



National Disability Insurance Scheme (NDIS Behaviour Support Practitioner Application) Guidelines 2020

I, Graeme Head, Commissioner of the NDIS Quality and Safeguards Commission, make the following guidelines.

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Graeme Head
Commissioner of the NDIS Quality and Safeguards Commission

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Introduction

The guidelines in this instrument describe a process that a person can use to apply to the Commissioner for the NDIS Quality and Safeguards Commission to be assessed as being an ‘NDIS behaviour support practitioner’ as defined by the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018* (Behaviour Support Rules). They also describe what the Commissioner will generally take into account in considering whether a person is an ‘NDIS behaviour support practitioner’.

The Behaviour Support Rules (section 5) define an ‘NDIS behaviour support practitioner’ as ‘a person the Commissioner considers suitable to undertake behaviour support assessments (including functional behavioural assessments) and to develop behaviour support plans that may contain the use of restrictive practices’.

A person’s status as an NDIS behaviour support practitioner is particularly important in the context of rules that apply to a provider of specialist behaviour support services to an NDIS participant under the *National Disability Insurance Scheme Act 2013* (NDIS Act). Put broadly, the rules require certain aspects of those services to be performed only by an ‘NDIS behaviour support practitioner’ (who may be the registered provider or someone engaged by the provider). These requirements are described below.

If the specialist behaviour support services will include:

- (a) undertaking a behaviour support assessment (including a functional behavioural assessment) of the participant; or
- (b) developing a behaviour support plan for the participant,

they can be provided to an NDIS participant only by a provider who is registered by the Commissioner under section 73E of the NDIS Act to provide specialist behaviour support services.

That is the combined effect of section 73B of the NDIS Act and sections 6 and 7 of the *National Disability Scheme (Provider Registration and Practice Standards) Rules 2018* (Provider Registration Rules).

A registered provider of specialist behaviour support services must comply with the conditions of their registration, including conditions imposed by rules under section 73H of the NDIS Act. Some of those conditions are in the Behaviour Support Rules. Importantly in this context, they include conditions that require the following things to be done *only* by an ‘NDIS behaviour support practitioner’:

- Provision of specialist behaviour support services (section 17 of the Rules)
- Development of a behaviour support plan that contains a regulated restrictive practice (section 18 of the Rules)
- Review of a comprehensive behaviour support plan that contains a regulated restrictive practice (section 22 of the Rules).

A person’s status as an ‘NDIS behaviour support practitioner’ is also relevant to a provider’s application to be registered by the Commissioner to provide specialist behaviour support services. In order to be registered, the provider must (among other things) have been assessed by an approved quality auditor as meeting the applicable standards and other requirements

prescribed by the NDIS Practice Standards, most of which are in the Provider Registration Rules. Once registered the provider must then be able to demonstrate ongoing compliance with those standards.

The *National Disability Insurance Scheme (Quality Indicators) Guidelines 2018* issued by the Commissioner are to be taken into account in assessing compliance with the standards. The guidelines list indicators that help to demonstrate providers' compliance with the standards.

The quality indicators relating to standards that apply to specialist behaviour support service providers refer to NDIS behaviour support practitioners. For example, the indicators in section 38 (Behaviour Support in the NDIS) include that:

- All NDIS behaviour support practitioners have been assessed as suitable to deliver specialised positive behaviour support, including assessments and development of behaviour support plans;
- Each NDIS behaviour support practitioner undertakes ongoing professional development to remain current with evidence-informed practice and approaches to behaviour support, including positive behaviour support; and
- A specialist behaviour support clinical supervisor provides clinical supervision of each work practice of the NDIS behaviour support practitioner.

There are connections between the application process set out in these guidelines and the *Positive Behaviour Support Capability Framework for NDIS providers and behaviour support practitioners* and the *Self-Assessment Resource Guide for the Positive Behaviour Support Capability Framework* (published by the NDIS Quality and Safeguards Commission and accessible on the Commission's website: www.ndiscommission.gov.au.) The Self-Assessment Resource Guide provides tools that a behaviour support practitioner can use to assess his or her capability against the capability levels in the Positive Behaviour Support Capability Framework.

The guidelines in this instrument set out how a practitioner can use these tools to support an application to be considered an 'NDIS behaviour support practitioner'. The application process in the guidelines does not mandate the use of the tools. Practitioners are however encouraged to use them because they may:

- Assist practitioners to build their capability in behaviour support services on an ongoing basis and to demonstrate this to NDIS participants and NDIS providers;
- Assist the Commissioner's consideration of practitioners' applications to be considered a 'NDIS behaviour support practitioner'; and
- Assist practitioners (if registered NDIS providers), and any registered NDIS providers that may engage practitioners, to demonstrate the quality indicators concerning NDIS behaviour support practitioners in their provision of behaviour support services.

