



Australian Government

Department of Health

# Serious Incident Response Scheme for Commonwealth funded residential aged care Model for Implementation

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# Context

Australians have a right to live free from abuse and neglect as a matter of human rights and current law. This is also a reasonable community expectation. In addition, older Australians have specific rights and expectations when receiving Commonwealth funded aged care services.

More broadly, Aged care policy is seeking to create an end to end aged care system with consumers at the centre of its design. While the current Serious Incident Response Scheme (SIRS) is being implemented for residential aged care the Department of Health (Department) is simultaneously undertaking a prevalence and feasibility study in 2020-21 to inform future Government decisions on the potential introduction of a SIRS for home and community aged care.

## Regulatory context

Approved providers operate in the context of the aged care legislative framework, relevant elements of which are specifically outlined below. Aged care providers and consumers are also subject to the broader range of Commonwealth, state and territory laws. The SIRS for residential aged care will be administered within that context.

Under the [Charter of Aged Care Rights](#) (the Charter) consumers have the right to “live without abuse and neglect”.<sup>1</sup> Aged care providers are required to uphold these rights and ensure their consumers understand their rights under the Charter.

The [Aged Care Quality Standards](#) (the Standards) require aged care providers to have effective risk management systems and practices to identify and respond to abuse and neglect of consumers.<sup>2</sup> Providers are also expected to adopt an open disclosure process when things go wrong.<sup>3</sup>

The [Aged Care Quality and Safety Commission](#) (the Commission) accredits and monitors providers’ performance against the Standards, and helps consumers resolve complaints about a provider’s responsibilities or actions, including those in the Charter. This is part of the Commission’s function to ‘protect and enhance the safety, health, well-being and quality of life of aged care consumers’.<sup>4</sup>

## Serious Incident Response Scheme

This paper sets out the structure and operation of the SIRS for residential aged care.

The final design of the SIRS is subject to any legal issues identified as part of the legislative drafting process. Some matters will be captured in primary legislation, with others in associated rules (subordinate legislation).

## Intent

The intent of the SIRS is to reduce the risk of harm arising from abuse and neglect of older Australians in residential aged care, including flexible care that is delivered in a residential aged care setting, by:

- driving learning and improvement at a system and service level to reduce the number of preventable serious incidents in the future;

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<sup>1</sup> *User Rights Principles 2014*, post 1 July 2019 Schedule 1, right #4.

<sup>2</sup> *Aged Care Quality Standards, 2019*, Standard 8, requirement 8(3)((d)(ii).

<sup>3</sup> *Aged Care Quality Standards, 2019*, Standard 6, requirement 6(3)(c).

<sup>4</sup> *Aged Care Quality and Safety Commission Act 2018*, s16(1)(a).

- building provider capacity to better identify risks of potential harm and respond to incidents if and when they occur; and
- holding providers to account to provide appropriate support to consumers in the event of an incident.

The SIRS will establish:

- obligations on approved providers to manage all incidents, focusing on the safety and well-being of the impacted consumer/s and to use incident data to drive quality improvement.
- mandatory reporting of alleged, suspected or actual serious incidents.

The SIRS will promote an aged care system that empowers consumers, develops safer systems of care, instils a culture of safety and quality, and learns from mistakes. A system operating in this way will give the community in general, and older Australians in particular, confidence that the aged care they access will continuously improve prevention, management and resolution of incidents and improve outcomes for consumers. Consumers will expect continuity of care and safeguards across an end to end aged care system, which is why work being progressed in parallel to establish the feasibility of a SIRS in home and community care settings.

The focus of SIRS is on a provider's response to an incident – the supports they put in place for the impacted aged care consumer consistent with expectations for open disclosure when harm has occurred; the actions they take to continuously improve and reduce the likelihood of incidents reoccurring; and the way in which they use information about incidents to inform organisation wide management of these risks, feedback and education to staff and to improve the service's capability to prevent, manage and resolve incidents.

Mandatory reporting is not intended to address every incident in residential aged care. Reporting of serious incidents is intended to focus on incidents that pose the highest risks to consumers.

The SIRS complements and supports other regulatory settings including the integrated expectations of the Quality Standards, the Charter of Aged Care Rights and open disclosure requirements. Together these settings will support providers to engage in risk management and continuous improvement activities to deliver safe, quality care to residential aged care consumers.

