

1. Policy Statement

Scarlet Row Plan Management Services (hereafter referred to as Scarlet Row) strives to provide quality service delivery. This includes having a clear process for the management and reporting requirements for incidents or alleged incidents that involve or impact upon participants during service delivery.

The key reason for reporting incidents is to learn from them and, if possible, prevent the future occurrence of similar incidents. Without a detailed analysis of incidents affecting participants, we may fail to uncover problems or situations that are potential hazards to participants or staff which could have been avoided or mitigated.

As such, Scarlet Row management and staff are committed to:

- ensuring the rights of people with disability are upheld and supported
- providing a high standard of duty of care and to ensure the safety and well-being of each participant using our services, our employees and members of our community
- fostering a culture of continuous improvement with a proactive approach to preventing incidents
- promptly and appropriately responding to the incident in an equitable, objective and fair manner
- recording all incidents, reporting (if required) and investigating (if required)
- ensuring the principles of procedural fairness are maintained by providing those affected an opportunity to give their side of the story and to comment on any adverse views
- maintaining an incident management system to aid in recording, managing and resolving incidents
- ensuring the incident management policy and process is provided to participants and stakeholders via email or hard copy during on-boarding and at any time by request.

2. Scope

This policy defines incidents including serious incidents and incidents which are reportable to the NDIS Quality and Safeguards Commission. An incident is broadly defined as:

- Acts, omissions, events or circumstances that occur in connection with providing NDIS supports or services to a person with disability and have, or could have, caused harm to the person.
- Acts by a person with disability that occur in connection with providing NDIS supports or services to the person with disability and which have caused serious harm, or a risk of serious harm, to another person.
- Reportable incidents that have or are alleged to have occurred in connection with providing NDIS supports or services to a person with disability.

Reportable incidents are serious Incidents that must be reported to the NDIS Quality and Safeguards Commission and include incidents or alleged incidents which result in harm to an NDIS participant and occur in connection with NDIS supports and services. Specific types of reportable incidents include:

- 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 (excluding, in the case of unlawful physical assault, contact with, and impact on, the person that is negligible).
- Sexual misconduct committed against, or in the presence of, a person with disability, including grooming of the person for sexual activity.
- The use of a restrictive practice in relation to a person with disability, other than where the use is in accordance with an authorisation (however described) of a State or Territory in relation to the person or a behaviour support plan for the person.

Other incidents may require reporting to other agencies, for example:

- data breach or breach of personal information (OAIC)
- injury or death of a worker while on duty (local state or territory WHS authority). Any incident involving crimes such as assault, theft and fraud must be reported to police.

3. Purpose

The purpose of this Instruction is to:

- Ensure timely and effective responses are taken to address immediate participant safety and well-being.
- Be accountable to participants for actions taken immediately and planned in response to their experience of a critical incident.
- Ensure due diligence and responsibilities to participants are met.
- Support the provision of high-quality services to participants through the full and frank reporting of adverse events.
- Assure and enhance the quality of service and supports to clients through monitoring and acting on individual incidents as well as trends identified through the analysis of incident reports.
- Support organisational consistency.
- Ensure that identified deficits in service and support are addressed.

4. Procedure

This procedure provides the steps to follow to investigate an incident that involves a participant. All incidents reportable to the NDIS Quality and Safeguards Commission must be investigated.

Initial Assessment of incident

- Incidents that must be recorded and managed include:
- any incident where a participant is harmed or could have been harmed while being supported
- any breach of privacy and confidentiality of an individual's personal information which has the potential to expose them to harm
- any incident where another person (e.g. a worker, a member of the general public, or another participant being supported) is harmed or could have been harmed by a participant while being supported
- any serious incident that occurred, or alleged to have occurred, while a participant is being supported.

A serious reportable incident is any incident that involves:

- the death of a participant while being supported
- a serious injury of a worker while on duty, or a participant while being supported abuse or neglect of a participant while being supported
- unlawful sexual or physical contact with, or assault of, a participant while being supported, or a worker while on duty
- sexual misconduct committed against, or in the presence of, a participant while being supported, including grooming of the person for sexual activity
- unauthorised use of a restrictive practice in relation to a participant
- any discrimination, bullying or harassment of a participant while being supported, or a worker while on duty
- a data breach or breach of privacy and confidentiality which poses a serious risk to the individuals affected as a result of the breach.

