Response to the National Disability Insurance Scheme (NDIS) Code of Conduct Discussion Paper

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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.

Recommendations

AHPA and its member associations believe the following recommendations will help ensure that an appropriate balance is struck between ensuring safeguards are in place to protect potentially vulnerable participants in the NDIS that receive allied health services, and ensuring unnecessary administrative burdens don't reduce the number of allied health practitioners willing and able to provide services under the Scheme.

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.

Introduction

Allied Health Professions Australia (AHPA) and its member associations support the need for a National Disability Insurance Scheme (NDIS) Quality and Safeguarding Framework. We recognise the importance of ensuring the Scheme supports protections for potentially vulnerable recipients of services. However, Australia's allied health professionals are already covered by a range of accreditation and regulation processes. Some allied health professions are regulated by the Australian Health Practitioner Regulation Agency (AHPRA) and their members must meet the requirements of the individual national boards covering those professions. This process also applies to medical professionals. Other allied health professions are self-regulating, meaning the professional associations administer their own national standards and guidelines independently or as part of the National Association of Self Regulating Health Professions (NASRHP). Allied health professionals may also be subject to a variety of other codes and safeguarding frameworks. Meeting these varying requirements can significantly impact on business costs and the viability of providing services under different schemes.

AHPA is concerned that the addition of a new Code of Conduct increases the administrative burden for allied health and other health professionals delivering services to consumers experiencing disability. The addition of an NDIS Code of Conduct introduces an additional, potentially complex interaction with the existing range of codes, standards and frameworks that apply to health professionals. The current proposal provides little clarity around where the Code sits in the hierarchy of other codes that are likely to apply to allied health professionals. It also fails to provide a foundation for why a new Code is required for health professionals and where existing codes fail to provide sufficient safeguards for consumers with disabilities.

AHPA notes the following codes of conduct currently covering allied health professionals:

1. Individual codes of conduct set by self-regulating allied health professional associations, for example Speech Pathology Australia whose members are bound by a Code of Ethics.
2. National code of conduct for health care workers developed by the Council of Australian Governments for health professions not registered by the Australian Health Practitioner Regulation Agency (AHPRA).
3. Professional codes of conduct covering allied health professions registered by AHPRA and administered by individual professional boards. An example is the code of conduct for occupational therapists developed by the Occupational Therapy Board of Australia.

AHPA believes that the NDIA should not impose additional costs and administrative burdens on practitioners and the Scheme where there does not appear to be a case for how existing Codes already covering health professionals are failing to provide the safeguards consumers require. AHPA is concerned that this is a further layer of bureaucracy that risks reducing the size of the workforce willing and able to provide services for consumers with disabilities. AHPA is also concerned that if any existing code is failing to provide the necessary protections for consumers with and without disabilities, these should be addressed within those codes to ensure appropriate safeguards for all Australian consumers regardless of whether they fall within the boundaries of the Scheme.

Specific commentary on the discussion paper

AHPA and its member associations are concerned about a range of recommendations and intended practices and processes outlined in the discussion paper. These have been outlined in greater detail below with reference to the relevant section in the paper.

1. Compulsory orientation module

A compulsory orientation module will be introduced for registered providers delivering supports, and all workers of registered providers engaged in the delivery of NDIS funded supports. This extends to allied health professionals providing NDIS funded supports (who could undertake this as part of their continuing professional development requirements). Information on the Code of Conduct and its requirements will be included as a topic in this orientation module. (p10)

AHPA and its member associations firmly believe that it is not appropriate or necessary to apply an additional code of conduct to allied health professionals, who are already covered by existing codes. However, AHPA recognises that there may still be a requirement for providers to undertake an orientation module. AHPA would like to understand how allied health professional associations (for self-regulating professions) and boards (for AHPRA-registered professions) will be engaged in the development and delivery of the compulsory orientation module. Allied health professional associations play a critical role in supporting the ongoing education of their members as well as for developing and endorsing CPD training. Engagement with these bodies will be important to ensure the training is appropriate and endorsed.

