



# NDIS Report

**ACCC observations of consumer issues in the NDIS**

February 2026

## Acknowledgment of country

The ACCC acknowledges the traditional owners and custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.

Australian Competition and Consumer Commission  
Land of the Ngunnawal people  
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ACCC 02/26\_25-70

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# Executive summary

The National Disability Insurance Scheme (NDIS) provides funding to eligible people with disability. It aims to fund the supports and services individuals need to gain independence, improve quality of life and participate more fully in their communities.

At the time of publishing this report, more than 751,000 Australians have NDIS funding.

Growth in the NDIS has led to concerns from government about businesses engaging in problematic practices to profit from emerging and developing markets for NDIS funded supports.

Conduct can be particularly harmful given products and services bought may be essential for Australians who experience a disability to participate in everyday life. Harm can range from financial loss and life-limiting impacts, to compromising their safety and physical well-being.

The 2 main regulators responsible for delivering the NDIS are:

- The National Disability Insurance Agency (NDIA) which sets up eligible people (NDIS participants) with plans and funding, provides price guidance for NDIS-funded supports (NDIS supports), processes claims and investigates alleged fraud within the scheme.
- The NDIS Quality and Safeguards Commission (NDIS Commission) regulates and registers NDIS providers, monitors providers and their compliance with the NDIS Code of Conduct and practice standards and receives and responds to concerns, complaints and reportable incidents about providers.

In addition to the specific laws and rules overseen by the NDIA and the NDIS Commission, the Australian Consumer Law (ACL) applies to all transactions between NDIS participants and providers. The ACCC and state and territory consumer protection agencies can look into NDIS related dealings where there is a potential breach of the ACL.

Since 2024, the Australian Competition and Consumer Commission (ACCC) has prioritised improved compliance with the ACL by NDIS providers.

Providers risk high penalties for breaching the ACL. The maximum fine is the greater of:

- \$50,000,000
- 3 times the value of the 'reasonably attributable' benefit obtained, if the Court can determine this
- 30% of the corporation's [adjusted turnover](#) during the [breach turnover period](#), if the Court cannot determine the value of the 'reasonably attributable' benefit.

This report outlines the ACCC's observations and concerns about conduct by businesses operating in NDIS markets. The purposes of this report are to:

- educate businesses about behaviours that may breach the ACL
- help participants, their carers, guardians and advocates, to learn more about how their consumer rights under the ACL apply to NDIS supports
- provide an overview of the ACCC's work relating to the NDIS.

# ACCC's increased focus on NDIS markets

On 17 December 2023, then Minister for the NDIS the Hon Bill Shorten announced the establishment of the Fair Pricing and ACL Taskforce (Taskforce) consisting of:

- the ACCC, as Chair
- the NDIA
- the NDIS Commission.

The Taskforce was established to address harms affecting NDIS participants. These include:

- participants potentially paying higher prices for products or services compared to non-NDIS consumers
- conduct by NDIS providers that may breach the ACL.<sup>1</sup>

The Taskforce agencies have built strong collaboration and information sharing protocols to address misconduct, and education efforts that aim to increase awareness of the laws and expectations relating to provider conduct. Intelligence sharing between the Taskforce agencies has led to ACCC enforcement and compliance action and referrals to the NDIS Fraud Fusion Taskforce for criminal investigation.

Since the Taskforce was established, the ACCC has:

- issued 6 infringement notices totalling \$118,800 in fines for alleged breaches of the ACL<sup>2</sup>
- instituted legal proceedings in the Federal Court of Australia against an NDIS provider for alleged breaches of the ACL<sup>3</sup>
- accepted a section 87B court enforceable undertaking in which a provider admitted that its standard form contract included unfair contract terms, and it changed those terms.<sup>4</sup>

The ACCC is continuing to look into potential misconduct by NDIS providers. These investigations are currently not public.

The ACL is enforced by the state and territory consumer protection agencies alongside the ACCC under a 'one law, multiple regulator' model. In general state and territory consumer protection agencies address more localised conduct. This complements the ACCC's focus on addressing more systemic and national matters.

While the ACCC does not provide individual dispute resolution, in most jurisdictions the state and territory consumer protection agencies provide some form of conciliation or dispute resolution functions for individual consumers.

The ACCC and the state and territory consumer protection agencies work collaboratively, sharing intelligence and coordinating work.

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1 <https://ministers.dss.gov.au/media-releases/16721>.

2 <https://www.accc.gov.au/media-release/thermomix-pays-penalties-for-allegedly-misleading-customers-over-ndis-endorsement>, <https://www.accc.gov.au/media-release/bedshed-pays-penalties-for-allegedly-misleading-customers-over-ndis-endorsement>.

3 <https://www.accc.gov.au/media-release/ndis-provider-in-court-over-allegedly-misleading-representations-when-selling-aged-care-and-disability-products-online>.

4 <https://www.accc.gov.au/media-release/disability-and-aged-care-support-platform-amends-unfair-contract-terms>.

# ACCC concerns in NDIS markets

## False or misleading advertising by NDIS providers

It is illegal under the ACL for businesses to make false or misleading claims about a product or service. NDIS providers must not make false claims about access to the scheme. NDIS participants must be able to rely on statements made by providers as being true and accurate.

Complaints about false or misleading advertising make up the highest proportion of contacts to the ACCC about providers.

Some examples of false or misleading advertising practices the ACCC has observed (and taken action to deter) include:

- using expressions like 'NDIS approved', when the NDIS does not approve or endorse products or services
- suggesting NDIS funds will cover products and services that are excluded from being NDIS supports
- promoting NDIS supports using misleading representations about discounting (such as the use of false or misleading "was/now" pricing). This type of discount advertising makes it difficult for participants to work out if they are getting a good price or not and by creating a sense of urgency can stop participants looking around for better deals.

## Consumer guarantees issues

Consumer guarantees are automatic, legally protected rights that consumers have when buying products and services in Australia. These guarantees cannot be limited or excluded in transactions between NDIS providers and participants.

The ACCC is concerned because many participants are reporting challenges when exercising their consumer guarantees rights for supports purchased. Participants have reported being unable to get appropriate remedies when:

- support equipment is faulty or does not meet the agreed specifications
- support services are not carried out with due skill and care.

When things go wrong, the harm can be severe and affect wellbeing and safety. For example:

- home modifications necessary for independent living not carried out to requirements could limit daily function and compromise in-home safety
- faulty mobility aids restrict community access and mean the participant may not be able to access necessary supports.

Some participants reported not receiving remedies for months or years.

The ACCC is also concerned about providers that make false or misleading representations about consumer guarantees. Providers must not make statements or engage in conduct that suggests a participant is not entitled to a remedy or only entitled to limited remedies where a product or service does not meet one or more of the consumer guarantees.

## Issues with provider contracts

Under the ACL, unfair contract terms are prohibited in standard form consumer and small business agreements.

NDIS providers must not include unfair terms in their standard form contracts. Such terms could include:

- excessive exit or cancellation fees, or unreasonably long notice periods for cancellation
- unnecessary barriers when participants exercise their consumer guarantees rights
- unnecessarily broad liability or indemnity clauses.

Through engagement with disability advocacy bodies, the ACCC has heard about concerns with contracts between NDIS providers and participants, which include:

- lack of understanding of terms of service due to complex language in written contracts, lack of any written contract or lack of decision-making supports (for example, access to independent disability advocacy services)
- use of inducements to convince participants to switch providers and enter new agreements.

While use of an inducement itself would not necessarily breach the ACL, providers may breach the ACL if:

- they claimed the inducement was free, when this was not true, or
- an inducement was used to lock a participant into a contract with unfair contract terms.

Providers should be aware that the government has committed to making law that prohibits unfair trade practices. Depending on how this provision is ultimately drafted, it may apply to problematic conduct around inducements.

## Charging for services not supplied

It is illegal under the ACL for a business to charge for products or services when they don't intend to supply them or believe they will not be able to supply them within the agreed timeframe or a reasonable time. This is called wrongly accepting payment.

When NDIS providers charge for more support hours than they intended to or worked, or charge for supports they believe they are unlikely to be able to supply, they may be breaching the ACL by wrongly accepting payment.

This behaviour harms participants by inappropriately using funds from their plan, which then cannot be used on alternative supports.

Providers must only charge for support hours provided.

Most reports to the ACCC of providers charging for supports that have not been supplied are escalated to the NDIS Fraud Fusion Taskforce, led by the NDIA. The ACCC will take action against providers for wrongly accepting payment where appropriate.

## Concerns in Specialist Disability Accommodation

Specialist Disability Accommodation (often referred to as SDA) is specialised housing for NDIS participants with extreme functional impairment or high support needs.

The government does not build, own, or lease SDA. The upfront cost to build or buy an SDA home comes from a private owner or investor.

