SA Health

Policy

NDIS Serious Reportable Incident

Version 1

Approval date: 03 May 2021

Government of South Australia

SA Health

1. Name of policy

NDIS Serious Reportable Incident Policy

2. Policy statement

This policy sets out the mandatory requirements and instructions that apply to reporting serious incidents in relation to National Disability Insurance Scheme (NDIS) participants. It describes the process of identifying incidents which have occurred inside and outside of a SA Health service and the required report.

All NDIS providers must follow the NDIS Incident Management and Reportable Incidents Rules (2018) as directed by the NDIS Quality and Safeguards Commission in addition to this policy. This includes SA Health NDIS Providers.

Additionally SA Health requires any serious incidents that have occurred in NDIS care provision to also be notified according to the following instructions regardless of who the NDIS provider is (see policy requirements). Compliance with this Policy is mandatory. Any reference to this Policy includes the Mandatory Instructions included at **Appendix 1**. Failure to comply may constitute grounds for disciplinary action, including termination of employment

3. Applicability

This policy applies to:

- The NDIS Serious Reportable Incident Policy applies to staff of the Department for Health and Wellbeing, Local Health Networks (including state-wide services aligned with those Networks), SA Ambulance Service, Wellbeing SA, The Commission on Excellence and Innovation in Health.

4. Policy principles

SA Health's approach to the NDIS Serious Incident Policy is underpinned by the following principles:

- We support the principles of a standardised system for the reporting and management of patient incidents as outlined in the Patient Incident Management and Open Disclosure Policy Directive.
- We support the principles of the National Disability Insurance Scheme Rules 2018.

5. Policy requirements

5.1 Reportable Incidents to the NDIS Quality and Safeguards (Q&S) Commission

NDIS Reportable Incidents are specific types of serious incidents (see below) that have, or are alleged to have occurred in connection with the provision of supports and services by registered NDIS providers (National Disability Insurance Scheme (Incident management and Reportable Incidents) Rules 2018; Part 3.)

See Appendix 1 Mandatory Instruction for further details regarding the type of reportable incidents and reporting timeframes and obligations.

Types of serious reportable incidents

- The death of a person with disability
- Serious injury of a person with disability

- Abuse or neglect of a person with disability
- Unlawful sexual or physical contact with, or assault of, a person with disability
- Sexual misconduct committed against, or in the presence of, a person with disability, including grooming of the person
- The use of a restrictive practice in relation to a person with disability that is unauthorised use or not in accordance with a behaviour support plan.

5.2 Reporting Requirements of NDIS Serious Incidents

- All reportable serious incidents involving a NDIS participant will be managed according to the Patient Incident and Open Disclosure Policy Directive and SLS processes.
- All NDIS participant serious incidents are to be reported to the NDIS Quality and Safeguards Commission via the NDIS Portal or by email: SAReportableIncidents@ndiscommission.gov.au.

Notifications

- SA Health requires any serious incidents identified in NDIS care provision to be notified according to Appendix 1 Mandatory Instructions regardless of who the NDIS provider is.
- Serious incidents involving a NDIS participant are required to be notified to;
    - The patient incident module of the Safety Learning System (SLS)
    - The NDIS Quality and Safeguards (Q &S) Commission
    - All relevant SA Health departments and non SA Health agencies as per Appendix 1.

6. Mandatory related documents

Under this policy, all employees of SA Health must comply with:

- Ageing and Safeguarding Act (1995)
- Consent to Medical Treatment and Health Care Policy
- Patient Incident Management and Open Disclosure Policy Directive
- Reporting and Management of Incidents of Suspected or Alleged Sexual Assault of an Adult or Sexual Misconduct by an Adult

7. Supporting documents

- SA Health - NDIS Clinical resource page
- The NDIS in each State- South Australia page
- The NDIS Quality and Safeguards Commission
- The NDIS Quality and Safeguards Commission- Reportable Incidents Guide
- National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018
- National Disability Insurance Scheme (NDIS) Critical Incident Notifications Protocol (DHS)

8. Definitions

- **Act** means the National Disability Insurance Scheme Act 2013.
- **Affected person** means a person with disability who has been affected by an incident that has occurred during the provision of NDIS supports and services.

