



Submission to the National Disability Insurance Scheme Code of Conduct discussion paper

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Summary of Recommendations

Recommendation 1

The Australian Government should produce separate NDIS Codes of Conduct for workers and providers. Each code should be tailored to needs, involvement and responsibilities.

Recommendation 2

An independent body should be established, or aligned to, an existing independent regulatory body, to monitor compliance with the NDIS Code of Conduct.

Recommendation 3

The NDIS Code of Conduct should specify obligations regarding restrictive practices.

These obligations should include:

- providers and workers are committed to the reduction and elimination of the use of restrictive practices
- providers fully implement the core strategies specified in the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector
- providers and workers are familiar with and comply with the relevant state or territory legislation regulating restrictive practices
- restrictive practices can only be used when they appear as part of a behaviour support plan, developed by a registered behaviour support practitioner and authorised by the state or territory in which the participant resides
- providers and workers report any “use of a restrictive practice in relation to a person with disability, other than where the use is in accordance with an authorisation (however described) of a State or Territory in relation the person”¹ to the NDIS Quality and Safeguards Commissioner
- the NDIS Quality and Safeguards Commissioner and NDIS providers provide regular training on the implementation of positive behaviour support strategies.

Recommendation 4

The NDIS Code of Conduct should specify obligations regarding service accessibility.

These obligations should include:

- information is distributed in a format that supports and responds to “the needs, values, and beliefs of people with disability, including those relating to culture, religion, ethnicity, gender, identity, age, and disability”²
- providers ensure that all NDIS service agreements refer to the NDIS Code of Conduct
- providers regularly review their services’ accessibility to identify any barriers to access.

Recommendation 5

The NDIS Code of Conduct should make reference to the roles of tribunal appointed and personally appointed decision-makers under state and territory laws (including guardians), as well as nominees appointed under the *National Disability Insurance Scheme Act 2013*.

Recommendation 6

The NDIS Code of Conduct should endorse the Interagency Guideline for Addressing Violence, Neglect, and Abuse (IGUANA).

Recommendation 7

The Australian Government should address gaps in funding and ensure that NDIS providers and workers receive adequate supervision and training.

¹ *National Disability Insurance Scheme Act 2013* (Cth). National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017 (Cth) s 73Z(f).

² As it currently appears in Part 2.1 of the Code of Conduct.



Introduction

The Public Advocate welcomes the opportunity to make a submission to the discussion paper on the National Disability Insurance Scheme (NDIS) Code of Conduct.

About the Public Advocate

The Victorian Office of the Public Advocate (OPA) is a statutory office, independent of government and government services that works to protect and promote the rights, interests and dignity of people with disabilities in Victoria.

Under the *Guardianship and Administration Act 1986 (Vic)*, the Public Advocate is appointed by the Governor in Council in seven-year terms and is answerable to the Victorian State Parliament.

OPA provides a number of services to safeguard the rights of people with disability, including advocacy, investigation and guardianship services for people with cognitive impairments or mental illness over 18 years of age. In 2015–16, OPA was involved in 1645 guardianship matters, 494 investigations and 61 new cases requiring advocacy.

OPA coordinates four volunteer programs to visit and support people with cognitive impairments and mental illness. They are: the Community Guardianship Program, Community Visitors Program, the Independent Third Person Program (ITP), and the Corrections Independent Support Officers Program. OPA provides support to over 800 volunteers.

The Community Visitors Program volunteers receive training to visit, report and monitor the adequacy of disability residential services, supported residential services, and mental health facilities. In 2015-16, Community Visitors conducted 5268 site visits to 1356 facilities across the state.³

OPA's involvement with the National Disability Insurance Scheme

OPA supports the development and implementation of the NDIS. OPA recognises the scheme as the most significant social welfare initiative of this generation. The NDIS is a significant shift in the way people with permanent and significant disability access reasonable and necessary care and support in order to achieve their goals and aspirations. It signals an important advancement in the exercise of rights, choice and control for people with disability.

OPA's primary involvement in the NDIS to date has been through advocacy referrals from the Victorian Department of Health Human Services for prospective participants living in shared supported accommodation in the Barwon trial site.

OPA's Community Visitors Program has been promoting the NDIS to the services it visits and to their residents to ensure that there is an increasing awareness about the NDIS and its value. The program has identified and documented observations in the implementation of the NDIS as it rolls out across the state.

