

What Ability Pty Ltd

**Policies and  
Procedures for  
Voluntary  
Out-of-Home Care  
(VOOHC)  
Service Provision**

# Welcome to What Ability Pty Ltd

This manual provides a comprehensive set of relevant policies and procedures to support What Ability Pty Ltd.'s organisational practices related to the provision of Voluntary Out-of-Home Care supports to participants.


## **Message from Steve Dresler, CEO of What Ability Pty Ltd.**

Our number one priority is the safety and happiness of our participants and workers. We strive to be one of the best for safe, high-quality person-centered services that enhance and impact the lives of people in our community.

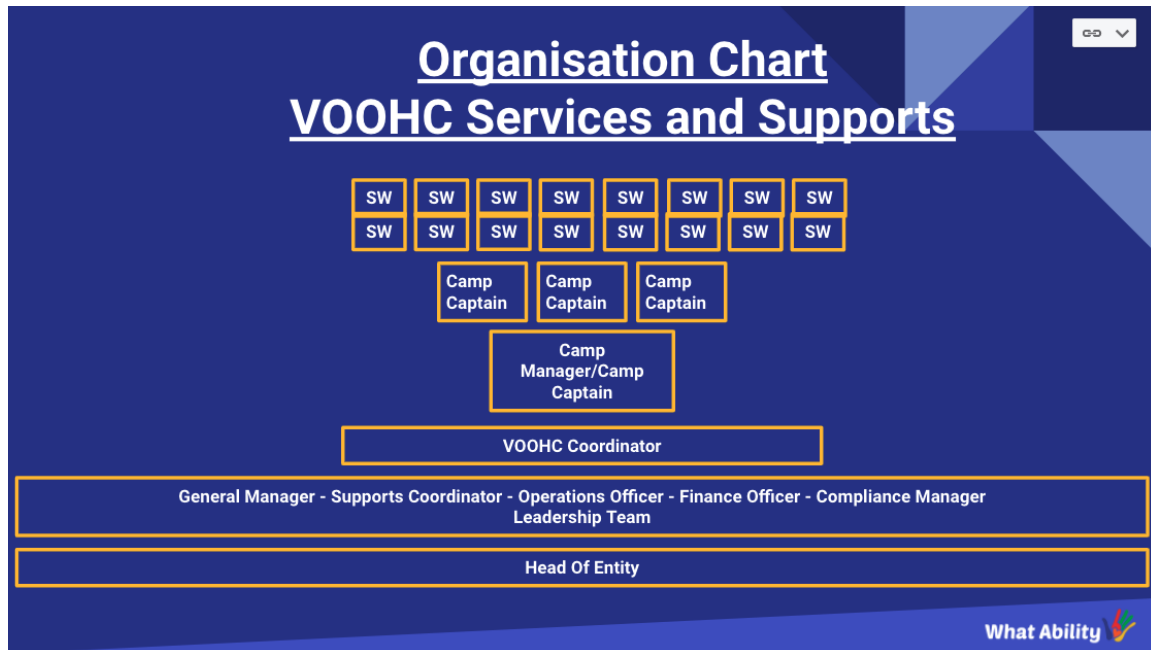
Our processes and policies are in place to ensure we provide excellent services. We recruit people who have a heart to impact and care for the community and ensure our participants experience the best in compliant, safe and high-quality care.

For our team, working here means making a commitment to uphold our company values and to follow the policies, procedures and guidelines detailed in this document.

Yours Sincerely,



Steve Dresler  
Chief Executive Officer  
What Ability Pty Ltd



# Mission Statement:

What Ability is a NDIS registered support service utilising professional and semi-professional athletes as Support Workers.

*“We exist to bring happiness to people living with a disability. We believe that happiness comes first.”*

Through community experiences we will bring happiness to participants, enriching their lives and unlocking their potential.

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## **Introduction to Policy and Procedures**

What Ability respects and supports the fundamental right of participants to continue living independently in their own homes and communities with dignity and respect, along with choice and inclusion in relation to their support needs and being free to engage an advocate and/or representative of their choice.

The What Ability VOOHC Policy and Procedure Manual sets out, in principle, the behaviours and standards of conduct expected of members of our organisation providing support services to a person and to uphold the rights of all participants.

## **What Ability Background:**

### **NDIS Services and Supports**

What Ability PTY Ltd has been a registered NDIS Service Provider since 2019.

the National Disability Insurance Scheme (NDIS) Act 2013 and the NDIS Provider Registration and Practice Standards Rules which were introduced on 17 May 2018 seek to ensure that people with disabilities have access to services that:

- help them achieve their maximum potential;
- promote and respect their legal and human rights;
- promote their integration into the community;
- promote positive outcomes and images; and,
- are innovative and well managed.

The NDIS Practice Standards (the Standards) were introduced to provide a framework to ensure that services such as those provided by What Ability are delivered in accordance with the requirements of the NDIS Act and attendant rules and in keeping with contemporary policy in disability services, namely the National Disability Service Standards.

The services and supports to people with disabilities, their families or carers provided by What Ability will meet the provisions of the NDIS Act and the Standards, including related legislation and regulations in both State and Federal jurisdictions.

