



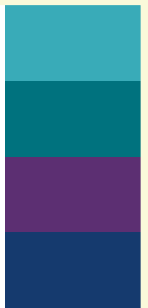
Australian Government

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

Care and support sector code of conduct

Consultation paper
November 2021

Contents



About the consultation	1
Purpose	1
How to make a submission	1
Context	2
Background	2
Overview of current care and support sector	3
How does the NDIS Code currently operate?	5
Overview of the NDIS Code	5
The operation of the NDIS Code	7
How is the draft Code intended to operate?	10
Who is the draft Code intended to apply to?	10
What will be included in the draft Code?	11
Describing the people protected by the draft Code and the care provided	12
What responsibilities would attach to the draft Code?	16
What would be the consequences of breaching the draft Code?	17
Intersections with other codes and expectations of behaviour	19
Next steps and further opportunities to engage	20
Attachment A – Marked up version of the NDIS Code	21

About the consultation



Purpose

The Australian Government is consulting in relation to the development of an enforceable code of conduct for the care and support sector (the draft Code) that will be applicable to providers and workers across aged care, veterans' care and disability support sectors.¹

The draft Code has been developed based on the existing National Disability Insurance Scheme Code of Conduct (the NDIS Code).

The purpose of this paper is to describe the content of the draft Code and the expected application of the Code in order to seek stakeholder views on:

- the language used in the draft Code
- the elements of the draft Code
- areas where the draft Code may need to be further adapted or adjusted to ensure it is fit for purpose across the care and support sector.

Feedback from this consultation process will further inform government decisions about the content and implementation of the Code.

How to make a submission

Making a submission

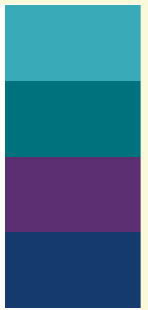
Stakeholders are invited to make a submission in response to this Consultation Paper. Stakeholders may choose to address some or all of the questions in the Consultation Paper or may wish to raise other issues relevant to the draft Code.

To assist stakeholders to provide feedback, a questionnaire has been developed and is available through the Department of Health's Consultation Hub platform. Questionnaire responses and submissions must be received **no later than midnight 10 December 2021**.

Thank you for your interest and we look forward to receiving your submission.

¹ While the content of the draft Code is yet to be settled, the legislation enabling a Code in aged care is currently before Parliament as part of the *Aged Care and Other Legislation Amendment (Royal Commission Response No. 2) Bill 2021*.

Context



Background

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 reduce red tape for employers, increase mobility of staff to work across the three sectors and strengthen safeguards for people who are provided with care, supports and services.

As part of the 2021–22 Budget, the Australian Government has begun to implement the National Care and Support Worker Regulation Budget measure to develop a common code of conduct and a nationally consistent pre-employment worker screening process across the aged care, veterans' care and disability support sectors. The Budget measure responds to the final report of the Royal Commission into Aged Care Quality and Safety, which recommended strengthening regulation of the personal care workforce and increasing protections for consumers from workers who pose an unacceptable risk of harm.

An extensive public consultation process about aged care worker regulation conducted in 2020 also confirmed the desirability of a common code and the value of harmonising regulation. Stakeholders also broadly supported alignment with the NDIS model noting that a large proportion of the workforce is shared across the care and support sector.

A code of conduct for the care and support sector is aimed at ensuring that all people who are provided with care, supports and services can have confidence in the workforce and feel equally safeguarded by the regulatory arrangements.

The implementation of a common code of conduct is just one initiative being undertaken to align care and support sector regulation. For more information on opportunities to provide feedback in relation to broader initiatives under the regulatory alignment work being undertaken by the Australian Government, please visit the website <https://www.health.gov.au/initiatives-and-programs/aligning-regulation-across-the-care-and-support-sectors>.

