

Response to the Department of
Social Services consultation on

Complaints, Incidents and Information Management rules

November 2017



**Allied Health
Professions
Australia**

AHPA interest in this consultation

Allied Health Professions Australia (AHPA) represents 22 national allied health associations and collectively works on behalf of their 100,000 allied health profession members. Many of those allied health professionals are involved in providing services to people experiencing disability, people who may or may not be participants in the National Disability Insurance Scheme (NDIS). AHPA and its member associations are committed to ensuring that all Australians, regardless of disability, can access safe, evidence-based services to support them to realise their potential for physical, social, emotional and intellectual development to participate in life fully.

This submission has been developed in consultation with AHPA's allied health association members.

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Introduction

Allied Health Professions Australia (AHPA) and its member associations strongly support the introduction of the National Disability Insurance Scheme (NDIS) Quality and Safeguarding Framework and the establishment of the NDIS Quality and Safeguards Commission. As a sector, we are committed to ensuring safe, high-quality services for participants. The introduction of nationally consistent arrangements in place of the current mix of individual State and Territory approaches and processes will help to ensure participant safety and support allied health practitioners seeking to work within the Scheme. We also support the intention of the legislative rules proposed to guide complaints, incidents management and reportable incidents and information management.

However we note that despite an intention to achieve national consistency, the early stages of transition to the NDIS have resulted in varying approaches undertaken by different States and Territories in their approach to allowing providers to provide services under the Scheme. These inconsistent transition processes and State-based decisions on how to implement safeguards, a key example being the ongoing focus in some areas on Third Party Verification, are causing a range of issues for providers and participants and adding cost and complexity. Victoria's current work to develop its own approach suggests that the goal of a nationally consistent approach may not be achieved.

While AHPA understands that the Commission will be advocating for consistency, there is a risk that other overlapping processes will be implemented in the meantime. AHPA believes that gaining national consistency must be a priority focus for the Department and the Commission. Given the significant communication and support issues providers are currently experiencing this may well result in more issues and avoidable complications. While the Commission may step in to address some of these provider support needs, AHPA believes a key guiding principle needs to be the standardization, as much as at all possible, of safeguarding processes with reasonable requirements for health professionals that recognize the existing regulatory frameworks that ensure that they practice safely and can be held accountable for their work. This will support the work of national health peak bodies to support their members throughout Australia and minimize barriers to entry for new providers.

Feedback areas

The AHPA response below includes specific commentary to the following areas:

- NDIS (Complaints) Rules
- NDIS (Incident Management and Reportable Incidents) Rules
- NDIS (Protection and Disclosure of Information) Rules

Feedback will be provided in reference to the relevant section of each set of rules. In some cases, references are made to specific sections of the consultation paper.

AHPA commentary to the individual rules

1. NDIS (Complaints) Rules

(6) System must comply with this part

The consultation paper states that:

Under the Bill, all registered providers will be required to have a process to receive and manage complaints which is proportionate to their size and the nature of supports provided (Division 5 of the Bill). Guidance will be developed in consultation with stakeholders to support appropriate compliance with the Complaints Rules. Unregistered providers will also be obliged under the Code of Conduct to have appropriate complaints management arrangements in place.

The draft Complaints rules further state that:

A registered NDIS provider must implement and maintain a complaints management and resolution system that complies with the requirements set out in this Part. Note: The complaints management and resolution system must also be appropriate for the size of the provider and for the classes of supports or services provided (see paragraph 73W(a) of the Act).

AHPA accepts that the need to have appropriate complaints management processes in place is both reasonable and necessary. However we note that this will involve a significant change management process within the allied health sector where practices are more likely to consist of small and solo practices and very few practices are likely to have experience in developing and implementing policies and procedures of this type. As such this will require significant work by allied health providers and access to appropriate support. We are not yet clear about the level of support the Commission will be able to provide and suggest that peak bodies will play an important supporting role. We note the intention to engage in dedicated consultation with stakeholders as part of the development of guidance materials and highlight the importance of engaging with AHPA and its member peak associations to ensure that the unique requirements of allied health providers are sufficiently addressed, and that those member associations are equipped to provide support for providers.

AHPA supports the intention of adjusting requirements to the size of the provider and the types of supports or services being delivered, noting the significant differences between, for example, a solo health professional practice and a large provider of accommodation services. AHPA believes it will be important to consult carefully to ensure these requirements are fit for purpose and not too onerous for providers to implement, particularly where a practice may operate without administrative support. An approach that works in one part of the disability sector may not be appropriate elsewhere. As such AHPA recommends that the allied health professions are consulted carefully in the establishment of the guidelines determining what systems are required for varying provider profiles.

