

## CODE OF CONDUCT POLICY

### 1. **Purpose**

The Policy outlines the minimum standards of ethical behaviour that are expected of Potential Therapy Services for Children (PTSC) employees in the performance of their duties.

This Code of Conduct supports PTSC to apply the National Disability Insurance Scheme (Code of Conduct) Rules 2018 and NDIS Practice Standards.

The Policy provides guidance on the behaviour required by employees in the conduct of business and when dealing with clients, colleagues and other stakeholders.

Potential Therapy Services for Children is committed to best practices in all aspects of service delivery. This Policy supports the people who work with us and empowers people with disability in relation to their rights.

### 2. **Scope**

1. The Code of Conduct applies to all employees of Potential Therapy Services for Children.
2. This policy supports PTSC's Contract of Employment.
3. Contractors and consultants working for PTSC must be made aware of this policy and act consistently with its principles. While contractors and consultants are not subject to disciplinary action, conduct that would be assessed as being a serious breach of the policy may result in their contract being terminated.
4. This policy is not exhaustive but gives guidance in areas where employees need to make personal and ethical decisions.
5. If faced with a situation not covered by this policy, employees are expected to apply common sense and sound judgment consistent with the intention and spirit of the principles and standards outlined in this policy and be accountable for their actions and decisions.

### 3. **Principles**

The overarching principles are:

1. to act ethically, with honesty, integrity, professionalism and care, and ensure the proper use of company information, funds, equipment and facilities,
2. to exercise fairness, equity, courtesy and respect when dealing with clients, colleagues and other stakeholders
3. to promptly take steps to raise or act on concerns about issues that may impact the quality and safety of services provided to clients.
4. to take all reasonable steps to prevent and respond to all forms of violence, neglect, exploitation and abuse of clients, colleagues and other stakeholders.
5. to avoid real or apparent conflicts of interest.

#### **4. Responsibilities**

All employees have responsibility for ensuring compliance with the Code of Conduct Policy and are required to:

1. perform their duties with skill, honesty, care and diligence, using authority in a fair and equitable manner,
2. be scrupulous in the proper use of company information, funds, equipment and facilities,
3. abide by Potential Therapy Services for Children's policies and procedures, instructions and lawful directions that relate to their employment and duties,
4. contribute to creating and maintaining a safe work environment,
5. promote the interests of Potential Therapy Services for Children,
6. comply with the spirit and regulations which apply to their particular profession and industry,
7. comply with this policy and report any possible breaches in accordance with the obligations outlined.
8. It is each employee's responsibility to ensure that they have familiarised themselves with PTSC's policies and procedures.
9. Employees who are unsure about any aspect of this policy, or how to apply it, should speak to their manager.

#### **5. Professional Conduct**

##### **Privacy and Confidentiality**

1. In the course of employment, employees will have access to a range of confidential information relating to PTSC, its business dealings and financial position, its employees, clients, suppliers and other stakeholders.
2. Employees must deal with this information in a confidential and sensitive manner, and must not, either during or after their employment:
  - a. Use or disclose this confidential information, or information of a sensitive nature, unless the disclosure is required by law. This includes removing confidential information from the workplace, making copies for external use, or sharing this information unless required as part of their duties or where agreed to by PTSC.
  - b. Use confidential information for personal gain, or to take advantage of another person, and/or
  - c. Take with them copies of computer programs, files or other records when they leave the employment of PTSC.

##### **Conflict of Interest and Other Employment**

1. Employees must avoid any real or apparent conflicts between any of their personal, financial or other interests and those of PTSC. If a personal, financial or other interest influences, interferes with or distracts from an employee's duties or responsibilities, then a conflict of interest exists.
2. Any interest which may constitute a conflict of interest must be promptly disclosed to management.
3. Working with another organisation, accepting a paid external appointment, or operating a business whilst an employee of PTSC is not permitted without the written permission of the Director.
4. If an employee is unsure about a potential conflict of interest, they should discuss it with their manager.

## **Company Property**

1. Company property, funds, facilities and services must only be used for legitimate and authorised work purposes.
2. Employees must take responsibility for the protection and care of company assets, including:
  - a. Cash and corporate cards
  - b. Plant and equipment (including vehicles, IT assets, phones and other communication tools)
  - c. Products and stock
  - d. Intellectual property
3. Unless governed by law, or otherwise agreed in writing, any intellectual property developed by an employee during their employment with PTSC is the sole property of PTSC.