AHPA also wishes to understand how much time practitioners will need to invest in completing the module, noting that a significant proportion of allied health providers are likely to work not only with participants in the Scheme but also other consumers. For some practitioners, Scheme-funded services may only represent a small part of their overall workload. Depending on the time investment required of practitioners, many may choose not to register to provide Scheme-funded services as it unlikely to result in sufficient business benefit. This puts further pressure on the size of the workforce available to provide services to participants.

2. Unregistered providers

Participants who self-manage their funding and registered plan managers are able to engage unregistered providers to deliver services. Unregistered providers will also be subject to the Code of Conduct if they are receiving NDIS funding for their services. Information about the Code of Conduct, and how to comply, will be available to all participants. Self-managing participants will be strongly encouraged to provide information about the Code of Conduct and its obligations to any unregistered providers they engage. (p10)

AHPA and its members are concerned about the lack of clarity around the process for informing unregistered providers of NDIS services about their obligations under the NDIS Code of Conduct. AHPA believes this imposes a significant risk for practitioners who, in delivering services to consumers experiencing disability, become subject to legislative requirements of which they may be entirely unaware. The discussion paper notes that self-managing participants will be strongly encouraged to provide information about the Code but AHPA understands that in any situation where there is a failure to do so, the risk is carried entirely by the unregistered provider and not by the Scheme or participant. AHPA also wishes to understand where responsibility lies for ensuring

unregistered providers are acting appropriately and within the NDIS Code of Conduct or other appropriate codes.

3. Interaction with other codes regulating health professionals

Workers who are members of a professional association and required to comply with an existing professional code of conduct, such as nurses, psychologists and health care workers, will also be required to comply with the NDIS Code of Conduct. The NDIS Code of Conduct has been developed with reference to other relevant codes to ensure a consistent definition of acceptable practice, with minimal additional burden on workers. If a person is subject to a professional code of conduct, the Commission will coordinate any regulatory activity with the professional body or other regulator, as appropriate, to ensure there is no duplication and manage any overlapping areas of regulation. (p11)

AHPA notes that there is clear recognition in the discussion paper that a range of existing professional codes apply to allied health professionals. What is not clear is how these codes may fail to provide the necessary safeguards for participants. AHPA notes that a range of reviews have consistently found low levels of risk presented by the allied health professions. This is borne out by the 2014 report of the Independent Review of the National Registration and Accreditation Scheme, which found that allied health professions attracted very few complaints and notifications. The low level of risk presented by many allied health professions was the basis for the decision by State and Territory Parliaments not to regulate a range of allied health professions under the Australian Health Practitioner Regulation Agency (AHPRA).

The discussion paper acknowledges the introduction of this Code will create an additional burden for practitioners without acknowledging the potential impact. AHPA and its member associations are concerned that the NDIS is introducing a range of additional layers of bureaucracy for allied health practitioners providing services for participants—from new registration requirements, to new payment systems, to additional reporting requirements—each of which makes providing services more complex and expensive for providers. Where there are overlapping layers of regulation, this increases the risk of unintended outcomes due to uncertainty about the interaction between codes and the different bodies responsible for regulation. It is not clear how this risk will be managed by the coordination activities of the Commission.

AHPA notes that the discussion paper fails to provide a foundation for the need to impose an additional Code of Conduct on health practitioners. AHPA notes that the discussion paper instead acknowledges that in some cases the requirements of existing codes may in fact exceed those of the proposed NDIS Code of Conduct:

> *There are some professions where prohibitions on close personal, physical or emotional relationships are also contained in the professional standards or code of conduct applying to the relevant profession. Workers or providers found not to have complied with a professional code or standard regarding sexual misconduct in the course of providing NDIS supports or services will also be regarded as breaching the NDIS Code of Conduct. (p30)*

In light of this lack of foundation for the need for an additional code for health professionals, AHPA and its member associations strongly recommend a revised approach based on recognition of existing codes applicable to practitioners providing services to NDIS participants. Allied health practitioners who are subject to existing comprehensive codes of conduct for professions regulated

under AHPRA, by their professional bodies, or through the National Alliance of Self-Regulating Health Professions (NASRHP), should not have an additional burden of compliance with the NDIS Code of Conduct.