The SIRS will provide high volume regulatory intelligence to enable the Commission to more effectively detect, analyse and respond to high impact and high prevalence risks to consumers. This will support a comprehensive regulatory response using the full range of regulatory tools to respond to provider level and sector wide risks. This means better evidence to inform risk profiling of aged care providers, which in turn will be used by the Commission to target its regulatory program at sector-wide and provider levels, as well as education, campaigns and regulatory approaches on particular issues; and thereby support capacity building of the sector. Similarly, a home and community SIRS may also provide valuable regulatory intelligence to better target community based regulation.

Feedback and information to the Department from the SIRS will support future policy and funding considerations as well as research, and future policy or regulatory options for Government consideration.

## Overview

Establishing a defined national framework for incident management and reporting of serious incidents, provides assurance to the Australian community that providers are being held to account to:

- provide safe, quality care and services for aged care consumers;
- support consumers and families appropriately should an incident occur; and
- take action to prevent incidents from reoccurring.

## Provider responsibilities

Approved Providers have a responsibility to comply with the requirements of the Standards. The SIRS will place additional obligations and specify expectations for Approved Providers to have organisation wide systems to identify, record, manage and resolve incidents and report serious incidents.

Incident management is part of a provider's management of risks systemically in the organisation, through monitoring outcomes for consumers, seeking feedback and in response, improving their management systems, culture and practices to ensure and sustain improvements and share organisational learning. Incident management is integral to continuous improvement, risk management and the delivery of safe and quality care.

The measure is complementary to existing accreditation requirements for services to undertake self-assessments against the Aged Care Quality Standards and have plans for continuous improvement, including addressing areas of risk and where adverse outcomes for consumers are evident.

Compliance with the SIRS should be dealt with through an approved provider's governance arrangements and processes. The legislative design will establish provider accountabilities for effective organisation-wide governance systems for incident management and reporting. It will be expected that providers will implement and maintain systems and processes to:

- identify, assess, record, manage and resolve all incidents;
- report alleged, suspected and actual serious incidents to the Commission;
- report incidents to police where necessary and notify families and decision makers as required;
- plan and provide the support and assistance to consumers affected by an incident (including those subject to allegations) to ensure the consumer's health, safety and well-being;
- engage a consumer and others affected by an incident in the management and resolution of the incident, in line with open disclosure principles;
- conduct an investigation or contribute to an external investigation;
- implement and monitor corrective actions taken; and
- use incident data to drive continuous improvement and prevent similar incidents from reoccurring.

## The role of the Aged Care Quality and Safety Commission

The Commission is the national end-to-end regulator of aged care services, and the primary point of contact for consumers and providers in relation to quality and safety.

The Commission will regulate the SIRS in the context of a responsive risk-based, end-to-end quality and safety regulatory framework.

The Commission will:

- assess and respond to a provider's compliance with incident management obligations;
- receive reports about serious incidents, apply risk-based monitoring of how providers investigate and respond to reportable incidents, including where the Commission is not satisfied with a provider's response, requiring further responses to be taken;
- take a proportionate and risk-based approach to responding to incidents using the full range of regulatory treatments available;
- make use of the high volume of intelligence to support risk profiling and identification of emerging trends in the sector;

- provide feedback to the sector to support understanding of adverse events, support continuous improvement by providers in the quality and safety of care;
- enhance transparency of quality and safety performance by through sector performance reporting; and
- identify improvements to the operation of the SIRS to support the objectives of the Commission.

The SIRS will support an integrated regulatory approach to better protect consumers and will be complementary to and supported by the Commission's current functions namely:

- **Education**

Such as information, resources and education about matters relating to serious incidents, best practice risk management systems and how providers should prevent, identify, manage and resolve incidents. Use trend analysis to share information and resources about risk and promote providers' understanding of areas for improvement.

- **Regulatory functions**

Enhance regulatory intelligence on the performance of providers to support targeting of regulatory activities. Assess and monitor providers' performance with relevant requirements under aged care law and the Standards such as risk management, open disclosure, clinical governance and the providers' systems and practices in place to prevent and respond to reportable incidents.

- **Compliance**

Apply a range of regulatory responses based on risk to consumers and the adequacy of the provider's own response to an incident.

- **Publication of performance information**

Publish sector trends and key risks to support systematic quality improvement and learning and capacity building in the sector and transparency of performance.

