

NDIS Review - Issues paper

The NDIS Quality and Safeguarding Framework Independent Review of the National Disability Insurance Scheme (NDIS)

Submission by
Australian Physiotherapy Association (APA)
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Introduction

The Australian Physiotherapy Association (APA) welcomes the opportunity to contribute feedback to the NDIS Review's issues paper on the NDIS Quality and Safeguarding Framework Independent Review of the National Disability Insurance Scheme (NDIS).

In this submission, we provide comments against the sections of the issues paper and we note there will be further opportunity for engagement. We are looking forward to continuing working collaboratively with the Review.

The APA renews our and our members' commitment to the highest standards of quality and safety in providing evidence-based and outcome-oriented services and supports to all patients and NDIS participants.

Another relevant review to be taken into consideration by the Review (issues paper p 7) is the *Aligning regulation across aged care, disability support and veterans* consultation's extensive work and related consultation on a common Code of Conduct. The consultation particularly addressed the issue of duplication of workers checks and processes, the lack of interoperability between the different reporting systems, and the lack of communication / collaboration between regulatory bodies. APA's submissions to these consultations are available upon request.

We also invite the Review to consult APA's recent submission to the NDIS Annual Pricing Review available at https://australian.physio/sites/default/files/submission-2023-04/APA_SUBMISSION_Pricing_Review_2023.pdf

Overall, in providing supports to NDIS participants, our members report issues related to the implementation of quality and safety regulations rather than with the Framework itself.

We would welcome the opportunity to engage further with the Review on any aspect covered in this submission.

Summary of our recommendations

The APA recommends that

1. Ahpra registration of physiotherapists and the quality and safety it already provides is recognised in the context of the provision of NDIS supports to avoid duplication of checks and processes;
2. Data is collected around the quality and safety of registered providers vs unregistered ones;
3. Regulation across the care sectors is aligned to avoid duplication; and
4. Regulation is always directed towards improving quality and safety.

Background – physiotherapy and regulation

Physiotherapy is a highly regulated profession including by the Australian Health Practitioner Regulation Agency (Ahpra), the Physiotherapy Board of Australia (PhysioBA) self-regulation, regulation by peers and regulation by government.

National regulation by Government

Physiotherapists are required to be registered through the National Registration and Accreditation Scheme (NRAS). Maintenance of registration is regulated by an external authority, the Physiotherapy Board of Australia (PhysioBA). The PhysioBA works in partnership with Ahpra to implement the NRAS under the Health Practitioner Regulation National Law.

Ahpra sets registration standards, accreditation standards, and codes and guidelines to ensure high-quality care. All physiotherapists, including those providing services in Residential Aged Care Facilities (RACFs) and aged community care, to veterans and to those living with disability, are required to meet regulations set by Ahpra.

Regulation by self and peers

The APA Code of Conduct (Code) and clinical practice standards and guidelines are an important part of self and peer regulation.

The APA Code, which closely aligns with the PhysioBA Code of Conduct, sets out the ethical foundation and professional obligations for APA members. The APA Code acknowledges the moral responsibility of physiotherapists to clients (including older people), families, colleagues and communities they work with and the health care system they work within.

The four principles of the Code of Conduct are:

- Respect the rights and autonomy of the individual
- Cause no harm
- Advance the common good; and
- Act fairly

The principles in the APA Code support a value-based framework that guides and strengthens physiotherapists' capability to make ethical decisions and provide safe, quality care.

The APA has established the National Professional Standards Panel (NPSP). The purpose of the NPSP is to educate, encourage and assist APA members to uphold standards of professional conduct, meet professional and ethical obligations and achieve a high-quality standards of practice. In the event that a complaint is made against a member physiotherapist, the NPSP acts as a peer response mechanism. The outcomes may vary from escalation of the case to Ahpra, or other disciplinary action. The NPSP also has a role in remediation should this be appropriate for the involved physiotherapist.

APA's National Professional Standards Panel Regulations:
https://australian.physio/sites/default/files/ABOUT-US/Governance/Website_NPSP_regulations_2017.pdf

NPSP's Complaints management and disciplinary hearing procedures

https://australian.physio/sites/default/files/RESOURCES/General%20templates%20%26%20guidelines/NPSP_COMPLAINTSPROCEDUES_2017.pdf

Feedback on the Issues paper

The APA is providing feedback against some of the sections of the issues paper.

The role, objectives and principles of the Framework

1. The APA notes and welcomes the fact that the Framework acknowledges that physiotherapists provide supports that are already regulated by Ahpra.
2. We support the objectives and principles of the Framework as described p8. When looking at the implementation of those objectives and principles, it is important to also look at the following aspects:
 - National consistency in the implementation of regulatory requirements so that when implementation is done at State level, there is consistency of process across States and reciprocity.
 - Coordination of regulatory requirements with other regulators for consistency and to avoid duplication.
 - Mutual recognition.
3. We support the idea that regulation of providers and workers must be effective and proportionate to risk, and look at aligning regulatory requirements across relevant parts of the health and care sectors. Regulation should always result in enhancement of actual service quality and safety to participants over paper trails with a description of good service.

Physiotherapists need to undertake a number of checks which leads to duplication:

- Working with children checks - one for each State.
- Police checks.
- NDIS workers screening checks – with inconsistencies across States in the implementation.
- State based checks such as the Disability Worker Exclusion Scheme (DWES) in Victoria.

- Working with vulnerable people check (WWVP) - not transferable between States.