## **Fraudulent Activities**

Employees must not engage in fraudulent activities, including fraud, theft, embezzlement or intentional misrepresentation to secure a benefit (including in relation to expense reimbursement or performance rewards), or misappropriation of any property of PTSC, any of its employees, suppliers or clients.

## **Gifts, Entertainment and Inducements**

1. PTSC recognizes that employees may, from time to time, entertain or be entertained and give or receive gifts in the course of their duties. Providing or receiving gifts and entertainment must be disclosed to the employee's manager.
2. Employees should not:
  - a. Accept gifts or hospitality which could impair their judgement or be perceived to be a conflict of interest, bribe or inappropriate gift
  - b. Offer inducement or bribes for the purpose of acquiring or retaining business or receiving any kind of special or favoured treatment for PTSC.
3. Invitations where travel and/or accommodation is involved must be authorised by the Director.

## **Media and Public Statements**

Media or public comment in relation to PTSC or its activities can only be made by the Director, or any employees expressly authorised to make public comments on its behalf.

## **6. *Personal Conduct***

### **Inappropriate Conduct**

1. At all times, the perception of PTSC employees by clients, suppliers, stakeholders and members of the public is paramount. Employees must conduct themselves in the workplace, and at company sponsored functions, in a manner that is appropriate for the circumstances and the workplace, and which is not likely to have an adverse impact on the work environment, or PTSC, its employees, clients or other stakeholders.
2. Employees must be aware of, and adhere to, company policies, including those relating to employee conduct, safety and health, equal opportunity, workplace discrimination, harassment or bullying (including isolating or excluding colleagues).
3. In addition to conduct outlined as unacceptable, inappropriate conduct may also include the use of offensive language and direct or indirect verbal or written, abuse directed at others.

## **Tidiness and Workplace Behaviour**

1. Desks and working areas, and other shared areas within the company, are to be left tidy.
2. All confidential material must be locked away overnight.
3. Personal belongings in the workplace should be limited and appropriate, and not allowed to accumulate.

## **Dress Standards**

1. It is expected that all employees will dress in a manner which is appropriate for their role, consistent with safety requirements, clean and neat.
2. Employees who deal with clients, suppliers and the public are expected to wear suitable attire of a standard consistent with that worn by people dealing with the public.
3. Employees who have been supplied with a uniform, or are required to wear a uniform, are expected to wear it in accordance with any Uniform Policy.

## **Smoking**

Smoking is not permitted on the premises of PTSC, or in its vehicles, or within 10 metres of any entrance to PTSC and their clients' premises.

## **Alcohol and Drugs**

All employees must present to work in a fit state to perform their duties. Whilst at work or representing PTSC, employees must not be under the influence of drugs and/or alcohol that may affect or impair their capacity to perform their job safely, efficiently and with respect for work colleagues and clients.

## **7. Consequences of a breach**

1. Any action in breach of this policy may result in disciplinary action in accordance with the Discipline Policy.
2. Any breach that is considered illegal may be reported to the appropriate external authority.

## **8. Reporting and Investigation**

1. Employees who become aware of a suspected breach of this policy, either before or after it happens, must promptly report it.
2. A complaint or disclosure about an alleged breach of the policy should:
  - a. Be in writing and contain details about the circumstances of the alleged breach.
  - b. Be made to the employee's manager, or to senior management if the employee's manager is implicated in the alleged breach.
  - c. Be treated as confidential.
3. Any employee who in good faith makes a complaint or disclosure about an alleged breach of the Code of Conduct Policy, in accordance with the procedures outlined, will not be disadvantaged or prejudiced.
4. The person to whom the allegation is made should undertake prompt and thorough investigation and determine whether they consider any further action is required
5. If the person conducting the investigation considers that an employee may have breached the Code of Conduct Policy, the matter should be dealt with in accordance with the Discipline and Termination Procedures.
6. The employee who made the complaint or disclosure will be informed of the outcome of the investigation.

## THE NDIS CODE OF CONDUCT

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).

As a registered NDIS Provider, Potential Therapy Services for Children and its employees must comply with the NDIS Code of Conduct.