- **Complaints**

Any person may make a complaint to the Commission that goes to matters that may be considered serious incidents. The Commission will take appropriate action to follow up provider responsibilities using its range of regulatory responses.

## Definition of a 'serious incident' for mandatory reporting

The SIRS will incorporate a number of existing definitions and protections operative in relation to the current provisions. The definition of a staff member in the [Aged Care Act 1997](#) will be used for the SIRS.

A serious incident is an alleged, suspected or actual occurrence of the following categories of incident, where the person affected by the incident is a consumer in residential aged care. These incidents must be reported to the Commission.

Incidents where an aged care consumer is the person who commits an incident and the person affected by an incident is a staff member or visitor are not included in the serious incident definition for mandatory reporting. These incidents will be addressed (identified, recorded, managed and resolved) in line with a provider's incident management arrangements.

The definitions will be subject to any legal issues identified as part of the legislative drafting process. Some matters may be captured in primary legislation, with others in associated rules (subordinate legislation).

## Unreasonable use of force

The definition of unreasonable use of force will be:

*Unreasonable use of force on a consumer, ranging from deliberate and violent physical attacks on consumers, to the use of unwarranted physical force.*

The current definition of unreasonable use of force will be used for the SIRS and this will be expanded to remove the current reporting exemption for consumers with an assessed cognitive impairment.

This category of serious incidents does not include touching an aged care consumer to attract their attention, to guide them, or to comfort them if they are distressed.

Person who commits an incident	Person affected by an incident	Examples include (but are not limited to)
Staff member	Consumer	Hitting Pushing Shoving Rough handling
Family member/visitor	Consumer	Hitting Pushing Shoving
Consumer	Consumer	Hitting Punching Pushing Shoving Throwing objects Kicking Biting

## Unlawful or inappropriate sexual contact

The definition of unlawful or inappropriate sexual contact will be:

*Unlawful sexual contact, or sexual misconduct committed against, with, to, or in the presence of a consumer.*

This extends the current compulsory reporting definition of unlawful sexual contact to include sexual misconduct and removes the current exemption for consumers with an assessed cognitive impairment.

It is important to note that consumers of aged care services have the right to sexual freedom and to give and receive affection. In the Charter of Aged Care Rights, consumers have the right to:

*“have control over and make choice about my care and personal and social life, including where the choices involve personal risk”*

This category of serious incidents does not include consenting sexual relations between aged care consumers, or between an aged care consumer and a partner that is not a resident at the service (e.g. that may visit or volunteer at the service).

Person who commits an incident	Person affected by an incident	Examples include (but are not limited to)
Staff member	Consumer	Showing own genitals to a consumer

Person who commits an incident	Person affected by an incident	Examples include (but are not limited to)
		Masturbating in front of a consumer Masturbating a consumer Sexual innuendos Sexually explicit language Showing pornography to a consumer Grooming Stalking or making sexual threats Touching consumer's genitals (or other private areas) without a care need Sexually penetrating a consumer with another part of their body or an object
Family member/visitor	Consumer	Sexual threats or stalking Activities without sexual consent: <ul style="list-style-type: none"> <li>• Showing own genitals to a consumer</li> <li>• Masturbating in front of a consumer</li> <li>• Masturbating a consumer</li> <li>• Sexual innuendos</li> <li>• Sexually explicit language</li> <li>• Exposing a consumer to pornography or using a consumer in pornography</li> <li>• Sexually penetrating a consumer with another part of their body or an object</li> <li>• Touching consumer's genitals (or other private areas) without a care need</li> </ul>
Consumer	Consumer	Sexual threats or stalking Activities without sexual consent: <ul style="list-style-type: none"> <li>• Showing own genitals to a consumer</li> <li>• Masturbating in front of a consumer</li> <li>• Sexual innuendos</li> <li>• Sexually explicit language</li> <li>• Exposing a consumer to pornography</li> <li>• Sexually penetrating a consumer with another part of their body or an object</li> </ul>

## Psychological or emotional abuse

The following definition will be used for the SIRS:

*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 or acknowledge the person's presence.*

In addition to single event incidents such as a staff member yelling at an aged care consumer, this category includes incidents that are part of a pattern of abuse. While the behaviour may not cause significant harm or suffering to the individual in each instance, the repetitive nature of the behaviour (over time) has a cumulative effect which intensifies the level of harm to the individual or in some circumstances individuals.

