



## Price differentiation – for Providers



LYNETTE ROWE AND WENDY ROWE

### Providers to price with honesty, integrity and transparency

The NDIS Commission expects all registered and unregistered Providers to act with honesty, integrity, and transparency. This includes how you price your products and services for NDIS scheme Participants and the reasons for your pricing.

Providers are also subject to the Australian Consumer Law (ACL). Providers must not mislead or deceive NDIS Participants or Plan Managers, must not make false statements and must not include unfair terms in their contracts, including in relation to the price of your goods and services.

#### What is 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 charging a Participant more than another person for substantially the same product, support or service, without objectively sufficient justification; or

- Not promoting, advertising or publishing higher prices for substantially the same products, supports or services for Participants compared with other people, without objectively sufficient justification.

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

#### Can you explain your pricing?

NDIS Participants and Plan Managers are encouraged to be informed purchasers. They are encouraged to ask you questions about the quality and price of the products and services that they acquire from you.

The Commission expects that, if asked, Providers will explain the prices they charge. If a Provider sets a different price for a product or service offered to NDIS Participants compared to the price offered to a person outside the NDIS, the Commission expects that the Provider will be able to explain the difference.

The Commission has identified some examples where NDIS Participants have been charged far more than others outside the NDIS for the same products and services, without the difference being explained. This is unacceptable: it is not consistent with Providers’ obligation to act with honesty, integrity, and transparency.

## As a Provider what can I do?



1. Be able to explain your prices, and be prepared to have frank and detailed discussion about them with NDIS Participants



2. Check your price lists are consistent with your obligation to act with integrity, honesty and transparency. For example, you may wish to include information that explains the basis for your pricing.



3. Review the Service Agreements and consider if they are consistent with your obligation to act with integrity, honesty and transparency with regards to price differentiation



4. Ensure your Service Agreements are understood by both Provider and Participants



5. Check your Service Agreements are up-to-date and your record keeping meets the Code



LYNETTE ROWE

## What happens if you can't explain your pricing?

NDIS Participants and Plan Managers are encouraged to shop around. If you can't, or won't, explain your pricing, this may adversely affect your business.

NDIS Participants and Plan Managers are encouraged to raise with the Commission instances where Providers are unable, or unwilling, to explain their pricing, particularly in the context of a higher price being charged to NDIS Participants.

The Commission may investigate such instances and will take appropriate compliance action that may include:

- Referral to the fraud fusion taskforce – if the conduct appears to be fraudulent
- Unscheduled site visits
- Issuing compliance notices
- Requiring Providers to enter into court enforceable undertakings
- Issuing infringement notices
- Varying, suspending or revoking registration
- Issuing banning orders
- Commencing court proceedings, seeking civil penalties and injunctions

## Australian Consumer Law

Providers must also comply with the Australian Consumer Law. When considering complaints, the NDIS Commission can also refer relevant matters to the Australian Competition and Consumer Commission (ACCC) for misleading and deceptive conduct, unconscionable conduct and unfair contract terms. See the ACCC's [website](#) for more information on your Australian Consumer Law obligations.

## What if I have a dispute with a Participant about a price difference?

Sit down with the Participant or their supporter and work it through. Consider if your behaviour is consistent with the Code of Conduct as it relates to honesty, integrity, transparency. If you cannot agree on a price difference you can:

Phone: 1800 035 544

Email: [pricehelp@ndiscommission.gov.au](mailto:pricehelp@ndiscommission.gov.au)

Complete a [complaint contact form](#):

