

# Disability Worker Regulation Scheme proposed regulations

Consultation paper



# Disability Worker Regulation Scheme proposed regulations

Consultation paper

To receive this publication in an accessible format phone 1300 650 172, using the National Relay Service 13 36 77 if required, or email [dwrconsultations@dhhs.vic.gov.au](mailto:dwrconsultations@dhhs.vic.gov.au)

Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.

© State of Victoria, Department of Health and Human Services December, 2019.

Except where otherwise indicated, the images in this publication show models and illustrative settings only, and do not necessarily depict actual services, facilities or recipients of services.

Available at [engage.vic.gov.au](http://engage.vic.gov.au)

# Contents

- Purpose of consultation ..... 6**
- Principles guiding development of the proposed regulations ..... 6
  
- Scheme overview ..... 7**
- Victorian disability workforce ..... 7
- The Disability Worker Regulation Scheme ..... 7
  
- Proposed regulations ..... 9**
- 1. Code of Conduct for workers ..... 9
- 2. Prescribed offences ..... 15
- 3. Other proposed regulations ..... 17
  
- Appendices ..... 19**
- 1. Definition of key terms ..... 19
- 2. Summary of consultation questions ..... 21
- 3. Proposed prescribed agencies and entities for information sharing ..... 22

# Purpose of consultation

On 23 August 2018, the Victorian Parliament passed the *Disability Service Safeguards Act 2018* (the Act) to create a regulation scheme for the disability workforce – the Disability Worker Regulation Scheme (the Scheme). The Scheme will commence 1 July 2020.

The Scheme will apply to all disability workers in Victoria, regardless of whether the disability workers are funded through the National Disability Insurance Scheme (NDIS) or through other sources.

People with disability will be able to exercise choice and control in their lives by choosing to use registered or unregistered workers to deliver services. The Scheme will also provide stronger protection from unsafe disability workers who are unregistered – these workers will be required to comply with a Code of Conduct.

Before the Scheme commences on 1 July 2020, the Department of Health and Human Services (the department) is developing regulations to support the Scheme. Regulations are rules or directives that can be made under the law that are enforced by the Victorian Disability Worker Commission and Disability Worker Commissioner.

This consultation paper seeks feedback on the following proposed regulations:

- A Code of Conduct for unregistered disability workers that creates obligations that all Victorian disability workers must abide by in Victoria (section 1).
- Prescribed offences to allow the Disability Worker Commission and Commissioner to take action against a disability worker who has committed an offence (section 2).
- Other matters that are important to be in place at the commencement of the Scheme (section 3).

This feedback will help the department develop and implement the Code of Conduct and other regulations before the Scheme commences.

Interested parties are invited to make submissions. Please provide your feedback through the Engage Victoria website at [www.engage.vic.gov.au](http://www.engage.vic.gov.au) by 14 February 2020.

## Principles guiding development of the proposed regulations

The development of the proposed regulations will be guided by the following requirements:

- complement measures in the NDIS Quality and Safeguarding Framework, including the legislative requirement to have regard to the NDIS Code of Conduct when developing the code of conduct for unregistered disability workers
- the Victorian Government takes a zero tolerance approach of abuse of people with disability. Zero tolerance of abuse requires a worker to uphold the human rights of people with a disability. A worker must not commit any form of abuse, harassment, exploitation or neglect. A worker must also actively report cases of abuse or neglect and speak up if they suspect abuse is occurring
- ensure the Scheme is ready to commence on 1 July 2020.

# Scheme overview

## Victorian disability workforce

The disability workforce is diverse and varied, making collecting data on the workforce challenging. In 2016 an estimate by the NDIS placed the Victorian disability workforce at approximately 20,000-24,000 full time equivalent (FTE) staff<sup>1</sup>.

National Disability Services data indicates that the workforce is heavily casualised<sup>2</sup> and the average number of paid hours of work for workers in the sector is significantly less than a full-time load at 22 hours per week<sup>3</sup>. This means there are approximately 1.7 staff for each FTE position. Combining these two estimates indicates that in 2016 the Victorian workforce for disability services was approximately 30,000-35,000. It is reasonable to assume there has been some growth in the sector since this time, however no more recent reliable data is available.

