



## **NDIS CODE OF CONDUCT – DISCUSSION PAPER**

### **VICSERV SUMMARY**

---

The NDIS Quality and Safeguarding Framework (the Framework) has been developed to ensure the rights of people with disability are upheld and the services and supports provided through the NDIS are safe.

The Framework was endorsed by the Council of Australian Governments on 9 December 2016 and publically released by the Disability Reform Council on 3 February 2017.

The Framework includes the following new national functions:

- a Code of Conduct;
- provider registration, including quality assurance;
- a complaints handling system;
- reportable incident notification;
- behaviour support and restrictive practice oversight;
- investigation and enforcement; and
- nationally consistent worker screening.

The NDIS Code of Conduct will be a central element of the Framework. It will encapsulate the rights of people with disability in the NDIS to have access to safe and ethical supports. It will additionally reflect the core values and principles set out in National Standards for Disability Services.

The Code of Conduct will be overseen by the new NDIS Quality and Safeguards Commission, which was announced by the Commonwealth Government on 9 May 2017. The Commission will have powers to enforce action where providers or workers have engaged in unacceptable behaviours.

The Commonwealth is currently seeking feedback on the *draft* [NDIS Code of Conduct discussion paper](#).

A summary of the discussion paper has been provided below. For further detail including scenarios developed by the Commonwealth demonstrating how the obligation applies to providers and workers, see the full [Code of Conduct](#) discussion paper.

### **Why do we need an NDIS Code of Conduct?**

To ensure the safety and quality of supports within the emerging NDIS market.

A Code of Conduct also serves to:

- reinforce the Australian Government’s commitment to ensuring people with disability are afforded their human rights;
- provide people with disability and their families with an understanding of what they can expect from NDIS funded supports and services;
- enable the NDIS Quality and Safeguards Commission (the Commission) to apply sanctions or remedial action to the worker and/or the provider if the Code of Conduct is breached;
- engage a broad range of providers and workers in being part of a quality and safe NDIS workforce through shared values and behaviours; and
- meet community expectations that institutional mechanisms are in place to deal with poor quality and unsafe practices.

### **What is proposed to be included in the NDIS Code of Conduct?**

- The NDIS Code of Conduct reflects the core tenets of the National Standards for Disability Services
- Consideration has also been given to broader policy, legislative and regulatory environments including:
  - The United Nations Convention on the Rights of Persons with Disabilities
  - The National Disability Strategy 2012-2020
  - The National Disability Insurance Scheme Act 2013
  - The National Standards for Disability Services
  - The National Standards for Mental Health Services
  - The Australian Consumer Law
  - Disability discrimination legislation
  - Carers recognition legislation
  - Work health and safety legislation
  - The National Plan to Reduce Violence Against Women and their Children 2010-2022
  - The National Framework for Protecting Australia’s Children 2009-2020.
- In addition to the broader legislative context, the obligations in the Code of Conduct also align with the overall objectives of the NDIS Quality and Safeguarding Framework.

### **Who will be covered by the NDIS Code of Conduct?**

The Code of Conduct will apply to all providers and workers who are funded under the NDIS, regardless of whether they are registered, or whether they receive funding through individual plans or contracted services. This includes:

- **Registered NDIS providers:**

- A compulsory orientation module will be introduced for registered providers delivering supports, and all workers of registered providers engaged in the delivery of NDIS funded supports. This extends to allied health professionals providing NDIS funded supports (who could undertake this as part of their continuing professional development requirements).

***NB: The Quality and Safeguarding framework also includes:***

*Currently, providers must apply to the NDIA to become registered providers of NDIS supports. Their application needs to explain the types of support they wish to provide, the areas in which they wish to provide them, their experience, qualifications or professional registrations (where relevant), and details of the processes they have in place to ensure a quality service. The chief executive officer of the NDIA (or delegate) then assesses whether the provider meets the criteria set out in the NDIS Act 2013 and NDIS Rules.*

*For the types of supports that must, by law, be provided by a person with certain qualifications (such as a psychologist or physiotherapist) or some other form of license, providers must demonstrate workers have this qualification or license. Depending on the type of support they plan to offer, providers may also need to provide evidence that they are financially viable, their workers have undergone national police checks, that they have risk management and complaints processes in place, suitable facilities and equipment, insurance and relevant licences, and that they comply with relevant practice standards.*

*Registered providers must comply with all laws that apply in the jurisdictions in which they operate and in line with the NDIA Terms of Business for Registered Support Providers (which NDIS Quality and Safeguarding Framework include having a complaints process and reporting serious incidents).*

*During the transition period, registered providers must also comply with state and territory quality requirements.*

- **Unregistered NDIS providers:**

- Unregistered providers will also be subject to the Code of Conduct if they are receiving NDIS funding for their services. Information about the Code of Conduct, and how to comply, will be available to all participants. Self-managing participants will be strongly encouraged to provide information about the Code of Conduct and its obligations to any unregistered providers they engage.

- **Providers delivering partners in the community services, including local areas Coordinator (LAC) and early childhood early intervention (ECEI) services; Providers delivering information, linkages and capacity building (ILC) activities; Providers delivering Commonwealth Continuity of Support (CoS) Programme services:**

- Compliance with the Code of Conduct will be included in their contract with the relevant Commonwealth agency
- **Workers providing NDIS funded supports or services:**
  - Workers involved in providing NDIS funded supports or services in any capacity are considered to be in the NDIS sector and will be required to comply with the Code of Conduct. This includes employees, contractors, consultants, volunteers and people who are self-employed. Workers who are members of a professional association and required to comply with an existing professional code of conduct, such as nurses, psychologists and health care workers, will also be required to comply with the NDIS Code of Conduct.
  - The term 'providers' includes key personnel such as any person with responsibility or influence over planning, directing or decisions, including board members and other stakeholders of significance.

