



Delivered by the  
National Disability  
Insurance Agency



NDIS Quality  
and Safeguards  
Commission

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Dear NDIS providers

### **Australian Consumer Law and the NDIS Code of Conduct**

The Australian Competition and Consumer Commission (ACCC), the NDIS Quality and Safeguards Commission (NDIS Commission) and the National Disability Insurance Agency (NDIA) are jointly writing to all NDIS providers to remind you of your obligations under the *Competition and Consumer Act 2010 (CCA)*, which includes the Australian Consumer Law (consumer law), and the NDIS Code of Conduct, when dealing with consumers with disability.

Most businesses know that it is important to treat their customers fairly, especially if they are experiencing vulnerability, and behave accordingly. Businesses that act fairly, in good conscience and accommodate the needs and circumstances of their consumers benefit from a good reputation.

It has been brought to our attention however that there are a number of emerging consumer issues within the disability sector, with some NDIS providers not meeting their consumer protection obligations. Issues affecting vulnerable consumers are an enduring priority for the ACCC.

Just like regular businesses providing goods and services to consumers, businesses who provide goods and services to NDIS participants have obligations under the consumer law as well as the NDIS Code of Conduct. Some conduct that is in breach of the consumer law may also lead to action being taken by the NDIS Commission against a provider under the NDIS Code of Conduct. For example, 'sharp practices' are considered unethical and are discouraged under the NDIS Code of Conduct and may also constitute conduct that is considered misleading and in contravention of the consumer law.

The ACCC and NDIS Commission will not hesitate to take action when these laws are breached.

## **Australian Consumer Law**

The consumer law imparts a set of protections and obligations into any consumer transaction within Australia, including those through the NDIS. It is important that you treat consumers fairly and take particular care when dealing with consumers that may be disadvantaged or vulnerable. The consumer law requires that, when supplying goods or services in Australia, businesses must:

- not mislead or deceive consumers, this includes giving false information or not enough information
- provide a proof of transaction when requested
- not accept payment for goods or services if you are unsure of your ability to supply them
- not request payment for goods or services that the consumer has not agreed to buy, and
- allow for a 10 day cooling off period for all unsolicited consumer agreements (agreements made when a business approaches the consumer such as door-to-door or telemarketing), as well as providing documents and information about these rights.

The consumer law also requires that businesses provide goods or services that are of acceptable quality, fit for their purpose and match the description or sample provided to the consumer, these are called the consumer guarantees. When the consumer guarantees are not met consumers are entitled to a repair, replacement or refund, depending on the severity of the failure.

If you do not comply with the consumer law then you risk serious financial penalties, court ordered corrective actions and reputational costs. For example, conduct that breaches the consumer law can attract penalties per breach of up to \$10 million.

You can find more information on your obligations to consumers, and how to meet them, in the ACCC publication *A guide to competition and consumer law: for businesses selling to and supplying consumers with disability*. This and other resources can be found on [ACCC website](#).

## **NDIS Code of Conduct**

The NDIS Code of Conduct promotes safe and ethical service delivery by setting out behavioural expectations for NDIS providers and those they employ. The NDIS Code of Conduct applies to both registered and unregistered NDIS providers. If you are a registered NDIS provider, compliance with the NDIS Code of Conduct is a condition of your registration.

The NDIS Code of Conduct obliges providers, amongst other requirements, to act with honesty, integrity and transparency. Under this obligation, you should:

- supply truthful information about the capacity, qualifications, training and professional affiliations of your workforce, and not hold yourself out as being able to provide a specialised service when you are not legally able to do so
- 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, and

- not make claims about the efficacy of treatments or supports that cannot be substantiated independently.

Businesses are also discouraged from engaging in sharp practices. 'Sharp practices' refers to unfair treatment or taking advantage of people. Examples of this include:

- providing services or expending funds contrary to a person with disability's approved plan
- asking for or accepting any additional fees for providing the service
- 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, and
- engaging in high-pressure sales tactics.

If you do not meet these obligations you may be breaching the consumer law, as well as risking serious penalties under the NDIS Act for a contravention of the NDIS Code of Conduct, such as financial penalties or having your registration revoked. If you are an unregistered NDIS provider you also risk these same penalties and being banned from providing disability supports and services to NDIS participants.

You can find further information and guidance on about meeting your obligations under the NDIS Code of Conduct on [NDIS Commission website](#).

Yours sincerely



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