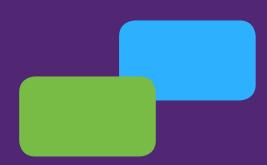# Conflict of interest

A resource for potential providers of Support Coordination in the National Disability Insurance Scheme (NDIS)

ncoss
NSW Council of Social Service

SKILLED TO THRIVE

About this resource

This conflict of interest resource has been developed for the NCOSS Skilled to Thrive project in response to requests for more detail on possible best practice in the area of conflict of interest. In these early stages, there is not yet a clear definition of 'best practice', however, there are a number of key areas of consideration which can be used as a guide; Part A: Governance, Part B: Operations and Part C: Clients.

Please note, this resource does not investigate why an organisation might consider becoming a provider of support coordination services in the NDIS, rather, it addresses the practical considerations and actions needed to manage actual and perceived conflicts of interest.
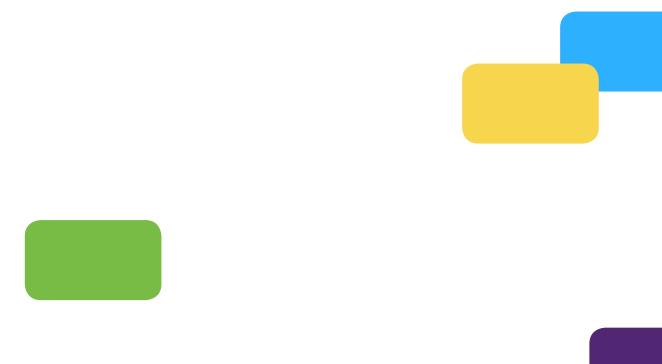
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Acknowledgements

Choice & control is central

The range of activities conducted under the heading of 'Support Coordination' is vital to the successful implementation of an NDIS participant's plan. Therefore it is of particular importance that this set of activities is provided in the context of the participant's right to choice and control over the services and supports they receive in their plan.

Particular attention must be paid to 'captured clients' - people with disabilities who receive 100% of their supports within an NDIS plan from the one provider. Multiple reports and inquiries tell us that people with disabilities who only have one provider in their life are at much higher risk of abuse and neglect. History also tells us that organisational risk increases with the proportion of control over an individual's plan. Therefore all parties benefit from Support Coordination that increases the number of external connections and supports experienced by an NDIS participant.

Be alert

Support Coordinators need to be alert to conflict of interest when they make recommendations to NDIS participants. Knowing the services within your own organisation well, separately from Support Coordination can be a real conflict trap. More than one Support Coordinator has inadvertently breached conflict of interest policy by endorsing a known program within their own service instead of encouraging a person to explore external and new options.

Conflict of interest rules in the NDIS

Organisations considering registration as an NDIS provider must comply with the NDIS Terms of Business (see NDIS Provider Key resources). The NDIS Terms of Business state:

'Registered Providers must act in the best interests of participants, ensuring that participants are informed, empowered and able to maximise choice and control. A Registered Provider must not (by act or omission) constrain, influence or direct decision making by a person with a disability and/or their family so as to limit that person's access to information, opportunities and choice and control.'

Registered providers are required to ensure that they proactively manage perceived and actual conflicts of interest, including through development and maintenance of organisational policies. These policies must specify how the provider will:

- Ensure its organisational or ethical values do not impede a participant's right to choice and control;

- Manage, document and report on individual conflicts as they arise; and

- Ensure that advice to a participant about support options (including those not delivered directly by the Provider) is transparent and promotes choice and control. The NDIA may request a copy of these policies at any time.

Registered Providers must also have in place governance arrangements that ensure all participants are treated equally, and that no participant is given preferential treatment above another in the receipt or provision of supports.

Assistance in coordinating or managing life stages, transition and supports

Organisations considering registration as an NDIS provider of Registration Group No. 0106 – *Assistance in coordinating or managing life stages, transition and supports* – have particular responsibility to ensure that services provided by a Support Coordinator are genuinely independent of any other activities of the organisation. Organisations that provide other NDIS services such as direct services or supports to an individual, or independent advocacy must have very strong structures and policies to properly manage actual and potential conflicts of interest.

Part A: Governance

Board members are important. They must always act in the organisation's best interest. Many board members sit on more than one board and may have a vested interest in other organisations due to a personal connection or experience. It is these interests and experiences that make them passionate and good at what they do, but they are also sources of conflicts of interest.