All serious incidents involving participants (also known as reportable incidents) must be reported to the NDIS complaints commissioner and/or the Victorian Commissioner for Children and Young People. **Please see Reportable Incident section of this procedure.**

A data breach, where there is a serious risk of harm to the persons affected by the data breach, must be reported to the Office of the Australian Information Commissioner (OAIC). **Please see Reportable Incident section of this procedure.**

Responding to an Incident in the First Instance

- establish a specific and accurate account of the incident
- identify potential witnesses
- if appropriate, arrange for the relevant worker to be stood down or moved pending the investigation
- ensure the immediate needs of the participant are taken care of, including:

- providing appropriate medical attention or first aid if necessary, including a forensic medical assessment if appropriate
- separating the alleged worker involved
- any other appropriate support
- consider the support needs of other participants remembering they are not just potential witnesses follow appropriate reporting requirements including:
 - the NDIS Quality and Safeguards Commission (reportable incidents)
 - the police (anything illegal such as assault, sexual misconduct or fraud)
- preserve relevant evidence including physical or documentary evidence (take photos and record descriptions of injuries if appropriate) which may be critical to an investigation by police or service provider.
- All serious incidents must be escalated to key management personnel to direct the incident response and to report the incident, if required. **Please see Reportable Incident section of this procedure.**

To respond to an incident:

- see to the participant's immediate needs
- provide first aid or call an ambulance
- provide the participant appropriate support notify parents, family or guardian
- report to police (if necessary)
- record details of the incident (internal incident report)
- provide additional employee training, or discipline/remove the employee
- investigate incident, review and update relevant participant support plans or risk management plans.
- Use the internal incident report recorded to add a summary, with the outcome, to the Incidents register (internal document for recording incidents) and the Brevity Incident register. Please refer to "Sample Brevity Incident Report Form" to see a sample of the information collected by the software for internal incident reporting.

Managing the Incident Internally

- The following details are to be recorded within the Scarlet Row incident report:
 - the name and contact details of witnesses (if not you)
 - a description of the impact on, or harm caused to, the participant
 - your response to the incident including immediate actions taken and any actions taken to ensure the health, safety and wellbeing of participants affected by the incident and whether the incident has been reported to police or any other body
 - if known—the time, date and place at which the incident occurred the names and contact details of the persons involved in the incident.
- If the incident involves a death of a participant while being supported, **please see Reportable Incident section of this procedure** and record the following details:
 - a description of the incident including circumstances leading to the death – attach any other relevant documents such as health care plans, palliative care plans
 - the name and contact details of witnesses (if not you)
 - the immediate actions taken in response to the incident, including actions taken to ensure the health, safety and wellbeing of any other participants affected and whether the incident has been reported to police or any other authority or body.
 - if known—the time, date and place at which the incident occurred.

Reportable Incidents to the NDIS Commission, and the Australian Information Commissioner.

Reporting to the NDIS Commission

Serious incidents that involve the following must be reported to the NDIS commissioner within 24 hours:

- the death of a participant while being supported
- serious injury of a participant while being supported
- abuse or neglect of a participant while being supported
- unlawful sexual or physical contact with, or assault of, a participant while being supported
- sexual misconduct committed against, or in the presence of, a participant while being supported, including grooming of the person for sexual activity

The above types of serious incidents must be reported within the NDIS immediate notification form and must be submitted via the NDIS Commission Portal within 24 hours of key personnel becoming aware of a reportable incident or allegation.

Any other type of serious incident such as the use of a restrictive practice that is:

- unauthorised, or
- not in accordance with a behaviour support plan.

must be reported to the NDIS commissioner within five business days.

The above types of incidents must be reported with the NDIS 5 day notification form must be submitted via the NDIS Commission Portal within 5 business days of key personnel becoming aware of a reportable incident.

The NDIS Commission will acknowledge receipt of the forms and will commence oversight or request further information. If the reportable incident raises a serious compliance issue, the NDIS Commission has powers to take regulatory action. Action might include requiring Scarlet Row to:

- undertake specified remedial action
- carry out an internal investigation about the incident, or
- engage an independent expert to investigate and report on the incident.

