



**NDIS Quality  
and Safeguards  
Commission**

# The NDIS Code of Conduct



Guidance for NDIS Providers  
March 2019

# Contents

<b>Introduction</b>	<b>3</b>
NDIS providers covered by the Code	4
Guidance for workers	4
<b>Part 1: The NDIS Code of Conduct</b>	<b>5</b>
<b>Part 2: Elements of the NDIS Code of Conduct</b>	<b>5</b>
<b>1 Act with respect for individual rights to freedom of expression, self-determination and decision-making in accordance with applicable laws and conventions</b>	<b>6</b>
Deliver services in a way that maintains standards and principles underpinning the NDIS	7
Support people with disability to make decisions	7
Communicate in a form, language and manner that enables people with disability to understand the information and make known their will and preferences	9
Take into account the expressed values and beliefs of people with disability, including those relating to culture, faith, ethnicity, gender, gender identity, sexuality and age, as well as disability	10
<b>2 Respect the privacy of people with disability</b>	<b>12</b>
Comply with Commonwealth and State and Territory privacy laws	12
Deliver services in a dignified way that maintains personal privacy.	13
<b>3 Provide supports and services in a safe and competent manner, with care and skill</b>	<b>14</b>
Ensure workers have the necessary training, competence and qualifications for the supports and services delivered	14
Provide services consistent with relevant professional codes	16
Meet relevant work health and safety requirements	17
Maintain appropriate and accurate records and follow security procedures	18
Hold appropriate insurance	18
<b>4. Act with integrity, honesty and transparency</b>	<b>19</b>
Recommend and provide supports and services appropriate to the needs of the participant	19
Maintain integrity by declaring and avoiding any real or perceived conflicts of interest	20
Avoid engaging in, participating in or promoting sharp practices	21
<b>5. Promptly take steps to raise and act on concerns about matters that may impact the quality and safety of supports and services provided to people with disability</b>	<b>23</b>
Foster an environment where people with disability, their families, carers, advocates and workers feel safe to make a complaint or report issues	23
Operate effective complaints processes	24
Operate effective incident management system	24
Undertake investigative and disciplinary action and comply with external investigations	25
<b>6. Take all reasonable steps to prevent and respond to all forms of violence against, and exploitation, neglect and abuse of, people with disability</b>	<b>25</b>
Commit to eliminating any form of violence, abuse, neglect and exploitation.	26

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Identify and respond to incidents of violence, abuse, neglect and exploitation, and report these to the NDIS Commission and, as appropriate, to other relevant authorities	27
Reduce and eliminate restrictive practices	28
<b>7. Take all reasonable steps to prevent and respond to sexual misconduct</b>	<b>29</b>
Have in place clear guidance for staff behaviour	29
Operate effective processes for dealing with sexual misconduct	31
<b>Part 3: The NDIS Code of Conduct in Practice</b>	<b>31</b>
Breaches of the Code	31
Consequences of breaching the Code	32
Relationship with other Professional Codes	33
Review of the Guidance	33
<b>Glossary</b>	<b>33</b>



## Introduction

1. The National Disability Insurance Scheme (NDIS) Code of Conduct (the Code) is set out in the *National Disability Insurance Scheme (Code of Conduct) Rules 2018*, which are NDIS rules made under the *National Disability Insurance Scheme Act 2013* (NDIS Act).
2. The Code is designed to work alongside other elements of the quality and safeguarding arrangements to promote a safe and skilled workforce within the NDIS. Providing quality supports for people with disability involves not only the right capabilities but also the right attitudes. NDIS providers and the people they engage need to be familiar with the principles underpinning the NDIS to respect the rights of people with disability, prevent harm and respond appropriately if harm occurs.
3. The Code's Guidance for NDIS providers (the Guidance) provides guidance on factors that may be relevant when considering if an NDIS provider is complying with the Code. The Code consists of seven elements that apply to all providers and persons employed or otherwise engaged by them to deliver supports and services in the NDIS.
4. This Guidance provides information and examples about what the Code means in practice. It is not intended to cover all circumstances that may arise or amount to a breach of the Code.
5. NDIS providers should consider all conduct associated with the delivery of supports and services under the NDIS and whether that conduct is compliant with the Code. This Guidance comprises the following parts:
  - a. **Part 1** outlines the Code and its role under the NDIS Act and in the NDIS Quality and Safeguarding Framework<sup>1</sup>.
  - b. **Part 2** outlines examples of factors that may be taken into consideration when assessing whether conduct of NDIS providers complies with the Code, including providing more detail and some scenarios to assist NDIS providers to understand how the Code may apply in these particular scenarios<sup>2</sup>.

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<sup>1</sup>

[https://www.dss.gov.au/sites/default/files/documents/04\\_2017/ndis\\_quality\\_and\\_safeguarding\\_framework\\_final.pdf](https://www.dss.gov.au/sites/default/files/documents/04_2017/ndis_quality_and_safeguarding_framework_final.pdf)

<sup>2</sup> The scenarios are fictional and any similarity to an individual person with disability, worker or provider is purely coincidental.

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- c. **Part 3** outlines actions that can be taken in relation to breaches of the Code and the Code's relationship with other codes.
6. The NDIS Quality and Safeguards Commission (the NDIS Commission) will take a proportionate approach, taking into account relevant factors, including the size of an organisation, the type of supports and services delivered, the environment in which these are delivered, participant support needs, other legislative requirements that apply, and other relevant circumstances in assessing compliance with the Code.

### **NDIS providers covered by the Code**

7. The Code and guidance apply to an NDIS provider (as defined in section 9 of the NDIS Act) or person employed or otherwise engaged by the provider and who is supporting a person who is participating in the NDIS and related services. NDIS providers for the purposes of the Code include:
- a. registered NDIS providers
  - b. unregistered NDIS providers
  - c. providers delivering Commonwealth Continuity of Support (CoS) Programme services (prescribed by the rules to be NDIS providers)
  - d. providers receiving funding under the arrangements set out in Chapter 2 under the NDIS Act for example, NDIS community partners such as Local Area Coordinators
  - e. Any other person or entity prescribed by the National Disability Insurance Scheme Rules to be an NDIS provider.

### **Guidance for workers**

8. In this guidance, a person employed or otherwise engaged by a provider is referred to as the provider's 'worker'. NDIS providers are expected to assist and support workers in meeting their own obligations under the Code. To assist workers in meeting their obligations, there is also separate guidance called the NDIS Code of Conduct - Guidance for Workers. That guidance explains some factors that workers might consider in ensuring their conduct is compliant with the Code. NDIS providers are expected to take all reasonable steps to assist and support workers in meeting their obligations under the Code.

## Part 1: The NDIS Code of Conduct

9. The Code is an important part of the NDIS Quality and Safeguarding Framework. It promotes the health, safety and wellbeing of persons with disability, by setting out acceptable, appropriate and ethical conduct for NDIS providers and workers delivering supports or services in the NDIS sector. The obligations in the Code are fundamental to the rights of people with disability set out in the *UN Convention on the Rights of Persons with Disabilities*. They are also broad to account for the diversity of people with disability and their support requirements.

### THE NDIS CODE OF CONDUCT

The NDIS Code of Conduct will require workers and providers delivering NDIS supports and services to do the following in providing those supports and services:

1. Act with respect for individual rights to freedom of expression, self-determination and decision-making in accordance with applicable laws and conventions.
2. Respect the privacy of people with disability.
3. Provide supports and services in a safe and competent manner with care and skill.
4. Act with integrity, honesty and transparency.
5. Promptly take steps to raise and act on concerns about matters that may impact the quality and safety of supports and services provided to people with disability.
6. Take all reasonable steps to prevent and respond to all forms of violence against, and exploitation, neglect and abuse of, people with disability.
7. Take all reasonable steps to prevent and respond to sexual misconduct.

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## Part 2: Elements of the NDIS Code of Conduct

10. Compliance with the Code requires NDIS providers to consider how they conduct themselves when delivering supports and services under the NDIS.

