

NDS Feedback on Draft Coroners Amendment Regulations 2022

April 2022

Introduction

National Disability Services welcomes the opportunity to provide feedback on the Draft Coroners Amendment Regulations in relation to reportable deaths in Specialised Disability Accommodation.

The development of the National Disability Insurance Scheme funded Specialist Disability Accommodation (SDA) market has involved a significant transition of supported disability accommodation residents from Victorian Government funded supported accommodation to NDIS funded SDA dwellings. In many of these homes, supports are provided by non-government organisations. This transition has resulted in disruption to the traditional processes by which the Victorian government obtains information and data about disability accommodation residents. NDS understands that the proposed changes to the Coroners Regulations to require providers of Supported Independent Living (SIL) supports to report all deaths of SDA residents - including apparent natural cause deaths - to the Victorian Coroners Court or the Victorian Institute of Forensic Medicine are designed to address this gap in data.

Over the last few months, NDS has engaged regularly with the Department of Justice and Community Safety to provide advice on the proposed changes based on feedback from the sector. Consultation with disability organisations has identified that many providers do not support the proposed changes for a range of reasons, including a perception that the underlying assumptions of the regulations are outdated and discriminatory, the potential impact on families and other residents, the administrative burden and significant costs associated with the amendments, and the existence of loops holes/discrepancies within the regulations.

We have summarised feedback on these key issues below.

The proposed regulations rely on outdated assumptions about people with disabilities

NDS questions why it is necessary to collect death information about participants living in SDA, particularly where they have died of natural causes. The regulations appear to treat people with disability living in SDA as a group who are particularly vulnerable because of their disability status, and are therefore reminiscent of outdated medical or charity models of disability which view people with disability as victims of their disability diagnosis. While we note that it is reasonable that all unexpected deaths in Victoria are required to be reported to the Victorian Coroners Court and the bodies of those deceased persons taken into the custody of the court, we believe that the requirement that natural deaths of Victorians with disability be treated in this way is unnecessary

and discriminatory. Victorians with disability should have the same right as any other Victorian to have their wishes respected at the end of their life. Many people with disability and their families would prefer that this process is family-led and does not involve possession of the person's body by the Coroners Court of Victoria. These regulations, which we believe unnecessarily infringe upon the rights of Victorians with disabilities to have a peaceful and family-led departure, are out of line with the inclusion principles in the Victorian State Disability Plan and the forthcoming Disability Inclusion Act, and the Victorian Government's commitment to them. They are also out of line with the broad principles and aims of the National Disability Insurance Scheme, which is designed to enable people with disability to have individual choice and control and be at the centre of decision-making on issues that impact them.

Impact on residents' families, friends, and other residents

NDS is also concerned that the regulations which would require the bodies of deceased SDA participants to be taken into the possession of the Coroners Court are likely to have a negative impact on the participants' grieving loved ones. Disability service providers have noted that the regulations may cause significant distress for families and loved ones of deceased persons, who may be restricted in their capacity to make timely funeral arrangements as they see fit and in line with the wishes of the deceased person. They also expressed concern about the potential impact on other residents in the house, who may not have the capacity to understand the process and may be distressed further by the involvement and presence of authorities in the process.

Administrative burden associated with the regulations

The death of a participant in SDA setting is a challenging time for support providers, who must manage difficult conversations with families, friends and other residents while navigating complex and administratively burdensome processes and procedures. Registered NDIS providers, including those who provide Supported Independent Living supports, are already bound by reporting requirements under the [NDIS Commission's Incident Management and Reportable Incidents framework](#), which include comprehensive death reporting requirements. Providers have expressed frustration that the proposed new Victorian reporting requirements, which essentially duplicate the NDIS Quality and Safeguards Commission reporting requirements, would place an unnecessary additional pressure on providers during a difficult period. To avoid placing additional administrative burden on providers, we argue that the Victorian Government should establish a data sharing protocol with the NDIS Commission to collect such information, rather than requiring providers to complete duplicative reports.

