



**Australian Government**  

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**Department of Social Services**

# Disability Services and Inclusion Code of Conduct

Guidance for Providers  
December 2023

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## Introduction

1. The Disability Services and Inclusion Code of Conduct (the Code) is set out in the *Disability Services and Inclusion (Code of Conduct) Rules 2023*, which are Disability Services rules made under the *Disability Services and Inclusion Act 2023* (DSI Act).
2. The Code is designed to work alongside other elements of the disability services and inclusion provisions to promote the quality and safety of services funded by the Department of Social Services. The Code is designed to mirror the existing Code of Conduct that applies to National Disability Insurance Scheme (NDIS) providers and their employees, creating greater alignment across Commonwealth funded disability supports and services. Providing quality supports for people with disability involves the right capabilities but also the right attitudes. Providers and the people they engage need to be familiar with the rights of people with disability, preventing harm and responding appropriately if harm occurs.
3. The Code's Guidance for Providers (the Guidance) provides guidance on factors that may be relevant when considering if a provider is complying with the Code. The Code consists of seven elements that apply to all providers and persons employed or otherwise engaged by them to deliver supports and services funded by the Department of Social Services.
4. The Guidance provides information about what the Code means in practice. It is not intended to cover all circumstances that may arise or amount to a breach of the Code.
5. Providers should consider all conduct associated with the delivery of supports and services under the DSI Act and when considering if conduct is compliant with the Code. This Guidance comprises the following parts:
  - a. **Part 1** outlines the Code and its role under the DSI Act.
  - b. **Part 2** outlines examples of factors that may be taken into consideration when assessing whether conduct of providers complies with the Code.
  - c. **Part 3** outlines actions that can be taken in relation to breaches of the Code and the Code's relationship with other codes.
6. The Department of Social Services will take a proportionate approach, taking into account relevant factors, including the size of an organisation, the type of supports and services delivered, the environment in which these are delivered, the person's

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support needs, other legislative requirements that apply, and other relevant circumstances in assessing compliance with the Code.

### Providers covered by the Code

7. The Code and Guidance apply to providers or a person employed or otherwise engaged by the provider and who is supporting a person participating in disability supports and related services.
8. The Code and guidance applies to all non-NDIS disability providers currently funded by the Department of Social Services, regardless of when the provider entered into an agreement for the duration the agreement is in place. If you are uncertain whether the Code of Conduct applies to your program, seek advice from your Program Manager or Funding Arrangement Manager (FAM) at the Department of Social Services.

### Guidance for employees

9. In this guidance, a person employed or otherwise engaged by a provider is referred to as the provider's 'employee'. Providers are expected to assist and support employees in meeting their obligations under the Code. To assist employees in meeting their obligations, a separate guidance (*Disability Services and Inclusion Code of Conduct - Guidance for Employees*) is available on the Department of Social Services website. Providers are expected to take all reasonable steps to assist and support employees in meeting their obligations under the Code.

## Part 1: The Disability Services and Inclusion Code of Conduct

10. The Code promotes safe and quality service delivery by setting out consistent expectations for the conduct of providers delivering disability services and supports to people with disability. The obligations in the Code are fundamental to the rights of people with disability set out in the UN Convention on the Rights of Persons with Disabilities. The obligations are broad to allow for the diversity of people with disability and their support requirements.

## THE CODE OF CONDUCT

The Code of Conduct requires employees and providers delivering supports and services to:

1. Act with respect for the individual rights of people with disability 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 the 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 matters that may impact the quality and safety of the provision of the supports and services 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.

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## Part 2: Elements of the Disability Services and Inclusion Code of Conduct

11. Compliance with the Code requires providers to consider their conduct when delivering supports and services under the DSI Act. This section:
  - a. Explains why each element of the Code is important and outlines examples of conduct or circumstances that may be taken into consideration when assessing whether a provider has complied with the Code.
12. Providers should use their existing employee engagement, human resources and governance arrangements to ensure their compliance with the Code. This includes considering whether operational policies and procedures, and training activities reflect the Code. Employees are expected to use these policies, procedures and training, in addition to their own professional experience and judgment, to comply with the Code.

