

Submission by the New South Wales Nurses and  
Midwives' Association

Australian Government Department of Social Services  
NDIS Code of Conduct Discussion Paper

June 2017

The New South Wales Nurses and Midwives Association (NSWNMA) is the registered union for all nurses and midwives in New South Wales. The membership of the NSWNMA comprises all those who perform nursing and midwifery work. This includes Assistant in nursing (who are unregulated), Enrolled Nurses, Registered Nurses and Midwives at all levels including management and education.

The NSWNMA has approximately 62,500 members and is affiliated to Unions NSW and the Australian Council of Trade Unions (ACTU). Eligible members of the NSWNMA are also deemed to be members of the New South Wales Branch of the Australian Nursing and Midwifery Federation.

Our role is to protect and advance the interests of nurses and midwives and the nursing and midwifery professions. We are also committed to improving standards of patient care and the quality of services in health and age care services.

We welcome the opportunity to make a submission to this important element of the NDIS quality and safeguarding framework to minimise the risk of harm to people with disability using the NDIS support services and the opportunity for wider discussion that this provides

This submission is authorised by the elected members of the New South Wales Nurses and Midwives' Association.

#### Contact details

NSW Nurses and Midwives' Association

50 O'Dea Avenue

Waterloo

NSW 2017

(02) 8595 1234 (METRO)

1300 367 962 (RURAL)

[gensec@nswnma.asn.au](mailto:gensec@nswnma.asn.au)

## Introduction

It is of vital importance that the rights of people living with disability are protected and that they are safeguarded through contractual staffing arrangements. This is a fundamental issue for our members and therefore the NSWNMA is supportive of a code of conduct.

However, we have concerns that the proposed system places the onus on providers to self-report therefore introducing an element of self-regulation which has the potential to leave people at risk. It also lacks clarity in relation to how the system will be regulated.

### **1. Promote Individual rights to freedom of expression, self-determination and decision-making.**

This obligation is extremely important in that services and support need to continue to have a person centred focus. It is important that carers and family are involved in the decision making process and are provided with the relevant information in regard to services and support. The current system has limitations to the information and processes when seeking support and services under the new NDIS system.

*“I received a plan but have not been provided with any direction or support in how to proceed.*

*“We got funding but have no idea what to do next, when I asked I was told I need to find providers and I have no idea where to start; I felt helpless. Because even with my knowledge, navigation of the system is extremely complex.”*

(Carer, Registered Nurse, NSWNMA member)

There is an obligation and expectation that communication is in a form, language, and manner that enables people with disability and their carers to understand the information provided and make known their feelings and preferences. A high number of people with disabilities (and carers) do not have the literacy skills or ability to advocate on their own or behalf of others. They are having difficulty interpreting and navigating the current NDIS system, leaving them stalled with no direction.

***Recommendation: Care plans should be presented in a clear and more individualised format that the recipient and carer can understand and follow. Telephone support should be available to answer all questions or to provide contact details for appropriate resources.***

## **2. Actively prevent all forms of violence, exploitation, neglect and abuse.**

The NSWNMA and its members are committed to eliminating violence, exploitation, neglect and abuse against people with disability. Our members have expressed concerns about their clients welfare when they transition to care provided by unregulated workers under the NDIS scheme.

*“I just do not understand why our clients that we have cared and provided a high level of professional support for years, have now been placed in these group homes with people that just do not have the skills and know them like we did. They have ended up in hospital and they are dying. How are their rights being protected?! I feel so powerless in protecting them now”.*

(Registered Nurse, Disability).

***Recommendation: That care is provided by a qualified and competent workforce that has the skills and knowledge in line with the objective. In particular that individuals’ healthcare needs are monitored, assessed and attended to by appropriately qualified health professionals.***

### **3. Act with Integrity, Honesty and Transparency**

Close monitoring and regulation within the NDIS scheme is of the utmost importance.

Those providing care must have the appropriate qualifications to care and support the complexities that are faced when working with people with disabilities. We are concerned that the level of qualifications and skills of workers typically employed by NDIS providers are not always consistent with the ability to provide comprehensive, safe and high quality care.