Part 1 – Preliminary

1. Name

This instrument is the *National Disability Insurance Scheme (NDIS Behaviour Support Practitioner Application) Guidelines 2020*.

2. Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

3. Authority

This instrument is made under subsection 181D(2) of the *National Disability Insurance Scheme Act 2013*.

Note: Subsection 181D(1) lists the functions of the Commissioner for the NDIS Quality and Safeguards Commission. They include the behaviour support function in section 181H. Subsection 181D(2) allows the Commissioner, by notifiable instrument, to make guidelines relating to the performance of the Commissioner's functions.

4. Definitions

In this instrument:

applicant means a person who makes an application to the Commissioner for consideration of the person's suitability and **application** has a corresponding meaning.

application form means a form made available by the Commission for the making of an application to the Commissioner for consideration of a person's suitability .

Note: The form can be obtained from the Commission by contacting the Commission to request a copy.

Behaviour Support Rules means the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*.

Commission means the NDIS Quality and Safeguards Commission established by the NDIS Act.

Commissioner means the Commissioner of the Commission or a person to whom the Commissioner has delegated the power to consider a person suitable to undertake behaviour support assessments (including functional behavioural assessments) and to develop behaviour support plans that may contain the use of restrictive practices and, therefore, an 'NDIS behaviour support practitioner' as defined by section 5 of the Behaviour Support Rules.

NDIS Act means the *National Disability Insurance Scheme Act 2013*.

NDIS behaviour support practitioner means a person whom the Commissioner considers to be suitable.

PBS Capability Framework means the *Positive Behaviour Support Capability Framework for NDIS providers and behaviour support practitioners* published by the Commission and accessible on the NDIS Commission's website <https://www.ndiscommission.gov.au/pbscapabilityframework>

Note: A copy of the *Positive Behaviour Support Capability Framework for NDIS providers and behaviour support practitioners* is accessible on the Commission's website: www.ndiscommission.gov.au.

self-assessment means a self-assessment as described in the Self-Assessment Resource Guide.

Self-Assessment Resource Guide means the *Self-Assessment Resource Guide for the Positive Behaviour Support Capability Framework* published by the Commission.

Note: A copy of the *Self-Assessment Resource Guide for the Positive Behaviour Support Capability Framework* is accessible on the Commission's website: www.ndiscommission.gov.au.

suitable means suitable to undertake behaviour support assessments (including functional behavioural assessments) and to develop behaviour support plans that may contain the use of restrictive practices and **suitability** has a corresponding meaning.

supervision agreement means a supervision agreement as described in the Self-Assessment Resource Guide.

Part 2 – Applying to be considered suitable

5. Making the application

- (1) A person may apply to the Commissioner for consideration of the person's suitability.

Note: A person whom the Commissioner (or a delegate of the Commissioner) considers suitable is an 'NDIS behaviour support practitioner' as defined by section 5 of the Behaviour Support Rules.

- (2) The application should be made in writing using the application form.

Note: The form can be obtained from the Commission by contacting the Commission to request a copy.

- (3) The application should be submitted to the Commission in accordance with the instructions provided on the form.

- (4) The application should be accompanied by:

- (a) the applicant's resume, setting out the experience, training and education of the applicant relevant to the applicant's suitability;
- (b) a certified copy of the official certificate or equivalent official record of any qualifications of the applicant that are relevant to the applicant's suitability;
- (c) a written self-assessment by the applicant of his or her capabilities against the capability levels in the PBS Capability Framework; and

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- (d) a written endorsement of that self-assessment by a supervisor of the applicant as described in the Self-Assessment Resource Guide.
 - (5) The self-assessment and endorsement should have been done or prepared as described in the Self-Assessment Resource Guide, which includes being supported by a portfolio of evidence as described in the Self-Assessment Resource Guide.
 - (6) The application should also be accompanied by the written consent of:
 - (a) the person who endorsed the applicant's self-assessment to being contacted by the Commission to discuss the self-assessment, the endorsement or any other matter relevant to consideration of the application; and
 - (b) the person (if any) with whom the applicant had a supervision agreement (as described in the Self-Assessment Resource Guide) to being contacted by the Commission to discuss the supervision of the applicant under the supervision agreement.

