

Response to the Australian Government Care and Support Sector Code of Conduct Consultation paper November 2021

Introduction

Palliative Care Australia (PCA) represents those who work towards high quality palliative care for all Australians who need it. Working closely with consumers, our Member Organisations and the palliative care workforce, we aim to improve access to, and promote palliative care.

Palliative Care in Aged Care

As Australia's population ages and the number of people using aged care services increases, the demand for palliative care in community and residential aged care is also increasing. The Royal Commission into Aged Care Quality and Safety's (Royal Commission) final report acknowledged that evidence heard during the life of the Royal Commission shows that:

Too few people receive evidence-based end-of-life and palliative care, and instead experience unnecessary pain or indignity in their final days, weeks and monthsⁱ

The Royal Commission recognised the significant role of palliative care in aged care, and the need for it to be core business for aged care providers. PCA believes that in order for palliative care to be core business in aged care, it is essential for aged care services to be delivered by a professional, skilled and competent workforce.

PCA Response to the Care and Support Sector Code of Conduct Consultation paper

PCA supports the introduction of a code of conduct for aged care, which will help ensure that aged care recipients are protected from exploitation, abuse and inappropriate and/or unprofessional conduct. PCA also supports improving regulatory alignment across the care and support sector by incorporating aged care, veteran's care and disability support under the same code. However, PCA has some concerns about the proposed *Code of Conduct for the Care and Support Sector* (Code of Conduct), which are outlined below.

Learnings from the NDIS Code of Conduct Implementation

The proposed Code of Conduct is based on the current NDIS Code of Conduct, in place since July 2018. PCA is concerned about how the NDIS Code of Conduct is currently working in practice and whether any issues with the current Code will be carried across to the aged care sector. Feedback from providers to PCA indicates the following:

- There is a significant regulatory and financial burden for service providers when demonstrating compliance with the NDIS Code of Conduct.

- Where a complaint about a NDIS service provider warrants independent investigation, the service provider must cover the costs of this investigation. In some instances this can be costly and unsustainable for providers.
- The NDIS Code of Conduct does not adequately address the role of carers in the delivery of care. This includes the rights of carers in the operationalisation of the code and any investigation of breaches.
- The NDIS Code of Conduct does not adequately address the commonly occurring situation where staff work across multiple providers.

PCA supports the outcomes of the recent Joint Standing Committee on the National Disability Insurance Scheme inquiry into the NDIS Quality and Safeguards Commission, including the adequacy and effectiveness of the NDIS Code of Conductⁱⁱ. The Committee found general support for the Code, however, they noted the following concerns:

- The language around preventing violence, abuse and neglect needs to be strengthened and clarified, including clear wording in the guidance documents for providers and workers.
- The guidance documents should include clearer guidance on:
 - How to work towards reducing or eliminating the use of restrictive practice
 - How and when to respond to abuse
 - Decision making and substitute decision making
 - Trauma informed recovery principles
- NDIS participants need more support to understand their rights under the Code of Conduct, including information on what it looks like 'in action'.
- There is a need for more resources and training to assist NDIS workers and providers to understand and implement the code.
- NDIS Quality and Safeguards Commission staff may not have an adequate understanding of the NDIS Code of Conduct.

The Committee also made a specific recommendation in relation to the Code of Conduct (recommendation 26):

The Committee recommends that the Australian Government ensure that the NDIS Quality and Safeguards Commission has adequate and appropriate training in place for staff, including...understanding of the NDIS Code of Conduct'.

In establishing the new Code of Conduct, work should be done to address the current shortfalls in the NDIS Code of Conduct and ensure these do not carry across to the new Care and Support Sector Code of Conduct (for aged care). It is crucial that the new Code of Conduct acknowledges and is built on learnings from NDIS providers, staff, participants and

carers. It is also important that staff at the Aged Care Quality and Safety Commission (ACQSC) are appropriately training in the understanding and applying the Code of Conduct.

Duplication of professional standards and processes

Aged care workers registered with a National Board under the National Registration and Accreditation Scheme must adhere to the registration standards, codes of conduct and guidelines set out by the relevant Board. This includes registered nurses, allied health workers, Aboriginal and Torres Strait Islander Health Practitioners and medical practitioners. These National Boards already have in place a comprehensive process for handling complaints regarding individual performance and conduct, overseen by experts in the relevant profession. Under the proposed Code of Conduct these aged care workers will be required to simultaneously comply with two codes of conduct and investigation and complaint processes undertaken by both the ACQSC and their National Board. It is crucial that clear guidance is given on how this interaction will work including sharing of information, parallel investigations and the rights of workers. The Code of Conduct should be tested with this workforce and the National Boards to ensure that it will work in practice.

Implications for Personal Care Workers

Personal care workers constitute the majority of the aged care workforce. They have high rates of part-time and casual work, up to a third of workers do not have a minimum Certificate III qualification and large numbers are from Culturally and Linguistically Diverse Backgrounds (CALD)ⁱⁱⁱ. As a result, the majority of aged care is provided by workers with limited training, English language skills, supervision and clinical support. This is a very vulnerable workforce, often exposed to precarious and exploitative working conditions, with little to no control over workplace practices and procedures. Further, there is no clear scope of practice or minimum qualifications for personal care workers.

PCA is concerned that the proposed Code of Conduct takes a highly punitive approach with the personal care workforce and could unfairly expose them to a costly, distressing and difficult process. PCA is particularly concerned about procedural fairness for workers, especially those from CALD backgrounds and Aboriginal and Torres Strait islander workers.

The Royal Commission determined that the best way to ensure high quality care, to value the aged care workforce and to ensure sufficient numbers of workers is to 'professionalise' the personal care worker role^{iv}. PCA supports any efforts to professionalise the aged care workforce and believes this is the best way to ensure that staff are trained and prepared to deliver palliative care.