The APA is in favour of a national consistent system that checks and regulates providers across the whole care sector (children, people with disability, veterans and aged care) and recognises Ahpra regulation. This would significantly strengthen safeguarding for people at risk of harm by utilising a national database and sharing data around people or providers who pose risk.

4. We encourage the Review to engage with Ahpra and the Physiotherapy Board of Australia to better understand physiotherapists' regulatory environment and how it can relate to the Framework.

The Scope and audience of the Framework

1. As expressed above, APA's position is that regulation should always result in enhancement of actual service quality and safety to participants.

However, NDIS Commissioner Ms Mackey told Senate Estimates in November 2022 that the Commission doesn't collect evidence on quality of registered versus non-registered providers.

See Senate estimates Community Affairs Legislation Committee question by Senator Steele-John to Commissioner Mackey: *Is the commission in possession of evidence or research that you've undertaken that has suggests that registered providers are safer or of better quality than non-registered providers?*

Commissioner Mackey: *We haven't undertaken research in that vein, but we do have oversight of registered providers.*

Source: Commissioner Mackey (2022) Proof Committee Hansard. Senate. Community Affairs Legislation Committee. Page 72.

2. To understand what works and the impact of regulation on quality and safety, there is a need to collect data on quality and safety indicators (co-designed with people with disability), monitor and compare the performance of unregistered providers vs registered (differentiate verified and certified) and make decisions accordingly.

Roles and responsibilities in the Framework

1. The APA has identified additional actors in current quality safeguarding arrangements in the care sectors that apply to support providers, including:
 - Ahpra and the relevant Boards
 - The Aged Care Quality and Safety Commission
 - The Australian Commission on Safety and Quality in Health Care

We recommend the Review engages with them.

The Framework's approach to quality and safeguards

Feedback on some of the guiding questions 5.a, 5.b and 5.c:

As indicated above, a common thread to address questions 5.a, 5.b and 5.c is the need for robust data collection that could be undertaken by the NDIS Quality and Safety Commission. Working closely with participants and providers to identify and collect relevant key performance data would help foster choice and control whilst creating a safe environment to protect participants and workers.

5.a How should the Framework go about balancing different priorities, such as the balance between protecting people with disability from harm and promoting their choice and control; and the balance between ensuring regulatory approaches support market entry and quality service delivery while protecting participants who are at risk of harm?

1. Because it is indeed a balancing act, because risk appetite, vulnerability to harm, and choice and control are personal and individual, and because market circumstances, supports and providers are so varied, the APA believes a one-size fits all approach will always have limitations and potentially adverse effects.
2. The NDIS Quality and Safety Commission can support market entry of providers by reducing duplication of new regulatory checks. For example, Ahpra-registered allied health providers are already required to have police checks to maintain their registration.

5.b What is required to drive improvements in the quality of supports and services?

1. Beyond the Framework, to drive improvements in the quality of supports and services, therapeutic supports need to be priced adequately. High-quality best practice tailored supports delivered by experienced practitioners have a cost and this needs to be recognised through pricing. Equally, pricing caps – if they don't keep up with actual costs of delivering supports – can be a deterrent to the promotion of high-quality therapeutic services.
2. To drive improvements in the quality of therapeutic supports and services, it is critical to invest in workforce development. Data indicates that demand for specialised therapeutic services in the NDIS is above the current workforce capability. By providing financial aid or financially supporting student placements, and/or early practitioner mentoring, there is capability for rapid upskilling, enhancing quality and care of therapeutic supports.
3. APA members' feedback is that, beyond the Framework, documentation from the NDIA such as the recently updated high intensity support skill descriptors need to be clearer in terms of training requirements and scope of practice.
For example, the view is there is not enough guidance around what adequate training is for support workers in terms of who can deliver the training, what the training is and how frequently it needs to be undertaken. This is critically important for life sustaining tasks such as ventilators, suction and tracheostomy management.

5.c What is required to ensure the regulation of providers and workers is proportionate and effective?

- Mutual recognition of already regulated professions is a necessary first step. The Framework has provisions for mutual recognition of Ahpra-regulated providers (p 86) and we would like to see that translated in practice when additional regulatory requirements are designed and implemented.

Quality and safeguarding measures under the Framework

1. Issues paper p 17 states:

“The unregistered segment of the market is subject to less regulatory oversight than many other human services sectors, and many participants using unregistered providers believe that there are more safeguards in place than actually apply. However, the use of registered providers does not guarantee effective safeguards and quality supports, and participants still need capacity building and support to ensure their safety.”

It is extremely important to note that not all unregistered NDIS providers are equal in terms of the regulatory environment in which they operate. For some providers, the absence of NDIS registration doesn't mean absence of regulation. As explained above, physiotherapy is a highly-regulated profession. Many other allied health professionals operate in an Ahpra-regulated or self-regulated environments.

2. Issues paper p 18 on approach to quality:

For quality and safety, we need participants, planners and coordinators to understand therapy supports, the way they are delivered, and how these supports help participants achieve their goals. The APA welcomes the Government's efforts towards building the capacity and upskilling of the NDIA workforce. Building participants' understanding of the supports available to them is equally important.

About Australian Physiotherapy Association (APA)

The APA vision is that all Australians will have access to quality physiotherapy, when and where required, to optimise health and wellbeing, and that the community recognises the benefit of choosing physiotherapy.

The APA is the peak body representing the interests of Australian physiotherapists and their patients. It is a national organisation with state and territory branches and specialty subgroups. The APA represents more than 30,000 members who conduct more than 23 million consultations each year. The APA corporate structure is one of a company limited by guarantee. The APA is governed by a Board of Directors elected by representatives