



Submission to DSS in response to the NDIS Code of Conduct Discussion Paper

21st June 2017

Women with Disabilities Victoria

Level 9, 255 Bourke Street

Melbourne 3001

Phone 9286 7800

www.wdv.org.au

Contact

Jen Hargrave

Senior Policy and Communications Officer – violence against women with disabilities

Jen.hargrave@wdv.org.au

Contents

About Women with Disabilities Victoria.....	3
Overview	4
Commentary	5
1.1 & 1.2 Why we need a Code and what it will cover	5
1.3 Who will be covered by the NDIS code.....	7
1.4 How the Code will be applied	8
2.1 Promote individual rights.....	9
2.1.1 Choosing the gender of a support worker	11
2.2 Actively prevent all forms of violence.....	13
2.3 Act with integrity.....	16
2.4 Provide supports in a safe and ethical manner	16
2.5 Raise and act on concerns.....	16
2.6 Respect privacy	17
2.7 Sexual Misconduct	18
Conclusion.....	18
List of recommendations	19

About Women with Disabilities Victoria

Women with Disabilities Victoria is an organisation run by women with disabilities for women with disabilities. Our members, board and staff live across the state and have a range of disabilities, lifestyles and ages. We are united in working towards our vision of a world where all women are respected and can fully experience life.

Our gender perspective allows us to focus on areas of particular inequity to women with disabilities: access to women's health services, gendered NDIS services, and safety from gender-based violence (see Appendix A, Fact Sheet: Women with Disabilities Victoria).

We undertake research and consultation. We provide professional education, representation, information, and leadership programs for women with disabilities.

We have dedicated particular attention to the issue of men's violence against women with disabilities, due to its gravity and prevalence in our lives. Since 2009 we have had a Policy Officer, funded by the Victorian Government, to focus on violence against women with disabilities. This has been a valuable resource for the community sector and government. Our representation at the Victorian Royal Commission into Family Violence contributed to 16 Commission recommendations with specific disability content, and our representation to the Victorian Parliamentary Inquiry into Abuse in Disability Services resulted in a chapter on gender in the Committee's final report.

Under Victoria's Plan to Address Violence Against Women and Children we were funded to pilot a ground breaking workforce development program in disability services. The Gender and Disability Workforce Development Program commenced in 2013 and the program evaluation was completed in August 2015.

In 2014 we published the Voices Against Violence 2 year research project with partners Office of the Public Advocate Victoria (OPA) and Domestic Violence Resource Centre Victoria. The 7 papers of the project examined the intersecting forms of gendered and disability based violence experienced by women with disabilities, studying literature, OPA files, legislation, and interviewing OPA staff and women with disabilities.

Overview

WDV agree that the Code should 'encapsulate the rights of people with disabilities' and 'reflect the core values and principles set out in the National Standards.' The Code should, in plain English, **encapsulate everything that a person with a disability would need to know about the conduct of providers and workers and the role of the Commission.** Advice on how the Code will interact with state based codes would be helpful to reduce confusion.

As an organisation run by and for women with disabilities, we strongly support the Discussion Paper making note of priority issues for women with disabilities – in particular the right to choose the gender of a support workers, and the right to live free from gender based violence. These are priority issues for WDV because the rates of violence against women in our general community are extremely high, and they are even higher for women with disabilities as reported by Victoria's Royal Commission into Family Violence among other significant investigations. **The Code has a role in clearly recognising and addressing preventing and responding to violence against women with disabilities.**

The right to privacy has been well developed in the Discussion Paper. However, we know from the experiences of Victorian Home and Community Care services that workers obligations to respect privacy can become confusing when workers see clients experiencing domestic violence. **Workers will look to the Code for advice on how to respond and how to share information when they see participants experiencing family violence.**

In Australia, and particularly Victoria, we have services who specialise in prevention and response of sexual assault and family violence. **WDV recommend that the Code is developed in consultation with prevention and response experts.** The Code can support referral to these services, in keeping with Guiding Principal 14 of the NDIS Act (Cth 2013).

We join many other community organisations and our peak, VCOSS, in strongly endorsing the Code's application to both registered and unregistered providers. However, like our partners and peak, we are concerned that **the systemic monitoring and capacity building mechanisms for unregistered providers described in the Discussion Paper are inadequate to create quality safe services for people with disabilities.** In addition to the monitoring corrective measures described in the code, **it is not clear how developmental and preventative measures will be monitored to ensure they are being implemented.**

WDV are pleased that the Commission will have powers to enforce the Code. Therefore, we see **resourcing the Commission to undertake communication, capacity building, monitoring and investigation** as a critical budget consideration. Likewise, resourcing advocacy is essential (self, systemic and individual advocacy).