³ Office of the Public Advocate (2016). *Community Visitors Annual Report 2015-2016*.



OPA has also produced a number of comprehensive submissions in relation to NDIS matters, recommending reform and undertaking systemic advocacy to protect and promote the rights of people with disability. OPA continues to advocate to the sector and the National Disability Insurance Agency (NDIA) on matters that relate to people with cognitive impairment and mental illness.⁴

About this submission

This submission draws from OPA's knowledge and expertise and its focus on safeguarding the rights and interests of people with disability. The submission begins with a general comment on the establishment of the NDIS Quality and Safeguards Commission, and then makes suggestions and recommendations relating to the NDIS Code of Conduct.

The NDIS Quality and Safeguards Commission

The National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017 (the Bill) was introduced into the Australian House of Representatives on 31 May 2017. The Bill establishes the NDIS Quality and Safeguarding Commission (the Commission) and the position of Commissioner, who will report to the Minister.

OPA is concerned about the interaction between a federal commission and various state and territory-based systems of safeguarding and monitoring. For this interaction to be effective, robust information-sharing systems need to be developed and implemented, along with adequate privacy protections, to facilitate the timely exchange of information when necessary and within the relevant legal frameworks. This exchange may have to occur in relation to information about, for example, restrictive practices and the worker exclusion scheme.

OPA is also concerned about retaining community visitor schemes as a key element of any federal quality and safeguarding framework. There "was considerable support in the consultations [to the Quality and Safeguards Framework] for a community visitor type function"⁵ and in 2011, the Productivity Commission recommended that Community Visitor schemes be implemented in all states and territories based on the Victorian model. As the Australian Guardianship and Administration Council (AGAC) noted in its submission on the NDIS Quality and Safeguarding Framework: "Community Visitors offer meaningful independent monitoring of service quality"; they provide "an on-site monitoring and quality safeguard, who promote and protect the rights and dignity of persons with disability".⁶

In Victoria, the Community Visitors annual report is tabled in state parliament. This is an effective means of communicating what is happening in the sector and what sector improvements are needed. The information provided in the report will become increasingly important in light of the expected reach of the NDIS, and may also be an opportunity to provide a snapshot of the cost effectiveness of the scheme.

While an independent evaluation of the existing state and territory community visitor schemes is scheduled to occur before the full implementation of the NDIS, this evaluation has yet to commence. OPA repeats its support for the continuation of community visitor schemes within the NDIS, and emphasises the irreplaceable role that community visitors play in relation to monitoring the quality of disability services and safeguarding the rights of people with disability.

⁴ OPA's recent submissions on the NDIS can be found at www.publicadvocate.vic.gov.au/advocacy-research/ndis

⁵ Australian Government. (December 2016). *NDIS Quality and Safeguarding Framework*, p.54

⁶ Australian Guardianship and Administration Council (2015). *Submission in relation to Proposal for a National Disability Insurance Scheme Quality and Safeguarding framework consultation paper*, p.21.



The Code of Conduct

Glossary of terms

OPA suggests a number of amendments to the glossary of the Code of Conduct (the code) to ensure that definitions are accurate and that the glossary covers all appropriate terms.

The definition of 'carer' in the discussion paper is: "Someone who provides personal care, support and help to a person with disability and is not contracted as a paid or voluntary worker, often a family member or guardian" (p.4). This definition is misleading and inaccurate in relation to guardians for adults, who are legally appointed by state or territory tribunals as a substitute decision-maker, in certain circumstances, for a defined period.

To avoid confusion between these two distinct roles, OPA suggests that a separate definition be provided for 'substitute decision-maker', and that the words 'or guardian' be removed from the definition of the word 'carer'. Nominees under the *National Disability Insurance Scheme Act 2013* (Cth) (NDIS Act) should also be defined in the glossary. The code should also make reference to supported decision-making and the very important role it plays in supporting people with cognitive impairment to exercise capacity, and to the interaction workers and providers may have with supporters.

The glossary does not define the words 'provider' and 'worker'. However, later in the document a 'provider' is defined as "someone ...who, in some instances, may be also a worker" (pg.6) and a 'worker' is defined as including "employees, contractors, consultants, volunteers, and people who are self-employed" (pg.7). Definitions of both terms would provide clarity and are necessary to explicitly identify who is subject to the obligations under the code.