- **Identified Clinician** is commonly a social work clinician or it may be a senior nurse/community mental health clinician or other relevant staff member.
- **Incident (patient incident)** means: any event or circumstance which could have (near miss) or did lead to unintended and/or unnecessary psychological or physical harm to a person or consumer / patient that occurs during an episode of health care.
- **Medical Agent** means a person appointed under a medical power of attorney under the Consent to Medical Treatment and *Palliative Care Act 1993* to be the medical agent of another.
- **Medical Agent of the person** is considered to be Substitute Decision Maker for the purposes of the Advance Care Directives Act 2013**.**
- **NDIS Commission** means the NDIS Quality and Safeguards Commission.
- **Person with disability** means a person with disability (including psychosocial disability) who is an NDIS participant and receives supports or services from an NDIS provider, includes psychosocial disability.
- **Registered NDIS provider** means a person or entity registered under s 73E of the Act to provide supports and services to people with disability.
- **Reportable incident** means a reportable incident is a serious incidents or alleged incident which results in harm to an NDIS participant and occurs in connection with NDIS supports and services.
- **Substitute Decision Maker (SDM)** is an adult one can choose and appoint in an Advance Care Directive to make decisions about their future health care, living arrangements and other personal matters when the person giving the Advance Care Directive is unable to make their own decision/s. An Enduring Guardian and a Medical Agent are considered to be Substitute Decision Makers for the purposes of the Advance Care Directives Act 2013**.**

9. Compliance

The SA Health-wide compliance indicators for this policy are set out below. These indicators are required to be met across all SA Health services and Attached Offices.

Any instance of non-compliance with this policy should be reported to the Domain Custodian for the Risk, Compliance and Audit Domain.

Department for Health and Wellbeing Safety and Quality Unit will provide an annual report of reported NDIS client incident to the Chief Executive SA Health. The report will also include matters that have been reported to NDIS Quality and Safeguards Commission.

Indicator	Description
Audit of Reported Incidents in SLS	All serious patient incidents involving NDIS participants are reported into SLS in a timely manner.
Timeliness of incident notifications to NDIS Q&S Commission within	All serious patient incidents involving NDIS participants are notified to the NDIS Q&S Commission within 24 hours.
Timeliness of notification of incidents to the CE DHW	All serious patient incidents involving NDIS participants are notified to the CE DHW via a CIB within 24 hours.

10. Document ownership

Policy owner: Executive Director, Provider Commissioning and Performance domain custodian for Clinical Governance, Safety and Quality.

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11. Document history

Version	Date approved	Approved by	Amendment notes
V1.0	19 March 2021	Executive Director, Provider Commissioning and Performance	New policy

12. Appendices

1. *Mandatory instruction SA Health NDIS Serious Reportable Incident Mandatory Instruction*
2. *National Disability Insurance Scheme (NDIS) Serious Reportable Incident Template and Flow Chart*
3. *CE Authorisation to disclose personal information*
4. *EXTERNAL MINUTE template*
5. *INTERNAL MINUTES template*

Appendix 1: SA Health NDIS Serious Reportable Incident Mandatory Instruction

The following Instruction must be complied with to meet the requirements of the *SA Health NDIS Serious Reportable Incident Policy*.

1. Reportable Incidents to the NDIS Quality and Safeguards (Q&S) Commission

The following NDIS Reportable Incidents are reportable within 24 hours of becoming aware of the incident.

1.1 The death of a person with disability (including psychosocial disability)

All deaths of people with disability that occur in connection with the provision of NDIS supports or services must be notified to the NDIS Q&S Commission. The place of death does not determine whether the death is a reportable incident so long as there is the required connection between the death and the service provision.

Once the connection is established, deaths are reportable if the person dies:

- In their own private home
- In supported accommodation
- In the community during community access
- In hospital or other health care facility.

1.2 The serious injury of a person with disability

All serious injuries require notification to the NDIS Q&S Commission if it occurs or is alleged to have occurred in connection with the provision of NDIS supports and services.

SA Health has a duty of care to notify the NDIS Q&S Commission of the incident. Once reported the NDIS Q&S Commission will determine the need to act on the notification.

In determining whether an injury is 'serious', consideration should be given to the level of harm caused. A serious injury includes, but is not limited to:

- Fractures
- Burns
- Deep cuts
- Pressure injuries (Stage 3, 4, suspected deep or unstageable)
- Malnutrition
- Extensive bruising, including large individual bruises, or a number of small bruises over the impacted person
- Head or brain injuries which might be indicated by concussion or loss of consciousness
- Any other injury requiring hospitalisation.