### **VOOHC Services and Supports**

What Ability Pty Ltd obtained registration as a Voluntary Out-of-Home Care (VOOHC) provider in March 2022.

In NSW, the Office of the Children's Guardian administers the Voluntary Out-of-Home Care (VOOHC) system under the Children and Young Persons (Care and Protection) Act 1998 and the Children and Young Persons (Care and Protection) Regulation 2012.

The Office of the Children's Guardian, an independent statutory authority in NSW Government that promotes and regulates the quality of child-safe organisations, services and people, is responsible for registering agencies that provide VOOHC, and monitoring whether children and young people in longer term VOOHC receive care that is appropriately supervised and planned.

The Office of the Children's Guardian administer the VOOHC Register which records information about each child or young person using VOOHC, including:

- entry and exit dates for each placement
- total placement days for the last 12 months
- name of placement agencies
- name of designated agency supervising placements
- date of case plan or review
- name of agency developing case plan

As a registered VOOHC provider, What Ability has developed and implemented a wide range of specific and

more general procedure requirements for its participants and staff.

This task is the role and responsibility of the What Ability management in close consultation with both current and future participants, their families, advocates, guardians and staff.

The intention of What Ability is that the participants, their families, carers, guardians and advocates will have full opportunity for input over the development and review of these policies and procedures, through representations to the What Ability's staff, management and through our documented communication channels.

These policies and procedures provide the framework that **must** guide the actions and initiatives of all staff.

# 1. Voluntary out-of-home care (VOOHC) policy

## Regulations

Children's Guardian Act 2019 (NSW)

<https://www.legislation.nsw.gov.au/#/view/act/2019/25>

Children and Young Persons (Care and Protection) Act 1998 (NSW)

Children and Young Persons (Care and Protection) Regulation 2012 (NSW)

<https://www.legislation.nsw.gov.au/#/view/regulation/2012/425>

Child Protection (Working with Children) Act 2012 (NSW)

<https://www.legislation.nsw.gov.au/#/view/act/2012/51>

Child Protection (Working With Children) Regulation 2013 (NSW)

<https://www.legislation.nsw.gov.au/#/view/regulation/2013/156>

NSW Carers Charter and the NSW Carers (Recognition) Act 2010 (NSW)

<https://www.legislation.nsw.gov.au/#/view/act/2010/20/full>

## What is VOOHC?

Voluntary out-of-home care (VOOHC) is out-of-home care arranged by the child or young person's parent and:

- the child or young person stays at a place other than his/her usual home for one or more nights
- the child or young person is in the care and control of a person other than his/her parent (i.e. the person with parental responsibility for the child or young person), and
- his/her parent has entered an arrangement with an organisation to provide or arrange that care (a voluntary arrangement).

VOOHC may be for occasional, crisis, regular planned short-term respite, or long-term care depending on the needs of the child and their family. VOOHC covers care arrangements such as:

- overnight or short-term accommodation in a group home, respite, hotel or AirBnB environment
- overnight stay with another family in a 'host family' arrangement
- longer-term residential care
- camps that focus on respite or behaviour support
- bail assistance.

VOOHC must only be provided, arranged, supervised or advertised by an agency registered by the Office of the Children's Guardian.



The Office of the Children’s Guardian is an independent government agency that works to protect children by promoting and regulating quality, child safe organisations and services.

The Office of the Children’s Guardian:

- maintains the Statutory Procedures which guide VOOHC agencies in the areas of intake, assessment, case planning and interagency coordination
- sets out the conditions of VOOHC registration
- provides access to the VOOHC Register and monitors compliance using the VOOHC Register
- conducts onsite monitoring visits (including assessments) and desktop assessments of VOOHC policies and procedures
- monitors children and young people in longer term VOOHC to ensure they receive care that is appropriately supervised and planned.

## VOOHC agencies

A VOOHC agency is either:

- a designated agency—an organisation accredited by the Children’s Guardian to provide statutory care, or
- a non-designated agency—an organisation registered by the Children’s Guardian to arrange and/or provide VOOHC.

Note that What Ability Pty. Ltd. (referred to hereafter as What Ability) is a non-designated agency.

## VOOHC Register

The VOOHC Register records information about a child/young person including their personal details, dates entering and exiting VOOHC, supervision or case plan requirements. Each time What Ability provides a VOOHC placement, they will enter the placement details onto the VOOHC Register within 5 working days and submit a placement exit date on the VOOHC register within 5 working days to ensure each child’s placement history is current.

What Ability will enter the following information into the VOOHC Register for each child accessing a VOOHC placement:

- first name, middle names, surname, any previous names used
- date of birth, place of birth
- gender
- whether the child or young person is from an Aboriginal or Torres Strait Islander background
- whether the child or young person has a disability

What Ability recognises that the provision of inaccurate data has the potential to hinder the OCG’s ability to accurately calculate the number of days a child/young person spends in care, and will act to minimise the possibility of this occurring, through implementing data quality checking strategies. Any details added or changed in the VOOHC Register will be double-checked for

accuracy to minimise the potential of errors occurring e.g. doubling-up of placement information.

