



Australian Government

Regulatory Harmonisation
Across Care and Support
aged care | disability | veterans

Care and support sector code of conduct

Consultation summary report September 2022

Contents

Introduction 3

Overview 3

Support for the Code 3

Elements of the Code 4

Language 4

Application of the Code 5

Guidance 5

Intersections 5

Enforcement 5

Implementation considerations 6

Attachment A: The draft Code 7

Attachment B: The NDIS Code 7

Introduction

The Australian Government has identified opportunities to improve regulatory alignment across the care and support sector, incorporating the aged care, veterans' care and disability support sectors, to strengthen safeguards for people using care, supports and services, reduce red tape for employers, and increase mobility of staff to work across the three sectors.

As part of the 2021–22 Budget, the Australian Government has been developing a Care and Support Sector Code of Conduct for the aged care, veterans' care and disability support sectors. A code of conduct for the care and support sector is aimed at ensuring that all people using care, supports and services have equal protections and expectations of providers and workers regardless of whether they are receiving them through aged care, disability or veterans' affairs.

Overview

Public consultation on a draft Care and Support Sector Code of Conduct (Code) occurred between 16 November 2021 and 10 December 2021.

Stakeholder feedback was sought on the draft Code, including areas where the Code may need to be further adapted or adjusted to ensure it is fit for purpose across the care and support sector. A copy of the draft Code is included at [Attachment A](#).

The draft Code was developed in response to the Royal Commission into Aged Care Quality and Safety (Aged Care Royal Commission) and was based on the existing National Disability Insurance Scheme Code of Conduct (NDIS Code). A copy of the NDIS Code is included at [Attachment B](#).

A [consultation paper](#) and questionnaire were published on the Department of Health and Aged Care's Consultation Hub. An Easy Read version of the consultation paper and easy to read questionnaire were also available.

Sixty submissions were received. Submissions were predominately from the aged care and disability support sectors.

Five targeted virtual stakeholder forums, including a consumer specific forum, were convened. These were held on 26 November 2021, 1 December 2021 and 3 December 2021. There were 58 attendees across the five forums. Representatives from across the aged care sector had the highest attendance, followed by representatives of the disability support sector.

This report provides a summary of the findings from the consultation. Feedback contained in this report will further inform government considerations about the content and implementation of the Code.

Support for the Code

- There was broad stakeholder support for a Code that applies across aged care, disability support and veterans' care and for it to apply to all providers, governing persons (key personnel) and workers.
- Stakeholders noted that consistency across the three sectors is appropriate given the crossover of the workforce and that a common Code is conducive to achieving greater and consistent protections for any person using care, supports and services.
- Stakeholders broadly felt it was appropriate to draw on the NDIS Code as the basis for the Code and that the seven elements of the NDIS Code (outlined at [Attachment B](#)) were applicable across the care and support sector.

- Other stakeholders questioned:
 - whether it was appropriate to use the NDIS Code as the base model for a Care and Sector Code of Conduct;
 - the need for a code of conduct in aged care and veterans' care;
 - the proposed broad application across the entire workforce, given Recommendation 77 of the Aged Care Royal Commission was limited to the personal care workforce;
 - whether a code should be applied to both providers and workers or whether two distinct codes should be developed to better support targeted behaviour statements; and
 - whether adjusting the Code to enable broader application could dilute the value of the NDIS Code for NDIS participants.

Elements of the Code

- Stakeholders suggested amendments to the proposed elements or for additional elements to be included in the draft Code.
 - A number of these suggestions were drawn from stakeholders' comparing other codes of conduct and looking to concepts in relevant standards, charters and frameworks.
- Many stakeholders suggested a strengthened focus on **diversity, inclusion and individual rights**.
- There was strong support for including elements around **valuing diversity and providing services free from discrimination**, with some stakeholders citing findings by the Aged Care Royal Commission that support the inclusion of diversity in the Code rather than in guidance.
- Other stakeholders suggested a stronger focus on **dignity and respect**.
- Several stakeholders proposed additional elements relating to the **competency and behaviour of workers**.
- Stakeholders also provided suggestions in relation to specific elements of the existing Code. In relation to:
 - element a), some stakeholders felt the need for workers and providers to 'act with respect for individual rights' set the bar too low as compared to supporting, promoting, upholding and valuing individuals and their diversity.
 - element d), some stakeholders suggested that integrity and transparency are terms more often used within government and may be challenging for some to understand and apply in practice (with others noting the value of the NDIS guidance in this regard).
 - element f), some stakeholders felt the Code should explicitly 'call out' bullying, harassment and discrimination of people using care, supports and services. A number of stakeholders suggested alternate wording to include discrimination as part of element f).
 - element g), some stakeholders suggested using the terminology, 'unlawful sexual contact and inappropriate sexual conduct' to align with reportable incidents definitions in the aged care Serious Incident Response Scheme.
- Some stakeholders suggested joining elements f) and g) together as f) 'all forms of violence against, and exploitation, neglect and abuse'. Others felt it was important to maintain element g) noting it is a key concern identified across sectors and 'too often sexual misconduct can be dismissed'.
- Many stakeholders acknowledged the challenges of expanding the Code in some of the areas suggested and noted: the value of keeping the Code succinct and easy to understand; and that certain requirements are unsuitable in a Code that applies to both workers and providers.

Language

- While many stakeholders agreed with the proposed language, noting it was 'clear and concise', some felt there was room to simplify the language and improve clarity.

