

## Submission of Family Planning NSW

# National Disability Insurance Scheme (NDIS) Code of Conduct Discussion Paper

June 2017



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Family Planning NSW welcomes this opportunity to further contribute to the consultation around the draft NDIS Code of Conduct.

## About Us

Family Planning NSW is the state's leading provider of reproductive and sexual health services.

We are experts on reproductive and sexual health and provide clinical services and health information to people throughout NSW.

We are an independent, not for profit organisation responsible to a voluntary board of directors and we rely on government funding, donations and self-generated income to provide our services. Our government funding comes from the Federal and NSW governments, as well as Local Health Districts.

Founded in 1926 Family Planning NSW is the oldest family planning service in Australia, providing reproductive and sexual health care services and information to the community for 90 years.

Family Planning NSW has been delivering targeted services to people with disability and those who support them for over 35 years. Family Planning NSW is also a registered provider of the National Disability Insurance Scheme (NDIS). Family Planning NSW provides services under the following NDIS support areas:

- Specialised assessment of skills, abilities and needs;
- Therapeutic supports;
- Behaviour support.

## Who we are

We work to ensure everybody has access to quality reproductive and sexual health.

We respect the rights of our clients to make choices about their reproductive and sexual health and we treat each and every person with respect, dignity and understanding.

We are experts on contraception, pregnancy options, sexually transmissible Infections (STIs), sexuality and sexual function, menstruation, menopause, common gynaecological and vaginal problems, cervical screening, breast awareness and men's sexual health.

Our Sydney Centre for Reproductive and Sexual Health Research undertakes nationally and internationally recognised research which underpins our clinical practice. We publish clinical practice handbooks on reproductive and sexual health for medical professionals and are recognised leaders in this field.

### **What we do**

We provide clinical services, health promotion and education and training at clinics in Ashfield, Fairfield, Penrith, Newcastle and Dubbo and use partnerships to deliver services in other key locations.

We also provide health information and education and training for doctors, nurses, teachers and other health, education and welfare professionals.

We see more than 28,000 clients annually at our clinics and our education services conduct courses with over 1200 professionals each year.

Our NSW Talkline service 1300 658 886 provides a confidential, non-judgemental telephone and email information and referral service for all who need advice across NSW.

We also work to provide reproductive and sexual health services in the Pacific through funding from Australian aid and donations.

### **Who We Help**

Our clinics welcome everyone and provide high quality reproductive and sexual health services.

Our education and training services provide expert education for doctors, nurses, teachers and other health, education and welfare services.

We reach out in particular to priority communities including people from culturally and linguistically diverse and Aboriginal and Torres Strait islander backgrounds, people with disability, young people, and people from rural and remote communities.

## Family Planning NSW Sexuality and Disability Service

Family Planning NSW is committed to recognizing and supporting the rights of people with disability to live full and meaningful lives. We believe that people with disability have the same rights as everyone else to express their sexuality including intimate relationships.

Our clinics provide a safe place for people with disability to talk about intimate and sometimes challenging issues. We produce 'easy to read' resources to support people with disability to learn about sexuality and relationships. We also provide training and support to parents, carers and service providers around disability and sexuality topics.

Our Sexuality and Disability Service offers individual and group-based programs that are tailored to the sexuality and support needs of people with disability and those who support them.

Family Planning NSW provides specialist sexuality and relationship support for people with:

- Intellectual disability;
- Autism Spectrum Disorder;
- Acquired brain injury.

Participants of the service are supported to develop skills across the lifespan in the area of sexuality and relationships. We use specialized assessments and a person-centred approach to support participants to engage more fully in their community and live as autonomously as possible.

## Feedback on the 'Standard English' Discussion Paper

1. Gender diversity and consistent language
  - 1.1 Family Planning NSW welcomes the recognition of the diversity of NDIS participants, with particular reference to the 'diversity of race, ethnicity, disability, age, sexuality, gender identity, intersex status and relationship status'.
  - 1.2 In keeping with the recognition of the diversity of gender identity amongst NDIS participants, we suggest refraining from using the pronouns 'his' or 'her' and instead using the more inclusive pronoun of 'their'. This is already used to a certain extent within the draft Code but should be applied consistently throughout the Code. This includes within the textbox 'scenarios' of adjustments to the delivery of supports.

## 2. Sexual misconduct

2.1 At 2.7 of the Code, the draft reads “people with a disability can be at increased risk of sexual assault and exploitation” (page 30). Unfortunately, it is well established that people with disabilities are at increased risk of violence, exploitation and neglect<sup>1</sup>. In this context, it is critical to ensure the Code enforces appropriate behavior from those providing support to people with a disability and situates these requirements in the context of the vulnerability of people with disability.