This section:

- a. Explains why each element of the Code is important and outlines examples of conduct or circumstances that may be taken into consideration when assessing whether an NDIS provider has complied with the Code.
- b. Contains scenarios that are examples of situations that could arise during provision of services or supports in the NDIS. These scenarios consider how the Code might be applied, noting that the scenarios cannot cover all situations. The scenarios are fictional and any similarity to an individual person with disability, worker or provider is purely coincidental.

11. NDIS providers should use their existing employee engagement, human resource and governance arrangements to ensure their compliance with the Code. This will include considering whether operational policies and procedures, and training activities reflect the Code. Workers are expected to use these policies, procedures and training, in addition to their own professional experience and judgment, to comply with the Code.

### **1 Act with respect for individual rights to freedom of expression, self-determination and decision-making in accordance with applicable laws and conventions**

12. People with disability have the right to make their own decisions, to be free to live the life they choose, and to have the same rights and freedoms as any other member of the community.

13. A complex range of intersecting factors including individual and social values, contexts, cultures, policy responses, and histories, shape how individuals understand disability. In the past, a focus on a person's incapacity or the 'tragedy' of their disability portrayed them as dependent, helpless, and in need of care and protection. This often resulted in their isolation, segregation and exclusion from the wider community. It is now understood that people with disability have full and equal human rights.

14. These rights are set out in the *United Nations Convention on the Rights of Persons with Disability*. They include the right to freedom of expression and the right to make decisions about, and exercise control over, their own lives. Choice and control is a core principle of the NDIS. People with disability have the right to choice and control about who supports them and how their supports and services are delivered.

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15. NDIS providers have obligations under the Code to respect these rights. Consistent with this element of the Code, factors that may be relevant when assessing if conduct complies with this element of the Code include (but are not limited to) a provider's actions to:

**Deliver services in a way that maintains standards and principles underpinning the NDIS**

16. The NDIS has been designed to further Australia's commitment to the *United Nations Convention on the Rights of Persons with Disabilities*, as well as the other international human rights treaties named in the NDIS Act. NDIS providers and workers have an obligation to respect the rights of people with disability and deliver services in a way that maintains the principles underpinning the NDIS.
17. Registered NDIS providers (and applicants for registration as an NDIS provider) are also obliged to comply with the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*, which have been developed in line with the *National Standards for Disability Services* and the *National Standards for Mental Health Services*.
18. By delivering supports and services in accordance with the NDIS rules made under the NDIS Act, registered NDIS providers will maintain the standards and principles and upholding the conventions that underpin the NDIS.

**Support people with disability to make decisions**

19. People with disability have the right to make choices and should always be assumed to have the capacity to make those choices. This is central to their individual rights to freedom of expression and self-determination. Adults with disability should receive the support they need to make any decision. Adults with disability have the right to choose who does and who does not help them to make any decisions. Their partner, family, friends, carers, advocates, support workers and others play an important role in any person's life. However, not all people with disability need or want those important people to support them in decision-making, or to make decisions for them. NDIS providers should encourage workers to engage directly with people on any choices or decisions that affect them. They should consult them about who, if anyone, they want to involve in decisions and discussions about their services and supports, or other aspects of their lives.
20. For children and young people, families have a key role. In the early years, workers should work closely with families to understand their child's strengths, interests and needs, and support them in their caring role. As a child grows up, they should be more involved in decision-making. Workers should involve children and young people in decisions that affect them in ways appropriate to their age and stage of development. In the case of very young children, this will involve ensuring staff pay attention to the signs children give that

communicate their feelings, ideas and wishes including non-verbal indications.

21. When the person with disability has a legal guardian or nominee, NDIS providers need to be clear on the decisions in which they need to involve the legal guardian. However, they still must ensure their workers listen to and support the person to make their own decisions. One option for NDIS providers and workers to do this is to use supported decision-making. Supported decision-making is a model for supporting people with disability, often cognitive in nature, to make significant decisions and exercise their legal capacity. The person with disability weighs options and makes a decision with the support of an individual or a network of people who they choose to involve because they trust them to provide reliable, unbiased support for decision-making.

### **Scenario**

Lee has just started a hospitality course at TAFE. He enjoys spending time with friends, particularly to listen to music. Lee has an intellectual disability and autism and has difficulty with the public transport system, so is accessing support from Out and About (a service provider) to build his skills to travel to TAFE and catch up with friends by himself.

His support workers ask his parents about his schedule instead of him and if Lee says he wants to change his plans, they ask his parents if it's okay instead of talking to Lee. Lee is unhappy that his support workers don't really listen to him and don't allow him to make his own choices about his schedule. Lee also feels that when they're out, his support workers talk to him like a child. One day on the way to TAFE, Lee sees a friend and stops to chat. His support worker interrupts the conversation and says it is time to go or he'll be late for TAFE. This really embarrasses Lee.

Lee talks to his friends about what he can do. They encourage him to tell the manager of Out and About how he feels. Lee also talks to his parents, who want to support Lee to become more independent and offer to help him to speak to the support workers.

With this support, Lee contacts the manager of Out and About. The manager apologises to Lee and says that his support workers should be listening to him and respecting his decisions about his support. They agree that Lee can speak to his support workers at a meeting. Lee works out what he wants to say with his friends and his parents and practices how he will say it. At the meeting, the support workers listen and apologise to Lee.

The manager asks Lee if they can share what he said with any new support worker in a one-page document, so they know what matters to him. Lee agrees and helps them make the document. Lee's support workers all read the document and include Lee in decision-making around his schedule.

**Communicate in a form, language and manner that enables people with disability to understand the information and make known their will and preferences**

22. At the heart of choice and control is a person's right to be an informed consumer. People with disability have a right to be informed about all aspects of the delivery of services to them so they can exercise their right of choice and control about who supports them and how supports and services are delivered, and if they need to change.
23. People with a disability have a right to question, seek additional information on, or refuse to receive any part of a service.
24. In practice, this means NDIS providers should:
- a. take reasonable steps to educate and support their workers to communicate in a form, language and manner that is accessible and appropriate for the individual and to use a range of communication tools to communicate with the people they support, using assistive technology and alternative forms of communication, such as email, text messages or symbols.
  - b. where the person speaks a language other than English or uses Auslan, match the person with a worker who speaks their language or uses Auslan (where possible), or provide supports using qualified interpreters, where these supports are covered by their NDIS plan.
  - c. confirm that the person with disability – and their families, carers or advocates (where relevant) – understands what has been explained, and is aware of potential benefits and risks associated with any part of a proposed plan for the delivery of supports and services.
  - d. respond to the will, preferences and concerns of the person with disability in relation to their supports and services – addressing requests or complaints where necessary.
  - e. where possible, provide consistent workers, so that they can build a good understanding of individual communication preferences and needs, particularly where an individual has complex communication needs.

**Scenario**

Kate has recently started accessing support from HomeCarePlus for tasks around the home and to go grocery shopping. Kate has a physical disability and is a non-verbal communicator, so when she first contacted HomeCarePlus she emailed them a list of the tasks she needed done each week and noted that she would communicate any specific tasks each week by leaving an additional list for staff.

Kate finds that different staff come to her home each week and not all of them know to read her list, so some tasks do not get done. She also finds that the staff don't know how to communicate with her when they go grocery shopping and have

ignored her when she is using gestures to indicate that they are taking the wrong product from the shelf.

Kate emails the manager at HomeCarePlus about her concerns. The manager apologises and asks what ways the staff could communicate with her when they are out grocery shopping. They work out that Kate could use an iPad to type short messages. Kate says it would also help if the same staff could provide her support, so they could get to know her and the gestures she uses to communicate. The manager agrees that they will do this, whenever possible (given sick leave and holidays). Kate finds that things are much better as two regular staff – Phillip and Joy – get to know her and how she communicates.

The manager also reviews their induction process to make sure it clearly includes the way staff must use appropriate means of communication, so the person with disability can communicate their preferences. The manager realises that the induction did not have enough information about non-verbal communication, so HomeCarePlus revises its induction process. It also make sure that staff are informed about people's communication needs and preferences.

