

**National Disability Insurance Scheme—Code of Conduct Discussion Paper**

NDS sees the introduction of a Code of Conduct as an important element of the national NDIS Quality and Safeguards system. It should serve as a regular reminder of the expectation on providers and workers to respect people with disability and assist them to live free from abuse, violence, neglect and exploitation.

The following comments are made with a view to improving the draft Code.

**Develop separate Codes for workers and employers**

While NDS appreciates the simplicity of having a single Code of Conduct that applies to all workers and employers, a single code applies unevenly. For example, obligation 9 “maintain adequate personal and professional liability insurance appropriate to the risks associated with the supports provided” is a responsibility of employers (and self-employed) rather than employees. Including it, in the current form, could lead workers to question the applicability of the Code itself to their work.

Likewise, many workers have a limited role in record-keeping and, when they do have a role, they are bound to follow requirements set by their employer.

The current wording of obligation 7, “not engage in sexual misconduct”, is worker-focused rather than employer-focused. In a Code specifically for employers, this obligation would be re-written to reflect the expectations on employers to take actions to prevent their employees from engaging in sexual misconduct.

NDS recommends that separate Codes be developed—one for workers and one for employers. Wherever practicable, the obligations in each Code should mirror each other.

Once finalised, the Codes should be available in accessible versions, including in easy English.

For the remainder of the submission, the use of the word Code is used for simplicity, but our preference is for two Codes.

**Link the Code to National Standards for Disability Services, NDIS Quality and safeguards Commission and worker screening**

To aid coherence, it would be useful to explain how the Code links to the national NDIS Quality and Safeguards Framework and to the National Standards for Disability Services.

Many people reading the Code may not be aware that there are other quality and safeguarding mechanisms in place which will place specific obligations upon them. We would not want to convey the message that quality and safeguarding is only about adhering to the Code.

**Provide clearer guidance about how the Code will be used to decide regulatory actions**

The consequences of breaching the Code can be very serious: registration can be revoked; ban orders can be applied; or worker clearances can be removed.

In its current form, much of the Code is too vague to give direction as to how an incident would be investigated and an action or penalty applied. This is a flaw in many of the commentaries explaining the obligations.

One example: under the obligation to “act with integrity, honesty and transparency” there is an expectation that “providers and workers must only recommend and provide supports and services that meet the needs of a person with disability”. Interpretations of how the needs of a person with disability are met can vary. Workers or organisations could be instructed by a person with disability to deliver a therapy that is known to be ineffective; or to position them in a manner that could cause difficulties eating; or be instructed by families to use inappropriate restrictive practices.

In addition, this obligation does not acknowledge that, in some cases, Work, Health and Safety requirements may prevent the worker providing support in a manner specified by a person with disability or their family. Additional examples will be raised later in this submission.

**Develop more realistic scenarios**

Some of the scenarios used in the draft Code should be redeveloped to provide more useful information about how the obligations might be applied in practice. This should be done with the assistance and advice of the disability sector and people with disability.

**Provide indicative information about complaint thresholds**

The discussion paper indicates that the Commission will operate with a ‘no wrong door’ policy and any complaints outside the scope of the Code of Conduct and Commission will be referred to the relevant agency.

NDS is pleased that the draft document indicates that, in the first instance, complaints should be made directly to a provider. It does not, however, state that the Commission, as a first measure, will direct participants back to the provider to try to have the complaint resolved.

Given that an employer has responsibility for ensuring workers operate in an appropriate manner, it is surprising that there does not seem to be a requirement to inform the Commission if an employer has terminated or taken significant action against an employee whom they believe has breached the Code of Conduct. Under these circumstances, could a terminated employee obtain employment elsewhere or be directly employed by a person with disability?

Further information about the threshold for a complaint or incident triggering an investigation by the Commission would be useful.

**Outline responsibilities for communicating the Code to workers**

The draft document is silent on where responsibility for promoting the Code lies. This is particularly pertinent in the case of unregistered providers and their workers and workers who are directly hired by participants. We would like to see further information on this.

**Apply the Code to the NDIA and its staff**

The Code places expectations on workers and employers, including those that provide Local Area Coordination services, Early Childhood Early Intervention services, and Information, Linkages and Capacity Building services. The Code should also apply to the NDIA and the staff it employs.

**Outline how reporting on the Code will be done**

Consideration should be given to how breaches of the Code will be communicated to improve practice among workers and employers. NDS suggests that public reporting should occur annually.

**Specific comments**

The following specific comments relate to the NDIS Code of Conduct discussion paper:

**1.1 Why we need an NDIS Code of Conduct**

* The need for a Code should largely be focused on delivering better outcomes for people with disability (the aim of developing quality in the NDIS market would then follow).

**1.2 What is included in the NDIS Code of Conduct?**

* Obligation 4 would be clearer if re-worded: “provide supports in a safe, ethical and competent manner”.

**1.3.4 Workers**

* How the NDIS Code interacts with other relevant Codes should be explained. For example, would a breach of the NDIS Code impact on Codes that apply to allied health staff? If so, how?

**1.4 How will the NDIS Code of Conduct be applied?**

* This section fails to address situations where a worker in breach of the Code is not employed by an NDIS provider. How the Code is applied in these circumstances needs to be explained.

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

* The description of this obligation would be strengthened by being more direct. For example, if there are rights, standards and principles underpinning the NDIS and the UNCRPD about which workers should know, they should be stated rather than referencing complex legislation and an international convention.

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

* This obligation is a good example of why two Codes are required. Providers and workers have different responsibilities for ensuring systems and procedures are in place. For example, a worker would not set policy, allocate funding for training, set rosters, or employ people. This distinction needs to be made.

**2.3 Act with integrity, honesty and transparency**

* This obligation needs greater clarity. As mentioned previously, the statement that “providers and workers must only recommend and provide supports and services that meet the needs of a person with disability” will be difficult to put into practice when opinions differ about appropriate support.
* The reference to “avoiding any actions or situations which are inconsistent with community standards” needs clarity as it could be applied with great variability.

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

* The obligation that a provider must ensure workers have access to all equipment and resources appropriate to safely deliver supports or services is broad and open to varied interpretations. In particular, inadequate prices for some NDIS supports will mean less training for workers; how will access to adequate training resources be measured?
* Similarly, whether a provider can “offer reasonable supervision and take reasonable steps to ensure workers are competent and supported to perform their role” will depend, in part, on the adequacy of NDIS prices.

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

* It is disappointing the NDIS Quality and Safeguards Framework requires that only registered providers must notify the Commission of any reportable incidents—violence, exploitation, neglect and abuse. The statement in the draft Code that “unregistered providers are also encouraged to report incidents of concern on a case-by-case basis to the Commission” is too weak.

A clause should be added to remind people that they may have other reporting responsibilities, such as to the police or to health providers.

**2.7 Not engage in sexual misconduct**

* The obligation not to engage in sexual misconduct is important but needs rewording. For example, the statement that “comments about…the way they look” is necessarily sexual behaviour ignores social norms which allow well-meaning comments on a new hair-cut or on the football jumper a person is wearing. Distinctions needs to be drawn based on the intention and context of comments.
* The description of this obligation should provide advice for a worker if a participant asks for their assistance to visit a sex worker. This is an aspect of support in relation to which some workers would welcome advice.

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**National Disability Services** is the peak industry body for non-government disability services. It represents service providers across Australia in their work to deliver high-quality supports and life opportunities for people with disability. Its Australia-wide membership includes over 1100 non-government organisations which support people with all forms of disability. Its members collectively provide the full range of disability services—from accommodation support, respite and therapy to community access and employment. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.