



Action for More Independence & Dignity in Accommodation

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Advocacy, Self Advocacy, Rights, Accessibility, & Community Living for People with a Disability

Submission NDIS - Code of Conduct June 2017

AMIDA (Action for More Independence & Dignity in Accommodation) is an independent advocacy organisation which advocates for good housing for people with disability. We provide advocacy to individuals, with priority given to people with an intellectual disability, and advocate for change in systems which prevent people from achieving good housing.

AMIDA acknowledges that people with disability have a right to a choice of with whom they live and where they live. Further, people with disability have a right to good quality housing which is accessible, affordable and non-institutional. People with disability have a right to live in the community with access to support to participate and have a good quality of life.

AMIDA strongly supports the United Nations Convention on the Rights of Persons with a Disability and works to assert these rights and community inclusion for people with a disability and supports people with disability as valued members of our community. AMIDA recognises that people with disability contribute to and develop our community.

As Australia is a signatory to the United Nations Convention on the Rights of Persons with a Disability the Convention must be incorporated into the Code of Conduct.

With this background and experience, we submit the following:

The Code of Conduct must incorporate the rights in the existing Victorian Charter of Human Rights 2006. Although developed for Victoria, it is a strong statement of rights, and should be included as a benchmark for the whole of Australia. With the introduction of the NDIS, Victorians with Disability should not lose existing rights which are included in this existing safeguard. Further, these same rights must be extended to all Australians with disability.

Decision makers must value what is currently working in Victoria. The present good practice being exercised in Victoria must be captured and used as a model for other states. The diversity which exists in Victoria must be maintained, so that the expertise which has been developed over many years is not lost. Disability specific and issue based advocacy services must be maintained to ensure that people with disability and their families and supporters can get support to exercise their rights, alongside the Code of Conduct.

The Victorian Charter contains 20 rights which reflect four basic principles.

These principles are: Freedom, Respect, Equality & Dignity

Freedom - freedom from forced work, freedom of movement, freedom of thought, conscience, religion and belief, freedom of expression, right to peaceful assembly and freedom of association, property rights, right to liberty and security of person, right to a fair hearing, rights in criminal proceedings and right not to be tried and punished more than once for the same act.

Respect - right to life, protection from retrospective criminal laws, protection of families and children and cultural rights, including recognition of the distinct cultural rights of the Aboriginal people of Victoria.

Equality - recognition and equality before the law, entitlement to participate in public life (including voting).

Dignity - protection from torture and cruel, inhuman or degrading treatment, protection of privacy and reputation, humane treatment when deprived of liberty, and appropriate treatment of children in the criminal process.

A national Code of Conduct for service providers will be strengthened if these four areas are covered.

Part 1 Why we need an NDIS Code of Conduct

1.2 AMIDA agrees that list of policy, legislation and regulations included as being considered is detailed, but as mentioned above the rights included in the Victorian Charter of Human Rights must also be included in this list when developing the Code of Conduct. At the very least the principles included in the Victorian Charter must be included.

1.4 How will the NDIS Code of Conduct be applied?

From the discussion paper - *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 and*

most complaints can be quickly and effectively resolved with the relevant provider. 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.

The Commission will operate with a 'no wrong door' policy and any complaints outside of the scope of the Code of Conduct and Commission will be referred to the relevant agency.

Registered providers will also be required to notify the Commission of reportable incidents, including incidents involving abuse, neglect, violence and/or exploitation. The Commission will also have 'own motion' powers to commence an investigation as a result of any information it receives. The Commission may investigate and will address any issues which may indicate a breach of the Code of Conduct fairly and efficiently.

AMIDA agrees that this is necessary. Adherence to the Code is the responsibility of both the worker and the provider.

AMIDA also believes that there must be a Commissioner and supporting staff in each State or Territory who is responsible for **investigating** reportable incidents, including incidents involving abuse, neglect, violence and/or exploitation and has powers to address any and all issues which may indicate a breach of the Code of Conduct fairly and efficiently and if necessary support the person with disability to report to police.