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

- 1. Act with respect for individual rights to freedom of expression, self-determination and decision-making in accordance with applicable laws and conventions.**
- 2. Respect the privacy of people with disability.**
- 3. Provide supports and services in a safe and competent manner with care and skill.**
- 4. Act with integrity, honesty and transparency.**
- 5. Promptly take steps to raise and act on concerns about the 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.**

Employees must read Appendix A which provides further explanation of the NDIS Code of Conduct requirements.

## APPENDIX A – NDIS CODE OF CONDUCT GUIDELINES

The NDIS Code of Conduct (the Code) is an important part of the NDIS Quality and Safeguarding Framework. It promotes the health, safety and wellbeing of persons with disability, by setting out acceptable, appropriate and ethical conduct for NDIS providers and workers delivering supports or services in the NDIS sector.

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

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

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.

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

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.

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

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

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.

Registered NDIS providers (and applicants for registration as an NDIS provider) are also obliged to comply with the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*, which have been developed in line with the *National Standards for Disability Services* and the *National Standards for Mental Health Services*.

By delivering supports and services in accordance with the NDIS rules made under the NDIS Act, registered NDIS providers will maintain the standards and principles and upholding the conventions that underpin the NDIS.

## **b) Support people with disability to make decisions**

People with disability have the right to make choices and should always be assumed to have the capacity to make those choices. This is central to their individual rights to freedom of expression and self-determination. Adults with disability should receive the support they need to make any decision. Adults with disability have the right to choose who does and who does not help them to make any decisions. Their partner, family, friends, carers, advocates, support workers and others play an important role in any person's life. However, not all people with disability need or want those important people to support them in decision-making, or to make decisions for them. NDIS providers should encourage workers to engage directly with people on any choices or decisions that affect them. They should consult them about who, if anyone, they want to involve in decisions and discussions about their services and supports, or other aspects of their lives.

For children and young people, families have a key role. In the early years, workers should work closely with families to understand their child's strengths, interests and needs, and support them in their caring role. As a child grows up, they should be more involved in decision-making. Workers should involve children and young people in decisions that affect them in ways appropriate to their age and stage of development. In the case of very young children, this will involve ensuring staff pay attention to the signs children give that communicate their feelings, ideas and wishes including non-verbal indications.

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

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

At the heart of choice and control is a person's right to be an informed consumer. People with disability have a right to be informed about all aspects of the delivery of services to them so they can exercise their right of choice and control about who supports them and how supports and services are delivered, and if they need to change.

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

In practice, this means NDIS providers should:

- i. take reasonable steps to educate and support their workers to communicate in a form, language and manner that is accessible and appropriate for the individual and to use a range of communication tools to communicate with the people they support, using assistive technology and alternative forms of communication, such as email, text messages or symbols.
- ii. where the person speaks a language other than English or uses Auslan, match the person with a worker who speaks their language or uses Auslan (where possible), or provide supports using qualified interpreters, where these supports are covered by their NDIS plan.

- iii. 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.
- iv. respond to the will, preferences and concerns of the person with disability in relation to their supports and services – addressing requests or complaints where necessary.
- v. where possible, provide consistent workers, so that they can build a good understanding of individual communication preferences and needs, particularly where an individual has complex communication needs.

**d) 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**

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.

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.

NDIS providers must acknowledge and consider individual contexts, values and histories, while also complying with obligations under anti-discrimination and work health and safety laws.

In practice, this means NDIS providers should:

- i. foster a culture of inclusiveness, in which people with disability feel as comfortable and safe as possible in their day-to-day interactions with workers
- ii. encourage people with disability to communicate their preferences for how their supports are delivered
- iii. discuss with people with disability their preferences for their support worker
- iv. have knowledge of, respect for, and sensitivity towards, the cultural needs of the community served, including Aboriginal and Torres Strait Islander peoples and those from culturally and linguistically diverse backgrounds
- v. where appropriate, provide cultural awareness training to workers to build an understanding of diverse needs and preferences
- vi. offer people with disability culturally-sensitive activities
- vii. respond to needs related to gender.

***Respect the privacy of people with disability***

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



### **a. Comply with Commonwealth and State and Territory privacy laws**

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

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

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

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

- i. the kinds of personal information about them that will be collected and held, including recorded /audio and visual material
- ii. why this information is held
- iii. who will have access to this information
- iv. how they will ensure the information is secure
- v. how this information will be used
- vi. how to access and amend information held about them
- vii. how to make a complaint if they feel that the NDIS provider has breached their privacy obligations.