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

13. 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.
14. Further 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. People with disability have the right to choose who supports them and how their supports and services are delivered.
15. 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:

#### Support people with disability to make decisions

16. People with disability have the right to make choices and should always be assumed to have the capacity to make those choices. Adults with disability should receive the support they need to make any decision. Adults with disability have the right to choose who does and 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.

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17. Not all people with disability need or want the people around them to support them in decision-making, or to make decisions for them. Providers should encourage employees to engage directly with people on any choices or decisions that affect them. Employees should consult people about who, if anyone, they want to involve in decisions and discussions about services and supports they receive, or other aspects of their lives.
  18. For children and young people, families have a key role. Employees should work closely with families to understand their child's strengths, interests and needs, and support families in their caring role. As a child grows, they should be more involved in decision-making. Employees 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.
  19. When the person with disability has a legal guardian or nominee, providers need to be clear on which decisions they need to involve the legal guardian. However, they must ensure their employees listen to and support the person to make their own decisions.

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

20. 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 consumers about all aspects of the services they engage (including pricing). This assists them to exercise their right of choice and control about who supports them, how supports and services are delivered, and their choice to change providers or services if they wish to.
21. People with a disability have a right to question, seek additional information on, or refuse to receive any part of a service.
22. In practice, this means providers should:
  - a. take reasonable steps to educate and support their employees to communicate in a form, language and manner that is accessible and appropriate for the individual
  - b. use a range of communication tools to communicate with the people they support, through assistive technology and alternative forms of communication, such as email, text messages or symbols
  - c. where the person speaks a language other than English or uses Auslan, match the person when possible with an employee who speaks their language or uses Auslan, or provide supports using qualified interpreters if suitable.
  - d. confirm that the person with disability – and their families, carers or advocates (where relevant) – understands what has been explained, and is aware of potential

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benefits and risks associated with any part of a proposed plan for the delivery of supports and services.

- e. respond to the wants, preferences and concerns of the person with disability in relation to their supports and services – addressing requests or complaints where necessary.
- f. where possible, provide consistent employees, so the employee can build a good understanding of individual communication preferences and needs, particularly where an individual has complex communication needs.

**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**

- 23. People with disability come from a range of backgrounds and communities and have varying lifestyles and beliefs. People with disability may be First Nations; 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.
- 24. Each of these contexts can affect how, when, why, and in what form a person with disability accesses supports and services. For example, cultural beliefs can shape preferences around who delivers supports and how supports are delivered. Some people may feel more comfortable with an employee of a particular gender for supports such as personal care. The Commonwealth *Sex Discrimination Act 1984* sets out rights in relation to gender.
- 25. Providers must acknowledge and consider individual contexts, values and histories, while complying with obligations under anti-discrimination and work health and safety laws.
- 26. In practice, this means providers should:
  - a. foster a culture of inclusiveness, in which people with disability feel as comfortable and safe as possible in their day-to-day interactions with employees
  - b. encourage people with disability to communicate their preferences for how their supports are delivered
  - c. discuss with people with disability their preferences for their support worker
  - d. have knowledge of, respect for, and sensitivity towards, the cultural needs of their community, including Aboriginal and Torres Strait Islander peoples, LGBTQ+ communities, and those from culturally and linguistically diverse backgrounds
  - e. where appropriate, provide cultural awareness training to employees to build an understanding of diverse needs and preferences
  - f. offer people with disability culturally-sensitive activities
  - g. respond to needs related to gender.



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## 2. Respect the privacy of people with disability

27. People with disability have a right to both information and physical privacy. 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:

### Comply with Commonwealth and State and Territory information privacy laws

28. The Commonwealth and most States and Territories have privacy laws.<sup>1</sup> Providers are expected to comply with all applicable privacy laws in all their dealings with people with disability.

29. Commonwealth privacy law protects personal information. 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.

a. Information about a person's health or disability is considered to be sensitive information, and requires a higher level of privacy protection.

b. A disability service provider has privacy obligations under Commonwealth law if they handle health information, even if they are a very small organisation.