Part 1

1.1 Why we need a Code of Conduct

OPA recognises the need for a code, but considers the proposed target group to be addressed by it to be too broad. One set of obligations cannot meet the needs of all providers (sometimes large or small organisations), workers and volunteers, as each of these roles comes with a different level of involvement, needs, and responsibilities.

Organisations have a responsibility to ensure workers compliance with the code. Separate codes targeted at workers and provider organisations may be worth considering to ensure that the division of responsibilities between parties is clear.

Recommendation 1

The Australian Government should produce separate NDIS Codes of Conduct for workers and providers. Each code should be tailored to needs, involvement and responsibilities.

OPA notes that one of the purposes of the code is to "reinforce the Australian Government's commitment to ensuring people with disability are afforded their human rights" (p.7). OPA supports this objective but would like to see a more explicit discussion of how this translates into practice for providers, workers, and people with disability.



The code is an opportunity to educate and inform its users about their human rights obligations under the United Nations *Convention on the Rights of Persons with Disabilities* (the Convention), particularly its Guiding Principles.⁷

The code should refer to the anti-discrimination requirements of the *Disability Discrimination Act 1992* (Cth) as well as state and territory-based equal opportunity legislation. It should provide specific information regarding the commitment of ensuring people with disability are afforded their human rights, using as its basis those rights contained in the Convention, and the National Disability Strategy.

1.2 What is included in the Code of Conduct?

The key requirements of the code are written in an action-oriented, directive manner, which is not consistently reflected in its detailed descriptions in Part 2.

These descriptions can be confusing and wordy, and often list what providers and workers must not do, instead of providing directives for best practice. For example, in part 2.3 of the code, which is entitled: “Act with integrity, honesty, and transparency”, is the following obligation: “A worker must provide truthful information as to his or her qualifications, training or professional affiliations”. However, this could be more action-oriented such as: “A worker must provide *evidence* of their qualifications, training or professional affiliations.” A second example, under the same part of the code is: “A worker must not use his or her possession of a particular qualification to mislead or deceive people with disability or the public regarding his or her competence in a field of practice or ability to provide supports” could be made clearer such as: “A worker or a provider must not engage in deceptive, or misleading conduct about their qualifications, experience and skills, nor about the type of support able to be provided”.

Overall, OPA recommends that each of the individual obligations be reframed to be clear, action-oriented, and directive. This will strengthen the obligations and improve accessibility for participants, providers, and workers.

1.3 Who will be covered by the Code of Conduct?

OPA is pleased to see that unregistered NDIS providers will be covered by the code, but it is unclear which safeguards will be put in place to ensure that unregistered providers provide quality supports in a safe manner. Unregistered providers are not obliged to fulfil the same requirements imposed on registered providers, including the completion of the compulsory, orientation module that will provide training on the code. Instead, self-managing participants are only ‘strongly encouraged’ to provide information about the code to unregistered providers. The lesser requirements on unregistered providers may put some participants at risk, particularly those people with cognitive impairments. OPA believes that the orientation module should be compulsory for all providers and workers, regardless of their registration status.

1.4 How will the Code of Conduct be applied?

OPA is concerned about the absence of monitoring of quality and safety under the NDIS.

Complaints-based systems have inherent flaws; a range of factors can prevent people from placing a complaint. In this context, these can be, for instance, a participant’s lack of knowledge or fear of losing services.

⁷ The guiding principles of the UNCRPD can be found here <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/guiding-principles-of-the-convention.html>



For people with cognitive impairment who do not have the capacity to articulate their concerns, making a complaint can be impossible. OPA stresses the importance of representative bodies, advocacy organisations, and other consumer bodies in assisting people with disability to make effective complaints.

Strong enforcement and monitoring of the code will ensure its effectiveness. The discussion paper outlines a range of possible sanctions to be applied in response to complaints but it is obvious that few independent monitoring mechanisms are provided for in the NDIS Quality and Safeguarding Framework, implying there will be no auditing of compliance with the code.

OPA recommends an independent monitoring mechanism be implemented to monitor adherence to the code. This mechanism should be independent of Commission, and report annually with data on compliance with the NDIS Quality and Safeguarding Framework.