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

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

Privacy extends beyond a careful approach to handling personal information to the way in which services are delivered to people with disability. NDIS providers should be aware of the privacy needs and preferences of people with disability and deliver services in a way that maintains personal dignity. This includes having in place policies, procedures, resources, worker training and service delivery models to support workers in:

- i. maintaining the confidentiality of the person's personal information
- ii. explaining and requesting permission to perform procedures that involve physical touch or the invasion of personal space
- iii. the timely provision of services to prevent embarrassment and discomfort such as toilet breaks or the changing of incontinence pads
- iv. considering everyday personal privacy needs such as being able to shower and dress in a private and comfortable space.

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

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

NDIS providers should ensure they assign appropriate workers, who have the required competence, to deliver the supports and services to meet the needs of people with disability.

They should also ensure adequate policies and operational procedures, resourcing, and appropriate supervision for workers are in place to ensure supports and services are delivered in a safe and competent manner. Providers are also required to hold appropriate insurance.

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

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

Adequate worker expertise and competence is central to safe and skilful service delivery. NDIS providers have a responsibility for ensuring workers have the necessary training, competence and qualifications to deliver supports and services. In practice, this means:

- i. supporting workers to adopt the values underpinning the NDIS, including choice and control and person-centred approaches
- ii. having recruitment and selection processes (including referee checks) that identify skills, experience and qualifications required by staff for the role
- iii. providing relevant training
- iv. providing appropriate supervision
- v. not directing workers to deliver supports and services for which they do not have the necessary training, competence and qualifications.

**b. Provide services consistent with relevant professional codes**

Workers who are members of a professional association or other relevant body with existing professional codes of conduct (for example nurses, psychologists and health care workers) are required to deliver services consistent with their relevant professional code as well as with the NDIS Code of Conduct and any other applicable regulatory framework. The NDIS Code of Conduct has been developed with reference to other relevant professional codes to ensure a consistency of practice and minimal additional regulatory burden. The NDIS Commission may work with professional regulatory bodies in investigating alleged breaches where a worker's conduct may be contrary to both the NDIS and their professional codes of conduct.

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

**c. Provide services consistent with relevant professional codes**

Workers who are members of a professional association or other relevant body with existing professional codes of conduct (for example nurses, psychologists and health care workers) are required to deliver services consistent with their relevant professional code as well as with the NDIS Code of Conduct and any other applicable regulatory framework. The NDIS Code of Conduct has been developed with reference to other relevant professional codes to ensure a consistency of practice and minimal additional regulatory burden. The NDIS Commission may work with professional regulatory bodies in investigating alleged breaches where a worker's conduct may be contrary to both the NDIS and their professional codes of conduct.

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

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

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.

NDIS providers should ensure the health and safety of their workers and other persons at the workplace.

NDIS providers should meet work health and safety requirements set out in the relevant acts and regulations in their State or Territory. Further information about specific work health and safety requirements in each jurisdiction can be found at

<https://www.business.gov.au/info/run/workplace-health-and-safety/whs-oh-and-s-acts-regulations-and-codes-of-practice>.

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

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

NDIS providers should maintain appropriate records and follow appropriate security procedures for record management. This includes:

- i. showing respect for people with disability by avoiding the inclusion of demeaning or derogatory language or remarks in records
- ii. keeping accurate, up-to-date and legible records that report relevant details of a participant's service history, medication and support needs
- iii. detailing any allegations and incidents that may have occurred, including alleged breaches of the Code, and how they were managed
- iv. recording feedback, complaints, incidents and allegations
- v. recording any other issues that may have arisen while providing services
- vi. maintaining sufficient detail to facilitate continuity of participant supports and inform future service delivery
- vii. retaining participant records for a minimum of seven years after service provision.

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

#### **f. Hold appropriate insurance**

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

### ***Act with integrity, honesty and transparency***

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.

For clients to be informed consumers they need accurate information about their service providers, the services they receive, and any real or perceived conflicts of interest of the people working with them; and

they should be able to make decisions in their best interest, free from inducements or pressure.

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

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

People with disability have a right to accurate, accessible and timely information about the cost and efficacy of supports and services. This information may include: a clear quote for a service or support; easily understood breakdown of costs for different service options; information supporting the effectiveness of supports; the experience of other people with the service or support, and the risks and benefits of service options.