4. Complaints management and other policies and systems

All providers are required to have complaints management systems in place and most complaints can be quickly and effectively resolved with the relevant provider. (p12)

People with disability need to feel safe to make a complaint or provide negative feedback without fear of adverse consequences or loss of service. This obligation includes the requirement for all providers to have a clear process in place to address complaints or disputes from people with disability, and their families, carers, friends and advocates. Providers should have established a range of opportunities to seek feedback, ranging from day-to-day feedback, formal consultation and engagement, regular satisfaction surveys or consumer groups. (p25)

Providers should have policies that define violence, exploitation, abuse and neglect and workers should familiarise themselves with such guidelines. Providers and workers need to ensure appropriate systems and procedures are in place and followed to prevent violence, exploitation, neglect and abuse from occurring. (p16)

AHPA and its member associations support the important role of complaints management and other related policies and processes to ensure consumers are safeguarded and have appropriate conflict resolution measures available to them. AHPA believes that these requirements could be applied appropriately to allied health providers of Scheme-funded services while still applying a process that recognises existing codes for health professionals.

However, AHPA notes that developing and managing these processes is vastly different for a small, potentially part-time, provider than it is for a large non-government provider of disability services. AHPA believes support must be provided to assist providers to establish and implement these systems by providing guidance materials and templates where appropriate. This guidance should provide clarity for providers and consumers about how different bodies are involved in regulating the conduct of providers and how these might fit into the complaints resolution process.

AHPA also believes the Code should provide great clarity about how these expectations might be adjusted based on the type of provider and level of engagement (e.g. an allied health provider providing one hour per week of service compared to a provider of accommodation services).

5. Financial interests of providers

Providers and workers must place the interests and needs of participants first, ahead of their own financial interests. (p19)

AHPA and its member associations note that the allied health sector has a strong commitment to providing high quality supports to all consumers, including those experiencing disabilities. AHPA also notes that existing codes and ethical guidelines mandate that health professionals appropriately consider the interests and needs of the people to whom they provide services.

In light of that commitment and the existence of codes and guidelines guiding practitioners, AHPA questions the need for this point and wonders why it has been considered necessary. Further information and examples may assist in clarifying its inclusion, however without these AHPA questions whether the intention is to suggest a provider should provide services even where they might be financially disadvantaged.

AHPA notes that allied health services are already disadvantaged by the recent decision as part of the NDIS costs review not to apply indexation to any therapy services. Allied health professionals also often find themselves unable to claim for the time and costs involved in travelling to a participant's location to provide service. Given that allied health providers are already experiencing lost income where they are putting their patient's interests ahead of their own, AHPA is extremely worried about the long-term sustainability of allied health service delivery under the Scheme, particularly for small providers with no ability to cross-subsidise and otherwise balance income sources. It is our hope that the intention of including this requirement in the Code is not to further put financial pressure on allied health service providers.

6. Record keeping

Providers and workers must maintain accurate, legible and up-to-date records of NDIS supports and services provided and ensure that these are held securely and not subject to unauthorised access. (p25)

AHPA and its member associations support the need for health professionals to maintain appropriate records and to ensure that these are kept secure. Existing codes covering health professionals, including the Privacy Act, already mandate the need for secure record-keeping. The Code should provide additional information to clarify further if the intention is to expand on existing requirements for health professionals and it may be appropriate to provide resources and training for providers to assist them in understanding and implementing the required systems.