Wage rates are quite low when compared to the broader sector providing care services, and this is particularly true for those in support and administrative roles<sup>4</sup>. The sector is also slightly older than the Australian workforce average – 21 percent of the disability workforce is aged 55 years or older compared to the Australian workforce average of 19 percent, and 24 percent are aged 45-54 compared to the broader workforce average of 21 percent<sup>5</sup>. The disability workforce is 70 percent female<sup>6</sup>.

## The Disability Worker Regulation Scheme

The Act establishes three entities that will work together under the Scheme:

- **Disability Worker Registration Board of Victoria** – responsible for the registration function and regulation of registered workers.
- **Victorian Disability Worker Commission** – responsible for managing complaints made about registered and unregistered workers and supporting the Board to exercise its functions with respect to registered workers.
- **Victorian Disability Worker Commissioner** – the head of the Disability Worker Commission with statutory powers to issue prohibition orders in relation to unregistered workers, where there is a serious risk to the public or a person.

---

<sup>1</sup> National Disability Insurance Scheme, 'Market Position Statement: Victoria', 2016 p 27

<sup>2</sup> National Disability Services, 'Australian Disability Workforce Report', 2018, p.10

<sup>3</sup> National Disability Services, 'Australian Disability Workforce Report', 2018, p 11

<sup>4</sup> Productivity Commission, 'Inquiry into Disability Care and Support', 2011

<sup>5</sup> National Disability Services, 'Australian Disability Workforce Report', 2018, p 15

<sup>6</sup> National Disability Services, 'Australian Disability Workforce Report', 2018, p 15

**Figure 1 – Entities in the Disability Worker Regulation Scheme**



Registration with the Scheme as a disability worker will be voluntary and allows a worker to apply for registration as a “registered disability worker”, “registered disability support worker”, or “registered disability practitioner”. These different types of registration are called divisions.

In order to be registered, an applicant must satisfy the Disability Worker Regulation Board of Victoria (the Board) that they are competent to practice in the division of registration they apply for. The Board is proposing to set registration standards and guidelines before commencement of the Scheme on 1 July 2020. The Board is currently consulting on the proposed standards and guidelines for registered workers and you can read and provide feedback on these at [www.engage.vic.gov.au](http://www.engage.vic.gov.au)

The Scheme will also provide stronger protection from unsafe disability workers who are unregistered – these workers will be required to abide by a Code of Conduct. Figure 2 below explains how the Code of Conduct operates under the Scheme.

**Figure 2 – Code of Conduct under the Disability Worker Regulation Scheme**



\*For registered workers, the Board is currently consulting on a guideline that will require registered workers to comply with the Code of Conduct. You can read about the proposed registration standards and guideline and provide feedback at [www.engage.vic.gov.au/](http://www.engage.vic.gov.au/)

# Proposed regulations

## 1. Code of Conduct for workers

Under the Act, a Code of Conduct for unregistered disability workers (Code of Conduct) may be created through regulations. The Code of Conduct is an important tool to protect people with disability from harm and abuse by establishing the obligations that unregistered Victorian disability workers must abide by.

The Code of Conduct has several functions under the Act including:

- A person may make a complaint to the Disability Worker Registration Board of Victoria or Disability Worker Commission (Commission) about the professional conduct of a disability worker if they believe the worker has breached the Code of Conduct (s. 33).
- An unregistered disability worker must comply with the Code of Conduct (s. 118).
- The Commission may conduct an investigation into a complaint or notification it has received about an unregistered disability worker if the Commission reasonably believes that the complaint or notification indicates that the worker may have failed to comply with the Code of Conduct (s. 119).
- The Commission may initiate its own investigation into any matter if the matter indicates that an unregistered disability worker may have failed to comply with the Code of Conduct (s.121).
- The Disability Worker Commissioner (Commissioner) may make an interim prohibition order or prohibition order under certain circumstances<sup>7</sup> if the Commissioner reasonably believes that an unregistered disability worker has breached the Code of Conduct (s. 131 and 133). A prohibition order bans a person from providing disability services (either some or all disability services) in Victoria for a fixed period of time or permanently.

