



A•S•U
Australian Services Union

ASU Submission

NDIS Code of Conduct

Department of Social Services

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Contents

1. The ASU	3
2. Who we represent in disability services	3
3. The consultation	3
4. Introduction.....	3
5. Investment in workforce development and training is paramount to ensuring a quality NDIS.....	4
6. The need for the Code to be developed in conjunction with the workforce.....	5
7. Concerns in relation to specific matters raised in the Code	5
8. The need to ensure procedural fairness for workers as part of the Code	8
9. Conclusion	8

1. The ASU

The Australian Services Union (ASU) is one of Australia's largest unions, representing approximately 135,000 members.

The ASU was created in 1993. It brought together three large unions – the Federated Clerks Union, the Municipal Officers Association and the Municipal Employees Union, as well as a number of smaller organisations representing social welfare workers, information technology workers and transport employees.

Currently ASU members work in a wide variety of industries and occupations because the Union's rules traditionally and primarily cover workers in the following industries and occupations:

- Disability support
- Social and community services
- Local government
- State government
- Transport, including passenger air and rail transport, road, rail and air freight transport
- Clerical and administrative employees in commerce and industry generally
- Call centres
- Electricity generation, transmission and distribution
- Water industry
- Higher education (Queensland and South Australia)

The ASU has members in every State and Territory of Australia, as well as in most regional centres. Around 50% of ASU members are women, the exact percentage varies between industries, e.g. in social and community services around 70% of our members are women.

2. Who we represent in disability services

The ASU is the largest union of workers in the social and community services sector, which includes workers in disability support services across the country. We are the major NDIS union in Queensland, New South Wales, ACT, and South Australia. We also represent public sector disability support workers in Queensland.

The ASU's expertise in disability arises from representing the disability support workforce working in a range of different jobs roles including disability support work, care management and coordination, disability advocates, Local Area Coordinators, team leaders, and managers in disability providers.

3. The consultation

The ASU is pleased to provide this submission to Department of Social Services consultation into the National Disability Insurance Scheme (NDIS) Code of Conduct (**the Code**).

In preparing this submission we have consulted widely with our members who work as disability support workers. Further, we conducted a survey of 448 ASU members in relation to the proposed Code.

4. Introduction

The National Disability Insurance Scheme is being rolled out across Australia and is due to be fully rolled out by 2020. The scheme will provide greater choice and control for people with disability over the types of supports they need, when they need them and how they want them delivered to help them lead more independent lives. The Code is an important step in ensuring that participants are delivered supports in a safe and ethical way.

However, it is critical that the Code is not introduced in a vacuum. As it presently stands, the Code appears, in some ways, to be divorced from the NDIS funding model.

NDIS pricing assumes that only 5% of time excluding leave (which works out to just 3 minutes an hour) is not directly with participants or travelling between clients. This simply does not adequately allow for the necessary administration, training, peer support, team meetings, and supervision that is required in the role of a disability support worker.

ASU members support a Code that ensures that quality and safe supports are delivered. It is proposed that a breach of the Code would attract serious compliance and enforcement action, including banning workers from working under the NDIS and fines on workers of up to \$45,000. Accordingly, it is critical that the Code is clear and practical, that workers have a proper opportunity to understand their obligations, and are resourced to not only allow them to meet their obligations under the Code, but also develop their skills and deliver high quality services to the people with disabilities that they support. Further, workers also have important rights that should not be undermined by the Code.

Accordingly, this submission will address four key areas:

1. Investment in workforce development and training is paramount to ensuring a quality NDIS;
2. The need for the Code to be developed in conjunction with the workforce;
3. Concerns in relation to specific matters raised in the Code; and
4. The need to ensure procedural fairness for workers as part of the Code.

5. Investment in workforce development and training is paramount to ensuring a quality NDIS

The ASU is concerned that workers will not get access to adequate training and support to understand the Code and to fully implement the Code in their day to day work. Current training arrangements for NDIS workers are wholly inadequate.

Many of the obligations set out in the Code will require workers to continuously develop new skills and qualifications relevant to the diverse needs of individual clients. In particular, under the NDIS there will be:

- Need for greater specialisation to reflect individual needs of people with disability (e.g. menstrual support, nutrition support, music/art/sport therapy and activities);
- Need for greater multi-disciplinary skill-sets for workers to be able to specialise across multiple clients (e.g. being able to work with high needs and low needs clients, with physical and intellectual disability, early intervention, aged care / mental health interface); and
- Focus on person-centred service delivery (e.g. importance of relational skills and relevant specialisation e.g. CALD, LGBTIQ, ATSI).

These skills are essential to ensure that the individual rights of participants are promoted.

However, there is currently no person-centred professional development plan for the NDIS workforce. The capacity for NDIS workers to have their skills recognised, to develop new skills and to attain relevant person-centred qualifications is severely limited.