30. Even if a provider is not covered by Australian privacy laws they should respect and protect the privacy of everyone who receives supports and services from them, and use the privacy law as their guide to proper standards.

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

- a. the kinds of personal information that will be collected and held about people with disability, including recorded audio and visual material
- b. why this information is collected
- c. how they will ensure the information is secure
- d. how this information will be used and disclosed
- e. how to access and change information held about them
- f. how to make a complaint if they feel that the provider has breached their privacy obligations.

32. For many decision points about the information of a person with disability, the provider will need to seek the input and agreement of that person. The provider must give the person with disability clear information in a way accessible to them, so the person can give informed consent. There will be some circumstances where the person with a disability does not have a choice about what happens with their

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<sup>1</sup> See [State and territory privacy legislation | OAIC](#)

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information, however, and this also needs to be clearly communicated. For example, providers may be subject to mandatory reporting requirements on child protection matters, or obligations to report incidents of violence, exploitation, neglect and abuse, and sexual misconduct.

### **Deliver services in a dignified way that maintains privacy**

33. Privacy under the Code also extends beyond the protection of information and includes the way in which services are delivered to people with disability. 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, employee training and service delivery models to support employees in:
- a. explaining and requesting permission to perform procedures that involve physical touch or the invasion of personal space
  - b. the timely provision of services to prevent embarrassment and discomfort such as toilet breaks or the changing of incontinence pads
  - c. considering everyday personal privacy needs such as being able to shower and dress in a private and comfortable space.

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

34. Providers should ensure they assign appropriate employees with the required competence, to deliver the supports and services to meet the needs of people with disability. They should ensure adequate policies and operational procedures, resourcing, and appropriate supervision for employees are in place to ensure supports and services are delivered in a safe and competent manner. Providers are also required to hold appropriate insurance. 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:

### **Ensure employees have the necessary training, competence and qualifications for the supports and services delivered**

35. Adequate employee expertise and competence is central to safe and skilful service delivery. Providers have a responsibility for ensuring employees have the necessary training, competence and qualifications to deliver supports and services. In practice, this means:
- a. supporting employees to adopt the values underpinning the Disability Services and Inclusion Act, including choice and control and person-centred approaches
  - b. having recruitment and selection processes (including referee checks) that identify skills, experience and qualifications required by staff for the role
  - c. providing relevant training
  - d. providing appropriate supervision

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- e. not directing employees to deliver supports and services they do not have the necessary training, competence and qualifications to deliver.

### **Provide services consistent with relevant professional codes**

- 36. Employees who are members of a professional association or other relevant body with professional codes of conduct (for example nurses, psychologists and health care employees) are required to deliver services consistent with their relevant professional code, as well as this Code, and any other applicable regulatory framework.
- 37. Providers must raise any queries relating to those professional Codes with the appropriate regulator. Where any breach of a professional Code may also amount to a breach of this Code, concerns must be raised with the Department of Social Services.

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

- 38. Providers should ensure the health and safety of their employees and other people at the workplace.
- 39. 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.safeworkaustralia.gov.au/>.

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

- 40. Part of providing supports and services in a safe and competent manner is maintaining accurate records to ensure continuity of support between employees and inform future service delivery.
- 41. Providers should maintain appropriate records and follow appropriate procedures for record management. This includes:
  - a. using respectful language when writing records
  - b. keeping accurate, up-to-date and legible records that report relevant details of a person's service history, medication and support needs
  - c. detailing any allegations and incidents that may have occurred, including alleged breaches of the Code, and how they were managed
  - d. recording feedback, complaints
  - e. recording any other issues that may have arisen while providing services
  - f. maintaining sufficient detail to facilitate continuity of supports and inform future service delivery
  - g. retaining records for a minimum of seven years after service provision.
- 42. Records should be created at the time of an event or action or as soon as possible afterwards.

## Hold appropriate insurance

43. Providers must 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. Providers should seek professional advice as to the type and amount of insurance that is necessary.

