



# NDIA Position Statement

## Conflicts of Interest in the NDIS Provider Market

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# Contents

NDIA Position Statement	1
Conflicts of Interest in the NDIS Provider Market	1
Contents	2
1. Acknowledgements	3
2. Introduction	3
3. Purpose	4
4. The NDIA's position	4
4.1 Manage unavoidable conflicts of interest	5
5. What are conflicts of interest?	6
5.1 Common conflict of interest scenarios	8
5.1.1 Influencing decisions	8
5.1.2 Limiting choice and control	8
5.1.3 One provider controls multiple supports of a participant's NDIS plan	8
6. Provider legislative obligations and regulatory actions	9
7. Approaches to identify, declare, and manage conflicts of interest	10
7.1 Anticipate and identify conflicts of interest	10
7.2 Declare conflicts of interest	11
7.3 Manage conflicts of interest	11
8. Related resources	12
9. Words we use	12
National Disability Insurance Agency	15

# 1. Acknowledgements

The National Disability Insurance Agency (NDIA, Agency, or 'we') acknowledges the Traditional Owners and Custodians of Country throughout Australia and their continuing connection to land, sea and community. We pay our respects to their Elders, past, present and emerging.

We have worked with National Disability Insurance Scheme (NDIS) participants, their families, and carers, and the disability community through co-design workshops to develop resources that will support the NDIS market to identify, declare and manage conflicts of interest. Through the consultation process we have developed this position statement on Conflicts of Interest in the NDIS provider market (Position Statement). We are grateful for the time and expertise they shared with us.

We also acknowledge the work of the Conflicts of Interest Steering Committee, members of the Independent Advisory Council, members of the Participant First initiative, and representatives from the disability provider sector for their help and shared experiences which have informed the development of the Position Statement.

We would like to recognise the individual participants, families and carers who have shared their stories in the national consultation and our co-design workshops. Their feedback and experiences on conflicts of interest has been invaluable, and we acknowledge their time and commitment.

# 2. Introduction

People with disability have the right to live a safe life, free from harm and make their own decisions without undue influence.

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) outlines the rights of people with disability to dignity, autonomy, decision making, and recognition of legal capacity.

This Position Statement is informed by research, consultation, co-design and the objects and principles set out in the following:

- United Nations Convention on the Rights of Persons with Disabilities
- *National Disability Insurance Scheme Act 2013* (NDIS Act)
- NDIA Participant Safeguarding Policy
- NDIA Supported Decision Making Policy

- NDIS Code of Conduct
- NDIS Practice Standards.

### 3. Purpose

The purpose of this Position Statement is to inform NDIS participants and providers of the NDIA's position and expectations to identify, declare and manage conflicts of interest that occur in the NDIS provider market.

It is important the NDIS provider market and the broader disability community understand, protect, and ensure participants have equal enjoyment of all human rights including the right and freedom to make their own choices free from conflicts.

This document makes clear our expectations regarding conflicts of interest including:

- identification and disclosures
- appropriate management
- the limited circumstances in which exceptions may be considered
- the NDIA's role in safeguarding participants in line with the NDIS Participant Safeguarding Policy and NDIS Supported Decision Making Policy by:
  - assessing and responding to risks
  - supporting participants to make their own decisions in the NDIS
- the NDIA's role in protecting the integrity of the NDIS by identifying and investigating non-compliance and the misuse of NDIS funds
- the NDIA's role in reporting suspected breaches of the NDIS Code of Conduct to the NDIS Quality and Safeguards Commission (NDIS Commission).

### 4. The NDIA's position

As a market steward, the NDIA works alongside the NDIS Commission to safeguard and protect participants and promote their human rights. This aligns with our commitment in the Participant Safeguarding Policy to 'acknowledge that individuals have the right to make their own decisions. If needed, the NDIA will support the

participant to make informed decisions about their safety, with or without their support networks.<sup>1</sup>

All NDIS providers are expected to make all efforts to avoid conflicts of interests. They should manage all conflicts of interest to the highest standard to ensure best outcomes are achieved for participants and the NDIS provider market. This includes:

- anticipate and identify all conflicts of interest, both at the beginning and throughout service delivery
- declare all conflicts of interest and be open with participants, their decision supporters and representatives with full transparency about any potential or real conflicts of interest and the associated risks
- discuss options with participants, their decision supporters and representatives to manage the risks associated with the conflicts of interest
- document strategies for managing the conflict of interest and monitor and review circumstances.