Significant costs of implementing the amendments

NDS has provided feedback to the Department of Justice and Community Safety that the proposed amendments would have a substantial financial impact on Supported Independent Living (SIL) providers in Victoria. Our consultation with SIL providers identified that the reporting and subsequent activities associated with the proposed regulations would likely cost providers between \$700-\$1,700 for each resident death, depending on the complexity of the case. It is noted that such state specific costs are not accounted for in the national NDIS price setting process which

determines the income received by SIL providers. Providers noted that with the current demands on registered SIL providers due to NDIS Commission reporting and compliance requirements, and the decreasing margins associated with working with people with more complex needs including those in SDA, the need to carry more legislative compliance could have a significant impact on SIL providers' willingness to provide registered SIL supports to SDA participants.

Challenges in capturing the intended cohort

We have identified a number of issues within the draft regulations which may limit the reach of the data that is collected. One key area of concern is the definition used for Supported Independent Living Providers. The draft amendment refers to Section 498B of the Residential Tenancies Act which defines a Supported Independent Living Provider as 'a registered NDIS provider that provides supported independent living assistance'. It is essential to note that SIL providers are not required to be registered with the NDIS Quality and Safeguards Commission. As a result, some unregistered SIL providers provide SIL supports within SDA properties. Our interpretation of the draft amendments is that the reporting requirements placed on SIL providers will only apply to those who are registered with the Commission, leaving a gap in data around the deaths of SDA residents who are supported by unregistered SIL providers.

A number of providers also noted that some of their SDA residents do not receive supports from a Supported Independent Living Provider at all. One example of this is a woman with Multiple Sclerosis who lives in an SDA property with her husband who is her full-time carer. Our understanding is that individuals who receive their daily living supports from informal carers (e.g., family members, friends) will not be covered by the proposed regulations.

Lack of clarity around reporting responsibilities

Service providers identified several areas where further clarity around the responsibilities of providers under the proposed amendments is required. In particular, it is unclear whether an unregistered SIL provider is able to report deaths (including natural deaths) of SDA participants. It is also unclear whether other providers (e.g. the SDA provider) should report a death to the coroner if the resident does not receive SIL supports, or does receive SIL supports but by an unregistered provider.

Providers also raised concerns associated with the lack of clarity around reporting requirements where a person has died in hospital. Providers noted that in cases where a participant has died under medical care, it would make more sense for the reporting to be done by the medical practitioners involved in the participant's healthcare, given their expertise in the participant's health conditions. Providers noted that this was particularly relevant where participants had been in hospital for an extended period and had therefore not received direct support from the SIL provider for some time.

Conclusion

NDS urges the Victorian Government to reconsider the proposed regulations, particularly in light of Victoria's commitment to disability inclusion as expressed in the State Disability Plan and forthcoming Disability Inclusion Act. While we acknowledge that it is appropriate for any Victorians who die of unnatural causes to be investigated by a Coroner, we question why people with disability who die of natural causes are not provided with the same right as other members of the community for a peaceful family led departure. We believe that any required data relating to the deaths of Victorians with disabilities who die of natural causes could be obtained from the NDIS Quality and Safeguarding Commission via a data sharing agreement.

We are also concerned that the proposed regulations may have a negative impact on residents' loved ones, and are likely to have a significant cost and administrative impact on providers. On these grounds, we would argue that the negative impacts of the proposed amendments outweigh the potential positive impacts.

In the case that the Victorian Government progresses with the proposed changes, NDS encourages the Victorian Government to establish an information sharing arrangement with the NDIS Commission to avoid duplicating reporting requirements for support providers. We also encourage the Victorian Government to provide further clarification around ambiguities in the reporting responsibilities, including where there is no registered SIL provider involved in a resident's schedule of supports, and where a resident has died in hospital after an extensive stay in hospital.

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