The What Ability VOOHC Coordinator is responsible for updating and reviewing the VOOHC Register. In their absence, the CEO will carry out this role.

## VOOHC Register Quarterly Activity Reports

The Children’s Guardian provides VOOHC Register Quarterly Activity Reports (QAR), which will be used by the VOOHC Coordinator as a self-monitoring and planning tool for quality assurance and to ensure compliance is achieved and maintained. QARs will be reviewed by What Ability with secondary reviews, if necessary, by the CEO. These reviews will focus on What Ability’s VOOHC compliance, and on identifying any quality improvement opportunities.

## VOOHC Statutory Procedures

The Statutory Procedures address the key VOOHC provisions of the Children’s Guardian Act (2019), which provides the legislative provisions with regards to voluntary out-of-home care. The Procedures also address the manner in which What Ability arranges and/or provides VOOHC:

- manages the intake and assessment of children and young people entering VOOHC
- works cooperatively with parents (i.e. those with parental responsibility for the child or young person) and other organisations in supporting the safety, welfare and wellbeing of children and young people
- plans and reviews the care of children and young people
- ensures that a designated agency or the Children’s Guardian provides or supervises the care of children and young people who have been in VOOHC for more than a total of 90 days in a 12 month period
- ensures children and young person in VOOHC for more than a total of 180 days in any 12 month period has a case plan that meets their needs approved by a designated agency
- manages a child or young person leaving VOOHC
- coordinates decision-making and service delivery and shares information with other organisations
- makes child protection reports where a child or young person is at risk of significant harm.

The Statutory Procedures establish common intake and assessment, supervision, case planning and interagency coordination framework for VOOHC, which:

- reduces the risk of children and young people drifting in the VOOHC system without appropriate planning and care, and
- promotes improved quality, consistency, efficiency and coordination in the delivery of VOOHC services.

## VOOHC Monitoring Guide

The Statutory Procedures should be read in conjunction with the Voluntary Out-of-Home Care Monitoring Guide (the Guide) and the Voluntary Out-of-Home Care Register Manual (the

Manual), available on the Children’s Guardian’s website ([www.kidsguardian.nsw.gov.au/voluntary-out-of-home-care](http://www.kidsguardian.nsw.gov.au/voluntary-out-of-home-care)).

The Guide explains:

- how the Children’s Guardian administers the Monitoring Framework
- how each VOOHC agency must confirm its compliance with the Procedures to attain and maintain registration to provide or arrange VOOHC.

The Manual explains:

- how information about VOOHC agencies and children and young people in VOOHC is entered on to the VOOHC Register
- how VOOHC agencies can access a child or young person’s previous VOOHC placement and case plan history from the VOOHC Register.

## **What is NOT VOOHC?**

VOOHC does not include:

- care provided by someone on an individual capacity (where that care is not on behalf of or arranged by an organisation)
- care provided outside NSW
- statutory out-of-home care
- supported out-of-home care (for example, care supported by the NDIS)
- care that is excluded from the definition of out-of-home care by the Act or Regulation, such as:
  - care given by a person in their capacity as a licensed provider of children’s services (for example, pre-school, long day care centre)
  - care provided by a carer, or care provided by the child or young person’s sibling, for example, under the Young Carers Program
  - boarding services provided by a school, training establishment, university, or affiliated body
  - a holiday camp, outdoor recreation centre or similar facility where children and young people undertake or receive education, training or instruction in academic, religious, athletic or recreational pursuits—unless its primary purpose is to provide respite or behaviour support
  - health services provided by the public health system or care provided by a licensed private health facility
  - care given under Supported Accommodation Assistance Program (SAAP)
  - any place used for the detention of children and young persons (including police custody) within the meaning of the Children (Detention Centres) Act 1987 (NSW)
  - adoption services under the Adoption Act 2000 (NSW).

## **Arranging and providing VOOHC**

VOOHC may be arranged or provided by a VOOHC agency, an individual authorised by the VOOHC agency, or the Children’s Guardian.

A VOOHC agency provides VOOHC where it is responsible for the care of a child or young person, or where it arranges for an individual (i.e. not an organisation such as a company or family partnership) to provide that care.

A VOOHC agency arranges VOOHC where it arranges for another organisation to provide care for a child or young person, for example, where it:

- contracts/subcontracts another organisation to provide VOOHC
- brokers another organisation to provide VOOHC, for example, respite brokerage services and care coordination services
- directly refers a child or young person to another organisation.

Note that funding a VOOHC placement, providing a parent with information on service providers or suggesting they contact a particular provider is not “arranging” VOOHC.

For guidelines on arranging VOOHC, refer to the VOOHC intake and assessment policy.

## Applicability

When
<ul style="list-style-type: none"> <li>• this policy applies when arranging or providing voluntary out-of-home care.</li> </ul>

Who
<ul style="list-style-type: none"> <li>• this policy applies to all representatives of What Ability Pty. Ltd. including key management personnel, full time workers, part time workers, contractors and volunteers.</li> </ul>

## Definitions

Term	Description
child	Anyone under the age of 16 years—according to the Children’s Guardian Act 2019.
young person	Anyone between the ages of 16-17 years—according to the Children’s Guardian Act 2019.