Hospitalisation includes a person with disability's presentation or admission to an emergency or other ward within a hospital facility, including short-stay admissions, if they are related to the injury acquired. There will be instances in which a person with disability is hospitalised for reasons unrelated to serious injury; these instances may not be reportable incidents.

1.3 The abuse or neglect of a person with disability

Types of abuse that meet the criteria for being a reportable incident include:

- **Physical abuse** – non-accidental physical acts towards a person with disability that are intended to cause hurt or harm. Acts that result in that person experiencing significant pain, shock, other unpleasant sensation. In some circumstances, acts of physical abuse will also amount to unlawful physical contact or assault, and may cause a serious injury to the person with disability.
- **Psychological or emotional abuse** – verbal or non-verbal acts that cause significant emotional or psychological anguish, pain or distress including verbal taunts, threats of maltreatment, harassment, humiliation or intimidation, or a failure to interact with a person with disability or acknowledge the person with disability's presence.
- **Financial abuse** – improper or illegal use of money (including NDIS funds where they are managed by the individual person with disability), property, resources or assets of a person with disability, including improperly withholding finances from that person, and coercing or misleading the person with disability as to how the funds or property will be used.
- **Systemic abuse** – a failure to recognise, provide, or attempt to provide adequate or appropriate services, including services that are appropriate to the person's age, gender, culture, disability support needs or preferences, that has a significant physical, emotional or psychological impact on the person with disability.

1.4 Neglect of a person with disability

Neglect includes an action, or a failure to act, by a person who has care or support responsibilities towards a person with disability.

Neglect can be a single significant incident where a NDIS provider or worker fails to fulfil a duty, resulting in actual harm to a person with disability, or where there is the potential for significant harm to a person with disability. Neglect can also be ongoing, repeated failures by a NDIS provider or worker to meet a person with disability's physical or psychological needs.

Neglect can include a number of specific categories that must be reported including:

- **Grossly inadequate care** - Grossly inadequate care refers to a registered NDIS provider depriving a person with disability of the basic necessities of life, such as food, drink, shelter, medical care or clothing.
- **Failure to access medical care** - provider deprives the person with disability from receiving required medical attention and care to access and treat a condition, or prevent an illness or condition from worsening.
- **Supervisory neglect** - the intentional or reckless failure to adequately supervise or support a person with disability that results in, or has the potential to result in, the death of, or significant harm to, the person with disability and a failure to adequately supervise and support which involves a gross breach in professional standards. A reckless act or failure to act - A gross breach of professional standards or an act or failure that results in or has the potential to result in the death of, or significant harm to, a person with disability.
- **Failure to protect from abuse** - includes an obviously unreasonable failure to respond to information which strongly indicates the actual or potential serious abuse of a person with disability.

1.5 Alleged unlawful physical contact with, or assault of, a person with disability

This includes any unlawful physical contact with, or assault of, a person with disability that occurs, or is alleged to have occurred.

1.6 Alleged Sexual Assault

In addition to reporting these incidents according to this policy there is an expectation that staff also comply with the Reporting and Management of Incidents of Suspected or Alleged Sexual Assault of an Adult, or Sexual Misconduct by an Adult, within SA Health Facilities and Services Policy Directive if applicable.

1.7 Alleged unlawful sexual contact with, or assault of, a person with disability

This includes any alleged unlawful sexual contact or assault of a person with disability that occurs, or is alleged to have occurred, in connection with the provision of supports or services.

This includes alleged sexual assault offences involving a person having sexual intercourse with another person without their consent or when a person is forced, threatened, coerced or tricked into sexual acts. Indecent assault usually involves touching (or threatening to touch) a person's body in a sexual manner without the consent of the other person.

1.8 Alleged sexual misconduct committed against, or in the presence of, a person with disability, including grooming of the person for sexual activity

Alleged sexual misconduct incidents include the following:

- alleged unlawful sexual conduct
- alleged sexually explicit comments and overtly sexual behaviour
- alleged crossing professional boundaries in a way that has sexual implications or connotations
- alleged grooming of the person for sexual activity.

