

Response to the Department of
Social Services consultation on

Registration, Practice Standards, Behaviour Support and Code of Conduct Guidelines

December 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.

Allied Health Professions Australia
Level 13, 257 Collins Street
Melbourne VIC 3000
Phone: 03 8662 6620
Email: office@ahpa.com.au
Website: www.ahpa.com.au

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. We recognise the importance of safe, high-quality services for Scheme participants, many of whom may be highly vulnerable. AHPA also recognises and supports the intentions of the draft Registration and Practice Standards rules, the Behaviour Support rules and the Code of Conduct rules and guidelines. AHPA believes the rules, as drafted, will support the practical implementation of the Quality and Safeguarding Framework and support NDIS participants. We note however that a number of these are still in an early stage of development and ask that AHPA is provided the opportunity to comment on these as they are further developed.

Despite our general support for the intentions of these rules, we wish to highlight several key concerns about some of the provisions outlined in the various draft rules and guidelines. Genuine accessibility of information, informed consent and the ability to exercise choice should certainly be goals for the Scheme as a whole and we recognise that providers will need to play a major role in their implementation. However, we also note that these provisions have the potential to require significant resources both in terms of dedicated time spent with a participant and in terms of the requirement to have information available in a range of formats unless there are limitations placed on how these requirements are applied to different types of providers.

While some larger providers may be able to resource these due to economies of scale we have significant concerns that it will be difficult for many providers to adhere to, particularly where those are smaller providers and/or providers who may only be providing very time-limited services to a particular participant. We also fear there is a risk that providers may avoid those participants with the most complex communication and decision support requirements due to cost and risk mitigation. AHPA believes further clarification about how these requirements will be determined and what level of support will be provided to providers by the Commission will be essential before they are finalised. In particular we suggest that requirements should be adjusted according to the provider profile, as is a feature of some of the other draft rules relating to the Quality and Safety Framework. Additional detail about these points is included in the specific feedback below.

We also ask that our response to the Code of Conduct consultation is reviewed as some of our key concerns outlined in that response remain. In particular we remain concerned about the interaction between various health profession standards, codes and the NDIS code of conduct, particularly as this relates to managing reported breaches. There remains significant scope for unnecessary complexity, conflicts between regulators and uncertainty for practitioners. AHPA believes it is appropriate for a more defined process of interaction to be established, including MoUs or similar between the Commission and health regulators. More detail about our position is provided in section 4 (on page 9).

Feedback areas

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

- NDIS (Registration and Practice Standards) Rules
- NDIS (Behaviour Support) Rules
- Draft Code of Conduct Guidelines for workers and service providers for discussion.

Feedback will be provided in reference to the relevant section of each set of rules. Where appropriate, several rules have been grouped together and the relevant sections highlighted. In some cases, references are made to specific sections of the consultation paper.

Detailed commentary to the individual rules

1. NDIS (Registration and Practice Standards) Rules

Part 1—Rights and responsibilities of persons with disability receiving supports

(2) Person-centred supports

Relevant indicators:

2. The provider supports persons with disability in active decision-making, individual choice and understanding their rights and responsibilities. Timely information about rights and responsibilities is provided in the language, mode of communication and terms which that person is most likely to understand.

(4) Privacy and dignity

Relevant indicators:

2. The provider advises the person with disability of the provider's confidentiality policy using the language, mode of communication and terms which the person is most likely to understand.
3. The provider ensures that the person with disability understands and consents to the purpose

(5) Consent and informed choice

Relevant indicators:

1. The provider supports active decision-making and individual choice, including the timely provision of information using the language, mode of communication and terms which the person with disability is most likely to understand, to support the person to make informed decisions and to understand their rights and responsibilities.
3. The provider ensures that the person with disability has sufficient time to consider and review their options and seek advice if required, at any stage of support provision.

While AHPA and its members philosophically support the intention behind each of these rules and the indicators associated with them, we have significant concerns about how these could be actively supported by providers. Developing the necessary information and resources, providing appropriate training and dedicating the time involved in cases where a Scheme participant's support needs are complex will be extremely difficult for providers, particularly given the significant restraints on funding available to providers. Where multidisciplinary providers are providing services at a high enough volume, these requirements may be reasonable but that will not be the case for many smaller providers.

