



# NDIS Code of Conduct Guidance Updates ‘at a glance’

## Price Differentiation

Price differentiation is when a Provider charges NDIS Participants a higher price for the same product, support or service compared with other customers. The recently updated NDIS Code of Conduct Provider and Worker Guidance (Guidance) identifies price differentiation as a potential ‘sharp practice’. The Commission expects that NDIS Providers will not participate in or promote sharp practices. This includes not:

1. providing services or expending funds contrary to a Participant’s approved plan
2. asking for or accepting any additional fees for providing the service
3. offering inducements or rewards that have no particular link to a Participant’s NDIS plan and that could be perceived to encourage people to take up or continue with your organisation or a particular service option
4. engaging in high-pressure sales
5. charging a Participant more than another person for substantially the same product, support or service without genuine, reasonable and objectively sufficient justification; and
6. promoting, advertising and publishing higher prices for substantially the same products, supports or services for Participants as compared with other people without genuine, reasonable and objectively sufficient justification.

*Source: NDIS Code of Conduct Provider Guidance September 2023, section 60*

## Scenario

Sanjay is an Occupational Therapist. NDIS Participant Rahit is undergoing a functional review with Sanjay after a ‘near miss’ fall in the shower. Sanjay advises that Rahit would benefit from having a shower chair and that he can easily source one for Rahit for \$170. Rahit trusts Sanjay and agrees for the shower chair to be ordered and the cost 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 a shower chair from Sanjay for her grandfather, who is not a Participant. The friend tells Rahit’s daughter that 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 Sanjay and asks why there is a \$70 price difference for a similar item. Sanjay responds and says that it is due to NDIS Participant pricing.

Rahit’s daughter makes a complaint to the NDIS Commission. The NDIS Commission undertakes further enquiries into Sanjay’s service pricing structure for the provision of disability related products. A further investigation uncovers that Sanjay’s business practice is to deliberately price products substantially higher than identical items offered as non-NDIS related supports. This price differentiation is found to be occurring across several OT clinics owned by Sanjay. The NDIS

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Commission arranges a meeting with Sanjay to explain the Code of Conduct breach and asks what he plans to do to rectify.

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## Advertising and negotiating the sale of an NDIS Provider

NDIS Providers should act with honesty, integrity and transparency in all aspects of conducting their business as detailed in the NDIS Code of Conduct (the Code). This includes when advertising their business for sale and engaging in sale negotiations.

The NDIS Code of Conduct Provider and Worker Guidance has been updated to discuss how the Code applies when an NDIS Provider is advertising and negotiating the sale of their business.

The Guidance includes that NDIS Providers who are selling their business must ensure they are not:

- falsely claiming that Participants and their plans are a guaranteed source of income for a period of time or indefinitely, or that they remain or transfer with the business as part of the sale
- making statements inferring that Participants and/or their NDIS plans are commodities or assets for sale, or that Participants are not free to change their Provider at any time
- making statements that infer that the buyer Provider can operate with minimal management or that otherwise misrepresent a Provider's other obligations under the Code, particularly obligations to provide services in a safe and competent manner, with care and skill, and to take all reasonable steps to prevent and respond to all forms of violence against, exploitation, neglect or abuse of people with disability
- making any other statements contrary to the human rights of people with disability to non-discrimination and self-determination, or contrary to the fundamental principle of choice and control
- falsely claiming or inferring, through the use of words or logos, that the Provider is an NDIS Registered Provider when it or they are not
- falsely claiming or inferring that, if the Provider is registered, registration will not be reviewed by the NDIS Commission after the sale, and that conditions of registration will not change
- sharing information with prospective purchasers that discloses or could disclose the identity and other personal information of an NDIS Participant in breach of the Provider's privacy obligations under this Code and other relevant laws.

Registered NDIS Providers must also comply with their obligations to give the NDIS Commissioner notice of changes and events under section 13 and 13A of the *National Disability Insurance Scheme (Provider Registration and Practice Standard) Rules 2018*, including changes in contact details, in the services provided and a significant change in the organisation and its governance arrangements.

The NDIS Commission may reassess a registered NDIS Provider's suitability to remain registered following a significant change in the organisation or its governance arrangements.

### Scenario

Jack is looking to buy a business and finds an online advertisement, '*Profitable NDIS Registered Business for Sale*'. Jack is interested, as it seems the Participants are going to remain with the NDIS Provider. The NDIS business for sale is advertised as a '*Guaranteed, profitable multi-year source of income for a business buyer, Participants included*'.

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Jack does further research into registration requirements for NDIS Providers. He is concerned the advertiser may be falsely claiming to be registered. Jack discovers there are strict requirements surrounding NDIS Provider registration. Jack learns that NDIS Participants cannot be transferred with the sale of a business as they have choice and control. Jack also learns that NDIS Participants have choice and control over which Providers they receive NDIS services from, and might not choose to stay with the Provider after the business has been sold.

Jack realises the advertisement is not accurate, clear or truthful. As Jack learns more about Provider registration and the NDIS Code of Conduct, he becomes increasingly concerned that this type of unethical and exploitive activity is occurring to NDIS Participants who might be at increased risk of harm. Jack decides to lodge a complaint with the NDIS Commission.

*NDIS Code of Conduct Provider Guidance, Page 26*