Disability Inclusion Act 2014 – reporting abuse and neglect to the NSW Ombudsman

The Disability Inclusion Act 2014 (the Act) and the Disability Inclusion Regulation 2014 (the Regulation) commenced on 3 December 2014.

The Act amends the Ombudsman Act 1974 (NSW) through the insertion of a new Part 3C which requires that reports be made to the NSW Ombudsman about serious incidents of abuse or neglect of people with disability living in supported group accommodation. This is called the Disability Incident Reporting Scheme.

Which services must report incidents?

Incidents of abuse or neglect must be reported by all supported group accommodation services, including centre-based respite services, that are operated or funded by Family and Community Services (FACS) under Part 5 of the Act.

Supported group accommodation services are defined as premises in which:

- two or more people with disability live in a shared living arrangement, but not a family household (where one of the people with disability has their guardian or family member living onsite and providing support for them); and
- paid disability support is provided onsite, noting that centre-based respite care is included even where it is provided at no cost to the resident or family.

This includes those supported group accommodation services operated or funded by FACS under the Disability Inclusion Act 2014.

Premises are not supported group accommodation if:

- the premises are not under the control, direction or management of the disability service provider (for example, the residents or their family may own the premises, or rent from a private landlord or social housing provider which chooses residents and sets the rules); and
- the onsite support provided by the disability service provider is controlled, directed or managed by:
  - one or more of the residents; or
  - a guardian or family member responsible for the care of a resident.

The aim of this is to exclude living arrangements where disability service providers are providing support to people with disability who are living together relatively independently in the community, but whose day-to-day lives are not under the substantial control of disability service providers.

www.facs.nsw.gov.au

**What is a reportable incident?**

A reportable incident is an incident that involves a person with disability in a FACS operated or FACS funded supported group accommodation service, including disability respite centres, where:

1. an employee (including agency staff, volunteers and contractors) of FACS, or a FACS funded supported group accommodation service, has engaged in any of the following:
   - a sexual offence against the person with disability;
   - sexual misconduct, including grooming the person with disability for sexual activity;
   - an assault of the person with disability;
   - a deception or fraud related offence against the person with disability under the *Crimes Act 1900*; or
   - mistreatment or neglect of the person with disability;
2. a resident assaults another person with disability in the same accommodation service that:
   - is a sexual offence; or
   - causes serious injury, e.g. fracture, burn, concussion or deep cuts; or
   - involves the use of a weapon; or
   - is part of a pattern of abuse;
3. there is a breach of an apprehended violence order (AVO) taken out to protect a person with disability; or
4. an unexplained serious injury occurs to a person with disability.

**How do incidents need to be reported?**

FACS and FACS funded disability service providers must ensure staff are aware of their obligation to notify the head of the organisation about an incident as soon as the staff member becomes aware of it.

The head of the accommodation provider – the Secretary of FACS, or the CEO of a FACS funded disability accommodation provider – must notify the Ombudsman within 30 days of becoming aware of the incident.

The NSW Ombudsman has published guidelines to assist service providers to understand their obligations under the reporting system. Anyone who wants more information should check the website of the NSW Ombudsman [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au), or call the NSW Ombudsman Reportable Incidents Division on (02) 9286 1000.

**Powers of the Ombudsman**

The Ombudsman can monitor the way FACS or a FACS funded disability accommodation provider manages a particular incident. The Ombudsman can also


investigate and report on individual incidents, and on the systems that a provider has in place to prevent, handle, and respond to, reportable incidents.

**What happens when the National Disability Insurance Scheme (NDIS) is in place?**

NDIS registered providers of supported accommodation and centre-based respite services operating in the Hunter NDIS trial site must also report incidents under the Disability Incident Reporting Scheme.

However, once the responsibility for funding disability supports and services has been fully transferred from the NSW Government to the NDIS, the reportable incidents system in Part 3C of the *Ombudsman Act 1974* will no longer apply.

Safeguards against the abuse or neglect of people with disability receiving NDIS payments are currently being developed by the NSW Government with the Commonwealth Government and the other states and territories in Australia.

**Other safeguards against violence and abuse**

Other safeguards and complaints mechanisms are available to people accessing all types of disability supports and services:

- the NSW Police Force can investigate all crimes, including assault, theft and fraud;
- the NSW Ombudsman can receive complaints and investigate incidents relating to disability service providers under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* – phone (02) 9286 1000, [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au);
- the National Disability Abuse and Neglect Hotline can also receive complaints – phone 1800 880 052, [www.disabilityhotline.net.au](http://www.disabilityhotline.net.au);
- the Australian Human Rights Commission can hear cases where a person with disability believes they have been discriminated against – phone (02) 9284 9600, [www.humanrights.gov.au](http://www.humanrights.gov.au); and

This fact sheet is available in a range of other languages and in an Easy Read format. To access these resources and find out more about the *Disability Inclusion Act 2014* visit [www.facs.nsw.gov.au/dia](http://www.facs.nsw.gov.au/dia), email disabilityinclusionact@facs.nsw.gov.au, or call 1800 446 470. If you would like to speak to us through an interpreter, call TIS on 131 450.