AHPA remains concerned about the uncertainty around the mechanisms that will be put in place to ensure that unregistered providers are aware of their obligation to have appropriate complaints management processes in place. AHPA understands that self-managing participants are not expected to inform providers about this requirement, which means that there is no guaranteed touch-point between the Scheme and the unregistered provider. AHPA believes that while there is an intention for

the complaints process to align with other systems and standards an unregistered provider would adhere to, we believe someone must have the mandate to provide information about this requirement to those providers if they are to be bound by this requirement.

(7) Complaints management and resolution

The rules state that system used by providers must:

*(1) (b) provide for an easy and accessible process for the making and resolution of complaints; and
(c) ensure appropriate support and assistance is provided to any person who wishes to make, or has made, a complaint.*

While AHPA acknowledges the importance of ensuring that the complaints process is genuinely accessible to a Scheme participant, we also note the significant variation in the complexity and cost of ensuring a process is accessible. The requirements involved in providing appropriate support and assistance to a participant will vary widely based on the individual needs of the participant and will challenge many small organisations. While it may be financially viable for a large provider to have staff resources available to complainants and materials in a variety of accessible formats, the same is not likely to be the case for small providers. As such AHPA notes that it would be appropriate to provide some form of limitation on what is considered reasonable. We also note the importance of ensuring that the same appropriateness test is applied as in section (6), based on the provider's profile (i.e. size, services delivered), and that resources are made available to practitioners to help them implement these requirements.

*(3) The system must also require that reasonable steps are taken to ensure that:
(b) information provided in a complaint is kept confidential and only disclosed if required or appropriate.*

AHPA believes some clarification of the circumstances under which disclosure would be required and appropriate would be a useful addition to any guidance material developed to support understanding of the complaints rules by practitioners. Practitioners may experience significant challenges in determining whether and when it might be appropriate or necessary to share information with informal carers or family members as well as other health professionals involved in a participant's care. In some cases that AHPA is aware of, the interests or views of the participant and their carer or family member may differ, sometimes significantly putting the practitioners in a complex and ethically challenging situation.

AHPA notes that different professional health codes prescribe varying definitions of appropriate sharing of information and that this may need to be considered to ensure that there isn't a mismatch between a practitioner's obligations according to their professional standards and codes and the requirements of NDIS legislation and rules.

*(5) The system must also provide for:
(a) the periodic review of the system to ensure it is effective; and
(b) the identification and resolution of systemic issues raised through the complaints management and resolution process.*

AHPA acknowledges the value of a continuous improvement system as the basis for the delivery of safe and high quality services. However, we note the importance of ensuring that appropriate support and guidance is provided to assist practitioners in implementing these types of processes as they may in many cases represent a change in practice. We also recommend that work is done to define an effective system and to support providers in the review of their own systems. AHPA notes that determining whether a system is working effectively may not always be obvious, particularly where there may be limited use of that system. By way of example, a lack of complaints to a provider could mean their system is not working well but could equally also reflect that provider's delivery of quality participant services.

(8) Documentation and record keeping

(1) The complaints management and resolution system must provide for the following details to be readily available and accessible to the public:

(a) how a complaint about the registered NDIS provider can be made to the provider;

(b) how a complaint about the registered NDIS provider can be made to the Commissioner.

(2) The registered NDIS provider must:

(a) document the system; and

(b) provide copies of the documented system in a form that is accessible to the following persons:

(i) persons with disability receiving supports or services from the registered NDIS provider, and their families and carers;

(ii) each person employed or otherwise engaged by the registered NDIS provider; and

(c) take reasonable steps to ensure that persons referred to in paragraph (b) understand how the documented system operates.

While AHPA acknowledges the importance of complaints management processes, we question the need for these to be available and accessible by the public, given the separate need to ensure that any participant or employee impacted on by the complaints process must be provided appropriate access to information about that system. AHPA instead believes that the Commission could provide general information for the public about the complaints systems that providers are required to have in place and guidance material around the minimum requirements for these systems. Maintaining resources to inform the broader public is likely to place an undue and unnecessary burden on providers.

AHPA also acknowledges the importance of ensuring information about complaints processes is available in a format that is accessible to participants and carers or family members. However, we reiterate our concern about the complexity and expense of providing accessible information if no constraints are placed on what is considered reasonable. We reiterate the need to provide appropriate resources to assist providers in providing accessible information as part of their complaints systems.

