

**Submission to the Australian Department of Social Services  
on NDIS Code of Conduct Discussion Paper  
Geelong Parent Network, 21 June 2017**

**About the Geelong Parent Network**

Geelong Parent Network is made up of members who are lifelong family carers of people with intellectual disabilities in the Geelong Region. The Network was established in 2003 to provide a forum, support and voice for family carers. The current membership is over 90. Most persons being cared for have an intellectual disability of some form and often other disabilities as well. They receive services from a wide variety of disability and community agencies throughout Geelong. Being in the National Disability Insurance Scheme's Barwon Trial Site, members have had first hand experience of developing plans and working with providers since the scheme commenced in 2013.

**Code of Conduct and service agreements**

Obligations of the Code of Conduct are central to how providers discharge their service responsibilities. Critical to the connection between providers and service recipients are service agreements. There is no mention however of service agreements in the draft Code. So how is it that 'respected' providers see themselves as adhering to the Code of Conduct but their practice of service agreements can so miss the mark while also undermining the very control by people with a disability that is a fundamental of the NDIS? This submission is directed towards taken for granted provider practices that are inconsistent with Code obligations.

Members of the Geelong Parent Network (GPN) have participated in the NDIS since 2013 and have seen a range of service agreement processes and outcomes with providers in the Barwon Trial Site. But overwhelmingly providers are expecting participants, for example, to simply agree with what they have written with no opportunity to have input with none implementing the 'collaborative' experience expected under NDIS.

In the NDIS a service agreement is seen as "a collaborative process between the participant, any other person (such as a participant's family member or friend) and the provider." (Provider Toolkit Module 5: Service Agreement, p.5) Clearly 'collaboration' is viewed here as a fundamental in enabling "people with a disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports." (p.5) The following comments on the draft Code of Conduct are made in the spirit of being proactive in addressing its stated obligations.

**1) Promote individual rights to freedom of expression, self-determination and decision-making.**

What would a service agreement process and product look like that explicitly met this obligation? For a start it would be collaborative. The current approach is a form of abuse that might be described as opaque or one that promotes gradual erosion of rights.

The draft Code states there is an obligation to "Communicate in a form, language, and manner that enables people with disability, and their carer where required, to understand the information provided and make known their feelings and preferences." Typically this has not been the case. One provider in an accompanying letter to an 'Agreement' for signing noted it was "a legally binding document and you may want to seek independent legal advice or contact an advocate before signing the document." Given many people with disability receive supports from more than one service, it is no wonder that they concede to the one-sided approach of providers.

The draft Code states: “Take into account the expressed needs, values, and beliefs of people with disability including those relating to culture, religion, ethnicity, gender, identity, age and disability.” With Plans and the planning process becoming more abbreviated over the four years NDIS experience of GPN members, there is less chance of expression of needs, values and beliefs being taken into account. A significant gap exists between the rhetoric of collaboration and its realisation.

The draft Code states “NDIS funded workers and providers need to accommodate any requests relating to individual differences as far as possible in the course of delivering NDIS supports and services.” By not including people with disability in developing the service agreement, providers effectively limit this significant listening opportunity and appear to be less accountable with expressed needs undocumented. The draft Code goes on to state “Providers and workers must engage with people with disability and their support networks to enable them to design the delivery of their supports in a manner that is consistent with their values, culture, beliefs and identity.” The strongly stated “must engage” in designing the delivery invariably is not happening and seems to be taken for granted as outside a provider’s responsibility. In practice the Code seems to be seen as largely applicable to high levels of abuse and violence and not to everyday practices.

In Scenario 2.1.1, the participant’s personal care needs were left unattended. The Commission’s action to facilitate discussion between the participant and provider did lead to the parties being better informed which was positive. But why was it not in a service agreement? Likely there was not such an agreement or it was not genuinely collaborative. So called ‘agreements’ that are a one size fits all may suit the administrative ease of providers as well as diminish accountabilities, with key service elements of importance to a person with disability omitted. A collaborative approach is necessary to designing for appropriate delivery. Ensuring such practice would give more support to participants who too often find it extremely daunting to challenge a provider.

Scenario 2.1.2 is a good example of a service provider responding to an NDIS plan in the way the provider interprets as relevant. A service agreement that involved the participant, who was deaf in this case and wanting an Auslan Interpreter for face to face meetings, would send a stronger message to the provider.

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

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

In Scenario 2.2.1, the Commission finds the provider failed to put systems in place to prevent violence and abuse. The participant’s NDIS Plan should have stated appropriate supports. But it takes more than the identifying the reasonable and necessary supports. A service agreement that stated “expressed needs, values and beliefs” of the participant together with explicit outcomes would have given direction to the provider and assisted the position being taken by the advocate given this was needed. Not defining these reduces ‘control’ by the person with disability and may contribute to a more ‘localised’ resolution being less likely.

### **3) Act with integrity, honesty and transparency**

Why is a service agreement not seen in terms of “integrity, honesty and transparency”, where a provider is bold and committed to achieving explicit outcome? Why for example settle for maintaining ‘presence’ in the community that is highly unlikely to ever achieve inclusion rather than grapple with ‘participating’ in community life? Why provide an education class by one staff for 10 participants when, for example, the NDIS funding provides for standard needs

with ratio of 1:3. The provider will be very aware of the funding arrangement but the person with disability may not, especially when the Plan only states the total being funded and neither the rate nor staffing ratio associated with it.

Why is it not the practice of service providers to explicitly commit in a service agreement to obligations in the draft Code of Conduct such as

- “People with disability, their family and carers, and the broader community have a right to accurate and timely information about the cost and efficacy of a support.” and
- “This means that providers and workers must keep people with disability informed about support arrangements.”

Clearly the Code’s fiat does not ensure people are informed. Providers should have a close knowledge of the Code, but it is likely to be distant from participants. The service agreement is a document that can be close to participants.

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

The draft Code of Conduct sets out 5 expectations included under this obligation. In GPN experience of service agreements with providers, none of these ‘musts’ are listed under provider responsibilities.

For example “A provider must offer reasonable supervision and take reasonable steps to ensure workers are competent and supported to perform their role” should be appropriately worded as a responsibility. Why isn’t it? Whose interests are being served? The provider may have filled the service time slot with a well-meaning staff and billed for the time. Without a well-defined statement of responsibilities in an agreed service document that is accessible by a person with disability, such as a service agreement, then it is more difficult to question at a local level. The GPN regards having the relevant knowledge of agreed commitments as essential to what counts for control in ensuring service needs of people with disability are met.

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

The example of Sabina in Scenario 2.4.1 demonstrates the importance of staff addressing ‘concerns’ in a supportive provider culture that encourages staff input. It would also be helpful that participants were encouraged to raise ‘concerns’. The wording of this obligation suggests ‘concerns’ are raised by staff with ‘complaints’ raised by participants and families.

### **Conclusion**

It is the experience of GPN members that there is a widespread disconnect between stated provider obligations of the Code of Conduct and their practices and responsibilities in service agreements. Service agreements have the potential to be a critical service tool that support clarity of inputs and outcomes for providers while recognising choices and controls for participants. Unfortunately, practices of providers to date have not embraced the collaborative processes in service agreements envisaged for the NDIS and the Code of Conduct does not take the opportunity to highlight how its obligations can be linked to everyday practices based on mutual understandings forged through a service agreement.

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