NDIS Quality and Safeguards Commission

The NDIS Code of Conduct

Guidance for NDIS Workers

April 2024

NDIS Quality and Safeguards Commission

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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. In December 2023, the NDIS Commissioner made a number of significant changes to the Code. These changes clearly confirm that the key personnel of NDIS providers are covered by the Code. This ensures key personnel are held to the same standard as NDIS providers and workers. The Code also now includes a prohibition on price differentiation when supplying goods to NDIS participants.

3. 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, their key personnel and the people they engage need to be familiar with the principles underpinning the NDIS, respect the rights of people with disability, aim to prevent harm and respond appropriately if harm occurs.

4. The Code's Guidance for Workers (the Guidance) provides guidance on factors that may be relevant when considering if a worker is complying with the Code. The Code consists of eight elements that apply to all NDIS providers, their key personnel and workers employed or otherwise engaged by them to deliver supports and services in the NDIS.

5. This Guidance provides information and examples about what the Code means in practice for workers. It is not intended to cover all circumstances that may arise or amount to a breach of the Code.

6. Workers should consider all conduct associated with their role in 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 in the NDIS Quality and Safeguarding Framework[1].

   b. **Part 2** outlines examples of factors that may be taken into consideration when assessing whether the conduct of workers complies with the Code, including further detail and scenarios to assist workers to understand how the Code may apply in these particular scenarios[2].

[1] https://www.dss.gov.au/sites/default/files/documents/04_2017/ndis_quality_and_safeguarding_framework_final.pdf

[2] The scenarios are fictional and any similarity to an individual person with disability, worker or provider is purely coincidental.

c. **Part 3** outlines actions that can be taken in relation to breaches of the Code and the Code's relationship with other codes.

7. The NDIS Quality and Safeguards Commission (the NDIS Commission) will take a proportionate approach in interpreting and enforcing the Code, taking into account relevant factors, including:

   a. the type of supports and services a worker is responsible for delivering

   b. the organisational environment in which these are delivered

   c. the skills and qualifications of the individual worker

   d. a participant's support needs; and

   e. other relevant circumstances.

Workers and key personnel covered by the Code

8. The Code applies to all key personnel as well as to all workers employed or otherwise engaged by NDIS providers to deliver supports and services in the NDIS.

9. The term 'workers' includes, but is not limited to, providers' employees, contractors, agents and volunteers engaged by an NDIS provider. Where this Guidance refers to a worker's provider (or words to that effect) it means the NDIS provider that employs or otherwise engages the person.

10. A member of a NDIS provider's key personnel, such as a CEO or manager, will also be a worker for the purposes of the Code if they are an employee, contractor or otherwise engaged.

11. The key personnel of NDIS providers are defined in section 11 A of the NDIS Act to include:

   a. the executive decision makers of an NDIS provider

   b. any other person with authority, significant influence over or responsibility for planning, direction or controlling the activities of an NDIS provider; and

   c. company directors of corporate providers.

12. NDIS providers for the purposes of the Code includes:

   a. registered NDIS providers

   b. unregistered[3] NDIS providers

[3] NDIS providers who have chosen not to register with the Commission (but are still able to provide services which are fully funded by the NDIS). These NDIS providers and their workers are still required to adhere to the Code of Conduct.

c. providers delivering Disability Support for Older Australians Program (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 NDIS providers

13. There is also a separate set of guidance called the *NDIS Code of Conduct Guidance for NDIS Providers*. This guidance explains some factors NDIS providers might consider in ensuring their conduct is compliant with the Code. The expectations an NDIS provider has of its workers and the support that NDIS provider and its key personnel gives to its workers to comply with the Code may be relevant to the Commissioner's consideration of whether a worker has breached the Code.

Part 1: The NDIS Code of Conduct

14. 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, key personnel and workers delivering supports or services in the NDIS market. 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 requires workers, key personnel 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.

8. Not engage in unfair pricing when supplying or promoting goods for NDIS participants.

Part 2: Elements of the NDIS Code of Conduct

15. Compliance with the Code requires workers to consider how they conduct themselves when delivering of 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 a worker 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.

16. NDIS providers and key personnel should use their existing employee engagement, human resource and governance arrangements to ensure 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

17. 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.

18. A complex range of intersecting factors including individual and social values, contexts, cultures, policy responses, and histories, shape how disability is understood. Historically, a focus on individual incapacity or the 'tragedy' of disability portrayed people with disability 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.

19. 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.

20. Workers 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 worker's actions to:

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

21. 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 (see section 4 of the NDIS Act).

22. Registered NDIS providers 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.

23. Delivering supports and services in accordance with the NDIS rules made under the NDIS Act will maintain the standards and principles and uphold the conventions that underpin the NDIS.

Scenario

Anthony is getting travel training support from LiveWell Community Access, so that he can get to his new job in the city. His support worker, Brett, accompanies him to the bus station in his local suburb one morning during peak hour. In front of a bus full of people, the driver tells Brett that he can't bring 'the guy in the wheelchair' on the bus because the wheelchair is too big.

Anthony is feeling humiliated by the situation but insists on getting on the bus so he can get to work on time. The bus driver tells him he is holding everyone up and he should feel bad because these people all have to get to work.

Anthony and Brett do manage to get on the bus. After Anthony's shift at work, Brett asks him how he is feeling about what happened. Anthony says he is feeling angry and upset about what happened. Brett asks him if he'd like to make a complaint to the bus company. Brett has never really encountered an issue like this before so when Anthony decides he'd like to make a complaint, Brett suggests they involve an advocacy agency. Anthony agrees, and they work together with an advocate to make the complaint.