While the Code refers to Human Rights, unfortunately we know that Australia's obligations to the DDA and the CRPD are at times breached. The Code should **fundamentally, clearly uphold Human Rights** before consumer rights, recognising that disability supports are a much more significant in our daily lives than the purchase of other goods and services. The CRPD makes specific reference to gender equality in Article 6, Guiding Principal 7 and Preamble Q. So the Code needs to be developed in consultation with women with disabilities and women's services and be clear about equality for girls and women.

We note that there is no reference to equality and diversity in the Discussion Paper. We suggest that they would be useful Obligations to introduce to uphold quality safe services for a diversity of Australians with disabilities. In particular, discrimination Acts are relevant, such as **the Sex Discrimination Act** which has protections for people who wish to choose the gender of workers for personal supports.

Commentary

This submission presents a more detailed exploration of our concerns accompanied by specific recommendations. We base these on our research, reports from stakeholders and consultation with members. This submission is set out in sections with the sub headings used in the DSS Discussion Paper.

1.1 & 1.2 Why we need a Code and what it will cover

As the Discussion Paper suggests, the Code is well placed to serve as a primary information source for all involved with the NDIS. The Discussion Paper's list of the relevant Acts is helpful. While consumer law is included, the emphasis should remain on human rights. Research and inquiries have found the rights of people with disabilities are systemically breached. Clearly highlighting our rights in the Code would achieve capacity building / developmental outcomes for participants, workers and providers.

Guiding Principal 7 of the CRPD is for 'equality between men and women.' In this submission we identify examples from the Discussion Paper where gender needs to be emphasised. We recommend that in consultation with women with disabilities and women's services, a gender lens is applied to the Code to uphold principles of equality. This work could be coordinated with other major national initiatives such as Ourwatch's prevention programs and the *National Plan to Address Violence Against Women and their Children*.

Australia's commitment to the CRPD requires a gendered approach

States and parties to the CRPD are required to recognise that 'women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation' in part Q of the Convention's preamble.

General principal G is for equality between women and men.

Article 6 states:

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.
2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

In addition to the 'Objectives to ensure NDIS supports' align with NDIS principles outlined on page 8 of the Discussion Paper we recommend adding that supports are:

- delivered equitably for a diversity of people
- responsive and inquisitive about the feelings and wishes of participants safety and comfort
- able to ensure that people who are found to have chosen to use violence and abuse against people with disabilities will be held accountable.

Guiding Principal 4 of the CRPD is respect for diversity. We strongly recommend including Commonwealth Discrimination Acts which are designed to uphold equality for a diversity of Australians who are likely to experience discrimination. These are relevant to, for example, protect a worker from racial discrimination, or protect a participant to choose the gender of their support worker. We discuss the relevance of the Sex Discrimination Act in particular in more detail in *Section 2.1 Promote Individual Rights*.

Commonwealth antidiscrimination Acts overseen by the Australian Human Rights Commission:

- Age Discrimination Act 2004
- Australian Human Rights Commission Act 1986
- Disability Discrimination Act 1992
- Racial Discrimination Act 1975
- Sex Discrimination Act 1984.

Recommendations

That the Code encapsulate everything that a person with a disability would need to know about the conduct of providers and workers and the role of the Commission.

That the Code's Human Rights approach is strengthened with:

- an emphasis on equality for a diversity of people,
- a gender lens is applied,
- the addition of Australian Discrimination laws.

1.3 Who will be covered by the NDIS code

WDV strongly supports application of the Code to, 'all providers and workers who are funded under the NDIS' such as LAC and ILC, and that this includes unregistered workers. The 'compulsory orientation module' for registered providers and all their workers is an important initiative to uphold the Code. Commonly time, resources and encouragement are not put in place for workers to become familiar with codes of conduct and other relevant policies.

Case example

Kerri works as a casual in a social service and many of her clients are people with disabilities. Regardless of her varying working hours, she receives 30 minutes paid administration time each week. The time is subsumed with client follow up, practically or with files. Often during that time, access to a computer cannot be arranged.*

*Kerri is not her real name. Kerri shared this experience with WDV during consultation, May 2017.

We have serious concerns about means of ensuring that the Code is applied to **unregistered providers and unregistered workers** such as sole traders. We recommend that the Code is systematically conveyed to all unregistered workers and providers. Another means monitoring unregistered workers to comply with the Code is by ensuring that participants have a strong understanding of what they can expect from a provider. Participants may then be in a position to include discussion of the Code in their agreements with all providers, and require agreement to comply with the Code whether providers are registered or not.

While information about the Code 'will be available to all participants', WDV recommend that each participant receives an introduction to it as an information and capacity building / development activity, potentially as part of the NDIS planning process. This would mean participants are active in the Code's processes rather than passive. The induction could include:

- a copy of the Code in their preferred format
- direction on how to find a copy in the future
- a brief overview of the Code and an explanation of why it is important
- advice on how to include the Code in their arrangements with unregistered providers
- an overview of their rights and how to contact the Commission and independent advocates.