There are 2 main ways investment in SDA can happen:

- managed investment schemes where money from investors is combined to buy many SDA homes with an investment manager overseeing the properties – this form of investment comes under the jurisdiction of the Australian Securities and Investment Commission (ASIC)
- direct property investment where investors buy, build or modify property to meet SDA requirements (including design standards) – breaches of the ACL relating to this form of investment come under the jurisdiction of state and territory consumer protection agencies, including the ACCC.

Once built and enrolled with the NDIS as an SDA property, the property must be managed by a registered SDA provider. Enrolled properties receive SDA payments if an NDIS participant with SDA funding occupies the property.

The ACCC has observed some developers and SDA providers may have breached the ACL by making the following types of potentially false or misleading claims:

- Overstating the security or government endorsement of SDA investments. For example, using the words ‘government-backed’, ‘guaranteed income’ and/or ‘NDIS-backed’ when promoting investment. Investors should be aware that:
  - the government does not guarantee payments to SDA properties
  - SDA properties will not receive SDA payments if they are vacant
  - NDIS participants have choice and control over where they live. Government agencies do not decide where to build SDA properties and the NDIA does not place or match participants with vacant SDA properties.
- Promising unrealistic investment returns. Investors should be aware that:
  - the amount of SDA payment varies greatly and depends on many factors, including the features of the SDA property and the amount of SDA funding available to the individual participant or participants living in the property.

Promises of high or guaranteed returns from SDA investments can be problematic if a developer or SDA provider does not have a good understanding of the needs of participants who are eligible for SDA funding. We have heard some SDA properties do not make enough income to cover investment loans because the properties were built in places where participants don’t want to live (e.g. locations with low amenity/low access to supports).

Also, sometimes houses built for multiple occupants may be more difficult to tenant because some participants want to live alone or some may not be compatible as tenants in shared living arrangements.

When properties remain vacant for long periods of time or are not tenanted to their capacity, this can result in significant investor losses.

The ACCC also has concerns about potential unfair terms in standard form contracts between SDA providers and investors.

Providers and investors should carefully consider the impact of terms that allow:

- for properties to be unoccupied, or not occupied to capacity, for long periods without a right for the investor to terminate the agreement
- SDA providers to acquire products or services from related companies, without the consent of the investor
- the SDA provider wide discretion to:
  - change the terms of the agreement
  - charge for products or services relating to management
  - limit the ability to dispute charges.

The ACCC encourages SDA providers and businesses promoting SDA investments to review their practices to ensure they are compliant with the ACL.

Potential investors should be aware of the potential risks of SDA investment and familiarise themselves with how SDA properties are regulated. Potential investors should seek information from advisors who are independent from developers and SDA providers, such as independent legal and financial advice.

## First Nations NDIS participants

There are over 60,000 active NDIS participants who identify as Aboriginal or Torres Strait Islander.<sup>5</sup> Conduct that affects First Nations Australians is one of the ACCC's enduring compliance and enforcement priorities.

The ACCC has heard concerns from NDIS participants in First Nations communities about:

- lack of access to NDIS supports
- NDIS providers allegedly taking payment for supports not provided
- lack of support services with ties to local communities and cultural understanding.

The ACCC recognises that First Nations consumers living in remote areas face particular challenges with asserting their consumer rights under the ACL. The ACCC will always prioritise its work in these areas while these challenges remain.

## Scams affecting NDIS participants

The ACCC's National Anti-Scam Centre (NASC), brings together experts from government, law enforcement and the private sector to disrupt scams.

ACCC data indicates NDIS participants are frequent targets of scam activity, including impersonating government agencies and romance scams.

NASC has developed awareness and education initiatives tailored for at-risk groups including those people living with a disability.

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5 NDIS Participant data Q4 2024/25.

# How the NDIS works

## Responsible agencies

There are 2 key agencies responsible for delivering the NDIS:

- The NDIS Commission regulates and registers NDIS providers and monitors compliance with the NDIS Code of Conduct and practice standards.
- The NDIA sets participants with plans and funding, provides price guidance for supports, processes claims and investigates alleged fraud within the scheme.

## NDIS participants

The NDIS provides funding for people living with significant and permanent disability to access supports that help them achieve independence and better quality of life.

NDIS participants have choice and control over how their funding is used. They choose who provides a support and can negotiate how supports are provided.

Every participant has a unique plan that outlines their goals and the funding they can use to purchase NDIS supports. Participants can choose to manage their plans as follows:

- **Self-managed:** The participant purchases the supports that will best help them achieve their goals and then submits claims to the NDIA for payment. The participant keeps track of their own funds and completes all financial reporting.
- **Plan-managed:** The NDIA provides funding to a plan manager who pays for supports on the participant's behalf. A plan manager keeps track of funds and does the financial reporting on the participant's behalf.
- **NDIA-managed:** A participant does not directly receive their funding and instead providers submit invoices to the NDIA, who then pay providers on the participant's behalf from their allocated funds. The NDIA will only pay invoices for registered NDIS providers, so NDIA-managed participants cannot use NDIS funds to access products or services from unregistered providers.
- Participants may also have a combination of management types that apply to different portions of their funding.

# NDIS providers

The ACL applies to all NDIS providers.

**Providers** can be either registered or unregistered.

**Registered providers** have applied to the NDIS Commission for registration and have been audited against the NDIS Practice Standards. Registration is mandatory for:

- Specialist Disability Accommodation providers
- plan management services
- specialist behaviour support services (for example providers who undertake behaviour support assessments including functional behavioural assessments and who develop behaviour support plans which may include use of restrictive practices)
- providers who use regulated restrictive practices (for example physical, mechanical, environment or chemical restraints).

Registered providers:

- can provide services to all NDIS participants
- must deliver services in line with the NDIS Code of Conduct and the NDIS Practice Standards
- cannot charge participants more for supports than the National Pricing Arrangements and Price Limits as reflected in the NDIS Price Arrangements and Price Limits<sup>6</sup> (often referred to as the PAPL).

**Unregistered providers** are any business that offers products or services to NDIS participants without formal registration with the NDIS Commission. They:

- cannot provide services to participants whose funding is agency-managed
- are expected to deliver services in line with the NDIS Code of Conduct.

The Pricing Arrangements and Price Limits sets out:

- price limits for specific NDIS supports
- the types of products and services that can be provided under different support descriptions.

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<sup>6</sup> <https://www.ndis.gov.au/providers/pricing-arrangements>.

Figure 1 below shows how the Pricing Arrangements and Price Limits applies depending on how an NDIS plan is managed.

**Figure 1: Participant and provider dealings based on how NDIS plans are managed**

	Self-managed	Plan-Managed	Agency-managed
Can engage unregistered providers	✓	✓	✗
Can negotiate prices above the Pricing Arrangements and Price Limits rates with unregistered providers	✓	✗	✗
Can negotiate prices with providers below the Pricing Arrangements and Price Limits rates	✓	✓	✓
Required to make payments, manage finances	✓	✗	✗

## Changes to the supports available

In October 2024 the NDIA published lists clarifying supports that NDIS funding can cover.<sup>7</sup> These are called [Section 10 Lists](#).<sup>8</sup> These lists include a list of potential supports that can be purchased with NDIS funds and a list of products or services that must not be purchased with NDIS.

Whether a support is eligible generally depends on if it is:

- reasonable and necessary for the NDIS participant
- in line with the goals set out in the participant’s plan.

Participants should check whether a product or service is an eligible support before purchasing. The NDIA can provide additional guidance on what products are eligible for funding.

Participants and providers must be familiar with these lists before claiming products or services. Participants should also be aware of “code shopping” from providers who offer to claim their services under general or non-specific codes. This might mean the NDIS rejects the claim.

## Ongoing changes and policy reform

Many things in the NDIS that raise public concerns go beyond the functions of the ACCC and state and territory consumer protection agencies.

Efforts to address concerns and protect the integrity and sustainability of the NDIS to continue to deliver safe supports to NDIS participants include, but are not limited to:

- developing law reforms that are informed by the NDIS Review<sup>9</sup>
- reviewing the registration system for NDIS providers and workers<sup>10</sup>
- upgrading auditing systems within the NDIA
- addressing fraud with joint action through the NDIS Fraud Fusion Taskforce.<sup>11</sup>

7 <https://ourguidelines.ndis.gov.au/would-we-fund-it/what-does-ndis-fund>.

8 <https://www.ndis.gov.au/understanding/supports-funded-ndis>.

9 <https://www.ndisreview.gov.au/>.

10 <https://www.health.gov.au/committees-and-groups/ndis-provider-and-worker-registration-taskforce?language=en>.

11 <https://www.ndis.gov.au/about-us/improving-integrity-and-preventing-fraud/fraud-fusion-taskforce>.

# False or misleading advertising

## Introduction

The ACL protects consumers, including NDIS participants, from false, misleading or deceptive advertising. Businesses must tell the truth when they deal with consumers.

This section highlights some of the false or misleading statements made to NDIS participants that have raised concerns under the ACL.

## False, misleading or deceptive advertising is illegal

Under the ACL, anything a business says to consumers about its products or services must be correct and true. This applies to all businesses that provide NDIS supports to participants.