Refer to [7. Approaches to identify, declare, and manage conflicts of interest](#) for further details.

## 4.1 Manage unavoidable conflicts of interest

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<sup>1</sup> NDIS Participant Safeguarding Policy, pp 11

The NDIA is committed to upholding the foundational principles of the NDIS and UNCRPD and ensuring that participants have informed choice and control free from undue influence over who delivers their supports and services.

The NDIA acknowledges there may be limited circumstances and situations where it may be difficult for providers and participants to avoid a conflict of interest. Following co-design and engagement with the disability community we identified conflicts of interest do occur, but they do not have to be a serious problem if they are managed to the highest standard.

Where the conflict is unavoidable, it should be managed transparently through good governance, processes, policies and information sharing. Providers should take defined steps to identify, declare and document where conflicts of interest occur. This ensures all parties involved understand the conflict and what actions have been taken or will be taken to safeguard participants, reduce risks, and monitor and review the conflict as necessary.

The limited circumstances where a conflict of interest **may** be unavoidable include:

- where limited alternative service options are available within regional, rural and remote areas
- the services required involve specific cultural and religious choice and practices
- highly specialised services where there are few accredited providers operating nationally
- the participant chooses to receive supports from a specific provider after fully considering other available services or supports and they formally acknowledge and accept the presence of a conflict of interest with their chosen provider.

When a participant chooses to continue receiving services where a conflict of interest exists, the NDIA encourages participants to review the conflict-of-interest resources. These resources have been developed through engagement with the disability community and include practical tools for providers and participants to help discuss, identify, consider options, document and monitor conflicts of interest. These resources are available on the [Conflicts of interest in the NDIS provider market](#) page.

The NDIA expects that all conflicts of interest be identified, declared, managed and documented in accordance with the NDIS Code of Conduct and NDIS Practice Standards.

## 5. What are conflicts of interest?

A conflict of interest occurs when a person or organisation has an opportunity to put what will benefit them (their own interests) ahead of the interests of the person they are supporting.

These conflicts may be:

- actual – it happened or is happening
- potential – it might happen
- perceived – it seems like it has happened or might happen.<sup>2</sup>

'Own interests' can include the interests of a person's family, friends, employer, or other organisations they are involved with.

Conflicts of interest could be of a financial, business or personal nature, including any financial and/or corporate interest or conflicted 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.<sup>3</sup>

Conflicts of interest can limit participants' choice and control over the providers they choose to work with.

Conflicts of interest can put a participant at serious risk of harm.

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<sup>2</sup> NDIA Supported Decision Making Policy, pp 25

<sup>3</sup> NDIS Code of Conduct, pp 39

## 5.1 Common conflict of interest scenarios

During co-design with participants, providers, and disability organisations a range of common scenarios and experiences of conflict of interest were shared with the NDIA. These are detailed below.

### 5.1.1 Influencing decisions

- A person or provider influencing or pressuring the participant's choice of services to benefit their own interests. This may include making recommendations, and referrals to or prescribing services or equipment from:
  - the same or a connected organisation.
  - a related third party (individual or organisation).
  - an organisation from which the person or provider receives a secondary gain, gift, or financial incentive.
- A provider acting as a nominee and making decisions about the participant's supports and providers.

### 5.1.2 Limiting choice and control

- A person or provider limiting the participant's choice of services to benefit their own interests. This may look like:
  - a provider refusing to provide a support unless an additional support is also delivered by a specific provider. For example, an accommodation provider requiring the use of a specific personal care provider or a support coordinator requiring a participant to use a specific plan manager.
- A person or provider refusing to complete a referral to a specific provider, where there is a personal dispute between the providers.