Scenario

Lee is a 17-year-old who wants to work in a restaurant. He has just started a hospitality course at TAFE and enjoys going out 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 to build his skills to travel to TAFE and catch up with friends independently.

Lee is unhappy that his support workers don't really listen to him – they ask his parents about his schedule instead of him and if Lee requests a change in what they're doing, they ask his parents if it's okay. 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's time to go or he'll be late for TAFE. This really embarrasses Lee.

Lee talks to his friends in the self-advocacy organisation he belongs to 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 support Lee becoming 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 at the meeting with his friends in the self-advocacy organisation 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 talk to Lee about his schedule.

Support people with disability to make decisions

24. 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 given decision. Partners, families of choice, families of origin, friends, carers, advocates, support persons and others can play an important role in a person's life. But not all people with disability need or want support in decision-making. Workers should work directly with the person with disability wherever possible. They should consult them about who, if anyone, they want to involve in decisions and discussions about their services and supports.

25. For children and young people, families also have an important role. In the early years, workers should work with families to understand a child's strengths, interests and needs, and support them in their caring role. As a child grows up, they will 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.

26. When the person with disability has a legal guardian, workers need to be clear on the decisions in which they need to involve the legal guardian. However, workers still have an obligation to ensure they have the capacity to listen to and support the person to make decisions. Workers can use supported decision-making to do this. Supported decision-making is a model for supporting people with disability to make decisions. 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

Regina is a 25-year-old with intellectual disability. Her mother is concerned about her being taken advantage of by unscrupulous businesses convincing her to buy things she doesn't need and Regina having a big credit card bill. She is considering seeking formal guardianship of Regina.

Regina tells her support co-ordinator, Eliza, about this, as she is concerned about not being able to make decisions for herself. They talk to Regina's mother together. Eliza explains that formal guardianship could impact on Regina's future decision-making and choice and control. She talks about how Supported Decision Making can be used to help Regina think through and make her own decisions.

Eliza also suggests building Regina's skills in money management. These include opening her own bank account and practising withdrawing money from the bank, so she and the staff in their local bank get to know each other; building her budgeting skills; and coming up with processes to make decisions about purchasing bigger items.

Regina's mother confirms that this is what Regina wants to do and agrees to try this approach.

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

27. 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 an informed consumer about all aspects of the delivery of services to them, including clear pricing information, 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.

28. People with a disability have a right to question, seek additional information about or refuse to receive any part of a service.

29. In practice, this means workers should:

    a. communicate in a form, language and manner that is accessible and appropriate

    b. be able 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.

    c. where the person speaks a language other than English or uses Auslan, organise for someone who speaks their language or uses Auslan (where possible) to assist with important discussions, or use qualified interpreters, where this support is covered by their NDIS plan.

    d. 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.

    e. respond to the will, preferences and concerns of the person with disability in relation to their supports and services – raising requests or complaints to be addressed by the NDIS provider, where necessary.

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

30. 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.

31. 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.

32. In practice, this means workers should:

    a. have an inclusive attitude

b. acknowledge and consider individual contexts, values and histories

c. work in a way that enables people with disability to feel as comfortable and safe as possible in their day-to-day interactions with workers

d. encourage people with disability to communicate their preferences for how their supports are delivered

e. offer people with disability culturally-sensitive activities

f. 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.

2. Respect the privacy of people with disability

33. Privacy is a human right. Rights related to privacy are set out in 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. Examples of personal information include a person's name, address, date of birth and details about their health or disability.

34. 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) worker's actions to:

Comply with Commonwealth and State and Territory privacy laws

35. Workers should respect and protect the privacy of all people connected with the delivery of NDIS supports and services, including people with disability, in accordance with Commonwealth and State and Territory privacy laws and the NDIS Act. Workers should also follow their NDIS provider's privacy policy and procedures where they exist and are not inconsistent with these laws.

36. Consistent with this privacy framework, workers should explain to persons with disability:

    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.

37. Workers should also be aware of the kinds of circumstances where other legal obligations may provide an exemption from a requirement to obtain informed consent from an individual. 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 Commission and police.

Scenario

Brooke lives in a small regional town, where many of the locals know each other. Unhappy with her current coordinator, Alexis, Brooke decides to change support coordinator. Brooke doesn't realise it, but Alexis knows the new support coordinator she has chosen, Francis. When Alexis and Francis meet for lunch, they realise this connection, and Alexis tells Francis about Brooke's needs and the supports she is looking for.

Later that afternoon, Francis bumps into Brooke in front of a local café and says he now understands that she has been having recent difficulty finding a singing group she feels comfortable in because of her anxiety. Now he knows this, he's been thinking about options and says they should talk again once he's had time to do more research.

Brooke is shocked. She doesn't understand how Francis knows this. She also feels very uncomfortable because other people are listening. She wants the conversation to be over, so she simply nods. At home, she tells her husband what happened. The more she thinks about it the more anxious she becomes. She decides that she will find another support coordinator.

When she meets her new support coordinator, Ben, she tells him that she is very concerned about her privacy. Ben assures her that he will not talk to other people in the community about what she tells him; they will just use the information to help her connect with supports and services.