NDIS providers must not make false or misleading representations or statements. This includes about:

- sponsorship, approval, or affiliation (such as saying that products are NDIS approved or funded when they're not)<sup>12</sup>
- warranties, guarantees, rights or remedies<sup>13</sup>
- price information.<sup>14</sup>

It doesn't matter if the business meant to mislead or deceive a consumer. If the behaviour is likely to have caused a person to make a mistake, then it is considered misleading or deceptive.<sup>15</sup>

Where a court finds that a business made false or misleading representations, it can, among other things, impose penalties.

The ACCC can also issue infringement notices, among other things, where there are reasonable grounds to believe a business has made false or misleading representations.

More information about how the ACL applies to false or misleading claims can be found on the [ACCC's website](#).

## NDIS providers and false advertising

During 2024 and 2025, the ACCC received many complaints about NDIS providers using advertising wrongly suggesting products and services were NDIS approved, funded or endorsed.

Changes to the NDIS that clarified what supports participants can and cannot spend their NDIS funding on came into effect on 3 October 2024. These supports are set out in lists, known as Section 10 lists, available on the [NDIS website](#).<sup>16</sup>

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12 *Australian Competition and Consumer Commission v Australian Private Networks Pty Ltd (t/as Activ8me)* (2019) 136 ACSR 80 at [13] (per Middleton J).

13 *Australian Consumer Law* s 29(1)(g).

14 *Australian Consumer Law* s 29(1)(i).

15 *Australian Consumer Law* s 29(2).

16 <https://www.ndis.gov.au/understanding/supports-funded-ndis>.

Providers must make sure that the products and services they supply or market to NDIS participants are listed as potential supports on the Section 10 lists. Claims that an ineligible product or service is NDIS approved or funded may breach the ACL.

### **Important tip**

No products or services are automatically NDIS approved or funded for all participants. Whether products and services will be approved or funded depends on the needs and goals in a participant's plan.

The NDIS does not provide specific approval or accreditation for any products or services in general. The ACCC is concerned that providers using statements such as "NDIS approved" or "NDIS funded" may be making false or misleading representations.

Examples of advertising that has raised ACCC concerns includes:

- claims that products or services are guaranteed to be funded (i.e. 100% NDIS funded, NDIS approved) when it depends on a participant's plan
- advertising that suggests NDIS funds will cover non-eligible supports such as 'all inclusive' holidays, when the NDIS doesn't fund general costs associated with holidays (i.e. flights, passports, cruises, activities, dining out, shopping, etc.)
- meal delivery services suggesting the NDIS will cover the cost of ingredients/meals when the NDIS doesn't cover food expenses, only support for preparation and delivery
- instructions on how to make claims using NDIS funding codes to cover costs of recreational services the NDIS does not cover.

When participants buy products or services not claimable under their plans, the NDIA may reject their claim. This could leave participants with large personal debts. These participants may already be in financial hardship, or vulnerable, and may not be able to pay for these products and services. Where a provider's advertising has made a participant think they can claim products or services with NDIS funds, but the claim is rejected, the provider may need to bear the participant's costs.

## Case study – Joan

Joan is a participant living with mobility issues.

After looking at Got Your Back’s website, including the advertising in Figure 2, Joan believes the massage chair the business sells is an NDIS approved product that they will be able to pay for with NDIS funding.

Got Your Back’s website has “I Heart NDIS” logos and “NDIS approved” banners on many of its products. It also has a frequently asked questions section that claims massage chairs are a valid support item for NDIS participants.


Joan uses their credit card to buy a \$5,000 massage chair from Got Your Back. Joan submits a claim to the NDIA for reimbursement. The NDIA rejects their claim because massage chairs are not an eligible support under the Section 10 lists.

Got Your Back refuses to accept Joan’s return because it does not accept “change of mind” returns. Joan is now in debt they can’t afford and is paying interest on their credit card purchase.

Joan contacts their state’s consumer protection agency for consistency with other references to resolve the dispute with Got Your Back.

Got Your Back’s false or misleading advertising about NDIS approval made Joan believe they could spend her NDIS funding on the massage chair, when they couldn’t. Joan should be entitled to return the chair to Got Your Back for a refund.

Figure 2: Got your back advertising



**Got Your Back**  
Massage chair

- NDIS endorsed
- Guaranteed NDIS refund

~~-\$5,500~~ down to \$5,000

**HURRY LIMITED STOCK**



## Provider registration

The NDIS registration system aims to ensure registered NDIS providers are of good character and have systems in place to keep participants safe.

The provider is responsible for ensuring the products and services they sell to participants are eligible under the Section 10 lists.

Being a registered NDIS provider doesn't mean that their products or services are automatically approved or endorsed. The NDIA website tells providers not to use the words NDIS approved, NDIS funded or NDIS endorsed in marketing.<sup>17</sup>

## Representations about discounted pricing

The ACCC is also concerned about the use of false or misleading "was/now" pricing, when businesses display a sale price marked down from an earlier price. Circumstances where was/now pricing may be false or misleading include where:

- the item was never sold, or only sold for a short time, at that price before the sale price started
- relatively few items were sold at the higher "was" price right before the sale
- the item is offered at a sale/special price for a long time, so the sale price has become the normal price.

False or misleading "was/now" pricing creates a false sense of urgency. This may cause participants to buy something they otherwise might not or to buy something without shopping around and looking for a better deal. Participants may be particularly sensitive to false or misleading representations about price when their NDIS funding is limited.

Misleading "was/now" advertising also makes it difficult for participants to work out the true market price for a product or service. This distorts competition and over time can drive prices up.

## ACCC action against false or misleading advertising

The ACCC has been working with the NDIA to address false or misleading advertising suggesting products and services are NDIS approved, funded or endorsed.

The ACCC and NDIA have sent compliance communications to many providers about their advertising.

The ACCC is continuing to investigate other businesses for false or misleading advertising targeted at participants.

Providers should review their advertising to make sure it's accurate and true. This includes making sure that they are not encouraging participants to use NDIS funding to buy products or services that are not eligible NDIS supports.

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<sup>17</sup> <https://www.ndis.gov.au/contact/ndis-logo-guidelines>.

The ACCC has taken the below enforcement actions to stop and deter false or misleading advertising in NDIS markets.

**Thermomix infringement notices** – In May 2025 Thermomix paid fines of \$79,200 after the ACCC issued it with 4 infringement notices for advertising that suggested the NDIS endorsed 2 of its household appliances.

This included allegedly describing the products as 'NDIS approved', 'NDIS-registered product', 'NDIS-consumables', 'NDIS assistive technology' and 'NDIS equipment'.

**Bedshed infringement notices** – In May 2025 Bedshed paid \$39,600 in fines after the ACCC issued it with 2 infringement notices. The ACCC alleged Bedshed made false or misleading representations to consumers through advertising that suggested the NDIS had evaluated or approved some products it sold when this was not true.

This included alleged website advertising and Google Ads saying some of its mattresses, furniture and bedding accessories were 'NDIS approved' and 'NDIS permitted'.

**Ausnew court action** – The ACCC began legal action against Ausnew in December 2024. The case is ongoing and includes allegations that Ausnew made false or misleading representations about the price of products, the time limited nature of sales, the savings consumers could achieve during those sales, and that certain products were "NDIS approved". More information about this matter can be found on the [ACCC's website](#).<sup>18</sup>

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<sup>18</sup> <https://www.accc.gov.au/media-release/ndis-provider-in-court-over-alleged-misleading-representations-when-selling-aged-care-and-disability-products-online>.

# Consumer guarantees

## Introduction

Under the ACL, all consumers have the right to expect certain things when they buy a product or service. These basic rights are called consumer guarantees. They are separate to any voluntary warranty and cannot be taken away by anything a business says or does.<sup>19</sup>

The ACL contains a range of automatic warranties known as “consumer guarantees” that apply to products or services, including any NDIS-funded supports.

Complaints to the ACCC show some NDIS providers fail to provide appropriate remedies under the consumer guarantees protections for:

- products not being of acceptable quality – e.g. a tablet supplied with a screen that doesn’t work
- products not matching their description – e.g. a wheelchair delivered with different dimensions to those ordered
- services not being delivered with due care and skill – e.g. a plan manager responsible for managing a participant’s funding budget over spends those funds.

Where a provider supplies products that don’t meet the consumer guarantees, a participant is entitled to a refund, repair or replacement from the provider within a reasonable time:

- Where the issue is a major failure, the participant has the right to choose a refund, replacement or repair.
- Where the issue is not a major failure, the participant is entitled to a repair.

The provider that sold the product or service to the participant needs to provide the remedy to the participant and should not tell the participant that they need to deal with a manufacturer.

For services not delivered with due skill and care, a participant can choose to:

- cancel the contract and get a refund. This may not be a full refund, as the participant needs to pay a reasonable amount for any work done so far and as expected, or
- keep the contract, but pay a lower price that takes the problem into account.

