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NDIS Quality and Safeguards Commission  
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## **National Disability Insurance Scheme (NDIS) – Code of Conduct Discussion Paper**

### **About FECCA**

The Federation of Ethnic Communities' Councils of Australia (FECCA) is the national peak body representing Australia's culturally and linguistically diverse (CALD) communities and their organisations. FECCA provides advocacy, develops policy and promotes issues on behalf of its constituency to Government and the broader community. FECCA supports multiculturalism, community harmony, social justice and the rejection of all forms of discrimination and racism so as to build a productive and culturally rich Australian society. FECCA's policies are developed around the concepts of empowerment and inclusion and are formulated with the common good of all Australians in mind. FECCA continues to work with organisations that advocate for people with disabilities from CALD backgrounds, including the National Ethnic Disability Alliance (NEDA).

### **Introduction**

The NDIS Code of Conduct will be an integral part of the NDIS Quality and Safeguarding Framework which will aim to ensure that people living with disability will have access to safe and ethical supports. It is therefore in the interest of FECCA to promote the particular rights and supports required by its constituents from culturally and linguistically diverse population groups. Whilst it is known that the national NDIS CALD participation rate captured by statistics of current approved plans is 4%, it represents a grossly understated potential participation rate which should be around 21.9%.<sup>1</sup> These statistics represent a statement that the Disability system is not currently meeting the needs of the CALD participant, their families, carers and their broader communities.

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<sup>1</sup> Amparo Advocacy Inc. *The NDIS and Culturally and Linguistically Diverse Communities: Aiming high for equitable access in Queensland*, p. 5.

FECCA understands that the individual obligation items in the Code of Conduct are broad to account for diversity of all forms however it believes that there needs to be an increased specificity in several areas including in relation to minimal restriction practices, matters which compromise the quality and safety of supports provided to people with a disability and record keeping, which will be addressed in this paper.

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

FECCA fully supports the promotion of individual rights and the adherence in practice to the *UN Convention on the Rights of Persons with Disabilities* as the foremost obligation of the NDIS Code of Conduct. However, what is missing from this area is acknowledgement of understanding what supports and/or mechanisms are in place to ensure that NDIS participants actually know their rights and understand how to safeguard them. How are CALD NDIS participants empowered to understand their human rights and organisational conventions which are aimed at protecting their interests?

The Department of Social Services discussion paper addresses the rights of people with disability in particular their right to be placed at the centre of service delivery. FECCA believes that this particular obligation of the Code of Conduct does not support strongly enough the right to have information and material presented in formats which are easily understood by the participants. The language used in the discussion paper around “reasonable requests” does not place adequate emphasis on the necessity of CALD Australians to have their cultural and linguistic needs attended to, such as the genuine cultural need for services to be conducted by same sex operatives and accessing material in a format and/or language which is easily understood. Language barriers are a key reason for the minimal participation of CALD communities in the NDIS. Although a majority of people with disability speak English in Australia, there remain a considerable number of people with disability who do not speak English at home. The six languages spoken at home of considerable numbers are Mandarin, Italian, Arabic, Cantonese, Greek and Vietnamese.<sup>2</sup>

FECCA would recommend that the expectation outlined in the discussion paper 2.1, immediately following ‘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’,<sup>3</sup> to include *and presented in a language and/or format that is easily understood*.

It is important that when designing the delivery of services that supports particular values, culture and beliefs that information should be presented in a format that is easily understood and accessible such as written, audio and/or visual. It is essential that people with disability from CALD backgrounds are not discriminated against due to low levels of English language proficiency.

The role of advocacy organisations for people with disability from CALD backgrounds should be considered highly and therefore specifically articulated in the Code of Conduct. Independent advocacy based on human rights, social justice and inclusion is essential to safeguarding the rights of these people and ensuring their wellbeing. Responsible and articulate advocacy can assist the role of service providers and their employees to deliver what is required by NDIS participants.

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<sup>2</sup> .id community, demographic resources, Australia, Community Profile, <http://profile.id.com.au/australia/language>, accessed 26 June, 2017.

<sup>3</sup> Department of Social Services, *National Disability Insurance Scheme (NDIS) – Code of Conduct, Discussion paper*, p. 14.

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

Australia's planned ratification of *the Optional Protocol to the Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) Convention* will most likely underscore a precedential push for disability institutions to be monitored in their client practices by the protocol. It is foreseen that this will provide stronger protection to people with disability and it would be beneficial to have the Optional Protocol addressed in the final Code of Conduct or in subsequent reviews of the Code, depending on the final date of ratification.

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

The obligations as set out in Item 5 of the Code of Conduct, 'People with disability need to feel safe to make a complaint or provide negative feedback without fear of adverse consequences or loss of service'<sup>4</sup>, require some further discussion. It cannot be assumed that all participants in the NDIS are aware of their right to complain, or how to access complaints mechanisms. Many CALD people migrated to Australia from countries where making complaints was not considered to be a cultural norm. Details about complaints mechanisms should be provided to the participants at the initial stage of planning and ensure that the participants understand the process clearly. FECCA believes that providers and/or workers may not heed to understand complaints or make reports about people with disability from CALD backgrounds understanding that people from CALD backgrounds typically do not favour making complaints against them, for fear of reprisal.

Typically, people from culturally and linguistically diverse backgrounds will not understand the nature or intent of feedback and continuous improvement processes. Therefore, if the obligations stated under this code of conduct do not cover the explicit needs of people who are unfamiliar with systemic protocols and with the common language then their needs will not be heard. Industry language and jargon are not understood and the use of this language to participants only further disempowers them and inhibits capacity building.

Australians from a CALD background may encounter difficulties in accessing complaint mechanisms over the phone due to limited English language skills. Therefore, they should have a clear understanding of the Translating and Interpreting Service (TIS National). Having accessible complaint mechanisms in place is an important element of meaningful engagement with the community.

The current lack of service plans not being delivered in a translated format is not captured in the 5<sup>th</sup> Code of Conduct article. Accessing a service plan which can be understood by people who have limited language proficiency is a right which should be addressed in the Code of Conduct.

## **Keep appropriate records (Obligation 8)**

Appropriate record keeping should be expanded to include governance structures and accountability measures. Additionally, it should include information regarding the suitability of key organisation personnel.

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<sup>4</sup> Department of Social Services, *National Disability Insurance Scheme (NDIS) – Code of Conduct, Discussion paper*, p. 25.

Ensuring that providers and all staff involved in delivering the NDIS adhere to a code of conduct is vitally important for the many vulnerable consumers of the scheme. It is also of the utmost importance that the Code of Conduct carries quite specific guidelines in order that the interests of the consumer are protected. Furthermore, it would be appreciated that CALD participants and their families are made aware of the existence of the NDIS Code of Conduct.

FECCA would like to thank the Department of Social Services for the opportunity to provide input into the discussion paper on the NDIS Code of Conduct.