Approved providers' incident management systems must be able to record incidents in a way that allows for repeated minor instances of these types of behaviour to be identified easily so that any pattern of abuse can be identified and reported as a single reportable incident.



This definition is based on the National Disability Insurance Scheme (NDIS) definition.

Person who commits an incident	Person affected by an incident	Examples include (but are not limited to)
Staff member	Consumer	Yelling Name calling Ignoring a consumer Feigning violence Threats to withhold care or services Threatening gestures Punishing a consumer by refusing access to care or services Making disparaging comments about a person's gender, sexual orientation, sexual identity, cultural identity or religious identity Repeatedly flicking, tapping, bumping etc a resident, which of itself does not constitute physical assault, but the repetitive nature causes psychological or emotional anguish, pain or distress
Family member/visitor	Consumer	Yelling Feigning violence Name calling Threatening gestures Making disparaging comments about a person's gender, sexual orientation, sexual identity, cultural identity or religious identity Repeatedly flicking, tapping, bumping etc a resident, which of itself does not constitute physical assault, but the repetitive nature causes psychological or emotional abuse
Consumer	Consumer	Yelling Feigning violence Name calling Threatening gestures Making disparaging comments about a person's gender, sexual orientation, sexual identity, cultural identity or religious identity Repeatedly flicking, tapping, bumping etc a resident, which of itself does not constitute physical assault, but the repetitive nature causes psychological or emotional anguish, pain or distress.

## Unexpected death

The definition of unexpected death for the SIRS will be:

*Death that is unexpected, where steps may not have been taken to prevent the death, or the death results from an intervention.*

Person who commits an incident	Person affected by an incident	Examples include (but are not limited to)
Staff member	Consumer	A consumer falls while being moved or shifted, with the injuries sustained resulting in the consumer's death.
Provider	Consumer	Untreated pressure injury left untreated that becomes infected, and appropriate medical assessment/treatment was delayed or not given resulting in the consumer's death. A fall results in an unexpected death.
Consumer	Consumer	Where the actions of a consumer result in the death of another consumer, such as from an assault.

## Stealing or financial coercion by a staff member

The definition of stealing or coercion by a staff member will be:

*Stealing from an aged care consumer or behaviour that is coercive, deceptive, or unreasonably controls the finances of an aged care consumer by a staff member.*

This definition has been adapted from the definition in Section 6 of the Victorian [Family Violence Protection Act 2008](#).

Person who commits an incident	Person affected by an incident	Examples include (but are not limited to)
Staff member	Consumer	A staff member coerces a consumer to change their will in favour of the staff member. A staff member steals money or valuables from a resident.

## Neglect

The following definition for the SIRS will be:

*Intentional or reckless failure in the duty of care for an aged care consumer that may also be a gross breach of professional standards resulting in significant harm or the potential to result in death or significant harm.*

Neglect may be as a result of systemic issues within an aged care home, for example lack of appropriate policies, procedures and/or practice resulting poor quality care for aged care consumers. Neglect may also be the deliberate and negligent conduct of one individual either as a one off incident or repeated incidents.

Noting consumers have the right to have control over and make choices about their care. This category of serious incident is not intended to capture situations where a consumer chooses not to shower, or a consumer with diabetes refuses to eat a diabetic diet and as a result have a wound with poor healing prognosis.

This definition has been adapted from the NSW Ombudsman's disability reportable incidents scheme.

Person who commits an incident	Person affected by an incident	Examples include (but are not limited to)
Staff member	Consumer	Withholding personal care such as showering or oral care Untreated wounds Maggots on/in the consumer Leaving a resident outside unprotected in the sun resulting in significant burns
Provider	Consumer	Serious injury sustained by a consumer that requires hospitalisation Where a consumer's meals are not appropriately modified to account for their difficulty of swallowing (dysphagia) as recorded in their care plan, or insufficient assistance is given to the consumer to eat their food, resulting in the consumer either not being able to eat meals or the consumer choking.

## Inappropriate physical or chemical restraint

The definition of inappropriate physical and chemical restraint for the SIRS is:

*The use of physical or chemical restraint that does not meet the requirements of the Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019.*

From 1 July 2019, the [Quality of Care Amendment \(Minimising the Use of Restraints\) Principles 2019](#) apply requirements on approved providers of residential care to minimise the use of physical and chemical restraint. Only when providers have explored alternatives to restraint, and satisfied a number of conditions, can either form of restraint be used.