### **4. Provide support in safe and ethical manner with care and skill**

The need for maintaining a high level of competence and skill is important in providing safe ethical care. The appropriate level of skills and competence is essential in providing care to disability clients. Within the existing disability workforce there are many skilled and competent professionals. There is concern amongst our members that the move to community based private providers may mean that they receive services from less skilled workers, since many do not provide nurse-led models of care. This not only reduces the quality of nursing care but also means the loss of very significant, long-term therapeutic relationships for some recipients of care.

### **5. Raise and act on concerns about matters that may impact on the quality and safety of supports provided to people with disability.**

The NSWNMA recommends a robust mandatory reporting system that improves quality and safety be in place.

*'Providers should contact the commission with concerns, noting that registered providers will be required to notify the commission of any reportable incident*

*involving violence, exploitation, neglect and abuse. Unregistered providers are also encouraged to report incidents of concerns on case-by-case basis to the commission' (NDIS Code of Conduct discussion paper).*

This raises the question whether this provides a reliable and true representation of robust reporting.

If mandatory reporting is not required by all providers whether registered or not, this creates incongruence within the system of regulation. This can impact on people with a disability feeling safe to make a complaint or provide negative feedback without fear of adverse consequences or loss of service.

The flow chart for handling of concerns on p36 of the consultation does not identify support systems for workers who have allegations made against them. In some cases, allegation may be unfounded and therefore the rights of workers should also be stated.

***Recommendation: a robust mandatory reporting system must be in place for all providers and include a system for identification of inappropriate workers that not only upholds their rights; but is robust enough to safeguard people.***

## **6. Respect the Privacy of People with Disability**

The NSWNMA support the ethical and legal obligation to protect the privacy of people with disability receiving care. This needs to be regulated under the NDIS system in a manner that provides continuity and accountability. We are concerned that the absence of a robust mandatory reporting system will create opportunities for exploitation.

## **7. Not engage in sexual misconduct.**

The need to protect this vulnerable population from unwelcome behaviour of a sexual nature is imperative to the safety of the person with a disability.

The NSWNMA also suggests incorporating 'professional boundaries' within this obligation to protect the person with a disability from inherent power imbalances<sup>1</sup>.

This obligation also needs to be regulated under the NDIS system in a manner that provides continuity and accountability.

### **8. Keep Appropriate records**

Registered Nurses and Enrolled Nurses are required to keep accurate contemporaneous records. However, extending the requirement to maintain accurate records to all level of workers through this Code is a positive development and ensures a higher level of safeguards.

### **9. Maintain adequate personal and professional Liability insurance appropriate to the risks associated with the support provided.**

This is supported.

### **General Comment**

The NSWNMA has concerns regarding the current general principles that guide the action under the NDIS Act 2013.

The current transition to this new NDIS scheme has created a great deal of uncertainty regarding the ongoing sustainability of funding of the scheme into the future. Transition to the NDIS scheme has resulted in the displacement of highly experienced skilled clinicians from long-term care facilities due to downsizing or

---

<sup>1</sup> Nursing and Midwifery Board of Australia (2010) *A Nurses Guide to Professional Boundaries*  
<http://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Professional-standards.aspx>

closure. This has resulted in a loss of experienced clinicians from the sector with the result of dependency on the high employment of unregulated staff, without the experience or skills required for this specialty area and has proven in the past to place individuals at increased risk of harm.

Providers should be required to employ those with the appropriate qualifications and experience to provide high quality and safest care. As stated by the National Safety and Quality Health Services “Managers and the clinical workforce have the right qualifications, *skills* and approach to provide safe, high quality care”. (NSQHS-Standards-Sept-2012)<sup>2</sup>.

Governance and regulation within the NDIS scheme is incongruent. There is a need for tighter regulation around mandatory reporting required by registered providers as well as non-registered providers as outlined in the discussion paper. A further recommendation to this would be that all providers be registered and held accountable by an appropriate and robust governance system.

The development of a National Disability Quality Framework to provide a national quality assurance system for disability services is a positive step to correcting some of these issues. The code of conduct will also provide a tool to enforce accountability and responsibility for both the workforce and the providers as long as effective governance is maintained. The NSWNMA supports the efforts of developing and promoting a world class well-funded integrated health system.

---

<sup>2</sup> Australian Commission on Safety and Quality in Health Care (2012) *National Safety and Quality Health Service Standards*.  
<https://www.safetyandquality.gov.au/wp-content/uploads/2011/09/NSQHS-Standards-Sept-2012.pdf>