Recommendation

That a Code of Conduct Communication Strategy is developed for:

- systematic introduction to the Code for all providers (registered and unregistered) and workers ensuring they are familiar with their rights, obligations and referral/reporting pathways
- introduction to the Code for all participants to ensure they are familiar with the Code, their rights, obligations and contact/reporting pathways
- inclusion in NDIA information and advice to participants on selecting service providers and making agreements with unregistered providers.

1.4 How the Code will be applied

It is positive that 'anyone will be able to make a complaint about NDIS funded supports including breaches of the Code.' **Advocates** have a strong role in monitoring providers and workers, and their work needs to be resourced and supported.

WDV endorses the following aspects of the Code:

- '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.'
- 'Registered providers will also be required to notify the Commission of reportable incidents.'
- The Commission's 'own motion' powers.

We note that the Code's monitoring mechanisms are corrective and reactive, reliant on complaints and incident reports. It raises the question, **what preventative and developmental monitoring will be done?** There is a need for outreach / face to face contact with participants to inform them of their rights, ask if they feel safe and let them know where they can seek help if and when it is needed. Under an NDIS scheme a service provider could be required to provide an auditing body with all the names of their service users to be randomly selected for interview. A prior Commonwealth model described below worked effectively when people with disabilities came together in groups, without service providers, carers or family present.

Case example: auditing of Commonwealth funded disability services in the 1990s

A Commonwealth Service Standards auditing system of Commonwealth funded disability services operated from circa 1995 to 2002. In this system, auditors would visit clients of disability employment services. Groups would meet without service staff or carers present so that they are free to speak without fear or favour and build up a shared understanding of their rights.

Groups would cover their rights under service standards and their experiences of how the service is meeting standards. They also would speak about who they could go to for support.

When this system operated well, client's comments were reported directly to Government without intervention from service providers, and the auditors were independent from Government and service providers.

WDV have identified important topics in the Discussion Paper where more information should be provided:

- Regarding reporting to the Commission as optional for unregistered providers, this raises the question of how unregistered providers will be monitored.
- Whistle-blower protections are recognised, but more information could be provided to workers about what to do when they are instructed to breach the Code or not permitted to uphold it.
- In the interests of transparency for participants, the Code could share the ramifications for providers and workers who breach the Code. This would support a shared understanding of accountability.
- The Code is clear that, 'where an alleged criminal act is involved, the matter will also be referred to the police.' Some breaches of civil law should also be referred to Police. The general community and the disability workforce do not have a high level of general knowledge about what should be referred to Police. It would be useful for the Code to support understanding or include links to guidance on when to refer to Police and how to respond to issues that are of concern but not at the threshold of criminal conduct.

Recommendations

That the Commission take regular proactive approach to monitoring adherence to the Code through audit functions and face to face outreach with participants to meet developmental and preventative aims of the NDIS.

That the Code supports shared understandings of worker and provider accountability by sharing ramifications for breaches of the Code.

That there is clarification of:

- guidance for workers if they are instructed to breach the Code or not permitted to uphold it
- types of criminal and civil law breaches that should be referred to Police.

2.1 Promote individual rights

It is a challenge for the Code and the Commission to meet convey the importance of individual rights to a large, varied and growing disability workforce. For example, each individual has different things that make them feel comfortable or trigger fear and make them feel unsafe. Whether someone feels safe may not be a priority for a worker or provider, but it can have serious implications for their behaviour, other needs and actual safety. It is good to see the Discussion Paper recognise individual rights and this could be strengthened by discussion of ways to address power imbalances between workers and participants by, for example, listening to them, providing choices, and providing information.

An individual's safety and comfort may be connected to their broader circumstances or identity group. Providers and workers can shape an individual's experience by, for example, providing a culturally safe service, being gender sensitive, or having Rainbow Tick Accreditation. We know that sometimes in person-centred planning, that systemic experiences of identity groups are lost. In keeping with Guiding Principal 4 of the CRPD and our recommendations about equity and discrimination in sections 1.1 and 1.2, we recommend that respecting and responding to diversity is an obligation of the code. This could require that:

- that **people with disabilities who are parents and carers** have a right to be supported in those roles.
- that supports should be respectful of diversity including gender, ethnicity, religion, sexuality, etc
- And supports should be delivered equitably.

The Discussion Paper recognises the need to **communicate in accessible 'form, language, and manner.'** It is therefore important that the Code is in Plain English with all key terms set out in a Glossary. The use of scenarios in the Discussion Paper is very helpful and this would be a good feature in the Code (and should not be left out of the Easy English version).