## Principles of care

When arranging or providing VOOHC, What Ability will ensure:

- VOOHC services are responsive to the needs of the child or young person and their parents and family
- that the safety, welfare and wellbeing of the child or young person is paramount—if the needs of a child or young person and their parents and family become incompatible, alternative arrangements should be made
- VOOHC services regard the needs of the child or young person and their family, including culture, age, disability, language, religion and sexuality, where relevant
- VOOHC services have regard for the NSW Carers Charter
- VOOHC services are consistent with provisions of the Convention on the Rights of the Child and Convention on the Rights of People with Disabilities.

Additionally, What Ability will ensure all relevant staff are trained in the principles of VOOHC, the VOOHC Register and in mandatory reporting guidelines.

## Decision making and participation

To facilitate and encourage participation in decision making, What Ability will:

- ensure that children and young people (to the extent of their capacity) and their parents are provided with information about services in a manner and language they can understand
- facilitate opportunities for communication and, where the child or young person has difficulties with spoken communication, may need to support the child or young person's use of an alternative communication system
- arrange meetings for intake and assessment and case planning and review at places and times that are convenient for children and young people and their parents
- ensure that children and young people and their parents have a say in setting the agenda for case planning/review meetings, and who will attend those meetings.
- coordinate decision-making and the delivery of services for children and young people with other relevant organisations—especially organisations which have responsibilities relating to the safety, welfare or wellbeing of those children and young people)
- work in partnership with the Children's Guardian and other VOOHC agencies to improve coordination of services
- ensure children or young people and their parents are made aware of how information about them may be provided to other agencies which have responsibilities relating to the safety, welfare or wellbeing of the child or young person.

Participants and their family meet during the intake process and information is gathered to create an individualised and person-centred support.

## VOOHC supports

Short-term occasional respite can help to promote children and young people to stay with their family. However, sometimes other supports or a combination of VOOHC and other supports are more appropriate for the child or young person.

When providing VOOHC supports, What Ability will:

- not limit the access of children and young people to VOOHC respite services
- always consider whether other family supports or non-VOOHC respite arrangements, or a combination of VOOHC and other supports, may be of greater benefit to children and their families than VOOHC alone
- ensure supports are age appropriate—placements will be with compatible peers of similar age, developmental capacity and interests
- conduct a risk/compatibility assessment of children and young people placed together to ensure that any identified risks are mitigated
- undertake risk/compatibility assessments regularly to determine ongoing suitability
- not place children under 7 years of age in centre-based care unless they have complex health needs that require such care

- not place children under 16 years of age in centre-based or residential care with adult clients unless exceptional circumstances apply e.g. the adult having high physical support needs and limited mobility or being of such a small size that would place them at risk in an adult respite placement
- place young people aged 16-17 with adults only after a risk assessment has been conducted, and with the consent of the parents and the authorisation of the chief executive or their senior delegate
- ANY placement of children and adults together requires completion of a VOOHC risk assessment, the prior approval of the child, their parents, and the CEO, and is subject to regular ongoing reviews
- support a child or young person to maintain connections with their family and community
- be respectful of any cultural needs of Aboriginal and Torres Strait Islander people and people from CALD backgrounds.

## Behaviour support

All workers who work with a child or young person with a behaviour support plan will be provided training on how to support the individual needs of the child or young person. What Ability will not use prohibited practices while providing supports and managing the behaviour of a child or young person in VOOHC. Prohibited practices for a child or young person include:

- physical coercion or physical punishment (including corporal punishment)
- punishment that takes the form of immobilising, force-feeding or depriving of food
- punishment intended to humiliate or frighten

In the event where the behaviour of a child or young person is beyond approved behaviour management practices, we will:

- make an assessment of the situation and consult the child or young person's parents, and
- determine how to address the problem by either:
  - providing appropriate advice, support and training to the voluntary carer and appropriate support to the child or young person, or
  - changing the placement arrangements.

For details on approval for a restrictive practice or supporting a child or young person with a behaviour support plan, refer to the Behaviour support policy.

## Physical restraint

Physical restraint is the intentional restriction of a child or young person's movement or behaviour by the use of a device or physical force. *The Children and Young Persons (Care and Protection) Act 1998 (s.158)* permits a carer to physically restrain a child or young person if, in the opinion of the relevant carer of a child or young person, the child or young person is behaving in such a manner that, unless restrained, he or she might seriously injure himself or

herself or another person. Any other use of physical restraint for a person under 18 years is a prohibited practice.

While physical restraint is a restrictive practice for an adult, it must not be used for children under 18 years in NSW unless used in accordance with s.158 of the *Children and Young Persons (Care and Protection) Act 1998*.

Section 158 of the Act (above) applies if, in the opinion of the relevant carer of a child or young person, the child or young person is behaving in such a manner that, unless restrained, he or she might seriously injure himself or herself or another person.

