

NDIS Code of Conduct – Submission



Supporting Mental Health & Wellbeing

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About Flourish Australia

Flourish Australia, previously known as RichmondPRA, is one of Australia's largest and most experienced not-for-profit community based, mental health organizations. For over 60 years, we have worked in local communities to support people on their mental health recovery journey. We provide a range of psychosocial support programs across our metropolitan and regional locations in NSW and South-East Queensland - including individual support in the home and the community, group programs and activities, supported employment opportunities and assistance to find and maintain work. Our aim is to build participation pathways and support people with a mental health issue to achieve their goals and live hopeful and meaningful lives. For 2015/16, we supported 4,723 people in this way.

Support for an NDIS Code of Conduct

Flourish Australia strongly supports the NDIS and its provision of lifetime support to people whose disability impacts on their ability to participate in the community and do everyday things. In particular, we support inclusion of psychosocial disability in the Scheme and the right of people with a significant and ongoing mental health condition to receive support to realise their potential and achieve their goals.

We are also strongly supportive of an NDIS Code of Conduct to set national standards for safe, high quality and ethical service provision. The NDIS is a national Scheme, so it is important to have a national framework to ensure consistency in establishing expectations, monitoring compliance and imposing sanctions where necessary.

The scale, pace and complexity of the NDIS reforms make it imperative that effective safeguards are in place. The transition to a market-based system that places individuals and their NDIS packages 'in the driving seat' brings with it a fundamental change to the relationships governing disability support services, as well as a dramatic increase in available funds.

Most service providers will participate in the Scheme in good faith and in the interests of those requiring NDIS support. However, there is the possibility that some may see the Scheme, and the confusion and uncertainty that can arise during the transition process, as an opportunity to further their own interests at the expense, or even exploitation, of already vulnerable people.

A strong and enforceable Code of Conduct can send a powerful, public message about what is expected, what will not be tolerated, and the consequences of wrong-doing.

Our comments below address the issues raised in the Discussion Paper. In preparing them, we have consulted with people with a lived experience of a mental health issue who are receiving support from Flourish Australia, including via the NDIS.

What is included in the NDIS Code of Conduct?

The need for transparency

The people we support who were consulted in regards to the proposed Code of Conduct raised the need for the Code to emphasise the importance of transparency and accountability in a service provider's overall operations. Open communication between the service provider and the people being supported is essential, including information to explain key policies and procedures, operational requirements and any limitations in service provision.

People accessing NDIS support also have a right to know why particular decisions that impact on their support have been taken. For example, if a particular activity is no longer offered or weekend support no longer able to be provided, the people impacted by this decision should ideally be consulted about it and at the very least, given an explanation as to why.

The requirement that workers and providers 'act with integrity, honesty and transparency' should be expanded to include the above.

The need to seek regular feedback from participants

The people we support who we consulted felt strongly that the Code should require providers to seek regular feedback from participants via multiple, accessible channels. This is good practice, aids open communication and transparency and will prevent complaints from escalating.

Preventing violence, exploitation, abuse and neglect

The Discussion Paper states that providers themselves will need to define violence, exploitation, abuse and neglect. This runs the risk that different definitions will be applied and a nationally consistent approach will not be developed.

Given the importance and seriousness of this issue, it should be dealt with in detail in the Code, including the provision of definitions developed in consultation with people with disabilities. It will be important to ensure that bullying, harassment, exclusion, failure to provide access to appropriate services and supports and other less visible forms of unacceptable behaviour are captured within the definitions.

The Code of Conduct should spell out that service providers have a responsibility to ensure that people accessing their services are not subject to violence, exploitation, abuse and/or neglect from other people also accessing their services, or from people visiting the service.

All states and territories now have a 'Working with Children' check. However not all have a 'Working with Vulnerable Persons' check. This could potentially undermine the

effectiveness of the Quality and Safeguards Framework. A national, consistent approach to screening workers is required so that all people with disabilities receiving NDIS support are afforded the same protection, regardless of jurisdiction.

The Code should spell out the standards required in relation to worker screening across all states and territories, incorporating Criminal Records Checks, other measures (such as access to information showing a pattern of abusive or inappropriate behaviour), and requirements in relation to information sharing between jurisdictions.

Financial exploitation and financial arrangements outside of scheme requirements

There does not seem to be explicit recognition in the Code of the potential for service providers to engage in charging practices that are outside the parameters set by the NDIA price guide, and which could leave NDIS participants open to financial exploitation.

The difficulties that service providers face in recovering the efficient cost of service provision could serve to increase the occurrence of such practices. This could result in arrangements that lack transparency, do not uniformly apply, are at odds with pricing policy set out in the NDIA Price Guide, and are unfair.

For example, we have heard of some service providers entering into private arrangements to recoup travel costs that are not in line with stated NDIA policy.

We have also been informed that some service providers are considering charging additional fees on top of the NDIS unit price, to better reflect actual costs of service provision. In a number of instances, we have heard that 'exit fees' are being applied.

We do not have evidence to know whether these practices are actually occurring. Regardless, the Code of Conduct should make it clear that they and any similar actions amount to financial exploitation, are in breach of requirements and will be sanctioned. Sanctions need to reflect both the seriousness and the monetary value of the breach.

We are sympathetic to the need to find ways of making service provision under regulated pricing arrangements viable. However, rather than leaving it up to service providers to come up with 'creative' solutions that could contravene NDIA requirements and exploit participants, our view is that it would be far better to transparently review pricing, in consultation with service providers, and come up with unit prices that better reflect the efficient costs associated with different types of support.