An additional communication access consideration is sufficient timeframes for communication. Many women and workers report to us that meeting times and phone conversations are too short to allow communication with people with a range of disabilities, particularly speech, hearing and cognitive disabilities. The Code should obligate service systems to allow for **reasonable adjustments for sufficient time for meetings and conversations.** For many people with disabilities, systemic time constraints are the biggest threat to information access and self-expression.

Some language in the Discussion Paper is inconsistent with the obligation to uphold human rights and respect and promote self-determination and decision-making. WDV recommends that the following phrases are amended to have language which more strongly upholds the rights of people with disabilities:

- **'take into account'** participants' needs and values
- being **'open to reasonable requests'**
- providers and workers should **'engage'** with participants about their plans
- 5(a) PWD should be **'involved in decision making processes'**.

When the paper describes how providers and workers 'must engage with people with disability and their support networks' (p.13) it is critical to note that the participant is the person who decides who is engaged in their plan. In some cases, such as domestic violence, it is completely inappropriate to engage family. We will discuss this further in section 2.6 *Respect the Privacy of People with Disabilities*.

Recommendations

That the Code and the Commission promote capacity building for providers and workers to understand individual rights, and set goals to increase them being upheld.

That respect and responsiveness to diversity is an obligation of the Code (for example, being culturally appropriate, gender sensitive and LGBTIQ friendly).

That the Code recognise that supports should be delivered with parents and carers who have a right to be supported in those roles.

That the Code contains a Glossary with definitions of 'own motion,' 'unacceptable risk,' 'violence, abuse and neglect,' 'sexual assault' and 'safety.'

That the Code obligates service systems to allow for reasonable adjustments for sufficient time for meetings and conversations.

That language is strengthened to uphold the rights of people with disabilities (eg. use more compelling language than 'take into account,' 'be open to,' and 'engage.'

That when the Code indicates the breadth of people who should be engaged in a plan:

- that it is clear that the participant can choose who is engaged in their plan
- and that in some cases, such as domestic violence, it is completely inappropriate to engage family.

2.1.1 Choosing the gender of a support worker

WDV support that **choosing the gender of a support worker** is a reasonable request. In line with Equal Opportunity Law, in many cases it is also a right. We recommend that our rights in the Sex Discrimination Act are published in the Code. WDV would like to emphasise that providing a female worker on request is a form of violence prevention in-keeping with Section 2.2 *Actively prevent all forms of violence*.

The Sex Discrimination Act 1984 (Cth)

The relevant Commonwealth legislation contains the following provisions.

Section 14 prohibits discrimination in the course of employment on the ground of a person's sex. Section 14(1) provides that:

It is unlawful for an employer to discriminate against a person on the ground of the person's sex...

- (a) in the arrangements made for the purpose of determining who should be offered employment;*
- (b) in determining who should be offered employment; or*
- (c) in the terms or conditions on which employment is offered.*

Section 14(3) provides an exception to discrimination in relation to the **provision of domestic or personal services**. Section 14(3) provides that:

Nothing in paragraph 1(a) or (b) renders it unlawful for a person to discriminate against another person, on the ground of the other person's sex, in connection with employment to perform domestic duties on the premises on which the first-mentioned person resides.

Section 30 provides a further relevant exception and states that discrimination on the ground of a person's sex is not unlawful where it is a **genuine occupational qualification**. Section 30 provides that:

(1) Nothing in paragraph 14(1)(a) or (b)...renders it unlawful for a person to discriminate against another person, on the ground of the other person's sex, in connection with a position as an employee... being a position in relation to which it is a genuine occupational qualification to be a person of a different sex from the sex of the other person.

*(2) Without limiting the generality of subsection (1), it is a genuine occupational qualification, in relation to a particular position, to be a person of a particular sex (in this subsection referred to as the **relevant sex**) if:*

- (c) the duties of the position need to be performed by a person of the relevant sex to preserve decency or privacy because they involve the fitting of clothing for persons of that sex;*
- (e) the occupant of the position is required to enter a lavatory ordinarily used by persons of the relevant sex while the lavatory is in use by persons of that sex;*
- (g) the occupant of the position is required to enter areas ordinarily used only by persons of the relevant sex while those persons are in a state of undress.*

The choice of support worker gender is a key issue raised by our members and stakeholders. The scenarios in the Discussion Paper do not illustrate the issues experienced by the women we hear from. Following is an example of a woman's experience which we share to highlight how significant this issue can be for women.

Case example: Monica's experience

Monica is a young woman with physical disabilities living in supported accommodation. When moving into the unit, the service assured Monica that she would have access to 24/7 personal care provided by female support staff. However there can be periods of more than two days when only male staff are on duty to provide Monica's intimate personal support (e.g. showering, menstrual care, catheter care).