### Who will be covered by the Code of Conduct?

The Code of Conduct will apply to all unregistered disability workers, regardless of whether they are funded through the NDIS or other providers. This includes:

- any unregistered person who provides a disability service as defined by the Act (see **Appendix 1** for definition)
- any unregistered manager and supervisor of any person providing a disability service as defined by the Act
- unregistered disability workers who have not registered under the Scheme but work for a registered NDIS provider.

For registered workers, the Board is currently consulting on a guideline that will require registered disability workers to comply with the Code of Conduct. You can read about the proposed standards and guidelines and provide feedback at [www.engage.vic.gov.au](http://www.engage.vic.gov.au)

### How will the Code of Conduct be applied?

The Act requires unregistered disability workers in Victoria to comply with the standards and obligations contained in the Code of Conduct.

Anyone will be able to make a complaint about a Victorian disability worker, including when a worker breaches the Code of Conduct. This includes people with disability, family members, friends, providers, workers, colleagues and advocates.

---

<sup>7</sup> If the Commissioner is satisfied that it is necessary to avoid a serious risk to life, health, safety or welfare of a person or the health, safety, or welfare of the public.

The Commission will operate with a 'no wrong door' policy and the Commission will assist with ensuring that the complaint is managed by the most appropriate regulator. If a complaint is made about a Victorian disability worker breaching the Code of Conduct, the Commissioner may investigate and will address any issues which may indicate a breach of the Code of Conduct fairly and efficiently.

There may be circumstances where a worker is directed by a supervisor or manager to do something that may constitute a breach of the Code of Conduct. In such circumstances, the intention is to be able to consider the conduct of both the worker and the supervisor or manager against the requirements of the Code of Conduct.

When an alleged criminal act is involved, the matter will also be referred to the police.

## **Relationship with other codes of conduct**

### **NDIS Code of Conduct**

The Act requires the Minister to have regard to the NDIS Code of Conduct when developing the Code of Conduct. The Code of Conduct is intended to align with obligations of the NDIS Code of Conduct, whilst ensuring that there is no reduction or degradation in protections for Victorians.

The NDIS Code of Conduct promotes safe and ethical service delivery by setting out expectations for the conduct of both NDIS providers and workers. The NDIS Code of Conduct applies to:

- registered NDIS providers and their employees
- unregistered NDIS providers and their employees
- providers delivering information, linkages, and capacity building (ILC) activities
- providers delivering Commonwealth Continuity of Support Programme services for people over the age of 65
- NDIS Commission employees.

The NDIS Code of Conduct requires workers and providers who deliver NDIS supports to:

1. act with respect for individual rights to freedom of expression, self-determination, and decision-making in accordance with relevant laws and conventions
2. respect the privacy of people with disability
3. provide supports and services in a safe and competent manner with care and skill
4. act with integrity, honesty, and transparency
5. promptly take steps to raise and act on concerns about matters that might have an impact on the quality and safety of supports provided to people with disability
6. take all reasonable steps to prevent and respond to all forms of violence, exploitation, neglect, and abuse of people with disability
7. take all reasonable steps to prevent and respond to sexual misconduct.

There are guidelines available to help both NDIS providers and workers understand their obligations under the NDIS Code of Conduct.

These guidelines can be found at: <https://www.ndiscommission.gov.au/workers/ndis-code-conduct>.

### **Victorian Code of conduct for disability service workers**

The Victorian *Code of conduct for disability service workers: zero tolerance of abuse of people with a disability* (Zero Tolerance Code) applies as an interim measure whilst the state transitions to full implementation of the NDIS in Victoria. Once the NDIS Code of Conduct and the proposed Code of Conduct under the Scheme are operational, the Zero Tolerance Code will be retired.

The Zero Tolerance Code provides a framework for ethical decision-making and outlines general standards of behaviour expected of disability service workers. Disability service providers funded,

delivered and registered by the Victorian Department of Health and Human Services and Victorian-approved NDIS service providers registered under the *Disability Act 2006* are required to:

- declare their commitment to the principle of zero tolerance included in Registration Application guides, and
- ensure that all disability workers are aware of and understand the principle of zero tolerance of abuse of people with disability and their obligations under the Zero Tolerance Code, and that they sign a declaration acknowledging their agreement to abide by the obligations.

