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**Submission to the**

**National Disability Insurance Scheme (NDIS) - Code of Conduct**

**Discussion Paper**

**21 June 2017**

**About United Voice**

United Voice is a union of workers organising to win better jobs, stronger communities, a fairer society and a sustainable future. Members work in a diverse range of industries including disability support, aged care, early childhood education and care, education, cleaning, hospitality, healthcare, security, emergency services and manufacturing.

Whilst coverage and titles may differ on a state basis, nationally United Voice has thousands of members who work in the disability sector. As the people working in the disability sector on a daily basis, our members are uniquely positioned to contribute to the development of the code of conduct for their sector and comment on its impact on quality disability services. United Voice members appreciate the opportunity to have their opinions, concerns and experiences considered as part of this inquiry.

United Voice accepts that in some respects our members views may appear to differ from those put to the Department of Social Services from other stakeholders. Whilst our positions on some issues may appear to conflict, we are all fundamentally interested in safeguarding the provision of quality disability services by ensuring professional workforce standards and upholding the rights of people with disability.

*“When working conditions suffer, so does the quality of support that people can expect to receive.”*

*- Disability Support Worker, United Voice Member*

**INTRODUCTION**

United Voice welcomes the opportunity to make a submission to the Department of Social Services (**the Department**) National Disability Insurance Scheme (NDIS) – Code of Conduct dated 10 May 2017 (**the Draft Code**).

The national NDIS Quality and Safeguarding Framework (**the Quality Framework**) aims to ensure the rights of people with a disability are upheld and the services and supports provided through the NDIS are safe.

The NDIS Code of Conduct will be a central component of the Quality Framework. It is intended to protect the rights of people with disability in the NDIS to have access to safe and ethical supports and reflect the core values and principles as set out in National Standards for Disability Services. The NDIS Code of Conduct will drive high quality supports to ensure people with disability can exercise choice and control, while minimising the risk of harm.

An effective code of conduct for the disability sector is one that will safeguard the provision of quality disability services by ensuring professional workforce standards and upholding the rights of people with disability. United Voice believes the Draft Code fails to do this.

By simply requiring providers and workers to meet existing obligations around quality, the Draft Code does not address concerns with the current standards for quality. Nor does it address serious workforce issues which put quality service delivery at risk and ultimately threatens the sustainability of the NDIS. Furthermore the current draft code in not separately addressing requirements for workers, organisations and volunteers has the capacity to be unclear and lead to inadvertent breaches of the code.

The development of a code of conduct for the disability sector should be seen as an opportunity to drive a model of disability service provision that provides sustainable, quality services for all people with disability. The Draft Code must be amended to address the concerns of our members as outlined in this submission.

**EXECUTIVE SUMMARY**

A code of conduct for the disability sector is an opportunity to drive a model for disability service provision that provides sustainable, quality services for all people with disability.

An integral component of providing a quality services is the capacity of the disability workforce. Working conditions are intrinsically linked to the quality of services people receive. Quality services depend on a quality workforce. A stable workforce of professionally trained, skilled and dedicated workers with decent working conditions, job security and competitive wages is required to provide a consistent, high quality service that is respectful of and facilitates individual needs and goals.

Disability support work is currently characterised by a range of conditions that are not conducive to quality jobs. These workforce challenges are well known and include; low wages, inadequate and unpredictable working hours, limited career progression, physically, emotionally and psychologically demanding work, and inadequate supervision. There is real concern across the disability sector that the NDIS will create a class of low paid workers, who lack the required training, skills and job security to provide quality services to people with disability.

United Voice believes that a code of conduct for the disability sector should specifically address some of these workforce issues by implementing clear expectations around mandatory qualifications, training, supervision and working conditions. Where workforce issues are addressed, the sector will be better positioned to ensure high quality supports for people with disability that provide for choice and control, with a minimal risk of harm.

United Voice is concerned that the development of the Draft Code has not been adequately considered within the context of the current NDIS pricing model. It is questionable if workers and service providers will be able to meet proposed obligations of the Draft Code due to the flawed pricing model that systematically undervalues the contribution of frontline workers under the NDIS.