Finally we note the ambiguity of requirement (c) and the requirement to 'take reasonable steps' to support understanding by participants and the varying levels of engagement a provider may have with a participant. We again note the importance of providing the means for participants to voice concerns about a service but believe this requirement should depend on the types of services, size of the provider and the level of engagement. If, for example, a provider is only funded to provide one or two sessions of therapy to a participant, it is unreasonable and inefficient to expect them to dedicate

significant time to explaining and testing the understanding of the complaints system by the participant.

(3) The system must also provide that appropriate records of complaints received by the registered NDIS provider are kept and maintained by the provider, including the following, where appropriate:

- (a) information about the complaint;*
- (b) any action taken to remediate or resolve complaints;*
- (c) the outcome of any action taken.*

(4) A record made for the purposes of subsection (3) must be kept for 7 years from the day the record is made.

AHPA notes the value of providing guidance in the form of templates and information about safe record keeping (both paper-based and digital) to ensure practitioners are supported in meeting this requirement. AHPA also notes that section (29) makes allowances for the size of the provider and the type of services being delivered when determining requirements about record-keeping. We believe a similar approach should be applied here too to ensure the bureaucratic requirements are not too onerous for small providers.

(10) Referring complaints

The complaints management and resolution system must require a complaint to be referred or notified to any other bodies in accordance with any requirements under relevant Commonwealth, State or Territory laws.

In light of the complexity and changing nature of requirements for NDIS providers during the current transition phase at Commonwealth, State and Territory levels, AHPA believes it is essential that State and Territory specific guidance and templates are developed to support practitioners in implementing appropriate complaints management systems, particularly with regards to the need to refer or notify other bodies. AHPA further notes that this could extend to the requirements of various health profession standards and requirements by engaging with appropriate health provider registration bodies, including the self-regulating health professions.

(13) Dealing with a complaint

(4) Before making a decision under subsection (3), the Commissioner may further examine an issue raised in the complaint by doing one or more of the following:

- (b) visiting the location at which the supports or services are provided by the NDIS provider or the offices of the NDIS provider;*
- (c) discussing the issue with the complainant, the person with disability affected by an issue raised in the complaint, the NDIS provider or any other person, in person or by other means;*
- (d) requesting information from any person.*

AHPA notes that while it is essential that the Commissioner, or a delegated representative, is able to undertake appropriate investigations to support decision making with regards to a complaint, a number of providers have reported that current NDIS auditing processes have involved unannounced visits and requirements for providers to hand over information on the spot. This has resulted in unneeded stress and anxiety and carries the risk of a provider handing over information

inappropriately. For example, a provider may provide an entire file rather than just relevant information necessary for the management of a complaint, resulting in a breach of patient privacy. AHPA believes that unless there is a demonstrable need to avoid providing notice, providers should be given adequate notice about an intended visit and given appropriate time to hand over information required to support the resolution of a complaint.

This also applies to visits undertaken as part of **(17) Resolution process**.

(29) Collection of information relating to complaints

(1) An NDIS provider must collect statistical and other information relating to complaints made to the provider to enable the provider to:

- (a) review issues raised in complaints; and*
- (b) identify and address systemic issues; and*
- (c) report information relating to complaints to the Commissioner, if requested to do so by the Commissioner.*

(2) The system must be appropriate for the size of the provider and for the classes of supports or services provided by the provider.

AHPA supports the application of a system that scales requirements to the size of the provider and the types of supports or services being provided. AHPA believes in many cases this requirement will be too onerous for allied health providers and encourages careful consultation to ensure that the development of requirements for different provider profiles are fit for purpose.

2. NDIS (Incident Management and Reportable Incidents) Rules

AHPA notes that there is significant crossover in the requirements set out in the Complaints rules and those set out in the Incident Management and Reportable Incidents Rules. As such many of the comments and concerns raised above apply similarly to these rules. Given the close alignment between these two requirements, AHPA recommends that guidance materials developed to support practitioners address both requirements simultaneously to minimize the complexity of implementing these systems.

(7) System must comply with this Division

A registered NDIS provider must implement and maintain an incident management system that complies with the requirements set out in this Division. Note: The incident management system must also be appropriate for the size of the provider and for the classes of supports or services provided (see paragraph 73Y(a) of the Act).

AHPA notes its response to the same requirement in section (6) of the Complaints rules and reiterates our support for system requirements that are appropriate to the practice profile of the provider. As with other elements of the Quality and Safeguarding Framework, AHPA believes it is essential to find the right balance between supporting safety and continuous improvement, and ensuring that barriers are not placed in the way of providers wishing to enter or remain in the disability service marketplace.