From the discussion paper - There may be circumstances where a worker is directed by a provider to do something that may constitute a breach of the Code of Conduct. In such circumstances, the intention is to be able to consider the conduct of both the worker and the provider against the requirements of the Code of Conduct.

AMIDA agrees that this is necessary. Adherence to the Code is the responsibility of both the worker and the service provider.

From the discussion paper - If a provider is found to have breached the Code of Conduct, the Commission will be empowered to take a range of compliance and enforcement actions proportionate to the seriousness of the breach. Such action may include training and education, warnings and directions for breaches of a less serious nature. In more serious cases, it may lead to a provider facing civil penalties, enforceable undertakings, revocation of registration or ban orders. Conduct involving individual workers may be taken up with the provider, referred to their professional body, and/or may trigger a re-assessment of a worker's NDIS worker screening clearance to deliver services involving more than incidental contact under the NDIS.

AMIDA believes that more transparency is required. All incidents by workers must be reported. Workers should face the same consequences as providers. There must also be independent checking of provider management of breaches as well.

From the discussion paper - *Where an alleged criminal act is involved, the matter will also be referred to the police.*

In relation to reporting to police, and to the police checking that presently occurs when employing workers, there must also be a national workers register that disability services can consult when recruiting workers, to ensure that those they employ have not been reported for transgressions previously. The fact that they may have been reported previously should be a flag for caution. In addition it must be recognised that Police checks will only pick up workers who have been charged by police. It is a fact that often workers who abuse people with a disability choose those who are unable to speak up and be heard, and hence have no way of reporting to either police or service provider. This extra safeguard for vulnerable people must be put in place to protect the most vulnerable from abuse and neglect.

A proactive approach to a Code of Conduct will require training and education on the Code and adherence to the code must be independently audited regularly via Quality Certification.

Part 2 Scenario discussion

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

AMIDA believes that what may seem unreasonable request for support by some people may in fact be a reasonable request from a person with disability with specific needs. This must be taken into account.

In AMIDA's experience support providers often exclude family members, supports and advocates from the process of organizing and overseeing that supports are delivered appropriately and consistently with a daily plan. Family/advocacy/support involvement must be stressed in the Code of Conduct, as it is a common occurrence for family/advocacy/supports to be denied access to support providers and often seen as 'a nuisance or an interference'. This would not occur if proper strategies were set up to include families/advocates/supports and to ensure that staff are instructed on what it is that they are expected to do in their time with the person with a disability.

In AMIDA's experience there are workers who sit and do nothing. This presence with a person with a disability is considered support. Planned support must be provided. A plan is just a plan unless it is carried out. Being present does not constitute a plan for the day or a routine. The Code of Conduct is another

opportunity to demonstrate that planned support is actually required, not just the presence by workers.

Scenario 2.1.1 The majority of workers rostered on to support him were female and he did not feel comfortable accepting their support. This meant his personal care needs were left unattended, creating a great deal of distress for him and his family.

The scenario is a good example of how not to provide support. This could have been avoided if service provider and family/advocates/supporters had discussed the best way to provide support.

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

The Victorian Government's Zero Tolerance Approach to Abuse and Neglect in response to the enquiry into Abuse in Disability Services should be referred to when developing the Code of Conduct. Often people with disability are expected to put up with treatment which would not be tolerated in other parts of the community. The Code of Conduct should clearly indicate that people's rights are not diminished because they have a disability, and procedures must be set in place to ensure that this does not happen. This includes reporting assaults to the police; to the response by courts to reporting of assault, and ensuring that the application of the law that covers everyone, also covers people with disability.

Reporting incidents to the Commission, and using the Commission as an independent overseer is vital.

If complaints are made about violence, neglect or abuse, the burden of proof should not be the same as under the legal system, ie proving guilt. Rather the emphasis should be 'what is probable?' so that the worker would be moved. Just because an allegation can't be substantiated, doesn't mean it hasn't happened.