Promoting individual rights - not discriminating against NDIS participants and being open to reasonable requests

This requirement needs to be more fully explored to provide clearer guidance. Are there circumstances where it is acceptable for a service provider to take the position that it will not provide a particular type of support or will not support some participant preferences? For example, if an organisation affiliated with a particular religion does not support same sex relations, is it acceptable to make this known and to not provide support that could be seen to conflict with this position?

The notion of 'dignity of risk' should also be considered in the Code. Just as placing participants in situations that give rise to unacceptable risk of harm should be avoided, so too should risk averse behaviour that fails to promote individual rights to self-determination and decision making. This requires a nuanced approach and service providers would benefit from guidance on how to strike the right balance.

Conflicts of interest

Requirements in relation to this are briefly touched on under 'Act with integrity, honesty and transparency'. However, a definition of what comprises a conflict of interest, examples of where this may arise and options for managing need to more fully explored in the Code.

Reportable incidents

The Code should clearly define 'reportable incidents' and indicate which, besides those involving violence, exploitation, neglect and abuse must be notified to the Commission.

It is concerning that it is only registered providers who are required to notify the Commission in this regard, while unregistered providers are 'encouraged' to do so. This seems to be a gap in the Quality and Safeguards Framework that could mean unequal protections are available to participants in receipt of NDIS support.

The whistle-blower provisions that will protect workers who contact the Commission with concerns need to be spelt out in plain English, either within the Code or referenced in a separate document.

Sexual misconduct

The requirement set out in the Discussion Paper for workers not to engage in sexual misconduct does not recognise that sometimes it can be people accessing the service/NDIS support who may engage in behaviour that fits the definition of sexual misconduct. Will the Code extend to cover these situations? If so, it should be acknowledged that people with disability need to be provided the opportunity to learn about and express their sexuality in a safe and appropriate manner.

Denying people with disability their rights in this regard can lead to conduct that is unacceptable and that could have been avoided had appropriate strategies been put in place earlier on.

Keeping appropriate records

The Discussion Paper highlights that all records need to comply with relevant privacy and security measures. The Code should give a clearer indication of what these privacy and security measures are. While requirements may vary across jurisdictions, there will also be national requirements that should be spelt out.

Who will be covered by the Code of Conduct?

We are pleased that the Code will have broad coverage and apply to all providers and workers who are funded under the NDIS, including registered and unregistered providers, contractors, consultants, volunteers, and people who are self-employed.

We note that the term 'providers' is taken to include key personnel such as any person with responsibility or influence over planning, directing or decisions, including board members and other stakeholders of significance. In our view, this definition could be taken to implicitly incorporate NDIA staff, particularly those with a role in approving access to the Scheme and approving plans.

Yet NDIA staff appear not to be covered by the Code of Conduct. We understand that this may be because, as public servants, they are covered by a separate code. We would argue that their role is essential to the effective operation of the Scheme, they provide a vital service to Scheme participants and they have the ability to strongly influence the safety, quality and integrity of the Scheme. They should be included within the remit of the Code, or the relevant Code of Conduct applying to them should be reviewed, updated to ensure it aligns, and made available to participants, potential participants and other stakeholders.

We are strongly of the view that the same framework and standards should apply regardless of whether a worker or provider is a public servant, in the not for profit sector, or from the commercial sector.

The Code should also explicitly apply to people appointed as Guardians or Financial Managers (either through court or tribunal processes or under Enduring Power of Attorney or Enduring Guardianship instruments) in respect of people with disabilities. These individuals exercise considerable decision-making power, including in relation to the NDIS, and should adhere to the same standards as others who will be captured by the Code. The Code should also stipulate that NDIS decision makers need to respect the role of, and appropriately involve, those who have been appointed as Guardians and Financial Managers for NDIS participants.

We also query whether advocates should be covered by the Code. They may not necessarily be involved in providing NDIS funded supports (for example they may support a person in a voluntary capacity to prepare for and attend their planning meeting, and they may continue to support a person from time to time without receiving any NDIS funding as a result) but they may have the ability to influence decisions, direction and planning in relation to the NDIS.

We support the notion that registered providers and workers with registered providers engaged in the delivery of NDIS-funded supports will be required to undertake a compulsory orientation module that will include information on the Code of Conduct. However, we query why this only applies to registered providers and not to unregistered providers as well.

Notwithstanding it may be difficult to mandate that they complete the orientation module, it is unregistered providers who may be less familiar with Scheme requirements and the specific requirements of the Code of Conduct. If an unregistered provider is in breach of the Code, could they argue that they were not made aware of the requirements and were at a disadvantage because they were not required to undertake the orientation module?

How will the Code of Conduct be applied?

In order for the Code of Conduct to be effectively applied and for complaints to be made about breaches, it will be important for the existence of the Code to be widely publicised and for copies to be easily accessible and readily available. The Code will also need to be written in plain English, and made available in community languages.

There will need to be accompanying information, also in plain English and community languages, about different channels for making a complaint concerning a breach of the Code, and what will happen when a complaint is made. People receiving support under the NDIS and their families will need reassurance that their support or their NDIS package will not be jeopardised because they have made a complaint.

Appendix A to the Discussion Paper, which sets out how complaints will be received and managed, is not a flow chart that is easy to understand. It will also not help to manage expectations in relation to what happens once a complaint is made. Unless the process is clearly spelt out in plain English, including any limitations, people may be reluctant to make complaints, and/ or may lose faith in the system, if they perceive that no action has been taken.

Input from people with disabilities should be sought in the development of relevant materials explaining the complaints process.

Conclusion

Flourish Australia appreciates the opportunity to provide comment on and input to the development of the NDIS Code of Conduct, given its importance in protecting the rights, safety and wellbeing of vulnerable people. We strongly recommend input from people with disabilities, including those with psychosocial disability, in further development and finalisation of the Code.