NDIS providers have a responsibility to only recommend and provide supports and services that are appropriate to the needs of the participant.

Under this obligation, NDIS providers should:

- i. supply truthful information about the capacity, qualifications, training and professional affiliations of their workforce including if a worker has been excluded from an NDIS worker screening check for a role that involves more than incidental contact with people with disability
- ii. not make false claims about the efficacy of any supports, services or products
- iii. give clear advice about the full costs of the service or support and what the cost covers
- iv. not make claims about the efficacy of treatments or supports that cannot be substantiated independently.

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

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

An NDIS provider should:

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

Additionally, NDIS providers should ensure their workers:

- i. are aware of their obligation to declare a conflict of interest and inform people with disability when they have an interest that may impact supports and services provided to a person with disability (i.e. other than simply being paid for providing the services or supports);
- ii. do not give inducements or gifts, ask for any inducement or gift, or accept any inducement or gift of more than minor value, from people with disability, their families, carers or advocates.

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

### **c. Avoid engaging in, participating in or promoting sharp practices**

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

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

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

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

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

### ***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***

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

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

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

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

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

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

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

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

### **a. Operate effective complaints processes**

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

- i. the death of a person with disability
- ii. serious injury of a person with disability
- iii. abuse or neglect of a person with disability
- iv. unlawful sexual or physical contact with, or assault of, a person with disability
- v. sexual misconduct committed against, or in the presence of, a person with disability, including grooming of the person for sexual activity
- vi. 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.

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

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

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

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

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

Evidence demonstrates that people with disability are at a far greater risk of experiencing violence, abuse, neglect and exploitation than others in the population and this often goes un-recognised and un-addressed<sup>1</sup>. Women and girls with disability are at far greater risk of violence, and children and young people with disability experience violence and abuse at approximately three times the rate of children without disability.

'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 willful deprivation.

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

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

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

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

NDIS providers should:

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

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

If an incident or criminal act of violence, abuse, neglect or exploitation does occur, the primary focus of both NDIS providers and workers should be to ensure that all persons affected are safe.

NDIS providers should:

- i. be aware of, and abide by, any State or Territory-based mandatory reporting requirements
- ii. ensure workers understand how to immediately report the incident to their supervisor and/or any other authorities if an incident or criminal act of violence, abuse, neglect or exploitation does occur or is alleged
- iii. notify the NDIS Commission about reportable incidents
- iv. act swiftly to involve the police and the NDIS Commission
- v. fully comply and cooperate with any investigative actions taken by the NDIS Commission or other relevant authorities, including the police.

An act of violence, abuse, neglect and exploitation by a participant should prompt an assessment/ re-assessment of a participant's service package and the delivery of services to ensure their supports are being delivered in a constructive manner that maximises the benefit to the participant. This process

should include a review of any behaviour support plans by a specialist behaviour support provider to reduce the risks of future violence.

In its separate guidance for workers, the NDIS Commission notes that if a worker considers that a NDIS provider has not responded appropriately to incidents of violence, abuse and neglect or if they think the matter might be of more systemic significance they are encouraged to report the incident to the NDIS Commission. NDIS Providers should not use adverse action or threats of adverse action against such a worker. The NDIS Commission has legislative powers to protect workers and other people who report incidents to the NDIS Commission and can take regulatory action against NDIS providers that engage in this behaviour.

### **c. Reduce and eliminate restrictive practices**

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.

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.

Governments are committed to reducing and eliminating the use of restrictive practices, consistent with the recommendation of the United Nations Committee on the Rights of Persons with Disabilities and in 2014 endorsed the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector.

NDIS providers have a responsibility to reduce and eliminate restrictive practices within their service delivery. NDIS providers supporting people who have a behaviour support plan that includes a restrictive practice need to comply with the Restrictive Practices and Behaviour Support Rules, guidance on these Rules can be found on the NDIS Commission's website.

### ***Take all reasonable steps to prevent and respond to sexual misconduct***

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.

However, people with disability experience are also at increased risk of all forms of sexual violence and sexual misconduct.

Sexual misconduct is a broad term encompassing any unwelcome acts or behaviour that are experienced by the person with disability as being sexual in nature. This includes physical and verbal actions committed without consent or by force, intimidation, coercion or manipulation. It includes sexual violence and exploitation but is not limited to actions which constitute a criminal offence.