Monica says she has been forced to receive personal support from male staff against her wishes. She has experienced being humiliated by a male support worker who was not trained to provide personal care to women. She says there have been times when male support staff are 'rough' while moving her on and off the toilet.

The Service's CEO wrote to Monica, *"Whilst we try to accommodate the preferences of our clients, we cannot guarantee that specific staff or gender specific staffing will always be available at our units... Unfortunately, given our staffing ratios it is unlikely that we will be able to change our service to offer gender specific staffing at our units in the foreseeable future."*

Monica is currently going without showers for days on end and using her Individualised Support Package (ISP), intended for support in the community to achieve vocational and recreational goals, to purchase showers from an external agency once or twice per week, which means that she has few remaining funded hours to leave the unit.

Monica has told the Service that she 'would rather be dead than live like this forever' and that she has considered 'drowning myself in the bath to make this end'. Her complaints to the service in the past have been met with denial and Monica has experienced retaliation (e.g. staff on duty, including the House Manager, refuse to take her calls for assistance for personal care leaving her soiled for hours).

She has had multiple hospitalisations as a result of poor personal hygiene, particularly from lack of showering causing infections at her catheter site, as well as bowel compaction and obstruction from waiting to go to the toilet for many hours at a time.

Monica would like to have greater control over the hiring of staff who provide personal care, but is not able to while living in supported accommodation. She would like to move however she requires wheelchair accessible housing which is almost impossible to secure among current private or public housing stock. She feels trapped in service and accommodation models which do not meet her requirements.*

Monica is not her real name. Monica's experiences from 2015-16 were shared with WDV with Monica's consent by the Youth Disability Advocacy Service and submitted in evidence to the Victorian Parliamentary Inquiry into Abuse in Disability Services, 2016.

Recommendations

That the Code explain to the rights to choose the gender of support workers outlined in the Sex Discrimination Act 1984 (Cth) as a right and as a violence prevention strategy.

That the Code and the case scenarios in the Code represent the rights of women, and that these are included in the Easy English version.

2.2 Actively prevent all forms of violence

It is good to see that euphemisms have not been used in the Discussion Paper to describe violence. The Code would benefit from including **a definition of violence, abuse and neglect**. WDV recommend that **stalking and threats** are forms of violence and should be listed alongside other forms of violence and abuse – they should also be included in scenarios.

Some language in the Discussion Paper has been used carefully, for example, it is to be commended that the term ‘vulnerable’ has not been commonly used as the word is rejected by many women with disabilities for shifting the cause of violence onto the victim. However, some language in the Discussion Paper should be strengthened for publication in the Code:

- While *‘providers and workers must be committed to eliminating violence’* we recommend that this is rephrased to say that they **must demonstrate** this commitment.
- Rather than workers *‘familiarise themselves with such guidelines’* about violence, we recommend that **employers must familiarise employees with them**. This recognises that workers are often not provided with time, encouragement or facilities to read and understand policies.

We recommend that DSS work with experts from violence prevention and response sectors to develop concepts in this critical section of the Code:

- The section on ‘increased risk of violence’ needs development as people who choose to use violence are invisible. These people target people with disabilities, the risk is not *‘the nature of their disability’* but that **people who target them believe they can get away with it**. WDV’s position statement may be a reference – <http://www.wdv.org.au/publications.htm#ourpublications>.
- It should be noted that **disability discrimination which allows violence against PWD combines with other forms of discrimination** such as gender discrimination, homophobia and racism. Bullying, harassment, violence and discrimination on any of these grounds is not acceptable.
- It is excellent to see that ‘Providers need to ensure their staff have appropriate supervision and training’ to identify and respond to violence. It is also positive that the Code later recommends appropriate staffing numbers. We strongly recommend that this **training** includes gender based violence and is delivered by specialists from sexual assault and family violence prevention and response services. If training is only about disability abuse it is a lost opportunity to connect with the expertise in specialist sectors who have developed sophisticated practices.
- The Code does not describe an adequate response to people with disabilities when it talks about responding to violence, and this is clearly demonstrated in the scenarios. The Code should explain some **critical trauma informed elements to appropriate responses**:
 - how they are and if they feel safe
 - it is important to be respectful and trustworthy and believing when you receive a disclosure from someone who has experienced violence
 - if someone experiences violence it is not their fault
 - that disability providers should have a list of local specialist services for referral and secondary consultation
 - that they should be supported to talk to a specialist service if they want to, like a sexual assault service or a counsellor, external and independent from the disability service provider
 - that they should be given the opportunity to stay involved or updated in a case / complaint if it is escalated to the Commission or the Police. Etc.

The NDIS Act reflects the importance of **services outside the NDIS**. Specialist violence response and prevention. The Code can support disability service providers to understand they have a responsibility to know and use specialist violence referral pathways.

