

## Care and support sector code of conduct

### **LASA submission**

Marlene Eggert, Senior Policy Advisor

10 December 2021

Submitted via: [WorkerRegulationSe@Health.gov.au](mailto:WorkerRegulationSe@Health.gov.au)

# About LASA

## Who We Are

LASA is the national association for all providers of age services across residential care, home care and retirement living/seniors housing.

## Our Purpose

Our purpose is to enable high performing, respected and sustainable age services that support older Australians to age well by providing care, support and accommodation with quality, safety and compassion—always.

## Our Members

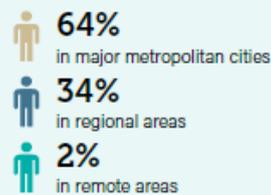
We represent providers of age services of all types and sizes located across Australia's metropolitan, regional and remote areas. We are dedicated to meeting the needs of LASA Members by providing

- a strong and influential voice leading the agenda on issues of importance;
- access to valuable and value-adding information, advice, services and support; and
- value for money by delivering our services and support efficiently and effectively.

## LASA supports all providers of aged care



## Our Members are located across Australia



## Our Affiliates

LASA Affiliates are proud supporters of the critical role played by the age services industry in caring for older Australians. Their value-adding products and services help age services providers apply innovative solutions that improve the provision of efficient and quality care.

## Our Strategic Objectives

1. Be the credible and authoritative voice of aged care representing the views of our Members for the benefit of older Australians.
2. Build sector capability and sustainability by delivering valued services and support to Members
3. Lead continuous improvement by promoting and celebrating excellence and innovation in age services
4. Deliver value for money for Members and Affiliates.
5. Be a high performing, respected and sustainable association that cares for our purpose, our Members and our people.

# Contents

Care and support sector code of conduct.....	1
Key points.....	4
Responses to consultation questions .....	4
1. Do you support the inclusion of the seven elements drawn from the NDIS Code? .....	4
2. If not, why not? N/A.....	4
3. Are there any other elements that should be included in the draft Code? .....	5
4. If so, what elements should be included and why?.....	5
5. Is the language proposed in the draft Code relevant across the care and support sector? .....	6
6. If not, what language is preferred and why? .....	6
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? .....	6
8. What considerations are relevant to enforcing the Code in the aged care context? .....	7
Aged Care Providers.....	7
Aged care staff .....	8
Unregulated staff .....	8
Other issues .....	8
9. What considerations are relevant to enforcing the Code in the veterans care context? .....	9
10. What other intersections need to be considered as part of the implementation of the Code?	

## Key points

As with the NDIS Code, compliance with the Aged Care Standards should be sufficient to ensure providers and workers are compliant with the Code of Conduct.

Guidance to the aged care sector needs to be far more comprehensive than is currently available for the NDIS Code. Guidance on professional codes of conduct such as the Nursing and Midwifery Board of Australia's Code of Conduct provide an indication of the level of detail that is required.

Banning orders should only be used in relation to egregious breaches. Consideration needs to be given to other measures that could be taken in less serious instances, such as informal notices to employees.

Relatedly, arrangements for the escalation of issues and assurance of procedural fairness need to be further developed – the process described currently does not ensure that that procedural fairness is afforded.

## Responses to consultation questions

1. Do you support the inclusion of the seven elements drawn from the NDIS Code?
2. If not, why not? N/A

LASA Members supported the inclusion of the seven elements from the NDIS Code. Aged care workers deliver their services observing the Charter of Aged Care Rights. LASA's mapping of the NDIS Code against the Charter of Aged Care Rights demonstrates a good overlap. Where the NDIS Code includes elements not covered in the Charter of Aged Care Rights, these tend to be addressed by The Nursing and Midwifery Board of Australia's Code of Conduct which covers a large part of the regulated workforce in aged care.

### **Element One**

act with respect for individual rights to freedom of expression, self-determination and decision-making in accordance with applicable laws and conventions;

Element One aligns with Aged Care Rights 1, 3, 7 and 9

### **Element Two**

respect the privacy of people with disability;

Element Two aligns with Aged Care Right 13.

### **Element Three**

provide supports and services in a safe and competent manner, with care and skill;

Element Three aligns with Aged Care Right 1.

**Element Four**

act with integrity, honesty and transparency;

None of the Aged Care Rights translate directly to Element Four

The Nursing and Midwifery Board of Australia's Code of Conduct's *Domain: Act with professional integrity* aligns with Element Four. This Code covers a significant part of the regulated workforce in aged care.