If the participant has already paid upfront, they have the right to get some money back. How much money will depend on whether some or all of the services provided did not have problems, or whether they were provided at all.

More information about consumer guarantees can be found on the [ACCC’s website](https://www.accc.gov.au/consumers/buying-products-and-services/consumer-rights-and-guarantees).<sup>20</sup>

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19 ACL, s 64.

20 <https://www.accc.gov.au/consumers/buying-products-and-services/consumer-rights-and-guarantees>.

# Observations and concerns about consumer guarantees in NDIS markets

The ACCC is concerned about a significant number of NDIS participants reporting providers not giving appropriate remedies under the consumer guarantees or not remedying an issue within a reasonable time.

When businesses don't follow the consumer guarantees it harms all consumers. However, the ACCC is concerned about the extra harm NDIS participants may experience

- Participants rely on the products they buy from providers for functioning in daily life and for community access. When those products don't work, their lives can be severely affected. For example, not having a working wheelchair means somebody who needs one for mobility may be unable to get to appointments or leave their home at all.
- Many NDIS supports are expensive. Complaints to the ACCC indicate that mobility equipment ranges from thousands of dollars to tens of thousands of dollars. Participants' plans are fixed, and budgets must be carefully managed. Where a participant doesn't receive remedies under the consumer guarantees, they may need to pay for repairs or replacement products either through their plan or at their own expense. If they pay out of their plans, this may mean giving up other products or services they need.
- Faulty or poor-quality products or services can be unsafe. For instance, if a lift chair breaks or home modifications aren't safely installed, the participant could risk serious injury or even death.

The below case studies are broadly based on complaints to the ACCC and highlight the harm that can occur when providers do not provide remedies for consumer guarantee failures.

## Case study – Mila

Mila is an NDIS participant living with a neuro-muscular disorder that affects her movement and breathing. They spend a lot of time in bed and need daily help from a carer. Mila uses a BiPAP breathing machine while sleeping to manage their oxygen levels and reduce the risk of choking.

Mila's NDIS plan provided funding to buy a hospital bed as assistive technology. Mila bought a hospital bed for \$24,000 through an NDIS provider. The contract included several modifications Mila's occupational therapist stated were required to make the bed safe for Mila.

When the bed was delivered, it did not include many of the required modifications:

- it was the wrong height, and its lift function did not go low enough, making it unsafe for Mila getting in and out of bed
- it still had a tilt function, meant to be removed, which increased risks to Mila's breathing.

The customised mattress for the bed was damaged during delivery.

Mila immediately contacted the provider to ask them to repair or replace the bed so it would be fit for purpose. The provider said they would contact the manufacturer to try to get the repairs done.

After nearly a year, Mila still does not have a remedy. They have had injuries due to falls from the bed as it doesn't have the modifications Mila needs. Mila's occupational therapist has expressed concerns for Mila's safety. Without modifications, Mila is at risk of further serious falls and compromised breathing.

The provider has not acted in line with the consumer guarantees protections by not providing the product matching the description on the order. The provider is responsible for providing a remedy and should not rely on the manufacturer's response to provide a remedy.

## False or misleading statements about the application of consumer guarantees

It is illegal under the ACL for a business to make false or misleading representations about the exclusion or application of the consumer guarantees.

The consumer guarantees cannot be excluded unless specific circumstances apply. For example, if someone buys second-hand equipment at a discount because of several faults that have been brought to the buyer's attention, the buyer can't ask the seller to repair those faults. In most transactions, however, consumer guarantees automatically protect consumers.

The ACCC is concerned about some NDIS providers suggesting that consumer guarantees do not apply or have limited application. For example, providers:

- with sales agreements that limit remedies to just repairs
- claiming that they are not responsible for fixing faults and telling the participant they need to deal with the manufacturer
- claiming that the participant is not entitled to a remedy because, depending on the type of products or services, the manufacturer's warranty has expired
- claiming that products won't be repaired after a certain time (e.g. 6 to 12 months) when the reasonable life of the product would be many years.

## Case study – Dawood

Dawood is a NDIS participant living with a disability that means they need a wheelchair for mobility.

Dawood's NDIS plan funds a wheelchair to ensure they can be mobile and can take part in community activities. After looking for a suitable product, Dawood bought an electric wheelchair for \$10,000 from a registered NDIS provider specialising in supplying assistive technology.

Just over 12 months later, Dawood's wheelchair would often lose power and come to sudden stops. On one occasion the wheelchair lost power in the middle of an intersection and could not be restarted. Dawood needed help from a passerby to get off the road safely and get home.

Dawood contacted the provider who said the problems with the wheelchair were a combination of software and hardware problems. The provider said that as the 12-month warranty had expired, the repairs would cost \$2,000.

Dawood continued to try to press for their rights under the consumer guarantees protections for months without success.

Dawood needs the wheelchair, but is on a Disability Support Pension and can't afford the repairs out of their own pocket. Dawood's NDIS plan does not have enough funds available to pay for the repairs, as well as daily support needs from carers and allied health professionals. As a result of the faulty wheelchair, Dawood must limit activities outside of their home until they resolve the dispute with the provider.

The provider has not acted in line with the consumer guarantees protections. Dawood should not need to pay for repairs or rely on a warranty where there is a major failure of a product intended to last more than 12 months.

## ACCC action relating to consumer guarantees

In December 2024, the ACCC began proceedings against NDIS provider Ausnew for alleged misrepresentations, including representations in its refund policy about consumer guarantees rights.<sup>21</sup> It is alleged that Ausnew's refund policy attempted to limit consumers' rights to a refund or replacement under the ACL by saying such rights were subject to various conditions, exclusions or limitations when this was not the case.

Providers that make untruthful statements about the consumer guarantees protections risk potential penalties under the ACL. The ACCC can take court action against a provider if they make false or misleading claims about the exclusion or application of these protections.

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21 <https://www.accc.gov.au/media-release/ndis-provider-in-court-over-alleged-misleading-representations-when-selling-aged-care-and-disability-products-online>.

# Overcharging in NDIS markets

## Introduction

Many disability advocacy groups and NDIS participants have raised concerns about some providers “price gouging” or charging higher prices for NDIS-funded supports than non-NDIS funded supports. Some have also expressed concerns about providers exploiting NDIS funding to charge for supports not actually provided.

The NDIS Commission has powers under the NDIS Code of Conduct to take action against providers who set a higher price for NDIS participants and cannot justify the price difference. Any conduct of this sort should be reported to the NDIS Commission.

Behaviour that might be viewed as charging an unfair price or ‘price gouging’ is not illegal under the ACL. The ACCC cannot take action against this behaviour. However related behaviour may breach the ACL, such as wrongly accepting payment or false or misleading marketing.

### Case study – Patience

Patience is a 61 year old NDIS participant living with a disability which impacts her mobility. Patience requires regular exercise and stretching to ensure her condition does not get worse and she can remain somewhat independent.

Patience and her support coordinator found some local fitness classes run by ‘Movement 4 All’ which were advertised for seniors in the community seeking movement and social connection. The classes were advertised as costing a flat fee of \$100 per term and participants could attend as many classes as they like.

The support coordinator helped Patience fill in the required paperwork and she began attending 2 classes a week. Patience and her support coordinator did not mention her NDIS plan at first but after a few weeks it came up in conversations with one of the ‘Movement 4 All’ staff members when they asked who the support coordinator was in relation to Patience.

Patience later received a bill for \$550 for the term instead of the \$100 that was advertised and already agreed to. Patience and her support coordinator asked why the fees had increased and were told that the change was because Patience is on the NDIS. They said that they had additional requirements and documents required for NDIS participants and as such needed to charge more. The support coordinator said Patience had not been asked to fill in any additional documents, only the standard intake form all attendees are required to complete, and there had been no changes to the classes because of Patience being an NDIS participant – the service she received was exactly the same. ‘Movement 4 All’ said “this is just the NDIS price – Patience will need to pay the new amount or she can no longer attend our classes”.

Charging consumers a higher price without a good reason but simply because they receive NDIS funding would be considered unfair pricing and can be reported to the NDIS Commission.

# Unlawful price differences under the NDIS Code of Conduct

In December 2023, the NDIS Code of Conduct was amended to ban NDIS providers from charging higher prices for products supplied to participants (compared to non-participants) without justification. This is known as illegal price differentiation. The NDIS Commission is responsible for enforcement of the NDIS Code of Conduct.

Through the Taskforce, the ACCC has supported the NDIS Commission and NDIA to educate providers about the new law. The NDIS Commission has done a lot of compliance and engagement work with individual providers about:

- the requirements of the NDIS Code of Conduct
- the expectation that prices charged to participants be the same as prices for non-participants for the same products and services.