Governance actions

Board practice

Understand good governance
Ensure that the roles and responsibilities of people in the organisation are clearly understood and that the organisation has practices and procedures in place that help effective and open work.

ℹ TIP: Board to regularly undertake governance training.

Guard against complacency
Experienced boards sometimes develop a high tolerance of conflict of interest.

ℹ TIP: Undertake periodic board reviews / audits / self-assessments.

Resources 🔗

ACNC guide for charity board members

ACNC Managing conflicts of interest guide

Handling conflicts of interest

Justice Connect info on clients vs. members

Our Community policy bank

Board policies

Board conflict of interest
Develop a policy that ensures board members disclose any financial interest or personal benefit in any contract or arrangement made or proposed to be made with your organisation.

ℹ TIP: Develop a Register of Interest that is updated and signed annually by board members.

ℹ TIP: Ensure conflict of interest is a standing item on the board meeting agenda.

Board eligibility
Develop a policy that resolves whether clients of the organisation (or their family members) are permitted to be board members. If this is permitted, do other specific policies need to be put into place?

ℹ TIP: Develop a Code of Conduct that is updated and signed annually by board members.

Board privacy and confidentiality agreement
Develop an agreement that is completed and signed annually by board members.

Part B: Operations

Conflict of interest will also need to be managed at an operational level. Employees may experience conflict between their public duty as an employee and private interests.

The organisational structure can be designed to minimise opportunities for conflict of interest to arise and therefore protect employees.

Operations actions

Robust organisational protocols

Develop an operational conflict of interest statement
Develop a clear conflict of interest statement that explains that provision of support coordination may be or is a conflict of interest for the organisation for all clients and other stakeholders. This must be in plain language.

ℹ️ TIP: Provide the Conflict of interest statement in accessible formats.

Internal communication protocols
Establish internal communication protocols between Support Coordination and other parts of the organisation to manage potential internal conflict of interest. The protocol should clearly outline the underpinning values and ethics associated with client choice and control and relevant procedures.

Robust Staff Code of Conduct
Ensure all staff sign the Staff Code of Conduct document and privacy and confidentiality agreements.

Communication

Conflict of interest statement should be available on the website and provided to and explained to every new client.

Keep staff well informed of your new initiatives and why conflict of interest and perceived conflict of interest issues are important.

Establish in-house training and visit other staff meetings to advise the necessity of maintaining a separation between Support Coordination and the link to conflict of interest.

Review / discuss the Staff Code of Conduct document regularly at staff meetings.

Operations actions

Organisational structure

Organisational structure

Support Coordination work must be kept separate from other NDIS work, especially provision of services and supports under a participant's plan, or independent advocacy work.

ℹ TIP: Set up a separate division or section in the organisation's structure.

Management structure

Ideally, management of the Support Coordination service should also be separate from the rest of the organisation.

However, in small organisations separation of management may not be possible. If it is necessary to have one manager oversee all aspects of the organisations, then it is important that they do not do any 'hands-on' client work.

Operational policies, practices and procedures

Management policies, staffing, OH&S and general policies can be overall policies for the whole organisation, with a separate operational policy manual for each division or section.

Office set up

Physical office

Physically separate the Support Coordination office. Ideally this would be a separate location and address; otherwise it should be a separate section or room within the office.

ℹ TIP: Set up a separate phone number for Support Coordination enquiries.

Comms

Use of a separate trading name clearly communicates that support coordination is independent from the rest of the organisation.

Publish the management structure on the website for clients and stakeholders.

Maintain separate sections within internal shared servers and restrict access as appropriate.

Create a separate website or section of website with information about Support Coordination.

Create a separate email account for Support Coordination.

Operations actions

Staffing

Promote a culture of disclosure

Your organisation's attitude and behaviour towards conflicts of interest is a key factor in how successful it is at responding to them when they arise. The cornerstone of creating a culture of disclosure is to have and encourage open discussion on conflicts of interest in a way that is supportive and non judgmental.

Employment practice

It is always best to employ separate staff in each area of the organisation. However there could be instances in rural and remote where this is not possible. In these cases existing staff might be used with their hours split accordingly.

If a staff member has hours split across support coordination and another area then it is important that they are fully aware of separation of roles and are disciplined in their practice.