Overview of current care and support sector

The care and support sector comprises the following:

- NDIS – Provided through registered and unregistered NDIS providers and funded through the Commonwealth, state and territories to deliver NDIS supports to NDIS participants. The NDIA is responsible for the management of the scheme's funding and the NDIS Quality and Safeguards Commission (NDIS Commission) regulates providers delivering NDIS funded supports and services.
- Aged care – Provided predominantly through Commonwealth-funded aged care, including home care packages, residential care, respite care and flexible care by approved providers for assessed care recipients overseen by the Aged Care Quality and Safety Commission (the ACQSC) under the aged care legislation. There are services delivered to aged care consumers through funded services outside the aged care legislation through grant agreements, for example, through the Commonwealth Home Support Programme (CHSP).
- Veterans' care – Comprises a range of services delivered under various funded programs and includes services provided by registered health practitioners under Gold Cards and White Cards delivered to veterans and eligible persons under the veterans' legislation and funded by the Department of Veterans' Affairs (DVA). At this stage, it is proposed that the Code apply to the providers and workers who provide care through the Veterans' Home Care and Community Nursing programs with any further changes to be considered by DVA in response to consultation with the veterans' care sector. The Veterans' Home Care (VHC) program provides similar services to those offered in aged care under the Commonwealth's Home Care Packages program. Services include domestic assistance, personal care, respite care either in the home, a residential aged care facility or through Emergency Short-Term Home Relief (ESTHR), and funding for safety-related home and garden maintenance. The Community Nursing (CN) program provides services for long-term high-level care needs over the short to long term, including in-home nursing and personal care.

These three sectors differ in the following ways:

- the people who can access care, supports and services
- the way providers are funded to deliver care, supports and services to individuals (including different levels of self-management)
- the way care, supports and services are managed and coordinated
- the size of the market within each sector
- the pre- and post-market obligations of providers in each sector.

The sectors are large:

- In 2019–20, 391,999 NDIS participants were provided with support, growing to 466,619 NDIS participants at the end of 2020-21.² Support is provided from over 11,600 active NDIS providers employing around 270,000 workers across 20 occupations. By 2024, around 500,000 participants will require support from almost 353,000 workers.³
- In 2019-20, over 1.3 million people were provided with aged care⁴ from approximately 2,263 unique providers⁵ employing more than 434,000 workers.⁶ By 2024, the aged care workforce is expected to grow by almost 20 per cent, equivalent to 57,000 people, to meet the needs of an ageing population.⁷
- In 2019-20, DVA had 433 contracts with providers to deliver services under the VHC and CN programs.⁸ There were 250,611 DVA clients with entitlement for health and care services with 39,816 receiving services through the VHC Program, and 14,126 receiving services through the CN Program⁹.

Many workers provide care, supports and services in more than one sector with around 36 per cent of aged care providers also operating in the NDIS or veterans' care programs, and the majority of providers operating in veterans' care operate in the other sectors too.¹⁰

2 Australian Government, [Background Paper – Aligning regulation across Australia's care and support sectors](#), p. 4.

3 There were 270,000 estimated workers in 2020. Workforce forecasts are from Department of Social Services and AlphaBeta analysis of National Disability Insurance Agency (NDIA) data. See [NDIS National Workforce Plan 2021-2025](#).

4 As at 2019-20, 66,873 people received residential respite care, 244,363 people received permanent residential aged care, 173,743 people received care through a home care package and 839,373 people received home support through the CHSP, see the Department of Health, [2019-20 Report on the Operation of the Aged Care Act 1997](#).

5 Department of Health analysis, noting that this includes 845 approved providers of residential aged care, 920 approved providers of home care packages, 129 flexible care providers and 1,452 organisations funded to deliver CHSP services who may deliver one or more of the services, see the Department of Health, [2019-20 Report on the Operation of the Aged Care Act 1997](#).

6 Department of Health, [2020 Aged Care Workforce Census Report](#), September 2021, including residential, home care and CHSP noting that the 2020 Aged Care Workforce Census did not include National Aboriginal and Torres Strait Islander Flexible Aged Care (NATSIFAC) Program and Transition Care Program with residential data (which was included in the 2016 Aged Care Workforce Census).