Still upset and concerned about her conversations with Alexis and Francis, Brooke decides to make a complaint to their employer, Sunny Coast Support Solutions. The CEO of the provider contacts Brooke to arrange a personal meeting to discuss her concerns. During this meeting, the CEO acknowledges that it was not right for either Alexis or Francis to have discussed Brooke's personal details without her knowledge, and undertakes to formally discipline both employees and ensure they take refresher training on their responsibilities and obligations regarding client privacy. Brooke is satisfied with this outcome and takes no further action.

Deliver services in a dignified way that maintains personal privacy.

38. Privacy extends beyond a careful approach to handling personal information to the way in which services are delivered to people with disability. Workers 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:

    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. He now stores Glen's clothes on the hook in the bathroom and helps Glen to dress in the privacy of the bathroom straight after his shower.

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

39. Obligations under the NDIS Act are intended to ensure safe and quality service delivery to support positive outcomes for people with disability.

40. When a person with disability seeks supports and services under the NDIS, they have the right to receive those supports and services in a safe manner and from workers with relevant expertise. 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) workers' actions to:

Obtain and maintain the expertise and competence necessary for the supports and services delivered

41. Adequate worker expertise and competence is central to safe and skilful service delivery. In practice, having the required expertise and competence for a role means workers:

    a. adopting the values underpinning the NDIS, including choice and control and person-centred approaches

    b. being honest with their employer and the people with disability they support about their qualifications and ability to provide particular supports and services, as well the limits of their knowledge, skills and experience

    c. having any qualifications required for the role

    d. developing and maintaining the knowledge and skills required for their role (for example, through training and supervision provided by their employer)

    e. being familiar with and adhering to policies and procedures established by their employer.

Scenario

Jordan has a psychosocial and 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 to discuss an appropriate plan of action. 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.

42. NDIS providers should not direct their workers to undertake duties they are not qualified or skilled to undertake. If an NDIS provider, a person with disability, or their family or carer directs a worker to deliver supports and services for which they do not

have the necessary training, competence and qualifications, workers should decline to do so. Workers can also make a report to the Commission that such a direction has been made. In some circumstances, there are whistle-blower protections for workers who raise issues with the NDIS Commission, so their NDIS provider cannot take or threaten to take adverse action against them for pursuing this course of action.

Provide services consistent with relevant professional codes

43. 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 this Code and any other applicable regulatory framework. This Code 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.

44. Where a worker is found to have breached the Code, the Commission may report the breach to their professional association or another relevant body. Additionally, if a worker is found by a professional association not to have complied with their professional code in providing supports and services under the NDIS, the Commission may consider whether they may have also breached the Code.

Meet relevant work, health and safety requirements

45. 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.

46. Workers should ensure they comply with work health and safety requirements set out in the relevant acts and regulations in their State or Territory and may face penalties for failure to do so. 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

Adele lives by herself, but a recent accident, which left her without mobility in one arm, means she requires a support worker to help her do certain things around the house. When she contacts Only Caring they ask her about her support needs – which are assistance with cooking and cleaning – and if there is anything they should be aware of, such as trip hazards or pets. When Adele tells them about her new dog, they arrange for the dog to be in the backyard when her support worker, Ava, is there. They also inform Ava about the dog and this plan.

On Ava's first visit, the dog is actually inside. Adele tells Ava not to worry because the dog is now well trained and will not be an issue. Ava likes dogs, so she agrees the dog can stay inside. On this occasion no issues arise, so she also agrees the dog can stay inside when she comes back later in the week to do the vacuuming. When she turns on the vacuum cleaner, the dog rushes at Ava, bites her and causes her to fall over and break her ankle.

Only Caring makes sure Ava's injury is taken care of, including helping her to make a workers compensation claim. They then investigate what happened and document the incident. They consult with Adele to organise a new support worker and make sure she understands the importance of following the plans they have in place. Once Ava has recovered, they provide additional training to ensure she is aware of implementing and following plans related to work health and safety.

Provide services only when free from the influence of alcohol or drugs

47. Workers should not provide services or supports while under the influence of drugs or alcohol. Workers who are taking prescription or over the counter drugs that may affect their ability to support people with disability should obtain advice from the prescribing practitioner or dispensing pharmacist and declare it to their NDIS provider and/or the person with disability if they are engaged directly by that person. If the advice from the prescribing practitioner or dispensing pharmacist indicates the ability to work may be impaired, workers should not provide services or supports until the prescribing practitioner or dispensing pharmacist says it is safe to do so.

Ensure appropriate and accurate records are kept

48. Part of providing supports and services in a safe and competent manner is maintaining accurate records to ensure continuity of supports between workers and inform future service delivery.

49. As well as following applicable security procedures for record management, workers should:

    a. show respect for people with disability by avoiding the inclusion of demeaning or derogatory language or remarks in records

b. keep accurate, up-to-date and legible records that report relevant details of a participant's service history, medication and support needs

c. detail any allegations and incidents that may have occurred, including alleged breaches of the Code, where they were involved in, witnessed or informed of these

d. record any other issues that may have arisen while providing services

e. maintain sufficient detail to facilitate continuity of participant supports and inform future service delivery.

f. Records should be created at the time of an event or action, or as soon as possible afterwards.

4. Act with integrity, honesty and transparency

50. 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.

51. For people with disability 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. People with disability should be able to make decisions in their best interest, free from inducements, pressure, deception and exploitation.