Person who commits an incident	Person affected by an incident	Examples include (but are not limited to)
Provider	Consumer	Where physical restraint is used on a consumer, when it is not an emergency and the provider does not seek prior informed consent. Where a provider uses physical restraint without consent and does not inform the consumer's representative as soon as practicable after the restraint starts to be used. A provider administers a drug to a consumer for the purpose of influencing their behaviour as chemical restraint. The consumer's representative was not informed before the drug was administered, or shortly afterwards.

## Unexplained absence from care

Reporting of unexplained absences will occur where the:

- care recipient is absent from the service; and
- the absence is unexplained; and
- the absence has been reported to the police.

Consistent with current arrangements, the provider must report to the Commission as soon as reasonably practicable, but not later than 24 hours after the care recipient's absence was reported to the police.

## What won't be considered a serious incident?

The following matters are not considered serious incidents:

- reasonable management or care of an aged care consumer taking into account any relevant code of conduct or professional standard that applied at the time.

Examples include:

- if a staff member raises his or her voice to attract attention or speak with an aged care consumer who has hearing difficulties;
- when there is accidental contact (unless it is negligent);
- where a resident taps another resident on the hand as the result of a disagreement for example over a bingo card;
- a resident alleges they had a blanket put on them and it was tucked in too tightly;
- a resident being grabbed to remove them from harm for example stepping onto the road into traffic.

The approved provider must consider all allegations of incidents, but may determine that some are not required to be reported as serious incidents following the consideration of guidance material provided by the Commission. If an incident is deemed not to be a serious reportable incident, the approved provider is required to refer back to their internal incident management systems.

A provider will not be required to report an allegation or suspicion of a serious incident (later allegation or suspicion) if:

- the later allegation or suspicion relates to the same or substantially the same situation or event as the earlier allegation or suspicion (i.e. the same date, time, individuals involved etc.); and
- the earlier allegation or suspicion was reported under the SIRS.

In a practical sense, this applies in the situation where two staff have both observed the same serious incident (e.g. physical assault) and make separate reports to the provider. Those two reports are of the same situation or event and do not need to be reported twice under the SIRS.

Subject to agreement by the Commission on a case by case basis, a provider will not be required to report where a consumer's particular repetitive behaviour has been proven to be related to a resident's cognitive impairment, investigated and has no basis in fact. For example, a consumer that has a delusion and reports every morning they were assaulted during the previous night.

## Reporting

### Who must/will be able to report

SIRS will place an obligation on Approved Providers of residential aged care services to record incidents; report alleged, suspected or actual serious incidents to the Commission; and matters of a criminal nature to the police (e.g. assault). Staff members of the residential aged care service will be responsible for alerting the approved provider of alleged, suspected or actual serious incidents.

Approved Providers must have in place systems and processes to ensure staff members of the residential aged care home alert the Approved Provider of alleged, suspected or actual serious incidents.

Any person, who is concerned that the care of any consumer is being compromised, should raise these concerns directly with the aged care provider in the first instance. Alternatively, concerns can be raised with the Commission via the Commission’s existing complaints functions. The Commission provides a free service for anyone to raise a concern or make a complaint about the quality of care or services provided to people receiving Commonwealth funded aged care services. There are strict confidentiality and anonymity provisions within aged care legislation that ensures people who request confidentiality are protected from having their identity disclosed.

It is not expected that providers engage in technical legal analysis of whether an incident amounts to a criminal offence. Providers should notify state and territory authorities, including police where appropriate.

### What protections will be available for those providing information or reports?

The whistleblowing protections in section 96-8 of the Act may need to be expanded to provide appropriate protections for the SIRS.

## Distinguishing critical incidents and other serious incidents

Providers will be required to categorise incidents based on the impact to the person affected by an incident as either: critical incidents (higher impact) or all other serious incidents (low or no impact). The following table sets out the impact categories for providers to assess impact.

Impact category	Degree of harm	Incident type
No impact	Low level of harm	Serious incident
Minor physical or psychological injury or discomfort which were resolved without medical or psychological interventions	Low level of harm	Serious incident
Physical or psychological injury or illness requiring onsite medical or psychological treatment	Higher level of harm	Critical incident
Physical or psychological injury or illness requiring a hospital admission (but not permanent)	Higher level of harm	Critical incident
Permanent physical or psychological impairment	Higher level of harm	Critical incident
Fatality or severe permanent physical or psychological impairment	Higher level of harm	Critical incident

This categorisation will determine reporting requirements.