## Wrongly accepting payment

The ACCC can take action against certain overcharging behaviours where a provider wrongly accepts payment. This happens if a provider takes payment from an NDIS participant but:

- cannot or does not intend to supply what they promised<sup>22</sup>
- supplies a different product or service from those promised<sup>23</sup>
- they know (or should know) that they cannot provide the products or services by the promised delivery date or within a reasonable time.<sup>24</sup>

This practice is illegal and can lead to large penalties. Participants who have experienced this would be entitled to a refund or other remedies.

Examples of behaviour that could be considered wrongly accepting payment include:

- A provider charging for more hours of support when they know they are overbooked and too busy to work the support hours within a reasonable time.
- A provider accepting payment for supports to be delivered within a month when they know that the equipment won't arrive until after 6 months.

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22 *Australian Consumer Law s 36(1).*

23 *Australian Consumer Law s 36(2).*

24 *Australian Consumer Law s 36(3)(i–ii).*

## Case study – Bob

Bob's son, Dylan, has some developmental speech delays. Dylan's speech therapist placed an order for a tablet device from TechClinics Australia with a pre-installed accessibility app to help with speech therapy.

Bob was told by TechClinics that the tablet device and the accessibility app were in stock and would be delivered within 4 weeks. However, the products weren't in stock and the business did not know when new stock would arrive.

After 4 weeks, Bob contacted the business. Bob was told they were waiting for stock to arrive.

TechClinics may have wrongfully accepted payment for the tablet device as they failed to deliver the product within a reasonable timeframe.

## False statements about NDIS pricing

It is illegal under the ACL to make false or misleading representations about the price of products or services.

Through the Taskforce, the ACCC has heard that some providers tell participants they need to charge NDIS participants the maximum price allowed under the Pricing Arrangements and Price Limits, claiming this is the mandated NDIS price. At the same time, they provide the same services to non-NDIS participants at a lower price.

These claims may be false or misleading. The Pricing Arrangements and Price Limits does not set a single price for supports to NDIS participants. Price limits are the maximum prices that registered providers can charge NDIS participants for specific supports. Participants and providers can negotiate lower prices.

## ACCC action

The ACCC coordinates with the NDIS Commission and NDIA on reports of providers charging for products and services that were not supplied. Most reports are escalated as fraud investigations through the NDIS Fraud Fusion Taskforce, led by the NDIA. The ACCC will take action against providers for wrongly accepting payment where appropriate.

The ACCC is also working with the NDIS Commission and NDIA to provide education materials targeted at:

- preventing illegal price differentiation
- breaches of the integrity provisions of the NDIS Code of Conduct.

# Contract issues

## Introduction

From NDIS participant complaints and engaging with disability advocacy groups, the ACCC has identified a range of issues associated with NDIS contracts. Some behaviour may breach the ACL and some are broader consumer issues. These include:

- contract terms not being clearly communicated to participants
- participants not having suitable decision-making supports when signing contracts
- participants being lured into changing providers using incentives
- the use of unfair contract terms.

This section outlines observations in these contracting practices.

All agreements by participants to buy products or services from a provider are broadly considered contracts. They can be in writing or based on conversations or electronic communications.

Contracts have obligations and expectations. Where a provider uses the same or very similar written contracts with each participant they deal with, on a “take it or leave it” basis, this is known as a standard form contract. The ACL bans unfair terms in standard form contracts.

There are other rules that apply to contracts between providers and participants, including the integrity requirements of the NDIS Code of Conduct, and at common law.

## Lack of clarity and decision-making supports

Many NDIS participants don't have written contracts in place. They rely on informal or “handshake agreements” based on a conversation with the provider. While this can be suitable for those who want to have flexibility in their dealings, it can present difficulties for some participants because:

- they have no document to refer to that sets out the provider's obligations if they have concerns about how their service is delivered
- it can be difficult to resolve disputes without written contracts that set out expectations.

Under NDIS regulations, contracts between NDIS participants and providers do not need to be in writing unless it relates to Specialist Disability Accommodation. However, the NDIA and NDIS Commission recommend that providers should give a participant a written contract so that costs and support expectations are clear.

The case study below is based on reports to the ACCC where the lack of a written contract contributed to NDIS funding being used up by a provider and the participant incurring personal debt.

## Case study – Maeve

Maeve is the carer for their adult daughter Lucy, an NDIS participant. Maeve receives a carer's pension as their income and they live in social housing. Lucy does not have capacity to make decisions for themselves. Maeve manages Lucy's finances and acts as their guardian and NDIS nominee.

Maeve engaged an NDIS provider to help with essential daily tasks such as bathing and dressing Lucy, helping to feed Lucy and supporting Lucy when they leave the house. There was no written contract in place, all arrangements were made through conversations.

There was a dispute about payment rates and Lucy's NDIS funding ran out much quicker than anticipated. This meant Maeve was sent invoices for past services that would need to be paid through their savings rather than NDIS funds. Maeve believes the provider was charging for services not delivered and did not pay the outstanding amounts.

Maeve tried to get help from Lucy's plan manager and the NDIA but couldn't resolve the issue with the provider.

Soon after Maeve discovered that over \$20,000 had been taken from their bank account under a garnishee order through legal action by the provider. Maeve did not get notified of the proceedings so did not attend the hearing. In their absence the provider was able to get a default judgement and a garnishee order without Maeve's knowledge.

The money in Maeve's account was Maeve's entire savings which they used to support their family. Maeve is now under financial stress and struggling to provide for both them and their family.

Without any written records of what was agreed it is difficult to track spending and the NDIS provider may have overcharged Maeve but this could be hard to prove. Providers should supply written service agreements wherever possible (and participants should request one if not provided) that clearly sets out what product or services will be supplied and how much the participant will have to pay and how any changes to pricing or payments may happen.

Even where written contracts are in place, NDIS participants may not have the capacity to give informed consent to the contract because:

- it may be written in a way that's hard to understand
- the participant may not have the cognitive capacity to review the contract.

Choice and control are key principles of the NDIS. NDIS participants should not be pressured into accepting a contract. They should have the opportunity to have decision-making help from a person independent from the NDIS provider. NDIS providers must take care that they do not breach the NDIS Code of Conduct. Providers should:

- not apply pressure tactics or offering inappropriate incentives to enter the contract
- avoid conflicts of interest by not acting as both an advocate and a provider that will profit from supplying supports
- make sure that participants have an independent support person to help them understand the terms of the contract and to choose whether they want to go ahead, if necessary
- give the NDIS participant a true opportunity to change or negotiate terms of the contract.

The box below sets out what participants should think about before accepting an NDIS provider's written contract.

## Checklist to consider when entering a contract with a provider

### Contracts between participants and providers should be:

- an agreement that suits the individual participants needs – i.e. created or modified from standard form (if needed) to reflect the participant’s plan, needs and wishes
- in a format accessible to the participant
- in language that is easy for the participant to understand.

### Participants should be comfortable the contract includes:

- what price they will have to pay
- what products or services must be supplied
- when products or services are provided
- how changes to pricing may happen
- what happens if someone needs to cancel the service
- how to solve disagreements
- what is and isn’t included
- names and roles of people involved
- any additional costs for services.

Having these things in a contract can make the arrangement clearer and avoid disagreements in future. If a participant is not happy with what is in a contract, they don’t have to accept it or can ask for changes to be made before accepting it.

## Unfair contract terms

The ACL bans unfair contract terms in standard form contracts. These contracts may be in the form of a template or standard terms and conditions that everyone must agree to before they provide their products or services.

A term of a contract is unfair if, for one party to the contract:

- it gives them more power than the other party
- it is not necessary to protect their interests, and
- it causes harm, whether financial or otherwise, if used.

The ACL gives examples of terms that may be unfair. These include any terms that:

- allow one party but not another to end the contract
- penalise one party but not another for ending the contract
- allow one party to change the upfront price payable under the contract without giving another party the right to end the contract.

More information about unfair contract terms can be found on the [ACCC's website](#).

Complaints to the ACCC have shown possible unfair contract terms in the following contexts:

- **Assistive technology supply** – Terms that restrict access to remedies. For example, terms that require the payment of high fees for assessment of faulty equipment or going through complex processes and paperwork before being able to ask for a repair, refund or replacement.
- **Cancellation terms** – Terms that require long notice periods to cancel appointments without penalty. For example, in allied health contexts where therapists require 10 days' notice to cancel appointments without fees, when they have long waiting lists and are likely to backfill timeslots because of high demand.
- **Exit fees** – High fees to end ongoing contracts, making it hard for participants to stop dealing with a provider. For example, in Specialist Disability Accommodation contexts, a provider requiring the participant to pay many months of rent and fees on moving out of the premises. In contrast, many states' laws for renting allowed tenants to give notice to leave properties with 2 weeks' notice in most circumstances where there is no fixed-term lease.
- **Liability/indemnity** – Where a contract makes someone liable for damage, that means they are responsible for covering the costs of the damage. Under indemnity terms, the participant may be agreeing to cover damage costs where the other party to the contract has made the mistake. These terms raise concern where they are too broad and could leave the participant exposed to very high costs not directly linked to their actions.

## Advice for providers

Since 10 November 2023, businesses face high penalties for including unfair contract terms in their standard form contracts.