Recommendation 2

An independent body should be established, or aligned to, an existing independent regulatory body, to monitor compliance with the NDIS Code of Conduct.

Part 2

The code sets the ethical standards for all providers and workers operating within the NDIS environment. Thus, the obligations in the code should represent the application of legislative requirements found under the NDIS Act that are relevant to service provision. Because the code translates legislation into specific practices and processes, the concrete application of requirements need to be thoroughly reflected throughout the code. This will enable providers and workers to receive clear guidance on how to adequately and effectively operationalise their obligations.

Given the importance of the code, OPA recommends that the following areas of policy and practice should be added to it.

Restrictive practices

OPA has longstanding concerns about the widespread use of restraints and other restrictive practices interventions on people with disability and mental ill health.

OPA reiterates its support for maintaining a legal authorisation process in relation to restrictive practices within the NDIS.

Procedures around the use of restrictive practices will be particularly important in the full-scheme environment, when state and territory regulatory mechanisms will interact with the Commissioner to ensure compliance through ongoing monitoring and auditing.

Given that the Australian and the State and Territory Governments have endorsed the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Services Sector, OPA expects obligations related to restrictive practices to figure prominently in the code, and in the upcoming NDIS Rules and Practice Standards (as provided for under the Bill).

Furthermore, provision of education material and training to service providers and workers will be an important additional safeguard to enable them to develop and implement positive behaviour support strategies, and represents one of the key functions of the Commission.



Recommendation 3

The NDIS Code of Conduct should specify obligations regarding restrictive practices.

These obligations should include:

- providers and workers are committed to the reduction and elimination of the use of restrictive practices
- providers fully implement the core strategies specified in the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector
- providers and workers are familiar and comply with the relevant state or territory legislation regulating restrictive practices
- restrictive practices can only be used when they appear as part of a behaviour support plan, developed by a registered behaviour support practitioner and authorised by the state or territory in which the participant resides⁸
- providers and workers report any “use of a restrictive practice in relation to a person with disability, other than where the use is in accordance with an authorisation (however described) of a State or Territory in relation the person” to the NDIS Quality and Safeguards Commissioner.⁹
- The NDIS Quality and Safeguards Commissioner and NDIS providers provide regular training on the implementation of positive behaviour support strategies.

Accessibility

While the code is not directed at NDIS participants, it nonetheless needs to be accessible to them as it can form the foundation of a complaint made to the Commissioner.

NDIS participants need to be aware of and understand the obligations contained in the code so that it is clear when a breach has occurred and a complaint needs to, and, rightly should be made.

Some ways to ensuring NDIS participants are made aware of the code are to refer to it in service agreements and to provide participants with a copy that is suited to their accessibility needs.

The code should be available in plain English, as well as in alternative formats such as Easy English, audio, braille and large print versions. Additionally, it should be available in the relevant community languages to facilitate access for people from culturally and linguistically diverse backgrounds.

Participants, workers, and providers also need clear directives on how to contact the Commission with any inquiries relating to the code or to make a complaint. This information should feature in the code.

Finally, accessibility also concerns service delivery. As stated in the National Disability Standards, all disability service providers are expected to ensure accessibility at all stages of service provision (i.e. at participant’s entry or commencement, throughout service use, and at service exit). This goes beyond “taking into account the needs” of people with disability, as is stated in the code.

OPA recommends that the commitment to ensuring accessibility feature as one of the requirements listed in the code.

⁸ *National Disability Insurance Scheme Act 2013* (Cth). National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017, Explanatory Memorandum.

⁹ *National Disability Insurance Scheme Act 2013* (Cth). National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017. S 73Z(f).



Recommendation 4

The NDIS Code of Conduct should specify obligations regarding service accessibility.

These obligations should include:

- information is distributed in a format that supports and responds to “the needs, values, and beliefs of people with disability, including those relating to culture, religion, ethnicity, gender, identity, age, and disability”¹⁰.
- providers ensure that all NDIS service agreements refer to the code.
- providers regularly review their services’ accessibility to identify any barriers to access.

2.1 Promote individual rights to freedom of expression, self-determination, and decision-making

The NDIS is built on the premise of participant empowerment; the objective of the scheme is to “enable people with disability to exercise choice and control in the pursuit of their goals and the planning of delivery of their supports”.¹¹

OPA agrees that the general principles under the *NDIS Act* should figure as an appendix to the code but also recommends that providers and workers be held accountable for the promotion of choice and control.