Without amendment the Draft Code will fall short of driving any real improvements in quality service delivery and in some cases may have a negative impact on service standards for people with disability.

**SUMMARY OF RECOMMENDATIONS**

* Amend clauses 2.2(5) and 2.5 to ensure workers are fully informed of, and understand their obligations for reporting incidents.
* Amend clause 2.5 to provide clear guidance on what constitutes reportable conduct.
* Amend clause 2.4 to mandate minimum requirement for qualifications at Certificate iii.
* Amend clause 2.4 to protect workers from financial or other hardships when accessing training and professional development.
* Amend clause 2.4(5) so that it only prohibits those circumstances where there is a reasonable belief that the medication will impair an individual’s ability to practice.
* Amend clause 2.7 to expressly exclude these types of personal relationships as being defined as sexual misconduct to avoid any confusion or inappropriate application.
* Amend clause 2.8 to ensure adequate paid time for appropriate record keeping

**RECOMMENDATIONS**

**Mandatory Reporting - clauses 2.2(5) & 2.5**

While United Voice believes mandatory reporting is a fundamental safeguard for quality services, we oppose the mandatory reporting requirements for individual disability support workers as drafted.

Clauses 2.2(5) and 2.5 impose an unreasonable duty on workers to report on the conduct of their colleagues without the necessary framework in place to safeguard those who do from persecution. Further, the Draft Code does not adequately mitigate against the risk of misuse of mandatory reporting requirements as a tool for intimidation and bullying in the workplace.

United Voice proposes that clauses 2.2(5) and 2.5 of the Draft Code are amended to ensure workers are fully informed of, and understand, their obligations to report incidents.

While clause 2.2(5) clearly involves an obligation to report on incidents of violence, exploitation, neglect and abuse, clause 2.5 establishes a potentially broad and onerous duty for mandatory reporting. The standard applied is simply‘matters that may impact on the quality and safety’. Thus, it is unclear when workers are obliged to report conduct and specifically what conduct will meet this standard. In practice, this may lead to confusion and undue stress for workers that will likely result in unnecessary and inappropriate reporting. Where a penalty is imposed for failure to report, this increases the likelihood of unnecessary reporting.

By failing to clearly define what conduct is reportable, the potential application is unreasonably broader than the mandatory reporting requirements that exist for registered health care workers. Pursuant to the National Law for Registered Health Care Workers enacted in each Australian jurisdiction (**the National Law**), registered health care workers must comply with mandatory reporting of ‘notifiable conduct’ which is specifically defined in the legislation.[[1]](#footnote-1)

Where mandatory reporting requirements are included in a national code, a clause that expressly prohibits the making of complaints that are of a frivolous or vexatious nature or lack substance must be included. Complaints that would fall within these categories are clearly not in the public interest.

Workers should be expressly protected from civil, criminal and administrative liability where reports to the commission are made in good faith. Conversely workers should not be prevented from pursuing legal avenues where complaints have been made against them that were not made in good faith. For example, under the National Law doctors who complain about their colleagues under mandatory reporting requirements could be sued for defamation if the complaints are found not to be made in good faith.

United Voice proposes that the Draft Code be amended to include clear guidance on what constitutes reportable conduct by providing a definition similar to that contained in the National Law and that prohibits frivolous or vexatious complaints and protects workers where complaints are made in good faith.

A workplace culture where people are supported and encouraged to speak up requires an accessible, transparent and robust internal complaints system that workers have received appropriate education and training on, and a national whistle blower policy that allows workers to raise concerns without fear of persecution. While whistle blower protections exist for reports made to the Commission, internal complaints processes must have similar levels of protections. Merely having established complaints procedures will not be a sufficient safeguard in a workplace culture where workers are disinclined or are not supported to make a complaint or raise a concern.

It is concerning to receive feedback from members who feel discouraged from raising concerns where they don’t perceive any value in their employers complaints system. Having a complaints procedure that is not transparent or effective is arguably akin to a complete absence of any system.

We receive constant feedback from our members that they have not received any formal training in the complaints systems that exists in their workplace. Clearly the first step in a successful complaints process is ensuring employees are aware of it and understand their obligations when making a complaint. While the Draft Code has an expectation that providers will ensure workers have appropriate training in reporting and complaints procedures, some level of external mandatory training must be included to ensure consistency in quality and delivery.