In these circumstances, the relevant carer:

1. may restrain the child or young person, but only on a temporary basis and only to the extent necessary to prevent injury to any person, and
2. may seize and take from the child or young person—
  - any weapon or other thing that is being used by the child or young person in a dangerous manner, and
  - any alcohol, and
  - any illegal substance, and
  - any other thing, the deprivation of which is necessary to prevent the child or young person from causing injury to any person.
3. If a child or young person is restrained under this section, the restraint must be consistent with any behaviour management requirements of a care plan applying to the child or young person, otherwise reasonable force may be used.
4. The Secretary of the DCJ may specify procedures that may be followed for the purposes of section 158 of the Act.
5. A relevant carer who acts in accordance with section 158 of the Act or any procedure specified by the Secretary of the DCJ for the purposes of this section, and who is able to satisfy the court on the balance of probabilities that his or her actions were reasonable in all the circumstances of the case, is immune from any criminal or civil liability that arises as a consequence of so acting.
6. In section 158 of the Act, the relevant carer of a child or young person means—
  - a parent of the child or young person, or
  - the authorised carer of the child or young person, or
  - a person who is providing voluntary out-of-home care in respect of a child or young person.

What Ability will only use physical restraint as a form of intervention:

- in accordance with all relevant legislation and practice requirements
- as a last resort and in the least intrusive way possible only where a child or young person may seriously injure themselves or others if not restrained
- to remove the child or young person from any weapon, alcohol, illegal substance or other to prevent injury to any person
- providing the restraint is consistent with any behaviour management requirements of a care plan applying to the child or young person—where behaviour management requirements have not been set out, reasonable force may be used

- only on a temporary basis—continued use of restraint indicates a need to consider a more appropriate behaviour support/management plan
- in accordance with the Act and where we are able to satisfy a court that the actions used were reasonable in all the circumstances
- if appropriate support and counselling is also provided to the child or young person who was restrained.

For more details on restrictive practices, refer to the Restrictive practices policy.

## **VOOHC Placements at What Ability**

All relevant information is gathered at the initial enquiry. This information includes:

- surname
- first name
- middle name(s)
- any previous names
- alternative surname(s) (any other surnames under which the child may also be known)
- date of birth
- place of birth
- gender
- Aboriginal or Torres Strait Islander identity (or both)
- if the child or young person has a disability.

Child or young person and their parent or guardian is provided with an age appropriate copy of the Charter of Rights and are asked to sign an acknowledgement of receipt form.

The child or young person is entered on to the OCG VOOHC Register within 5 working days of entry and exit.

If a child or young person will be supported in a site which also supports adults, a risk assessment will be conducted for the safety and wellbeing of the child or young person. This risk assessment will be signed off by the CEO prior to commencing provision of supports for the child or young person.

Information exchange requests under Chapter 16A are approved by the CEO or VOOHC Coordinator.



## 2. VOOHC process

### Start

The process provides a high-level overview of the voluntary out-of-home care system.

### Step 1 – Intake and assessment

Conduct intake and assessment and commence service planning.

This involves:

- assessing child/young person and parents and identifying services to be provided
- checking placement history for number of days already in care, supervision and case plan details if applicable—use the VOOHC Register Placement History Function to gather this information
- contacting the supervising agency or other VOOHC agencies involved to advise of What Ability’s involvement
- obtaining relevant information from other agencies if applicable
- informing and involving the child or young person and parents
- entering placement information into the VOOHC Register.

### Step 2 – (At 60 days) Alert principal care agency (Children’s Guardian)

Supervision may be required, alert the registered principal care agency and continue to monitor.

### Step 3 – (At 90 days) Supervision – arrange supervision (principal care agency)

Arrange supervision by a designated agency.

This involves:

- informing child/young person and parents prior to start
- notifying Children’s Guardian if supervision is not arranged

### Step 4 – (At 90 days) Ongoing supervision (supervising agency)

This involves:

- entering supervision information into the VOOHC Register
- advising the Children’s Guardian if supervision ceases.

### Step 5 – (At 150 days) Case plan may be required (Children’s Guardian)

Case planning may be required. Advise the supervising agency and continue to monitor.

### Step 6 – (At 180 days) Case planning and review (lead planning

## agency)

Develop and implement a case plan. This involves:

- input and involvement by the child/young person and parents
- consulting with other service providers if applicable
- reviewing case plans annually.

## **Step 7 – Monitor case plan development (supervising agency)**

Monitor case plan development and review compliance. This involves:

- approving the case plan
- entering case plan information into the VOOHC Register
- advising the Children’s Guardian if the case plan has not been developed.

NOTE: If a case plan is not developed, the Children’s Guardian may report risk of significant harm.

### 3. VOOHC intake and assessment policy

#### Introduction

Assessment is where information about the child or young person is recorded and assessed over one or more meetings to best understand the child or young person’s needs. This involves the person, their parents and other family members, where relevant, and includes information about the family relationship and social networks.

What Ability will liaise with the child/participant’s formal and informal supports and funding bodies to ensure consistency in service delivery.