Furthermore, continuing professional development, in-house training and induction, and access to study leave is limited and varies across providers. As the sector becomes more competitive with the entrance of large for-profits in the market, access to these supports by workers will be further diminished as providers drive to reduce costs and increase profits.

Many of the obligations set out in the Code will require workers to have access to training and supervision. We fear that without significant investment of time and funding for training and education the Code will be ineffective in ensuring people with disability have access to safe and quality supports.

In relation to training, our members told us the following:

Workers need individual training and support to ensure they have the skills and abilities to manage and prevent violence, exploitation, neglect and abuse.

- Chun, NSW

Is there funding for training in this area, especially for new workers in the field, also ongoing for those already employed?

- Sharon, Victoria

Need to ensure staff are trained on quality and safety standards and how to implement them and how to raise and act on their concerns.

- Aaruv, QLD

It is critical that a workforce development and training plan is developed in conjunction with the development of the Code. The Code will not in itself ensure a quality and safe NDIS. There must be a proactive focus on skills and quality, rather than a punitive approach that is applied after an issue arises.

6. The need for the Code to be developed in conjunction with the workforce

The introduction of the Code represents a significant change to the regulation of disability support work. The consequences of a breach of the Code are significant and have the possibility of ending a worker's career. Disability support workers are the people who have extensive experience in delivering support to people with disability day in and day out. Accordingly, disability support workers should be at the heart of the development of the Code, not merely afforded an opportunity to comment on a proposed Code that has been developed without them.

In our recent survey of 448 disability support workers only 4% felt that NDIS workers have been adequately consulted about the Code by the Department of Social Services or the NDIA. Only 12% felt they were adequately informed or very well informed about the NDIS Quality and Safeguarding Framework and the Code.

To ensure the efficacy of the Code there needs to be buy-in from the workforce. This is more likely to happen where the workforce are treated as a partner in the development of the Code, rather than having a Code that they were not involved in developing imposed upon them.

7. Concerns in relation to specific matters raised in the Code

Generally, we do not take issue with the specific obligations set out in the Code. However, we wish to make a number of observations about specific elements of the Code that have been brought to our attention by ASU members, as set out below.

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

The specific feedback we have in relation to this obligation under the Code is as follows:

- The Code should be clear that both people with disability **and their support workers** must not be discriminated against on the basis of the particular attributes set out in the Code.
- The expectation to take into account people with disability's values and beliefs in respect of culture, religion, ethnicity, gender, identity, age and disability may intersect with a worker's right to a workplace that is safe and free of discrimination. This should be expressly dealt with in relation to this expectation to ensure clarity as to the workers' and providers obligation in

this regard. Disability support workers' rights under state and federal equal opportunity legislation and occupational health and safety legislation must be taken into account.

- The obligation should expressly deal with the tension between people with disability's rights to self-determination and decision making, and providers and workers' duty of care to the people they support. On this issue, one member said the following:

This is great in principle, but is very broad and may conflict with a duty of care with some clients who experience acute mental health issues or impaired cognitive function.

- Helen, NSW

- There should be conflict resolution assistance made available to deal with circumstances where there is a disagreement about supports between providers, families and carers of people with disability, or people with disability, to as best as possible avoid breakdowns in those relationships.

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

The specific feedback we have in relation to this obligation under the Code is as follows:

- It should be clear that providers (that is, employers) must have policies that deal with violence, exploitation, abuse and neglect, rather than it being stated as a mere aspiration.
- The expectation to have systems and procedures in place to adequately prevent violence, exploitation, neglect and abuse should fall on the organisations providing support, rather than the individual workers.
- The expectation that providers ensure staff have appropriate supervision and training to make sure workers are able to identify, monitor and act when harmful situations arise must be underpinned with funding to provide that supervision and training. As stated above, the current NDIS pricing model simply does not provide adequate time and funding for supervision and training of workers. Adequate supervision and training are key to ensuring a quality NDIS. On this issue, one of members said the following:

Many staff will be working in isolation and there does not appear to be any capacity under NDIS for supervision/debriefing and team meetings. As a result it would be easy to overstep boundaries as there are no checks and balances.

- Ben, WA

- We are concerned that stating the obligation as being to "prevent" all forms of violence, exploitation, neglect and abuse is too high of a threshold. Workers do, and will continue to work hard to try to prevent harm to people with disability, but ultimately it is not something that is exclusively within their control. Workers are concerned that they will be subject to punishment because they did not prevent harm that they did not know about nor have control over. On this issue, our members said the following:

Great principle, but scary if you fail to prevent "ALL" forms of violence, exploitation, neglect and abuse.

- Sarah, Victoria

Report? Prevent is a big ask.

