



National Disability Insurance Scheme (NDIS) – Code of Conduct

People with Disabilities (WA) Inc. (PWdWA) would like to thank the Department of Social Services for the opportunity to provide comment on the National Disability Insurance Scheme (NDIS) – Code of Conduct.

PWdWA is the peak disability organisation representing the rights, needs and equity of all Western Australians with disabilities via individual and systemic advocacy.

PWdWA is run BY and FOR people with disabilities and, as such, strives to be the voice for all people with disabilities in Western Australia.

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Introduction

PWdWA welcomes the introduction of the NDIS Code of Conduct and is encouraged that many of the recommendations made in previous consultations with respect to the NDIS Quality and Safeguarding Framework are embedded in the Code of Conduct. It is important that people with disability continue to be engaged at all levels of system development to ensure their rights are upheld in accordance with the United Nations Convention on the rights of Persons with Disabilities.

As the NDIS rolls out across Australia there will be inevitable changes, adaptations and review ensuring the scheme is effective, provides value for money and meets the unique needs of individuals. As the scheme evolves, it is important that the NDIS Code of Conduct is flexible enough to adapt to any changes and has an in built mechanism to reflect any continuous improvement.

The Code of Conduct needs to also work for the diversity of people with disability, and be able to interact with mainstream complaints and safeguarding mechanisms. Providing the right level of safeguarding so that those who are most vulnerable are supported in safe ways will require more than a Code of Conduct, and making a Code of Conduct too restrictive will potentially put providers off and make it more difficult for those able to articulate an advocate for themselves. This is only one part of the safeguarding mechanisms and we hope that the input from people with disabilities through this process will assist in getting the balance right.

The survey part of the engagement was not filled in by PWdWA as it did not seem to have questions that would actually provide meaningful data. All of the outcome areas identified were extremely important and it would potentially have been more useful to ask if we thought those areas were currently being addressed, and if not, how we thought they might be addressed. It would also have been beneficial to ask if there are gaps in the system and what could be incorporated to ensure these gaps are minimised.

Issues

Co-design

PWdWA are disappointed that there has been missed opportunity for people with disability to be actively engaged in the development of the NDIS Code of Conduct. The impact of a poorly designed Code of Conduct will ultimately affect the lives of people with disability and their rights as decision makers about their own lives. It really is vital that policy makers consider the wealth and breadth of diversity that disabled people organisations, peak bodies and individuals can provide to this process. Disability is diverse and often complex and without engagement from people who use the system, policy will fail.

If there are skills gaps in co-design process then funding should be made available to build capacity that addresses those gaps and training for people with disability to become expert in co-design processes.

People with a range of disabilities should be involved at all stages and that should include delivery of training and mentoring services on the implementation of the Code of Conduct. The Code of Conduct should be reflecting the expectation that people with disability, their families and carers have of how they should be treated and so are best placed to show that to services.

Clarification on the role of workers

Disability support workers and registered service providers are not the keepers of people with disabilities rights. There is a balance required. Workers in settings where they notice potential abuse or neglect need to raise that issue, but also be aware that it is not their role to take away the choices people might make which may fall beyond the moral boundaries of the worker. There needs to be accountability from the Code of Conduct and the NDIS quality and safeguarding commission to the person with the disability. The NDIS Code of Conduct needs to provide greater clarity for workers and providers about their roles and responsibilities and what is meant by 'their requirements' as prescribed in the NDIS Code of Conduct. People with disability need to be fully aware of their rights as a consumer and explicit reference needs to be made of the Code of Conduct, the National Standards, and the associated complaints process in any service agreement.

It is important that the Code of Conduct does not become an overburdened bureaucratic tick box. Many unregistered providers and workers who work in the mainstream context will be subject to the normal mechanisms that deal with workplace behaviour in their particular context. It is important that such providers/workers are not subject to both systems if there is overlap as this may deter them from offering their services to people with disability. What PWdWA strongly supports is that people with disability and those people they wish to engage have the right information, knowledge, training and expertise to ensure that person feels safe, secure and confident in the service they receive.

Training

People with disabilities and their families, whether self-managing or not, should be able to attend and participate in training on employment recruitment and human resources practices, Occupational Safety and Health, and working with staff. It is also imperative that people who are self-managing can access training for the workers they employ, including how the Code of Conduct relates to them. The NDIS Code of Conduct should reflect this and allow people to have the confidence to employ people in the knowledge that they will be safe, respected and well supported.

The NDIS discussion paper on page 10 indicates that *'A compulsory orientation module will be introduced for registered providers delivering supports'* and

information about the Code of Conduct and how to comply, will be available to all participants. PWdWA are particularly encouraged that information about the Code of Conduct will be available to all participants. It is important that this information is available in accessible formats including Easy English. Feedback from PWdWA members indicate that information currently available about the NDIS is not being provided to people in alternative formats that are appropriate to their communication needs. PWdWA recommends that the promotion of information in alternative formats is actively encouraged by NDIS agencies and service providers to ensure people with disability can be well informed decisions about the services they require.