Intake occurs prior to a child or young person receiving VOOHC services and includes an assessment process. This assessment involves assessing:

- the eligibility of the child or young person and/or their parents/family members to access VOOHC and/or other services
- the needs of the child or young person and/or their parents/family members, especially the information necessary to provide for the immediate health and safety of the child or young person
- whether the child or young person may pose a risk to the safety of others—children or young people with known behaviours of concern must have a plan to manage associated safety risks
- identifying and assessing any risks from other household members and ensuring appropriate strategies are in place
- which available service or combination of services best meets the needs of the child or young person and parents/family members, with consideration of the best interests of the child or young person
- where a child or young person has a disability, either a review of their existing NDIS plan or an access request form lodged with the NDIA to fund personalised supports related to the child or young person’s disability support needs.

What Ability may decline service if risks cannot be mitigated safely following the risk assessment.

#### Applicability

<b>When</b>
<ul style="list-style-type: none"> <li>● this policy applies when arranging, providing, or supervising voluntary out-of-home care.</li> </ul>

<b>Who</b>
<ul style="list-style-type: none"> <li>● this policy applies to all representatives of What Ability Pty. Ltd. involved in providing or supporting voluntary out-of-home care services.</li> </ul>

## Allocation of intake and assessment responsibilities

VOOHC is often delivered as part of a package of flexible supports for children and young people and their parents/families. Depending on the needs of the child or young person and their parents/families, other services that may be considered include:

- after-school or other day care
- extracurricular activities at school
- recreation services
- in-home care
- out-of-home respite attended by both the child or young person and their parents
- peer and informal support
- therapeutic or behavioural support
- provision of aids and equipment
- support services for the parents and/or other family members
- case management services
- mainstream services for children and young people and/or their parents/families that are provided by other government or non-government organisations.

## Eligibility for VOOHC placement

What Ability will assess the eligibility for service of a child or young person against the following criteria:

- the child or young person is a participant of the NDIS
- the child or young person's NDIS plan includes goals related to the need for a long-term individualised living option
- the person with parental responsibility for the child or young person agrees to the placement
- the child or young person within their capacity agrees to the placement and that the arrangement will assist them to meet their intended NDIS outcomes.

## Assessment and intake responsibilities

We will only provide VOOHC services to a child or young person if:

- we are able to meet the needs of the child or young person, with consideration of the child or young person's age, development and individual circumstances, as confirmed during the assessment process
- we have obtained all necessary information to meet the immediate health and safety needs of the child or young person at the point of intake, and
- any other information necessary to meet the ongoing needs of the child or young person and their parents/family are obtained before intake where practicable, otherwise as soon as practicable after intake.

What ability will only arrange VOOHC services for a child/participant or young person if:

- the other agency is a designated or registered (non-designated) agency, and
- we are satisfied that the other agency can meet the needs of the child or young person with regard to their age, development and individual circumstances.

## Statutory out-of-home care

During the intake process, What Ability will confirm if a child/young person is in statutory out-of-home care, and will contact the OCG to advise of any placements involving children/young people in statutory or supported out-of-home-care.

NOTE: children/young people subject to statutory out-of-home care orders must not be entered onto the VOOHC Register.

## Referrals to mainstream services

If, during intake or assessment, we conclude that a child or young person and their parents/family would best benefit from specialist or mainstream services not provided, we will refer the matter to another agency which may be able to arrange those services, and will only refer a child/young person and/or their parents/other family members to another agency:

- after making it clear information about the child or young person's safety, welfare and wellbeing will be provided to the other agency, and
- with the consent of the child or young person (to the extent of their capacity) and the parents/other relevant family members—consent must be documented.

## Informing a child or young person, and their parents/family during intake and assessment

During intake and assessment, we will inform the child or young person and their parents/family in a way they can understand:

- the full range of services we can arrange or provide and any associated costs
- local advocacy services advocacy services available to promote the best interests of the child or young person or parents
- who will be responsible for providing the services selected
- our role, and the role of any other service provider, the child or young person and parents in making decisions concerning the ongoing care and/or support of the child or young person
- the way information relevant to the child or young person's safety, welfare or wellbeing may be shared with other agencies.

What Ability is required to enter basic information about children and young people and their care onto the VOOHC Register. The VOOHC Register is a secure online database that records information about a child or young person accessing VOOHC. The VOOHC Register is updated by agencies that provide direct care and holds the following information:

- Full name and any previous name
- Date and place of birth
- Gender
- Aboriginal and Torres Strait Islander status
- Disability
- Name of the VOOHC agency
- Length of time spent in VOOHC
- Dates of any case plan or reviews

A child/participant or young person has a right to access and correct any information held about them by a VOOHC agency or the VOOHC Register. The VOOHC Coordinator can be contacted to access and correct any information held about the participant.

As a VOOHC agency, What Ability is a 'prescribed body' under Chapter 16A of the Children and Young Persons (Care and Protection) Act 1998. This means What Ability can exchange information if it assists other 'prescribed bodies' to:

- Make a decision or undertake an assessment or plan
- Provide a service
- Manager any risk to a child or young person
- Initiate or conduct an investigation

The safety, welfare and wellbeing of the child or young person takes precedence over the protection of confidentiality or an individual's privacy. Therefore, this information may be provided even if consent cannot be obtained.