The five obligations under the Zero Tolerance Code are:

1. You must provide services without engaging in abuse, exploitation, harassment or neglect.
2. You must report any form of abuse or suspected abuse.
3. You must not engage in sexual abuse or misconduct and must report any such conduct by other workers, people with a disability, family members, carers or community members.
4. You must show respect for cultural differences when providing services.
5. You must act ethically, with integrity, honesty and transparency.

Additional information about the Zero Tolerance Code can be found at:

<https://providers.dhhs.vic.gov.au/code-conduct-disability-workers>.

## No reduction in protections in the NDIS Code of Conduct

An important principle underpinning the development of the proposed Code of Conduct is to ensure that there is no reduction in obligations or protections for Victorians. An analysis of the existing codes of conduct that apply in Victoria has been conducted to assess whether there are any gaps in obligations or protections that need to be addressed. Table 1 below summarises the obligations contained in both existing codes, organised by the nature of the obligations.

**Table 1 – NDIS and Zero Tolerance Code of Conduct obligations summary**

<b>Topic</b>	<b>NDIS Code of Conduct</b>	<b>Victorian Code of conduct for disability service workers: zero tolerance of abuse of people with a disability</b>
<b>Respect for individual rights</b>	Obligation 1: Act with respect for individual rights to freedom of expression, self-determination and decision-making in accordance with applicable laws and conventions.	Obligation 4: You must show respect for cultural differences when providing services.
<b>Privacy</b>	Obligation 2: Respect the privacy of people with disability.	No specific obligation, but the Zero Tolerance Code provides guidance on respecting the privacy of people with a disability and their families, carers and advocates.
<b>Safety, competence and quality</b>	Obligation 3: Provide supports and services in a safe and competent manner, with care and skill.	No specific obligation about safety, competency and quality contained in the Zero Tolerance Code.

	Obligation 5: 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.	
<b>Ethical behaviour</b>	Obligation 4: Act with integrity, honesty and transparency.	Obligation 5: You must act ethically, with integrity, honesty and transparency.
<b>Preventing and responding to abuse and harm</b>	Obligation 6: Take all reasonable steps to prevent and respond to all forms of violence against, and exploitation, neglect and abuse of, people with disability.	Obligation 1: You must provide services without engaging in abuse, exploitation, harassment or neglect.  Obligation 2: You must report any forms of abuse or suspected abuse.
<b>Sexual abuse or misconduct</b>	Obligation 7: Take all reasonable steps to prevent and respond to sexual misconduct.	Obligation 3: You must not engage in sexual abuse or misconduct and must report any such conduct by other workers, people with a disability, family members, carers or community members.

### Options for the Code of Conduct for unregistered disability workers

There are two options the department has considered to develop the Code of Conduct. The first option, to adopt a completely new Code of Conduct, was considered to be an unnecessary increase in regulatory burden as it would duplicate obligations and increase complexity for all stakeholders. In addition:

- the Minister must have regard to the NDIS Code of Conduct when developing the Code of Conduct, and
- early stakeholder feedback has strongly supported adoption of the NDIS Code of Conduct to ensure consistency and achieve outcomes effectively.

The second option, to adopt the NDIS Code of Conduct as the prescribed code of conduct for unregistered disability workers under the Act is the recommended option for the reasons set out below.

### Adoption of the NDIS Code of Conduct

The sector is generally already familiar with and must comply with the NDIS Code of Conduct. Therefore, to minimise further disruption to the sector and reduce unnecessary duplication, it is proposed that the NDIS Code of Conduct be adopted as the Code under this Scheme.

This means that the obligations contained in the NDIS Code of Conduct will apply to unregistered disability workers in Victoria under the Code of Conduct, regardless of whether they are funded through the NDIS or other providers.

The NDIS Code of Conduct was subject to considerable consultation prior to national implementation, and Victoria has agreed to implement the NDIS Code of Conduct for disability workers and providers funded under the NDIS.

There are four primary reasons why the NDIS Code of Conduct is recommended to be adopted for the Scheme.

**i) Legislative requirements**

The Act requires the Minister to have regard to the NDIS Code of Conduct when developing the Code of Conduct.

