



Australian Government

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

Overview of regulation across aged care, disability support and veterans' care

Supplement to the consultation paper on alignment of regulation

November 2021



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Introduction



This document has been developed as a supplement to the consultation paper, **'Aligning regulation across aged care, disability support and veterans' care'**.

This document provides a high-level overview* of some of the different elements of quality and safety regulation across the care and support sector:

- the regulators
- provider approval/registration processes
- rules and standards
- monitoring, auditing and reporting
- complaints
- compliance and enforcement
- education
- consumer information.

This information may help you to respond to the questions asked in the consultation paper.

For each area of regulation, you may also want to consider the following questions:

- What challenges exist because of differences or overlaps across the care and support sector in the specific area of quality and safety regulation?
- From your perspective, what solutions to the challenges you have identified in the specific area of regulation should be considered? What would be the benefits and risks of these solutions?

* Note the overview is not a comprehensive list of all elements of quality and safety regulation.

The regulators

There are five (5) primary regulators of the care and support sector. Providers and workers have obligations they need to meet to each regulator responsible for the schemes or programs they are funded under. An overview is provided in Table 1.

Table 1: The regulators across the care and support sector

	Aged Care	Disability services		Veterans' care
		NDIS	Non-NDIS	
Regulators	Aged Care Quality and Safety Commission (ACQSC) and Department of Health	NDIS Quality and Safeguards Commission (NDIS Commission)	Department of Social Services (DSS)	Department of Veterans' Affairs (DVA)
Regulatory approach	<p>The ACQSC takes a responsive risk-based approach to regulation. It focuses activities on the areas of greatest potential harm to the safety, health and well-being of aged care consumers through the use of intelligence to identify systemic and provider-based risk. The ACQSC responds with proportionate action that takes into account the context, conduct and culture of the organisations they regulate.</p> <p>The ACQSC also has a focus on engagement and empowerment of consumers, including through the management and resolution of complaints, and engagement and education of providers.</p>	<p>The NDIS Commission's regulatory approach is proportionate, risk-based and aims to achieve a balance between supporting people with disability to make informed choices, while also promoting high quality supports and services with appropriate safeguards to support the development of a responsive and effective market.</p> <p>To achieve these objectives, the NDIS Commission uses a range of strategies, including education, working with other agencies, analysing risks, and enforcing the law.</p>	<p>DSS regulates disability services programs through grant agreements that stipulate quality and safety requirements.</p>	<p>DVA regulates Veterans' Home Care (VHC) and Community Nursing providers through fee-for-service contracts.</p> <p>Contracts include the expectation that service providers will meet established standards and accreditation where relevant.</p> <p>DVA has a focus on contract performance and claiming patterns rather than compliance.</p>

Provider approval/registration

There are certain requirements that providers are expected to meet when providing care and support services to consumers and participants. Regulators may check that these requirements have been met before approving or registering providers to operate in the market. Regulators can also cancel approval or registration if the requirements have not been met, or not been met to a satisfactory level. Provider approval/registration works differently across aged care, disability support and veterans' care. Details are provided in Table 2.

Note: the Government has already committed to aligning worker screening processes.
To find out more, visit the aged care engagement hub: agedcareengagement.health.gov.au