**Take into account the expressed values and beliefs of people with disability, including those relating to culture, faith, ethnicity, gender, gender identity, sexuality and age, as well as disability**

25. People with disability come from a range of backgrounds and communities and have varying lifestyles and beliefs. People with disability may be Aboriginal and Torres Strait Islander; come from culturally and linguistically diverse communities; have a faith, or not; be married, divorced, partnered, or single; be gay, lesbian, bisexual, transgender, queer, intersex or asexual; or be parents, guardians and carers. People with disability may or may not be in paid work, or they could be engaged in education and training.
26. Each of these contexts can affect how, when, why, and in what form a person with disability accesses NDIS supports and services. For example, cultural beliefs can shape preferences around who delivers supports and how supports are delivered. Some participants may also feel more comfortable with a worker of a particular gender for supports such as personal care. The Commonwealth *Sex Discrimination Act 1984* sets out rights in relation to gender.
27. NDIS providers must acknowledge and consider individual contexts, values and histories, while also complying with obligations under anti-discrimination and work health and safety laws.
28. In practice, this means NDIS providers should:
  - a. foster a culture of inclusiveness, in which people with disability feel as comfortable and safe as possible in their day-to-day interactions with workers
  - b. encourage people with disability to communicate their preferences for how their supports are delivered

- c. discuss with people with disability their preferences for their support worker
- d. have knowledge of, respect for, and sensitivity towards, the cultural needs of the community served, including Aboriginal and Torres Strait Islander peoples and those from culturally and linguistically diverse backgrounds
- e. where appropriate, provide cultural awareness training to workers to build an understanding of diverse needs and preferences
- f. offer people with disability culturally-sensitive activities
- g. respond to needs related to gender.

### **Scenario**

When Al approached Regional Networks about their providing him with daily personal care support, he said he needed male support workers for this, consistent with his religious beliefs. Regional Networks agreed they could meet this requirement. However, they had difficulty recruiting male support workers, so have rostered mostly female support workers to provide Al's personal care.

Al does not feel comfortable receiving personal care from these female support workers. Instead, his family provides his personal care supports and asks the rostered support workers to assist with household tasks. The family does not complain to the provider because they are not confident in their spoken English and they have had previous negative experience with formal complaints processes, so are worried about losing the support around the home if they complain.

This continues for some months before Aisha is rostered on to support Al. When she is asked to help with household tasks instead of providing Al's personal care, she asks Al and his family about their concerns. Aisha speaks Arabic, so she is able to speak directly to Al and his family and understand their concerns. When they explain that Al is uncomfortable with a female support worker providing his care, Aisha encourages them to make a complaint to Regional Networks with her support.

Aisha helps them by writing down their complaint. The manager of Regional Networks organises a meeting with Al to discuss the situation and Aisha interprets at the meeting. The manager apologises to Al and his family. They indicate that they have worked out a way to provide a male support worker for four days per week if they change the timing of the support. They will also begin more actively searching for male support workers.

Al and his family accept this arrangement for four days per week but contact another provider to see if they have male support workers to provide care.

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## 2 Respect the privacy of people with disability

29. Privacy is a human right. Rights related to privacy are set out in the Commonwealth *Privacy Act 1988* and State and Territory privacy laws. People with disability have a right to privacy including in relation to the collection, use and disclosure of information concerning them and the services they receive. Consistent with this element of the Code, factors that may be relevant when assessing if conduct complies with this element of the Code include (but are not limited to) a provider's actions to:

### Comply with Commonwealth and State and Territory privacy laws

30. Individuals have the right not to have personal information disclosed to others without their informed consent. Personal information is information or an opinion about a person whose identity can be determined from that information or opinion. Examples of personal information include a person's name, address, date of birth and details about their health or disability.

31. NDIS providers should respect and protect the privacy of everyone that receives supports and services from them, or provides those supports and services.

32. NDIS providers should also ensure that they manage health information about any people they support or about their workers in accordance with privacy laws related to the management of health information.

33. NDIS providers should have policy and procedures to ensure that they manage information about people in accordance with privacy laws, and ensure their workers understand these policies and procedures. They should also clearly explain to people with disability and workers:

- a. the kinds of personal information about them that will be collected and held, including recorded /audio and visual material
- b. why this information is held
- c. who will have access to this information
- d. how they will ensure the information is secure
- e. how this information will be used
- f. how to access and amend information held about them
- g. how to make a complaint if they feel that the NDIS provider has breached their privacy obligations.

34. There are certain circumstances where NDIS providers should disclose information about a person without consent from the person involved. This might include mandatory reporting requirements on child protection matters, and obligations to report incidences of violence, exploitation, neglect and abuse, and sexual misconduct to the NDIS Commission and police.

## Scenario

Essentials Health Services offers holistic mental health services in a regional area. Some of their clients are NDIS participants and some receive services funded through the health system.

As a new initiative, the provider distributes a newsletter to keep clients better informed about services and events in their local area. The first newsletter they send out goes to all current and past clients. However, the email is sent with all email addresses visible in the 'to' field of the group email rather than hidden in the 'bcc' field. Many clients are upset as they're identifiable to other clients by their email addresses. A number of clients complain to the provider and the NDIS Commission and some people contact the Privacy Commissioner.

Essentials Health Services immediately emails an apology for the breach of privacy to all clients, this time ensuring the email addresses are hidden. They strengthen business processes around managing access to and use of client details. They also work with individuals who have been distressed by the privacy breach to ensure they receive the support they need.

The NDIS Commission issues a notice of non-compliance with the Code against the provider and the Privacy Commissioner issues a warning. The NDIS Commission monitors the steps the provider takes to improve practices around adhering to privacy laws and reports back to the Privacy Commissioner.

### **Deliver services in a dignified way that maintains personal privacy.**

35. Privacy extends beyond a careful approach to handling personal information to the way in which services are delivered to people with disability. NDIS providers should be aware of the privacy needs and preferences of people with disability and deliver services in a way that maintains personal dignity. This includes having in place policies, procedures, resources, worker training and service delivery models to support workers in:
- a. maintaining the confidentiality of the person's personal information
  - b. explaining and requesting permission to perform procedures that involve physical touch or the invasion of personal space
  - c. the timely provision of services to prevent embarrassment and discomfort such as toilet breaks or the changing of incontinence pads
  - d. considering everyday personal privacy needs such as being able to shower and dress in a private and comfortable space.

## Scenario

Glen has recently moved into a shared accommodation and receives support from David with daily activities, including showering and taking medication. The bathroom is very small, with nowhere to store Glen's clothes. When David goes to retrieve Glen's clothes, he leaves the bathroom door open because he is

concerned Glen may have a fall and he wouldn't hear him. However, this means anyone passing by in the corridor can see Glen naked. This leaves Glen feeling exposed and disempowered.

When Glen's brother Nigel visits, Nigel notices a distinct change in Glen's mood. He appears withdrawn and unhappy. Nigel asks Glen whether something has happened. Glen tells him he dreads showering when David is working.

Nigel expresses Glen's distress to David's manager, who meets with Glen to discuss the changes he would require to feel safe and comfortable again. Glen explains that his personal privacy is being compromised by having the door left open. After a discussion with Glen and Nigel, the provider agrees that David's conduct was unacceptable and undertakes to give him a formal warning. The provider also agrees to install clothes hooks in the bathroom and to ensure David understands the privacy and dignity aspects of the situation and how this cannot happen again.

David apologises to Glen. David's manager checks in with Glen regularly to ensure things are now ok; he also arranges to check showering routines in other homes to ensure that this is not happening elsewhere.

### **3 Provide supports and services in a safe and competent manner, with care and skill**

36. Obligations under the NDIS Act are intended to ensure safe and quality service delivery to support positive outcomes for people with disability.
37. NDIS providers should ensure they assign appropriate workers, who have the required competence, to deliver the supports and services to meet the needs of people with disability. They should also ensure adequate policies and operational procedures, resourcing, and appropriate supervision for workers are in place to ensure supports and services are delivered in a safe and competent manner. Providers are also required to hold appropriate insurance.
38. Consistent with this element of the Code, factors that may be relevant when assessing if conduct complies with this element of the Code include (but are not limited to) provider's actions to:

#### **Ensure workers have the necessary training, competence and qualifications for the supports and services delivered**

39. Adequate worker expertise and competence is central to safe and skilful service delivery. NDIS providers have a responsibility for ensuring workers have the necessary training, competence and qualifications to deliver supports and services. In practice, this means:
- a. supporting workers to adopt the values underpinning the NDIS, including choice and control and person-centred approaches

- b. having recruitment and selection processes (including referee checks) that identify skills, experience and qualifications required by staff for the role
- c. providing relevant training
- d. providing appropriate supervision
- e. not directing workers to deliver supports and services for which they do not have the necessary training, competence and qualifications.