The NDIS Commission can also conduct its own investigation and take appropriate enforcement action, such as:

- issuing a compliance notice, or
- asking a court to impose a civil penalty.

The NDIS Commission will instruct Scarlet Row to undertake an investigation and/or complete a Final Report (60 day) as deemed appropriate for the incident. The NDIS Commission will provide this form via email.

Scarlet Row must assess:

- the impact on the NDIS participant
- whether the incident could have been prevented
- how the incident was managed and resolved
- what, if any, changes will prevent similar events occurring
- whether other persons or bodies need to be notified

Where appropriate, the NDIS Commission may require a provider to take remedial measures. The NDIS Commission may work with Scarlet Row to implement these measures and monitor progress. Remedial measures may include (but are not limited to):

- additional staff training and development
- improvement of the services to support NDIS participants
- updating policies and procedures.

Reporting to the Australian Information Commissioner

Under the Notifiable Data Breach (NDB) scheme an organisation must notify affected individuals and the OAIC about an eligible data breach.

An eligible data breach occurs when:

- there is unauthorised access to or unauthorised disclosure of personal information, or a loss of personal information, that an organisation or agency holds
- this is likely to result in serious harm to one or more individuals, and
- the organisation or agency hasn't been able to prevent the likely risk of serious harm with remedial action

An organisation or agency that suspects an eligible data breach may have occurred must quickly assess the incident to determine if it is likely to result in serious harm to any individual.

The notification to individuals must include recommendations about the steps they should take in response to the data breach. Scarlet Row staff should notify the OAIC using the online Notifiable Data Breach form on the OAIC website.

Investigation Planning

If the incident required further investigation, please take the following steps:

- appoint a manager to coordinate the investigation, this should be someone separate to the team supporting the participant
- If the incident involves a participant, the participant has the right to (and must be supported to) access an advocate at any step of this process, if they wish.
- if the matter has been referred to police for possible criminal charges, check with police before starting an investigation
- keep relevant parties informed of the progress throughout the investigation set the purpose and scope of the investigation
- review the preliminary assessment including incident reports, all known details, circumstances, timeframes and witnesses
- appoint an investigator—incidents involving worker to participant assaults, serious unexplained injuries or potentially criminal conduct, are best handled by an external investigator, ideally someone experienced in interactive with persons with disability
- determine the framework for the investigation including:
 - scope, timeframes and resources required
 - any requirements or conditions to ensure maximum feasible involvement of the participant
 - arrangements for an interview with the participant with the presence of a support person,
 - witnesses to be interviewed and the order of interviews to take place
 - arrangements to interview the alleged perpetrator and
 - documentary evidence to be reviewed by the investigator
 - arrangements for site visits
 - arrangements to obtain expert evidence, e.g. forensic medical assessment
 - plans for communicating with other participants, families and workers
 - reporting and review arrangements (for more complex investigations)
 - a plan for effective communications with the participant, their family and advocate.

Investigation

- interview the participant in a way the person can understand:
- explain why the discussion is taking place
- explain that the person has the right to ask for a break or end the discussion at any time regularly check if the person would like a break
- use open-ended questions rather than questions likely to result in 'yes' or 'no' answers (ask clear and brief questions using short words and sentences)
- break down complicated concepts or information into smaller chunks

- ask the person to repeat the questions in their own words (if they have sufficient verbal skills) and allow enough time for the person to answer the question
- the investigator should understand the key elements of investigations:
- principles of procedural fairness
- confidentiality and privacy
- the civil standard of proof
- the appropriate interview techniques
- avoiding leading questions
- evidence that is relevant to the facts at issue
- weighing the evidence according to the type of evidence
- recording the interview
- the investigation process should:
- balance formality with flexibility
- consider all possible scenarios and causes in detail along with all types of evidence

The investigation report should include:

- a description of the matter investigated
- details of the allegations
- details about the investigation, e.g. the witnesses interviewed
- documentary evidence considered
- summary of the key evidence
- conclusions and findings based on the salient evidence while taking care to distinguish findings of facts and findings of opinion.