Any complaint in the area of abuse, neglect or violence must be recorded in the registration of the worker, not just what has been proved. The balance of power has to shift from the worker's rights to the person with a disability's rights. The Inquiry into Abuse in Disability Services demands this change.

In our experience often reports of abuse are unsubstantiated as it comes down to one person's word against another - even with staff on staff reporting. It is a flaw in this process as it becomes an ineffective mechanism.

Strategies to address prevention of abuse must include more than a code, eg:

- Rights education
- Empowerment training for service users
- Independent advocacy to have right of access
- Cultural change actions to highlight how to identify abuse and zero tolerance
- Community visitors and other independent visitors to oversee services

- Cameras (cctv) - there are numerous unsubstantiated cases, where this could have been of assistance and could be useful.
- Training for Police in disability awareness and the Code of Conduct
- Independent Quality Auditing

Unless all these are in place a Code of Conduct won't work.

The processes for investigating complaints must not conflict, eg Provider investigation, police investigation and Commission investigation can take place simultaneously. They should all work together. In AMIDA's experience providers suspend their investigation when Police begin to investigate. This disadvantages people with disability whose memories may not be able to cope with some delays.

There should also be protections for staff whistle-blowers. AMIDA has experience of a staff member being reported by another staff member. An investigation took place and the allegation was found to be unsubstantiated and the worker returned to work. The result was that the person with disability had to continue to work with the abuser and the staff member who reported the incident was forced to leave.

2.2 The scenario provided is a very good example of how supported accommodation is often run, ie staff doing chores, instead of supporting residents to learn how to do the chores themselves, or to do them with support.

It is clear that workers need to have quality training in the areas of assisting people with disabilities to participate and have input into their daily lives and to not have limited expectations of people with a disability.

If workers don't carry out support plans including active support this should be considered 'abuse and neglect' and the code of conduct must be clearly linked to the training and support of staff.

Again, this lack of strategic support to enable people to become as independent as possible is linked to the Victorian Government's Zero Tolerance Approach to Abuse and Neglect. The neglect occurs when support staff do not work to enable people to become as independent as possible and do not incorporate individual needs, abilities and possibilities into their day to day support of people. This fault cannot be laid solely at the foot of the support workers, but also at the feet of service providers. Service providers must work with people with disability and their families/advocates/supporters to create day to day routines for people. Vague support plans are often the only instructions provided to the worker. This vital step of a daily plan seems to be missing in the procedures set in place. A Code of Conduct could ensure that a daily plan is no longer ignored or omitted.

Again, Code of Conduct must be linked into training of staff.

Scenario 2.2.2 describes how a person with a disability is handed a communication board, but the worker goes off to perform household duties, and does not stay to

see what the person wishes to communicate. This clearly demonstrates the way support is carried out in a way that is abusive and neglectful - training of staff should cover this aspect, and staff should not be required to do so much other work, that they neglect the people they work with. The person with disability must be foremost, not the sparkling house. Prioritising housework over supporting people is also “abuse and neglect”.

2.3 Act with integrity, honesty and transparency

The Code of Conduct must ensure that when families/advocates/supporters ask questions of the service provider, they are not treated as if they are interfering, or threatened that services will be withdrawn.

Many questions by families need to be asked, as information has not been made available to people with disability and their families/advocates/supporters. If the daily plan was set up properly in the first place, service provider would know what is expected of them, be able to provide their support workers with clear instructions of expectations of them, and families would be able to see what is happening, and be confident that they do not need to keep asking questions and/or feel if they do that they are being ‘fobbed off’ or are a ‘nuisance’ or even sometimes ‘a hindrance to their sons/daughter’s wellbeing’ as has been inferred in numerous cases.

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

It is often the practice of support providers to send support workers to people they have not met before, with little preparation, or even the timetable of activities for the day. There seems to be no opportunity for ‘shadow shifts’ to be incorporated in preparing new workers. This must be highlighted in the responsibilities of the support providers.