### **How will the NDIS Code of Conduct be applied?**

The legislation establishing the Commission will require providers and workers to comply with the standards and obligations contained in the Code of Conduct. Anyone will be able to make a complaint about NDIS funded supports, including breaches of the Code of Conduct. This includes participants, family members, friends, providers, workers and advocates. In the first instance, people should contact the relevant service provider to make complaints.

All providers are required to have complaints management systems in place. In cases where the problem is not resolved by the relevant provider, or when the person does not feel comfortable talking to the provider about the problem, complaints should be directed to the Commission.

Registered providers will also be required to notify the Commission of reportable incidents, including incidents involving abuse, neglect, violence and/or exploitation.

### **NDIS Code of Conduct Obligations**

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

This obligation includes the following expectations:

- Always treat people with disability with dignity and respect and value their contribution to society.
- Adhere to the rights, standards and principles underpinning the NDIS, and the *United Nations Convention on the Rights of Persons with Disabilities*.
- Communicate in a form, language, and manner that enables people with disability, and their carer where required, to understand the information provided and make known their feelings and preferences.
- Take into account the expressed needs, values, and beliefs of people with disability including those relating to culture, religion, ethnicity, gender, identity, age and disability.

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

This obligation includes the following expectations:

- Providers and workers must be committed to eliminating violence, exploitation, neglect and abuse against people with disability, including through their own actions.
- Providers should have policies that define violence, exploitation, abuse and neglect and workers should familiarise themselves with such guidelines.
- Providers and workers need to ensure appropriate systems and procedures are in place and followed to prevent violence, exploitation, neglect and abuse from occurring.
- Providers need to ensure their staff have appropriate supervision and training to make sure workers are able to identify, monitor and act when situations arise which could lead to harmful incidents.
- Providers and workers must report incidents of violence, exploitation, neglect and abuse to the Commission and/or any other authorities, including the police, as appropriate.

### ***Act with integrity, honesty and transparency***

This obligation includes the following expectations:

- Providers and workers must only recommend and provide supports and services that meet the needs of a person with disability.
- A worker must provide truthful information as to his or her qualifications, training or professional affiliations.
- 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.
- Providers and workers must not make false claims about the efficacy of their supports, services or products.
- Providers and workers must not ask for, accept or provide any inducement, gift or hospitality that may affect or be seen to affect the way NDIS supports or services are provided. This includes as part of referral arrangements with other providers.

### ***Provide supports in a safe and ethical manner with care and skill***

This obligation includes the following expectations:

- A provider or worker must maintain the necessary competence in the types of supports and services they provide.
- A provider must offer reasonable supervision and take reasonable steps to ensure workers are competent and supported to perform their role.
- A provider must ensure workers have access to all equipment and resources appropriate to safely deliver supports or services.

- A provider or worker must not provide supports of a type that is outside his or her expertise or training, or provide supports or services that he or she is not qualified to provide.
- A worker must not provide supports or services to people with disability while under the influence of alcohol or drugs.

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

Providers and workers are obliged to raise and act on concerns about the quality or safety of NDIS supports and services. Providers should contact the Commission with concerns, noting that registered providers will be required to notify the Commission of any reportable incidents as part of their registration requirements. This includes any incident involving violence, exploitation, neglect and abuse. Unregistered providers are also encouraged to report incidents of concern on a case-by-case basis to the Commission.

Workers should raise concerns with their employer in the first instance and are encouraged to contact the Commission if their concerns are not adequately addressed. Workers who contact the Commission with concerns will be protected by whistle-blower provisions in the legislation establishing the Commission.

***Respect the privacy of people with disability***

People with disability have the right for their privacy and dignity to be respected. This obligation reflects the legal requirement that applies to all providers and workers to comply with Commonwealth, state and territory privacy laws to protect the confidentiality of personal information gathered during the course of providing NDIS supports or services.

***Not engage in sexual misconduct***

Sexual misconduct is a broad term encompassing any unwelcome behaviour of a sexual nature. This includes physical and verbal actions committed without consent or by force, intimidation, coercion, or manipulation. It includes sexual violence and exploitation but is not limited to actions which constitute a criminal offence.

***Keep appropriate records***

Providers and workers must maintain accurate, legible and up-to-date records of NDIS supports and services provided and ensure that these are held securely and not subject to unauthorised access.

The purpose of this obligation is to set minimum standards of conduct for workers and providers in relation to keeping appropriate records with regards to NDIS participants. Registered providers may also have additional obligations in relation to record keeping, for example, in relation to reportable incidents as part of their registration. Records are kept for a variety of purposes, including to record supports provided, information related to clients, communicate to other providers, record incidents or to satisfy legal requirements. Records are also an important audit tool to monitor the quality and safety of supports and manage the acquittal of NDIS funding.

***Maintain adequate personal and professional liability insurance appropriate to the risks associated with the supports provided***

Appropriate indemnity insurance ensures that people with disability who are injured in connection with NDIS supports and services are able to receive fair and sustainable compensation. The costs can be substantial and in the absence of adequate compensation through insurance arrangements, these costs are born by the individual, their family and by the community. The provider or worker concerned may also bear significant costs associated with defending legal action and in payment of compensation to an injured client.