Response to Investigation

- the investigation manager scrutinises the investigation report carefully and considers whether:
- the findings are well founded
- the investigator has provided a clear and strong case based on reasonable probability the events are likely to have happened according to one view or another
- all possible evidence has been sought and considered, and the investigation does not rely on a single piece of evidence or opinion such as a forensic medical report
- the findings and recommendations include both matters of evidence and matters of outcomes (for participants and workers)
- the investigation should also address any underlying patterns or causes of the incident so that systemic and practice improvements can be implemented to minimise the occurrence of similar incidents
- findings of evidence related to alleged worker to participant assault and whether allegations have been sustained or not sustained, the following language is recommended:
- 'sustained'—used when there is sufficient evidence that the reported conduct occurred
- 'not sustained – insufficient evidence'—used when there is some evidence that the reported conduct occurred but not enough evidence to make a conclusive finding
- 'non sustained – lack of evidence of weight'—used when there is no evidence of weight that the reported conduct occurred
- findings of outcomes should be considered from the participant's perspective in order to acknowledge and remedy the situation
- the participant should be advised—at least in broad terms—of the decisions and actions resulting from the investigation, including actions taken or planned to prevent future occurrences
- the investigation manager should draw up an action plan to address the matters and monitor the plan until all actions are finalised
- appropriate action should be taken if an allegation against a worker is sustained—the worker must not work again in the same setting
- where an allegation was not sustained, consider whether it is appropriate for the worker to continue working with the participant
- all investigations, whether allegations are sustained or not, provide opportunities for practice or

systemic improvement

- for incidents relating to workers who lack skills in managing behaviours of concern or not getting the required support needed for complex work, the following may be considered:
- additional training for workers
- improved supervision of workers
- changes to routines or rosters
- reviewing and refining support plans for certain participant

5. Key Responsibilities

Role	Responsibility
Director	The Director is to be advised on all Major impact client incidents and risk mitigation strategies to be applied.
	The Director is also to ensure the Incident Management Instruction is current and adhered to at all times.
Executive Managers	The executive managers are responsible for ensuring that all employees have the necessary skills to: • be familiar with the NDIS (Incident Management and Reportable Incidents) Rules 2018 (Cth) • manage incidents • record serious incidents • manage escalated incidents and serious incidents • report incidents to the NDIS Quality and Safeguards Commission • respond to any media enquiries • investigate incidents • review incidents and initiate improvements
Program Coordinators/Clinicians/Staff/Volunteers	To be familiar with the NDIS (Incident Management and Reportable Incidents) Rules 2018 (Cth) and ensure that reporting incident and adhere to the reporting of the timelines as per the Instruction. To resolve, record and escalate incidents to managers.

6. Definitions

Term	Meaning
Act	The National Disability Insurance Scheme Act 2013.
NDIS Commission	The NDIS Quality and Safeguards Commission.
Impacted person	A person with disability who has been affected by an incident that has occurred during the provision of NDIS supports and services.
Incident	An incident is defined as an act, omission, event or circumstance. It may mean any of the following: • Acts, omissions, events or circumstances that occur in connection with providing NDIS supports or services to a person with disability and have, or could have, caused harm to the person with disability • Acts by a person with disability that occur in connection with providing NDIS supports or services to the person with disability and which have caused serious harm, or a risk of serious harm, to another person • Reportable incidents that have or are alleged to have occurred in connection with providing NDIS supports or services to a person with disability