7 Based on an interpretation of Productivity Commission's growth estimates of workforce headcount, as at 2020.

8 Data provided by the Department of Veterans' Affairs about number of DVA clients receiving care in 2019-20 and the number of contracted providers as at 30 June 2021.

9 Australian Government, [Background Paper – Aligning regulation across Australia's care and support sectors](#), p. 4.

10 Australian Government, [Background Paper – Aligning regulation across Australia's care and support sectors](#), p. 5.

How does the NDIS Code currently operate?



Overview of the NDIS Code

Noting that the draft Code has been developed based on the NDIS Code, it is important to understand the elements of the existing NDIS Code.

The NDIS Code is established under section 73V of the *National Disability Insurance Scheme Act 2013* (NDIS Act) and contained in the *National Disability Insurance Scheme (Code of Conduct) Rules 2018*. The current version of the NDIS Code has been in place since July 2018 and was developed after extensive consultation with stakeholders including providers, workers and people with disability.

The NDIS Code was developed with regard to the following informing documents:

- The United Nations Convention on the Rights of Persons with Disabilities
- The National Disability Strategy 2012–2020
- The *National Disability Insurance Scheme Act 2013*
- The National Standards for Disability Services
- The National Standards for Mental Health Services
- The Australian Consumer Law
- Disability discrimination legislation
- Carers recognition legislation
- Work health and safety legislation
- The National Plan to Reduce Violence Against Women and their Children 2010–2022
- The National Framework for Protecting Australia’s Children 2009–2020.

The NDIS Code delivers on the [NDIS Quality and Safety Framework](#) in providing a nationally consistent approach to ensuring safeguards are in place including statements around the expectations for providers and their workers to deliver high quality supports to people with disability.

The NDIS Code applies to all NDIS providers and workers employed or otherwise engaged by NDIS providers to deliver supports and services in the NDIS (described in the NDIS Code as 'Code covered-persons'). All workers who provide supports and services to NDIS participants are subject to the NDIS Code. This includes employees, key personnel, contractors, agents, registered health professionals and volunteers engaged by an NDIS provider. The NDIS Code describes seven high level expectations for safe and ethical services and supports.

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.

Further guidance about the practical operation of the seven elements of the NDIS Code are set out in guidance for providers and guidance for workers (discussed below).

The operation of the NDIS Code

How is the NDIS Code enforced?

The NDIS Commission has responsibility for overseeing the compliance of workers and providers with the NDIS Code when delivering supports and services under the NDIS. Compliance with the NDIS Code also requires workers and NDIS providers to consider how they conduct themselves when delivering supports and services under the NDIS, and places certain obligations on them to raise and act on concerns.

Workers are expected to:

- adhere to the NDIS Code
- identify and report breaches to the NDIS provider with whom they are engaged, or as a complaint to the NDIS Commission if it cannot be raised internally
- use their organisation's operational policies, procedures and training, in addition to their own professional experience and judgment, to comply with the NDIS Code.

NDIS providers are expected to:

- adhere to the NDIS Code
- take steps to ensure their workers adhere to the NDIS Code
- investigate and take appropriate action to address any breaches.

NDIS providers should use their existing employee engagement, human resource and governance arrangements to ensure compliance with the NDIS Code. This will include considering whether operational policies and procedures, supervisory arrangements and training activities give effect to the requirements of the NDIS Code.

In addition, registered NDIS providers are required, as part of the conditions of registration, to develop and maintain a complaints management and resolution system, and an incident management system that includes obligations to act on, resolve and take preventative measures in response to complaints and incidents. These may involve breaches of the NDIS Code.

Anyone can make a complaint about NDIS funded supports and services, including alleged breaches of the NDIS Code. This includes people with disability, family members, friends, workers, advocates and other providers.

The NDIS Commission may become aware of potential breaches of the NDIS Code through:

- complaints made to the NDIS Commission
- the notification of reportable incidents by registered NDIS providers
- the notification of certain events, including an event that significantly affects a provider's ability to comply with any of the provider's conditions of registration¹¹
- referrals from other government agencies, including the NDIA and police services.