### **Scenario**

Jordan has a psychosocial and a physical disability. He really dislikes showering and can become aggressive with the support workers who help him to shower. This is why his behaviour support plan requires that two workers support him to shower.

However, one day, one of the support workers calls in sick. Frank – the other worker who is on shift – is unaware of the requirement in Jordan’s behaviour support plan requiring two support workers to shower him, and decides that he will go ahead and help Jordan to shower rather than wait for a second support worker to arrive.

Jordan struggles with Frank when the shower is turned on and he ends up falling over. After checking that Jordan is okay, and helping him to dress, Frank calls his supervisor.

The supervisor establishes that Frank was unaware of the requirements outlined in Jordan’s behaviour support plan and then advises that if a situation like this arises again Frank should contact him. The supervisor reaches out to Jordan to check if he wants to take further action. He also discusses the situation with their manager, and the organisation reviews how it can better provide training to workers in order to facilitate effective awareness and implementation of client behaviour support plans. At the next review of Jordan’s behaviour support plan, further consideration is also given to alternative practices such as baths, wash cloths and dry bathing, in order to provide Jordan with alternative options for the days when he doesn’t wish to shower. These options are incorporated into his plan.

### **Scenario**

Tommy is a tall and stocky 28-year-old man with an intellectual disability who attends a day program centre. Tommy experiences emotional regulation problems, which most often present in the form of anxious and angry agitation. After a minor accident on the centre’s minibus six months ago during an excursion, Tommy developed more problematic behaviours. He becomes distressed when he is required to travel on the minibus with his peers and resists getting on and off the bus, delaying arrival to and departure from excursions. This causes distress to Tommy and his peers.

Soon after the accident, the centre had one of its support workers, Amelia, with a health and welfare degree and a Certificate IV in disability services, work with Tommy to address the problem. Some time ago, Amelia had read about the benefits of catharsis therapy, but was unaware that the practice literature does not

support this therapy. She advised the centre that Tommy should be encouraged to ventilate his fear and irritability to exhaust it before he boards the bus on the way to and from excursions and that he be enticed to leave the bus quietly with Coca-Cola rewards. The adoption of this intervention has had only intermittent, limited success and it has become increasingly evident recently that Tommy's behaviour is in some of these situations actually worse and may in fact be deteriorating overall.

Noticing this situation, Amelia's supervisor consults with Tommy about what is happening. With Tommy's consent, they conduct an investigation into why Amelia implemented therapy beyond her area of expertise and without conducting further research or consulting with management. The Centre also involved his parents and NDIS planner, with Tommy's consent, to request a specialist behaviour support practitioner be funded as part of an NDIS behaviour support plan. They also provide Amelia with updated training.

The investigation finds Amelia acted without appropriate duty of care and she is issued a formal warning. At the same time, procedures are established to ensure therapeutic interventions are endorsed by an appropriately qualified practitioner from within the organisation.

Tommy's newly funded specialised behaviour support practitioner works closely with Tommy, undertaking a thorough functional analysis. She establishes that Tommy's difficulties are multifaceted and affected by who is driving the bus; which support workers attend; the nature of the excursion; the bus type used (the Centre has three of different sizes, configurations and colours, each of which are important to Tommy); which side of the bus he sits on and his proximity to the exit door; the time of day and day of the week of the excursion; whether or not Tommy's friend, Rod, is on the excursion; Tommy's previously undetected claustrophobia; and Tommy's sense of being crowded on the bus.

The behaviour support plan that the specialised behaviour support practitioner develops in consultation with Tommy, involves an ongoing program of exposure to different buses and trials on board the bus with varying levels of passengers. She also includes a seating and entry plan that allows him to embark or disembark first and she uses contingencies to shape his behaviour and help him to regulate his emotions when needed. The behaviour support practitioner works with Amelia to understand and implement the strategies in the plan. It takes some time, but Tommy's behaviour settles with the new strategies and he expresses that he is more comfortable travelling on the excursions.

### **Provide services consistent with relevant professional codes**

40. Workers who are members of a professional association or other relevant body with existing professional codes of conduct (for example nurses, psychologists and health care workers) are required to deliver services consistent with their relevant professional code as well as with the NDIS Code of Conduct and any other applicable regulatory framework. The NDIS Code of Conduct has been developed with reference to other relevant professional codes to ensure a consistency of practice and minimal additional regulatory

burden. The NDIS Commission may work with professional regulatory bodies in investigating alleged breaches where a worker's conduct may be contrary to both the NDIS and their professional codes of conduct.

41. NDIS providers should ensure their workers are delivering services consistent with their professional Codes of Conduct and raise any queries relating to those professional Codes with the appropriate regulator and, where any breach of a professional Code may also amount to a breach of this Code, with the NDIS Commission.

### **Meet relevant work health and safety requirements**

42. Work health and safety laws in each State and Territory provide a framework for protecting the health, safety and welfare of workers and other people who might be affected by work activities, including people with disability, their family and carers.
43. NDIS providers should ensure the health and safety of their workers and other persons at the workplace.
44. NDIS providers should meet work health and safety requirements set out in the relevant acts and regulations in their State or Territory. Further information about specific work health and safety requirements in each jurisdiction can be found at <https://www.business.gov.au/info/run/workplace-health-and-safety/whs-oh-and-s-acts-regulations-and-codes-of-practice>.

#### **Scenario**

Sabina is an NDIS participant who uses a wheelchair. She purchases support from Support Net to help her get more involved in the community and do tasks like shopping. One day Uta, a support worker, collects Sabina in a Support Net van to take her to choir practice.

While Sabina's wheelchair is being put into the van, the wheelchair lift gives way and the wheelchair falls and tips sideways, with Sabina seated in it. Uta is unable to lift the wheelchair upright and calls an ambulance for assistance as Sabina has sustained some minor grazing and a suspected concussion. Support Net notifies the NDIS Commission of the reportable incident. Sabina is cleared of any serious physical injury but is very concerned about her future safety. Sabina cancels the support from Support Net and tells her Local Area Coordinator (LAC) that she won't be able to keep attending activities that require transport.

When making further inquiries into the reportable incident, the NDIS Commission finds that the wheelchair lifts fitted to Support Net vehicles are not suitable for Sabina's wheelchair. They also find that, at the time of the incident, Uta had not received any training on how to use this type of wheelchair lift, and had not used in-built safety features, which could have prevented the incident. Additionally, Uta had not received any work safety training, including how to deal with an emergency.

The NDIS Commission also finds that Support Net has a number of other clients who use wheelchairs that are beyond the recommended weight limit of the wheelchair lifts fitted to their vehicles. Further, they frequently send out new support workers unsupervised to work with clients, before they have received adequate training. The NDIS Commission finds the provider is putting clients and workers at risk by not providing adequate equipment, training or supervision for their workers. To maintain their NDIS registration, Support Net is directed to upgrade the wheelchair lifts fitted to their fleet of vehicles and provide all workers delivering services with work safety training in the use of lifts. No adverse findings are made against individual workers.

### **Maintain appropriate and accurate records and follow security procedures**

45. Part of providing supports and services in a safe and competent manner is maintaining accurate records to ensure continuity of support between workers and inform future service delivery.
46. NDIS providers should maintain appropriate records and follow appropriate security procedures for record management. This includes:
- a. showing respect for people with disability by avoiding the inclusion of demeaning or derogatory language or remarks in records
  - b. keeping accurate, up-to-date and legible records that report relevant details of a participant's service history, medication and support needs
  - c. detailing any allegations and incidents that may have occurred, including alleged breaches of the Code, and how they were managed
  - d. recording feedback, complaints, incidents and allegations
  - e. recording any other issues that may have arisen while providing services
  - f. maintaining sufficient detail to facilitate continuity of participant supports and inform future service delivery
  - g. retaining participant records for a minimum of seven years after service provision.
47. Records should be created at the time of an event or action or as soon as possible afterwards.