Providers should review their contracts thoroughly to make sure they do not have terms that are unfair.

For every term in their standard form contracts, providers should carefully consider:

- What interests am I attempting to protect with this term?
- Are those interests legitimate in the context of this contract/transaction?
- Is what this term provides for, or permits, reasonably necessary to protect those interests or does it go beyond what's reasonably necessary?
- Is there any corresponding right for the consumer that may counteract the detriment that may arise from this term?

Providers should also look for ways to ensure key terms are clearly drawn to the attention of participants during the sign-up process, and any renewal processes.

## Unconscionable conduct

The ACL protects consumers, including NDIS participants, against unconscionable conduct. Unconscionable conduct is behaviour so harsh that it goes against good conscience.

There is no precise legal definition of unconscionable conduct as it is a concept that has been developed and considered on a case-by-case basis by courts over time. However, often it involves a business exploiting someone's disadvantage to make money. Courts will generally consider whether the behaviour goes against the morals and principles of the community when determining if behaviour amounts to unconscionable conduct.

For the courts to decide that behaviour is unconscionable, it's not enough for it to be unfair. There must be something extra that makes it especially harsh. For example, if the business knowingly targets consumers who are experiencing vulnerability, which may be people who:

- are sick or live with disabilities
- have difficulties reading and writing
- have difficulties understanding and using basic financial skills
- don't speak English as their first language.

When deciding whether behaviour is unconscionable, the law says that the courts may also consider a range of other factors, including:

- the bargaining strengths of each person – i.e. the ability of one person to negotiate a better deal compared to the other
- whether the weaker party could understand any documents used
- the use of high pressure or unfair tactics by the stronger party
- the price or other terms on which the weaker party could have got the same or similar products or services from another business
- whether the stronger party acted unreasonably in not informing the weaker party about key risks that the stronger party should have known the weaker party was not aware of.

An example of unconscionable conduct which impacted people living with disability is the ACCC's court action against Optus Mobile Pty Ltd (Optus) outlined below.

### **ACCC case against Optus**

Optus was ordered to pay a penalty of \$100 million for unconscionable conduct when selling mobile phones and contracts to hundreds of Australians, and subsequent debt collection in a case brought by the ACCC.

Optus also provided the ACCC with a [five-year court-enforceable undertaking](#) that it will compensate impacted consumers and improve its systems.

Optus admitted to unconscionable conduct through the following behaviours:

- putting undue pressure on consumers to purchase a large number of products, including expensive phones and accessories, that they did not want or need, could not use or could not afford
- failing to explain key terms and conditions to vulnerable consumers in a manner they could understand, resulting in them not understanding their ongoing payment obligations
- not having regard to whether consumers had Optus coverage where they lived
- selling products and services which Optus knew the consumers could not afford
- misleading these consumers to believe that products were free or included as part of a bundle at no additional cost.

Many of the consumers involved were vulnerable or experiencing disadvantage, such as living with a disability, diminished cognitive capacity or learning difficulties, being financially dependent or unemployed, having limited financial literacy or English not being a first language. Many of the consumers were First Nations Australians from regional, remote and very remote parts of Australia.

## Incentives to enter contracts

Through the work of the Taskforce and engagement with disability advocates, the ACCC has heard reports of providers offering incentives to lure NDIS participants into contracts.

By itself, offering an incentive to enter an agreement may not raise concerns under the ACL. However, the following will likely raise concerns:

- A provider falsely stating that the participant is receiving a “free” item that is not actually free – for example a smart phone or tablet device when the cost of the item is included into the cost of services. This could amount to misleading or deceptive conduct in some circumstances.
- Where the incentive is used to lock the NDIS participant into a contract with potentially unfair terms, such as high exit fees. This could also amount to unconscionable conduct in some circumstances.
- Clauses that give one party more power than the other party, clauses that are not necessary to protect a provider’s interests and clauses that cause harm, whether financial or otherwise, if used. These could be unfair terms if included in standard form contracts.

Disability advocates have raised concerns about NDIS participants being lured away from a reputable Specialist Disability Accommodation provider with offers of products such as gift cards, cigarettes and fast food. Once moved to the new Specialist Disability Accommodation property, however, the new Specialist Disability Accommodation provider did not provide adequate in-home or community access supports. Additionally, the site of the accommodation was in a new housing development with little access to amenities and remotely located from the NDIS participants’ social and family support networks.

The NDIS Commission has done education and compliance work with providers to address concerns with these types of incentives as potential breaches of the NDIS Code of Conduct.

# Specialist Disability Accommodation investment

## Introduction

This section outlines concerns about advertising of some SDA properties and potential misconduct by some SDA providers in dealing with investors.

The ACCC has received reports of people who have invested significant money in SDA after being promised unrealistically high returns and government backing for the investment. They have raised concerns that they are suffering financial loss because their SDA investments have remained empty or are not tenanted to capacity. There have also been concerns about unfair terms in contracts between investors and providers managing SDA properties.

The ACCC is working closely with the NDIA, NDIS Commission, ASIC and the SDA Alliance to monitor the SDA sector. The ACL is enforced by state and territory consumer protection agencies alongside the ACCC under a 'one law, multiple regulator' model so more localised matters may be referred to those agencies while the ACCC focuses on addressing more systemic or national issues. The ACCC does not assist with resolving individual disputes. Guidance on SDA investment is available on the [NDIA website](#). It has been developed by the NDIA with the assistance of the NDIS Commission, ACCC and ASIC.<sup>25</sup> The ACCC has also helped the NDIA deliver education seminars concerning SDA markets.

People should seek independent legal and financial advice before deciding to invest in SDA developments.

## What is Specialist Disability Accommodation?

SDA is specialised housing for NDIS participants:

- with extreme functional impairment or high-support needs
- who meet strict eligibility criteria.

Unlike traditional housing, SDA housing has accessible features to help residents live more independently and allow the delivery of other supports more safely. Because of this, SDA dwellings are more expensive to build than a traditional house of a similar size. Some accessible features that make SDA housing different from other housing include:

- wider doors and hallways for wheelchair access
- wheelchair accessible ramps
- flat surfaces.

Choice and control are key principles of the NDIS. NDIS participants eligible for SDA choose where they want to live and the type of building that best meets their needs based on their SDA budget the service providers they want to engage for supported independent living (often referred to as SIL) services, if required.

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<sup>25</sup> <https://www.ndis.gov.au/providers/housing-and-living-supports-and-services/specialist-disability-accommodation/investment-sda>.

Eligible participants rent properties from SDA providers under tenancy agreements governed by state and territory laws, and also enter service agreements with an SDA provider, with:

- the NDIS funding SDA supports (SDA payment)
- rent not exceeding the amount of the maximum reasonable rent contribution.<sup>26</sup>

The SDA Payment varies greatly. The [SDA Pricing Arrangements and Price Limits](#) provides further information about the different levels of SDA payment depending on the participant's funding and the features of the building.

Government agencies do not decide where to build SDA and the NDIA does not place or match NDIS participants with vacant SDA properties.

## The investment process

Businesses have emerged that allow consumers to invest in SDA housing. These include:

- managed investment schemes (MIS) where money from investors is combined to buy many SDA homes with an investment manager overseeing the properties
- direct property investment where investors buy, build or modify property to meet SDA requirements (including design standards) and then lease the property to the SDA provider.

A MIS is usually classified as a financial product and is regulated by ASIC. Any business selling shares or units in a MIS must hold an Australian Financial Services Licence. Concerns about businesses marketing MIS in SDA housing are within the jurisdiction of ASIC and are referred there. Direct investments can fall under the jurisdiction of the ACCC and/or other ACL regulators.

Property developers are usually responsible for marketing, building and getting NDIA approval to register dwellings as SDA. The developer then links with a separate business which acts as the SDA provider.

Once fully built, the SDA provider will submit an application to enrol the property as SDA with the NDIS. Once enrolled, SDA payments can be received for the property if it is occupied by an NDIS who is eligible for NDIS funding.