## Timeframes and information to be provided for reporting

### Implementation Timeframe

Implementation of SIRS mandatory reporting will be staged. From early 2021, critical incidents and unexplained absences from care will be reported to the Commission, with all other incidents required to be reported to the Commission from 1 July 2022 (as outlined below).

### Unexplained Absence

Unexplained absence from care will continue to be reported consistent with current arrangements. The provider must report to the Commission as soon as reasonably practicable, but not later than **24 hours** after the care recipient’s absence was reported to the police.

## Critical incidents

Critical incidents will require a two-stage reporting process, consistent with the NDIS reportable incidents scheme:

- **Incident notification and reporting to police where necessary (Part A)**

To be provided to the Commission within **24 hours** of the aged care provider becoming aware of the incident.

Should an incident be of a criminal nature the aged care provider must also report this to police within **24 hours** of the provider becoming aware of the incident

- **Incident status report (Part B)**

To be provided to the Commission within **five business days or by a date specified by the Commission** of the date of incident notification.

The Commission at times may decide that an incident status report is not required if all the information being provided within the 24 hour incident notification report satisfies for the Commission that the incident has been resolved appropriately.

Information to be provided at each stage will be set out in a form approved by the Aged Care Quality and Safety Commissioner.

### Final report (if required)

A final report may also be required by the Commission within 60 business days of submitting the incident report (or a different period specified by the Commission). The Commission will advise a provider if this is required.

Where required, this final report should be submitted to the Commission in writing and include, if known, details of matters set out by the Commissioner such as reports of any internal or external investigation or assessment that has been undertaken in relation to the reportable conduct and corrective actions taken.

## All other serious incidents

All other serious incidents will require a one-stage reporting process:

- **Incident report**

To be provided to the Commission within **30 days** of the provider either suspecting or becoming aware of the alleged or actual incident.

Information to be provided will be set out in a form approved by the Commissioner

## Record keeping requirements

There is no change proposed to the existing requirements for record keeping set out in the [Records Principles 2014](#), beyond minor changes to terminology, definitions and responsibilities.

Approved Providers will continue to be required to keep a record of each incident, including whether or not that incident was a “serious incident” to be reported to the Commission. Approved Providers will continue to need to make records available to the Commission to enable the Commission to fulfil its assessment, monitoring, compliance and complaints handling functions.

Providers will also continue to make records available to the Commission regarding exemptions and matters held to be trivial or negligible conduct after being investigated and recorded as part of workplace procedures. Behaviour between consumers which does not cause significant harm or suffering to the individual in each instance should also be recorded where, if repeated may constitute a pattern of abuse to be reported under the SIRS.

## Functions and powers for a SIRS

The Commissioner will have a number of additional functions and powers dedicated to dealing with a SIRS, within an end-to-end quality and safety regulatory framework. In conjunction with the Commission's existing education, compliance and complaints functions, the Commissioner will be given additional functions regulate the SIRS. These are intended to ensure the Commission is able to respond, proportionately to all levels of risk, to ensure the safety of consumers.

The Commissioner's functions will include to:

- Administer the mandatory recording and reporting arrangements for serious incidents.
- Oversee the systems of approved providers for recording, reporting, preventing, managing and responding to allegations or suspicion of an incident(s).
- Support approved providers to develop and implement effective incident management systems and to build provider capability to prevent and manage incidents.
- Collect, correlate, analyse and disseminate information relating to incidents, including reportable incidents, to identify trends or systemic issues.