### **Hold appropriate insurance**

48. NDIS providers should have professional liability insurance that is appropriate to the size of the organisation and the supports and services it provides, as well as the environment in which they provide services. NDIS providers should seek professional advice as to the type and amount of insurance that is necessary.

## 4. Act with integrity, honesty and transparency

49. Integrity, honesty and transparency are crucial to developing the trust-based relationships between people with disability, NDIS providers and workers that are required for high-quality service delivery.
50. For clients to be informed consumers they need accurate information about their service providers, the services they receive, and any real or perceived conflicts of interest of the people working with them; and they should be able to make decisions in their best interest, free from inducements or pressure.
51. Consistent with this element of the Code, factors that may be relevant when assessing if conduct complies with this element of the Code include (but are not limited to) a provider's actions to:

### **Recommend and provide supports and services appropriate to the needs of the participant**

52. People with disability have a right to accurate, accessible and timely information about the cost and efficacy of supports and services. This information may include: a clear quote for a service or support; easily understood breakdown of costs for different service options; information supporting the effectiveness of supports; the experience of other people with the service or support, and the risks and benefits of service options.
53. NDIS providers have a responsibility to only recommend and provide supports and services that are appropriate to the needs of the participant.
54. Under this obligation, NDIS providers should:
- supply truthful information about the capacity, qualifications, training and professional affiliations of their workforce including if a worker has been excluded from an NDIS worker screening check for a role that involves more than incidental contact with people with disability
  - not make false claims about the efficacy of any supports, services or products
  - give clear advice about the full costs of the service or support and what the cost covers
  - not make claims about the efficacy of treatments or supports that cannot be substantiated independently.

### **Scenario**

Kumi's daughter, Akiko, has cerebral palsy and has funds in her NDIS plan to receive occupational therapy supports. They visit OT Supports to discuss therapy options. OT Supports offers a range of occupational therapy supports such as home aids and modifications and fine motor skill development – all of which will be

beneficial to Akiko. However, OT Supports also suggest that Akiko would potentially benefit from working with their in-house psychologists and counsellors to address her anxiety that she has mentioned is an issue. The provider gives Kumi and Akiko some brochures about these services to consider.

After considering the information provided to them during their visit, Akiko and Kumi decide that they would like to engage OT Supports to provide occupational therapy supports, including counselling. However, upon contacting OT Supports again, the provider mentions that there is a delay in them being able to provide the counselling due to a 'red tape issue'.

Kumi tells Akiko's Local Area Coordinator about this, who in turn makes enquiries to the NDIS Commission. The NDIS Commission investigates further and finds that OT Supports are not registered to provide psychological/ counselling services, and after making more enquiries they find OT Supports had been intending to expand into this area but had not yet sought to alter their registration status to allow for these services to be provided. The NDIS Commission instructs OT Supports to stop advertising these services until they are registered to provide them.

The NDIS Commission informs Kumi of this process and refers her back to her Local Area Coordinator to seek a new provider of counselling services for Akiko.

### **Maintain integrity by declaring and avoiding any real or perceived conflicts of interest**

55. NDIS providers should disclose to the people with disability they support or who are seeking support, any conflicts of interest – potential or real – that may impact on how they deliver supports and services to that person. This would include conflicts of a financial, business or personal nature, including any financial and/or corporate interest or relationship the NDIS provider may have with other entities, including businesses and organisations, or of a personal nature, including but not limited to cultural, religious or social relationships.

56. An NDIS provider should:

- a. not give, ask for, or accept any inducement or gift that impacts or may impact on the way it provides supports or services under the NDIS, including any referral arrangements with other providers
- b. not allow any financial or commercial interest in an organisation or company providing products, services or supports to people with disability to adversely affect the way in which the NDIS provider engages with people with disability
- c. engage in recruitment practices, such as probity checks and reference checks, to uncover any potential or real conflicts of interest of people that it is considering employing.

57. Additionally, NDIS providers should ensure their workers:

- a. are aware of their obligation to declare a conflict of interest and inform people with disability when they have an interest that may

impact supports and services provided to a person with disability (i.e. other than simply being paid for providing the services or supports);

- b. do not give inducements or gifts, ask for any inducement or gift, or accept any inducement or gift of more than minor value, from people with disability, their families, carers or advocates.

58. NDIS providers should also have internal policies and guidance for workers to follow for declaring and avoiding conflicts of interest and accepting and giving gifts.

### Scenario

Alex has an intellectual disability and has recently engaged Sumetra as her support coordinator. Alex and Sumetra develop a close yet professional relationship in which Alex often asks Sumetra for advice.

After a while, Alex tells Sumetra that she is really conscious about getting healthy and would like to join an exercise class to improve her fitness and meet some new people. Sumetra tells Alex that *Exercise Right* is a program that she knows really well and thinks that it will be a perfect fit for Alex. Alex attends the class the following week but realises that the class is far above her level, leaving her feeling anxious, confused and upset.

She talks to her brother Sam about her experience. Sam looks up *Exercise Right* and finds out that it is a program run by *Super Caring*, Sumetra's employer. Sam approaches *Super Caring* to ask if their management think that it is reasonable practice to have support coordinators recommending services provided by *Super Caring* without disclosing that they are also employed by the organisation.

*Super Caring* facilitates a face-to-face meeting with Alex and Sam, where *Super Caring* apologises for not disclosing the conflict of interest, and also apologise for the poor advice given to Alex, acknowledging that the class was not suited to her. *Super Caring* then offer to help Alex find another exercise class that is more suited to her abilities and interests. They also ensure it is part of the protocol for workers to inform clients of the conflict of interest when cross-selling products.

### Avoid engaging in, participating in or promoting sharp practices

59. The term 'sharp practices' refers to a range of practices involving unfair treatment or taking advantage of people, including over-servicing, high pressure sales and inducements. Some sharp practices may undermine the integrity of NDIS providers, workers and/or the NDIS sector as a whole. Although not necessarily unlawful, sharp practices are considered unethical, dishonest and not in the interests of people with disability.

60. People with disability expect that NDIS providers will not participate in or promote sharp practices. This includes not:

- a. providing services or expending funds contrary to a person with disability's approved plan
- b. asking for or accepting any additional fees for providing the service
- c. offering inducements or rewards that have no particular link to a person's NDIS plan and that could be perceived to encourage people to take up or continue with your organisation or a particular service option
- d. engaging in high-pressure sales.

61. NDIS providers also need to ensure their workers are aware of their obligations not to participate in sharp practices.

62. Some unethical practices, such as misleading or deceptive conduct, and coercive or exploitative conduct, as well as being a potential breach of this element of the Code, may also be a breach of the laws and regulations administered by other regulatory authorities.

### **Scenario**

As part of her NDIS Plan, Tamina has funding to purchase a new powered wheelchair to replace her old one which is outdated and has a battery malfunction. Tamina visits a wheelchair supplier and talks to a sales representative about her needs. Tamina uses her wheelchair almost exclusively indoors or on paved outdoor surfaces, but the sales representative suggests that she may be interested in a four wheel driven wheelchair with larger tyres which gives additional traction, stability and comfort on uneven surfaces such as at parks or dirt walking tracks. He notes that for this week only this particular model is 20% off, which makes it only a couple of hundred dollars more expensive than the entry level model that Tamina had been looking at and as such is excellent value-for-money. Tamina is unsure whether she really needs such an elaborate model, and says she'll go away and think about her options.

Tamina then receives follow-up phone calls from the sales representative three times over the following week asking if she's made up her mind and reminding her that this special offer ends in only a few days. Tamina feels pressured and talks to her Local Area Coordinator.

The Local Area Coordinator encourages Tamina to raise her concerns with the NDIS Commission, who investigate further and find that the incident may constitute unconscionable conduct and refer the matter to the Australian Competition and Consumer Commission (ACCC) for further investigation and action.