### 5.1.3 One provider controls multiple supports of a participant's NDIS plan

- One provider controls multiple supports of a participant's NDIS plan which may affect the provider's due diligence and oversight of supports and services and/or limit the opportunity for the participant to raise concerns or exit services. This may occur through controlling the coordination and referrals of supports, the delivery of supports and the payment of supports. This may look like:



- A Support Coordinator or Plan Manager delivers some of the participant's other NDIS funded supports.
- A Plan Manager pays themselves for other supports they delivered.
- One provider, or a group of providers from the same or connected business delivers all NDIS funded supports.

## 6. Provider legislative obligations and regulatory actions

The NDIA together with the NDIS Commission aims to protect participants and promote the human rights of people with disability in keeping with the commitment to the UNCRPD.

We will work with the NDIS Commission to:

- raise awareness, educate, and support participants and providers to understand what a conflict of interest is and where conflicts may occur in the NDIS provider market
- ensure participants and providers have information and resources to help identify, declare, and manage those conflicts
- identify conflicts of interest and report breaches of the NDIS Code of Conduct to the NDIS Commission.

The proactive and effective identification and management of conflicts of interest is key to transparent business management and service delivery practice. The duty to avoid conflicts of interest is derived from both general law and statutory provisions found in the [Corporations Act 2001 \(Cth\)](#).

The *Corporations Act 2001* sets out the specific provisions that company directors must comply with, including the duty to exercise care and diligence, the duty to act honestly and the duty of avoiding conflicts of interest. These statutory duties provide a framework for directors to identify and manage conflicts of interest in accordance with their legal obligations.

The following NDIS rules set out NDIS provider obligations and the regulatory actions that will be taken in relation to non-compliant behaviour.

- [National Disability Insurance Scheme \(Provider Registration and Practice Standards\) Rules 2018](#)

- [National Disability Insurance Scheme \(Code of Conduct\) Rules 2018](#)

The NDIS Commissioner can take a range of actions as appropriate, including education, compliance and enforcement action or prohibiting providers from operating in the NDIS market.

All NDIS providers and NDIS workers must comply with the NDIS Code of Conduct. This requires providers and workers to act with integrity, honesty and transparency. This means providing accurate information about their organisation, the services they provide and any real, potential, or perceived conflicts of interest.

The NDIS Code of Conduct: Guidance for NDIS Providers states that all NDIS providers should:

- disclose any conflicts of interest - real, potential, or perceived – that may impact the way supports and services are delivered to a participant.
- not give, ask for, or accept any inducement or gift that may impact the way supports and services are delivered.
- not allow any financial or commercial interests to adversely affect the way in which they engage with people with disability.
- use recruitment practices that can uncover any real, potential, or perceived conflicts of interest of people they are considering employing.
- ensure key personnel and workers are aware of their obligations and so not give, ask for, or accept any inducement or gift from people with disability, their families, carers, or advocates.
- have internal policies and guidance for key personnel and workers to follow regarding the appropriate management of conflicts of interest.

## **7. Approaches to identify, declare, and manage conflicts of interest**

The NDIA together with the NDIS Commission is committed to supporting participants and providers to proactively and effectively declare and manage of conflicts of interest. The information below provides general guidance on the minimum requirements of the NDIS provider market where conflicts of interest are identified.

### **7.1 Anticipate and identify conflicts of interest**

At the beginning and throughout the service delivery relationship with a participant, providers are expected to remain alert to the existence of conflicts of interest in the NDIS provider market.

The NDIS Commission can act if it identifies a provider or worker has failed to meet their obligations under the NDIS Code of Conduct and NDIS Practice Standards. This includes failure to maintain integrity by declaring and avoiding any real or perceived conflicts of interest.

## **7.2 Declare conflicts of interest**

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.

Disclosure requirements include:

- Whether the conflict is potential, real or perceived.
- The nature of the conflict – financial, business or personal including any financial and/or corporate interest or relationship with other entities, businesses or organisations.
- If the conflict involves a cultural, religious or social relationship.
- Who the conflict relates to (e.g. worker, organisation, participant, authorised representative, decision supporter, family member).
- If the conflict can be avoided. If not, explain why, and detail the potential risks of the arrangement.
- Record and document the conflict of interest.

Refer to the [conflict of interest declaration form](#).

## **7.3 Manage conflicts of interest**

Following the declaration that a conflict of interest exists; the provider should consider how to manage the conflict and if required, what risk mitigation strategies should be put in place.

