

National Disability Insurance Scheme   
Code of Conduct

21 June 2017

**Peak Body in the ACT for the Community Mental Health Sector**

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About Mental Health Community Coalition ACT Inc.

The Mental Health Community Coalition of the ACT (MHCC ACT), established in 2004 as a peak agency, provides vital advocacy, representational and capacity building roles for the community-managed mental health sector in the ACT. This sector covers the range of non-government organisations that offer recovery, early intervention, prevention, health promotion and community support services for people with a mental illness.

The MHCC ACT vision is to be the voice for quality mental health services shaped by lived experience. Our purpose is to foster the capacity of ACT community managed mental health services to support people to live a meaningful and dignified life.

Our strategic goals are:

* To support providers deliver quality, sustainable, recovery-oriented services
* To represent our members and provide advice that is valued and respected
* To showcase the role of community managed services in supporting peoples’ recovery
* To ensure MHCC ACT is well governed, ethical and has good employment practices.

# General Comments

MHCC ACT would like to thank the Department of Social Services (DSS) for the opportunity to provide a submission on the National Disability Insurance Scheme (NDIS) – Code of Conduct. The National Disability Insurance Scheme (NDIS) is a worthy initiative and one with the potential to improve the lives of thousands of people living with disability, their families and carers. As such, it has the potential to contribute significantly to future economic growth and the wellbeing of all Australians. MHCC ACT and its members and stakeholders remain committed to working towards the success of the Scheme.

The Code of Conduct discussion paper states that the new national NDIS Quality and Safeguarding Framework (the Framework) has been developed to ensure the rights of people with disability are upheld and the services and supports provided through the NDIS are safe. The Code of Conduct is the central component of the Framework, which will “encapsulate the rights of people with disability to have safe and ethical support”[[1]](#footnote-1).

The MHCC ACT submission will generally address the following issues in the discussion paper and the Code of Conduct

* Who will be covered by the Code of Conduct specifically the absence of the responsibilities of people with disability and their carers in ensuring safe and ethical workplaces;
* The training and other related obligations imposed by the Code of Conduct;
* The language of the Code of Conduct which is stigmatising and paternalistic.

# Who will be covered by the Code of Conduct

Although the paper states that:

“*A commitment to strive for excellence and ensure quality in the NDIS market must come from workers, providers, regulators, professional associations, people with disability, their family and carers and the wider community”[[2]](#footnote-2),*

*o*ne of the major omissions in the discussion paper and the Code of Conduct is the responsibilities of people with disabilities, their carers and the rest of the community. There is nothing in the Code that shows that with rights come responsibilities to work with the service providers to ensure that the services and workers have a safe and ethical environment to work in.

If the Code of Conduct is solely for service providers and workers, there needs to a equitably enforceable code for people with disability and their carers that sets out their responsibilities to ensure they afford the same respect to the service providers and workers to ensure that they work in a safe and ethical environment. There is also nothing mentioned on how the Commission would handle and investigate any complaints about persons with disability or how they would enforce any findings.

The document mentioned that work health and safety legislation has been taken into account in the drafting of the Code, however nothing is explicitly mentioned about the responsibilities that visitors and consumers of the services need to do all they can to ensure they do not contribute to the environment in a negative way. They are responsible for their actions and behaviour whilst using the services and should not do anything that would adversely affect the safety of the workers and service providers.

Whilst we acknowledge that service providers could have their own code of conduct or rights and responsibilities for their clients, we are concerned about how the service providers are able to enforce this to ensure a safe and ethical workplace. We realise that it is in the prerogative of service providers to refuse service to participants who do not conduct themselves in an ethical and safe manner. However, without some mechanism to mediate in these issues, there is a possibility that this could result in some people with complex needs and issues being unable to find providers who will work with them.

Self-managed NDIS participants are essentially the employers of service providers and workers, yet there is nothing in the Code that acknowledges this relationship and the implications of it.

# Training and other registration requirements

MHCC ACT is concerned about the number of requirements that are imposed by the Code of Conduct on service providers especially in relation to the training and supervision requirements. We have made a number of submission recently outlining that the NDIS pricing framework provides little if any capacity to build in crucial aspects of quality service sustainability – training, induction, supervision, systems upgrade, innovation, specialist services. Service providers have repeatedly told us that the current price structure does not allow for high quality recovery focused services and to respond effectively to participants.

