

## Feedback on National Disability Insurance Scheme – Code of Conduct Discussion Paper

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A handwritten signature in black ink that reads 'L. Harkin'.

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## 1. Introduction

The Disability Services Commissioner (DSC) commenced on 1 July 2007 under the *Disability Act 2006* (the Act) to improve disability services for people with a disability in Victoria. This independent statutory office works with people with a disability and disability service providers in Victoria to resolve complaints.

Our complaints resolution process is free, confidential and supportive and we encourage and assist the resolution of complaints in a variety of ways including informal approaches to resolution, conciliation processes, or under certain circumstances through investigations. Our person-centred approach aims to achieve improved service outcomes while actively supporting the rights of people with disability to live with dignity and respect.

Our understanding, via the complaints process, of the needs and concerns of Victorians with a disability and their interactions with service providers and the National Disability Insurance Scheme (NDIS, or the scheme) provides the basis for our feedback.

## 2. Executive Summary

The NDIS Code of Conduct discussion paper is a positive, constructive and directive document that covers concerns in relation to best practice, safety and response requirements for monitoring the quality and performance of workers delivering supports to people with a disability.

The Code of Conduct promotes both a preventative and corrective model of worker standards and regulation, and it focuses on the responsibilities and obligations of service providers as well as individual staff.

There are some of the broad statements and assumptions in the discussion paper that may require further consideration.

## 3. Alignment with other Codes of Conduct

The paper lists on pages 8-9 various policy, legislative and regulatory environments that have been taken into consideration in drafting this Code of Conduct.

There is the recommended National Code of Conduct for health care workers (refer to the Council of Australian Government's Health Council website) and the related codes in each state and territory jurisdiction. It would be expected that there would

be overlap between different Codes of Conduct for particular service providers working across the disability, health and aged care sectors.

There is an opportunity to align the NDIS Code of Conduct with other Codes in similar service delivery sectors.

#### **4. Who will be covered by the NDIS Code of Conduct?**

##### **Staff working for the National Disability Insurance Agency and National Quality and Safeguarding Commission**

The paper lists on pages 10-11 a number of different workers who would be covered by the NDIS Code of Conduct. They include registered and unregistered providers, ILC providers, and individual workers.

What is not clear, is whether staff working for the National Disability Insurance Agency (the Agency) and the future National Quality and Safeguarding Commission (the Commission) are included in this NDIS Code of Conduct, or whether they will be subject only to the Australian Public Service Code of Conduct.

Given the disability-specific knowledge and skill sets that will be required of public servants working at both the Agency and the Commission, DSC recommends the inclusion of both Agency and Commission staff in this list to be covered by the NDIS Code of Conduct.

##### **Support for self-managing scheme participants**

The paper recommends on page 10 that “Self-managing participants will be strongly encouraged to provide information about the Code of Conduct and its obligations to any unregistered providers they engage”.

This recommendation assumes that self-managing scheme participants will have easy access to the Code of Conduct and other related materials to provide to their unregistered providers for compliance by the provider. Therefore it is important that the Code of Conduct be provided in accessible formats (for example - audio, Braille, Easy English, community languages) that are appropriate for all audiences.

To help facilitate this process, DSC recommends the creation of a ‘resource kit’ to be designed in an accessible format suitable for the needs of the self-managing

participant. This kit may include resources such as NDIS Code of Conduct documents which the participant can then pass on to their unregistered provider of choice.

'Unregistered providers' should also be defined in the Glossary in the way that registered providers are defined, as the Code of Conduct also applies to them.

## **5. How will the Code of Conduct be applied?**

### **Referral of complaints to relevant agencies**

The paper recommends on page 12 that “any complaints outside of the scope of the Code of Conduct and Commission will be referred to the relevant agency”.

From our years of experience as a complaints body in the disability sector, DSC can state that it will not be unusual for the Commission to receive complaints that are deemed to be 'out-of-scope'. In these situations, it would be customary to either directly refer the complaint to the relevant agency or more commonly, to equip the individual making the complaint to contact the relevant agency themselves.

This relates to the key tenets of the NDIS and the principles of person-centred supports – empowering people with a disability to have choice and control over their own lives. This should include having control over making one's own complaints, and any complaint bodies should work towards facilitating this personal control. Often, DSC Resolution Officers will spend time giving advice and coaching individuals on the phone on how they can raise their own complaints.

DSC recommends that the Commission's 'no wrong door' policy should include Commission complaints staff providing support, advice, and coaching for those individuals making an out-of-scope complaint to make their own complaints to the relevant agency.

### **Selecting support workers of a particular gender**

The paper states on page 13 (and in Scenario 2.1.1 on page 14) that service providers must be open to reasonable requests for services to be appropriate and sensitive to their needs, with particular reference to “services delivered by support workers of a certain gender”.

Historically and statistically, we know that it has been a challenge for the disability and personal care sectors to recruit and retain a specific gender-based pool of staff. 2015 data from the Australian Bureau of Statistics (Labour Force, Australia) show that out of 1.2 million individuals employed as a 'community and personal service worker', 828,000 of those identify as female – or nearly 70 per cent of the total workforce.