It is enshrined in legislation that the NDIS is designed to enable people with disability to make decisions that will affect their lives, to the extent of their capacity.¹² Notwithstanding this, the NDIS Act recognises that there may be circumstances where it is necessary to have another person appointed to act on behalf of a participant or to be involved in decision-making (i.e. through the appointment of a plan nominee). The principles to “guide the actions of other people who may do acts or things on behalf of others” are listed in Section 5 of the NDIS Act.

OPA has previously released a discussion paper on the complexities arising from the interaction between Commonwealth appointments of nominees and state or territory court or tribunal appointments of substitute decision-makers (such as guardians or administrators).¹³ Of relevance to this submission is the responsibility of providers and workers to comprehend that in some instances, guardianship for NDIS participants may be required; the interaction the NDIS with jurisdictional guardianship should be referenced.

While it remains unclear in the NDIS legislation how a state or territory-appointed substitute decision-maker is expected to operate within the NDIS, providers and workers have the obligation to respect and respond to the legislative authority of tribunal-appointed substitute decision-makers.

Recommendation 5

The NDIS Code of Conduct should make reference to the roles of tribunal appointed and personally appointed decision-makers under state and territory laws (including guardians), as well as nominees appointed under the *National Disability Insurance Scheme Act 2013*.

¹⁰ As it currently appears in Part 2.1 of the Code of Conduct.

¹¹ *National Disability Insurance Scheme Act 2013* (Cth) Part 2.3 s (1)(e).

¹² *National Disability Insurance Scheme Act 2013* (Cth) s 17A(3)(b).

¹³ Office of the Public Advocate. (2014). *Guardianship and National Disability Insurance Scheme Discussion Paper*.



2.2 Actively prevent all forms of violence, exploitation, neglect and abuse

The code suggests that people with disability *may* be at increased risk of violence, exploitation, neglect, and abuse, however, people with disability *are* at increased risk of violence and the code should be clear about this.

OPA has consistently raised concerns about the pervasiveness of abuse and neglect in disability services and the potential impacts of the development and implementation of the nationally-consistent NDIS Quality and Safeguarding Framework. OPA welcomes the commitment to the prevention of violence, exploitation, neglect, and abuse in the code.

In 2015, the Victorian Ombudsman conducted an investigation into disability abuse reporting. In phase 2 of the report, the Ombudsman concluded that the “current [Victorian] system of incident reporting fails at every level. It is not fit for purpose in its primary aim of learning and prevention, or its secondary aim of ensuring client safety and wellbeing”.¹⁴ The Ombudsman attributed the failure of the present system to a reporting “service that is focused on the process rather than the person”.

In recent submissions to inquiries into the neglect and abuse of people with disability, OPA presented data from notifications made to the Public Advocate and provided case studies from its work into disability services to illustrate the severity of these issues.

An analysis of data across OPA’s program areas identified some of the key systemic issues that cause serious violence, sexual assault, and injury of people with disability. OPA considers that violence in disability services results from the combination of deficiencies in reporting and investigation (including compliance, training and monitoring) and the absence of systemic analysis and risk management responses to incidents when they do occur. As such, OPA strongly advocates for detailed incident reporting procedures to be specified to providers and workers. There is a role here for the Commissioner. These procedures should be explained in the compulsory orientation module.

Victoria’s system of reporting is known to more robust than most other jurisdictions. Consequently, the experience of responding to reports is clearer, but should not be misconstrued as Victoria having a higher prevalence of these issues. Both reporting and responding to violence, exploitation, neglect, and abuse are necessary as, only through consistent and thorough reporting, can an effective response be assured.

Despite the clear legislative requirements that are currently in place, Community Visitors in Victoria consistently identify oversights in incident reporting by disability service providers and workers.

Following procedures for incident reporting is crucial in monitoring instances of violence and abuse, and contributes to the development of evidence-informed responses to such incidents. Regular and ongoing training should be provided to maintain high quality reporting of incidents of violence, exploitation, neglect, and abuse.

Part 2.2 of the code operationalises *defining*, *preventing*, and *reporting* violence, but fails to address providers’ responsibility to ensure a consistent and appropriate response to all reported incidents of violence, exploitation, neglect, and abuse.