Potential breaches of the NDIS Code are investigated by the NDIS Commission, including as part of the NDIS Commission's complaint resolution and reportable incident oversight functions. The NDIS Commission can also commence compliance monitoring and/or an investigation based on any information it receives about a potential breach, or multiple potential breaches, of the NDIS Code whether it is in relation to complaints, reportable incidents or from any other source.

The NDIS Commission can consider the liability of the relevant NDIS provider when looking into an instance of worker non-compliance with the NDIS Code and may undertake compliance or enforcement action against both an NDIS provider and workers concerning a single instance of non-compliance.

Where the NDIS Code is found to be breached, the NDIS Commission can take a range of actions as appropriate, including education, compliance and enforcement action such as prohibiting workers and/or providers from operating in the NDIS market through banning orders.

¹¹ Paragraph 13A(1)(a), *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*.

Banning orders in the NDIS context

In the NDIS context, banning orders can be made against an NDIS provider (including a former NDIS provider) or a person who is or was employed or otherwise engaged by an NDIS provider in circumstances where it is the most appropriate regulatory option available to prevent people with disability from experiencing harm arising from poor quality or unsafe services provided under the NDIS.

A banning order may only be made, in accordance with natural justice principles, where the person has been given an opportunity to make submissions to the NDIS Commission on the matter, except in the following circumstances:

- where there is immediate danger to the health, safety or wellbeing of a person with disability
- where the NDIS Commission has revoked the registration of the NDIS provider.

Where the NDIS Commission is satisfied that it is appropriate to do so, it may vary or revoke a banning order. This may be done on the NDIS Commission's own initiative or on application by the person against whom the order was made.¹²

Breaching a banning order carries a civil penalty which is substantial indicating the serious nature of non-compliance with a banning order.

Banning orders were strengthened in November 2020 to expand the powers of the NDIS Commission to ban unsuitable providers and workers from entering the market.¹³

The intent was to create additional banning powers to prevent people who may pose a risk of harm to NDIS participants from entering or re-entering the NDIS market, and to allow the NDIS Commission to use information from sources outside the NDIS, such as a person's conduct in other sectors to ban an unsuitable person from entering the NDIS market in the first place.

The NDIS Commission publishes compliance action including banning orders made against NDIS providers and workers who have breached the NDIS Code on its [website](#).

Information concerning identified worker non-compliance with the NDIS Code, including outcomes and findings from the NDIS Commission's investigations, may be provided to the relevant state or territory worker screening unit (WSU) where the worker has applied for an NDIS Worker Screening Check and/or holds an NDIS Worker Screening Clearance. The purpose of this disclosure is to enable the WSU to undertake a risk assessment regarding the worker's suitability to hold an NDIS Worker Screening Clearance.

¹² See section 73ZO(2) of the NDIS Act.

¹³ See [National Disability Insurance Scheme Amendment \(Strengthening Banning Orders\) Act 2020](#).

How is the draft Code intended to operate?



Who is the draft Code intended to apply to?

In the context of the NDIS, the Code would continue, as per current arrangements, to apply to:

- NDIS providers including:
 - registered NDIS providers
 - unregistered NDIS providers
 - providers delivering Commonwealth Continuity of Support Programme
 - providers delivering Commonwealth Disability Support for Older Australians
 - providers delivering Commonwealth Continuity of Support Programme relating to Specialist Disability Services for Older People
 - providers receiving funding under certain arrangements, including NDIS community partners such as Local Area Coordinators
 - any other providers prescribed by the NDIS legislation from time to time.
- persons employed or otherwise engaged by the above NDIS providers, including employees, key personnel, contractors, agents, registered health professionals and volunteers.

In the context of aged care, the Code is intended to apply from 1 July 2022 to:

- approved providers of residential, home and flexible care (noting that the Code is not intended to apply to CHSP in the first stage of implementation)
- aged care workers being:
 - an individual employed or otherwise engaged (including on a voluntary basis) by the approved provider
 - an individual who is employed or otherwise engaged (including on a voluntary basis) by a contractor or subcontractor of the approved provider to provide care or other services to care recipients.
- the governing persons¹⁴ of an approved provider (identified key personnel).