Given these statistics, it would be difficult for the Commission to direct, as they have done in Scenario 2.1.1, that “the provider was required to establish processes to ensure male support workers were available to meet AI’s needs”. The challenge of balancing an individual’s choice and control over their disability supports and the economic reality of diverse disability workforce recruitment and retention is one that will continue into the future.

The Commission’s role in this case would be to require the service provider to ensure that participants have informed expectations about the service they will receive. Service providers should advise how they will deliver the service and staff requested by participants.

## **6. Prevention of violence, exploitation, neglect and abuse**

A recommendation on page 16 states that “Providers should have policies that define violence, exploitation, abuse and neglect and workers should familiarise themselves with such guidelines”. Our experience has shown us that unless service providers are provided with clear definitions related to abuse, there will be a number of definitions that range vastly in detail and explanation.

DSC recommends that the NDIS provides clear and consistent definitions for the terms ‘violence, exploitation, abuse and neglect’ and ‘complaint’ for use by all service providers to ensure that a nationally consistent understanding of these terms by all stakeholders included in the NDIS. This would also have flow-on benefits for the new National Quality and Safeguarding Framework as any future incidents or complaints can be recorded and handled consistently by all stakeholders.

Currently DSC uses the following definitions:

- **Complaint:** An expression of dissatisfaction made to or about a disability service relating to its products, services, staff or the handling of a complaint where a response or resolution is explicitly or implicitly expected or legally required.

(Disability Act 2006; Aust. Standard 2014 AS/NZS 10002:2014; ISO 10002:2004 MOD)

- **Abuse:** the violation of an individual's human or civil rights, through the act or actions of another person or persons. (National Disability Abuse and Neglect Hotline)
- **Neglect:** the failure to provide the necessary care, aid or guidance to dependent adults or children by those responsible for their care. (National Disability Abuse and Neglect Hotline)

## 7. Questions related to illustrative case studies

The paper uses a number of useful case studies to illustrate different scenarios. While these case studies are realistic, some do raise questions about how the Code of Conduct and the Commission will function in the future.

### Scenario 2.1.2 – Worker (Page 15)

This case study refers to a mis-match between a staff member at a service provider, and a scheme participant – particularly around the ability to communicate effectively given the participant's need for an Auslan interpreter.

What isn't clear in the case study is whose responsibility it is to engage an Auslan interpreter (participant or provider) – and indeed, whether interpretation services have been funded in the participant's NDIS package.

**Question** – Will the Commission require providers to take responsibility for hiring Auslan interpreters?

Another consideration in this case study how providers are making appropriate decisions in assigning staff to participants.

**Question** – What are the Commission's expectations of service providers to ensure that participants are provided with choice and control over every aspect of the services received, including the selection of their support coordinator?

### Scenario 2.2.1 – Provider (Page 17)

This case study refers to the Commission making the decision to “direct (a service provider) to immediately increase the staffing levels in the home”.

The Commission's direction as indicated in this case study has a significant financial impact. Making the directed changes would have implications for the amount of funding required to be allocated to the individuals living at that home for accommodation supports, as well as the cost of services as charged by the service provider. This indicates that the Commission has power to direct funding, over and above the NDIS decision. The proposed Bill does not include this power.

**Questions** – Is it expected that the Commission will have the power to over-ride funding decisions made by the Agency?

### **Scenario 2.6.1 – Provider (Page 28)**

This case study refers to the Commission monitoring the steps taken to improve the practice, and reporting back to the Privacy Commissioner.

It is unusual to nominate the Commission as having a role in reporting to another statutory agency as this should be the obligation of the service provider in question. In this particular case study, the service provider should be the one reporting back to both the Commission and the Privacy Commissioner on the steps they have taken in improving a service.

**Question** – Is it expected that the Commission will take on a liaison and reporting role with other statutory agencies?

### **Scenario 2.7.1 – Provider (Page 31)**

This case study refers to the Commission deciding to “de-register (the service provider) and banning the provider and their key personnel from being able to provide NDIS supports”.

What isn't clear in this scenario, is how participants of this particular service will be advised of this decision and assisted to access another service. There will be instances where there are participants who are happy with the service they are receiving, and who have never had any contact with the workers in question.

**Question** – If a service provider is de-registered, what is the process for communicating with participants and assisting them to access other services? Will this case management of the transition of all participants involved be the responsibility of the Commission or the NDIA?



### **Scenario 2.7.2 – Worker (Page 32)**

This case study refers to the Commission “noting the outcome and recording the event to see if a pattern of behaviour emerges in relation to Peter’s conduct that would require further action”.

Under the proposal for the NDIS Quality and Safeguarding Framework, state jurisdictions will be responsible for worker screening. Which statutory body will be responsible for monitoring Peter’s conduct on an ongoing basis? The Commission will be receiving incident reports and complaints but will not be responsible for worker screening. Nor is there a requirement for persons to be registered to deliver disability supports.

**Question** – Who is responsible for recording and monitoring staff conduct – provider, Commission, or other statutory body?

## **8. Recommendations**

The NDIS Code of Conduct discussion paper sets strong guidelines for positive person-centred service delivery. The areas for improvement are:

1. having a nationally consistent definitions of key terms;
2. management of expectations for both providers and participants;
3. clarification on how the Commission will work with other statutory bodies and government agencies; and
4. the addition of a Roles and Responsibilities section in the Code of Conduct document to ensure all the above is clear.