While the Commission's focus will include promoting capability of approved providers to develop effective systems to prevent and manage incidents, the Commission will also require a range of powers to respond proportionately to all levels of risk. This may include the following:

- To ensure the compliance of approved providers, the Commission will use its existing search and entry powers to assess Approved Providers' performance and monitor compliance with their incident management obligations at their premises. Additional information gathering powers may also be established so the Commission can verify reporting by Approved Providers off premises, and to investigate suspected breaches of their incident management obligations.
- To ensure the safety of consumers, the Commission may also be given additional powers to respond proactively to reports of serious incidents to ensure the safety of consumers. This would include powers to direct Approved Providers in relation to their responses to a serious incident. These new powers would allow the Commissioner to act before needing to be satisfied of an Approved Provider's non-compliance.
- The Commission may also have powers to inquire into serious incidents and their management by Approved Providers whether in response to a report of a serious incident, a complaint or on the Commission's own initiative. These inquiries would enable the Commission to deal with serious incidents without being limited to matters of compliance, to ensure the protection of consumers.
- Where a failure to meet the requirements of the SIRS is identified, the Commission will be able to undertake enforcement actions, e.g. imposing sanctions, which align with existing approaches taken to compliance in relation to other Approved Provider responsibilities. The Commission may also be given powers to enforce any civil penalty provisions under the SIRS.
- To ensure an effective system wide and sustainable response is made by a provider the Commission's current sanctions will be expanded to include enforceable undertakings. Enforceable undertakings can go beyond what is currently available with existing sanctions with the purpose of understanding, correcting

and preventing the original non-compliance and its underlying causes. In this way they can influence sector improvements other than those of the regulated providers themselves. Cases can be published to support system-wide learning.

Enforceable undertakings would be an effective and complementary enforcement tool for the SIRS because this enforcement power would enable the Commission to hold an Approved Provider to account for actions taken to address root causes of serious incidents at a service and strengthening the accountability of a provider for sustainable improvements in care. They may also be more satisfying for consumers who have a stake in seeing that a harm is redressed and will not happen again (for example, through modifying work processes and practices and introducing systematic safeguards to prevent future occurrences).

## Public reporting by the Commission on SIRS

Public reporting of SIRS information is intended to increase transparency and information to the sector and consumers on performance. Reporting will be informative and include quantitative (e.g. analysis) and qualitative analysis and help the sector, policy makers and regulators understand current trends and emerging issues.

Information publicly reported on the operation of the SIRS may include annual and trend reporting on information such as the:

- number of reports received annually, by type (category of incident, who made the allegation; who was the reported person who committed an incident) and identify incidents found to be unsubstantiated or unfounded;
- action taken by the Commission, e.g. number of Directions, Notices of Non-Compliance/sanctions; and
- types of action taken by the provider to resolve/manage incidents.

Providers will be encouraged to have an open disclosure approach to self-reporting incident information and providing information to consumers, for example through annual reports.

The Commission will consider how this reporting fits with other current reporting for example trends.



# Glossary

Term	Definition
<a href="#">Aged Care Act 1997</a> (the Act)	The Act is the overarching legislation that outlines the obligations and responsibilities that aged care providers must follow to receive subsidies from the Australian Government.
<a href="#">Aged Care Quality and Safety Commission</a> (the Commission)	The role of the Commission is to protect and enhance the safety, health, well-being and quality of life of people receiving aged care. The Commission independently accredits, assesses and monitors aged care services subsidised by the Australian Government, and also resolve complaints about these services.
<a href="#">Aged Care Quality Standards</a> (the Standards)	Organisations providing Commonwealth subsidised aged care services are required to comply with the Standards. Organisations are assessed and must be able to provide evidence of their compliance with and performance against the Standards. The Standards focus on outcomes for consumers and reflect the level of care and services the community can expect from organisations that provide Commonwealth subsidised aged care services.
<a href="#">Approved provider</a>	An approved provider receives subsidies for the delivery of aged care to and is responsible for making decisions about the delivery of quality care to consumers, the financial management of subsidies and for managing consumer's fees and payments.
<a href="#">Disability Reportable Incidents Scheme</a> for disability services in NSW	The disability reportable incidents scheme operating in New South Wales.
<a href="#">National Disability Insurance Scheme</a> (NDIS)	The NDIS provides funding for supports and services to people with a disability, their families and carers.
<a href="#">Open disclosure</a>	The open discussion that an aged care provider has with people receiving aged care services when something goes wrong that has harmed or had the potential to cause harm to a person receiving an aged care service.
Residential aged care	Provides a range of care options and accommodation for older people who are unable to continue living independently in their own homes.
Staff member	Staff member is defined in s63-1AA(9) of <a href="#">the Act</a> to mean 'an individual who is employed, hired, retained or contracted by the approved provider (whether directly or through an employment or recruiting agency) to provide care or other services' and the Accountability Principles 2014 extends this definition to certain volunteers of an aged care service where appropriate.