Team meetings and staff supervision (debriefing)

Keep client and participant issues within each section and confidential to that section, unless needed for incident reporting/alert/staff safety reasons.

ⓘ TIP: Advertise for specific staff and start staff when you have the work available, e.g. fixed term contracts matched to NDIS plan periods.

Comms

Operational policies to include an 'encourage, facilitate, record' approach. Policy is clear that manager needs to be advised immediately of any issue arising that is related to conflict of interest.

Have separate team meetings for each section, and whole-of-staff meetings where general issues are discussed.

Create a separate section on the server for storage of team meeting minutes – access locked to other parts of the organisation and only available to direct management and quality assurance personnel.

Part C: Clients

The range of activities conducted under the heading of 'Support Coordination' is vital to the successful implementation of an NDIS participant's plan. Therefore it is of particular importance that this set of activities is provided in the context of the participant's right to choose.

As mentioned earlier, particular attention must be paid to 'captured clients' - people with disabilities who receive 100% of their supports within an NDIS plan from the one provider. Multiple reports and inquiries tell us that people with disabilities who only have one provider in their life are at much higher risk of abuse and neglect. History also tells us that organisational risk increases with the proportion of control over an individual's plan. Therefore all parties benefit from Support Coordination that increases the number of external connections and supports experienced by an NDIS participant.

A particular challenge within the disability sector is the networks of relationships that exist or develop between board members, staff and clients of the organisation. This becomes more complex when the clients are people with disability - particularly people with intellectual disability.

Client actions

Client eligibility

Eligibility for Support Coordination service delivery
Decide on your organisation's approach / view regarding existing clients using your new NDIS support coordination service. Is it appropriate for an existing client to become a Support Coordination client? Is it appropriate for a new client to be a past advocacy or services client? Is it appropriate to stop them from using a service, e.g. their right to choose? Does this decision change if you provide a service in a thin market (e.g. remote area)?

ⓘ TIP: If your organisation chooses the best practice option of not allowing an NDIS participant to concurrently be a service and Support Coordination client, then it will be necessary to set up a procedure to identify and handle inadvertent signing up of a new client in both services. This may occur when different staff members who are observing good process (keeping confidential and private records) sign up the same client for advocacy & Support Coordination or individual services & Support Coordination.

Comms

Have a clear conversation with clients who have used your existing service if they encounter a familiar staff member who is now doing Support Coordination work. Staff responses need to be clear that they no longer have access to or knowledge of the other side of the organisation.

Part C: Clients, continued

Client actions

Risk management

Maintain quality records
Collect evidence and keep records that show that the Support Coordination client was referred to other organisations for supports provided in their plan.

Collect evidence and keep records that show that the Support Coordination was referred to independent Support Coordination providers. (This is especially relevant now with year 1 plans coming up for review.)

Collect evidence and keep records that show that the Support Coordination client was referred to other organisations for independent advocacy regarding any problems with the provider of the Support Coordination.
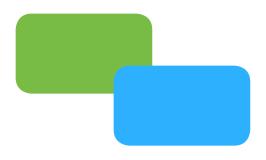
In the instance that a client states they do not wish to be referred to other services, collect evidence that all other options have been explored with the client and that their choice is free from influence and they have had full choice and control in their decision making process.

Comms

Have a clear conversation with each client that they do not have to stay with the same service provider that they have used previously, and that it is okay to get different supports from different providers, including mainstream.

Regularly maintain contact with the client to ensure they are happy with supports provided by either the new service or existing service.

Client actions

Data management

Maintain separate records
Set-up and maintain separate records for NDIS participant work and other support services or advocacy work.

ℹ️ TIP: Use the same database, but keep records in separate, password-protected sections.

Maintain a separate enquiry and intake system
Separate the enquiry and intake system.

ℹ️ TIP: If you have administrative support, they can answer all queries, but use separate systems and forms.

ℹ️ TIP: Set up a separate phone number for Support Coordination enquiries.

Marketing

Physically separate marketing materials
Separate marketing materials and website, or separate section on existing website.

Communications 📡

Clearly advise all clients that their files / database are separate to their advocacy or individual service file. Tell them that will mean that the Support Coordinator does not know of their other information, as that is kept confidential to their advocacy file.

Administrative support staff responses need to be clear and appropriate during enquiries and intake.

Clearly advise all clients of the separation of your services.