If the conflict of interest can be avoided, providers record the steps taken including any alternative options that have been offered and discussed with the participant.

If the conflict cannot be avoided the following steps are recommended.

- Provide the organisation's conflict of interest policy to the participant and their decision supporters in an accessible format and explain if required.

- Consider if the conflicted person or organisation can be removed or excused from further involvement.
- Offer the participant alternative service options free from influence and inducements.
- Ensure the organisation's internal complaints management process remains independent of the conflicted person where the conflicted person is directly involved in the delivery of services.
- Ensure the conflicted person is removed from discussions regarding any decision making.
- Where this is not possible, engage or appoint an individual in a position of authority within the organisation to act as a point of contact should issues arise through the delivery of services to support the participant
- Document the agreed approach to manage the conflict, including risk mitigation strategies.
- Establish a regular cycle to review and monitor the conflict-of-interest management plan.
- Give all parties a documented copy of the conflict-of-interest declaration and management plan.

## 8. Related resources

- [Conflicts of interest in the NDIS provider market](#)
- [United Nations Convention on the Rights of Persons with Disabilities](#)
- [National Disability Insurance Scheme Act 2013](#)
- [NDIA Participant Safeguarding Policy](#)
- [NDIA Supported Decision Making Policy](#)
- [NDIS Code of Conduct](#)
- [NDIS Practice Standards](#)

## 9. Words we use

Table 1 – Words we use

Words we use	What they mean
<b>Conflict of interest</b>	<p>When a person puts what will benefit them (their own interests) ahead of the interests of the person they are supporting.</p> <p>A Conflict of Interest may be:</p> <ul style="list-style-type: none"> <li>• Actual – it happened or is happening.</li> <li>• Potential – it might happen.</li> <li>• Perceived – it seems like it has happened or might happen.</li> </ul>
<b>Decision supporters</b>	<p>Decision supporters are anyone chosen by the participant or person with disability to support them.</p> <p>They can ask any person they would like to be their decision supporter and may select more than one. This can include family, friends, carers, peer networks, advocates, or support providers. Decision supporters are different from a ‘representative.’</p>
<b>Human rights</b>	<p>Basic rights and freedoms that should happen for every person in the world.</p> <p>Human rights recognise the inherent value of each person, regardless of background, where we live, what we look like, what we think or what we believe</p>
<b>NDIS provider market</b>	<p>Includes NDIS participants and providers (registered and unregistered) with the NDIS Quality and Safeguards Commission.</p>
<b>NDIS Providers</b>	<p>(a) a person (other than the Agency) who receives:</p> <ul style="list-style-type: none"> <li>(i) funding under the arrangements set out in Chapter 2; or</li> <li>(ii) NDIS amounts (other than as a participant); or</li> </ul> <p>(b) a person or entity:</p> <ul style="list-style-type: none"> <li>(i) who provides supports or services to people with disability other than under the National Disability Insurance Scheme; and</li> <li>(ii) who is prescribed by the National Disability Insurance Scheme rules for the purposes of this subparagraph. (NDIS Act, s 9)</li> </ul>
<b>Representatives</b>	<p>Representatives assist a person who requires support to make decisions or, where necessary, makes decisions on their behalf. The decision made by the representative should reflect the will and preferences of the person they are assisting. They may be chosen by the person who requires support or appointed by others. In the NDIS, representatives include child representatives, plan nominees and correspondence nominees.</p>

**Safeguards**

Safeguards are actions designed to protect the rights of people to be safe from the risk of harm, abuse, neglect, or exploitation, while maximising the choice and control they have over their lives.

**Supported decision making**

The process of providing support to people to make decisions to remain in control of their lives. This is every person's human right.

Supported decision making is a rights-based approach that assists a person who requires decision making support to make, and/or communicate, decisions about their own life.

It does not mean making the decision for them.

**Undue influence**

Undue influence occurs when a person is pressured into making a particular decision by another person. This decision may not be what the person who needs decision support wants to do.

This pressure can take the form of deception, harassment, threats, or isolation.

People who need decision support must be able to exercise their own free will in the decision-making process.

# National Disability Insurance Agency

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