- Mark, South Australia

This may well go beyond the worker's capacity depending on the scale of threat that is faced. I would prefer, for example, "Diligently report all forms of violence, exploitation, neglect and abuse". Workers would have to be trained in whistleblowing procedures and know who to report it to if the agency they represent or work for is complicit in the abuse.

- Azmeena, NSW

We cannot prevent violence and exploitation where it is client on client. We can have measures in place, but we cannot “prevent”.

- Susie, NSW

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

The specific feedback we have in relation to this obligation under the Code is as follows:

- Disability support workers are overwhelmingly concerned to ensure that training be provided to ensure that workers develop and maintain the skills required to perform the work they are required to provide. The expectation that workers maintain competence in the supports they provide must be underpinned by adequate time and funding for training.
- The expectation that providers must offer reasonable supervision is limited by the fact that there is inadequate time and funding for supervision built in to the NDIS pricing model, as described above.
- On this issue, our members said the following:

I support this point but the NDIS has to be prepared to put money into training as now there is no money for training.

- Mandy, Queensland

Many providers do not. They do not encourage or provide specific training to match the needs of clients (eg. peg feeding) as they see it as a waste of cash.

- John, NSW

The care and skill may be minimal as the workforce will be “dumbed down” therefore the wages organisations are going to be able to afford to pay employees will mean that there will be more workers with a certificate level education rather than degree and/or years of skill. For example if someone with a degree is currently on \$30/hr is being expected to go down to \$22/hr, the worker would be financially better off working at Coles or Bunnings.

- Agnes, Victoria

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

Disability support workers are concerned about repercussions in their employment should they raise concerns their employer does not wish for them to raise. This is especially so given the increasingly precarious nature of the workforce, with increasing casualization in the sector. Workers must be protected by robust whistleblower protections. We wish to work more closely with DSS and the NDIA on ensuring that the whistleblower protections are built with the protection of workers and their livelihoods as a core consideration.

7.5 Keep appropriate records

The specific feedback we have in relation to this obligation under the Code is as follows:

- Clarity is needed as to what constitutes “appropriate” records, as presently the Code is not clear as to the nature of the records that must be kept.
- The expectation for workers to keep detailed and comprehensive records must be supported with adequate paid time for workers to do such administrative work. As stated above, the current pricing model only allows 3 minutes an hour of non-client facing time. This is inadequate to allow for the administration that may be required, let alone training and supervision requirements. We are concerned that workers will need to complete these records outside of their paid working hours in order to comply with the Code. On this issue, our members said the following:

Issue here is timeshare between working with client and completing your paperwork. At present I don't know whether when the NDIS comes in here if we will have the time allocated to us to properly complete records.

- Gloria, Victoria

This is a fine expectation – but will workers have enough time and the appropriate work tools and resources to satisfy this?

- Bruce, SA

I have found this is becoming extremely hard to maintain due to the nature of administrative requirements in the NDIS framework. Staff have to complete activity notes in their own time as there is no funding from NDIS clients to support this part of the process. As a result this has become harder to encourage and monitor.

- Abdul, NSW

8. The need to ensure procedural fairness for workers as part of the Code

ASU members are very strongly of the view that the Code should contain clear commitments that workers will be afforded procedural fairness in the event of a complaint or investigation.

It should be expressly set out in the Code that in the event that a complaint is made in relation to a worker's conduct or that an investigation is commenced that:

- The worker is notified of any allegations that are made against them (including particulars of the allegations);
- The worker has an opportunity to respond to any allegations made against them;
- The worker is entitled to be represented in relation to the allegations or in any investigation.

These principles are presently protected in our industrial relations system, and should not be undermined by the Code. These principles are even more important given the grave consequences that can flow to a worker for a breach of the Code.

It is critical that workers are given an opportunity to respond to allegations at an early stage, to ensure that any information they are able to provide is as close as possible in time to the time of the alleged conduct.

There should also be a requirement that investigations are completed as soon as practicable (while not adversely affecting the quality of the investigation), given the impact uncertainty may have on a worker. We are also of the view that there should be some guidance provided in relation to circumstances in which a worker may be stood down or suspended. The impact of this would be particularly serious for casual workers, who would not be able to access any form of paid leave during such an investigation.

9. Conclusion

ASU members support the introduction of the Quality and Safeguarding Framework and Code of Conduct as an important step in ensuring a quality and safe NDIS.

However, it is critical that workers are at the heart of the development of the Code, as they are ones most significantly impacted by the Code, and have a deep understanding of the requirements disability support work and how the Code will be implemented on the ground. Further, the Code must expressly protect NDIS workers' rights to procedural fairness in the event of a complaint or investigation.

The most significant problem with the Code is that it is not underpinned with adequate funding and resources for training, workforce development, supervision, and administration for NDIS workers. Implementing the Code without addressing this critical issue undermines the goals of the Code, and will not ensure a high quality and safe NDIS.