52. 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) worker's actions to:

Provide accurate information about themselves to clients and their NDIS provider

53. It is essential that people with disability have accurate information about the qualifications and competencies of the workers who deliver their supports and services. As such, workers should be transparent about the qualifications, skills, experience and competencies they possess to deliver those supports and services, and any limitations of their skills, experience or competencies.

54. A worker's capacity to deliver supports and services safely is also a key consideration. Workers should disclose to their NDIS provider and to people with disability if they have:

a. not obtained an NDIS worker screening check for roles that involve more than incidental contact with people with disability

b. failed a worker screening clearance

c. been subject to an employment proceeding related to work with a person with disability in which the findings were substantiated

d. been subject to a finding of professional misconduct.

Scenario

Jen seeks support for emotional regulation and anger therapy from ABC Provider. Hamish has recently been hired as a counsellor and Jen is his first client. Jen becomes irritated and throws a chair across the room. Hamish is unaware how to handle the situation and shouts loudly at Jen, making her very upset and uncomfortable.

After ensuring Jen is okay and talking to her about a new counsellor, ABC Provider questions Hamish about the incident. They uncover that Hamish was not qualified to engage in emotional regulation and anger therapy as he has no experience or training in this despite claiming that he had on his CV.

ABC Provider dismisses Hamish from his role as counsellor for providing false information about his qualifications. However, ABC Provider failed to call any of the references that Hamish provided to authenticate his accomplishments and did not attempt to further verify any of his qualifications. Upon realising their recruitment checking procedures were inadequate, ABC Provider altered their policy to ensure better vetting processes.

Support informed consent by providing accurate information relating to service provision

55. People with disability have a right to accurate, accessible and timely information about the cost and efficacy of available supports and services. This information may include: easily understood comparative costs of service options; research supporting the effectiveness of supports; and the risks and benefits of service options.

56. People with disability expect workers to provide information and answer questions in a way that assists and promotes informed decision-making by people with disability. As such, workers should not make claims about the efficacy of treatments or supports that cannot be substantiated independently.

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

57. Both persons with disability and NDIS providers need to know when a worker or a member of its key personnel has a conflict of interest – potential or real – that may impact on their delivery of supports and services. This includes, but is not limited to:

    a. personal relationships with the person with a disability, their family, friends or carers

    b. financial or commercial interest in an organisation or company providing products, services or supports to people with disability

c. beliefs and values that may impact on the delivery of supports or services.

58. Workers should be transparent in regards to any conflict of interest and comply with their NDIS provider's policies and guidance for declaring and avoiding any real or perceived conflicts of interest.

Scenario

Mena, who has a physical disability, has recently engaged Tim to assist her with her weekly shopping. Mena and Tim develop a close yet professional relationship in which Mena often asks Tim for advice.

When Tim comes to pick Mena up one day, he comments that the grass in the front yard is too long and that Mena should probably get it cut. He then proceeds to tell Mena that he knows a really good lawn mowing business, LawnMowerz, and that he can organise for them to come the next day to mow the lawn. Mena agrees and LawnMowerz cuts the lawn the following day. That's when Mena finds out that Tim's brother owns LawnMowerz.

Although she thinks Tim's brother did a good job, she is concerned that he didn't tell her that it was his brother's business. Mena contacts Tim's employer to tell them what has happened. They ensure that Tim understands this was wrong and against their guidelines. Tim apologises to Mena, and while the service provider offered Mena a different support worker, she decides that she would still like Tim to support her.

Avoid giving, asking for or accepting inducements or gifts that may influence decision-making and service provision

59. People with disability, their family, carers or advocates should not be required or expected to give any sort of inducement to a worker in order to influence decision-making or service delivery. This includes, but is not limited to: additional fees, separate amounts of money, goods, food, favours or services of any kind.

60. Workers may give or accept gifts of minor value, such as a card or a box of chocolates as a 'thank you' or for special events, such as birthdays. However, in these instances, workers should be mindful of their NDIS provider's policies and guidance on giving and accepting gifts. Where workers are unsure, they are encouraged to consult their manager or NDIS provider.

61. Workers should also avoid giving, asking for, or accepting any inducements or gifts from other service providers or organisations in exchange for referrals, favourable decisions or any other market benefits, particularly where it might impact on the integrity of the information provided to support a participant's choice of service provider.

Avoid engaging in, participating in or promoting sharp practices

62. 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 the person with disability.

63. People with disability expect that workers do 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 an organisation or a particular service option

    d. engaging in high-pressure sales

    e. charging a participant more than another person for substantially the same product, support or service without reasonable justification; and

    f. promoting, advertising and publishing higher prices for substantially the same product, supports or services for participants as compared with other people without reasonable justification.

64. NDIS workers and key personnel also need to ensure that they are aware of their obligations not to participate in sharp practices.

65. Some unethical and unlawful 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

Klas receives daily personal care support from two support workers, Alex and Andrew. Alex and Andrew accompany Klas when he holidays at the beach, a few hours' drive away, so that they can continue to provide his supports.

When Klas starts talking excitedly about his next holiday at the beach, Andrew shows him a brochure for Bali and convinces Klas that he should take his next trip there. Klas resists – he likes the beach nearby. But over a few weeks Andrew convinces him to book a two-week holiday in an expensive hotel in Bali and to pay him a higher hourly rate for the trip.

When Klas's parents hear what has happened, they explain to Klas that what Andrew did is wrong, and together they contact Andrew's employer and the Commission.

