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**ABF response to:**

**National Disability Insurance Scheme – Code of Conduct**

**Discussion Paper**

**21 June 2017**

# **About the Australian Blindness Forum**

The Australian Blindness Forum is the peak body representing blindness, low vision and rehabilitation in the blindness sector. ABF was formed in 1992 and is funded only by its members. ABF is an Australian public company limited by guarantee and governed by a Board of Directors.

Membership of ABF is open to any organisation that has as its primary objects the provision of services to people who are blind or vision impaired, or whose activities are substantially connected with the welfare of people who are blind or vision impaired. ABF is represented in every state and territory of Australia.

As Australia’s representative to the World Blind Union, ABF has strong connections with the international blind and vision impaired community. ABF comprises 16 blindness sector organisations whose expertise and knowledge are reflected in the following comments.

# **Background**

ABF appreciates the opportunity to provide a response to the Department of Social Services consultation on the National Disability Insurance Scheme (NDIS) Code of Conduct (the Code of Conduct).

ABF and its member organisations support every person’s right to participate in and contribute to the community. This includes all people who are blind or vision impaired having the right to access services and technology and to live independently, inclusively and with dignity in the community.

This position is consistent with:

* the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)
* the *Disability Discrimination Act 1992* (DDA)
* the National Disability Strategy 2010-2020.

Overall, ABF supports a rigorous Code of Conduct within the NDIS Quality and Safeguarding Framework in conjunction with the other new national functions such as provider registration, a complaints handling system and investigation and enforcement, as outlined in the Discussion Paper. ABF also supports the Code of Conduct being aligned with the National Standards for Disability Services.

However, ABF is of the view that further clarity is required to ensure the Code of Conduct is a workable document that provides both service providers and consumers with certainty and safeguards to ensure a robust system. ABF is concerned that any ambiguity could lead to vexatious complaints against service providers and poor outcomes for consumers.

Further clarity is also required to ensure consumers are able to engage in **informed decision-making** and **give informed consent** to the services they are engaging. Consumers need to be aware of their rights and explicit reference needs to be made to the Code of Conduct and the associated complaints process in any service agreement.

ABF has the following specific concerns about the Code of Conduct:

* the requirements are different for **registered providers as opposed to non-registered providers**. The inconsistencies associated with this make the Code of Conduct much less effective if non-registered providers are not required to comply with all the requirements of the Code of Conduct. Non-registered providers should be held to the same standard as registered providers. This aspect of the Code of Conduct must be reviewed and addressed to ensure a robust and effective quality and safeguarding system.
* It is unclear how the Code of Conduct **interacts with other standards and policies** and any defined Quality Assurance process. This also needs to be consistent.
* there is no provision for **funding assistance** to service providers for the administration or training of this new system. While reputable service providers will have their own strong internal systems that already align with the Code of Conduct, there will be compliance costs for registered service providers that, in addition to other costs associated with transitioning to the NDIS, could be quite onerous.
* All information within the Code of Conduct and about the Code of Conduct must be provided to consumers in the format of their choice. For people who are blind or vision impaired, this could be in Braille, large print, audio or an accessible electronic format. In addition, any information about the Code of Conduct and complaints processes that is put into video format must include audio description to ensure it is accessible to people who are blind or vision impaired.

ABF acknowledges that the Code of Conduct will be overseen by a newly established NDIS Quality and Safeguards Commission (the Commission) and that the Commission ‘will have powers to enforce action where providers or workers have engaged in unacceptable behaviours’. While ABF is pleased that an independent statutory authority will be in place to enforce the Code of Conduct, further detail and clarity is required about the powers and processes of the Commission. For example:

* will service providers be given an opportunity to conduct an internal review of an incident even if it is reported (sometimes anonymously) to the Commission?
* how will a Commission investigation be conducted?
* when is the Code of Conduct triggered?
* is there a ‘reasonable test’ applied to complaints?
* can a complaint be referred by anyone? How does the Commission filter what might be a vexatious or unfounded complaint (based on a mis-communication or misinterpretation of events)?
* what time frames will be in place for the resolution of a complaint?
* what ongoing education and awareness campaign and training will the Commission deliver in order to ensure consumers are aware of the Code of Conduct, the existence of the Commission and their rights under the Code of Conduct?