AHPA believes it will be important to review the impact on participants of placing reasonable limitations on this requirement based on the profile of a provider (such as size, volume of services provided to people within the Scheme). It will also be important to test what costs may be in practical terms and what level of support the Commission or the NDIA can provide practitioners in terms of resources, templates and generic information. In particular AHPA advises that it will be important to determine whether these provisions may result in providers avoiding more complex patients.

Finally, AHPA notes that while we understand and conceptually support providing time for a patient to review their options at any stage of support to ensure that they are able to exercise appropriate levels of choice and decision-making, we note that in practice this may not always be practical and may have unintended consequences. In a range of cases a provider may have undertaken significant work to prepare for the services they will provide a participant. This may include planning, preparation and even the sourcing of particular aids. Due to the structure of funding within the Scheme, that work is not funded and instead is done with the expectation of receiving income for services then rendered. If a participant is able to reconsider their services at all stages, this may leave the provider with a loss of income. The longer term consequence of this increased uncertainty around funding for a package of care may well have unintended follow-on effects that impact the quality of care providers can offer participants. We note that there may be other means of addressing this issue such as adjustments to the pricing structures and funding limitations set by the NDIA though these fall outside the remit of the Department.

(6) Discrimination, abuse and neglect

Relevant indicators:

2. In instances of allegations of violence, abuse, neglect, exploitation or discrimination involving a person with disability, the provider ensures that the person is offered access to independent support and advice.

AHPA is uncertain about how this provision is intended to function in practice and what is meant by providing access to independent support and advice. As such it is difficult to comment accurately though we are concerned about the ramifications. Is the intention to ensure that providers give participants information about the options available to them for independent advice and support or is the intention for providers to fund these themselves. If the latter, we have strong concerns about the costs of these for many providers.

We also note that while violence and abuse may be relatively easily defined and identified, allegations of the other offences such as discrimination may be based around broad and widely varying interpretations of impact and severity. It may be appropriate to provide additional information or guidance around the situations in which this provision would be triggered.

2. NDIS (Behaviour Support) Rules

Division 2 – Requirement to be registered to use restrictive practices

(7) Providers using restrictive practices must be registered

If: (d) during the provision of a support, the NDIS provider uses a restrictive practice in an emergency; and (e) the use was not in connection with a behaviour support plan and State or Territory authorisation (however described); and (f) there is, or is likely to be an ongoing or interim need to continue to use a restrictive practice.

Note: Failure by a provider to register as required by the NDIS rules and this Part constitutes a breach of the requirement to be registered (see section 73B of the Act); and may lead to the imposition of a civil penalty as set out in subsection 73B(2) of the Act.

AHPA is supportive of this provision though we would like to better understand what consequences and processes may apply for unregistered providers under this provision. AHPA can envision situations where an unregistered provider is engaged and during the course of the services they are providing, makes appropriate use of a restrictive practice for a participant that was not previously identified as requiring this type of behavior support. Our reading of the draft rules suggests that this would mean the provider is in breach of the Act and subject to civil penalties. We also envision that there would need to be a process for managing this situation that might involve the provider reporting the incident and ceasing to provide services in favour of a registered provider. However, we are not aware that this situation has been outlined and we do not currently understand how unregistered providers may be provided information about restrictive practices and the restrictions that exist around their use.

3. Guidelines for the Code of Conduct

AHPA notes the Department's clear message that unregistered providers and their workers will be subject to the NDIS Code of Conduct. We understand the intention is for this to provide a mechanism for participants and their families to make complaints to the Commission about these providers, and for the Commission to be able to undertake compliance and enforcement actions against the providers.

AHPA is supportive of the need for the Commission to have the means to manage issues related to unregistered providers. However, we remain concerned about what we perceive as a lack of clarity or certainty around processes that would ensure unregistered providers are provided with information

about any applicable guidelines or rules that they are subject to in providing Scheme-funded services. While we understand that the intention is for the Code of Conduct to align with other codes that apply to allied health professionals, we note that this alignment is not complete. As such we believe it is essential to assign responsibility for education of unregistered providers and encourage engagement with allied health and other professional bodies to support access to information.