The provider investigates the incident and finds Andrew pressured Klas with the intent of personal gain rather than placing his needs at the centre of service delivery. After discussing it with Klas, the provider dismisses Andrew on the grounds of misconduct and informs the Commission of their action. The Commission is satisfied with the provider's actions and begins its own investigation to see whether further action, such as banning Andrew from working in the NDIS sector may be warranted.

Scenario

Nicole is an NDIS participant who has been attending an individual physiotherapist fortnightly over the last 3 months. At today's appointment, Nicole advises the physiotherapist that she is a participant and has a NDIS plan. The physiotherapist advises that 'the correct' paperwork needs to be completed and requests that Nicole provides the details of her NDIS plan. Nicole provides these details to continue receiving services from her physiotherapist.

The next appointment, the physiotherapist charges Nicole at a higher rate than she paid for previous appointments. Nicole misses her following appointment and is later told by the physiotherapist not to worry, as the cost of the missed appointment will be covered by her plan. Previously if Nicole was to miss a physiotherapy appointment, the physiotherapist would not charge her. Nicole believes that the physiotherapist is now charging her differently only because the clinic now knows she is a participant. Nicole is now concerned that her plan money is going to be used up quickly.

Nicole speaks to the NDIS Commission about her concerns. The NDIS Commission undertakes further enquiries into the Physiotherapist's pricing structure for NDIS participants and others and uncovers this systemic price differentiation. The NDIS Commission issues a Compliance Notice requiring the physiotherapist to cease these practices that are in breach of the Code. Further, the NDIS Commission consults with the ACCC and other regulatory bodies to determine if the physiotherapist may be subject to further penalties.

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

66. People with disability have the right to safe and quality supports and services under the NDIS.

67. Workers have a role in contributing to the delivery of safe and quality supports and services by taking action when they notice issues including raising concerns. Workers also play an active role in improving supports and services by listening to people with disability to gain their feedback on ways to improve their experience.

68. Factors that may be relevant when assessing if conduct complies with this element of the Code include (but are not limited to) worker's actions to:

Take immediate action

69. People with disability expect that workers enquire and are aware of their needs and aspirations, as well as how supports and services they deliver are meeting these needs.

70. When a worker identifies a potential issue, or an issue arises regarding the quality and safety of supports and services, they should take immediate action to address it. The first step is to ensure that the person who the issue concerns is safe. The worker should also consult with the person with disability about how they would like to resolve any issues and create a safer environment.

71. Actions might be as simple as adjusting some aspect of service delivery to better meet a person's needs, for example changing the timing of meals. In other instances, simple changes can make the environment safer, for example, moving a piece of furniture to make it easier to manoeuvre a wheelchair. In more complex cases, a response might involve conducting a risk assessment, raising the issue within the organisation or with another relevant authority.

Raise concerns with their NDIS provider and/or the Commission

72. Workers have an important role in supporting safe and quality service delivery and in preventing violence, abuse, neglect and exploitation (see section 6).

73. Workers should be familiar with their NDIS provider's systems for complaints and incident management and follow established procedures.

74. Registered NDIS providers have an obligation to implement and maintain an incident management system and notify the Commission of reportable incidents in accordance with the *National Disability Insurance Scheme (Reportable Incidents) Rules 2018.* Reportable incidents are:

    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.

75. Workers of a registered NDIS provider should familiarise themselves with the provider's incident management system to meet their reportable incidents obligations.

76. When directly or immediately addressing a quality or safety issue is not feasible for a worker, they should raise the issue with their NDIS provider (whether registered or unregistered) or other relevant authorities, such as the Commission.

77. Workers are encouraged to raise issues with the Commission if they believe they are not being dealt with appropriately within the organisation. In some circumstances there are whistle-blower protections for workers who raise issues with the Commissioner, so their NDIS provider cannot take or threaten to take adverse action against them for pursuing this course of action.

78. People with disability, their family, friends and advocates may also raise issues or make complaints. Workers are expected to support people making a complaint through these processes and also advise people that they can raise concerns or complaints with the Commission.

79. Workers should never threaten or take adverse action against someone who proposes to make a complaint, has made a complaint or is involved in reporting an incident.

Contribute to improving supports and services

80. Complaints and incidents are important sources of information for workers to improve the supports and services they provide.

81. Workers should contribute to the resolution of complaints and incidents and the implementation of any changes to the way services are delivered to improve supports and services as a result of a complaint or incident.

82. Workers should also comply with any reasonable direction given by the provider regarding how they can personally contribute to providing a better service experience for people with disability, their families, carers and advocates. This includes complying with directions to modify their conduct or the way they deliver services in order to address a complaint.

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

83. 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[4]. Women and girls with disability are at far greater risk of violence, and children and young people with disability

[4] https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report

experience violence and abuse at approximately three times the rate of children without disability.

84. '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 neglect; passive neglect; and wilful deprivation.

85. Workers and key personnel play an important role in helping to prevent, intervene early and respond to violence, abuse, neglect and exploitation, and must not engage in these practices.

86. 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 worker's actions to:

Not commit or participate in any form of violence, abuse, neglect and exploitation of people with disability

87. Violence, abuse, neglect or exploitation of people with disability is never appropriate and NDIS providers will be expected to take prompt action against a worker or member of key personnel who does engage in these practices, including reporting to the Commission and the police. The Commission will also require the investigation of any alleged incident and, where necessary, the police be informed. The Commission may also take action in relation to non-compliances with the Code.