General Principal under the NDIS Act 2013

(14) People with disability should be supported to receive supports outside the National Disability Insurance Scheme, and be assisted to coordinate these supports with the supports provided under the National Disability Insurance Scheme.

Victoria's Office of the Public Advocate developed an [inter-agency guideline](#) for responding to violence, neglect and abuse in collaboration with specialist services, supporting inter-agency responses and explaining a trauma informed approach.

Case example: Office of the Public Advocate Victoria's Interagency Guideline on responding to violence

The guideline was developed by the Victorian Office of the Public Advocate in collaboration with statutory agencies, family violence and sexual assault services, Victoria Police, and representatives from the disability and mental health sectors in Victoria. The guideline draws on national and international research and practice, as well as the United Nations Convention on the Rights of Persons with Disabilities.

Guideline 2 - Support the person

- > Reassure the person, discuss their options with them and ask them how they would like to be supported.
- > If a sexual assault has occurred, or is suspected, support may be sought from the Centres Against Sexual Assault by telephoning 1800 806 292.
- > If family violence has occurred, or is suspected, support may be sought from the Women's Domestic Violence Crisis Service on 1800 015 188.
- > Ensure the person is kept informed of actions taken and the progress of any investigation.
- > Consider referring the person to an independent advocacy organisation or victim support service, for example, the Victims Support Agency on 1800 819 817.
- > Plan for the provision of ongoing support to the person, as their needs and responses to the matter may change and the option of referrals may need to be revisited.

Guideline 6 - Encourage the person to take part in any investigation

- > The person should be encouraged and supported to make statements to police and other independent investigators. For example, appropriate support may be sought from agencies including the Centres Against Sexual Assault, independent advocacy organisations and the Federation of Community Legal Centres.
- > If a police investigation occurs, and the person has a cognitive impairment or mental illness, police should ensure that an Independent Third Person is present at the Video and Audio Recorded Evidence police interview. Independent Third Persons will assist the person to understand their rights and support them through the process.

[Extracts of OPA's Interagency Guideline.](#)

The scenarios provided in the Discussion Paper do not adequately demonstrate prevention issues. We would like to share Melissa's experience to help describe how preventing violence hinges on listening to people and believing them.

Case example: Melissa's experience

A disability support worker stalked me over a period of 6 months. I was living in a house managed by a large disability service provider. The service used to employ him to come to the house to support another woman who lived there. After he finished working with her, he kept coming back to visit her. Then he started visiting me. He would come to my house many times

, even after I had clearly told him not to. He learnt my schedule and the places I went to and he would follow me around. He left gifts for me which I returned to him.

I was scared. I reported this to the service provider at least 3 times, to my house manager, my key worker and her manager. They did nothing. After 6 months there were a couple of times when my boyfriend and my mum both witnessed him coming to my house uninvited. My mum reported the problem to the service. It was only then that the service started to see it as a problem. But the service did not offer me any support for the fear I had been feeling.

About a month after that the worker sexually assaulted a woman who is also a client of the service. She has a communication disability and had trouble reporting the assault. After this assault the service stood the worker down.

The service said I should have told them about the problem more clearly. They offered counselling from an in house counsellor. I felt like everything I told the counsellor would go back to the service. Now he is working for another service. I am scared where he is and if he will turn up in my life. To this day I say, "I was talking. Why wasn't anyone listening to me."*

Melissa is not her real name. Melissa submitted this evidence to the Victorian Inquiry into Abuse in Disability Services, 2016, and with WDV for our [submission](#).

Recommendations

That providers and workers must *demonstrate* their commitment to eliminate violence.

That DSS and the NDIA work with violence against women prevention and response specialist agencies (such as Ourwatch, AWAVA) to develop informed understandings of violence prevention and response strategies to underpin sections 2.2 and 2.7 in particular. Key areas for attention are:

- the breadth of violence, including stalking and threats
- evidence based risk factors
- what safety is and how it feels
- training content and co-delivery
- trauma informed responses to disclosures of violence are explained in the Code and that the scenarios demonstrate respectful, empowering responses to victims of violence
- violence is an unacceptable choice
- inclusion of specialist service contacts such as 1800respect (in keeping with General Principal 14 of the NDIS Act).

That DSS and NDIA consider Office of the Public Advocate Victoria's Interagency Guideline for responding to violence, neglect and abuse as a model for supporting staff to support people who experience violence.

2.3 Act with integrity

Some brief points we wish to raise in relation to this section follow.

