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| Response to NDIS Code of Conduct Discussion Paper | |
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| **Contact: Leanne Varga** |
| Systemic Advocate & Leadership Facilitator |
| [**leanne@family-advocacy.com**](mailto:leanne@family-advocacy.com) |
| (02) 98690866 |
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# About Family Advocacy

Family Advocacy is a state and federally funded disability advocacy organisation in New South Wales (NSW), founded by families of people with disability. Our goal is to advance and protect the rights of people with developmental disability to achieve meaningful lives and enjoy the same opportunities and living conditions as the majority of Australians.

Family Advocacy:

* builds the capacity of families to undertake an advocacy role and provides advocacy related information, support and advice;
* runs a successful ongoing capacity building project for families of people with disability, called Resourcing Families;
* develops leadership skills in families;
* represents the rights and interests of a person with a disability to Government regarding legislation, policy, funding, monitoring and practice, and the extent to which they reflect the needs of people with developmental disability, from a family perspective.

Family Advocacy helps families to advocate on behalf of their family member with disability for a good life with the things most of us would expect in Australia: a place to call home, roles in the community amongst friends and family, and the supports, informal and paid, necessary to make that happen.

# Recommendations

1. The Code of Conduct should be displayed publicly, and be included in every service agreement, whether it’s a registered service provider, unregistered service provider, the house of a participant, or the office of an allied health practitioner.
2. We recommend an immediate response for serious breaches, and for less serious matters, a maximum of 1-2 weeks.
3. We recommend that the Code inform people that Advocacy is an avenue that exists and provide a link within each State and Territory of the advocacy groups and their details.
4. Generic names with neutral meanings for imaginary providers are more appropriate for examples in the final Code, such as ABC Care Services, Central Rehab Services or Citywide Speech Pathology.
5. We recommend including some examples in section 2.1 of the code that more deeply engage with a person with an intellectual disability who may struggle to balance everyday and pervasive choices, and how a service provider might deal with this.
6. Examples should reflect realistic scenarios and not include unlikely built in safeguards.
7. We recommend the Australian Government commence this process of setting up an NDIS register for workers who have had complaints upheld against them, or convictions, in order to empower participants and their families to make informed decisions.

# Comments on the Code of Conduct

## Introduction

We support the intent of this paper of “minimizing the risk of harm to people with disability and making sure high quality supports are provided through the NDIS.” A Code of Conduct for service providers and workers providing NDIS services is an important step toward safeguarding a person with a disability, particularly a developmental disability.

Family Advocacy believes it is important to remember that what actually creates safe and secure futures for our sons and daughters is social connection and freely given relationships. For this reason, we have made some values-based suggestions for what we believe should be included in the code of conduct.

**Display the code of conduct**

In the NDIS Quality and Safeguarding Framework, under *4.3.1 Investigation non-compliance with the code of conduct,* *Box 10: Indicative elements of an NDIS code of conduct*, one of the suggestions is point 14:

“Display the code of conduct or make it available to participants” (p.96).

For some reason, this has been removed from the new Code of Conduct in the Discussion Paper. We recommend it be reinstated. It should be at the forefront of the minds of service providers, workers and participants.

*Recommendation 1: The Code of Conduct should be displayed publicly, and be included in every service agreement, whether it’s a registered service provider, unregistered service provider, the house of a participant, or the office of an allied health practitioner.*

**Specific timeframes**

No timeframes are provided for how long these processes will take to be actioned by the Commissioner. It is fair for there to be an expectation on the part of the Participant that although their complaint will be 'triaged' as to severity of the matter, a reasonable time limit will be applied with the expectation that all are bound by this and respect is shown.

*Recommendation 2: We recommend an immediate response for serious breaches, and for less serious matters, a maximum of 1-2 weeks.*

**Need for advocacy**

Many of the scenarios given in the discussion paper hinged on someone just happening to hear something or observe inappropriate behaviour. Even when reporting inappropriate behaviour is mandatory, many people, perhaps most, will not report. Advocacy avenues need to be mentioned prominently as part of this Code of Conduct. A participant or even a worker should be able to feel safe in the knowledge that they can make contact with an Advocate if there is a breach of the Code. There are many scenarios where a worker or participant’s position may be compromised if they report a matter to the Commissioner or where a Participant or their family member, need assistance or advice as to whether a matter is being handled appropriately or not.