**ii) No reduction or degradation in protections for Victorians**

Analysis of the NDIS Code of Conduct and Zero Tolerance Code has been conducted to inform the recommendation to adopt the NDIS Code of Conduct under the Scheme. This analysis has concluded that there are no gaps in obligations or protections for Victorians between the two existing codes. This is because:

- the NDIS Code of Conduct is largely consistent with the Zero Tolerance Code and there have been no changes identified that need to be made to the NDIS Code of Conduct to address gaps in obligations or protections for Victorians
- the NDIS Code of Conduct provides additional protections in some areas such as Safety, competency and quality and Privacy (see Table 1 above). The obligations contained in the NDIS Code of Conduct are expressed in a more comprehensive way to place obligations on workers that are not only about unacceptable behaviour but impose obligations about being proactive in reporting and responding to behaviour. For example, the NDIS Code of Conduct requires workers to take all reasonable steps to respond to abuse, neglect and sexual misconduct, instead of limiting the scope of obligations to require workers to not engage in abuse, neglect and sexual misconduct
- the obligations contained in the NDIS Code of Conduct have been established as broad obligations to account for the diversity among, and requirements of, people with disability. This includes diversity of race, ethnicity, ability, age, sexuality, gender identity, intersex status and relationship status
- the obligations contained in the NDIS Code of Conduct have been established as broad obligations to be applied across diverse disability providers, including providers of different scales and different services scope.

**iii) Stakeholder feedback**

Consultation conducted in September 2017 and August 2019 to assist with development of the Scheme has highlighted strong stakeholder support for the Code of Conduct to be as consistent with the NDIS Code of Conduct as possible. Providers and disability workers see the NDIS Code of Conduct as rigorous and robust and see maximising consistency as the most effective way to engage workers and reduce administrative burden.

However, there was also feedback from the consultation that existing codes come across as quite complex and that there has been a lack of visibility and communication to people with disability and their families.

This feedback highlights the importance of effectively communicating and implementing the Code of Conduct and ensuring that the Code of Conduct is communicated in ways that are engaging and fit-for-purpose for people with disability and their families, carers, disability workers and providers.

**iv) Consistency and reducing duplication in decision-making**

Imposing nationally consistent obligations on Victorian disability workers will promote consistency and reduce duplication in regulatory decision-making between the NDIS Quality and Safeguards Commission and the Disability Worker Commission.

The Commission will operate with a 'no wrong door' policy and the Commission will assist with ensuring that the complaint is managed by the most appropriate regulator. By having consistency between the codes, this will ensure that complaints and information sharing between the NDIS Quality and Safeguards Commission and Commission can occur effectively.

### **Questions to assist with submissions**

1. Do you agree with the recommendation to adopt the NDIS Code of Conduct as the Code of Conduct that Victorian unregistered disability workers must comply with? Why?
2. Are there any changes from the NDIS Code of Conduct that you think need to be made to ensure safeguards in Victoria are not reduced? Why?
3. What kind of information and supports do you think would be useful to assist with communicating and implementing the Code of Conduct to people with disability and their families, carers, disability workers and providers?
4. Would you like to comment on any other aspects of the proposed Code of Conduct?

## 2. Prescribed offences

Prescribed offences will be an important tool in protecting people with disability from abuse as they will allow the Commissioner to investigate and prohibit unregistered disability workers who have committed certain criminal offences (a 'prescribed offence') from working in the disability sector. Prescribed offences have several functions and will impact on certain decisions under the Act, including:

- The Commission may investigate a complaint or notification received about an unregistered disability worker if the Commission reasonably believes that the complaint or notification indicates that the disability worker has committed a prescribed offence (s. 119(1)(b)(iii)).
- The Commission may initiate its own investigation into any matter if the matter relates to an unregistered disability worker who has committed a prescribed offence (s.121(b)(iii)).
- The Commissioner may make an interim prohibition order or interim prohibition order under certain circumstances<sup>8</sup> if the Commissioner reasonably believes that an unregistered disability worker has been convicted or found guilty of a prescribed offence (s. 131(b) and 133(b)). A prohibition order bans a person from providing disability services (either some or all disability services) in Victoria for a fixed period of time or permanently.

### Who will be covered by prescribed offences?

Prescribed offences will apply to unregistered disability workers.