A Code of Conduct must stipulate that workers are given detailed training and shadow shifts so that they learn from people who already know them.

Additionally staff must be given time to understand the specific needs each client has. This must also include casual staff as clients have incredibly specific needs including medical and personal care needs.

Support providers must also send people with experience and/or training to provide support.

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

Service providers are sometimes in the habit of questioning the right of parents/advocates/friends to be involved in the life of a person with a disability.

Service providers confuse the parents' right to be involved, with issues of guardianship.

A person doesn't have to be a guardian as a family member. Sometimes service providers challenge the right to be involved or confuse it with decision making powers.

They also seem to have little regard for family's roles in planning. So, complaints are often seen as a nuisance, rather than an opportunity to clarify concerns or improve their service.

The requirement to including family/advocates/supporters in planning and care must to be included strongly in the Code of Conduct.

2.6 Respect the privacy of people with disability

It is clear that this has been a serious issue in the past. The Code of Conduct is a good opportunity to again reiterate the importance of people's privacy and dignity. The Privacy laws have been strengthened over recent years with the realisation that some people don't respect others' privacy, and can misuse or abuse private information that they have access to.

It is imperative that files and histories of people are only viewed by people who have permission and need to view them. The permission to view a private file of someone can only be granted by that person or his or her parent/advocate/friend/guardian. Part disclosure of files is a common way to provide information for people who need it. This must be developed to ensure that only necessary information is disclosed.

It is important that a person's file held by one organisation is not handed to a new organisation without permission and/or discussion.

2.8 Keep appropriate records

Emphasis must be placed on the privacy of records and files. Only certain information can be shared with workers. Private details contained in files can only be accessed after permission is sought and given by the person with disability or their families/advocates/supporters/guardians and only when it is necessary to provide support. Of course files and records must be kept up to date, and kept in a secure location.

Appendix A - Process of Code of Conduct Investigation and Enforcement

The chart of the process was helpful, but it needs to be distributed and available to all interested parties, not only the service provider, once the Code is developed. This type of chart will support families to know how to advocate if they consider that the Code of Conduct is not being followed and that their family member is not being supported appropriately.

Every service provider must provide a copy of the Code of Conduct and the chart to people with disability/families/advocates/supporters/guardians.

Appendix B - General principles under the NDIS Act

On reading Appendix B, all the points are important, but there is one jarring point which does not sit well with the other points which are all about supporting people with disability. 17. b) 'the need to ensure the financial sustainability of the national Disability Insurance Scheme'. Although the Act may include this, this Appendix is about the Code of Conduct and this seems quite unrelated to what we are talking about developing. It doesn't belong anywhere near the Code of Conduct or the discussion about the Code of Conduct.

Financial sustainability cannot be used to undermine the Code of Conduct.

If there is conflict between Code of Conduct and sustainability, then the rights of a service user must come first.

Conclusion:

As stipulated in the NDIS Quality and Safeguarding Framework, strategies would be put in place covering preventative strategies, corrective mechanisms and also consequences of non-compliance with the Code of Conduct.

AMIDA agrees that the preventative strategies are preferable to corrective actions. We further believe that the burden of proof when allegations are made must be reduced so that the balance of right shifts toward people with disability who are vulnerable to abuse and exploitation and where the experience of abuse is often hidden. This will ensure that vulnerable people covered by the Code of Conduct will not have to endure neglect and abuse, have someone recognise it and then go through a series of steps to see that it ceases and does not continue. This is by far AMIDA's preferred emphasis of the Code of Conduct, to ensure that it is strong enough to prevent neglect and/or abuse before it happens. The Code should be in language strong enough to make it clear that unacceptable behaviour will not be tolerated; nay it will be severely looked upon, acted upon and eradicated.

It is also vital that regular independent quality auditing and adherence to the Code of Conduct is necessary, not just an investigation when there is a report of non-compliance. The Code of Conduct needs to be strong, effective and proactive.