



Disability Council NSW

Submission to

Department of Social Services:
NDIS Code of Conduct

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Disability Council NSW

The Disability Council NSW was established under the *Community Welfare Act 1987* (NSW), and was re-constituted under the *Disability Inclusion Act 2014* (NSW) on 3 December 2014. Council's main responsibilities under the Act are to:

- monitor the implementation of Government policy
- advise the Minister for Disability Services on emerging issues relating to people with disability, and about the content and implementation of the NSW State Disability Inclusion Plan and Disability Inclusion Action Plans
- advise public authorities about the content and implementation of Disability Inclusion Action Plans
- promote the inclusion of people with disability in the community and promote community awareness of matters concerning the interests of people with disability and their families
- consult with similar councils and bodies, and people with disability, and
- conduct research about matters relating to people with disability.

The Council consists of a diverse group of 8 to 12 members (currently 11 members). Each member is appointed for up to four years by the Governor of NSW on the recommendation of the Minister for Disability Services. Members are selected to be on Council because:

- they have lived experience of disability
- they have particular expertise on disability issues
- they want to improve the lives of people with disability

The Council is funded by the NSW Government through the NSW Department of Family and Community Services (FACS) and is supported by a secretariat team within FACS.

Issues

The Disability Council welcomes the opportunity to make this submission. The Council is a long-time supporter of the NDIS and is strongly supportive of an NDIS Code of Conduct and the Framework to support the rights of people with disability, including the right to dignity and to reasonable adjustments.

Depth of guidance

The proposed Code of Conduct is a useful summary; however, the Council would like to see the Code expanded in order to provide greater guidance to providers and workers, and better understanding of the Code by participants. Other modern Codes of Conduct provide an overarching statement of guiding principles, supported by a more in-depth explanation of each principle. One example which NDIA may wish to draw on is the Code of Ethics of the Australian Sign Language Interpreters Association.¹

Other professional Codes

Many providers and workers will be required to adhere to other Codes of Conduct or Codes of Ethics. This needs to be recognised clearly in the NDIS Code of Conduct, with guidance provided about what a provider/worker should do in the event of a conflict between the NDIS Code of Conduct and another professional Code.

The Council notes that the discussion paper refers to other bodies, such as the Australian Health Practitioner Regulation Agency (p20) and asks that the fact that the Commission can refer complaints and concerns to such bodies be included in the Code of Conduct.

Scope of practice

People with disability have the right to skilled providers and workers who are working only within their range of expertise. Providers and workers who provide services outside their range of expertise could risk the health and safety of participants, are potentially wasting taxpayer funds, and in some circumstances are compromising their own professional ethics.

As an example: in a previous submission², the Council noted that an interpreter who provides services unrelated to interpreting (such as driving a client to and from an appointment etc) is compromising their own ability to be objective and impartial, as well as the appearance of objectivity and impartiality, which are essential to the dignity of the participant. The Disability Council recommended that NDIA policy actively discourages any additional service provision by interpreters which could compromise an interpreter's professional ethics, specifically objectivity and impartiality.

¹ http://asliansw.org.au/file/CODE_OF_ETHICS.pdf

² To the Joint Standing Committee on the NDIS (hearing services); http://www.disabilitycouncil.nsw.gov.au/_data/assets/pdf_file/0006/392433/NDIS-hearing-with-cover-letter.PDF

Workers or providers working outside of their range of expertise could impact a participant's safety or health; for example, by training a participant to move incorrectly or by providing them with incorrect information about finances, their legal obligations or personal safety.

Conflicts of interest

Tenet 3 of the draft code requires workers and providers to act with integrity, honesty and transparency, and although conflicts of interests are referred to on p19 of the discussion paper, it is essential to include this in the Code itself. The Council suggests adding to Tenet 3:

"...including with regard to any actual, potential or perceived conflict of interest".

As the discussion paper rightly notes, some people with disability (and their families) are particularly vulnerable to social pressure or may fear a withdrawal of services. While providers and workers must err on the side of caution in the event of a conflict of interest, they should refer the participant to a more suitable provider/worker to avoid a participant not having access to services.

Objectivity

In a previous submission, the Disability Council called for NDIS participants, including parents of participants who are eligible for early intervention services, to be provided with unbiased information as to the various supports available and the evidence base for any successes claimed.³ While this recommendation was aimed at planners, it applies equally to providers and workers, and while this was referred to in the Discussion Paper (p20) it should be reflected specifically in the Code of Conduct, both by ensuring that workers and providers do not provide misleading information, but also by requiring professional development to stay up to date with the latest research in the person's area of practice.

Transparency

Tenet 3 of the draft Code also refers to transparency. The Council has been made aware of some providers charging for more hours than are actually provided. One person has reported that when they objected to this practice, they were told that services would no longer be provided. The Council recommends that this practice, in particular, is referred to as unethical in the Code.