SDA providers manage and maintain properties on behalf of investors. Under the SDA Rules:

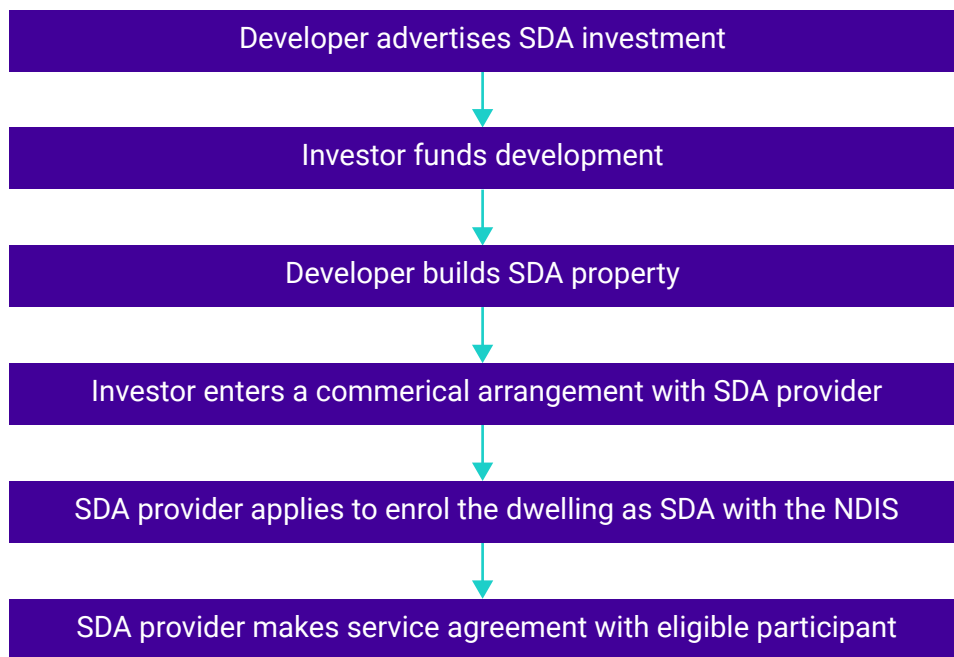
- all SDA providers must be registered as an NDIS provider with the NDIS Commission
- the NDIA must approve and register all SDA dwellings.

Some SDA providers also act as the developer and so following build completion and registration, the same business that built the home goes on to manage the SDA property.

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<sup>26</sup> The maximum reasonable rent contribution is an amount that is 25% of the maximum basic rate of the Disability Support Pension; plus, 25% of the maximum rate of the Pension Supplement; plus, 100% of the maximum rate of Commonwealth Rent Assistance. Further information is available on the NDIS website: <https://www.ndis.gov.au/providers/housing-and-living-supports-and-services/specialist-disability-accommodation/sda-pricing-and-payments>.

Figure 3: Stages in building and occupying SDA homes<sup>27</sup>



## False or misleading promotion of SDA investment

The ACCC is concerned that promotions used by some developers may breach the ACL's bans against making false or misleading representations.

### Guaranteed and government-backed returns

Advertising using words like "government-backed", "NDIS-backed" or "guaranteed income from NDIS funding" may mislead investors about the extent of government sponsorship and downplays the risks involved in the investment.

If properties are unoccupied or if properties are not enrolled with NDIS, no SDA payments will come from the NDIS.

No government agency guarantees payment for SDA properties or plays a role in finding tenants for an SDA property. Finding suitable tenants is generally managed by SDA providers.

Although many NDIS participants with SDA funding are not in SDA housing, this doesn't mean that all SDA properties built will be occupied. Many SDA properties have remained empty and not generated much or any income because they are:

- in places that participants don't want to live, often away from community and social supports
- built to be occupied by 2 or more participants when most participants want to live alone
- available housing may not have the modifications to suit the specific needs of each NDIS participant with SDA funding.

<sup>27</sup> Use of the word "investor" refers to "mum and dad" or "retail investors" i.e. people using their personal savings, taking out personal loans or using a self-managed super fund to invest in Specialist Disability Accommodation. It does not refer to managed investment schemes or large corporate investment entities for the purposes of this report.

## Unrealistic returns

The ACCC is aware of advertising promising high returns on SDA investments when there may not be a good basis for making these claims.

Higher return claims are generally based on an assumption that properties will be rented to multiple participants receiving the maximum SDA payment. However, the ACCC understands this may not eventuate for the following reasons:

- It is a participant's choice where they live. Investors will not receive SDA Payment if an eligible participant is not living in the home.
- The social environment in some homes will not suit all participants. For example, some tenants may want to live alone or with more privacy, meaning that it may be more difficult to find tenants to fill all rooms of homes with multiple bedrooms.
- The property is not built to the design standard that was advertised. Claims about returns are often based on properties being built to the highest standard and receiving the corresponding payment, when they will not in fact be built to that standard.
- The level of funding a participant has for SDA payments varies greatly depending on their disability. A property built to "robust" standard to receive the highest level of SDA payment, but would not receive this level of SDA payment if the participant only has funding at a basic level.

**Figure 4:** Example of potentially false or misleading SDA investment marketing



# Harm caused by SDA investments failing

Investing in SDA housing, as with any investment, has risks. In addition to potentially overstating the benefits, we are concerned that some developers may downplay the risks.

SDA housing is an expensive investment. It costs hundreds of thousands of dollars more to build an SDA dwelling than a regular home of a similar size. Where SDA dwellings end up unoccupied, investors may find they can't easily switch to renting to the public to recoup their losses. Because of their special features, SDA housing can be more difficult to rent or sell to the general public.

If investment in SDA fails, the negative outcomes may not just be felt by investors through significant financial loss because:

- failed investments discourage further investment in SDA
- SDA homes are intended to be long-term homes for people with severe disabilities. In extreme cases, if an SDA investment fails to deliver enough income, investors may need to withdraw the property as an SDA home. This could then impact an NDIS participant's housing security or stability.

## Case study – Stephen's investment

Stephen invested in a 4-bedroom high physical support house and land package through a developer who advertised secure government-backed income of \$94,000 per year.

Stephen used his superannuation funds and a mortgage to build the proposed SDA property.

The developer connected Stephen with an SDA provider who offered him a 10-year contract. In conversations, the SDA provider guaranteed they would find NDIS participants with SDA funding for all rooms in the property.

The dwelling was enrolled as SDA with the NDIS. Soon after signing the contract the SDA provider told Stephen that they could not locate 3 eligible participants to move into the dwelling and suggested Stephen rent the dwelling to a family for a return of \$65,000 per year. None of the family members are NDIS participants, so Stephen will not receive any SDA payments for the property.

It is likely the developer made false or misleading representations in breach of the ACL by promising secure, government-backed income of \$94,000.

It is also likely the SDA provider did not have a reasonable basis for guaranteeing that all rooms would be occupied by NDIS participants with SDA funding. These guarantees may also be false or misleading representations in breach of the ACL.

Investment in SDA, like any other type of investment, carries risks. Those considering building or investing in SDA property should carefully assess the information and investment proposals provided to them, complete due diligence and seek independent legal and financial advice when deciding whether to invest in SDA.

## Possible unfair contract terms

Some standard form contracts between SDA providers and investors contain terms that may be unfair. These terms should be read carefully as they may affect the amount of income an investor receives or limit their rights to sell the property or use it for another purpose. For example, in some circumstances, the following terms may raise ACCC concern:

- Requiring investors to use specific service contractors in supplying SDA services (such as cleaning, gardening, maintenance and support worker services) at inflated prices. Providers sometimes have an interest in these contractors and receive a cut of the costs, without disclosing this.
- First right of refusal options, preventing the investor from engaging another SDA provider, or even participating in the NDIS industry more broadly, for a period after they end their contractual relationship. This reduces an investor's ability to shop around for a better deal.
- Limited options for investors to exit the contract, especially where providers either mismanage the property or fail to achieve full occupancy. This may include lock-in terms or significant exit fees.

# First Nations participants

## Introduction

There are over 60,000 active NDIS participants who identify as Aboriginal or Torres Strait Islander.<sup>28</sup> Conduct affecting First Nations Australians is one of the ACCC's enduring compliance and enforcement priorities.

In January 2025 the NDIA released the NDIS First Nations Strategy for 2025–30 to address systemic barriers First Nations participants face, including those who need supports but may not yet be on the NDIS.<sup>29</sup>

## Work undertaken

The ACCC has met with First Nations groups as part of the Taskforce. They raised many issues affecting First Nations participants, including:

- NDIS plan utilisation rates are lower for First Nations participants.
- A general lack of understanding in First Nations communities about the NDIS and lack of culturally appropriate resources.
- Specialist Disability Accommodation systems that don't meet the diverse and complex housing needs of First Nations participants and fail to incorporate First Nations cultural values, family structures, community connections and spiritual ties to Country.
- An undersupply of Specialist Disability Accommodation in regional, rural and remote areas forces First Nations participants to choose between moving into accessible housing or remaining connected to kin, culture and Country.
- Disconnected data on First Nations peoples access to and outcomes within the NDIS makes it difficult to accurately assess needs and develop targeted solutions.

Engagement with First Nations participants in the Anangu Pitjantjatjara Yankunytjatjara Lands (APY Lands) revealed concerns from First Nations NDIS participants:

- The lack of service availability in remote communities meant participants can't use their NDIS plan, and many families can't or don't want to travel to larger cities for supports. The harm caused by being away from family and Country is greater than the harm of living without supports.
- Providers charging ongoing fees for services when no other supports are being provided or coordinated, and participants may be unaware their plan is being charged.
- Short-term Accommodation service providers offering long respite trips to big cities (i.e. 2 weeks in Adelaide or Alice Springs) where the provider drops the participant off and then picks them up at the end of the trip with no supports provided during the trip despite charging the maximum daily amount for the entirety of the trip. Participants wanting shorter trips are offered weekly one-day short term accommodation trips charged at the highest rate until the participants funding is exhausted.