United Voice proposes that the Draft Code be amended to include mandatory external training in reporting and complaints procedures to ensure consistency in quality and delivery.

**Standards of Supports – clause 2.4**

Clause 2.4 requires workers to provide supports in a safe and ethical manner with care and skill and includes obligations relating to training and supervision.

**Qualifications & Training**

2.4(1) makes reference to a standard of ‘necessary competence’ in providing supports. While we strongly support the provision of a quality professional workforce for the disability sector, we disagree that this is best achieved by imposing a blanket obligation for maintenance of ‘necessary competence’.

Maintaining necessary competence is an arbitrary concept for workers whose employment does not require, or provide for, pre-entry qualifications or mandated professional development and training. Workers employed as direct care workers in the non-government disability sector are not subject to regulated pre-entry qualifications or ongoing professional development requirements. As such, the Draft Code does nothing to address concerns of inadequate and insufficient training requirements for these workers and instead imposes a status quo which is currently inadequate.

United Voice proposes that the Draft Code be amended to ensure quality disability support is underpinned by a well-trained and qualified workforce through mandating minimum requirements such as qualifications at Certificate iii level.

Clause 2.4(2) requires the provider to take ‘reasonable steps’to ensure workers are competent. This must be redrafted to expressly protect workers from financial or other hardships by complying with this obligation. For example, the provision of paid training leave and a requirement that the employer pays for any training courses the employee is required to attend.

This obligation is problematic for workers who do not have a traditional employer-employee relationship. Due to the reforms under the NDIS it is increasingly likely that workers in disability services will be employed directly by the consumer and it is unlikely that they will be afforded the same professional development opportunities. If a national code imposes an obligation to maintain some level of professional development it is likely that these individuals will be required to meet these obligations at their own cost and in their own time. Provision should be made for these individuals so that they are not disadvantaged, such as free or low cost training courses provided by the government.

United Voice proposes that the Draft Code be amended to protect workers from financial or other hardships when accessing training and professional development.

The NDIS pricing structure assumes that, excluding leave, a support worker is working directly with participants for 95% of their time. Allowing only 5% of paid time to undertake administrative duties, training and development, supervision, induction, peer support, etc. is clearly inadequate.

Experience of the NDIS to date has been that time for training is squeezed under the NDIS pricing. Feedback from employers has been that in some instances they are not able to pay support staff for their time to attend training and development. This is clearly unsustainable and leads to clear risks to participants, where disability support workers are not properly trained.

In a submission to the Productivity Commission inquiry into NDIS costs, NDS raised concern that the provision for training under the NDIS pricing structure is not conducive to developing a quality workforce and that *“the 2 days per year allowance for training is inadequate to ensure a skilled workforce”.*

Delivering a quality NDIS will require a skilled and experienced workforce that has access to ongoing training and knowledge acquisition. In lieu of this being factored into an hourly rate, workers will be increasingly pressured to undertake basic training and knowledge gathering in their own time. This context creates real risks for the future of NDIS, and for NDIS participants.

**Supervision**

Clause 2.4(2) requires providers to ensure workers have ‘reasonable supervision’.

Good supervision is a key element of quality support work. However, increasing complexity of support and higher expectations from people who use services means that workers are often placed in demanding situations without immediate support. Further, disability work is often structured in such a way where direct supervision is not practical.

In finalising the Draft Code the Department must be conscious of the current NDIS pricing arrangements, which puts pressure on the ability for service providers to maintain supervisory practices that would comply with the expectations of the Draft Code.

Current NDIS pricing assumes that supervisors are at the level of SACS Level 3.2.[[2]](#footnote-2) The NDS submission to the Productivity Commission noted that the average pay rate used for worker and supervisor is lower than the sector pays. Further, a supervisory ratio of 1 supervisor for 15 staff is assumed, which NDIA states can be increased to 1 supervisor for every 18 staff for individual services in the transition to an ‘efficient’ price.[[3]](#footnote-3) These ratios are predicated on poor quality supervision and ratios of 1:15 and 1:18 assume much larger supervisory spans than is common practice. Anecdotally the current sector average is 1 supervisor for 8 staff.