The support relationship between a worker and a person with disability they support relies on a high degree of trust. All forms of sexual misconduct constitute a breach of this trust and a breach of the Code.

NDIS providers have a key role in implementing practices that minimise the risk of sexual misconduct. They must have in place clear guidance for staff behaviour and processes for reporting sexual misconduct to the NDIS Commission and any other relevant authorities.

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

#### **a. Have in place clear guidelines for staff behaviour**

It is a core expectation of people with disability and the NDIS Commission that NDIS providers will develop policy and guidance to prevent and respond to sexual misconduct. This must explicitly indicate that workers are expected to adhere to the highest standards of behaviour, be respectful and take every action to make sure people with disability are safe. This means having professional boundaries in place



for relationships between staff and people with disability, and preventing and responding to any inappropriate behaviours by anyone to a person with disability, including sexual misconduct.

This guidance must state that workers will not commit sexual misconduct with persons with disability they support.

An NDIS provider's guidance for their workers should:

- i. distinguish between sexual misconduct and appropriate conversations around a participant's sexual support or family planning needs
- ii. distinguish between inappropriate touching and appropriate touching
- iii. guide workers in setting boundaries with the person they are working with
- iv. guide workers in determining whether their own or others' relationships have become inappropriate and instruct them to cease any such relationship.

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

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

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

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

NDIS providers should ensure that there are appropriate policies and procedures in place for workers to identify and report any alleged sexual misconduct, unlawful sexual or physical conduct or inappropriate relationships to the provider and to the NDIS Commission and relevant authorities, such as the police or child protection authorities, and relevant professional bodies.

It is crucial that NDIS providers create an environment in which people with disability feel safe and are informed about how to make a complaint about any alleged sexual misconduct, and that the complaint is made without fear of retribution or loss of services. NDIS providers have a responsibility to take steps to facilitate access to independent advocacy support or support for harm or trauma experienced if the person desires this support.

While it is understood that all NDIS providers will contact appropriate authorities as part of their response to an incident, registered NDIS providers have a particular obligation to notify the NDIS Commission under the *National Disability Insurance Scheme (Reportable Incidents) Rules 2018* about allegations of sexual misconduct.

## **THE NDIS CODE OF CONDUCT IN PRACTICE**

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

In considering issues that may arise with non-compliance of the Code, the NDIS Commission will take into account a number of factors including the size of an organisation, the type of supports and services

delivered and the environment in which these are delivered, participant support needs, other factors that apply to the supports and services, and other relevant circumstances.

### **a. Breaches of the Code**

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

NDIS providers are expected to adhere to the Code, take steps to ensure their workers adhere to the Code and to investigate and take appropriate action to address any breaches.

If an NDIS provider directs a worker to do something that may constitute a breach of the Code, the conduct of both the NDIS provider and the worker will be considered against the requirements of the Code if the worker complies with the direction.

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

The NDIS Commission has the role of collecting, correlating, analysing and disseminating information relating to complaints that arise out of, or in connection with, the provision of supports or services by NDIS providers and their workers.

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

The NDIS Commission is required to abide by the privacy and confidentiality obligations imposed under federal law, including the *Privacy Act 1988* (Cth) and the NDIS Act.

### **b. Consequences of breaching the Code**

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

Penalties for breaching the Code will depend on the nature of the breach. For breaches of a less serious nature, the NDIS Commission may, for example, decide to use training and education, warnings and directions. For the most serious breaches, the NDIS Commission may choose a different response, for example, going to court to have civil penalties imposed, deregistering NDIS providers, or banning NDIS providers or workers from providing services and supports in the NDIS sector.

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

### **c. Relationship with other Professional Codes**

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

NDIS providers should be aware that workers who are required to comply with an existing professional code of conduct, such as nurses, psychologists and health care workers, will also be required to comply

with the NDIS Code of Conduct and other applicable regulatory frameworks (for example, child protection requirements).