There needs to be more than just information provision, but also the opportunity to be part of training, discussion and exploration of the Code of Conduct with peers in peer group settings. A well-supported, skilled and informed person with disability is better able to detect and respond to violence, abuse and neglect by support staff. If a person is self-managing they can take swift remedial action and terminate that person's employment. If support is provided by a service then the person with disability needs to feel they can speak up and be heard. We need to ensure that people with disability and their families are able to understand their obligations and the obligations of services, and access information and training readily. An environment should be introduced where there is a constant continual improvement system that is personalised to the person's needs and which works in a way that is mutually beneficial to both staff and the person with a disability.

Advocacy

PWdWA are disappointed that advocacy is not part of the Code of Conduct for a person with disability to access should a breach of conduct occur. Advocacy services are often called upon when a person does not feel that their voice or issue is being heard or understood. Advocacy needs to be provided as part of the Code of Conduct to ensure issues of concern are dealt with before they become problems. Advocates support people to get the mechanisms and supports in place that can reduce a person's risk of danger. An advocate will support a person until appropriate measures are in place to ensure that person feels safe, happy and confident with the services they are receiving. PWdWA recommends an independent advocacy referral mechanism in the Code of Conduct. It is extremely important that advocacy is independent of service providers and government so people know the advocate is working solely for them and there is no conflict of interest.

Advocacy also forms an integral part of the Code of Conduct on a variety of different levels before a breach of conduct occurs and enables the person with disability to develop natural safeguards, thus minimising the risk of a potential breach. Advocacy has an important role to develop a person's capacity to act with informed choice and control. Independent individual advocacy builds a person's capacity as the advocate is working alongside a person, helping them to understand their options and ensuring their voice is heard. Advocacy is also a form of independent monitoring as it raises issues from an individual to a systemic level to address systemic abuse and

discrimination. The ability to build capacity in terms of knowledge of rights, knowledge of complaints systems, and confidence in self-advocacy are all areas that will develop natural safeguards. Investing in community infrastructure whether it is through advocacy, peer support, education and training, awareness raising and improving the flow of information will all help to develop natural safeguards.

Whistleblowing

The National Public Interest Disclosure Act 2013 (PID Act) facilitates disclosure and investigation of wrongdoing and maladministration in the Commonwealth public sector, and for other purposes, likewise the Public Interest disclosure Act 2003 (WA) facilitates the disclosure of public interest information, and provides protection for those making disclosures and those who are the subject of disclosures.

Whistleblowing is not encouraged in the disability sector and workers can be penalised for reporting abuse. The Corporations Act 2001 provides protection for corporate whistle blowers albeit limited in scope. PWdWA believes that legislation must be adopted that provides protection for 'whistle blowing' beyond just the public sector to all jurisdictions.

It is important to realise the fine line between regulation and choice for the individual. Too much regulation may in turn make workers too guarded in their approach to supporting a person with a disability and in turn limit choice. This is important when considering the range and diversity of disability. A one size fits all approach should not be adopted and flexibility in the system should take precedent.

PWdWA supports the introduction third party mechanisms like the community visitor scheme into the Code of Conduct which will have a more positive impact on quality and safeguarding than an over regulated Code of Conduct. This also provides another person or authority to disclose information to without fear of retribution from either the person with disability or the staff.

Mechanisms for reporting must not be channelled only through the disability sector. It is also important to not forget the mechanisms that every person has such as contacting the police. It is important that if a breach of conduct involves the police, that they are supported to hear evidence from people with disability. If a crime has occurred as part of the breach, it must be reported to police. Police must then have the mechanisms and expertise to support the victim to give evidence. It is a disservice to people with disability if we ignore that some breaches of the Code of Conduct are crimes and as such, must be treated as a criminal offence.

In-scope Services

PWdWA is still concerned that a blanket coverage has been applied to all providers and workers who deliver NDIS support whether they are registered or not. There are

many variables to consider in designing a registration scheme such as nature of service, geographic location, specialised services and cultural diversity.

PWdWA also acknowledges the potential limitations to choice by creating a mandatory Code of Conduct for all providers and workers. A concern with registration of all providers and workers is around how much detail is required to become registered. It is important to recognise that the requirement for registration will be dependent on a variety of factors including nature of disability, type of support required, and life circumstance/ stage. For providers and workers who are not registered, PWdWA supports the need for training and information to be offered to both people receiving and providing the service and access to this provision to be fully funded and resourced. PWdWA also advocates for this type of training to be delivered by people with disability who have the skills, knowledge and experience to provide such support.

It is also important that there is information sharing with services that intersect with the NDIS to ensure these sectors are aware and understand the rights of people with disability under the Code of Conduct. Communication with mainstream services including consumer affairs, police and court systems is vital to ensure people with disabilities have a seamless and consistent service and that mainstream safeguards respond appropriately.