# **Specific Obligations**

ABF has provided comments in relation to the 9 specific obligations in the Discussion Paper. These are outlined below.

## **Promote individual rights to freedom of expression, self-determination and decision-making**

ABF supports the expectations outlined in the Discussion Paper in relation to this obligation. In particular, ABF supports the requirement that people with disability receive appropriate information delivered in an accessible way to enable them to make choices about their supports. As stated above, people who are blind or vision impaired need to have all relevant information provided in a format of their choice. This may include large print, Braille, electronic media and audio.

At the moment, ABF members are reporting that the NDIS itself is not providing information to NDIS participants and potential participants in alternate formats so that the participant can have full access to all information. Therefore, it is imperative that both the information from the NDIS and the information from the service providers is delivered in an accessible way in order for consumers to make informed decisions and provide informed consent to the relevant services.

## **Actively prevent all forms of violence, exploitation, neglect and abuse.**

ABF fully supports the obligation relating to the elimination of violence, exploitation, neglect and abuse against people with disability and that the appropriate systems and procedures are in place to prevent this from occurring. ABF also supports the expectation that staff have appropriate supervision and training to make sure workers are able to identify, monitor and act when situations such as this arise including reporting the incident to the appropriate authorities including the Commission.

The example given in the Discussion Paper related to an anonymous complainant. While ABF understands it may be necessary in some circumstances to make a complaint anonymously, ABF is concerned that this may allow for unsubstantiated or deceptive complaints and therefore, ABF sees there is a need for further information about the rigour of the complaints process that will be conducted by the Commission.

Complaints relating to abuse are very serious and time-sensitive. Therefore, it is important that any complaints regarding abuse are dealt with in a timely and efficient manner through the investigation and resolution of the matter so that the consumer is in a safe situation and the services can resume as seamlessly as possible.

### ***Jurisdiction***

The jurisdiction of the Commission and the Code of Conduct is not clear in relation to the provision of services to people who are over the age of 65 and within the disability sector. The Discussion Paper describes who will be covered by the Code of Conduct including registered NDIS providers; unregistered NDIS providers; providers under Information, Linkages and Capacity Building (ILC) and providers delivering Commonwealth Continuity of Support Program (CoS) services. People who are over the age of 65 may be receiving services under some of these programs, but are also considered part of the aged care sector. These services may be delivered in conjunction with aged care services.

Therefore, ABF members have expressed concern and uncertainty about how the Code of Conduct and the operation of the Commission will interact with other disability, aged care and health complaints bodies and processes. ABF acknowledges that the Discussion Paper refers to a “no wrong door” policy whereby complaints that are not within the jurisdiction of the Commission will be referred to the relevant agency. Even so, further clarity around the interface between the many bodies, standards and regulations in this sector and the interaction with the aged care sector would provide more certainty for both service providers and consumers.

ABF also notes that one type of abuse includes financial abuse. The provision of all relevant information in the consumer’s preferred format is essential to eliminate the incidence of financial abuse.

## **Act with integrity, honesty and transparency.**

ABF supports the obligation for providers and workers to ensure they only recommend and provide supports and services that meet the needs of a person with disability and they must be truthful about their qualifications, training and professional affiliations. When this includes providing accurate and timely information about the cost and efficacy of support so that people with disability can make an informed decision, it is imperative that this information is provided in the individual’s preferred format.

ABF is concerned that providers and workers may not act with integrity, honesty and transparency as part of referral arrangements with other providers. ABF is concerned that some providers including providers delivering partners in the community services such as local area coordinators (LACs) may not disclose or even be aware of all the options available to a participant for the delivery of services they require. This may be due to a bias or incentive to refer only to specific providers and a lack of understanding of the potential options and aspirations of people with specific disabilities. Therefore, ABF supports the expectation that providers and workers must not ask for, accept or provide any inducement that may affect or be seen to affect the way NDIS supports or services are provided.

ABF also supports the obligation that all providers and workers must not ask for, or accept, money or gifts from participants that will benefit the worker directly or indirectly. ABF acknowledges that in some cases if a participant has a long relationship with a carer they may feel inclined to give a small gift, for example, at Christmastime to thank a carer, which may be consistent with community standards. However, ABF agrees that providers and workers must act with honesty, integrity and transparency at all times and such instances should be declared, consistent with community standards and professional obligations.