2.2 Family Planning NSW has a number of concerns about the examples of sexual behaviour by a worker that constitute a breach of the Code, as listed in Section 2.7. Examples include:

- sexual, personal or erotic comments;
- comments about a person’s private life, sexuality or the way they look;

These examples are too broad and vague, and may deter workers looking to engage in legitimate conversations about a person’s sexuality support needs, or conversations that serve to meet the worker’s duty of care.

2.3 For example, a worker asking a participant whether they know about safe sex, or a worker asking a participant how they are feeling about a new relationship, or a worker commenting to a male participant that dressing as a woman may lead to different responses from other people would all be examples of legitimate conversation in a sexuality support context.

2.4 Conversely, the drafting of such examples could deter support workers from seeking more information or engaging with people with a disability who are disclosing abuse.

2.5 It should also be stated clearly that this section of the Code does not preclude the provision of sexuality support by a worker where that worker is sufficiently trained and consent is given for the provision of that support. 2.6 A balance needs to be defined that both protects a person with disability’s right to safety with their right to sexual expression and associated NDIS supports. Family Planning NSW suggests the inclusion of words to the effect of:

*This section of the Code is not intended to prevent services or workers from providing sexuality support to a participant under the NDIS. Staff must be sufficiently trained to provide such support, and the participant must consent to the support being given. This is important to ensure a person’s right to safety is balanced with their right to sexual expression and sexuality support.*

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[https://www.dss.gov.au/sites/default/files/documents/05\\_2012/national\\_disability\\_strategy\\_2010\\_2020.pdf](https://www.dss.gov.au/sites/default/files/documents/05_2012/national_disability_strategy_2010_2020.pdf)

- 2.7 It is well recognised that disability support workers have an important role in supporting the reproductive and sexual health rights of people with disability. The Code needs to support proactive conversations and proactive sexuality support, rather than creating more opportunities for sexuality support to be dismissed as being too difficult or illegal.
- 2.8 The drafting of ‘ignoring or encouraging sexual behaviour between participants which is non-consensual or exploitative’ as a threshold is too narrow. It should be amended to:

*ignoring or encouraging non-consensual or exploitative sexual behaviour between a participant and any other person.*

The definition must be so expanded so it can include a participant and their family member or partner, or a participant and a worker. It is particularly important that ignoring or encouraging sexual behaviour between a participant and a worker be specifically stated within this section of the Code given recent inquiries have identified that such behaviour has previously been under-reported by services.

3. Statement acknowledging people with a disability have reproductive and sexual rights

- 3.1 We would suggest concluding section 2.7 ‘Not engage in sexual misconduct’ of the Code with a statement acknowledging that people with disability have had, and continue to have, their reproductive and sexual rights impinged on by acts of commission and omission of others, including workers and carers. Placed after the dot points on page 30, such a statement could read:

*People with disability have had, and continue to have, their reproductive and sexual rights impinged on by acts of commission and omission of others, including workers and carers. Instances of behavior of this nature must be treated with the utmost seriousness and respect for the dignity of people with disability.*

## Feedback on the ‘Easy Read’ Discussion Paper

4. Section 7 “Don’t take part in sexual misconduct”

4.1 There are a number of items of concern in this section. Specifically:

- 4.2 The list of examples of sexual misconduct does not clearly state that these behaviours are only sexual misconduct if done by a worker to a participant. In its current form, a participant could reasonably interpret this section to mean that they would be committing sexual misconduct if they were to make a sexual comment to a friend, or ask a friend to go on a date. Presumably it is not the intention of the Commission to prevent people with disability engaging

in consensual sexual behaviours with their peers. This statement should be amended to read:

*It can be sexual misconduct if a worker does these things to a person with disability they support, or ignores these things being done to a participant by another worker.*

- 4.3 This section should also include a statement to reassure people with disability that it is OK to ask for support with sex, relationships or sexual health, and that a service or worker should assist where they are confident and competent to do so, or otherwise provide a referral to somebody who can help. Such a statement could read:

It is OK for you to ask your support worker to help you with sex, relationships and sexual health. This is not sexual misconduct. If they do not know how to help you, they should find somebody who does know how to help you.

A support worker should only help you with sex, relationships and sexual health if you say it is OK.

- 4.4 As noted above, this section of the Code must clearly differentiate between a worker's and service's role to provide sexuality support, and sexual misconduct. This differentiation is imperative to ensure that people with disability have their rights met.

Family Planning NSW is happy to provide further comment and feedback throughout the drafting process for the Code of Conduct.



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