## 5. Promptly take steps to raise and act on concerns about matters that may impact the quality and safety of supports and services provided to people with disability

63. People with disability have the right to safe and quality supports and services.

64. NDIS providers have a responsibility to provide safe and quality supports and services. To do this, they should operate effective complaints, resolution, incident management, investigation and disciplinary processes, and meet relevant NDIS Commission reporting requirements. NDIS providers should also foster an environment in which people feel safe to make a complaint or provide negative feedback without fear of retribution. Providers should guarantee procedural fairness principles will be applied throughout the complaints process.

65. Consistent with this element of the Code, factors that may be relevant when assessing if conduct complies with this element of the Code include (but are not limited to) provider's actions to:

### **Foster an environment where people with disability, their families, carers, advocates and workers feel safe to make a complaint or report issues**

66. People with disability, their families, carers, advocates and workers have the right to make a complaint and raise issues without fear of any adverse consequences, such as future refusal of service.

67. NDIS providers should seek to promote and uphold this right by fostering an environment where people with disability, their families, carers and workers feel safe to make a complaint. They can do this by:

- a. encouraging people with disability to provide feedback, make complaints or raise concerns where they have them
- b. encouraging workers to raise concerns where they have them
- c. not taking or threatening to take adverse action in relation to complaints raised with them or the NDIS Commission about their services
- d. taking all reasonable steps to ensure that workers do not threaten or take adverse action against someone who proposes to make or has made a complaint or who is involved in a reportable incident
- e. using complaints data to inform continuous improvement.

68. In some circumstances, workers and others who contact the NDIS Commission with concerns about NDIS providers in good faith are protected by whistle blower protections as well as procedural fairness practices.

### **Scenario**

Jacob has been living in shared accommodation for the past six months. During this time Jacob has been happy with the services he has received, but he has

been recently allocated a new support worker, Karen. Jacob becomes increasingly frustrated with the way Karen has been treating him; she is abrupt and speaks down to him. Jacob remembers, from discussions with his previous worker, that he can make a complaint if he is unhappy.

Jacob emails a complaint to the provider using the provider's complaint form. He receives a response that Karen's manager will talk to Karen. After several weeks, it is obvious that Karen hasn't changed. Jacob talks to an advocate who helps him make another complaint and speak to Karen's manager directly.

The manager apologises that Jacob's complaint was not properly addressed and talks to Jacob about his preferences for a support worker. The manager talks to Karen about Jacob's concerns and makes sure she understands her responsibilities to listen and speak respectfully to clients.

The manager also undertakes an internal review of the provider's complaints management processes and finds that a number of residents don't feel comfortable making complaints or feel that complaints go unheard. The provider places signage and posters within the properties it manages and reminds workers about the complaints process – encouraging them to raise issues if they identify them and inform clients that they can make a complaint if they tell them they are unhappy with a service.

### **Operate effective complaints processes**

69. Anyone can make a complaint about supports and services under the NDIS, including alleged breaches of the Code. This includes people with disability, family members, friends, advocates, workers and other NDIS providers.
70. NDIS providers should play an active role in supporting people with disability to understand their rights and that it is imperative to raise concerns and complain if these rights are violated, and to understand how they can make a complaint both to the NDIS provider and to the NDIS Commission.
71. NDIS providers are required to have a complaints management system in accordance with the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018*. Guidance on these Rules can be found on the Commission's website.

### **Operate effective incident management system**

72. Registered providers are required to implement and maintain an incident management system to identify, assess, manage and resolve incidents that occur during the course of delivering NDIS supports or services and pose a risk of harm to people with disability. Additionally, registered providers must report the most serious of these incidents to the NDIS Commission as reportable incidents. Reportable incidents are defined in the NDIS Act 2013 as
  - a. the death of a person with disability
  - b. serious injury of a person with disability

- c. abuse or neglect of a person with disability
- d. unlawful sexual or physical contact with, or assault of, a person with disability
- e. sexual misconduct committed against, or in the presence of, a person with disability, including grooming of the person for sexual activity
- f. the use of a restrictive practice in relation to a person with disability, other than where the use is in accordance with an authorisation (however described) of a State or Territory in relation to the person.

73. These reporting obligations should be clearly documented in a provider's complaints and incident management arrangements. For more information on the NDIS Commission's requirements, see the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*.

### **Undertake investigative and disciplinary action and comply with external investigations**

74. NDIS providers should have robust and transparent procedures for investigating and acting upon alleged breaches of the Code. Providers should also take appropriate disciplinary action to address breaches of the Code.

75. NDIS providers also have a responsibility to cooperate with any external investigations that are undertaken by the NDIS Commission or other relevant third parties.

## **6. Take all reasonable steps to prevent and respond to all forms of violence against, and exploitation, neglect and abuse of, people with disability**

76. Evidence demonstrates that people with disability are at a far greater risk of experiencing violence, abuse, neglect and exploitation than others in the population and this often goes un-recognised and un-addressed<sup>3</sup>. Women and girls with disability are at far greater risk of violence, and children and young people with disability experience violence and abuse at approximately three times the rate of children without disability.

77. 'Violence, abuse, neglect and exploitation' is broadly understood to include, but is not limited to: domestic, family and interpersonal violence; physical and sexual violence and abuse; psychological or emotional harm and abuse; constraints; forced treatments and interventions; humiliation and harassment; financial abuse; violations of privacy; systemic abuse; physical and emotional

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[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report)

neglect; passive neglect; and wilful deprivation.

78. It is important NDIS providers take a zero-tolerance approach to violence, abuse, neglect and exploitation – using strategies to prevent, intervene early and respond to these practices.

79. Consistent with this element of the Code, factors that may be relevant when assessing if conduct complies with this element of the Code include (but are not limited to) the provider's actions to:

**Commit to eliminating any form of violence, abuse, neglect and exploitation.**

80. People with disability and the NDIS Commission expect that supports and services will be delivered without any violence, abuse, neglect and exploitation.

81. NDIS providers should:

- a. have policies, systems and procedures in place that are designed to increase understanding of and eliminate violence, abuse, neglect and exploitation of people with disability
- b. ensure these policies, systems and procedures are understood and used by workers
- c. encourage workers to use their own initiative to be alert to situations that may give rise to violence, abuse, neglect or exploitation and take steps to avert such situations
- d. ensure incidents and responses inform continuous improvement
- e. inform people with disability and workers of all available avenues for raising concerns or complaints, noting their right to do so without fear of retribution
- f. uphold whistle blower protections.

### **Scenario**

Angela is living in shared accommodation provided by HousingPlus in a small regional area in Northern NSW that does not have many support workers. One evening, a disability support worker, Tamara, comes in to relieve another support worker, Julia, for the nightshift. Recently, Tamara has noticed that when she takes over from Julia, Angela is withdrawn and upset. When she asks Angela why she is upset, Angela says that Julia has been shouting at her, calling her stupid and useless.

Tamara follows HousingPlus's policy to report Julia's behaviour to her supervisor. However, they are currently understaffed, so they do not take immediate action. Tamara then makes a complaint to the NDIS Commission.

The NDIS Commission contacts HousingPlus to inform them that they are investigating the complaint. HousingPlus also begins an internal review process

and finds that the issue Tamara has raised has not been addressed. They stop Julia from providing supports while they investigate whether this is an isolated incident. At the conclusion of their investigation HousingPlus makes a finding of misconduct against Julia and commences dismissal proceedings.

The NDIS Commission monitors HousingPlus's investigation and its outcome. The NDIS Commission determines that the process and outcome taken by HousingPlus have addressed the specific issue but suggests they also review their internal complaints system to ensure issues like this are appropriately dealt with in the future. HousingPlus has the operation of their complaints system flagged for review as a part of their next audit.