Table 2: Provider approval/registration across the care and support sectors

	Aged Care	Disability services		Veterans' care
		NDIS	Non-NDIS	
Provider approval/ registration	<p>Providers need to be approved to provide services under:</p> <ul style="list-style-type: none"> home care packages residential aged care flexible care, including multi-purpose services, innovative care, transition care and short-term restorative care. <p>Providers may also apply for government grants, but do not need to be approved to provide services, under:</p> <ul style="list-style-type: none"> the Commonwealth Home Support Programme (CHSP) the National Aboriginal and Torres Strait Islander Flexible Aged Care Program. <p>Organisations which provide services through the CHSP or NATSIFACP programs are referred to as service providers and are required to provide services in line with their funding agreements with the Commonwealth.</p>	<p>To be a registered NDIS provider, providers must be assessed by an approved quality auditor (verification or certification audit) and undergo a suitability assessment, including assessment of key personnel</p> <p>Not all NDIS providers need to be registered with the NDIS Commission. Providers must be registered if they:</p> <ul style="list-style-type: none"> deliver services and supports to NDIS participants who have their plan managed by the National Disability Insurance Agency (NDIA) deliver specialist disability accommodation, use restrictive practices, or develop behaviour support plans, or deliver services or supports to older people with disability who are receiving continuity of supports under the Commonwealth Continuity of Support Programme relating to Specialist Disability Services for Older People. 	<p>Application through grant rounds.</p>	<p>Providers are engaged through either an open tender process (VHC) or an open panel arrangement (Community Nursing).</p> <p>The contracts require providers to meet certain conditions. VHC and Community Nursing require provider personnel to maintain appropriate qualifications and competencies to deliver services.</p>

Rules and standards

There are certain rules and standards that care and support providers and workers must adhere to. These rules and standards set out requirements for the safety and quality of the supports and services provided to consumers and participants. The rules and standards are similar but different across aged care, disability support and veterans' care. Details of some of these key rules and standards are provided in Table 3.

Note: the Government has already committed to developing a Code of Conduct for the care and support sector, based on the NDIS Code of Conduct. To find out more, visit the aged care engagement hub: agedcareengagement.health.gov.au

Table 3: Standards and rules across the care and support sector

	Aged Care	Disability services		Veterans' care
		NDIS	Non-NDIS	
Standards, codes and charters	<p>Government-funded aged care providers are required to comply with eight Aged Care Quality Standards.</p> <ol style="list-style-type: none"> 1. Consumer dignity and choice 2. Ongoing assessment and planning with consumers 3. Personal care and clinical care 4. Services and supports for daily living 5. Organisation's service environment 6. Feedback and complaints 7. Human resources 8. Organisational governance <p>Government-funded aged care providers are expected to adhere to the Charter of Aged Care Rights, which specifies 14 rights of aged care consumers in relation to safe and high quality care; dignity, respect, independence, and privacy; choice and control; information; advocacy; and complaints.</p> <p>Aged care providers are also required to support consumers to understand the Charter.</p>	<p>Registered NDIS providers must demonstrate compliance with the NDIS Practice Standards that apply to the types of supports and services they deliver.</p> <p>The NDIS Practice Standards are modular. All registered providers must meet standards for managing risks, incidents, complaints and their human resources.</p> <p>Providers delivering complex supports must meet core module standards, and supplementary modules where they also deliver specialist supports.</p> <p>The core module covers:</p> <ul style="list-style-type: none"> • rights of participants and responsibilities of providers • governance and operational management • the delivery of supports • the environment in which supports are delivered. <p>The supplementary modules cover:</p> <ul style="list-style-type: none"> • High intensity daily personal activities • Specialist behaviour support, including implementing behaviour support plans • Early childhood supports • Specialised support co-ordination • Specialist disability accommodation. <p>The NDIS Code of Conduct (the Code) applies to all registered and unregistered NDIS providers and workers employed or otherwise engaged by NDIS providers to deliver supports and services in the NDIS. All workers who provide supports and services to NDIS participants are subject to the Code. The Code describes seven high level expectations for safe and ethical services and supports.</p>	<p>There are six (6) National Standards that apply to disability service providers:</p> <ol style="list-style-type: none"> 1. Rights 2. Participation and Inclusion 3. Individual Outcomes 4. Feedback and Complaints 5. Service Access 6. Service Management. <p>Most grants expect providers to comply with relevant codes of conduct/ethics and industry applicable legislation.</p> <p>Disability Employment Services providers have a Code of Practice.</p>	<p>VHC providers are required to adhere to the Aged Care Quality Standards, and the Charter of Aged Care Rights. VHC providers are also required to ensure their workers adhere to the National Code of Conduct for Health Care Workers.</p> <p>DVA refers to the Australian Commission on Safety and Quality in Health Care in relation to standards for the provision of Community Nursing services.</p> <p>Community Nursing providers are required to comply with national standards and the code of conduct for nurses developed by the Nursing and Midwifery Board of Australia (for registered/enrolled nurses) and with standards set out in the Community Services Training Package (for personal care workers).</p>