## 4. Act with integrity, honesty and transparency

44. Integrity, honesty and transparency are crucial to developing the trust-based relationships between people with disability, providers and employees that are required for high-quality service delivery.
45. To be informed consumers, people with disability 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. People with disability should be able to make decisions in their best interest, free from inducements, pressure, deception and exploitation.
46. 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:

## Recommend and provide supports and services appropriate to the needs of the person

47. 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
48. Providers have a responsibility to only recommend and provide supports and services that are appropriate to the needs of the person.
49. Under this obligation, providers must:
- supply truthful information about the capacity, qualifications, training and professional affiliations of their workforce including if an employee has been excluded from an employee screening check for a role that involves more than incidental contact with people with disability
  - not make false claims about the efficacy of any supports, services or products
  - give clear advice about the full costs of the service or support and what the cost covers
  - not make claims about the efficacy of treatments or supports that cannot be substantiated independently.

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

50. 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 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.
51. A provider must:
- not give, ask for, or accept any inducement or gift that impacts or may impact on the way it provides supports or services, including any referral arrangements with other providers
  - 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 provider engages with people with disability
  - engage in recruitment practices, such as probity checks and reference checks, to uncover any potential or real conflicts of interest of people it is considering employing.
52. Additionally, providers should ensure their employees:
- 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);
  - 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.
53. Providers should have internal policies and guidance for employees to follow for declaring and avoiding conflicts of interest, and accepting and giving gifts.

## **Do not engage in, participate in or promote unfair treatment, nor take advantage of people with disability**

54. Any practices involving unfair treatment or taking advantage of people including over-servicing, high-pressure sales and inducements undermine the integrity of providers, employees and/or the disability sector as a whole, and are not in the interests of the person with disability.
55. People with disability expect that providers will not participate in or promote unfair treatment or take advantage of people. This includes not:
- providing services contrary to a person with disability's needs
  - asking for or accepting any additional fees for providing the service

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- c. offering inducements or rewards that have no particular link to a person's disability
56. Providers also need to ensure their employees are aware of their obligations not to participate or promote unfair treatment, which includes taking advantage of people with disability.
57. Providers must not engage in misleading or deceptive conduct, and coercive or exploitative conduct.

### **Advertising and negotiating the sale of a provider**

58. Providers should act with honesty, integrity and transparency in all aspects of conducting their business. This extends to when advertising their business for sale and engaging in sale negotiations. This includes not:
- a. falsely claiming that people with disability are a guaranteed source of income for a period of time or indefinitely, or that they remain or transfer as part of the sale
  - b. making statements inferring that people with disability are commodities or assets for sale and are not free to change their provider at any time
  - c. making statements inferring that the purchaser can operate with minimal management or that otherwise misrepresent a provider's other obligations under this Code. This is particularly relevant to 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, and exploitation, neglect and abuse of people with disability
  - d. 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
  - e. sharing information with prospective purchasers that discloses or could disclose the identity and other personal information of any persons.
59. Providers must also comply with their obligations to give notice to the Department of Social Services, of changes including:
- a. changes in contact details
  - b. changes in the services provided
  - c. any significant change in the organisation and its governance arrangements
60. The Department of Social Services may reassess a provider's suitability to deliver services following a significant change in the organisation or its governance arrangements.

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## **5. 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**

61. Providers have a responsibility to provide safe, quality supports and services. To do this, they should operate effective complaints, resolution, incident management, investigation and disciplinary processes, and meet relevant reporting requirements. Providers should foster an environment in which people feel safe to make a complaint or provide negative feedback without fear. Providers should guarantee procedural fairness principles will be applied throughout the complaints process.
62. 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:

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

63. People with disability, their families, carers, advocates and employees have the right to make a complaint and raise issues without fear of any adverse consequences, such as future refusal of service.
64. Providers should seek to promote and uphold this right by fostering an environment where people with disability, their families, carers and employees feel safe to make a complaint. They can do this by:
- encouraging people with disability to provide feedback, make complaints or raise concerns when they have them
  - encouraging employees to raise concerns when they have them
  - not taking or threatening adverse action in relation to complaints raised about their services
  - taking all reasonable steps to ensure that employees 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
  - using complaints data to inform continuous improvement.
65. In some circumstances, employees and others who contact the Department of Social Services with concerns about providers in good faith are protected by whistle blower protections as well as procedural fairness practices.