**Identify and respond to incidents of violence, abuse, neglect and exploitation, and report these to the NDIS Commission and, as appropriate, to other relevant authorities**

82. If an incident or criminal act of violence, abuse, neglect or exploitation does occur, the primary focus of both NDIS providers and workers should be to ensure that all persons affected are safe.
83. NDIS providers should:
- a. be aware of, and abide by, any State or Territory-based mandatory reporting requirements
  - b. ensure workers understand how to immediately report the incident to their supervisor and/or any other authorities if an incident or criminal act of violence, abuse, neglect or exploitation does occur or is alleged
  - c. notify the NDIS Commission about reportable incidents
  - d. act swiftly to involve the police and the NDIS Commission
  - e. fully comply and cooperate with any investigative actions taken by the NDIS Commission or other relevant authorities, including the police.
84. An act of violence, abuse, neglect and exploitation by a participant should prompt an assessment/ re-assessment of a participant's service package and the delivery of services to ensure their supports are being delivered in a constructive manner that maximises the benefit to the participant. This process should include a review of any behaviour support plans by a specialist behaviour support provider to reduce the risks of future violence.
85. In its separate guidance for workers, the NDIS Commission notes that if a worker considers that a NDIS provider has not responded appropriately to incidents of violence, abuse and neglect or if they think the matter might be of more systemic significance they are encouraged to report the incident to the NDIS Commission. NDIS Providers should not use adverse action or threats of adverse action against such a worker. The NDIS Commission has legislative powers to protect workers and other people who report incidents to the NDIS

Commission and can take regulatory action against NDIS providers that engage in this behaviour.

### Reduce and eliminate restrictive practices

86. A restrictive practice is any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability.
87. The *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018* (Restrictive Practices and Behaviour Support Rules) describe regulated restrictive practices as involving seclusion, or chemical, mechanical, physical or environmental restraint. In the past, restrictive practices were often used as a first line of response for people with behaviours of concern (behaviours that pose a risk of harm to the person or others). It is now recognised that restrictive practices can represent serious human rights infringements and that routine use has often been harmful and exacerbated the behaviours they were intended to address.
88. Governments are committed to reducing and eliminating the use of restrictive practices, consistent with the recommendation of the United Nations Committee on the Rights of Persons with Disabilities and in 2014 endorsed the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector.
89. NDIS providers have a responsibility to reduce and eliminate restrictive practices within their service delivery. NDIS providers supporting people who have a behaviour support plan that includes a restrictive practice need to comply with the Restrictive Practices and Behaviour Support Rules, guidance on these Rules can be found on the NDIS Commission's website.

#### Scenario

Jane has a psychosocial disability. Her tenancy support provider has placed locks on the cupboards and fridges around her house to limit her access to food. This practice has occurred for years without review, with a high turnover of support workers. As a result of the recurring restriction, Jane begins to shoplift food to meet her needs. Jane's sister, Barbara, discovers that Jane has been shoplifting and gets involved, soon discovering the locks placed around Jane's house.

A routine review of Jane's behaviour support plan notes that this restrictive practice is not part of her Plan. When the NDIS Commission undertakes further queries, the provider says the restrictive practice was done 'for Jane's own good' because of her weight gain. The NDIS Commission works with Jane's Behaviour Support Practitioner to review the situation. The Practitioner requests a medical review, finding that the drugs Jane is required to take are causing her weight gain, so there is no behavioural concern that would require locks on the cupboards. The Practitioner works with Jane's support workers to educate them on Jane's condition and refine Jane's behaviour support plan.

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## 7. Take all reasonable steps to prevent and respond to sexual misconduct

90. People with disability have a right to sexual expression as well as to develop and maintain sexual relationships. As part of this, they need access to information and support to assist them to make informed and positive choices about sex, sexuality, relationships and reproductive health and wellbeing, as well as exercise their rights in regard to privacy.
91. However, people with disability experience are also at increased risk of all forms of sexual violence and sexual misconduct.
92. Sexual misconduct is a broad term encompassing any unwelcome acts or behaviour that are experienced by the person with disability as being sexual in nature. This includes physical and verbal actions committed without consent or by force, intimidation, coercion or manipulation. It includes sexual violence and exploitation but is not limited to actions which constitute a criminal offence.
93. The support relationship between a worker and a person with disability they support relies on a high degree of trust. All forms of sexual misconduct constitute a breach of this trust and a breach of the Code.
94. NDIS providers have a key role in implementing practices that minimise the risk of sexual misconduct. They must have in place clear guidance for staff behaviour and processes for reporting sexual misconduct to the NDIS Commission and any other relevant authorities.
95. Consistent with this element of the Code, factors that may be relevant when assessing if conduct complies with this element of the Code include (but are not limited to) provider's actions to:

### Have in place clear guidance for staff behaviour

96. It is a core expectation of people with disability and the NDIS Commission that NDIS providers will develop policy and guidance to prevent and respond to sexual misconduct. This must explicitly indicate that workers are expected to adhere to the highest standards of behaviour, be respectful and take every action to make sure people with disability are safe. This means having professional boundaries in place for relationships between staff and people with disability, and preventing and responding to any inappropriate behaviours by anyone to a person with disability, including sexual misconduct.
97. This guidance must state that workers will not commit sexual misconduct with persons with disability they support.
98. An NDIS provider's guidance for their workers should:
- a. distinguish between sexual misconduct and appropriate conversations around a participant's sexual support or family planning needs

- b. distinguish between inappropriate touching and appropriate touching
- c. guide workers in setting boundaries with the person they are working with
- d. guide workers in determining whether their own or others' relationships have become inappropriate and instruct them to cease any such relationship.

99. More detailed information on the behaviours that may constitute sexual misconduct is contained in the **Glossary** which is not exhaustive.

100. NDIS providers should ensure that workers are aware of obligations they may have under other professional codes of conduct. There are some professions where prohibitions on close personal, physical or emotional relationships are also contained in the professional standards or code of conduct applying to the relevant profession. Workers found not to have complied with a professional code or standard regarding sexual misconduct while providing NDIS supports and services may be regarded as breaching the NDIS Code of Conduct.

101. NDIS providers should also inform people with disability, their families and carers about the guidance around appropriate behaviour and relationships.

### Scenario

Nathan is an adult with a psychosocial disability who attends weekly sessions with Jacinta, a psychologist. During one session, Jacinta asks Nathan a series of questions about his previous sexual relationships, his sexual preferences, and whether he is currently in a sexual relationship. Nathan is confused as to how this line of questioning relates to the issues that he generally discusses with Jacinta, and asks her what the purpose of her questioning is. Jacinta responds by noting their allocated time is up for today and suggests they continue their conversation over a casual lunch later that week.

Nathan gets the feeling that something is not quite right with either Jacinta's questioning or her lunch proposal and feels very uncomfortable. Later that day, he calls his provider about his concerns. The provider tells Nathan it has strict guidance for staff about how they interact with people they work with and that, as a psychologist, Jacinta must comply with professional standards as well as the Code of Conduct.

The provider conducts an investigation and finds that Jacinta's questioning around Nathan's sexuality may have been relevant to the broader psychosocial supports that she had been engaged to provide. However, her proposal to meet with Nathan for lunch, outside of a professional capacity, was a direct breach of the NDIS Code of Conduct, and may also constitute a breach of the *Australian Psychological Society Code of Ethics*.

Nathan is given the option of choosing a different psychologist which he accepts.

The provider records the incident, counsels Jacinta and sets up arrangements to closely supervise Jacinta's work. The provider also reminds her of internal

guidelines, which detail appropriate behaviour and practice. This includes ensuring she understands that meeting in other than a professional capacity is never acceptable in any circumstance.

They also refer the matter to the Australian Psychological Society and notify the NDIS Commission.

### **Operate effective processes for dealing with sexual misconduct**

102. NDIS providers should ensure that there are appropriate policies and procedures in place for workers to identify and report any alleged sexual misconduct, unlawful sexual or physical conduct or inappropriate relationships to the provider and to the NDIS Commission and relevant authorities, such as the police or child protection authorities, and relevant professional bodies.
103. It is crucial that NDIS providers create an environment in which people with disability feel safe and are informed about how to make a complaint about any alleged sexual misconduct, and that the complaint is made without fear of retribution or loss of services. NDIS providers have a responsibility to take steps to facilitate access to independent advocacy support or support for harm or trauma experienced if the person desires this support.
104. While it is understood that all NDIS providers will contact appropriate authorities as part of their response to an incident, registered NDIS providers have a particular obligation to notify the NDIS Commission under the *National Disability Insurance Scheme (Reportable Incidents) Rules 2018* about allegations of sexual misconduct.