**Element Five**

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;

None of the Aged Care Rights translates directly to Element Five

The Nursing and Midwifery Board of Australia's Code of Conduct's *Domain: Practise safely, effectively and collaboratively* includes that nurses must: document and report concerns if they believe the practice environment is compromising the health and safety of people receiving care.

This statement covers a significant part of the regulated workforce in aged care.

**Element Six**

take all reasonable steps to prevent and respond to all forms of violence against, and exploitation, neglect and abuse of, people with disability;

Element Six aligns with Aged Care Right 4.

**Element Seven**

take all reasonable steps to prevent and respond to sexual misconduct

Element Seven aligns with Aged Care Right 4 which talks about living without abuse and neglect but does not make explicit sexual misconduct.

3. Are there any other elements that should be included in the draft Code?
4. If so, what elements should be included and why?

LASA Members observe that the NDIS Code is not very specific about care recipients' diversity and inclusive services (LGBTIQ, Gender, Religion, Culture etc). The Charter of Aged Care Rights includes Right 3 *have my identity, culture and diversity valued and supported*.

LASA Members consider that overt recognition of diversity and inclusive services should be a critical inclusion in the Code.

Further considered for inclusion should be an obligation for workers to maintain appropriate boundaries with care recipients in their work relationships.

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?

LASA Members prefer the Code to be written in plain language, similar to the manner in which the Charter of Aged Care Rights is written.

LASA Members also observed that wellness and reablement are key approaches to care in aged care but these concepts are not included in the NDIS Code. The Code should include reference to wellness and reablement and to supporting aged care recipients/older persons to live as independently as possible.

Some LASA Members expressed that they would prefer that carers in aged care not referred to as 'workers'. Aged care providers want to make their workforce feel more valued. The word 'workers' is considered to be a very traditional language that suggests an unskilled workforce. The aged care sector wants to professionalise its workforce by developing its capability so it can meet older Australians' actual care demands.

A term describing people delivering services in aged care more in line with the notion of professional carers would be preferred.

LASA acknowledges that it will be challenging to identify a term that describes equally well the various employees delivering services across the support and care sectors.

Members also raised that the language around Occupational Health and Safety (OHS) should be addressed by using a term that is universal across jurisdictions. The term WHS (Work Health and Safety) is used in the Code. In Victoria OHS is used due to State based legislation. It would be better if the Code used a term that is universal.

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?

LASA Members listed following requirements for guidance:

- Detailed guidance and information on each code and its sub-elements and reference to compliance, training, OHS and other applicable legislations in plain language. All terms should be defined.
- Provision of a comprehensive guidance materials e.g. Training Toolbox for all providers and aged care workers so that each element and sub-element of the Code of Conduct is understood and that there are no grey areas.
- Provision of guidance materials to providers to assist with updating policies and procedures to include the Code of Conduct.
- The consultation paper indicates that everyone needs to be trained by 1 July 2022. Will the NDIS training be updated/adapted to incorporate aged care and Veterans Home Care?

- LASA Members strongly advise that the training be made available via SCORM<sup>1</sup> files for providers to embed in their own learning management systems, in order to effectively assign, track, record and report completion of learning.

## 8. What considerations are relevant to enforcing the Code in the aged care context?

Members observed that the Code of Conduct should equally apply to assessment staff and to ACQSC assessors, as they are an integral part of the aged care system and are aged care recipient facing.

How will the practical implementation of the Code work? Will employees need to regularly review and re-commit to the Code? If so, what is the regularity of this and will employer need keep a record of this, similarly to sighting nurses' annual registration renewal?

The Code of Conduct applies to both aged care providers and aged care workers. We discuss the issues arising for aged care providers and aged care workers separately.

### Aged Care Providers

The consultation paper states that 'a banning order may only be made, in accordance with natural justice principles, where the person has been given an opportunity to make submission to the NDIS Commissioner on the matter...' The consultation paper later refers to section 73ZO (2) of the NDIS Act which is copied in below:

#### **73ZO Variation or revocation of banning orders**

##### *Variation or revocation of banning order*

(1) The Commissioner may vary or revoke a banning order, by giving written notice to the person against whom the order was made, if the Commissioner is satisfied that it is appropriate to do so.

(2) The Commissioner may do so:

(a) on his or her own initiative; or

(b) on application by the person against whom the order was made.

(2A) Without limiting subsection (1), a variation of a banning order may involve imposing new conditions on the order or varying or removing existing conditions.

---

<sup>1</sup> SCORM stands for Shareable Content Object Reference Model and is a set of technical standards for eLearning software products. SCORM tells programmers how to write their code so that it can "play well" with other eLearning software. It is the de facto industry standard for eLearning interoperability. Specifically, SCORM governs how online learning content and Learning Management Systems (LMSs) communicate with each other. SCORM does not speak to instructional design or any other pedagogical concern — it is purely a technical standard.