- Stakeholders reiterated the need for the language to be simple, active and easily understood, as well as resonate across all three sectors.
- Stakeholders felt that simple language will support worker understanding of the Code, drive behaviour, and improve compliance.
- Stakeholders provided feedback on a number of specific terms used throughout the Code.
 - Some stakeholders queried the scope of the term 'Code-covered person'. At the forums, a number of stakeholders expressed a preference for first person language (i.e. 'I must...').
 - Some stakeholders suggested the term 'care, supports and services' was unnecessarily long and could be reduced to 'supports and services', although others felt the inclusion of 'care' is important in the context of aged care. The term 'care' is recognised in an aged care service context but not in a disability support service context.

Application of the Code

- Some stakeholders queried the application of the new Code to health professionals registered through a National Board under the Australian Health Practitioner Regulation Agency (Ahpra).
- Other stakeholders acknowledged the benefit of a Code that creates a foundational expectation on all providers and workers and felt strongly that the Code needed to apply to all workers including registered health professionals.
- One stakeholder also noted that the Code should apply equally to staff of the various regulators, including the ACQSC, noting that the NDIS Code currently applies to NDIS Quality and Safeguards Commission (NDIS Commission) staff.

Guidance

- Many stakeholders supported the development of sector-specific guidance and felt strongly that detailed guidance was needed to support providers and workers to understand and adhere to the Code (noting the NDIS Code is supported by guidance for providers and guidance for workers).
- Stakeholders felt it was important for any guidance to include real-life scenarios and be accessible and available in different languages and formats.

Intersections

- The consultation paper identified intersections with other statements of expectation and existing codes and sought stakeholders' feedback on any further intersections. Examples included in the consultation paper included the Charter of Aged Care Rights, the Aged Care Voluntary Industry Code of Practice, the Victorian Disability Service Safeguards Code of Conduct and the rights and responsibilities under the Department of Veterans' Affairs (DVA) Service Charter.
- Additional intersections identified by stakeholders included the Aged Care Quality Standards, the Aged Care Diversity Framework and Action Plans, the Human Rights Approach to Ageing and Health, the Australian Charter of Health Care Rights and voluntary industry codes of practice.
- Stakeholders felt it was critical to ensure the Code was consistent with, and reinforced, the expectations and requirements outlined in existing regulatory mechanisms and that it was important for any guidance/communications to describe how the Code sits alongside other regulatory requirements and codes of conduct.

Enforcement

- Stakeholders broadly supported the requirements for providers to comply with the Code and take reasonable steps to ensure that workers comply with the Code. Stakeholders also broadly

supported the requirement for aged care workers and governing persons to comply with the Code.

- Stakeholders generally supported the proposal for the ACQSC to monitor and enforce the Code in aged care. It is expected this will be similar to the way in which the NDIS Commission currently monitors and enforces the NDIS Code.
- Some stakeholders sought to understand how adherence to the Code would be proactively monitored to ensure breaches were not always raised after the fact (preventing harm to people using care, supports and services).
- In relation to complaints regarding potential breaches of the Code, stakeholders:
 - suggested standardising the investigation of complaints and enforcement of Code breaches across the regulators; and
 - suggested establishing a consolidated care and support sector complaints mechanism to capture all concerns regarding breaches of the Code, where different regulatory bodies could be notified of the relevant breach.
- A number of stakeholders sought to understand how workers would be protected, including where a worker is found to have breached the Code as a result of their employer's policies or procedures.
- In relation to banning orders, stakeholders raised some concerns about the significant impact of banning orders on workers including their ability to work. Some stakeholders highlighted that banning orders could present a real risk to workers, particularly those who may have little control over their working conditions.
- Stakeholders highlighted the importance of procedural fairness for workers, which is a principle of the enforcement of the NDIS Code.

Implementation considerations

- Some stakeholders raised concerns with the implementation of the current NDIS Code, including that providers are required to cover the costs of any independent investigation that stems from breaches of the NDIS Code.
- Stakeholders also flagged that the Code should be developed holistically as part of the broader aged care reforms (including the new Aged Care Act and revised Quality Standards), so they operate cohesively. Other relevant reforms to consider include the NDIS Quality and Safeguarding Framework Review.
- As part of implementation considerations, stakeholders raised the importance of training, support and guidance for both 'Code-covered persons' and those using care, supports and services.
- Some stakeholders noted that providing training would entail additional costs for providers and queried whether an orientation training module (similar to the one developed by the NDIS Commission) would be developed for aged and veterans' care.

Attachment A: The draft Code

In providing care, supports and services, a Code-covered person must:

- a. act with respect for individual rights to freedom of expression, self-determination and decision-making in accordance with applicable laws and conventions; and
- b. respect the privacy of people being provided with care, supports and services; and
- c. provide care, supports and services in a safe and competent manner, with care and skill; and
- d. act with integrity, honesty and transparency; and
- e. promptly take steps to raise and act on concerns about matters that may impact the quality and safety of care, supports and services provided to people being provided with care, supports and services; and
- f. take all reasonable steps to prevent, respond to, and provide care, supports and services free from, all forms of violence against, and exploitation, neglect and abuse of, people being provided with care, supports and services; and
- g. take all reasonable steps to prevent, respond to, and provide care, supports and services free from, sexual misconduct.

Attachment B: The NDIS Code

In providing supports or services to people with disability, a Code-covered person must:

- a. act with respect for individual rights to freedom of expression, self-determination and decision-making in accordance with applicable laws and conventions; and
- b. respect the privacy of people with disability; and
- c. provide supports and services in a safe and competent manner, with care and skill; and
- d. act with integrity, honesty and transparency; and
- e. promptly take steps to raise and act on concerns about matters that may impact the quality and safety of supports and services provided to people with disability; and
- f. take all reasonable steps to prevent and respond to all forms of violence against, and exploitation, neglect and abuse of, people with disability; and
- g. take all reasonable steps to prevent and respond to sexual misconduct.