	Aged Care	Disability services		Veterans' care
		NDIS	Non-NDIS	
Specific rules regarding behaviour support	<p>It is a requirement for all residential aged care providers to have Behaviour Support Plans (BSP) in place for consumers that need them.</p>	<p>Registered providers are required to facilitate development of a behaviour support plan (BSP) by a behaviour support practitioner considered suitable by the NDIS Commissioner.</p> <p>Providers are required to seek authorisation for use of any regulated restrictive practice (seclusion, chemical, mechanical, physical and environmental restraint) in line with any relevant state or territory requirements.</p> <p>Behaviour support practitioners must lodge a BSP in the NDIS Commission portal.</p> <p>Monthly reporting to the NDIS Commission on use of regulated restrictive practices (RRPs) is required for providers who implement RRP.</p>	-	<p>VHC service providers are required to provide training to all relevant personnel to assist them in responding to, and managing, behaviours of concern.</p> <p>More broadly DVA offers providers training in understanding the military experience, veteran mental health and suicide prevention.</p>
Specific rules regarding restrictive practices	<p>Residential aged care providers who use restrictive practices are required to:</p> <ul style="list-style-type: none"> only use restrictive practices as a last resort, after alternative strategies have been applied to the extent possible regularly monitor for signs of distress or harm, side effects and adverse events, changes in wellbeing, as well as independent functions or ability to undertake activities of daily living consider the necessity and effectiveness of the restrictive practice on an ongoing basis, and cease or alter if no longer required or ineffective consider (to the extent they are able to) whether environmental changes would reduce or remove the need for the use of a restrictive practice. <p>Providers are required to report on the use of restrictive practices through the Quality Indicator Program and as a Serious Incident Report where they have been used inappropriately in a residential aged care setting.</p>	<p>Registered providers who use restrictive practices are required to:</p> <ul style="list-style-type: none"> Be registered with the NDIS Commission for the type of support they are providing Submit monthly reports to the NDIS Commission on the use of restrictive practices Ensure staff are appropriately trained to implement positive behaviour strategies or use restrictive practices Notify the NDIS Commission in the event of any unplanned or unapproved use of a restrictive practice through the reportable incident process, and Help their staff, NDIS participants, their families, and other decision-makers to understand the NDIS Commission's behaviour support function. 	-	<p>DVA does not have specific requirements for restrictive practices.</p>

Monitoring, auditing and reporting

There are ways that regulators can check that providers and workers are following the rules and assess/audit how well they are doing it, and for providers to let the regulator know of incidents like harm to a consumer. The monitoring and assessment/audit processes and reporting requirements are different under aged care, disability support and veterans' care. Details are provided in Table 4.

Table 4: Monitoring, auditing and reporting requirements across the care and support sector

