



Western Sydney Community Forum

Submission to Department of Social Services



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community forum

Submission on “National Disability Insurance Scheme (NDIS) – Code of Conduct”

15 June 2017

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“National Disability Insurance Scheme (NDIS) – Code of Conduct”
Discussion Paper, Department of Social Services
June 2017

Summary response:

Western Sydney Community Forum (WSCF) welcomes the opportunity to give feedback on the Department of Social Services’ Discussion Paper on the NDIS Code of Conduct. We believe that all 9 obligations covered in the NDIS Code of Conduct are critical in safeguarding and ensuring quality in the provision of services within NDIS and we applaud this national initiative. It is also very significant that this Code will be monitored by an independent NDIS Quality and Safeguards Commission (herein referred to as the Commission) which will have powers to enforce compliance where unacceptable behaviours are evident and will also have a clear educative role to support the disability sector in understanding and implementing the NDIS Code of Conduct.

We would like to highlight some key themes below which we believe would be beneficial to further explore and clarify to ensure the effectiveness of the NDIS Code of Conduct.

Key themes:

Reliance on complaints as the only avenue for raising NDIS Code of Conduct concerns

While it is imperative that complaints are recognised as the key way to alert the Commission to potential and actual breaches in the NDIS Code of Conduct, it may be worth exploring other ways for breaches to be identified and acted upon. As recognised in the discussion paper, although various initiatives have been implemented in the past (as well as through this initiative) to educate and support participants, their carers and workers to be able to make a complaint, fear of the consequences of making a complaint can still be significant for complainants.

It would be greatly beneficial to identify and explore further ways that education, support and protections can be given to potential complainants around making complaints. It is noted in the Discussion Paper that a compulsory orientation module for registered providers delivering supports will be implemented. Will resources and educational tools be developed and widely promoted for participants and their carers and families to assist them in making a complaint?

What other methods within the NDIS quality and safeguards framework will be developed to complement this process, to ensure that breaches in the NDIS Code of Conduct are detected and dealt with so that the system is not totally dependent on complaints being made? This is particularly important for unregistered providers who will not be required to meet the quality assurance requirements specified for registered providers (see further comments below).

Unregistered providers

While it is very important to ensure choice and control for people who are self-managing their packages, we also need to ensure that unregistered providers are fully aware of their NDIS Code of Conduct obligations. As indicated in the Discussion Paper, *“unregistered providers will also be subject to the Code of Conduct if they are receiving NDIS funding for their services”*, and self-managing participants will be *‘strongly encouraged to provide information about the Code of Conduct and its obligations to any unregistered providers they engage’* (page 10). While this puts the onus on participants to inform unregistered providers of the NDIS Code of Conduct, there is no obligation for them to do so.

We believe this could be problematic as there is no mechanism to ensure that unregistered providers and their staff are fully aware of their obligations under the NDIS Code of Conduct. Unregistered providers are not required to meet the quality assurance provisos in the registration process. In addition, the compulsory orientation module that is referred to in the Discussion Paper and the reportable incident notification requirements in the NDIS Quality and Safeguarding Framework (see Scenario 2.5.1) only seem to apply to registered providers.

Would it be possible to at least make it a compulsory requirement for unregistered providers to read and agree to abide by the NDIS Code of Conduct? In addition, how can we ensure that workers from unregistered providers are aware of whistle-blower provisions included within the functions of the Commission?

Compulsory Orientation Module

We recommend that the compulsory orientation module that is proposed in this Discussion Paper for registered providers be co-designed with the sector to ensure that it is relevant, in line with best practice and can readily be implemented.

There is no mention of a compulsory orientation module for NDIA partnering services such as organisations contracted to provide ILC, LAC, ECEI and CoS services. We would expect that these services should meet the same orientation training obligations as registered providers. Will this be included in their contract, or be covered in other ways to ensure consistency of service?

Clarity regarding interface with other Complaints bodies

It is pleasing to note that the Discussion Paper indicates that the Commission will operate with a ‘no wrong door’ policy and any complaints outside of the scope of the NDIS Code of Conduct and Commission will be referred to the relevant agency. As part of the Commission’s education role, both for participants and providers, it would be very beneficial to scope the boundaries of all relevant agencies (e.g. NSW Department of Fair Trading, Australian Human Rights Commission, NSW Ombudsman, Commonwealth Ombudsman, etc) that deal with complaints relating to people with disability, and to provide community and sector information that helps stakeholders navigate the system effectively.

Application of the Code to the National Disability Insurance Agency (NDIA)

We note that the NDIA is not listed as covered by this NDIS Code of Conduct. Given that the Agency, particularly planners, have a key role to play in the development of services for people with disability, it is surprising to see that they are not within scope of this Code. Is there any particular reason for this exclusion?

Workforce shortages and ability of providers to always be able to meet participants' choices

In scenario 2.2.1, reference is made to a breach being made by the provider as they did not meet the gender requirements of the participant in the provision of personal care. We agree that this should be considered a breach and that remedial action is required in these circumstances. In some situations, however, every attempt by a provider to fulfil the specific workforce requirements of a participant is not successful and this can be due to significant workforce shortages. We have noticed that this is becoming increasingly an issue as the increase in demand for disability services has not been met by an equivalent growth in the disability workforce. This will need to be taken into consideration in the broader context when decisions are made on what constitutes a breach as the NDIS continues to broaden its reach.

Obligation 2 – policies and procedures on dealing with violence, exploitation, neglect and abuse

In this obligation, reference is made to organisations needing to have policies that define violence, exploitation, abuse and neglect, and systems and procedures to prevent violence, exploitation, abuse and neglect. No mention is made of providers being required to have policies and procedures that clearly outline the steps to be taken internally within an organisation should a situation of violence, exploitation, abuse and neglect occur. We believe that this omission needs to be rectified in this Obligation. We do note that Obligation 5 covers the need for providers to have systems in place to address complaints or disputes, but this does not automatically cover all ways that violence, exploitation, abuse and neglect are identified and addressed.

Queries about this document to:

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