



e. mifa@mifa.org.au

w. www.mifa.org.au

p. 07 3004 6914

www.minetworks.org.au - 1800 985 944

Submission to Department of Social Services: NDIS Code of Conduct

Mental Illness Fellowship of Australia (MIFA) is a federation of long-standing member organisations, delivering specialist services for individuals living with mental illness and their friends and families. MIFA members operate out of over 150 'front doors' in metropolitan and regional areas, and support 30,000 people living with mental illness and their carers each year. Our membership has a strong focus on building community, valuing peer support and lived experience, and supporting recovery. We have substantial experience delivering specialist, place-based, community-building programs to those experiencing mental illness, and over 50% of our workforce has a lived experience as a consumer or carer; as such, we feel we are well placed to assist the Department of Social Services in their development of the Code of Conduct for the National Disability Insurance Scheme (NDIS), and we welcome the opportunity to provide our input.

Section 1.3. Who is covered by the Code

MIFA observes that NDIA workers are not bound by the NDIS Code of Conduct ("the Code"). Given the significant access decision-making and planning services provided by the NDIA, this is concerning. While noting that the conduct of NDIA employees is covered by NDIA Operational Guideline – General Conduct¹, the Code articulates a stronger position than is contained with the NDIA Operational Guideline. At a minimum, the two pieces of policy should be aligned.

Section 1.3.2. Unregistered providers

The *NDIS Registered Providers of Supports Rules 2013* allow participants self-managing their plan to use unregistered providers if they choose². MIFA suggests that significant risks are associated with unregistered provision of NDIS services. While MIFA strongly supports the principle of dignity of risk, this must be balanced with adequate regulation to prevent poor quality service provision, exploitation, coercion and abuse. MIFA suggests that the onus to provide information to unregistered providers about the Code and its obligations should not rest solely with participants self-managing their plan. MIFA has the position that unregistered providers should be subject to a minimum level of safeguarding regulation and compliance requirements, with the onus on the Commission to actively educate, audit and regulate compliance with the Code and other safeguarding initiatives (such as worker screening) for both registered and unregistered providers.

¹ *NDIA Operational Guideline: General Conduct*, available at:

https://www.ndis.gov.au/html/sites/default/files/documents/operational_guideline%20_general_conduct_overview.docx

² *NDIS Registered Providers of Supports Rules 2013*. Available at: <https://www.legislation.gov.au/Details/F2013L01009>

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Section 1.3.4. Workers

MIFA suggests that workers who breach their respective professional code of conduct, where applicable, should be automatically found to have breached the NDIS Code of Conduct with subsequent ramifications.

Section 2.1. Promote individual rights to freedom of expression, self-determination and decision-making

MIFA suggests that the obligations in this sections should be more strongly articulated. Communication should not just be for the purposes of enabling people to understand the information and make known their feelings and preferences; the communication itself should be in the form that is preferred. We also suggest that the requirement to “take into account” expressed needs should be more active. We suggest the following:

- *Communicate in the form, language and manner preferred by people with disability, and such that people with disability, and their carer where required, are able to access and understand the information and make known their feelings and preferences*
- *Actively inquire about and respect the expressed needs, values, beliefs and preferences of people with disability, including those relating to culture, religion, ethnicity, gender, identity, age and disability.*

This section should also more clearly articulate the right to informed consent, self-determination and the dignity of risk, as well as addressing the issue of restrictive practices.

MIFA also notes the role of carers, supporters, friends and families is not strongly articulated within the Code. While the Code notes that providers and workers must engage with support networks, we suggest the Code should specifically give reference to a person’s right to nominate a carer, advocate, support person, friend or family member; that opportunities to exercise this right should be actively offered to all participants; and that to the greatest extent practicable, family, carers and other support persons of a person should be involved decisions about the person’s supports, subject to the person’s right to self-determination, to privacy and to other rights (e.g. to live free from violence or coercion).

Section 2.2. Actively prevent all forms of violence, exploitation, neglect and abuse

MIFA suggests this section should specifically reference the forms of unacceptable behaviour outlined in the NDIS Quality and Safeguarding Framework³, including neglect and deprivation, harsh or rough treatment, bullying, intimidation, or vengeful behaviour (including where in response to a complaint). The section should also reference all forms of violence, including physical, emotional, financial, cultural and/or spiritual.

Section 2.3. Act with integrity, honesty and transparency

MIFA suggests that this section should actively encourage providers to prioritise client interests. The section should also denounce acts of “coercion” and “unconscionable inducement”, such that service providers must not provide coercive incentives to participants, engage in unscrupulous marketing of services, nor place undue barriers to participants seeking alternative supports; and must actively provide

³Department of Social Services. (2017). *NDIS Quality and Safeguarding Framework*. Available at: <https://www.dss.gov.au/disability-and-carers/programs-services/for-people-with-disability/ndis-quality-and-safeguarding-framework-0>

information about a participant's right to seek alternative supports. We also suggest that this section should also be strengthened by more clearly defining what constitutes a conflict of interest.

2.4. Provide supports in a safe and ethical manner with care and skill

MIFA suggests that the provision of supports in an ethical manner should be strengthened by directly referencing the general principles underpinning the *NDIS Act 2013*.

MIFA would also like to note the importance of lived experience in service provision, and significant contribution of peer support workers in the disability and mental health sector. In the fourth point, MIFA suggests that experience be acknowledged in addition to the concept of expert or qualified support:

- *A provider or worker must not provide supports of a type that is outside his or her expertise or training, or services that he or she is not **experienced or qualified to provide***

MIFA notes that the scenario provided is not remedied by the specific obligations as outlined under this section; reference should also be made to providing safe equipment and premises.

2.5. Raise and act on concerns about matters that may impact on the quality and safety of supports provided to people with disability

MIFA notes this section should reference not only an obligation to have a clear process for handling complaints, but to have that process communicated in an easily accessible, open, and effective manner to participants, so that participants are actively informed of their right to pursue any grievance.

Appendix B – General principles under the NDIS Act

MIFA suggests that the principles under the NDIS Act are incorporated into the pre-ambule for the proposed Code, and referred to throughout, rather than appearing as an Appendix. This ensures they are clearly articulated as the underpinning principles for the Code itself.

MIFA thanks the Department of Social Services for the opportunity to provide input into these consultations.

Contact

Tony Stevenson – CEO – MIFA

m. 0400 555 433

e. tony.stevenson@mifa.org.au



Written by

Rohani Mitchell – Policy & Strategy Advisor – MIFA
Tony Stevenson – National Chief Executive Officer – MIFA

Disclaimer

This submission represents the position of MIFA. The views of MIFA members may vary.