	Aged Care	Disability services		Veterans' care
		NDIS	Non-NDIS	
Auditing and monitoring	<p>An approved provider may apply to the ACQSC for accreditation of a residential aged care service. The ACQSC considers the application in making a decision whether to accredit or not accredit the service. If the ACQSC decides to accredit the service accreditation is for a period of 12 months. An 'assessment contact' is usually made 1-2 months after residents have moved into the service. An unannounced assessment contact is also conducted prior to the expiry of the initial 12 months accreditation period. An approved provider can apply for re-accreditation. The ACQSC conducts an unannounced site audit prior to making an accreditation decision.</p> <p>Home care providers are audited under a process called a 'quality review', which is undertaken at least once every three (3) years, but not necessarily at market entry.</p>	<p>Registered NDIS providers must undergo a third party audit by an approved quality auditor (verification or certification audit).</p> <p>Registered NDIS providers are audited at application, and then every three (3) years following. If the provider's registration is subject to certification and delivery of services has not yet commenced, the initial audit is provisional-only.</p> <p>Applicants must also complete a self-assessment against the applicable NDIS Practice Standards.</p> <p>For registered providers that are subject to certification, an on-site audit will be undertaken at the mid-cycle point (18 months).</p> <p>A re-certification or verification audit is conducted in the third year.</p>	<p>Disability Employment Services and Australian Disability Enterprises are subject to auditing for the purposes of certification prior to being able to apply for grants-based funding. Acquittals are also required.</p> <p>For many grant programs there is no auditing requirement, however monitoring requirements are generally included in the grant agreement.</p>	<p>VHC provider performance is monitored against contractual obligations, including through self-assessment and compliance audits.</p> <p>On-site or desktop audits may be conducted to assess quality and safety of services delivered by Community Nursing providers. The frequency of audits depends on issues or complaints arising, data analysis and whether the provider holds recognised accreditation.</p>

	Aged Care	Disability services		Veterans' care
		NDIS	Non-NDIS	
Reportable incidents	<p>Residential aged care providers must report to the ACQSC any incidents of the following:</p> <ul style="list-style-type: none"> • Unreasonable use of force • Unlawful sexual contact or inappropriate sexual conduct • Psychological or emotional abuse • Unexpected death • Stealing or financial coercion by a staff member • Neglect • Inappropriate use of restrictive practices, and • Unexplained absence from care. <p>There are two (2) mandated reporting timeframes. Priority 1 reportable incidents must be reported within 24 hours of the provider becoming aware of the reportable incident. Priority 2 incidents must be reported within 30 days. Reports are made through the My Aged Care Provider Portal.</p> <p>From 1 July 2022, the serious incident response scheme will be expanded from residential care to include in-home aged care services</p>	<p>Registered NDIS providers must report to the NDIS Commission any incidents (including allegations) of the following:</p> <ul style="list-style-type: none"> • the death of a person with disability • serious injury of a person with disability • abuse or neglect of a person with disability • unlawful sexual or physical contact with, or assault of, a person with disability • sexual misconduct, committed against, or in the presence of, a person with disability, including grooming of the person with disability for sexual activity • use of a restrictive practice in relation to a person with disability where the use is not in accordance with an authorisation (however described) of a state or territory in relation to the person, or if it is used according to that authorisation but not in accordance with a behaviour support plan for the person with disability. <p>All reportable events must be notified to the NDIS Commission within 24 hours, excepting the use of a restrictive practice not in accordance with an authorisation which must be reported within 5 days.</p> <p>Reports are made through the NDIS Commission Portal.</p>	<p>As per grant agreements.</p>	<p>Both Community Nursing and VHC providers are required to have written clinical and administrative policies in place which adhere to the provisions contained in the relevant State or Territory legislation and which are appropriate for a community care (for VHC) and nursing setting (Community Nursing).</p> <p>VHC Providers are required to report incidents, accidents, dangerous occurrences, reportable assaults or alleged/ suspected elder abuse, including:</p> <ul style="list-style-type: none"> • if required, report the situation to the police or appropriate authority • advise DVA of the situation and actions taken, and • record the situation in the entitled person's file. <p>Community Nursing providers must have policies that cover incident, accident and dangerous occurrence management.</p>

	Aged Care	Disability services		Veterans' care
		NDIS	Non-NDIS	
Mandatory reporting	<p>Examples of reporting requirements in aged care include:</p> <ul style="list-style-type: none"> • annual prudential reporting, and • reporting on material changes within the provider organisation. These must be provided within 28 days of the changes. 	<p>In addition to the reportable incidents obligations outlined above, registered NDIS providers must provide a monthly report on their use of restrictive practices (as applicable).</p> <p>Registered NDIS providers must notify the NDIS Commission of certain changes and events, especially those which substantially affect a provider's ability to provide the supports and services they are registered to provide.</p>	<p>Providers are generally required to provide six-monthly performance reports through the Data Exchange website.</p> <p>Prior to grants being renewed/extended, providers complete and submit a performance questionnaire.</p>	<p>VHC and Community Nursing providers are required to provide data and information as requested by DVA to assist in performance monitoring.</p>

Complaints

There are rules about the way that complaints are made, received, handled and resolved in the care and support sectors. The complaints processes are different under aged care, disability support and veterans' care. Details are provided in Table 5.