## **Part 3: The NDIS Code of Conduct in Practice**

105. The Commission has responsibility for overseeing the compliance of NDIS providers and workers with the NDIS Code of Conduct when delivering supports and services in the NDIS sector. This section outlines actions that can be taken in relation to breaches of the Code and its relationship with other professional codes.
106. In considering issues that may arise with non-compliance of the Code, the NDIS Commission will take into account a number of factors including the size of an organisation, the type of supports and services delivered and the environment in which these are delivered, participant support needs, other factors that apply to the supports and services, and other relevant circumstances.

### **Breaches of the Code**

107. Anyone can make a complaint about supports and services funded under the NDIS, including alleged breaches of the Code. This includes people with disability, family members, friends, workers, advocates and other providers. In the first instance, people are encouraged to contact the NDIS provider to make

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complaints.

108. NDIS providers are expected to adhere to the Code, take steps to ensure their workers adhere to the Code and to investigate and take appropriate action to address any breaches.
109. If an NDIS provider directs a worker to do something that may constitute a breach of the Code, the conduct of both the NDIS provider and the worker will be considered against the requirements of the Code if the worker complies with the direction.
110. The NDIS Commission can commence an investigation as a result of any information it receives about an NDIS provider or worker's potential breach of the Code whether it is in relation to a complaint, a reportable incident or from any other source. The NDIS Commission will work with all relevant people and conduct investigations fairly and efficiently and in accordance with the principles of natural justice.
111. The NDIS Commission has the role of collecting, correlating, analysing and disseminating information relating to complaints that arise out of, or in connection with, the provision of supports or services by NDIS providers and their workers.
112. The NDIS Commission will gather, integrate and assess information about sharp practices from multiple sources, including workers, NDIS provider registration data, participant feedback and complaints, reportable incidents, referrals and intelligence from other agencies including the NDIA, and from its own market studies.
113. The NDIS Commission is required to abide by the privacy and confidentiality obligations imposed under federal law, including the *Privacy Act 1988* (Cth) and the NDIS Act.

### **Consequences of breaching the Code**

114. The NDIS Commission, an independent regulator, is empowered to take a range of sanctions and remedial action if NDIS providers or workers breach the Code.
115. Penalties for breaching the Code will depend on the nature of the breach. For breaches of a less serious nature, the NDIS Commission may, for example, decide to use training and education, warnings and directions. For the most serious breaches, the NDIS Commission may choose a different response, for example, going to court to have civil penalties imposed, deregistering NDIS providers, or banning NDIS providers or workers from providing services and supports in the NDIS sector.

116. The Commissioner may publish on the NDIS Commission’s website the result of any action it has taken against an NDIS provider or person employed or otherwise engaged by an NDIS provider.

### Relationship with other Professional Codes

117. The Code has been developed with reference to other relevant codes to ensure a consistent definition of acceptable practice, with minimal additional administrative burden.

118. NDIS providers should be aware that workers who are required to comply with an existing professional code of conduct, such as nurses, psychologists and health care workers, will also be required to comply with the NDIS Code of Conduct and other applicable regulatory frameworks (for example, child protection requirements).

119. If a professional is found not to have complied with their own professional standards in providing NDIS supports and services, they may have also breached the NDIS Code of Conduct. The reverse may also be the case.

120. The NDIS Commission will, as far as practicable, coordinate any regulatory activity with the professional body or other regulator, as appropriate, to ensure there is no unnecessary duplication and manage any overlapping areas of regulation.

### Review of the Guidance

121. This Guidance has been developed in consultation with the disability sector and the broader community. The NDIS Commission will regularly review the Guidance based on learnings from its various functions and in consultation with stakeholders.

122. Any material changes made will be communicated widely through a range of channels to inform NDIS providers and workers of any changes in guidance that may assist them in meeting the requirements of the Code.

## Glossary

Phrase	Definition
<b>Behaviour Support Plan</b>	A documented plan that: <ul style="list-style-type: none"><li>• outlines the strategies that seek to support a person with disability;</li><li>• responds to the person with disability’s needs;</li><li>• responds to the causes of behaviours of concern;</li></ul>

	<ul style="list-style-type: none"> <li>provides a roadmap for reducing or eliminating the use of any restrictive practices.</li> </ul>
<b>Carer</b>	Someone who provides support and help to a person with disability in the activities of their day to day life but not as an employee or person otherwise engaged by an NDIS provider. A carer will often be a family member or guardian of the person.
<b>Conflict of Interest</b>	Conflict of interest can be potential or real and occurs when a worker or an NDIS provider is in a position to exploit their own professional or official capacity for personal or corporate benefit (other than in the usual course of charging fees for services or supports rendered). Conflicts of interest could include conflicts of a financial, business or personal nature, including any financial and/or corporate interest or relationship the NDIS provider may have with other entities, including businesses and organisations, or of a personal nature, including but not limited to cultural, religious or social relationships.
<b>Complaints Process</b>	In addition to the NDIS Commission having a complaints function overseen by a Complaints Commissioner, registered NDIS providers are required to have effective internal complaints management and resolution systems that are appropriate for the size of a provider and for the services or supports they provide.
<b>Incident Management System</b>	The incident management system that registered NDIS providers are obliged to implement and report on to the NDIS Commission, in accordance with the <i>NDIS (Incident Management and Reportable Incidents) Rules 2018</i> .
<b>Local Area Coordinator (LAC)</b>	Local organisations working in partnership with the NDIA, to help participants, their families and carers access the NDIS. LACs will help participants write and manage their plans and also connect participants to mainstream services and local and community-based supports.
<b>NDIA</b>	National Disability Insurance Agency. The Commonwealth government organisation administering the NDIS.

<b>Participant</b>	A person who the CEO of the NDIA decides meets the NDIS access requirements in response to a valid access request and so becomes a participant in the NDIS.
<b>Plan</b>	Means the participant's plan that is in effect under section 37 of the NDIS Act. Generally this will be a written agreement worked out with the participant, stating their goals and needs, and the reasonable and necessary supports the NDIS will fund for them. Each participant has their own individual plan.
<b>Registered NDIS Provider</b>	A service provider that has registered with the NDIS Commission to provide services or supports under the NDIS.
<b>Restrictive Practices</b>	An intervention such as seclusion, physical, chemical, mechanical or environmental restraint that has the effect of restricting the rights or freedom of movement of a person with disability.
<b>NDIS Sector</b>	The organisations and companies providing disability support services and the peak bodies that represent them.
<b>Sexual Misconduct</b>	<p>Inappropriate behaviour that may include</p> <ol style="list-style-type: none"> <li>a. asking the person on a date</li> <li>b. touching any part of a person's body in a sexual way</li> <li>c. touching a person in a way they do not wish to be touched</li> <li>d. displaying their genitals to the person</li> <li>e. coercing, by pressuring or tricking, a person to engage in sexual behaviours or acts</li> <li>f. making sexual or erotic comments to the person – in person or by text message, email or social media message (as well as written comments, this includes images and audio)</li> <li>g. making sexually suggestive comments or jokes</li> <li>h. intentionally staring at a person in a way that makes them feel uncomfortable</li> </ol>

- i. making comments about a person's sexuality or appearance
- j. making requests of a sexual nature, including to remove clothing, for sexually explicit photographs, videos or for sexual activities
- k. showing the person pictures or videos of naked people, or people undertaking sexual activities
- l. ignoring or encouraging sexual behaviour between people with disability that is non-consensual or exploitative.

This list does not cover all situations and there may be other activities or behaviours that constitute sexual misconduct.

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**Sharp Practices**

Business practices that may in a technical sense be legal but are unethical or dishonest.

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**Support**

Things to help a person undertake daily life activities and enable them to participate in the community and reach their goals.

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**Worker**

Persons employed or otherwise engaged by an NDIS provider. For example, people working in the disability support sector in either a paid or voluntary capacity for an NDIS provider.

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