This would mean that approved providers and their workforce, inclusive of registered health professionals, senior executives and volunteers, would be required to comply with provisions in the Code.

In terms of veterans' care, it is proposed that, in the first instance, the following are covered for the VHC and CN programs:

- providers who are contracted and funded by the DVA to deliver services under the VHC and CN programs
- key personnel
- workers engaged by those providers.

However, note that any expansion to other veterans' care services will be considered by DVA in response to consultation with the veterans' care sector which may impact application of the Code.

What will be included in the draft Code?

The elements of the draft Code

Early stakeholder feedback identified that the NDIS Code provides a good basis on which to develop the draft Code. This is because the NDIS Code:

- is well known and understood, including by many aged care and veterans' care workers who also work in the NDIS
- was developed relatively recently and involved extensive consultation
- includes concepts that are relevant to the care and support sector and reflects a number of concepts that are already reflected in obligations under existing legislation in other sectors.

¹⁴ Note that this term is being introduced into the aged care legislation by the *Aged Care and Other Legislation Amendment (Royal Commission Response No. 2) Bill 2021* and refers to a certain scope of key personnel of the provider including any person who has authority or responsibility for, or significant influence over, planning, directing or controlling the activities of the entity at that time.

As such, it is proposed that the seven elements of the NDIS Code would be largely maintained, with NDIS, aged care and veterans' care-specific requirements and detailed expectations regarding each of the elements reflected in supporting guidance.

Consultation questions

1. Do you support the inclusion of the seven elements drawn from the NDIS Code?
2. If not, why not?
3. Are there any other elements that should be included in the draft Code?
4. If so, what elements should be included and why?

The language used in the draft Code

The language used in the draft Code (set out below) differs slightly from the existing NDIS Code to reflect:

- language that:
 - is inclusive of the people who are provided with care, supports and services in any of the three sectors
 - incorporates references to all of the relevant descriptors of care used in different sectors - care, supports and services.
- minor amendments to the NDIS Code to reflect stakeholder feedback about the need to expressly prohibit certain conduct from occurring in the delivery of care, supports and services (see elements f) and g) discussed below).

Describing the people protected by the draft Code and the care provided

Currently the language used in legislation and guidance materials to describe people who are provided with care, supports and services varies across the sectors and includes:

- care recipient, older person or consumer in aged care
- NDIS participant or person with disability in the NDIS
- veteran, DVA client or eligible person in veterans' care.

Similarly, there are different terms used to describe 'care', including:

- care and services (aged care)
- services and supports (NDIS)
- services or treatments (DVA).

To generalise the language of the Code for all sectors, in referencing people who are protected by the draft Code and in describing the care, the language of 'people being provided with care, supports and services' and 'care, supports and services' is proposed.

Stakeholder views are sought about the language used in the draft Code.

The proposed draft Code

Draft Care and support sector code of conduct

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 A provides a comparison version of the proposed draft Code relative to the current NDIS Code to highlight these changes.

Consultation questions

5. Is the language proposed in the draft Code relevant across the care and support sector?
6. If not, what language is preferred and why?

Guidance

The NDIS Code is supported by two sets of guidance (one for providers and one for workers). This guidance:

- explains why each element of the NDIS Code is important and outlines examples of conduct or circumstances that may be taken into consideration when assessing whether a worker or provider has complied with the NDIS Code
- contains scenarios that are examples of situations that could arise during provision of services or supports. These scenarios consider how the NDIS Code might be applied variously by providers and workers.

Example of how guidance would be used to inform the Code

As an example, under element c) of the NDIS Code, the high-level expectation is that both NDIS providers and workers are required to 'provide supports and services in a safe and competent manner, with care and skill.'

The **guidance for workers** explains that this element involves **five sub-elements**, being to:

- obtain and maintain the expertise and competence necessary for the supports and services delivered
- provide services consistent with relevant professional codes
- meet relevant work, health and safety requirements
- provide services only when free from the influence of alcohol or drugs
- ensure appropriate and accurate records are kept.