Table 5: Complaints processes across the care and support sector

	Aged Care	Disability services		Veterans' care
		NDIS	Non-NDIS	
Handling complaints	<p>All approved aged care providers must establish a complaints resolution mechanism to address any complaints made by or on behalf of a person to who care is provided through the service. Consumers are encouraged to first contact their service providers. If the consumer is not satisfied with the outcome through this process or they are unable or uncomfortable doing this, they can submit a complaint to the ACQSC either via telephone or an online form. Complaints can be made anonymously, confidentially or openly.</p>	<p>All registered NDIS providers must:</p> <ul style="list-style-type: none"> implement and maintain a complaints management and resolution system record and manage any complaints support NDIS participants or other relevant parties to make a complaint <p>Complaints to the NDIS Commission:</p> <p>A person may make a complaint to the NDIS Commissioner about services provided by an NDIS provider (registered and unregistered).</p> <p>The NDIS Commissioner may: take no further action, give assistance and advice to the complainant, or undertake a resolution process (work with participant and provider to resolve, request the provider to undertake remedial action, conciliation, investigation).</p> <p>The Commonwealth Ombudsman can also consider and handle complaints in relation to systemic issues relating to the NDIS (both NDIS Commission and NDIA).</p>	<p>Providers are usually required to implement and maintain an internal complaints and resolution system is transparent and accessible. Any unresolved complaints can be escalated to different external complaints mechanisms.</p> <ol style="list-style-type: none"> To DSS Feedback and Complaints, or relevant business line area mailboxes. To the Minister or Commonwealth Ombudsman. If the program is funded under the Disability Services Act 1986, the external Complaints Resolution and Referral Service. Department of Employment receives queries/complaints about Cth funded employment service providers through the National Customer Service Line. The Disability Abuse and Neglect Hotline receives allegations of violence, abuse, neglect and exploitation about any government funded services used by people with a disability. 	<p>In addition to existing mainstream mechanisms for addressing complaints in the delivery of care and support, the following is also available for DVA clients.</p> <p>VHC Service Providers are obliged to resolve complaints and to refer unresolved complaints to DVA which are then managed internally.</p> <p>Feedback can be directly provided to DVA, which is then centrally managed.</p> <p>It is a contractual provision that Community Nursing providers have a mechanism for the management of complaints and feedback from clients and other individuals. Where a recipient is not satisfied with the outcomes through their provider, they can contact DVA and/or talk to the relevant health care complaints body in their state or territory.</p>

Compliance and enforcement

There are actions that regulators can take if they find that providers and workers are not following the rules. These range from information and education to the use of stronger enforcement powers. The actions that regulators can take are different across aged care, disability support and veterans' care. Details are provided in Table 6.

