be assisted in the conduct of the detailed examination of the Reportable Incidents and the Complaints by staff of the Commission and by any additional contracted resources required and agreed between the Inquiry Lead and the acting Commissioner.

The NDIS Commission will identify the Reportable Incidents and the Complaints referred to in paragraph 1 of the terms of reference and provide the Inquiry Lead with access to the NDIS Commission's records in relation to them, including any relevant compliance or investigation records.

The Inquiry Lead will review the documents associated with the Reportable Incidents and the Complaints and will determine what, if any, additional information is required for the detailed examination of the reportable incidents and complaints. This may include requesting discussions with: people with disability who are referenced in the relevant reportable incident and complaint; disability support workers or other staff of the provider; family members; advocates and/or guardians.

The NDIS Commission will work with the Inquiry Lead to identify the need for any exercise of the NDIS Commission's information gathering powers under the NDIS Act.

The detailed examination of the Reportable Incidents and the Complaints is to be conducted in a manner that avoids prejudice to any pending or current criminal or civil proceedings and any risk of actual or perceived interference with the conduct of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, or any inquiry of the Joint Standing Committee on the National Disability Insurance Scheme.

Any disclosure of information for the purposes of or in the course of the detailed examination is to occur only in accordance with the provisions of the NDIS Act.

In conducting the detailed examination of the Reportable Incidents and the Complaints the Inquiry Lead is to take account of the objects of the NDIS Act and the general principles guiding actions under the NDIS Act, as set out in sections 3 and 4 of the NDIS Act respectively.

Reporting

By the end of October 2022, the Inquiry Lead is to provide to the Commissioner:

- For each provider listed above, a separate detailed report in relation to the reportable incidents and complaints that relate to the provider. These reports will necessarily include considerable amounts of 'protected Commission information' within the meaning of the NDIS Act and, as a consequence, will be subject to the restrictions on disclosure set out in the NDIS Act.
- A single report summarising the Inquiry Lead's findings⁵ in respect of the matters in paragraphs 1 to 4 of the terms of reference and outlining the models of best practice for the delivery of supported accommodation identified under paragraph 5 of the terms of reference.

The Inquiry Lead is welcome to include in the separate detailed reports or the single report (as the Inquiry Lead considers appropriate) any observations or suggestions the Inquiry Lead wishes to make about the NDIS Commission's processes or systems or the legislation and rules governing the NDIS Commission's relevant functions.

If the Inquiry Lead identifies any issues or concerns during the conduct of the detailed examination of the reportable incidents and the complaints that the Inquiry Lead considers require the urgent attention of the NDIS Commission in advance of the submission of the Inquiry Lead's reports, the Inquiry Lead is to raise these matters in writing with the acting Commissioner.

The NDIS Commissioner intends to prepare and publish a report setting out the Commissioner's findings in relation to the inquiry. The publication will be subject to the requirements of the NDIS Act in relation to protected Commission information and any redactions necessary to avoid prejudice to any criminal, regulatory or civil proceedings or to protect the privacy of any individual.

The NDIS Commissioner intends that the Inquiry Lead's single report summarising the Inquiry Lead's key findings and outlining what the Inquiry Lead considers to be the models of best practice will form a substantial part of the Commissioner's report.

The NDIS Commission will cognisant of the demands of any other processes that might be underway that impact on the providers that are engaged in this inquiry, and will be open to adjust the timeframes for the provision of a final report by the Inquiry Lead to avoid any

⁵ These findings are separate from any findings of the acting Commissioner in relation to the inquiry

interference with those processes, including processes that might be initiated by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

Inquiry lead

Mr Arthur Rogers PSM was appointed as Inquiry Lead in August 2021. Mr Rogers was unable to proceed with the inquiry for personal reasons and withdrew in early 2022. The NDIS Commission acknowledges the work undertaken by Mr Rogers to commence the inquiry, and his insights will be a valuable contribution to the Inquiry findings.

In July 2022 the NDIS Commissioner established the role of Strategic Advisor. Completion of the Inquiry forms part of the responsibilities of that role.

As a consequence of this change, the Lead Inquirer's report will be the NDIS Commissioner's report.