*“In many cases the pricing for plans is so restrictive that it makes the opportunity to provide a flexible and quality service to participants unsustainable. We have had to start employing a lesser skilled workforce to cater for the shift to lower wages which the NDIS demands by its pricing structure, and have very limited capacity for supervision and training of staff. We are concerned this will have an impact on the quality of service we provide.”*

So MHCC ACT has serious concerns about service providers’ capacity to absorb the cost of providing this training and the added possibility that worker will have to undergo this training in their own time adding further burden to an underpaid workforce. The discussion paper also made no mention of who would be developing this training and how it would be tailored to the different workforces. There is also no mention of how they would ensure that this training would meet professional organisations requirements for professional development.

# Language

The underlying premise of the NDIS is choice and control for participants. However, the way that the Code of Conduct is written is very stigmatising and paternalistic. The service providers and the workers are the ones that are keeping the person with disability safe and ensuring that they are “afforded their human rights”, people with disability and their carers seem to be completely absent from the Code.. The way that the Code is written is all about the providers and workers imposing things on persons with disability. It reinforces the power imbalance that the NDIS was supposed to lessen by giving the participants the choice and control over the services they receive.

MHCC ACT recognises that people with disability have an increased risk of violence, abuse and neglect and that there needs to be safeguards to prevent, detect and respond to violence, exploitation, neglect and abuse. However, this needs to be undertaken in a way that is truly collaborative, involving people with disability, their carers and the community and their expertise. One example of this is the following case study which illustrates the poor use of language.

**Scenario 2.2.1 – Provider**

Disability Home Care provides 24 hour support to people with disability living in shared accommodation. They provide supports in a property where advocacy worker Ahmed has been engaged by one of the residents at the house to provide support on a legal matter unrelated to the NDIS. One day Ahmed visits the house to find two of the residents wrestling on the lounge room floor and another banging his head against the wall. There are two support workers in the kitchen at the far end of the house preparing the evening meal. After Ahmed and the two support workers calm the situation down, the support workers tell Ahmed that the residents often get rowdy when they are left alone but they have too many household chores to complete and cannot always be in the same room. Additionally, they feel unable to intervene if residents become highly agitated as there are only two staff members in attendance during the afternoon shift.

Ahmed discusses the situation further with his client who tells him there are often violent incidents at the house. Ahmed contacts Disability Home Care to make a complaint. He is told they will investigate and will undertake any action required. After four weeks, there have been no changes to the staffing arrangements and Ahmed’s client tells him about another violent incident occurring in the house.

Ahmed contacts the Commission anonymously to make a complaint. After the Commission investigates, they find Disability Home Care has failed to put systems in place to prevent violence and abuse in the home. Disability Home Care is directed to immediately increase the staffing levels in the home and to adequately train all their staff in best practice service provision to minimise the risk of violence occurring. For example, supporting residents to carry out daily chores, rather than the workers completing chores for them, increases residents’ control over their everyday lives and minimises the time residents are left unsupervised.

There is nothing in this example that shows the residents of the home being consulted about the situation, or asking them how they would like their home run, how they could live together better, how they can help make the home safe and secure for themselves and their workers.

There is nothing in the Code and the language it uses to show that there should be a relationship between service providers, workers, people with disability and their carers. Service providers, workers, persons with disability and carers need to walk along side of each other to ensure the human rights of all are upheld.

# Conclusion

MHCC ACT is concerned that obligations and expectations relating to providers or workers maintaining necessary competencies; offering supervision; and undertaking training are a part of the Code of Conduct when the NDIS pricing structure does not adequately or at all in many instances incorporate non-client facing time.

We are also concerned that there is no corresponding responsibilities imposed on people with disabilities to assist in ensuring an ethical and safe environment in which services can be provided. The NDIS is desperately in need of a partnership approach whereby the expertise of consumers, carers and providers is sought out and valued. The issues raised in this submission need to be addressed if the NDIS is to deliver on its stated goals and in the process leave no one worse off.

Simon Viereck  
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MHCC ACT

21 June 2017

1. National Disability Insurance Scheme (NDIS) - Code of Conduct Discussion Paper DSS 2122.05.17 - page 1 [↑](#footnote-ref-1)
2. Ibid page 7 [↑](#footnote-ref-2)