

NDS Submission on Proposed Changes to the Coroners Regulations 2019

17 December 2021

Introduction

NDS welcomes the opportunity to provide feedback on the proposed changes to the *Coroners Regulations 2019* in relation to reportable deaths in disability accommodation. The introduction of the National Disability Insurance Scheme (NDIS) has had a profound impact on the disability support landscape and the role of the Victorian Government in disability.

The development of the Specialist Disability Accommodation (SDA) market has led to a significant transition of supported disability accommodation residents out of Victorian Government managed homes and into SDA dwellings that are funded by the NDIS and within many of which, supports are provided by non-government organisations. This has created gaps in information and data about disability accommodation residents that have traditionally been captured by the Victorian Government. NDS understands that the proposed changes to the Coroners Regulations 2019 to require providers of supports to SDA residents to report all deaths of SDA residents (including apparent natural cause deaths) to a coroner or the Victorian Institute of Forensic Medicine are designed to address this gap in data collection.

Mandatory Reporting to the NDIS Quality and Safeguarding Commission

Victorians residing in Specialist Disability Accommodation (SDA) and receiving supports and services generally have a range of complex support needs, often have significant healthcare needs, and can be particularly vulnerable to violence, abuse and neglect. NDS understands that the mandatory reporting of deaths of people with a disability residing in supported accommodation has, over the years, contributed to identification of issues associated with avoidable deaths and provided opportunity to identify and reduce risks for people who are living in supported accommodation.

It is important to note, however, that since the introduction of the NDIS Quality and Safeguards Commission, this information has been captured by the [Commission's Incident Management and Reportable Incidents framework](#), which dictates a number of reporting requirements including the reporting of deaths. This reporting is mandatory for registered NDIS providers, which includes all providers of SDA. Under the reportable incidents framework, registered NDIS providers are required to report the death of a person with a disability, where it has happened in connection with the provision of supports or services, within 24 hours of the incident occurring. This reporting includes collection of mandatory information around the details of the incident and the immediate actions taken in response to the incident, as well as additional optional information around how the provider has managed decisions around the incident, investigated the incident and undertaken a risk assessment to reduce the risk or prevent similar incidents from occurring.

The death of a participant in a disability residential accommodation 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. NDS is concerned that the introduction of new reporting requirements, which essentially duplicate the NDIS Quality and Safeguards Commission reporting requirements, are an unnecessary additional pressure on providers during a difficult period. While we note the importance of this information, we recommend, in the first instance, that the Victorian Government establish a data sharing protocol with the NDIS Commission in order to collect such information from the NDIS Commission, rather than requiring providers to complete duplicative reports.

In the event that the Victorian government is unable to secure such a data sharing agreement, and information cannot be shared between the NDIS Commission and the Victorian Coroner, NDS recommends that the process should be made as simple as possible to avoid unnecessary administrative burden. If reporting by providers is essential, NDS recommends that the Victorian Coroner accept the same form that is completed by providers for the NDIS Commission, rather than requiring a completely new and separate form be completed.

Scope of the requirement

NDS also encourages the Victorian Government to clearly delineate exactly who is responsible for the reporting of deaths in SDA in a variety of circumstances. For example, it is unclear whether the support provider who operates within the property (eg. the Supported Independent Living (SIL) provider) is responsible for this reporting, or whether it should be completed by the SDA provider. Many disability group homes in Victoria are owned by the Victorian government, and Homes Victoria operates as the SDA provider. There has been recent work on negotiation of standard collaboration agreements with the SIL providers providing supports in these homes, which spell out respective responsibilities between Homes Victoria as the SDA provider, and the SIL providers. Other SDA providers include not for profit disability organisations, which often own disability houses, and for-profit SDA providers which are newer entrants to the market. Clarity is also sought around who is responsible for the reporting if two parties may have obligations – for example, if paramedics are at the scene when the death occurs, or if an SDA resident passes away while undergoing surgery in hospital.

Clearer guidance on handling deaths in SDA dwellings is also sought by providers. A number of providers indicated that the process for managing a death, including who to contact first, is often confusing and complex. The process is particularly unclear where residents are in at-home palliative care and have advanced 'do-not-resuscitate' orders in place.

It is also important that the Victorian Government considers how best to reduce negative impacts on grieving families, friends and other SDA residents within the dwelling. The reporting process implemented should be the one which minimises impacts on these parties.

Capturing the intended cohort

NDS understands that the intention of the proposed reporting requirement is to re-capture death information previously captured by the Victorian Government prior to the significant transition of

participants into NDIS-funded services. NDS would like to caution the Victorian Government that the proposed reporting requirements may not successfully recapture a significant proportion of the clientele which would have been covered by the current regulations prior to the NDIS. In particular, it should be noted that only 6% of NDIS participants are eligible for SDA funding, leaving 94% of participants and those people with disability who do not receive NDIS funding (e.g. TAC funded clients) uncovered by the proposed changes. There are a significant number of people who may historically have lived in Victorian Government-managed disability accommodation who now reside in properties managed by SIL and Short Term Accommodation (STA) providers who would not be covered under the proposed changes.

It is also worth noting that NDS expects that the NDIS housing and residential support market is likely to go through significant changes in the coming years. The recent development of [Individualised Living Options](#) (ILO), an alternative to SIL/SDA which lets participants choose their home and set up their own supports, is likely to alter the way that many Victorians with disabilities access supports for daily living. Furthermore, the recent release of the [NDIS Home and Living Policy consultation paper – an ordinary life at home](#) provides insight into the Agency's desire to shift away from the current housing supports model, which is recognised as being a costly element of the Scheme, toward a more sustainable and flexible housing model. NDS encourages the Victorian Government to consider whether the proposed changes to the Coroners Regulations 2019 will be able to reflect the evolving nature of disability housing in Victoria.

Conclusion

NDS urges the Victorian Government to consider how it can capture the desired death reporting information about disability housing residents while minimising the impact on support providers and grieving families, friends and fellow residents. It is recommended that the Victorian Government establish an information sharing arrangement with the NDIS Commission to avoid duplicating reporting requirements for support providers. If this is not possible, the process should be made as simple as possible by accepting the same reporting form as the one accepted by the NDIS Commission.

NDS cautions the Victorian Government that the disability housing landscape is likely to continue to evolve. We also note that the SDA market only services a small portion of NDIS participants. Consequently, reporting requirements which only cover SDA residents may leave gaps in data that had been captured before the introduction of the NDIS.

Should you require any further information or feedback, we are available to discuss these matters further. Please contact Clare Hambly on clare.hambly@nds.org.au or 0448 076 987.

Kind regards,

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