### **Operate effective complaints processes**

66. Anyone can make a complaint about supports and services, including alleged breaches of the Code. This includes people with disability, family members, friends, advocates, employees and other providers. All complaints are confidential and can be made anonymously.

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67. Providers should play an active role in supporting people with disability to understand their rights and the importance of raising concerns and submitting a complaint if these rights are violated. Providers should also support people with disability to understand how they can make a complaint both to the provider, to the Department of Social Services, or to an independent body.
68. Providers are required to have a complaints management system in accordance with the *Disability Services and Inclusion (Complaints and Incidents Management) Rules 2023*. Guidance on these Rules can be found on the Department of Social Services website.

### **Operate effective incident management system**

69. 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 supports or services, and pose a risk of harm to people with disability. Additionally, providers must report the most serious of these incidents to the Department of Social Services, regardless of resolution.

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

70. 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 unrecognised and unaddressed<sup>2</sup>.
71. ‘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 wilful deprivation.
72. It is important providers take all reasonable steps to prevent violence, abuse, neglect and exploitation, and respond quickly if these things happen.
73. 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:

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<sup>2</sup>[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report)



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

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

75. Providers must:

- a. 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
- b. ensure these policies, systems and procedures are understood and used by employees
- c. encourage employees 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
- d. ensure incidents and responses inform continuous improvement
- e. inform people with disability and employees of all available avenues for raising concerns or complaints, noting their right to do so without fear of retribution
- f. uphold whistle blower protections.

## **Identify and respond to incidents of violence, abuse, neglect and exploitation, and report these to the Department of Social Services and, as appropriate, to other relevant authorities**

76. If an incident or criminal act of violence, abuse, neglect or exploitation does occur, the primary focus of both providers and employees should be to ensure that all persons affected are safe. This is consistent with the incident rules as specified in the *Disability Services and Inclusion (Complaints and Incidents Management) Rules 2023*.

77. Providers must:

- a. be aware of, and abide by, any State or Territory-based mandatory reporting requirements
- b. ensure employees 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
- c. notify the Department of Social Services
- d. act swiftly to involve the police and the Department of Social Services
- e. fully comply and cooperate with any investigative actions taken by the Department of Social Services or other relevant authorities, including the police.

78. An act of violence, abuse, neglect and exploitation by a person should prompt an assessment/re-assessment of a person's service package and the delivery of services. This should ensure supports are being delivered in a constructive manner that maximises benefit for the person with disability. This process should include a review of any behaviour support plans by a specialist behaviour support provider to reduce the risks of future violence.

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79. The *Guidance for Employees* notes that should an employee consider that a provider has not responded appropriately to incidents of violence, abuse and neglect or should they think the matter may be of systemic significance, they should report the incident to the Department of Social Services. Providers should not use adverse action or threats of adverse action against the employee.

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

80. People with disability have a right to sexual expression as well as to develop and maintain sexual relationships. As such, they need access to information and support to assist them to make informed choices about sex, sexuality, relationships and reproductive health and wellbeing, as well as exercise their rights to privacy.

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

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

83. The support relationship between an employee and the person 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.

84. 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 provider, the Department of Social Services and other relevant authorities.

85. 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:

### **Have in place clear guidance for staff behaviour**

86. It is a core expectation of people with disability and the Department of Social Services that providers will develop policy and guidance to prevent and respond to sexual misconduct. This must explicitly indicate that employees 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.

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

88. A provider's guidance for their employees should:

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

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

90. Providers should ensure that employees 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. Employees found not to have complied with a professional code or standard regarding sexual misconduct while providing supports and services may be regarded as breaching the Code of Conduct.

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

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

92. Providers should ensure that there are appropriate policies and procedures in place for employees to identify and report any alleged sexual misconduct, unlawful sexual or physical conduct or inappropriate relationships. Reports must be made to the provider, the Department of Social Services, relevant professional bodies, and necessary legal authorities, such as the police or child protective services.

93. It is crucial that providers create an environment where people with disability feel safe and are informed about how to make a complaint about any alleged sexual misconduct. People with disability should feel comfortable making a complaint without fear of retribution or loss of services. 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.