For registered workers, the Board is currently consulting on a registration standard about criminal history. You can read about the proposed standards and guidelines and provide feedback at [www.engage.vic.gov.au](http://www.engage.vic.gov.au)

### What prescribed offences are proposed?

It is proposed that offences which indicate serious criminal activity will be prescribed under the Scheme. These offences include significant crimes against persons and serious fraud and deception offences. The types of offences that are proposed are being used elsewhere in the disability sector as the basis for criminal checks to prevent individuals from gaining registration to be NDIS workers. For consistency, it is proposed that the same offences are used under the Scheme.

The NDIS Worker Screening Check is an important part of the NDIS Quality and Safeguarding Framework and requires registered NDIS providers to ensure that particular workers have an appropriate check as a mandatory requirement of NDIS provider registration (the NDIS Worker Screening Check). Once fully implemented, the NDIS Worker Screening Check will enable screened workers to deliver NDIS services and supports in any state and territory, with any employer delivering services and supports under the NDIS.

Interim arrangements set out in the *Safety Screening Policy for registered NDIS providers operating in Victoria* (Safety Screening Policy) are currently in place in Victoria. These arrangements will operate from 1 July 2019 until Victoria's NDIS Worker Screening Unit (NDIS WSU) is operational in the future.

There is a list of Commonwealth, State and Territory offences that disability workers will be screened against to determine whether they can provide NDIS supports and services as part of the NDIS Worker Screening Check. The framework for these offences is outlined in clause 61 and 62 of the Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme (May 2018) (Intergovernmental Agreement).

---

<sup>8</sup> If the Commissioner is satisfied that it is necessary to avoid a serious risk to life, health, safety or welfare of a person or the health, safety, or welfare of the public.

The department proposes to adopt the list of relevant offences for NDIS worker screening as prescribed offences under the Act. Consistent with the Intergovernmental Agreement, the types of offences that are proposed to be prescribed for the Scheme are:

- murder and attempted murder
- assault and sexual offences (including serious assault against a child or vulnerable person, sexual assault of a child or vulnerable person and incest)
- child pornography-related offences
- abduction or kidnapping offences (including abduction or kidnapping offences against a child or vulnerable person involving a sexual or abusive element)
- bestiality and animal cruelty offences
- manslaughter
- dangerous or negligent acts against a person under care
- drug trafficking offences
- fraud and deception offences against a child or vulnerable person
- national security offences, and
- pending charges for murder, attempted murder, serious assault against a child or vulnerable person, sexual assault of a child or vulnerable person, incest, child pornography-related offences, abduction or kidnapping offences against a child or vulnerable person involving a sexual or abusive element, bestiality and serious animal cruelty offences.

Other criminal offences may be prescribed for the Scheme to align with the list of offences that will be adopted for NDIS worker screening. The adoption of the NDIS worker screening offences by the Scheme will ensure regulatory consistency and fulfil the government's obligations under the Intergovernmental Agreement.

The Intergovernmental Agreement can be accessed in full at:

<https://www.coag.gov.au/about-coag/agreements/intergovernmental-agreement-nationally-consistent-worker-screening>.

## **Proposed regulation**

To promote national consistency in decision-making and information sharing between the NDIS Quality and Safeguards Commission and Disability Worker Commission, it is recommended that the list of offences for NDIS worker screening, as summarised above, are adopted as the prescribed offences for this Scheme.

## **Questions to assist with submissions**

5. Do you agree with the proposed approach to align prescribed offences under the Scheme with NDIS worker screening? Why?

### 3. Other proposed regulations

#### Prescribed agencies and entities for information sharing

The Act allows for information sharing to enable the Commission and the Board, and relevant agencies and entities, to exercise their functions. Information sharing will be managed through agreements, memoranda of understanding or through other mechanisms. Information sharing arrangements will enable the Board and the Commission to consider relevant information when assessing an individual's application for registration and in the course of undertaking investigations and assessing complaints and notifications.

The Act allows for information sharing with information management agencies, defined as “prescribed Commonwealth, State or Territory agencies that have functions relating to identification of health practitioners or disability workers for information management and communication purposes” (s. 240).

The Act also allows for information sharing with other relevant entities (s. 241), including:

- an entity established under the NDIS Act
- an NDIS screening agency
- a prescribed entity responsible for worker screening under an Act of the Commonwealth
- a State or a Territory
- any other Commonwealth, State or Territory entities with functions in relation to the provision of disability services.