(9) Incident management system procedures

(3) The incident management system must require all incidents to be assessed in relation to the following, with the assessment considering the views of persons with disability affected by the incident:

(a) whether the incident could have been prevented;

(b) how well the incident was managed and resolved;

(c) what, if any, remedial action needs to be undertaken to prevent further similar incidents from occurring, or to minimise their impact;

(d) whether other persons or bodies need to be notified of the incident.

AHPA notes the intention for the system to be person-centered and the importance of ensuring that the Scheme participant's views are considered. However, AHPA believes that this requirement is potentially complex due to the varying nature of individual participant's capacity and accessibility requirements. As such we believe it is appropriate to amend this requirement so that reasonable steps to consider the views of the participant are required. We further believe that it may be appropriate to scale this requirement based on the severity of the incident noting that in some cases it would be appropriate to very carefully consider the views of the participant even if this is onerous.

AHPA also notes that the changing nature of the NDIS Scheme and the various legislative requirements operating in different jurisdictions makes it difficult for providers to stay abreast of which persons or bodies would need to be notified about an incident. We believe it would be appropriate for the Commission to take on responsibility for the development of State and Territory-based guidance materials to support providers.

(4) The incident management system must require the collection of statistical and other information in relation to incidents to enable the registered NDIS provider to report information relating to incidents to the Commissioner, if requested by the Commissioner.

AHPA notes that a similar requirement in the Complaints rules noted that this requirement was to be scaled according to the size and service delivery profile of the provider. AHPA believes that a similar approach should be taken that determines the appropriateness of this requirement on the profile of the providers.

(10) Documenting procedures

(1) A registered NDIS provider must document the incident management system of the provider.

(2) A copy of the documented system must be readily accessible by:

(a) each person employed or otherwise engaged by the registered NDIS provider; and

(b) persons with disability receiving supports or services from the registered NDIS provider.

As noted with regards to the Complaints rules, AHPA supports the importance of providing access to information about the incident management system of the provider. However, we also reiterate our concern about the need to ensure that the system is accessible, noting that genuine accessibility can be complex and expensive given the various formats and systems that may be required. AHPA recommends that a reasonableness test is applied and notes that it may be appropriate for additional supports for providers and participants to be available through the Commission to support making information and processes accessible.

(11) Record keeping

(3) A record made for the purposes of this section must be kept for 7 years from the day the record is made.

As noted in the previous Complaints section, AHPA recommends that support is provided in the form of templates and guidance around the safe management of records to ensure providers are able to comply with the need to maintain records for seven years while also ensuring that they are managing the privacy of participant records.

(14) Incidents include alleged incidents

A reference in this Part to a reportable incident that has occurred includes a reference to a reportable incident that is alleged to have occurred.

AHPA notes that the Incident Management rules refer to the need for providers to address incidents in which they have been responsible for the delivery of services. However, AHPA notes that there may be situations in which providers become aware of alleged incidents involving other providers. This may be particularly the case for a provider delivering mental health related services. AHPA recommends that specific reference is made to the requirements for providers in such cases, even if there is no requirement to act, to ensure that providers are clear about their obligations. AHPA further recommends that appropriate guidance is developed as part of the work of the Commission.

3. NDIS (Protection and Disclosure of Information) Rules

The consultation paper states:

In addition, NDIS registered providers will be required to provide information requested by the Commission as a condition of their registration under the Bill.

AHPA has some concerns that the requirement to provide information for registered providers may breach the standards set out by individual health professions, in particular the mental health professions. As such we recommend careful consultation to ensure that the guidelines for information provision are aligned with other codes and standards.

The consultation paper further states:

The Commission will need to have the power to gather information from a range of people who may be associated with NDIS providers to ensure the safety and quality of supports.

AHPA notes that there is currently only limited information available about what type of information may be sought and who may be required to provide information. As such we remain uncertain about the exact nature of this provision and have concerns that it may result in unintended consequences. We believe a careful balance must be struck between ensuring the Commission can gather the information it requires for its work and protecting the privacy of participants and providers. It will also be important to ensure that in providing information to the Commission, people are adequately informed about other relevant legislation, such as the Privacy Act, and applicable standards and codes to ensure that they are not inadvertently placing themselves at professional risk.

14 (CEO) and 30 (Commissioner) Record of disclosure

(1) If the CEO discloses NDIS information under section 66 of the Act (other than subparagraph 66(1)(b)(ii), (iii) or (iv)), the CEO must ensure that a record of that disclosure is made.

(4) A record made for the purposes of subsection (1) must be kept for X years.

AHPA notes that the draft rules currently do not specify a minimum period of time for the maintenance of records by the CEO and Commissioners or their delegates. AHPA believes that for the sake of consistency, these should be set at no less than seven years in order to align with other record keeping requirements set out in the rules.