## **Obtaining and using personal information gathered from other VOOHC agencies**

During the intake and assessment process, we may obtain relevant personal information from other organisations who were involved in supporting the safety, welfare and wellbeing of a child or young person. The acquisition of this information will be discussed with the child or young person and their parents. The VOOHC Register's placement history function will be used to identify if a child/young person has a case plan and What Ability will make enquiries of the supervising agency and lead planning agency about the case plan.

When acquiring this information, the VOOHC Coordinator will use the VOOHC Register Placement History function and Chapter 16A to identify and contact other involved VOOHC agencies, the supervising agency and the lead planning agency (if applicable), and What Ability will contact these agencies as appropriate. The supervising agency and lead planning agency will be contacted if the placement history search confirms that there is a case plan in place for the child/young person. Information may be exchanged with other involved agencies such as clinicians, schools, doctors, allied health etc. to gather information to determine whether the child/young person's needs can be met.

This is subject to approval by the CEO and performed by the VOOHC Coordinator (or CEO, if the VOOHC Coordinator is absent).

Refer to the VOOHC information exchange policy for more details.

## **Recording living and socialisation skills, daily routine and preferences**

During intake, the child or young person's living and socialisation skills, and any daily routine they may have—such as eating, drinking, dressing, sleeping, bathing, toileting or menstruation—is recorded using the VOOHC intake form.

## **Recording emergency contact details**

During intake, emergency contact details for the child or young person's parents, or other relevant family members, must be recorded in the VOOHC intake form.

## **Record keeping**

During intake and assessment, details of the assessment and intake process, including how the views of the child or young person and their parents were sought and included in the process, must be recorded.

The views of the child or young person and their parents are documented during intake (in the VOOHC intake form), during assessment (assessment notes), during reviews (review notes, meeting minutes) and any time feedback is provided (feedback notes, complaint records).

Note: a VOOHC placement can be accepted verbally but must be followed up to confirm a VOOHC placement in writing to the parent(s) within 7 days of the placement being arranged.

Once a VOOHC placement is accepted, What Ability will develop a written service agreement with the child or young person and/or their parents that:

- outlines the agreed services, the times for these services and the cost for these services
- outlines the responsibilities of the various parties in making decisions regarding the ongoing care of the child or young person
- is signed by the child or young person (to the extent of their capacity) and the parents
- a copy is provided to the child or young person and parents.

Following a VOOHC placement, we will enter the VOOHC placement details into the VOOHC Register within 5 working days. Each placement episode requires this.

At What Ability Pty. Ltd., all records are stored in a locked filing cabinet and electronic records are securely stored in a secure, Australian online server. All VOOHC records will be retained indefinitely to ensure the availability of all records in the circumstances where historical reviews of records are required or requested.

## 4. VOOHC intake process

### Introduction

The intake process involves gathering and documenting relevant information about a child/participant or young person. The information gathered considers a child or young person's:

- eligibility for VOOHC
- needs
- safety risks
- which services they might need
- disabilities (and if they are on a current NDIS Plan).

This information is used to enable What Ability to assess whether we are able to meet the child/young person's immediate and ongoing needs.

### Step 1 – Recording of information

What Ability uses an interview-based onboarding process in order to gather relevant information about a child or young person's needs. This includes the child or young person's:

- first name, middle names, surname, any previous names used
- date of birth, place of birth
- gender
- whether the child or young person identifies as being from an Aboriginal or Torres Strait Islander background
- whether the child or young person has a disability
- emergency contact information of the parents or other family member
- whether the child or young person is in statutory out-of-home care (and if they are, are they subject to a statutory out-of-home care order?).

What Ability will record the views of the child or young person or parents during all stages of the intake process. This information will be added to the VOOHC intake form.

**NOTE:** children or young people subject to statutory out-of-home care orders must not be entered onto the VOOHC Register.

What Ability will contact the OCG to advise of any placements involving children/young people in statutory out-of-home-care.

What Ability will conduct a placement history search and identify children who may be reaching 180 days in VOOHC and will not accept such referral.

**Note:**

What Ability cannot provide VOOHC to a child for over 180 days without providing compliant case planning policies and a case plan template to the Office of the Children's Guardian. If a child is likely to reach 180 days and What Ability intends to continue to provide care, we will submit compliant case planning policies and a case plan template to the Office of the Children for assessment, prior to the child reaching 180 days.



## Step 2 – Accessing the VOOHC Register

What Ability will access the placement history function in the VOOHC Register to view the child or young person’s VOOHC placement history, days spent in care in the last 12 months and any current supervising agency and lead planning agency or case plan, and will contact these agencies as appropriate to facilitate and enable collaboration in the provision of services to vulnerable children and their families.

What Ability will access and use the VOOHC Register Placement History Function to identify VOOHC agencies relevant to the child or young person which may have information to request, and will actively liaise with the child/participant or young person’s formal and informal supports and funding bodies to ensure consistency in service delivery, as detailed in What Ability’s VOOHC Information Exchange policy and process.