1.9 The unauthorised use of a restrictive practice in relation to a person with disability

Restrictive practices involve the use of practices that have the effect of restricting the rights or freedom of movement of a person with disability other than where the use is in accordance with an authorisation (however described, including an authorised NDIS Behaviour Support Plan) of a State or Territory in relation to that person (see the Reportable Incidents Guidance document for further detail). This includes:

- restraint (chemical, mechanical, social or physical) and seclusion (keeping someone in isolation) see the SA Health Minimising Restrictive Practice Policy Framework for more detail
- the use or alleged use of a restrictive practice in relation to a person with disability, other than where the use is in accordance with an authorisation must be notified.

2.0 In the event of a serious incident

- Immediately support the affected person.
- Ensure the safety and wellbeing of the consumer and staff involved and any other consumer or staff that may be at risk.

If it is alleged or suspected that there is a serious threat to health, life and safety a report to the South Australian Police (SAPOL) is required and as relevant/indicated:

- Emergency services

- Ambulance if there is an injury requiring medical attention
- Child Abuse Report Line (CARL) notification
- Key personnel from the Local Health Network
- Relatives/support people/guardian for the affected person
- Safety Learning System (SLS) report
- NDIS Q&S Commission as per this policy.

Develop and document a plan of care for each person with disability that includes:

- any actions specific to that person to be taken after an incident to ensure the health, safety and wellbeing of the person
- the assessment and mitigation of any risks to other people with disability that could be impacted by the incident.

3.0 Reporting Requirements

3.1 Report of NDIS incidents in the SLS Patient Incident Module

- All reportable serious incidents involving a NDIS participant will be managed according to the Patient Incident and Open Disclosure Policy Directive and SLS processes.
- All serious incidents involving NDIS participants must have a Safety Assessment Code (SAC) according to the SAC Matrix.
- When entering any SLS notification involving a NDIS participant, ensure that the notification states that the incident relates to a *NDIS participant* and the name of the NDIS provider, if known.

3.2 Requirement to report to the NDIS Quality and Safeguards Commission and other External Departments

- If the NDIS participant has decision making capacity, inform the client of the requirement to report the incident to the NDIS Q&S Commission. Document in the medical record.
- If the NDIS participant does not have decision making capacity inform their authorised guardian, substitute decision maker or medical agent of the person of the requirement to report the incident. Document in the medical record.
- If the NDIS participant, authorised guardian, substitute decision maker or medical agent objects to reporting the incident, or if it is determined that it is not safe to inform them, then
  - In instances where the Information Sharing Guidelines (ISG) apply then the information can be shared with the relevant entities (see below)
  - Where the ISG's are not applicable to report an incident a signed CE /CEO Authority to Disclose personal information is required in compliance with Section 93 of the *Health Care Act 2008* or Section 106 of the *Mental Health Act 2009*. LHN Safety and Quality Unit staff can facilitate obtaining an Authority to Disclose.
- The CE / CEO Authority to Disclose personal information of NDIS client must include the clients name and date of birth.
- It must also list the external (to SA Health) Government Departments that a disclosure may or will be made to such as:
  - South Australian Police (SAPOL)
  - NDIS Quality and Safeguards Commission
  - National Disability Insurance Agency (NDIA)

- Department of Human Services (DHS)
- Health Care Services Complaints Commission (HCSCC)
- Office of the Public Advocate (OPA).

> All NDIS participant serious incidents are to be reported to the NDIS Quality and Safeguards Commission via the NDIS Portal or by email: SAReportableIncidents@ndiscommission.gov.au.

*If you have successfully reported the incident via the aforementioned email address, you should receive a system generated return confirmation email.

3.3 If consent to report cannot be obtained

> Whenever reasonable and practicable, informed consent for information sharing should be sought.

> Staff are legally allowed to share (disclose) information about a consumer where sharing the information is reasonably required to lessen or prevent a serious threat to the life, health or safety of a person, or a serious threat to public health or safety (see section 93(3)(e) of the *Health Care Act 2008*). Alternatively if there is a risk of serious harm to a person or group of people and the circumstances and processes outlined in the ISG and SA Health ISG Appendix apply.

> Deciding to share consumer information in line with the ISG is a clinical and professional judgement that can be assisted by the use of relevant risk assessment processes. If relying on section 93(3)(e) or the ISGs when sharing information, file notes should be kept regarding their application.

> In the event that there is any doubt about the application of either section 93(3)(e) or the ISGs then a CE/CEO authorisation (see above) must be obtained if consent cannot be.