Adhere to organisational policies and relevant laws, and fully cooperate with the Commission in relation to incidents of violence, abuse, neglect and exploitation

88. Workers should work closely with their NDIS provider and the Commission in preventing violence, abuse, neglect and exploitation and:

89. familiarise themselves with and follow the provider's policies, systems and procedures to prevent and respond to violence, abuse, neglect and exploitation

90. comply with all relevant laws related to violence, exploitation, abuse and neglect

91. fully cooperate with any related investigative action taken by either the Commission or other relevant authorities, including the police.

Identify and respond to situations that could lead to violence, abuse, neglect and exploitation

92. In addition to following organisational policies and all relevant laws, workers should use their own initiative to be alert to situations that may give rise to violence,

exploitation, abuse and neglect and take all appropriate steps within their control to avert such situations.

Scenario

Steve, a participant, lives with his father Ron. Both Steve and Ron have an intellectual disability and schizophrenia.

Peter, Steve's psychosocial support worker arrives at Steve and Ron's house on a hot 39-degree summer day. He notices that Steve is sitting in a jumper and tracksuit pants and is obviously hot and sweating. Ron is lying on his bed in his underwear.

Peter notices that there is a workable fan and air-conditioner, and neither is switched on. He asks Ron if he can turn them on due to the heat. Ron states that he does not want the fan or air-conditioner turned on and the worker leaves the house without further discussion.

Later that evening the support agency that employs Peter receives a phone call from the hospital to tell them that Steve was admitted with severe dehydration due to the heat – he had been found unconscious at home.

The provider initiates an internal investigation and notifies the Commission of the reportable incident. The provider finds that while Peter responded to the wishes of his client's father, he failed in his duty of care to his client, Steve, by not informing his supervisor of his concerns for Steve and Ron's safety. Given the seriousness of the issue, the provider directs him to undertake additional training regarding heat stress and his duty of care obligations.

Report incidents of violence, exploitation, neglect or abuse to their NDIS provider, the Commission and, as appropriate, to other relevant authorities

93. If an incident or act of violence, abuse, neglect or exploitation does occur, the primary focus of both NDIS providers and workers should be to ensure that the person(s) affected is safe.

94. If an incident or act of violence, abuse, neglect or exploitation does occur, workers, after ensuring the safety of the person(s) affected, should immediately report the incident to their supervisor and/or any other authorities, including the police where appropriate. Workers also need to be aware of, and abide by, any State or Territory mandatory reporting requirements.

95. If a worker considers that an NDIS provider has not responded appropriately or if they think the matter might be of more systemic significance (for example, a pattern of violence, or a pattern of the provider brushing off incidents or relocating problem staff), they are encouraged to report the incident to the Commission. The Commission has legislative powers to protect workers and other people who report incidents to the Commission from adverse action or threats of adverse action by the provider.

Note the whistle-blower protections that are in place in some circumstances for workers who raise issues with the Commission, which protects them from adverse action against them for pursuing this course of action.

Scenario

Angela is living in shared accommodation in a small regional area in northern NSW that does not have many support workers. One evening, 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, over the next few weeks, it is apparent to Tamara that the supervisor is not acting on her concerns. There has been no change to shifts or supports, and Angela tells her that Julia is continuing to verbally abuse her.

Tamara is worried that taking her concerns to the Commission may compromise her employment, but she re-reads the Code of Conduct and understands that she has whistle-blower protections and an important role in ensuring the situation is addressed. Together, Angela and Tamara make a complaint to the Commission. The Commission investigates.

Contribute to the reduction and elimination of restrictive practices

96. 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.

97. 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.

98. The Commonwealth and States and Territories 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.

99. Workers should work in partnership with their NDIS provider, to contribute to the reduction and elimination of restrictive practices. There are specific requirements

around restrictive practices and behaviour support set out in 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 develops complex issues, including low self-confidence, and begins to shoplift.

When, Maria, a new support worker begins working with Jane, she asks one of her colleagues why there are locks on the cupboards. The other support worker says they're 'for Jane's own good' because of her weight gain. The support worker raises their concern with their manager because they know that this is a restrictive practice that must be approved in a behaviour support plan and they suspect, from past experience, that Jane's medication may be causing her weight gain.

When the manager ignores her concern, Maria makes a report to the Commission and they investigate her claim and provide a Behaviour Support Practitioner to review the situation. The Practitioner conducts 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 provider removes the locks on the cupboards and fridges, while the Practitioner works with Jane's support workers to educate them on Jane's condition. The Behaviour Support Practitioner also talks to Jane about her shoplifting behaviour and identifies a need to engage a clinician to help her deal with her lack of self-confidence and risk-taking behaviours more generally.

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

100. 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.

101. People with disability are at an increased risk of all forms of sexual violence and sexual misconduct.

102. Sexual misconduct is a broad term encompassing any unwelcome acts or behaviours 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.

103. The support relationship between a worker and a person with disability they support relies on a high degree of trust which can never be exploited or betrayed. Workers should never engage in sexual misconduct with respect to persons with disability and they have a key role in reporting such misconduct.

104. 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 worker's actions to:

Not commit or participate in any form of sexual misconduct or inappropriate relationship

105. When delivering services, 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 towards a person with disability, including sexual misconduct.

106. NDIS providers are required to develop policy and guidance to prevent and respond to sexual misconduct. This must explicitly indicate
that workers will not commit sexual misconduct or engage in inappropriate relationships with persons with disability they support, or knowingly engage in them with the families and carers of people with disability they support.