- That 'providers and workers must not ask for, accept or provide any inducement' is an important obligation in the Discussion Paper. Because sexual behaviour is commonly used as an inducement, we suggest that it is included and that this is linked to section 2.7 *Sexual Misconduct*.
- Like sections 2.1 and 2.6, the Discussion Paper raises that 'family and carers, and the broader community have a right to' information. We must again note that this is not appropriate without the person's consent and not in instances of domestic violence.
- The word 'vulnerable' is not used by many Feminist and disability advocates as it focuses the cause of violence onto the victim. Therefore we recommend that 'People with disability in situations of long term dependence are particularly **vulnerable**' is changed to 'particularly **at risk**.'
- Regarding scenario 2.3.1, it is unfortunate that while Shuai is trying to uphold Jenny's right not to be financially exploited that she is not advising Jenny of her rights but rather, **'tells Jenny not to** give her any of her inheritance.'

2.4 Provide supports in a safe and ethical manner

We suggest defining safety and what it is and how it feels, and that workers should be checking that participants feel this way. Safety is not the same situation for everybody, we experience it individually. This connects with our recommendations to develop understandings with violence prevention and response specialists, as written in sections 2.2 and 2.7.

2.5 Raise and act on concerns

The statement that, '**people with disability need to feel safe to make a complaint**' is a priority and would be best placed at the beginning of its section. The same clear statement should also be made about workers, workers must feel safe to make a complaint. WDV support the Discussion Paper's statement that, 'Providers and workers are **obliged to raise and act on concerns**.' It would be helpful to understand in more detail what systemic structures will support this obligation. As noted in the paper, whistle-blower protections are essential.

2.6 Respect privacy

WDV support the statement that, 'Providers and workers must not disclose any personal details about a person without consent.' There is some complexity to privacy to rise. We receive reports from workers witnessing domestic violence (such as those following) who have not reported when clients are living with domestic violence due to privacy obligations. The Code can tease out this issue using scenarios to illustrate when it is appropriate to share client information and when it is not safe. This connects with our recommendation in Section 2.1.

Case example: Nell saw her client experience domestic violence

Nell had been doing Home and Community Care work at Elsie's and Robert's house for a couple of months. The longer she worked there, the more she tuned in to a tension in the household. She was confronted one day when she arrived and saw Elsie tied to a chair while Robert yelled. Nell became scared to visit and over the months saw more incidents of domestic violence. She did not wish to tell anyone what she was witnessing as she had been instructed to respect client privacy. She reached a point where she became so scared to attend that she did inform her manager. Her manager's response was to remove HACC services from Elsie to protect worker safety. Unfortunately this meant that Elsie never received any referral for Domestic Violence service supports.*

Case example: Carla's service called a case conference

A disability day service suspected that Carla was experiencing Domestic Violence. She was presenting as more withdrawn and workers started to notice she had bruises. The service called Carla's mother in for a case conference – as is standard practice - to discuss the suspected violence. Carla's mother appeared frightened and withdrew Carla from the service. Carla became more isolated and had to spend more time at home with the violence. Carla's mother was also experiencing violence and was fearful of how the disability service was handling the situation - that it would make matters worse.*

Case example: Karen referred Beth to a specialist family violence outreach worker

Karen was a worker who noticed that over time Beth seemed more and more sad and scared. Karen had just completed training on identifying and responding to family violence. Karen asked her manager to invite Beth to talk. The manager did so, and asked Beth if she was ok. Beth said no. The manager asked if Beth would like to talk to a worker from a women's service. Beth said yes. An outreach worker came and did a risk assessment with Beth and was able to make appropriate referrals and make a plan with Beth and the service provider.*

*All scenarios are not using real names. They were reported to WDV during secondary consultation and are shared here with permission.

Recommendation

That the Code provide instruction around how to manage information about clients experiencing domestic violence.

2.7 Sexual Misconduct

WDV endorses that the draft Code highlights and condemns sexual misconduct. A series of recent Inquiries from Parliamentary Committees, Ombudsmen, Public Advocates and Royal Commissions document evidence of sexual misconduct in a range of forms. This work has identified the extent to which a pervasive culture within the disability service sector has blurred the lines of acceptable behaviour over time. On this basis, WDV advises that wide promotion of this aspect of the Code is required, with targeted education resources for organisations made available to all levels of their workforce. This approach to change in organisational culture is needed from executive level to service and support staff.

As with sections 2.2 and 2.4, the Code's content on Sexual Misconduct requires input from specialist prevention and response services with a view to:

- Describing that **'This risk can be particularly high for women and children, and for people with....'**, to place a stronger emphasis on risk factors (including gender) and perpetrators who choose to target people with disabilities. 'Can be' should be changed to 'is'.
- The list of what constitutes sexual misconduct should be checked with a sexual assault specialist service if it has not been already, and could specifically name sharing pornography in addition to talking about sharing explicit electronic imagery.
- Include sexual assault service contacts such as 1800respect in addition to calling the Police.
- Develop trauma informed responses to people who experience violence, abuse and neglect. In Scenario 2.7.1, for example, we do not find out what happened to Dev. In a trauma informed response someone would have:
 - talked to him and ask him if he is ok
 - tell him what has happened is not his fault
 - offer to refer him to support independent of the service such as a counsellor or sexual assault service
 - keep him informed and involved in how the complaint / incident is being handled
 - monitor his feelings of safety and support needs.