Use of Scenarios

PWdWA supports the use of scenarios to explain the different elements of the Code of Conduct. It is important to detail the different situations and what can be achieved in that particular circumstance. The scenarios offered in the discussion paper do provide a range of different circumstances and provide a diversity of people with disability and how they may be affected. However, the scenarios offered do not provide a contemporary model for how NDIS will support people with disability to achieve their goals and follow the life they want. PWdWA recommends that the scenarios are reviewed before the Code of Conduct is published and new situations are introduced that reflect situations that may occur following the introduction of the NDIS. One such example may include when a person chooses to self-manage under section 2.1 *promote individuals rights to freedom of expression, self-determination and decision-making*.

Supporting people with disability to identify their own risks would enable them to think about what they need to stay safe and still enjoy choice, control and flexibility in directing their services. Supporting self-direction is critically important to enable people with disability and their families to be able to take charge of their supports and services. Self-direction is currently not actively promoted as an option or supported well by the provision of tools, training or mentoring. PWdWA strongly advocate for funding support in NDIS plans to enable people to self-manage as

much of their plan as they want with appropriate information, training and a variety of natural safeguards.

PWdWA are also aware that a number of organisations have provided detailed feedback on the scenarios and the need to illustrate situations that show people resolving issues through choice and control to lead the life they want. PWdWA supports this feedback and would be happy to work with Government to develop situations that are contemporary.

The scenarios clearly identify what would happen in each situation to the person or organisation where the Code of Conduct has been breached. PWdWA would recommend that in addition to this detail, information about where the person with disability may go for support following a breach in service to ensure they are being adequately supported after the event, this may be in the form of advocacy, referral to other cross sector agencies, legal services, counselling or mental health providers.

PWdWA is also concerned about the focus of the Code of Conduct when a breach of conduct has occurred. The discussion paper omits to detail at what stage of the process the person with disability is informed about the outcome. It is important that the person with disability is the focus in this system and as such is supported not only throughout the process but are also involved/informed about the final decisions. This will ensure that the person will feel safe, informed and confident that their issues has been resolved to their satisfaction.

Conclusion

As discussed in the issues there is a diversity of service situations people with disability might choose to use, and a diversity of people with disability. The code needs to be applicable in a range of situations including self-management, but also interweave and connect with mainstream and complimentary systems such as advocacy, consumer rights legislation, the police and ombudsmen.

There is still further work to do on the Code of Conduct and how it will be implemented. An expert group of people with disability with representatives across the peak groups could improve the focus of the code to be more in line with the expectations of people with disability. They could also provide input into implementation systems, training mechanisms and scenarios. For the code to be an effective tool and not a tick box by providers, people with disability need to be actively engaged in discussion, development and evaluation of the code. Organisations like PWdWA are in the best position to be part of this work with the peer groups we support and advocacy services we provide.

We have provided a number of recommendations below that we encourage DSS to seriously consider.

Recommendations

Recommendation 1

Engage a co-design group from peak body and disabled persons organisations that represent the diversity of disability to check the code against the expectations people with disability have of staff from their supports and services. This group should explore different contemporary scenarios and the interaction with mainstream systems.

Recommendation 2

Ensure that any ongoing and future developments of the Code of Conduct are co-designed with people with disability, and provide financial investment to support the mechanisms for this to be achieved effectively.

Recommendation 3

Provide opportunities for people with disability to deliver training on the Code of Conduct and promote information and training for those people who are affected by the Code of Conduct, as well as evaluate the effectiveness of the code.

Recommendation 4

In section 1.2 'what is included in the NDIS Code of Conduct' consideration has been given to a broad range of legislation, these are listed on page 8 of the discussion paper. PWdWA encourages the inclusion of The Corporations Act 2001 and specifically protection of whistle blowers onto this list.

Recommendation 5

The list illustrated on page 9 of the discussion paper describes nine key areas the proposed Code of Conduct will require workers and providers to deliver. PWdWA recommends that a further activity be added. 'Promote opportunities for people to participate and be actively included in society in a safe and respectful manner.' This is in accordance with the second standard of the National Standards for Disability Services, participation and inclusion.

Recommendation 6

Section 1.3 of the discussion paper illustrates who will be covered by the Code of Conduct. PWdWA strongly recommends that the following services should be also be included:

- Advocacy Services,
- Australian Disability Enterprises,
- Commonwealth Respite and Care link Centres.

Recommendation 7

PWdWA strongly support the detail on page 10 of the discussion paper that will, provide and encourage training on the Code of Conduct for both people who self-manage and unregistered providers they choose to engage. This training should

include developing mechanisms for peer support, and self-advocacy that empower individuals, promote independence and provide options for flexibility.

Recommendation 8

Ensure advocacy, which plays an important role in all facets of the Code of Conduct is highly visible, resourced and accessible in the system. PWdWA recommends amending some of the scenarios to include information for the person with disability about appropriate agencies and support services that can be involved when a Code of Conduct is breached.