107. An NDIS provider's guidance for their workers should:

108. distinguish between sexual misconduct and appropriate conversations around a participant's sexual support or family planning needs

109. distinguish between inappropriate touching and appropriate touching

110. guide workers in setting boundaries with the person they are working with

111. guide workers in determining whether their own or others' relationships have become inappropriate and instruct them to cease any such relationship.

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

113. There is a distinction between sexual misconduct and appropriate conversations around a person with disability's sexual support or family planning needs; and inappropriate touching versus appropriate touching. In understanding behaviour that involves an inappropriate and overly personal or intimate relationship with, conduct towards, or focus on a person with disability, workers should refer to any guidance issued by the Commission and guidance issued by their NDIS provider.

114. Workers should set boundaries with the person with disability with whom they are working by having conversations with the person about their role. If workers find the nature of their relationship with the person they support changing, they have the responsibility to bring this immediately to the attention of their NDIS provider.

115. The professional standards or codes of conduct of some professions also have prohibitions on close personal, physical or emotional relationships. The Commission may refer a breach of the Code to other regulators of professional codes for their consideration in relation to a breach of the relevant code. The Commission may also take compliance action in relation to non-compliances with the Code.

Scenario

Nathan is an adult with a psychosocial disability who attends weekly sessions with support worker, 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 the 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 although Jacinta's questioning around Nathan's sexuality may have been relevant to the broader psychosocial supports that she had been engaged to provide, her proposal to meet with Nathan for a casual lunch is 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 and regularly monitors Jacinta's work. The provider also makes sure that Jacinta is aware of their 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.

Jacinta accepts that although her questioning may have been relevant, she needs to more clearly explain to her clients during sessions why she pursues the line of questioning that she does, and how it is relevant to the broader psychosocial supports that they require.

Scenario

Support worker Peter cleans NDIS participant Aisha's apartment every Wednesday. Peter is very enthusiastic and talkative and often gives Aisha compliments about her clothes and appearance. Peter has attended provider induction training about professional conduct and the employer has clear guidelines about unacceptable behaviours when working with clients. This includes not asking clients out on dates and not using sexually explicit language.

One day, Peter invites Aisha to go to a local café for lunch. Aisha accepts. During lunch, Peter makes sexually inappropriate comments that make Aisha feel very uncomfortable. After the lunch, Aisha contacts Peter's employer to make a complaint. After ensuring Aisha's safety and wellbeing, the employer commences an investigation and notifies the Commission.

The Commission finds that Peter directly contravened the NDIS Code of Conduct and engaged in sexual misconduct. The provider immediately dismisses Peter and assists Aisha, at her request, to select a new female support worker. Aisha is also offered counselling support.

The Commission passes the findings on to the NDIS Worker Screening Unit that cleared Peter and asks them to consider whether these findings impact on Peter's clearance outcome.

Report sexual misconduct or inappropriate relationships to their NDIS provider, the Commission and other relevant authorities

116. Workers should report any sexual misconduct, unlawful sexual or physical conduct or inappropriate relationships to their NDIS provider, the Commission and any other relevant authorities, such as the police, child protection authorities and professional bodies. This includes abuse towards a participant from a third party such as a family member or carer.

117. Workers also have a responsibility to support people with disability so they feel safe to make a complaint about alleged sexual misconduct without fear of retribution or loss of services. Workers 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.

Scenario

Rob is a resident in a supported accommodation facility. Lisa, a nurse at the facility, notices that Rob is increasingly anxious during interactions with another worker in the facility, Mark. Lisa is aware of the obligation to ensure Rob feels safe and respected and engages Rob in a respectful conversation about his preferred interaction with workers.

Rob alleges that Mark always places a hand on Rob's back while they are talking, which is uncomfortable and feels threatening in a way that is hard to explain. However, Rob does not want to make any complaints about Mark because he is generally nice and provides a good service.

Lisa reassures Rob that it is okay to speak up about what he is experiencing as unwelcome contact. Rob raises the issue with Mark. Mark is unaware that his actions were making Rob uncomfortable, explains this to Rob, and stops the practice immediately.

8. Prohibition on charging and representing higher prices for the supply of goods for NDIS participants

118. NDIS participants have the right to equality and non-discrimination when purchasing goods in the NDIS market. They also have the right to access appropriate and affordable services, devices and other assistance for disability-related needs.

119. Unless they have a reasonable justification, an NDIS provider, its key personnel and workers must not charge a participant more than another person for the same or substantially the same goods. They must also not represent that the price is higher for supplying a participant. Representing includes telling, promoting, advertising and publishing.

120. This conduct is known as 'price differentiation' and is prohibited. It discriminates against people with disability who are accessing the NDIS and it potentially reduces the funds available in a participant's plan to purchase reasonable and necessary supports.

121. The prohibition covers circumstances where the goods involved are either the same or substantially the same. For example, price differentiation where the goods are of a different colour but otherwise identical is prohibited. If the goods are significantly modified or customised, they will not be substantially the same.

122. A reasonable justification for differences in pricing may include fluctuations in the market price for the goods over time, different warranties or services being attached to them or different volumes of the goods being supplied.

Scenario

NDIS participant Rahit is undergoing a functional review with an Occupational Therapist after a 'near miss' fall in the shower. The therapist advises that Rahit would benefit from having a shower chair and that he can source one from Sanjay's Assistive Technology Store, a registered NDIS provider. Rahit purchases the shower chair and the cost of $170 is placed against his NDIS plan. Rahit has dinner with his family and tells them about the OT review, the shower chair and the cost.