*Recommendation 3: With this in mind, we recommend that the Code inform people that Advocacy is an avenue that exists and provide a link within each State and Territory of the advocacy groups and their details.*

**Breaches are serious - examples must reflect this**

The names given to the imaginary service providers in the discussion paper appear to be given in jest. Examples include ‘Oliver Twist Speech Pathology’, ‘Wiley Home Support’ and ‘She’ll be Right Care’. Firstly, this does not convey the seriousness of these breaches of the Code of Conduct. Even though they are illustrative and imaginary examples they bear resemblance to issues that happen to real people every day.

Secondly, they give the impression that these breaches are the work of newcomer, or poorly managed organisations, whereas there is ample evidence that they also occur regularly in well-established and long serving organisations. The comical names give a subtle message to providers that misconduct can only occur in disreputable groups.

*Recommendation 4: Generic names with neutral meanings for imaginary providers are more appropriate for examples in the final Code, such as ABC Care Services, Central Rehab Services or Citywide Speech Pathology.*

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

We appreciate the intent of this section of the Code of Conduct is aimed at ensuring people with a disability are treated with “dignity and respect”, provided with appropriate forms of communication, and have their needs, values and beliefs taken into account. We are concerned that the Code of Conduct inadvertently conveys a narrow view of decision-making, particularly with regard to a person with an intellectual disability. We recommend the adoption of an approach to decision making which assumes providers will be aiming to build capacity to understand the impact of decisions and the connection between every day, and long term choices, as explored below.

Most people in Australia take for granted the knowledge that they have the right, and responsibility, to make decisions that affect outcomes in their lives. However, making decisions is a skill, and like most skills, it requires practice. For someone with disability, particularly intellectual disability, they may have limited decision-making experience. They may have been in situations where all aspects of their life were controlled by others.

Inclusion Melbourne helpfully explains choice by dividing it into every day, lifestyle and pervasive choices. They argue that choices at one level should not conflict with choices at the other levels, if a person is to have a satisfying life experience. Therefore, support for people’s choices must be present in capacity building, but also throughout the code of conduct and broader services. Supporting people to gain knowledge of contextual factors and their own preferences, where appropriate, is enabling them greater choice and freedom in the longer term.

There needs to be a proper assessment of needs with supported decision making in order to find a true balance between a participants’ short-term desires and their long term goals, when these come into conflict. Being familiar with the person’s longer term desires and having some measures to balance out their everyday choices with these long term or pervasive choices, will be an important role for some service providers, and some examples and wording in the Code should reflect this. We have provided an example below.

Gemma is a young woman living in her own home and working part time at the local bakery. She is a volunteer, family member and has strong relationships in the local community. She has an intellectual disability and struggles with the concept of image and how she is perceived by others. Whilst she can dress herself, she needs support for her clothes to be socially appropriate, work appropriate, suitable for the occasion, etc. Gemma’s intellectual disability means she is already vulnerable to exclusion. Care is needed from her support worker who comes to assist her in the mornings so that while Gemma has choice in what she likes to wear, these choices don’t negatively impact her other goals of maintaining a job and having more friends and social connections in her community. A worker supporting Gemma should help her to choose to present in a way that will be appropriate to the setting, encourage social engagement and support her positive image in the community, and will need to make sure balance is in play between her everyday clothing choices and long term desires.

Service providers who have a larger role to play in the life of someone with difficulty making choices need to be reminded that being of service requires helping people to dream of and pursue an “ordinary life”, to offer support that compensates, encourages or guides, and to find ways to create valued roles and relationships, with the person, not the provider, as the priority.

This means “Enabling strategies for services and service-users to:

* keep imagining how to do better
* use their time and energy well;
* build trusting relationships over time” (Dr Margaret Ward).

*Recommendation 5: We recommend including some examples in this section of the Code that more deeply engage with a person with an intellectual disability who may struggle to balance every day and pervasive choices, and how a service provider might deal with this.*

**Example 2.3.2 – Worker**

In our experience in NSW, it is unlikely that a group home will have two different support providers in the same house, due to the nature of the transfer and contracts with service providers. This is not a safeguard that likely to be in place.

*Recommendation 6: Examples should reflect realistic scenarios and not include unlikely built in safeguards.*

**State Worker Screening Unit**

We are aware of the suggestion in the NDIS Quality and Safeguarding Framework under *3.2.1 Screening Workers* and *3.3.1 Monitoring Worker Conduct*, that a “nationally consistent screening process” be developed. This is vital to the success of the proposed Code of Conduct having adequate enforcement capacity. We urge the Australian Government commence this process of setting up an NDIS register for workers who have had complaints upheld against them, or convictions, in order to empower participants and their families to make informed decisions.

*Recommendation 7: We recommend the Australian Government commence this process of setting up an NDIS register for workers who have had complaints upheld against them, or convictions, in order to empower participants and their families to make informed decisions.*