A regulation which prescribes the relevant agencies and entities will enable information sharing to support the functions of the Board and the Commission. The proposed prescribed agencies and entities are outlined in **Appendix 3**.

#### Prescribed “interstate health complaints entities”

The Act allows for proceedings against a registered disability worker to be commenced before a panel established by the Disability Worker Registration Board of Victoria, the Victorian Civil and Administrative Tribunal (VCAT) or a court under the Act, despite the fact the disability worker's behaviour has been dealt with by a health complaints entity (s. 275(2)).

Prescribing interstate health complaints entities will allow proceedings about professional misconduct, unsatisfactory professional performance or unprofessional conduct of a registered worker under the Act, and that have been dealt with by a health complaints entity (including a prescribed interstate health complaints entity), to also be the subject of a proceeding before a panel, VCAT or a court under the Act.

A regulation which prescribes interstate health complaints entities will ensure that such conduct is appropriately dealt with in the disability sector and promote quality and safety of disability services.

The proposed prescribed interstate health complaints entities are:

- New South Wales Health Care Complaints Commission
- Health and Community Services Complaints Commissioner South Australia
- Western Australian Health and Disability Services Complaints Office
- Tasmanian Ombudsman/Office of the Health Complaints Commissioner
- Queensland Office of the Health Ombudsman
- Queensland Health Quality and Complaints Commission
- Northern Territory Health and Community Services Complaints Commission.

## Receipt for seized items

The Act allows an authorised officer<sup>9</sup>, when investigating complaints, to seize an object if it is relevant to the investigation and prevents the object from being hidden or lost (s. 231).

The Act requires that when seizing an object, the authorised office must give a receipt for the thing or sample to the person in charge of the thing or the premises from which it was taken. The proposed regulation prescribes the form of the receipt which requires the authorised officer to:

- identify their name and the date
- identify the person in charge of the thing and the premises from which it was taken
- identify the thing seized or sample taken
- sign the receipt.

## Questions to assist with submissions

6. Would you like to comment on any aspect of the proposed regulations?

---

<sup>9</sup> Appointed by the Board or the Commissioner.

# Appendices

## 1. Definition of key terms

<p><b>Codes of Conduct</b></p>	<p>There are three codes of conduct referenced in this paper:</p> <ul style="list-style-type: none"> <li>• Code of Conduct for unregistered disability workers (Code of Conduct)</li> <li>• NDIS Code of Conduct</li> <li>• <i>Victorian Code of Conduct for disability service workers: zero tolerance of abuse of people with a disability (Zero Tolerance Code)</i></li> </ul>
<p><b>Complaint or Notification</b></p>	<p>The Disability Worker Commission will investigate a complaint or notification made about a disability worker. The areas that someone may make a complaint about include:</p> <ol style="list-style-type: none"> <li>a. standard of work</li> <li>b. knowledge, skill or judgment possessed by the disability worker</li> <li>c. suitability to be registered</li> <li>d. capacity to provide services safely.</li> </ol>
<p><b>Disability Services</b></p>	<p>The Act broadly defines disability services to include incidental contact with a person with a disability for the principal purpose of caring for, or treating, the person or supporting the person to manage the person's limitations in undertaking one or more of the following activities:</p> <ol style="list-style-type: none"> <li>a. communication</li> <li>b. social or economic participation</li> <li>c. social interaction</li> <li>d. learning</li> <li>e. mobility</li> <li>f. self-care</li> <li>g. self-management.</li> </ol> <p>For the purposes of the Act, a person is not a disability worker if:</p> <ul style="list-style-type: none"> <li>• The person is a family member of a person with a disability and does not receive a fee or reward, or</li> <li>• The person voluntarily provides disability services, unless the person provides the disability services on behalf of an organisation or agency.</li> </ul>
<p><b>Disability worker</b></p>	<p>The Act defines disability worker to mean a person who either:</p> <ul style="list-style-type: none"> <li>• directly provides a disability service to a person with a disability or</li> <li>• supervises or manages another person who directly provides a disability service to a person with a disability.</li> </ul>