94. Providers must contact appropriate authorities as part of their response to an incident. They must also notify the Department of Social Services about allegations of sexual misconduct.

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## Part 3: The Code of Conduct in Practice

95. This section outlines actions that can be taken by the Department of Social Services in relation to breaches of the Code and its relationship with other professional codes.
96. In considering issues that may arise with non-compliance of the Code, the Department of Social Services 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, service users support needs, and other relevant circumstances.

### Breaches of the Code

97. Anyone can make a complaint about supports and services, including alleged breaches of the Code. This includes people with disability, family members, friends, employees, advocates and other providers. In the first instance, individuals are encouraged to contact the provider to make complaints.
98. Providers are expected to adhere to the Code, take steps to ensure their employees adhere to the Code and to investigate and take appropriate action to address any breaches.
99. If a provider directs an employee to do something that constitutes a breach of the Code, the conduct of both the provider and employee will be considered against the requirements of the Code if the employee complies with the direction.
100. The Department of Social Services can commence a review of a provider as a result of any information it receives about a provider or employee's potential breach of the Code, whether arising from a complaint, a reportable incident or any other source. The Department of Social Services will work with the provider and relevant persons to conduct its review to ensure fairness and efficiency.
101. The Department of Social Services may gather and assess information about unethical practices from multiple sources, including employees, provider registration data, feedback and complaints, incidents, referrals and intelligence from other agencies and from its own market studies.
102. The Department of Social Services is required to abide by the privacy and confidentiality obligations imposed under federal law, including the Privacy Act 1988 (Cth).

### Consequences of Breaching the Code

103. Consequences for breaching the Code will depend on the nature of the breach. The Department of Social Services may:
- a. terminate the funding agreement with the provider
  - b. vary or suspend the funding agreement with the provider

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- c. publish information about the breach on a website maintained by the Department of Social Services, and
  - d. use other available rights to the Department of Social Services under the funding agreement with the provider.

### **Relationship with other Professional Codes**

- 104. Providers should be aware that employees who are required to comply with an existing professional code of conduct, such as nurses, psychologists and health care employees, will also be required to comply with the Code of Conduct and other applicable regulatory frameworks (for example, child protection requirements).
- 105. If a professional is found not to have complied with their own professional standards in providing supports and services, they may have also breached the Code of Conduct.

## Glossary

Phrase	Definition
<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 a 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 an employee or a 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 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.
<b>Complaints Process</b>	In addition to the Department of Social Services having a complaints function, 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 providers are obliged to implement and report on.
<b>Provider</b>	A service provider that is funded by the Commonwealth to provide services or supports to people with disability. This may be an organisation or an individual.
<b>Disability Sector</b>	The organisations and companies providing disability support services and the peak bodies that represent them.
<b>Sexual Misconduct</b>	Inappropriate behaviour that may include <ol style="list-style-type: none"><li>asking the person on a date</li><li>touching any part of a person's body in a sexual way</li><li>touching a person in a way they do not wish to be touched</li><li>displaying their genitals to the person</li><li>coercing, by pressuring or tricking, a person to engage in sexual behaviours or acts</li></ol>

**Phrase****Definition**

- 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)
- g. making sexually suggestive comments or jokes
- h. intentionally staring at a person in a way that makes them feel uncomfortable
- i. making comments about a person’s sexuality or appearance
- j. making requests of a sexual nature, including to remove clothing, for sexually explicit photographs, videos or for sexual activities
- k. showing the person pictures or videos of naked people, or people undertaking sexual activities
- l. ignoring or encouraging sexual behaviour between people with disability that is non-consensual or exploitative.

This list does not cover all situations and there may be other activities or behaviours that constitute sexual misconduct.

**Support**

Things to help a person undertake daily life activities and enable them to participate in the community and reach their goals.

**Employee**

Persons employed or otherwise engaged by a provider. For example, people working in the disability support sector in either a paid or voluntary capacity for a provider.

**Workplace**

A place at which an employee works or otherwise carries out functions in connection with being an employee. This includes, but is not limited to, offsite locations, vehicles used for transporting clients, and venues for outings.