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28 NDIS Participant data Q4 2024/25.

29 <https://www.ndis.gov.au/news/10550-first-nations-strategy-ensure-better-outcomes-first-nations-people-living-disability>.

- Short Term Accommodation funding and respite arrangements do not suit First Nations participants who often want to travel with family or remain on Country while giving their family and in-place carers a break. Many participants in the APY Lands expressed that 2-week trips are too long away from home and can often cause more harm than good.
- A lack of advocacy or dispute resolution services in the region amplify these issues and make it even harder for remote First Nations participants to enforce their consumer rights.

First Nations advocacy groups have also raised concerns about a lack of:

- providers from First Nations backgrounds or with ties to local communities
- competition for First Nations participants seeking support services, particularly in rural, regional and remote locations.

Other advocacy groups have also raised lack of competition in some areas as concerning.

Competition in any industry leads to lower prices, more choice and better products and services for consumers. This equally applies when providers compete to meet NDIS participants' needs.

### **Case study – Linda**

Linda is an Arrernte woman who lives in Santa Teresa and lives with an acquired brain injury.

English is not her primary language. Her first language is East Arrernte.

Linda is an NDIS participant, but Linda has not been able to use much of her funding. Linda has struggled to find supports because of the lack of local NDIS providers.

In January 2025, a provider from a major city visited Linda and other NDIS participants in Santa Teresa. They told Linda they could provide her with plan management services to help her get the supports she needs. Linda remembers signing some papers but did not hear from them again.

In December 2025, Linda called the NDIA to ask the agency to manage her funding so she could get supports. Linda then found out the provider had been taking a monthly plan management fee from her NDIS funding package, even though Linda had never had any other supports provided to her.

Providers should ensure that they are providing services in a way that can truly be delivered to participants in remote First Nations communities. This includes having a proper understanding of:

- infrastructure limitations
- cultural practices
- individuals' ways of living.

Providers unable to provide services suitable for the unique needs of First Nations participants in remote communities should not take payment for services.

## Continued focus on ACL issues

The ACCC has a dedicated First Nations team focused on better understanding and addressing the specific consumer harms faced by First Nations communities. The Team shares information specifically for First Nations consumers through targeted outreach and via the [Your Rights Mob Facebook page](#).



# Scams affecting NDIS participants

## Introduction

Protecting consumers and businesses from scams is one of the ACCC's enduring priorities.

The National Anti-Scam Centre, run by the ACCC, brings together experts from government, law enforcement and the private sector to disrupt scams before they reach consumers. The National Anti-Scam Centre helps make Australia a harder target for scammers through education, awareness and disruption.

Scams targeting people with disability, including NDIS participants, undermine individuals' wellbeing. Where these scams impersonate organisations involved in delivering the NDIS or target the scheme itself, scams may also impact public trust in the integrity of the NDIS.

A key objective of the National Anti-Scam Centre is to develop accessible, high-quality information to empower people who may be at increased risk of harm to identify and avoid scams.

## Scams impacting NDIS participants

In 2024, Scamwatch received 19,989 reports of scams by people living with disability, with 1,758 reporting overall financial losses of \$20.8 million. The primary contact method for these losses was online (websites, advertisements, social media and mobile apps).

In 2024, there were over 150 Scamwatch reports mentioning the NDIS and/or the NDIA, with losses of more than \$750,000. These reports have increased significantly in 2025, with over 580 reports mentioning the NDIS and/or the NDIA between January and September.<sup>30</sup>

NDIS participants are frequently targeted by scammers impersonating government entities. Scammers often impersonate myGov to steal personal information and money. They typically send phishing emails or text messages that link to a fake login page. After stealing login details, scammers can access myGov accounts and exploit myNDIS or other linked services to redirect payments and lodge false claims.

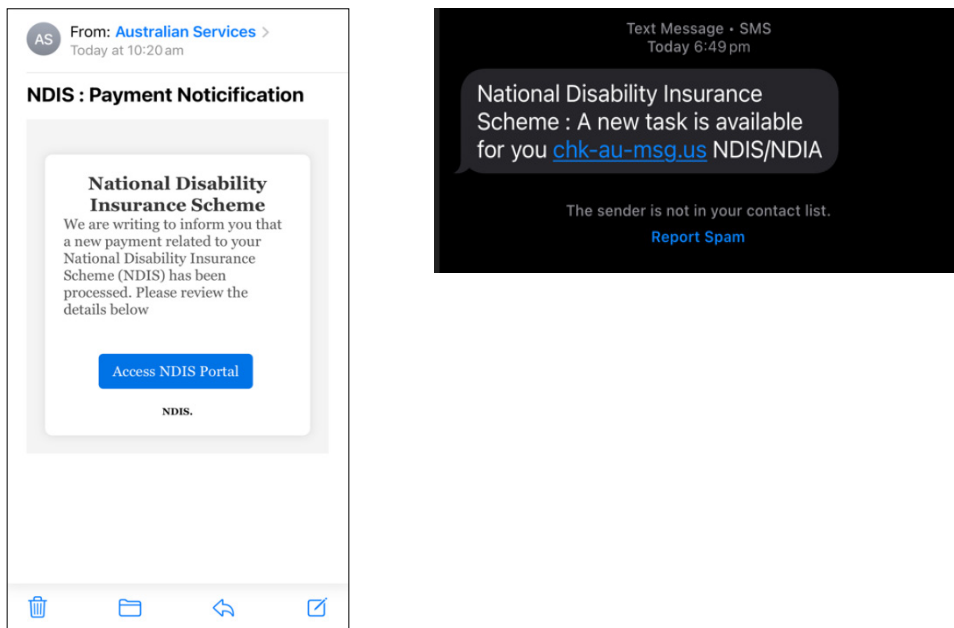
Scamwatch has received reports of scammers impersonating NDIS representatives to request donations or personal details. NDIS providers themselves are also targeted, with scammers impersonating the legitimate business to extract money or sensitive information, including in employment scams.

The National Anti-Scam Centre works to mitigate the harms that scams cause. It promotes proactive data and intelligence sharing with stakeholders across government, law enforcement and industry. The National Anti-Scam Centre also identifies scammer websites and contact methods and refers these for assessment and removal. The National Anti-Scam Centre also provides tailored support and advice to some consumers who report scams. Scam victims who lose \$5,000 or more can consent for automatic referral to support by IDCARE.

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<sup>30</sup> This data includes reports that include the keyword "NDIA" and/or "NDIS". Largely, the reports pertain to impersonations of the NDIA/NDIS, fraudulent companies claiming to be a registered provider and scams that have impacted a participant.

**Figure 5:** Examples of phishing email and text message that impersonate the NDIS/NDIA, reported to Scamwatch



## Romance scam fusion cell

Fusion cells are time-limited taskforces that bring together government, industry, and community partners to address specific, urgent scam issues. The National Anti-Scam Centre's third and current fusion cell focusses on romance scams. Scamwatch reports show that people with disability generally report higher losses to romance scams. This highlights the disproportionate impact, as well as the need for stronger referral pathways and tailored frontline support.

Through this fusion cell, the National Anti-Scam Centre is working with NDIS providers, disability organisations and counselling services to strengthen engagement and ensure victims can access trusted help. The National Anti-Scam Centre is also:

- planning an industry forum for organisations in the disability services sector
- developing resources to equip staff with practical tools to identify the signs of romance scams, intervene early, and connect victims to appropriate services.

### Case study – Shelley

A criminal perpetrating a romance scam spent months grooming Shelley, a 65-year-old NDIS participant. The scammer pretended to be a celebrity and said they would move to Australia to be with Shelley. Over several months Shelley sent more than \$9,000 in gift cards, leaving them unable to afford expenses to cover basic needs.

Shelley's physiotherapist and disability carer noticed the warning signs and reported their concerns to Scamwatch. This case highlights the crucial role of NDIS providers in recognising red flags and the need for stronger referral processes to protect victims.

## Awareness and education

Scams guidance and education are for all Australians, with tailored initiatives for at-risk groups including those living with a disability. In 2024–25 our activities included:

- delivering 62 in-person and virtual consumer awareness presentations
- distributing over 145,000 copies of 'The Little Book of Scams'
- publishing new scams awareness material, including a scam quiz, digital and printable resources available in 21 languages, and dedicated resources for First Nations people
- automatically referring 8,727 high risk scam victims to IDCARE for tailored, practical advice and support.

The Cyberability team at Monash University together with the National Anti-Scam Centre, Westpac, QUT, Brain Injury Matters and disability consumers are developing prevention and support strategies and resources to help people with cognitive disability, such as brain injury, intellectual disability, or dementia avoid and recover from online scams.

The project will strengthen frontline responses for cyberscam victims, conduct a national trial of a co-designed support program for victims, and distribute free education material nationwide, empowering people with disability to participate more securely online.