[https://scorm.com/scorm-explained/one-minute-scorm-overview/?utm\\_source=google&utm\\_medium=natural\\_search](https://scorm.com/scorm-explained/one-minute-scorm-overview/?utm_source=google&utm_medium=natural_search)

Further, on page 18 the consultation paper states that: 'Much like the protections afforded under the NDIS legislation, workers and governing persons in aged care would also be afforded procedural fairness'.

LASA is of the view that section 73ZO (2) does not give a full account of how the principles of natural justice will be applied when an aged care provider seeks to challenge a banning order. The steps being put in place to ensure natural justice and procedural fairness need to be described. This should include a description of how the performance of a provider will be judged and what expertise the Aged Care Quality and Safety Commissioner will draw on to evaluate a provider's performance.

LASA Members call for a practical, efficient and transparent review process when a banning order is issued.

They also want to have visibility on the suitability status of employees under the screening regime to be introduced and of the people seeking employment with them.

#### Aged care staff

Aged care employs regulated and unregulated staff.

Regulated staff in aged care are health care professionals. The health professions regulate themselves via their professional boards and any breaches of their professional Codes are investigated by their Board and judged by their professional peers.

LASA is of the view that the health care professional's conduct should be judged by his/her peers on their professional Board rather than the ACQSC. If a regulated health care professional is being investigated for a breach of the Code of Conduct, then this process should be undertaken by their professional Board rather than the ACQSC.

#### Unregulated staff

LASA is concerned how natural justice will be ensured when the performance of an unregulated worker is evaluated against the Code of Conduct. LASA asks about the qualifications and experience of the person(s) who will judge the unregulated worker's performance and by which criteria it will be judged.

Further, what avenues to challenge decisions will be available to unregulated workers?

LASA would like to see greater transparency regarding the processes undertaken when an aged care provider's or worker's performance is judged against the Code of Conduct. We refer to AHPRA which maintains an informative website about the processes it undertakes when a health care professional is being investigated following a notification to AHPRA and the avenues available to individuals to challenge AHPRA's decisions.

<https://www.ahpra.gov.au/Notifications/Further-information/Guides-and-fact-sheets.aspx>

#### Other issues

LASA Members inform us that they believe that a concerted effort of awareness raising in conjunction with support and training for providers and aged care workers is required.

Consideration should be given to the impact on providers who have to be compliant to Aged Care Quality Standards, Home Care Assurance Reviews (for providers of home care) and the new Code of Conduct. Preparedness will require updating of documentation, staff and volunteer training, system and process updates. Preparation for compliance with the Code of Conduct places a significant impost of cost, time and resources on the provider.

LASA Members note that a number of other overlapping codes are listed in the consultation paper, however, the paper leaves unclear what specific actions will be taken to integrate and consolidate these.

At a minimum, a mapping exercise needs to be undertaken to understand what codes currently apply to which work roles, the applicable regulatory bodies and any resulting reporting and compliance obligations. Any significant lack of overlap between various codes and complexity arising from this must be addressed.

For example, some natural tensions between the obligations under the aged care act and the fair work act exist (e.g. the right of residents to live free of restraint and the right of staff to live free from violence inflicted on them by residents). The interplay between conflicting obligations for providers under various Codes and legislations must be fully considered to minimize any contradictions that put providers in compromising positions.

#### 9. What considerations are relevant to enforcing the Code in the veterans care context?

The issues raised by LASA in our response to question 8 equally apply to veterans care. LASA Members consider that the veterans care associated assessment teams should be included under the Code.

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

Overall, Members considered the consultation paper to be comprehensive in its reference to intersections with other codes and expectations of behaviour.

However, Members ask that the workforces not included under the Code of Conduct be clearly identified. For example, will staff working in retirement villages be included in or excluded from the Code?

Many providers operate multiple services. Members are disappointed that workers employed in Commonwealth Home Support Program (CHSP) services will not be working under the Code.

Providers tend to employ their staff across programs. With the proposed exclusion of CHSP, an incident constituting a breach of Code by a staff member delivering services to a recipient of a home care package will have different consequences for the staff relative to the same incident involving the same employee delivering services to a CHSP funded consumer.

This is concerning because an incident involving staff working under the Code may have consequences such as the incident being investigated by the ACQSC and recorded against their name while staff working for CHSP committing a similar incident will not face such consequences by the regulator.

This seems to be an unfair outcome for consumers, employers and staff alike.

*A Strong voice and a helping hand*

*1300 116 636*

*[www.lasa.asn.au](http://www.lasa.asn.au)*