Note: The application form provides for the applicant to consent to the Commissioner disclosing to, and receiving from, these people information about the applicant and the application in order to assist consideration of the application.
 - (7) If the applicant considers that he or she will be unable to submit one or more of the documents referred to in paragraph (4)(c) or (d) or subsection (6), the applicant should state this and the reason why in the application.
 - (8) If the Commissioner is satisfied that there is a good reason why one or more of the documents referred to in paragraph (4)(c) or (d) or subsection (6) will be unable to be submitted with the application the Commissioner may agree to the applicant submitting alternative documents or information to assist consideration of the application.

6. Feedback on a self-assessment

- (1) To help encourage continuous improvement in the quality and safety of behaviour support services, the application form provides for the applicant to ask for feedback from the Commissioner on the applicant's self-assessment (if any).
- (2) If on the application form the applicant does ask for feedback the Commissioner will provide it when the Commissioner informs the applicant of the outcome of the application (as referred to in section 8 below) or as soon as reasonably practical after that.
- (3) Any feedback that the Commissioner provides is not, and is not to be regarded or presented as, endorsement of the applicant's self-assessment or any aspect of it.

7. Consideration of the application

- (1) As soon as reasonably practicable after receiving an application the Commissioner will consider it and the documents submitted with it.
- (2) As part of that consideration, the Commissioner may do any one or more of the following things:
 - (a) ask the applicant to clarify or expand on information submitted by the applicant

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- (b) if the applicant submitted a self-assessment—ask the applicant to provide the original or a copy of some or all of any portfolio of evidence prepared in support of the self-assessment
 - (c) if the applicant submitted a self-assessment with the application—contact the person (if any) who endorsed the self-assessment to discuss the self-assessment, its endorsement and any other matter relevant to the applicant’s suitability
 - (d) if the applicant had a supervision agreement—contact the person with whom the applicant had the agreement to discuss the supervision of the applicant under that agreement and any other matter relevant to the applicant’s suitability
 - (e) ask the applicant to submit additional information relevant to the applicant’s suitability
 - (f) have regard to any other information held by or provided to the Commission that is relevant to the applicant’s suitability.

Note: The Commissioner’s collection, disclosure and use of information is subject to applicable provisions of the NDIS Act and the *Privacy Act 1988*.

- (3) If, after considering the application, the Commissioner intends to decide that the applicant is not suitable, where reasonably practicable before making that decision the Commissioner will:
 - (a) notify the applicant, in writing, that this is the Commissioner’s intention and why; and
 - (b) give the applicant a specified period within which to respond before the Commissioner decides the application.

8. Outcome of the application

- (1) After the Commissioner has completed consideration of the application (including any response as referred to in subsection 7(3) received within the specified period or any extension of that period agreed to by the Commissioner) the Commissioner will notify the applicant in writing of the outcome.
- (2) The outcome may be that:
 - (a) the applicant is suitable or
 - (b) the applicant is not suitable or
 - (c) the Commissioner was unable to make a decision about the applicant’s suitability (for example, because the applicant had not provided information that the Commissioner needed in order to make a decision).

9. Publication of suitability

If the Commissioner decides that the applicant is suitable, and the applicant has consented to his or her name and contact details being published, the Commissioner will arrange for the name and details to be placed on a list of NDIS behaviour support practitioners to be published on the Commission’s website.

10. Reconsideration of suitability

- (1) The Commissioner may, on the basis of relevant information, form the view that a person whom the Commissioner had previously decided was suitable is no longer suitable and form an intention to revoke that previous decision.
- (2) If the Commissioner forms that intention the Commissioner will:
 - (a) notify the person in writing that it is the Commissioner's intention to revoke the previous decision and why, and
 - (b) give the person a specified period within which to respond before the Commissioner decides whether or not to revoke the previous decision.
- (3) After considering any response received from the person within the specified period (or any extension of that period agreed to by the Commissioner), the Commissioner will inform the person in writing of the outcome.
- (4) If the outcome is that the Commissioner considers the person is no longer suitable and revokes the previous decision:
 - (c) on the revocation of the previous decision the person ceases to be an NDIS behaviour support practitioner, and
 - (d) the Commissioner will arrange for the person's name and other details to be removed from any list of NDIS behaviour support practitioners published on the Commission's website.

Note: Rules under the NDIS Act require certain aspects of specialist behaviour support services to be performed only by an 'NDIS behaviour support practitioner' (who may be a registered NDIS provider or someone engaged by a registered NDIS provider).