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

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

#### **d. Review of the Guidance**

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

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

## **GLOSSARY**

<b>Phrase</b>	<b>Definition</b>
<b>Behaviour Support Plan</b>	A documented plan that: <ul style="list-style-type: none"><li>• outlines the strategies that seek to support a person with disability;</li><li>• responds to the person with disability's needs;</li><li>• responds to the causes of behaviours of concern;</li><li>• provides a roadmap for reducing or eliminating the use of any restrictive practices.</li></ul>
<b>Carer</b>	Someone who provides support and help to a person with disability in the activities of their day to day life but not as an employee or person otherwise engaged by an NDIS provider. A carer will often be a family member or guardian of the person.
<b>Conflict of Interest</b>	Conflict of interest can be potential or real and occurs when a worker or an NDIS provider is in a position to exploit their own professional or official capacity for personal or corporate benefit (other than in the usual course of charging fees for services or supports rendered). Conflicts of interest could include conflicts of a financial, business or personal nature, including any financial and/or corporate interest or relationship the NDIS provider

Phrase	Definition
	may have with other entities, including businesses and organisations, or of a personal nature, including but not limited to cultural, religious or social relationships.
<b>Complaints Process</b>	In addition to the NDIS Commission having a complaints function overseen by a Complaints Commissioner, registered NDIS providers are required to have effective internal complaints management and resolution systems that are appropriate for the size of a provider and for the services or supports they provide.
<b>Incident Management System</b>	The incident management system that registered NDIS providers are obliged to implement and report on to the NDIS Commission, in accordance with the <i>NDIS (Incident Management and Reportable Incidents) Rules 2018</i> .
<b>Local Area Coordinator (LAC)</b>	Local organisations working in partnership with the NDIA, to help participants, their families and carers access the NDIS. LACs will help participants write and manage their plans and also connect participants to mainstream services and local and community-based supports.
<b>NDIA</b>	National Disability Insurance Agency. The Commonwealth government organisation administering the NDIS.
<b>Participant</b>	A person who the CEO of the NDIA decides meets the NDIS access requirements in response to a valid access request and so becomes a participant in the NDIS.
<b>Plan</b>	Means the participant's plan that is in effect under section 37 of the NDIS Act. Generally this will be a written agreement worked out with the participant, stating their goals and needs, and the reasonable and necessary supports the NDIS will fund for them. Each participant has their own individual plan.
<b>Registered NDIS Provider</b>	A service provider that has registered with the NDIS Commission to provide services or supports under the NDIS.
<b>Restrictive Practices</b>	An intervention such as seclusion, physical, chemical, mechanical or environmental restraint that has the effect of restricting the rights or freedom of movement of a person with disability.

Phrase	Definition
<b>NDIS Sector</b>	The organisations and companies providing disability support services and the peak bodies that represent them.
<b>Sexual Misconduct</b>	<p>Inappropriate behaviour that may include</p> <ul style="list-style-type: none"> <li>a. asking the person on a date</li> <li>b. touching any part of a person's body in a sexual way</li> <li>c. touching a person in a way they do not wish to be touched</li> <li>d. displaying their genitals to the person</li> <li>e. coercing, by pressuring or tricking, a person to engage in sexual behaviours or acts</li> <li>f. making sexual or erotic comments to the person – in person or by text message, email or social media message (as well as written comments, this includes images and audio)</li> <li>g. making sexually suggestive comments or jokes</li> <li>h. intentionally staring at a person in a way that makes them feel uncomfortable</li> <li>i. making comments about a person's sexuality or appearance</li> <li>j. making requests of a sexual nature, including to remove clothing, for sexually explicit photographs, videos or for sexual activities</li> <li>k. showing the person pictures or videos of naked people, or people undertaking sexual activities</li> <li>l. ignoring or encouraging sexual behaviour between people with disability that is non-consensual or exploitative.</li> </ul> <p>This list does not cover all situations and there may be other activities or behaviours that constitute sexual misconduct.</p>
<b>Sharp Practices</b>	Business practices that may in a technical sense be legal but are unethical or dishonest.
<b>Support</b>	Things to help a person undertake daily life activities and enable them to participate in the community and reach their goals.
<b>Worker</b>	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.

**Related Documents**

- 1) [Discipline Policy](#)
- 2) [Termination Procedure](#)

**Sign Off**

I have read the *Potential Therapy Services for Children Code of Conduct Policy* and *Appendix A NDIS Code of Conduct Guidelines* and agree to adhere to it at all times during my employment.

<b>Employee's Name:</b>	
<b>Employee's Signature:</b>	<b>Date:</b>