PCA notes that as part of the *Aged Care and Other Legislation Amendment (Royal Commission Response No. 2) Bill 2021* the Australian Government introduced a registration scheme for aged care workers. This was in response to Recommendation 77 of the Royal Commission. However, PCA is concerned that the scheme does not go far enough and include all elements of the Commission's recommendation including:

- mandatory minimum qualifications;
- ongoing training requirements;
- minimum levels of English language proficiency; and
- code of conduct and power for a registering body to investigate complaints into breaches of the Code of Conduct and take appropriate disciplinary action.

If a professional body oversees the registration of aged care workers, this will also allow for the development of a scope of practice and training, development programs and leadership training and provide professional support and structured career pathways. This can then be linked to award wages and ensure staff are properly remunerated. Further to the registration scheme, PCA supports the recommendation of the Royal Commission that the Australian Health Practitioner Regulation Agency (AHPRA) should start a process to examine the feasibility of the registration scheme being administered by AHPRA under the National Registration and Accreditation Scheme. This would ensure the registration scheme aligns with those of other healthcare professions.

PCA notes that the current guidance for the NDIS Code of Conduct outlines that workers are responsible for ‘developing and maintaining the knowledge and skills required for their role’^v and that providers must ‘ensure workers have the necessary training, competence and qualifications for the supports and services delivered’^{vi}. It is difficult to determine this level of training and skills if there is no clear scope of practice for workers. The professionalisation of the personal care workforce would further support the implementation of the Code of Conduct and ensure and provide clear guidance for providers and workers.

The Code of Conduct should be tested with the personal care workforce to ensure that it is understood and supports the rights of workers.

Addressing Diverse Needs Groups

Older Australians have a diverse range of life experiences, cultural backgrounds, religion, spirituality, sexuality, socio-economic status and geographic spread. Many people with diverse needs are underserved by the current aged care and health systems and struggle to access culturally safe and inclusive services, including palliative care. The Royal Commission found that the existing aged care system is not well equipped to provide appropriate care to people with diverse needs. They stated that the aged care system should be welcoming and supportive of everyone needing care:

To deliver high quality and safe care, those providing services must respect the diverse backgrounds and life experiences of every older person, and tailor the delivery of care to meet their needs. Diversity should be core business in aged care^{vii}.

PCA acknowledges that the NDIS Code of Conduct guidance currently references the need to take into account the diverse needs of NDIS participants when delivering care. However,

given the importance of meeting the diverse needs of those receiving care and the findings of the Royal Commission, PCA believes diversity should be directly referenced in the new Code of Conduct. This would also support the work already undertaken to develop and implement the Aged Care Diversity Framework which seeks to embed diversity in the design and delivery of aged care and support action to address barriers to care using a human rights based approach^{viii}.

Guidance and Training Needed

It is essential that the Code of Conduct is supported through clear guidance for aged care providers and workers (separate from the current NDIS guidance). This should include reference to how the Code of Conduct interacts with other aged care provider and worker requirements including:

- Aged Care Act
- Aged Care Quality Standards
- Complaints processes including the Aged Care Complaints Scheme
- Serious Incident Response Scheme
- Charter of Aged Care Rights

The Code of Conduct can be further supported through the development of training modules to support providers and staff to understand the Code, how to implement it in their workplaces and how to recognise and respond to breaches.

ⁱ Royal Commission into Aged Care Quality and Safety (2021). *Final Report: Care, Dignity and Respect, Volume 1: Summary and Recommendations*. Retrieved from: https://agedcare.royalcommission.gov.au/sites/default/files/2021-03/final-report-volume-1_0.pdf

ⁱⁱ Joint Standing Committee on the National Disability Insurance Scheme (2021). *NDIS Quality and Safeguards Commission*. Retrieved from: https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024506/toc_pdf/NDISQualityandSafeguardsCommission.pdf;fileType=application%2Fpdf

ⁱⁱⁱ Department of Health (2021). *2020 Aged Care Workforce Census Report*. Retrieved from: <https://www.health.gov.au/sites/default/files/documents/2021/10/2020-aged-care-workforce-census.pdf>

^{iv} Royal Commission into Aged Care Quality and Safety (2021). *Final Report: Care, Dignity and Respect, Volume 1: Summary and Recommendations*. Retrieved from: https://agedcare.royalcommission.gov.au/sites/default/files/2021-03/final-report-volume-1_0.pdf

^v NDIS Quality and Safeguards Commission (2019). *The NDIS Code of Conduct: Guidance for Workers*. Retrieved from: <https://www.ndiscommission.gov.au/sites/default/files/documents/2021-03/code-conduct-workers-march-2021-11.pdf>

^{vi} NDIS Quality and Safeguards Commission (2019). *The NDIS Code of Conduct: Guidance for NDIS Providers*. Retrieved from: <https://www.ndiscommission.gov.au/sites/default/files/documents/2021-06/code-conduct-providers-june-2021.pdf>

^{vii} Royal Commission into Aged Care Quality and Safety (2021). *Final Report: Care, Dignity and Respect, Volume 1: Summary and Recommendations*. Retrieved from: https://agedcare.royalcommission.gov.au/sites/default/files/2021-03/final-report-volume-1_0.pdf

^{viii} Aged Care Sector Committee Diversity Sub-group (2017). *Aged Care Diversity Framework*. Retrieved from: [file:///Users/katiesnell/Downloads/PCA-Submission-to-Aged-Care-Royal-Commission-July-2020%20\(1\).pdf](file:///Users/katiesnell/Downloads/PCA-Submission-to-Aged-Care-Royal-Commission-July-2020%20(1).pdf)