3.4 NDIS Reportable Serious Incidents to appropriate Department for Health and Wellbeing (DHW) Internal units (SA Health Agencies)

Internal DHW units to be notified of NDIS client incident report via an Internal Minute* are:

> Wellbeing SA - Integrated Care Systems *

> Non-Government Organisation (NGO) Performance Management Team*

> If the serious incident involves a mental health client also send a copy of the internal minute to the Office of the Chief Psychiatrist*.

*Refer to Internal Minute template.

3.5 NDIS Reportable Serious Incidents to appropriate other External Government Departments (Non SA Health Agencies)

External government departments that may need to be notified of NDIS client incident report (where appropriate) via an External Minute* include:

> Department for Human Services (DHS) – Chief Executive Officer*. If the NDIS client is also a client of the DHS Exceptional Needs Unit (ENU), the ENU must also be notified.

> Office of the Public Advocate (OPA)* all NDIS participants with an appointed OPA Guardian. Those clients with a private guardian do not require reporting to OPA. If unsure of the guardianship status, contact OPA for advice.

> Health Care Services Complaints Commissioner* this is for circumstances where healthcare is being provided by an unregulated/unregistered worker.

*Refer to External Minute template.

4.0 Reporting Timelines

- All NDIS serious reportable incidents must be notified to the NDIS Q&S Commission by the LHN within 24 hours of becoming aware of the incident via the NDIS Portal or by email: SAReportableIncidents@ndiscommission.gov.au.
- All NDIS serious reportable incidents must have a Clinical Incident Brief (CIB) to be sent to the CE SA Health within 24 hours (working days) of becoming aware of the incident.

5.0 Record keeping

- Ensure all records relating to the incident are written and stored as required by the relevant SA Health Policy Directives and LHN procedures.
- Ensure all personal and sensitive information relating to people with disability receiving NDIS supports and services is securely stored; and when transmitted, privacy and confidentiality is maintained and the documents are marked with the appropriate Information Classification as per SA Health Policy Directive.
- All supporting documents must be uploaded to the Safety Learning System (SLS) including the Clinical Incident Brief (CIB), CE Authority to Disclose, Internal and External Minutes, NDIS Commission correspondence and notification documents.

6.0 Roles and responsibilities

- The following roles within SA health have specific responsibilities in implementing this Policy and Mandatory Instruction, as summarised in Table 1 below:

Table 1. Roles and responsibilities for the implementation of the *SA Health NDIS Serious Reportable Incident Policy*

Role/s	Responsibilities
SA Health Chief Executive/Deputy Chief Executive	> ensuring services across SA Health operate in accordance with Legislation and this policy > ensuring appropriate resourcing for reporting and responding to NDIS Serious Reportable Incidents > ensuring the Minister for Health and Wellbeing is apprised of NDIS Serious Reportable Incidents and their management > ensuring that all relevant non-SA Health government agencies have been informed in a timely way.
LHN Governing Boards/ Chief Executive Officers / and other Health Services procured to deliver health services on behalf of SA Health	> adherence to Legislation and appropriate reporting including to SLS and to the NDIS Quality and Safeguards Commission > internal processes are in place to report serious NDIS participant incident > appropriate support and resources are provided to all staff.
LHN Director of Safety and Quality/Clinical Governance Units / Divisional Directors	> obtaining a CEO Authority to Release Information prior to any information sharing of NDIS client incident data > ensuring that reporting any serious incidents to the NDIS Quality and Safeguards Commission has occurred via the NDIS Portal or SAReportableIncidents@ndiscommission.gov.au email address > preparing and distributing relevant documents as outlined in this policy (e.g. Clinical Incident Brief, internal/external Minute).

Role/s	Responsibilities
The Adult Safeguarding Units (ASU	> will comply with the *Ageing and Safeguarding Act (1995*) report and action accordingly.
Identified clinician*	> seeking engagement of the DHS Exceptional Needs Unit (ENU) if applicable > seeking engagement of emergency guardianship if applicable > seeking advice from OPA regarding guardianship if applicable. *Identified clinician is commonly a social work clinician or it may be a senior nurse/community mental health clinician or other relevant staff member.
South Australian Ambulance Services (SAAS) staff are responsible for:	> reporting immediate concerns to SAPOL in the situation where the NDIS participant survival is of concern > documenting and communicating incident details to LHN staff during handover > reporting incidents via Safety Learning System (SLS) as outlined in this policy.
All other staff	> keeping themselves informed of the requirements of this Policy > complying with their incident reporting responsibilities.