Key personnel	A member of the group of persons who is responsible for the executive decisions of the registered NDIS provider and any other person who has authority or responsibility for (or significant influence over) planning, directing or controlling the activities of the registered NDIS provider. See s 11A of the Act.
NDIS	National Disability Insurance Scheme.
Term	Meaning
NDIS provider	A person (other than the NDIA) who receives: • funding under the arrangements set out in Chapter 2 of the Act; or • NDIS amounts (other than as a participant); or • a person or entity who provides supports or services to people with disability other than under the NDIS and who is prescribed by the NDIS rules as an NDIS provider. See s 9 of the Act.
NDIS (Incident Management and Reportable Incident) Rules 2018	The Rules require registered NDIS providers to establish an incident management system that meets minimum requirements and that is appropriate for the size of a registered NDIS provider and the supports or services they provide. The rules also set out the obligations on registered NDIS providers to notify, investigate and respond to reportable incidents.
NDIS Practice Standards	Consist of a core module and several supplementary modules that apply according to the types of supports and services NDIS providers deliver, and the corporate structure of the organisation. The NDIS Practice Standards are included in the NDIS (Provider Registration and Practice Standards) Rules and in the NDIS (Practice Standards – Worker Screening) Rules.
Person with disability	A person with disability who is an NDIS participant and receives supports or services from an NDIS provider.
Registered NDIS provider	Means a person or entity registered under s 73E of the Act to provide supports and services to people with disability.
Relevant Personnel	• A member of the registered NDIS provider's key personnel. • A supervisor or manager of the person • The person specified in the incident management system as being responsible for reporting incidents that are reportable incidents to the NDIS Commission (Specified personnel).¹
Reportable incidents to the NDIS	Reportable incidents are serious incidents or alleged incidents which result in harm to an NDIS participant and occur in connection with NDIS supports and services. Specific types of reportable incidents include: • 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 (excluding, in the case of unlawful physical assault, contact with, and impact on, the person that is negligible). • Sexual misconduct committed against, or in the presence of, a person with disability, including grooming of the person for sexual activity. • The use of a restrictive practice in relation to a person with disability, other than where the use is in accordance with an authorisation (however described) of a State or Territory in relation to the person or a behaviour support plan for the person.

Term	Meaning
	- enable reportable allegations to be made to the head of the organisation - enable reportable allegations that involve the head of the organisation to be reported to the Commission.
Specified personnel	Person named in the incident management system of a registered NDIS provider as being responsible for taking all reasonable steps to ensure that reportable incidents that occur in connection with the provision of supports or services are notified to the NDIS Commission.
Subject of the allegation	A worker, person with disability or any other person who has been accused of being involved with an incident that has occurred in connection with the provision of NDIS supports and services to a person with disability.
Trauma informed care	The provision of care that acknowledges how trauma affects people's lives and their service needs. Awareness and sensitivity to the way in which people with disability may experience trauma differently.
Worker	Includes employees, contractors and people otherwise engaged for example, on a volunteer basis, by an NDIS provider.

Term	Meaning
Injury	An event that results in an injury of any severity that required first aid treatment
Illness	Any event that results in a participant or employee becoming ill from either a known or unexpected illness whether, or not, medical treatment is required
Lost person	A member of the workforce or tour party is unable to be located for any amount of time
Lost property	Any property belonging to member of the workforce or participant that is reported as unable to be located for any amount of time (i.e. luggage, identity card, wallet, passport, etc.)
Complaint	Any report of Client or provider dissatisfaction with Scarlet Row Plan Management arrangements or processes, including, discrimination.
Aggression / bullying	Any report of behaviour that is deemed to cause apprehension or fear to tour participant(s) or Scarlet Row Plan Management worker(s); this may be from either an internal (participant / worker) or external source (provider, members of the public, etc.) and includes harassment of any type

7. Related Documents

Internal:

Related policy and procedures for Governance
Related policy and procedures for risk
Risk Management Policy
Related policy and procedures for OHS
Occupational Health and Safety Management Policy
NDIS Immediate Reportable Incident Form
NDIS 5 Day Reportable Incident Form
Scarlet Row Incident Report
Scarlet Row Incident Register
Scarlet Row Complaints Management and Resolution Policy

8. Related legislation

Occupational Health and Safety Acts (and associated regulations)

- The National Disability Insurance Scheme Act 2013.
- NDIS (Incident Management and Reportable Incidents) Rules 2018 (Cth)
- The Scarlet Row Feedback and Complaints Policy and Procedure
- Workers Compensation Act 1958
- Accident Compensation (Occupational Health and Safety) Act 1996
- Occupational Health and Safety Act 2004
- Dangerous Goods Act 1985
- Equipment (Public Safety) Act 1994
- Workplace Injury Rehabilitation and Compensation Act 2013
- Privacy and Data Protection Act 2014
- Health Records Act 2001
- Disability Act 2006
- Health Records Act 2001