Later that week, Rahit's daughter speaks to a friend who got the same shower chair from the same store for her grandfather, who is not a participant. The friend tells Rahit's daughter than the chair cost her only $100. Rahit's daughter feels that Rahit is being taken advantage of because he has an NDIS plan. Rahit's daughter phones the store and asks why there is a $70 price difference for a similar item. The store responds and says that it is due to NDIS participant pricing.

Rahit's daughter makes a complaint to the NDIS Commission. The NDIS Commission makes enquiries into Sanjay's Assistive Technology Store's pricing structure for the provision of disability related goods. A further investigation uncovers that the store's business practice is to deliberately price goods substantially higher than identical items offered as non-NDIS related supports. This price differentiation is found to be occurring across several Sanjay's Assistive Technology stores and without reasonable justification. The NDIS Commission arranges a meeting with the business owner to explain the Code of Conduct breach and asks what they plans to do to rectify. The NDIS Commission also works with the ACCC to share information and explore if any other breaches of Australian Consumer law have occurred.

Part 3: The NDIS Code of Conduct in Practice

123. The Commission has primary responsibility for overseeing the compliance of workers, key personnel and providers with the NDIS Code of conduct when delivering supports and services under the NDIS. This section outlines actions that can be taken in relation to breaches of the Code and its relationship with other professional codes.

124. In its administration of the Code, the Commission will take into account a number of factors including:

    a. the type of supports and services a worker is responsible for delivering;

    b. the environment in which these are delivered;

    c. participant support needs;

d. other regulations that apply to the supports and services; and

e. other relevant circumstances.

Breaches of the Code

125. Anyone can make a complaint about NDIS funded supports and services, 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 provider to make complaints.

126. Workers are expected to adhere to the Code and should identify and report breaches to their NDIS provider and key personnel.

127. There may be circumstances where a worker is directed by an NDIS provider or its key personnel to do something that may constitute a breach of the Code. In such circumstances, the conduct of the worker, key personnel and the NDIS provider will be considered against the requirements of the Code.

128. The NDIS Commission can commence an investigation as a result of any information it receives about a NDIS provider's worker's or key personnel's potential breach of the Code whether it is in relation to a complaint, a reportable incident or from any other source. The Commission will work with all relevant people and conduct investigations fairly and efficiently and in accordance with the principles of natural justice.

129. The 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, their key personnel workers.

130. The Commission will gather, integrate and assess information about sharp practices from multiple sources, including workers, provider registration data, participant feedback, complaints, reportable incidents, referrals, intelligence from other agencies including the NDIA, and from its own market studies.

131. The 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

132. The NDIS Commission, an independent regulator, is empowered to take a range of sanctions and remedial action if workers, key personnel or NDIS providers breach the Code.

133. 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. The issue may be referred to a worker's professional body, may trigger a reassessment of an NDIS worker screening clearance and/or may be referred to the police. For the most serious breaches, the NDIS Commission may choose a different response, for example, going to court to

have civil penalties imposed or issuing an order that bans a person from working in the NDIS sector.

134. When an alleged criminal act is involved, the matter should be referred to the police either directly by a worker, member of key personnel or via their NDIS provider.

135. The NDIS Commission also has the discretion to publish on its website the result of any action it has taken against a worker, key personnel and/or NDIS provider.

Relationship with other codes

136. Workers who, as members of a professional association, are required to comply with a 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 (eg child protection requirements).

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

138. The NDIS Commission will, as far as practicable, coordinate any regulatory activity with the professional body or other regulator.

Review of the Guidance

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

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

Glossary

Phrase	Definition
Behaviour Support Plan	A documented plan that seeks to support a person with disability by outlining strategies that respond to their needs and causes of challenging behaviours, and provides a roadmap for reducing or eliminating the use of any restrictive practices.
Carer	Someone who provides personal care, support and help to a person with disability 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.
Conflict of Interest	Conflict of interest includes potential or actual conflict for example, when a worker or a provider is in a position to exploit their own professional or official capacity for personal or corporate benefit.
Complaints Process	In addition to the NDIS Quality and Safeguards Commission having a complaints function overseen by a senior member of Commission staff employed as the 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.
Incident Management System	Registered providers have an obligation to implement and maintain an incident management system and report to the Commission reportable incidents (as defined under the *NDIS (Reportable Incidents) Rules 2018*).
Local Area Coordinator	Local Area Coordinators or LACs, which are 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.
NDIA	National Disability Insurance Agency. The Commonwealth government organisation administering the NDIS.
Participant	A person whom 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.

Phrase	Definition
Plan	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.
Registered NDIS Provider	A service provider that has registered with the NDIS Commission to provide services or supports under the NDIS.
Restrictive Practice	Means any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability.
NDIS Sector	The organisations and companies providing disability support services and the peak bodies that represent them.
Sexual Misconduct	Inappropriate behaviour that may include a. asking the person on a date b. touching any part of a person's body in a sexual way c. touching a person in a way they do not wish to be touched d. displaying their genitals to the person e. coercing, by pressuring or tricking, a person to engage in sexual behaviours or acts 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) g. making sexually suggestive comments or jokes h. intentionally staring at a person in a way that makes them feel uncomfortable 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.

Phrase	Definition
Sharp Practices	Business practices that may in a technical sense be legal but are unethical or dishonest.
Support	Things to help a person undertake daily life activities and enable them to participate in the community and reach their goals.
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.