Consumer choice

1. The Council is aware of media reports (eg Channel 9 News, 18 April 2017) of providers allegedly inserting significant 'exit fees' (of up to \$4000) into their service contracts. One of the central pillars of the NDIS is the choice that people

³ To the Joint Standing Committee on the NDIS (hearing services); http://www.disabilitycouncil.nsw.gov.au/_data/assets/pdf_file/0006/392433/NDIS-hearing-with-cover-letter.PDF

with disability have to change providers if they are not happy with the service they are getting. A large exit fee makes it expensive, perhaps impossible, to exercise that choice. By making it hard to change, these providers give themselves more opportunity to provide sub-standard services.

2. In some, limited circumstances, a worker or provider will have, in one interaction, more than one client, only one of which may be an NDIS participant. For example, Auslan/English and Deaf interpreters⁴ always work in situations where one party to the interpreted conversation is *not* an NDIS participant. Neither party will be able to judge the quality of the translation provided, and so exercising choice is problematic.

With this in mind, the Disability Council previously has recommended that the NDIS consults with relevant stakeholders with a view to putting in place policies which ensure that *all* parties in an interpreter-mediation situation are always offered consumer choice.⁵

This is equally relevant to *any* interaction where a worker/provider has more than one client, one of which is an NDIS participant.

Privacy and confidentiality

The Disability Council is aware of reports that providers have demanded a copy of a participant's NDIS plan.

Council supports the sharing of information necessary to the delivery of a service, but recommends that only in exceptional circumstances should providers or workers ask to see the funding arrangements of a plan. Providers having access to plans could result in abuses of the system (such as a provider tailoring service delivery or rates to extract maximum funding). When any Australian buys a service from a business (eg a plumber) they would find it highly inappropriate to be asked to provide a copy of the family's budget as a condition of receiving a service. NDIS participants are similarly buying a service and should not be subject to further conditions.

Where a participant is asked for a copy of their plan, there must be safeguards so that only information regarding the nature of their supports, and not any financial or funding information, is included, and any sharing or collection of personal information must occur with due regard to the participant's right to privacy.

In fact, the Council believes that NDIS providers, whether registered or not, may well fall within the scope of the *Privacy Act 1988* and the Australian Privacy Principles⁶, and urges the NDIA to seek advice from the Office of the Australian Information Commissioner as to whether NDIS providers are 'health service providers' under the Act.

⁴ A Deaf interpreter is a Deaf person who works with Deaf clients who have minimal language skills, use a foreign sign language or who are Deafblind:

https://www.naati.com.au/media/1287/deaf_interpreter_information_booklet.pdf

⁵ To the Joint Standing Committee on the NDIS (hearing services);

http://www.disabilitycouncil.nsw.gov.au/_data/assets/pdf_file/0006/392433/NDIS-hearing-with-cover-letter.PDF

⁶ <https://www.oaic.gov.au/privacy-law/privacy-act/australian-privacy-principles>

If this is the case, then the Code should reflect this, and note specifically that information relating to a person's disability is considered 'sensitive information' under the Act, and that this places more stringent obligations on the provider/worker.

The Code should also make clear the circumstances under which providers/workers who are not statutory mandatory reporters are permitted to breach confidentiality, to whom and how.

Recommendations

Recommendation 1: That the Code be expanded to include further elaboration on each of the guiding principles

Recommendation 2: That the Code provides guidance to workers/providers presented with a conflict between the NDIS Code of Conduct and other professional Codes

Recommendation 3: That the Code references the ability of the Commission to refer concerns and complaints to other appropriate professional and/or regulatory bodies, such as the Australian Health Practitioner Regulation Agency and the National Authority for the Accreditation of Translators and Interpreters

Recommendation 4: That the Code requires that workers and providers act only within their own scope of practice, providing services only within their professional expertise, qualifications, and accreditation

Recommendation 5: That Tenet 3 of the Code includes "...with regard to any actual, potential or perceived conflict of interest"

Recommendation 6: That workers and providers must err on the side of caution with regard to any actual, potential or perceived conflict of interest, and that a worker or provider who must withdraw their services or refuse service based on such a conflict should be obliged to refer the participant to another service

Recommendation 7: That workers and providers do not engage in misleading or deceptive practices, such as claiming therapeutic benefits which are not supported by evidence; and that workers and providers support this by engaging in professional development in order to keep abreast of current evidence in their area of practice

Recommendation 8: That workers and providers charge only for the actual service provided and that where a minimum number of hours is charged (eg a 'call-out fee') this is made clear to the participant, and agreed to, beforehand

Recommendation 9: That the tenet of consumer choice specifically be reflected in the Code:

- Workers and providers should not take actions which limit participants' ability to make free choices, such as by the use of unreasonable exit fees.
- Workers and providers who have more than one client in an interaction, where at least one client is an NDIS participant, must give full regard to consumer choice for *all* clients, not only the participant.

Recommendation 10: That the NDIA seeks advice from the Office of the Australian Information Commissioner, and that the Code notes specifically any responsibilities of providers/workers under the Privacy Act 1988 and the Australian Privacy Principles, including any obligations relating to a participant's 'sensitive information', including requesting sharing of an NDIS participant's plan; further, NDIS participants should be provided with a copy of their plan which includes no financial information and which is the appropriate version to share with providers who seek necessary information regarding other supports to which the person is entitled

Recommendation 11: That the Code notes the circumstances under which providers/workers who are not statutory mandatory reporters are permitted to breach confidentiality, to whom and how.