1.2 Communicate in a form, language and manner that enables people with disability, and their carer where required, to understand the information provided and make known their feelings and preferences.

1.3 Take into account the expressed needs, values and beliefs of people with disability including those relating to culture, faith, ethnicity, gender, age and disability.

Knowing a participant's needs for service delivery and how different service delivery styles may impact on wellbeing. For example, requiring a participant to share a room with another may conflict with their religious beliefs. Encouraging people with disability to participate in social activities when they have a social anxiety diagnosis would also be inappropriate.

As outlined in previous responses, AHPA strongly supports the need to support full engagement with and by people with disabilities receiving services. We recognise the crucial role of communication in this. However, we reiterate our concerns about finding a balance between the need to support participant engagement and to not unduly burden providers in a way that makes service provision overly costly or unsustainable. We also reiterate our belief that the Commission or the NDIA should provide a generic suite of materials for providers that could be easily adapted to support the various requirements such as providing accessible information about complaints processes. We recognise that the requirement above in the Code of Conduct applies broadly to all communication by a provider and suggest that some degree of restriction based around making reasonable attempts should be applied.

AHPA also recommends that the Commission takes an active role in supporting the development of resources and training for providers and their workers to ensure that they understand culturally aware service delivery and have an understanding of some of the more common cultural and religious beliefs participants may have.

We note that it may be appropriate to separate out cultural and religious and other similar values a participant may hold from cases where a provider legitimately recommends activities that are uncomfortable or difficult for a participant due to a particular disorder they may experience. For example, the situation outlined above where a participant experiences social anxiety is one where a provider may legitimately and appropriately recommend certain social activities as part of a therapeutic process.

2 Respect the privacy of people with disability

- *Ensure staff, where possible, consult people with disability prior to any discussions with carers, family members or advocates.*

2.3 Consult people with disability prior to any discussions with carers, family members or advocates

Where possible, people with disability should be consulted and informed consent obtained prior to any discussions with carers, family members or advocates.

AHPA is strongly supportive of the need to protect the privacy of people with disability, noting that people often experience very little privacy or consultation about their preferences. AHPA also supports the application of a reasonableness test through the 'where possible' wording throughout section two. As noted elsewhere, we believe it is essential to provide some restrictions to where requirements for providers apply. However, we do note that there may be a wide range of interpretations of the terminology and encourage the Commission to be asked to more carefully define or provide guidance around the meaning of 'where possible' in this context.

AHPA also notes the complexity of attaining informed consent more generally, as per the discussion points above, and the complexity of potentially having to choose between the desires of a participant and that of their carers, family members or advocates. This can be an extremely complex ethical area and should be supported by guidance materials developed by the Commission.

3.2 Ensuring all workers are familiar with any other relevant professional code

The NDIS Code of Conduct has been developed with reference to other relevant professional codes to ensure a consistent definition of acceptable practice.

While these codes may overlap in a range of areas, including privacy, record keeping, professional indemnity insurance, ethical and safe service provision and sexual misconduct, the NDIS Code has been developed to have a minimal additional regulatory burden.

If a worker is subject to a professional code of conduct, the Commission will co-ordinate any regulatory activity with the professional body or other regulator, as appropriate, to ensure there is no unnecessary duplication and manage any overlapping areas of regulation.

If a worker is found not to have complied with their own professional standards in providing NDIS supports and services, they may have also breached the NDIS Code of Conduct.

AHPA notes the Department's intention to proceed with an NDIS Code of Conduct that applies to all health practitioners, despite a recognition of the existence of codes that cover most or all of the requirements set out in the NDIS Code. We reiterate our concern about the overlap of codes and the additional bureaucratic and training burden that this puts on providers and the potential risks that this adds in terms of practitioner regulation. We again refer the Department to our previous Code of Conduct submission, key points of which have been summarized below. In particular we reiterate our belief in the need to develop a process for the coordination of responses to breaches of either NDIS Code or professional codes in conjunction with the health professions.