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

ABF supports the obligation that providers and workers are to provide supports in a safe and ethical manner including maintaining necessary competence, offering reasonable supervision of workers, providing all necessary equipment and resources and ensuring workers are appropriately skilled to provide the required supports and services.

ABF also supports the expectation that workers must not provide supports or services to people with disability while under the influence of alcohol or drugs. However, it is not clear to ABF how this expectation interacts with industrial relations laws that usually govern alcohol and drug management in the workplace. Further, the Code of Conduct does not specify whether it requires, for example, a zero reading for alcohol (which would be in line with the requirements for workers such as bus and truck drivers) or the standard reading of 0.05 for alcohol which may be more common in an office environment. Further detail on these requirements and their interaction with industrial relations laws would provide clarity on this issue.

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

This obligation requires providers and workers to raise and act on concerns about the quality and/or safety of NDIS supports and services. The Discussion Paper notes that **registered providers** will be required to notify the commission of any reportable incidents as part of their registration requirements while **unregistered providers** are merely encouraged to report incidents of concern on a case-by-case basis.

ABF is concerned that this difference in expectations for registered as opposed to unregistered providers weakens the Code of Conduct and results in an inconsistent enforcement of the Code of Conduct. This in turn would result in a less effective and less rigorous Quality and Safeguarding framework. This inconsistency is unfair on registered providers and ultimately results in less than optimal outcomes for consumers.

ABF would prefer to see a simplified, consistent Code of Conduct that applies to all providers and workers which is enforceable in its entirety.

## **Respect the privacy of people with disability.**

ABF supports the obligation for providers and workers to protect the confidentiality of personal information gathered during the course of providing NDIS supports or services and that they not disclose any personal details about a person with disability without consent. ABF acknowledges that this is already a legal requirement under Commonwealth, state and territory privacy laws and is always covered in the terms of trade of professional service providers.

ABF also notes that providers and workers must be mindful that these privacy obligations extend to service settings, particularly if a person with a disability requires assistance with completing forms that often contain personal and private information. The service provider and workers need to provide such assistance in a discreet and respectful manner and in a private environment in which the consumer is comfortable.

ABF also encourages the Code of Conduct to require providers and workers to ensure their internal social media policies, including emails, are current and effective in ensuring that workers know that privacy issues also extend to any activity on social media platforms or email distribution.

## **Not engage in sexual misconduct.**

ABF supports the obligation that all types of sexual misconduct constitute a breach of the Code of Conduct and are unacceptable.

As stated above in relation to the obligation to prevent all forms of violence, exploitation, neglect and abuse, it is important that any complaints regarding sexual misconduct are dealt with in a timely and efficient manner through the investigation and resolution of the matter so that the consumer is in a safe situation and their services can resume as seamlessly as possible.

## **Keep appropriate records.**

ABF supports the obligation that all providers and workers must maintain accurate, legible and up-to-date records of NDIS supports and services provided and ensure that these are held securely and not subject to unauthorised access.

However, ABF members have indicated that further information is required that outlines the details of these requirements including:

* the length of time records need to be kept
* the method by which records are to be stored (i.e. hard copy records, electronic records)
* any requirements relating to back-up systems
* archiving requirements.

## **Maintain adequate personal and professional liability insurance appropriate to the risks associated with the supports provided.**

All professional service providers should already have all necessary insurances in place, including personal and professional liability insurance. However, the Code of Conduct may need to define what is considered to be an “adequate” level of insurance. Again, further detail is necessary to ensure clarity of the requirements of the Code of Conduct.

# **Conclusion**

ABF reiterates that it supports a rigorous Code of Conduct within the NDIS Quality and Safeguarding Framework in conjunction with the other new national functions and in alignment with the National Standards for Disability Services.

However, ABF is calling for further details and clarity on many areas of the Code of Conduct and in relation to the powers and processes of the NDIS Quality and Safeguards Commission, as outlined above. Further details and clarity for all stakeholders is necessary to ensure it is a workable system that provides both service providers and consumers with certainty and safeguards for a robust National Disability Insurance Scheme.