¹⁴ Victorian Ombudsman. (December 2015). *Reporting and investigation of allegations of abuse in the disability sector: Phase 2 – incident reporting*, p.18.

The code fails to mention the role of providers and management services to *respond* to incidents, *review* incidents, to undertake risk management and to *analyse* incident reporting data. These activities are critical in addressing systemic factors causing violence, exploitation, neglect, and abuse of people with disability. These expectations may be reflected in the NDIS Practice Standards, but the code should still identify these activities as necessary under obligation 2.2.

There exists a range of resources and guidelines for responding to violence, exploitation, neglect, and abuse across a variety of service settings. Most policies are sector specific but, in spite of these, workers have reported confusion about the appropriate way to respond to suspicions or allegations of abuse.¹⁵

In 2014, OPA published an Interagency Guideline for Addressing Violence, Neglect and Abuse (IGUANA), a practice guideline for organisations, staff members and volunteers working with adults who are at risk of violence, neglect or abuse. IGUANA was developed in collaboration with a range of statutory agencies and service providers and has been endorsed by over 30 organisations across Victoria.

OPA recommends that IGUANA be adopted as the model for effective response to violence, exploitation, neglect, and abuse in the NDIS context.

Recommendation 6

The NDIS Code of Conduct should endorse the Interagency Guideline for Addressing Violence, Neglect, and Abuse (IGUANA).

OPA stresses the importance of providing appropriate supervision and training for workers in the prevention of violence, exploitation, neglect, and abuse. Indeed, poorly trained staff are unlikely to have a sophisticated understanding of disability and complex behaviours, and may be unable to manage people with complex needs or to recognise and report actions that put participants at risk.

OPA has demonstrated that in the absence of supervision and monitoring, disability workers could be enabled to (and, indeed, have) perpetrated acts of violence or abuse because their actions are unseen.¹⁶ Strong leadership, continuous professional development and supervision by more highly trained and experienced staff is required to establish a culture of safety and where assiduous incident reporting is expected. Regular supervision also enables senior staff to identify workers who may present safety risks to people with disability.

While supervision and professional development are mandatory for certain registered occupations, OPA fails to see how they will be funded in the NDIS environment. With the casualisation of the disability workforce, which will solely be funded through individual NDIS plans, providers are unlikely to maintain the financial ability to provide thorough and consistent supervision and training to their staff.

This is an area of great concern to OPA.

¹⁵ Office of the Public Advocate. (May 2013). *Interagency guideline for addressing violence, neglect, and abuse (IGUANA): Background and discussion paper*.

¹⁶ Office of the Public Advocate (February 2015). *Submission to the Victorian Ombudsman Investigation into disability abuse reporting*.



Recommendation 7

The Australian government should address gaps in funding and ensure that NDIS providers and workers receive adequate supervision and training.

2.3 Act with integrity, honesty and transparency

Part 2.3 of the code relates to workers being truthful about their qualifications. This implies a responsibility for providers to ensure screening of their workers, and this obligation should appear in the code.

2.4 Provide supports in a safe and ethical manner with care and skill

The code expects providers and workers to maintain the “necessary competence” and “expertise” in providing services.

These statements are unclear to OPA, and should be further clarified.

2.6 Respect the privacy of people with disability

The NDIS Act and other privacy laws legislate information sharing.

However, Part 2.6 of the code only makes mention of information sharing in the context of marketing or communications products.

Obligations need to be established to protect against information sharing in other contexts. For instance, provisions to maintain the privacy of participants exist for the following purposes: research, reporting, information sharing between providers, among others.

OPA supports the principles contained in the NDIS Act, including a presumption of capacity and a focus on providing people with disability support to exercise capacity.¹⁷ For people with cognitive impairment, obtaining consent often requires assistance and support. Confusion can easily arise around decision-making capacity and consent. Obligations should be articulated in the code for providers and workers to be clear on the appropriate course of action to obtain *informed* consent from a person with disability, or from a substitute decision-maker or a plan nominee in situations in which informed consent cannot be provided at all. This oversight could otherwise result in harm for workers, providers, and participants.

¹⁷ *National Disability Insurance Scheme Act 2013* (Cth) ss 4–6, 17A.