Under each of these sub-elements, there is an explanation of the relevant NDIS legislation and scenarios in which workers might find the NDIS Code is triggered.

Similarly, the **guidance for providers** explains that this **same element has different sub-elements applicable to how providers** are expected to conduct themselves. These sub-elements include a responsibility to:

- ensure workers have the necessary training, competence and qualifications for the supports and services delivered
- ensure their workers are delivering services consistent with relevant professional codes
- meet relevant work health and safety requirements
- maintain appropriate and accurate records and follow security procedures
- hold appropriate insurance.

Guidance is targeted at assisting the provider or worker to understand how the NDIS Code applies specifically to their experience as either a provider or worker.

There are many concepts that are similar between aged care and the NDIS, including similar regulatory requirements around incident management, rights of those being provided with care, supports and services, etc. However, there are also differences.

It is intended that, like with the NDIS Code, detailed guidance about what each of these seven elements of the Code means in practice for the relevant sector will be drafted to supplement the Code. This would include guidance for providers and guidance for workers relevant to the context of the care provided and the legislative/funding scheme in place to contextualise what the Code means in practice.

This guidance would be developed following the consultation on the draft Code, with further consultation on the resources prior to publication.

Consultation questions

7. At a high level, what should be covered in the detailed guidance to support providers and workers to adhere to the Code in the aged care and/or veterans' care context?

What responsibilities would attach to the draft Code?

In the context of the NDIS, application of the Code would continue to require:

- NDIS providers and persons employed or otherwise engaged by NDIS providers to comply with the Code, and meet the expectations described in the guidance including for providers to take all reasonable steps to assist and support workers in meeting their obligations under the Code.

Similarly, in the context of aged care, application of the Code is proposed to require:

- approved providers to:
 - comply with the Code (in the manner described in the guidance relevant to providers)
 - take reasonable steps to ensure that aged care workers and governing persons of the provider comply with the Code.
- aged care workers and governing persons to comply with the Code (in the manner described in guidance relevant to governing persons and workers).

In relation to veterans' care it is also proposed that providers of care under the VHC and CN programs would be required to also take reasonable steps to ensure that individuals employed or engaged by the provider comply with the Code.

Across the care and support sector, providers would be expected to use their existing employee/worker engagement, human resource and governance arrangements to ensure compliance with the Code, and individual workers would be expected to use these policies, procedures and training, in addition to their own professional experience and judgment relevant to their role to comply with the Code.

What would be the consequences of breaching the draft Code?

The Code is proposed to be enforced by the NDIS Commission for the purposes of its functions under the NDIS Act, and by the ACQSC in the aged care and veterans' care context.

The same process that currently exists for identifying and responding to potential breaches of the NDIS Code will apply. That is, the NDIS Commission, as part of its various functions, may monitor and/or investigate potential breaches and consider compliance and enforcement action designed to remediate, mitigate and/or prevent ongoing risks associated with such non-compliance. The NDIS Commission will retain the full range of compliance and enforcement tools available to respond to breaches of the Code, including its power to prohibit providers and/or workers from operating in the NDIS market through banning orders that are also published on the NDIS Commission's website.

In the aged care context, it is proposed that:

- when the ACQSC becomes aware of a potential breach of the Code (for example, through a complaint to the ACQSC), the ACQSC could investigate and may issue notices to request people to attend, to answer questions and give information or documents where it believes on reasonable grounds that a person has information or documents relevant to whether an aged care provider, worker or governing person is complying with the Code
- the ACQSC could take compliance and enforcement action against providers using existing powers under the aged care legislation including seeking enforceable undertakings, injunctions, sanctioning the provider, seeking to impose a civil penalty order (either enforced through an infringement notice or civil penalty proceeding) or revoking their approval to provide care (informed by the significance of the breach)
- civil penalty orders and banning orders could be imposed against aged care workers and governing persons where the breach is so significant as to warrant such action.

