

Business integrity and legal requirements in the Assistive Technology sector

24TH OCTOBER 2022

The undersigned peak bodies, member organisations, and Organisations of Persons with disability are committed to the highest standards of use, assessment and advice regarding, as well as selection, supply, support and maintenance of assistive technology (AT).

AT users should expect to be able to make informed decisions based on the highest standards of assistive technology provision to meet their AT goals and needs. We thus encourage AT product suppliers and advisory service providers to work collaboratively with the user of AT to deliver the best participation outcomes, aligned with each person's individual needs and goals. The selected AT solutions should be of quality and value that reflects these goals and needs.

To achieve this end, business integrity in the provision of AT is fundamental. This includes the dealings between customers, allied health professionals (AHPs) or other AT advisors (e.g. AT mentors), suppliers of AT, and other stakeholders. All involved in the delivery of the AT solution should conduct themselves according to the highest expected standards of honesty, fairness and personal integrity.

It has come to our attention that there are a small number of operators within the AT industry whose business practices and actions are likely to contravene good practice provision of AT, be they in breach of specific associations' codes of conduct, and/or potentially in breach of the law. For this reason, the signatories have assembled the following guidance for professional stakeholders in the AT industry.

This guidance is provided across five core areas of AT product and/or service practice:

- Referral fees, sales commissions and rebates
- Gifts and hospitality
- Consumer protection
- Insurance risks
- Industry/professional codes of practice.

We strongly encourage AT stakeholders nationally who advise on or assess AT use, or develop and/or supply AT products, to reflect on and uphold these values in the interest

of good AT practice (see page 16 of the World Health Organization’s Global Report on Assistive Technology¹) and the best possible outcomes for all Australians who use AT. If you have questions or concerns in this area, please contact your relevant professional association, peak body or Disabled Persons’ Organisation directly. If you are aware of or concerned regarding potential suspicious or illegal activities relating to the NDIS, you can use the following link to report: [Report suspicious behaviour | NDIS](#)

1. World Health Organization (2022). Global Report on Assistive Technology. Geneva, CH: Author. Accessed via <https://www.who.int/publications-detail-redirect/9789240049451>



Bronwyn Morris-Donovan
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Australia CEO



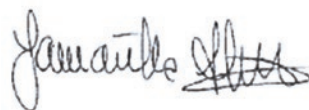
Libby Callaway
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David Sinclair
ATSA Executive Officer
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Anja Nikolic
Australian Physiotherapy
Association CEO and
National President



Samantha Hunter
Occupational Therapy
Australia CEO



Michael Bleasdale
Rights & Inclusion
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Guidelines

REFERRAL FEES, SALES COMMISSIONS & REBATES

Referral fees, sales commissions, rebates or 'spotter's fees' are payments service providers make to third parties in return for recommending their services or sending customers to them. Allied Health Providers (AHPs) or AT mentors, AT suppliers, support coordinators and funding plan managers (including but not limited to: Aged Care providers, NDIS and third-party service providers) must be open and transparent when entering into such arrangements for the sale or supply of goods and/or services. Individuals or businesses who are engaged in referral, commissions, spotter's fees, and rebate arrangements with a third party that are not disclosed to the consumer could breach the prohibitions on misleading and deceptive conduct, or engaging in misleading representations, in breach of the Australia Consumer Law (ACL).

The ACL prohibits businesses from making representations that are incorrect or likely to create a false impression. To avoid breaching the ACL, businesses should be transparent about the commissions and payments that they receive where non-disclosure may mislead AT users. The non-disclosure of commercial relationships can distort consumer choices, as consumers may not realise that a business is being recommended to them because the recommender is receiving a commission, rather than because they are endorsing the business' standard of service.

Penalties for misleading representations for breach of the ACL can be up to \$10 million per breach.

GIFTS AND HOSPITALITY

Providers of AT services and products (including their employees) must not offer, promise or provide a gift, favour, hospitality and/or entertainment for the purpose of obtaining favourable treatment from customers including AT funders, AT advisors or assessors, and AT suppliers. Gifts and hospitality may be provided in certain circumstances as long as the gift or benefit is not having the effect of distorting choices, or creating a conflict of interest (including a perception of such a conflict).

Gifts or benefits may be permissible provided they also conform with the gift provider's professional Code of Practice. If the issue is not covered by the relevant Code of Practice, then the following guidelines are offered:

- The total value of the gift or benefit, including hospitality, is no more than \$100 per year;
- The gift or benefit is disclosed, and would not influence the business or the beneficiary of the gift/benefit;
- The gift/benefit is reasonable and appropriate and consistent with an individual/association Code of Practice.

CONSUMER PROTECTION

Under the Australian Consumer Law (ACL), supplied services or goods are required to meet consumer guarantees, including being safe, of an acceptable quality, being fit for purpose, and matching any sample or description. Due to the multiple parties involved in

the advice and assessment, measurement, selection and supply of AT, all parties involved are responsible for ensuring that the AT solution meets consumer guarantees.

In addition, the NDIS Code of Conduct, article 50 states

“For clients to be informed consumers they need accurate information about their service providers, the service they receive, and any real or perceived conflicts of interest of the people working with them; and they should be able to make decisions in their best interest, free from inducements or pressure”

When consumer guarantees are not met, AT users are entitled to a repair, replacement, or a refund, depending on the severity of the failure. To ensure compliance with the NDIS Code, all parties involved in the supply of the AT, from the assessment and advice, measurement, selection, and delivery, will need to demonstrate that the best interests of the user were upheld, and the supplied AT solution was free of bias or undue influence.

For these reasons, it is strongly recommended not to engage in business-to-business spotter’s fees, commissions or rebate arrangements for the sale or supply of goods and services to consumers to strengthen a businesses’ position (see #1 above). This will remove any doubt concerning undue influence applied or conflict of interest in the final supplied AT solution.

In 2021, the ACCC, the National Disability Insurance Agency and the NDIS Quality and Safeguards Commission released joint guidance in this area. For details, go to <https://www.accc.gov.au/system/files/Joint%20ACCC%20NDIA%20NDIS%20Commission%20letter%20-%20January%202021.pdf>

INSURANCE RISKS

Professional indemnity policies are intended to provide cover for the insured as a result of an **unintended** act, error or omission, that results in legal action or enquiry costs and expenses. However, the policy is not intended to provide indemnity when the insured’s **conduct is intentional or deliberate**. For an AT advisor, assessor or supplier to be able to call on professional indemnity insurance as required, it is imperative they comply with the individual policy agreement they enter into.

INDUSTRY CODES OF PRACTICE

Professional peak bodies and associations have codes of practice in place for a reason, and they often go beyond legal requirements to address ethical matters. It is important to be aware of and comply with relevant industry Code of Practice where applicable, as in some cases, a breach may lead to disciplinary actions.

Below are two examples of Professional Codes of Practice:

The AHPRA Code of Conduct for Registered Health Practitioners:

Access via <https://www.ahpra.gov.au/Resources/Code-of-conduct/Shared-Code-of-conduct.aspx>

ATSA Code of Practice:

Access via <https://www.atsa.org.au/wp-content/uploads/2022/01/ATSA-Code-Of-Practice-Booklet-A5-2022.pdf>