Table 6: Enforcement processes across the care and support sector

	Aged Care	Disability services		Veterans' care
		NDIS	Non-NDIS	
Compliance and enforcement	<p>The ACQSC takes a responsive and risk-based proportionate approach to non-compliance with a provider's aged care responsibilities. The regulatory response may include one or more regulatory actions:</p> <ol style="list-style-type: none"> 1. Education and engagement 2. Frequency of performance assessment and monitoring, investigation 3. Directions for continuous improvement or to address complaints issues 4. Requests for information 5. Compulsory information gathering 6. Compliance notices 7. Non-compliance notices and Undertaking to Remedy 8. Variation of period of accreditation 9. Requirement to agree to certain matters 10. Infringement notice 11. Enforceable undertakings 12. Injunctions 13. Civil penalties 14. Sanctions 15. Revocation of accreditation and/or revocation of approved provider status. 	<p>The NDIS Commission has the power to investigate any matters relating to registered and unregistered NDIS providers and workers.</p> <p>The compliance and enforcement actions available to the NDIS Commission are:</p> <ul style="list-style-type: none"> • Education, compliance and support • Registration, audit, investigation • Undertaking • Infringement notice • Civil penalties • Suspend registration • Revoke registration • Ban. 	<p>DSS grant agreements generally include provision for termination of agreements, repayment of money or withholding of payment.</p>	<p>Enforcement action is provided for under contractual arrangements that relate to contractual performance. Enforcement options include repayment of money.</p> <p>Systemic issues requiring clarification and/or education may also be addressed through Provider Bulletins.</p>

Education

Regulators have a responsibility to promote quality services, inform and educate the sector that they regulate. The way that this happens is different across aged care, disability support and veterans' care. Details are provided in Table 7.

Table 7: Regulatory education across the care and support sector

	Aged Care	Disability services		Veterans' care
		NDIS	Non-NDIS	
Education	The ACQSC educates aged care providers and the broader community by ensuring all those across the sector have access to the information they need to understand the role and functions of the Commission. The education program focuses on the development and delivery of effective education resources and activities for the aged care sector including, but not limited to, interactive content for the online Aged Care Learning Information Solution (Alis), sector workshops, webinars, videos, website content and communications activities.	<p>The NDIS Commission educates NDIS providers through the performance of its core functions, including registration, complaints, reportable incidents and behaviour support.</p> <p>The NDIS Commission publishes resources, guidance and training materials for NDIS providers, workers to provider safe, high-quality services and supports such as the NDIS Worker Orientation module.</p> <p>Education to NDIS participants focuses on supporting participants to understand their rights, what they can expect from their NDIS provider, and how to complain if they have a concern about their services and supports.</p>	Website guidance and information, as well as advice and presentations by the Community Grants Hub and program administrators.	DVA educates veterans' care providers through presentations, updates and promotes external education like webinars.

Consumer information

Regulators have a responsibility to assist consumers, participants, their families, carers and advocates to be empowered to make informed decisions about their care and supports. The way that consumer information is compiled and presented is different across aged care, disability support and veterans' care. Details are provided in Table 8.

Table 8: Consumer information across the care and support sector

	Aged Care	Disability services		Veterans' care
		NDIS	Non-NDIS	
Consumer information	<p>Information on approved providers is available through the My Aged Care website as well as the Commission's website, which hosts audit reports and a regulatory decision register. There is also a 'compare' feature available on My Aged Care, which allows consumers to compare services they may wish to access according to their Service Compliance Ratings for residential services.</p> <p>This process is currently undergoing reform to present quality information on residential aged care services in a new way.</p> <p>The Star Ratings will support senior Australians compare services and make informed choices by providing simple 'at-a-glance' information, based on:</p> <ul style="list-style-type: none"> the five existing quality indicators relevant regulatory activities undertaken by the ACQSC consumer experience information staff minutes of care. 	<p>The NDIS Commission publishes a Provider Register which includes information on a provider's registration groups and conditions of registration. This is accessible via a database on the NDIS Commission website where participants can search for registered NDIS providers.</p> <p>Part 2 of the Provider Register details current and past compliance and enforcement actions taken against registered and unregistered NDIS providers and workers.</p> <p>Part 2 is presented in a PDF format, and provides information about actions that have been taken against providers and workers, including whether they have been suspended or banned from providing services to NDIS participants.</p>	<p>Information on government disability support providers is available through the Disability Gateway website.</p>	<p>DVA provides information on its website on eligibility for services, and the services offering for VHC and community nursing.</p> <p>A list of approved VHC providers is publicly available via the DVA website.</p> <p>A list of approved Community Nursing providers is available via the DVA website, or by contacting DVA by telephone.</p>