**Working under the Influence of Drugs or Alcohol - clause 2.4(5)**

While United Voice strongly supports the requirement that workers should not practice while under the influence of alcohol or drugs, this blanket exclusion has a broad application that may discriminate against people who have prescription medication.

Clause 2.4(5) requires workers to obtain advice regarding the impact of prescribed medication on their ability to practice and must refrain from practicing where their capacity ‘may’ be impaired. This clause should be redrafted to ensure it captures only those circumstances where there is a reasonable belief that the medication will impair an individual’s ability to practice. This will limit application to only those circumstances where necessary to do so and will protect workers right to privacy from unintended application.

United Voice proposes that the Draft Code be amended to ensure clause 2.4(5) only prohibits those circumstances where there is a reasonable belief that the medication will impair an individual’s ability to practice.

**Sexual Misconduct - clause 2.7**

We strongly support safeguards to ensure that people with disability are not subject to sexual misconduct in the provision of a service. However, we have concerns that the proposed clause 2.7 could be applied to not only instances of sexual misconduct, but to prevent or deter other personal relationships that can reasonably be expected to develop between a disability workers and a person receiving supports.

For example, our members who work as support workers may be caring for a single client for a considerable amount of time. A necessary consequence of providing care is often the development of a personal relationship or friendship. Clause 2.7 as drafted could be perceived as prohibiting this type of relationship, despite the fact that it would not constitute sexual misconduct.

United Voice proposes that the Draft Code be amended to expressly exclude these types of personal relationships as being defined as sexual misconduct to avoid any confusion or inappropriate application of clause 2.7.

**Keep appropriate records – clause 2.8**

In order to keep appropriate records workers will need adequate paid time in which to do so. Current NDIS pricing assumes that 95% (excluding leave)[[4]](#footnote-4) of a workers time is client facing, this will not allow adequate time for record keeping, nor for effective handover, training and supervision and other activities that would contribute to appropriate record keeping. In the absence of paid time for record keeping it will either not happen appropriately or at all or workers will be pressured to comply in unpaid time.

United Voice proposes that the Draft Code be amended to ensure that for the purposes of clause 2.8 workers will be provided adequate paid time in which to complete required records

**Insurance - clause 2.9**

We support the requirement that all workers should be covered by appropriate insurance. However, we have concerns with imposing a blanket obligation without having sufficient consideration to how different circumstances impact on an individual’s ability to access appropriate insurance coverage.

Generally, if employed by a provider the worker will be covered by their employer’s insurance policy. However, where the worker is employed by a private individual, they cannot automatically rely on that individual providing adequate insurance cover.

This is further complicated where certain workers cannot legally comply with the obligation. For example, in WA where home care workers are defined as domestic service workers and are not considered employees under the *Industrial Relations Act 1979 (WA),* this presents barriers to securing indemnity insurance coverage.

To ensure these workers are able and financially willing to obtain the appropriate insurance, the government should consider providing financial assistance to such workers or imposing an obligation on all employers to provide adequate insurance coverage, including in circumstances of direct employment.

**CONCLUSION**

United Voice is concerned that the Draft Code fails to provide a framework for a model of disability service provision that provides sustainable, quality services for all people with disability. There is an urgent need to address current workforce issues under the NDIS to ensure quality service provision remains sustainable under the NDIS. A code of conduct for the sector should drive standards of quality by specifically addressing such concerns as qualifications, training and development and supervision. A code of conduct that inhibits improved quality from the outset is not one that can meet the designs of the scheme to transform the delivery of quality disability support to people living with disability.

1. For example; *Health Practitioner Regulation National Law (WA)* Act 2010, Division 2 [↑](#footnote-ref-1)
2. NDIA (2014), NDIA Report on the Methodology of the Efficient Price [↑](#footnote-ref-2)
3. NDIA (2014), NDIA Report on the Methodology of the Efficient Price [↑](#footnote-ref-3)
4. NDIA (2014), NDIA Report on the Methodology of the Efficient Price [↑](#footnote-ref-4)