Much like the protections afforded under the NDIS legislation, workers and governing persons in aged care would also be afforded procedural fairness.

Consideration will be given to publishing compliance and enforcement action on the ACQSC's website where:

- provider breaches of the Code are significant¹⁵
- a banning order is placed on an aged care worker, a governing person or a person prohibited or restricted from being involved in or being engaged in aged care.

As part of the transition to harmonising worker screening and regulation with the NDIS, the outcomes of investigations may be sent to state and territory worker screening units for consideration in relation to a worker's screening check and clearance to work in aged care. It is intended that this would result in the conduct informing the status of any existing or future NDIS Worker Screening Check as well and be recognised for the purposes of clearing a worker to work in a care and support sector role where clearance is required.

Relevant information may also be shared between the ACQSC and other regulatory and complaints handling bodies (for example, Ahpra, state and territory health complaints entities and the NDIS Commission).

Consultation questions

8. What considerations are relevant to enforcing the Code in the aged care context?
9. What considerations are relevant to enforcing the Code in the veterans' care context?

¹⁵ See the existing [Non-compliance register](#) on the Aged Care Quality and Safety Commission's website.

Intersections with other codes and expectations of behaviour

In addition to the draft Code, there are other relevant statements of expectations of worker and provider behaviour that may intersect with the Code.

For example¹⁶:

- in aged care, there is the [Charter of Aged Care Rights](#) that details the rights aged care consumers have in relation to how they are treated (and therefore how the workforce is expected to act towards them) and the [Aged Care Voluntary Industry Code of Practice](#) which sets out a framework and key principles for proactive industry-led improvement to meet and exceed community expectations about aged care service delivery
- in veterans' care, there are [rights and responsibilities](#) for DVA clients under the VHC program and a [Service Charter](#)
- since July 2020, all disability workers providing disability services in Victoria are required by law to comply with the [Disability Service Safeguards Code of Conduct](#) administered by the Victorian Disability Worker Commission. The Disability Service Safeguards Code of Conduct adopts the NDIS Code to ensure consistency in the requirements for worker conduct in Victoria, regardless of how the services are funded.¹⁷

There are also intersections with existing professional codes of conduct, like codes of conduct for unregistered health practitioners, national code of conduct for health care workers, and health practitioner codes of conduct and practice, such as the Nursing and Midwifery Board of Australia's [Code of conduct for nurses](#).

Consultation questions

10. What other intersections need to be considered as part of the implementation of the Code?

¹⁶ Not an exhaustive list.

¹⁷ Further information about the Disability Service Safeguards Code of Conduct is found on the [Victorian Disability Worker Commission website](#).



Next steps and further opportunities to engage

Stakeholder submissions will be closely considered and will inform the further development of the Code.

For more information on opportunities to provide feedback in relation to broader initiatives under the regulatory alignment work being undertaken by the Australian Government, please visit the website <https://www.health.gov.au/initiatives-and-programs/aligning-regulation-across-the-care-and-support-sectors> or email RegulatoryAlignmentTaskforce@health.gov.au.

Further information about how to get involved in any aged care regulatory projects is also available on the Aged Care Engagement Hub, at <https://agedcareengagement.health.gov.au/get-involved>.

Attachment A – Marked up version of the NDIS Code

The below provides a comparison of the changes made to the NDIS Code as part of developing the draft Code, including where terms have been removed (struck out) and terms have been added (highlighted) to the NDIS Code to deliver on a national code of conduct for the care and support sector.

The NDIS Care and support sector code of conduct

In providing **care, supports and services** ~~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~~ **being provided with care, supports and services**; and
- c) provide **care, supports and services** ~~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** ~~supports and services~~ provided to people ~~with disability~~ **being provided with care, supports and services**; and
- f) take all reasonable steps to prevent, ~~and respond to,~~ **and provide care, supports and services free from,** all forms of violence against, and exploitation, neglect and abuse of, people ~~with disability~~ **being provided with care, supports and services**; and
- g) take all reasonable steps to prevent, ~~and respond to,~~ **and provide care, supports and services free from,** sexual misconduct.