Finally, AHPA notes that each health professional is required as part of their individual profession registration process to be aware of the professional codes that apply to their practice. AHPA does not believe it is necessary for providers to be responsible for ensuring that workers with health professional qualifications are familiar with professional codes as this adds an unnecessary bureaucratic burden without in any way increasing safety or quality. This is particularly the case where a provider might employ workers across a range of health professions.

4. Final general commentary

AHPA notes that the views of the allied health professions around duplication/overlap in terms of existing codes of conduct, professional standards and ethical requirements set by professional bodies and the risk of adding additional burdens have not been reflected in the Guidelines paper. For example, a dietitian may be covered by three different Codes of Conduct: a professional code ([DAA statement of ethical practice](#)), a Code for Unregistered (that is NDIS unregistered) Providers as per state legislation and the NDIS Code of Conduct. We note a continued concern around adding to the bureaucratic burden for providers in the absence of a clear need to do so. However, we also note our ongoing support for greater consistency in the Scheme and the overarching need to protect potentially vulnerable participants.

We continue to believe that our key recommendations remain relevant and draw the Department's attention to these.

AHPA recommends:

1. A principle of mutual recognition is applied through which current codes of conduct covering health professionals are recognised as meeting any code of conduct obligations for allied health professionals. This will reduce the need for additional bureaucracy for practitioners, self-managing participants, and the Scheme.
2. A review of existing codes of conduct applying to health professionals should be undertaken to determine if these codes include sufficient safeguards for consumers, disabled or otherwise. If required the Scheme should work with Boards and professional associations to update existing codes rather than overlaying an additional code. In this way all Australian consumers will have appropriate protections when accessing health services.
3. Formal processes should be established as part of the development of the NDIS Code of Conduct, which appropriately assign responsibility to the bodies responsible for regulatory activities for different allied health and other health professions. This information should be built into complaint process materials developed and distributed by the National Disability Insurance Agency (NDIA) to ensure that participants and practitioners are accessing and utilising consistent information about the management of issues related to conduct.
4. Terminology used within the NDIS Code of Conduct and associated materials should be clearer with regard to registration for NDIS purposes and regulation for health professionals. There is significant potential for confusion here for health professionals.
5. There must be no practical differences in the requirements for health professionals regulated under the Australian Health Practitioner Regulation Agency (AHPRA) or who are either self-

regulating or part of the National Alliance of Self-Regulating Health Professions (NASRHP) to ensure equity and consistency across professions.

6. Additional work should be undertaken to differentiate between registered NDIS providers and unregistered providers, in particular to clarify expectations for unregistered providers and how these will be dealt with under the Scheme.
7. The Scheme should provide support appropriate to smaller providers who may not be involved in full-time delivery of services within the Scheme, particularly to put in place complaints procedures and other related processes.

Defining requirements based on provider profile

AHPA notes that the current draft rules and guidelines rules are inconsistent in terms of including provisions for levels of requirement based around the size of the provider and the types and volume of services being provided. We are of the very strong belief that a balance must be found between appropriate support for participants in terms of accessibility of information and support for decision-making and not overly burdening smaller providers or providers who deliver only a small proportion of their services to participants. These providers will not have the volume of income and overall size to meet these requirements and are likely to choose not to participate in the market.

We find that there is significant inconsistency in terms of the language that is applied across the rules and guidelines and suggest that a consistent standard is applied throughout that makes allowances for varying requirements based on provider's profile.

Education

The guidelines makes note of the importance of making access to education free and accessible for participants. AHPA notes the essential importance of doing so for providers too—in this case ensuring that guidance is practical and considers the structure and service delivery styles of solo and small allied health providers. Appropriate consideration should be applied to how these materials might be made available to unregistered providers and how such providers might be made aware of the need to understand the guidelines that apply to them.

Unregistered providers

AHPA reiterates our belief that unregistered providers should be bound by the code of conduct but notes that there must be a mandate for some agency or body to inform unregistered providers about their requirements. AHPA believes it would be odd and irresponsible to require NDIS-registered health professionals that are already bound by codes with very similar requirements and safeguards to be covered by the Code while an unregistered service provider with no existing codes or standards would not be. If the overall intention is safeguarding potentially vulnerable people then this must be consistently applied.