	However, a disability worker does not include a family member who provides disability services and does not receive a fee or reward for those services or a person who voluntarily provides disability services, unless the person provides the disability services on behalf of an organisation or agency.
<b>Disability Worker Commission</b>	The Commission receives and investigates complaints about registered and unregistered workers and supports the Board and Commissioner. The Commission also maintains registers of disability workers (both registered and those people prohibited from providing disability services) that is accessible to the public.
<b>Disability Worker Commissioner</b>	The head of the Disability Worker Commission with statutory powers to issue prohibition orders in relation to unregistered workers, where there is a serious risk to the public or a person.
<b>Disability Worker Registration Board of Victoria</b>	Responsible for the registration function and regulation of registered workers.
<b>Disability Worker Regulation Scheme</b>	The Act creates a registration and accreditation scheme for the disability workforce. The scheme is made up of three entities – the Disability Worker Registration Board of Victoria, the Victorian Disability Worker Commission and the Victorian Disability Worker Commissioner.
<b>Prohibition order</b>	Is a legally enforceable order issued by the Victorian Disability Worker Commissioner that bans an unregistered disability worker from providing all disability services, or specified services, either for a limited period of time or permanently.
<b>Registered worker</b>	Victorian disability workers registered with the Disability Worker Registration Board of Victoria.
<b>Unregistered worker</b>	Victorian disability workers not registered with the Disability Worker Registration Board of Victoria.

## 2. Summary of consultation questions

1. Do you agree with the recommendation to adopt the NDIS Code of Conduct as the Code of Conduct that Victorian unregistered disability workers must comply with? Why?
2. Are there any changes from the NDIS Code of Conduct that you think need to be made to ensure safeguards in Victoria are not reduced? Why?
3. What kind of information and supports do you think would be useful to assist with communicating and implementing the Code of Conduct to people with disability and their families, carers, disability workers and providers?
4. Would you like to comment on any other aspects of the proposed Code of Conduct?
5. Do you agree with the proposed approach to align prescribed offences under the Scheme with NDIS worker screening? Why?
6. Would you like to comment on any aspect of the proposed regulations?

### 3. Proposed prescribed agencies and entities for information sharing

- Australian Health Practitioner Regulation Agency
- Australian Human Rights Commission
- Australian Federal Police
- Victorian Ombudsman
- Victorian Independent Broad-based Anti-Corruption Commission
- Victorian Commission for Children and Young People
- Victoria Police
- Coroner's Court of Victoria
- Victorian Office of the Public Advocate
- Victorian Equal Opportunity and Human Rights Commissioner
- Victorian Civil and Administrative Tribunal (VCAT)
- Victorian Department of Justice and Regulation
- Victorian Institute of Teaching
- New South Wales Ombudsman
- Office of the New South Wales Advocate for Children and Young People
- New South Wales Public Guardian
- New South Wales Police Force
- New South Wales Civil and Administrative Tribunal
- Ombudsman South Australia
- South Australian Office of the Guardian for Children and Young People
- South Australia Police
- South Australian Civil and Administrative Tribunal
- South Australian Commissioner for Equal Opportunity
- Ombudsman Western Australia
- Western Australia Police Force
- Western Australian Office of the Public Advocate
- Commissioner for Children and Young People Western Australia
- Western Australian Equal Opportunity Commission
- State Administrative Tribunal Western Australia
- Commissioner for Children and Young People Tasmania
- Tasmania Police
- Tasmanian Ombudsman
- Office of the Public Guardian Tasmania
- Guardianship and Administration Board Tasmania
- Magistrates Court of Tasmania (includes civil court)
- Queensland Office of the Public Guardian
- Queensland Office of the Public Advocate
- Queensland Human Rights Commission
- Queensland Ombudsman
- Queensland Civil and Administrative Tribunal
- Queensland Police Service
- Australian Capital Territory Human Rights Commission
- Australian Capital Territory Civil and Administrative Tribunal

- Australian Capital Territory Ombudsman
- Northern Territory Police
- Northern Territory Anti-Discrimination Commission
- Northern Territory Civil and Administrative Tribunal
- Ombudsman Northern Territory
- Office of the Public Guardian Northern Territory
- Northern Territory Office of the Children's Commission.