Recommendations

That targeted education resources about sexual misconduct are made available to all levels of the disability workforce.

Refer to recommendations in Section 2.2 on working with the Violence Against Women Prevention and Response Sector specialists.

Conclusion

WDV support the introduction of a Code applicable to the parties set out in the Discussion Paper. We endorse the fundamental principles set out in the Paper and believe these can be improved by applying an equality and a gender lens across the draft Code, and by developing concepts of safety and violence prevention in conjunction with specialists from the violence prevention and response sectors. We encourage the consultative approach through the development of the Code and expect that a diversity of people with disabilities will be involved through monitoring and evaluating the Code and establishment of the Commission.

List of recommendations

1.1 and 1.2 Why we need a code and what it will cover

That the Code encapsulate everything that a person with a disability would need to know about the conduct of providers and workers and the role of the Commission.

That the Code's Human Rights approach is strengthened with:

- an emphasis on equality for a diversity of people,
- a gender lens is applied,
- the addition of Australian Discrimination laws.

1.3 Who will be covered by the Code

That a Code of Conduct Communication Strategy is developed for:
systematic introduction to the Code for all providers (registered and unregistered) and workers ensuring they are familiar with their rights, obligations and referral/reporting pathways
introduction to the Code for all participants to ensure they are familiar with the Code, their rights, obligations and contact/reporting pathways
inclusion in NDIA information and advice to participants on selecting service providers and making agreements with unregistered providers.

1.4 How the Code will be applied

That the Commission take regular proactive approach to monitoring adherence to the Code through audit functions and face to face outreach with participants to meet developmental and preventative aims of the NDIS.

That the Code supports shared understandings of worker and provider accountability by sharing ramifications for breaches of the Code.

That there is clarification of:

- guidance for workers if they are instructed to breach the Code or not permitted to uphold it
- types of criminal and civil law breaches that should be referred to Police.

2.1.1 Choosing the gender of support workers

That the Code explain to the rights to choose the gender of support workers outlined in the Sex Discrimination Act 1984 (Cth) as a right and as a violence prevention strategy.

That the Code and the case scenarios in the Code represent the rights of women, and that these are included in the Easy English version.

List of recommendations continued

2.1 Promote individual rights

That the Code and the Commission promote capacity building for providers and workers to understand individual rights, and set goals to increase them being upheld.

That respect and responsiveness to diversity is an obligation of the Code (for example, being culturally appropriate, gender sensitive and LGBTIQ friendly).

That the Code recognise that supports should be delivered with parents and carers who have a right to be supported in those roles.

That the Code contains a Glossary with definitions of 'own motion,' 'unacceptable risk,' 'violence, abuse and neglect,' 'sexual assault' and 'safety.'

That the Code obligates service systems to allow for reasonable adjustments for sufficient time for meetings and conversations.

That language is strengthened to uphold the rights of people with disabilities (eg. use more compelling language than 'take into account,' 'be open to,' and 'engage.'

That when the Code indicates the breadth of people who should be engaged in a plan:

- that it is clear that the participant can choose who is engaged in their plan
- and that in some cases, such as domestic violence, it is completely inappropriate to engage family.

2.2 Actively prevent all forms of violence

That providers and workers must *demonstrate* their commitment to eliminate violence.

That DSS and the NDIA work with violence against women prevention and response specialist agencies (such as Ourwatch, AWAVA) to develop informed understandings of violence prevention and response strategies to underpin sections 2.2 and 2.7 in particular. Key areas for attention are:

- the breadth of violence, including stalking and threats
- evidence based risk factors
- what safety is and how it feels
- training content and co-delivery
- trauma informed responses to disclosures of violence are explained in the Code and that the scenarios demonstrate respectful, empowering responses to victims of violence
- violence is an unacceptable choice
- inclusion of specialist service contacts such as 1800respect (in keeping with General Principal 14 of the NDIS Act).

That DSS and NDIA consider Office of the Public Advocate Victoria's Interagency Guideline for responding to violence, neglect and abuse as a model for supporting staff to support people who experience violence.

2.6 Respect privacy

That the Code provide instruction around how to manage information about clients experiencing domestic violence.

2.7 Sexual misconduct

That targeted education resources about sexual misconduct are made available to all levels of the disability workforce.

Refer to recommendations in Section 2.2 on working with the Violence Against Women Prevention and Response Sector specialists.