## Step 3 – Additional intake information

During the intake process, What Ability will obtain relevant information about:

- current formal and informal supports for the child or young person and their parents/family (if information is available)
- the impact/involvement of formal and informal supports with the VOOHC placement
- any health, medication, disability, environmental, safety risk, emotional/behavioural, cognitive/developmental, mobility, nutrition or dietary issues relevant to the child or young person’s care – where possible What Ability will obtain any management plans for these issues (e.g. health plan, behaviour management plan, epilepsy plan, asthma plan, allergy plan)
- any special cultural, language or communication needs of the child or young person
- living and socialisation skills and any particular daily routine such as eating, drinking, dressing, sleeping, bathing, toileting or menstruation.

## Information Exchange

Information may be exchanged with other involved agencies such as clinicians, schools, doctors, allied health etc. to gather information to determine whether the child/young person’s needs can be met.

Chapter 16A of the Children and Young Persons (Care and Protection) Act 1998 (the Act) allows any organisation considered a ‘prescribed body’ to exchange information that relates to a child or young person’s safety, welfare and wellbeing. All Voluntary out-of-home care (VOOHC) agencies are considered to be prescribed bodies.

The care and protection of children and young people is enhanced when agencies work collaboratively and share information to provide consistent care and assess risk. Other prescribed bodies include agencies that provide statutory out-of-home care, NSW government agencies, schools, public health agencies and private hospitals, children’s services (such as pre-schools) or the police.

Effective information exchange arrangements help improve decision-making and coordination of services between government and non-government services. However, the collection, use and disclosure of personal information must also comply with Australian privacy law.

## Step 4 – Assessing the child or young person

During the assessment process, What Ability will:

- obtain and consider (where relevant to the safety, welfare and wellbeing of the child or young person during their time in care), information on:
  - the child or young person’s relationships with family members and others who are significant to them
  - the child or young person’s interests, likes and dislikes
  - any religious or spiritual observances of the child or young person
  - any educational or vocational arrangements for the child or young person
  - the child or young person’s social and leisure activities
  - appropriate transport arrangements for the child or young person.
  
- During the intake process, the needs of the child/young person’s family and strategies to preserve the child/young person’s relationship with people who are significant to them will be discussed and planning considered

## 5. VOOHC information exchange policy

### References

Children’s Guardian Act 2019 (NSW)

Child Protection (Working with Children) Act 2012 (NSW)

<https://www.legislation.nsw.gov.au/#/view/act/2012/51>

Children and Young Persons (Care and Protection) Act 1998

Children and Young Persons (Care and Protection) Regulation 2012 (NSW)

<https://www.legislation.nsw.gov.au/#/view/regulation/2012/425>

Privacy Policy 1988 (Cwth)

<https://www.legislation.gov.au/Series/C2004A03712>

### Applicability

When
<ul style="list-style-type: none"> <li>this policy applies when there is an information exchange request involving a child or young person in a VOOHC placement.</li> </ul>

Who
<ul style="list-style-type: none"> <li>this policy applies to all representatives of What Ability Pty. Ltd. (referred hereafter as What Ability) involved in providing VOOHC services.</li> </ul>

### Definitions

Term	Description
Chapter 16A	Chapter 16A of the Act—establishes the framework for interagency coordination and information exchange between VOOHC agencies and other prescribed bodies. Chapter 16A permits, and sometimes requires, organisations to share information about children or young people, irrespective of their clients’ consent. It takes precedence over the protection of confidentiality or an individual’s privacy because the safety, welfare and wellbeing of children and young people is paramount.
designated agency	The agency that supervises a child or young person’s VOOHC provided by all VOOHC agencies until supervision ends. See Children’s Guardian ( <a href="http://www.kidsguardian.nsw.gov.au/voluntary-out-of-home-care/designatedagencies">www.kidsguardian.nsw.gov.au/voluntary-out-of-home-care/designatedagencies</a> ) for a list of designated agencies.
lead planning agency	An agency that has case management of a child or young person and is responsible for preparing and reviewing their case plan.
prescribed bodies	The following are prescribed bodies under Chapter 16A: <ul style="list-style-type: none"> <li>a designated agency</li> <li>a registered VOOHC provider</li> <li>a NSW government department or public authority</li> </ul>

	<ul style="list-style-type: none"> <li>• a government school, a registered non-government school or a TAFE</li> <li>• a public health organisation or a private hospital</li> <li>• a children’s service</li> <li>• an accredited adoption service provider</li> <li>• the NSW Police Force</li> <li>• any other organisation that has direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children’s services, residential services, or law enforcement, wholly or partly to children.</li> </ul>
principal care agency	<p>The agency that currently provides the majority of the child or young person’s VOOHC and is responsible for arranging any supervision that is required. The principal care agency may change when a child or young person’s patterns of care change.</p> <p>If there is any uncertainty over who is the principal care agency, contact the Children’s Guardian for clarification.</p>
supervising agency	<p>A designated agency, or the Children’s Guardian, responsible for supervising a child or young person’s VOOHC.</p>

## Information Exchange

Chapter 16A of the Children and Young Persons (Care and Protection) Act 1998 (the Act) allows any organisation considered a ‘prescribed body’ to exchange information that relates to a child or young person’s safety, welfare and wellbeing. All Voluntary out-of-home care (VOOHC) agencies are considered to be prescribed bodies.

The care and protection of children and young people is enhanced when agencies work collaboratively and share information to provide consistent care and assess risk.

Other prescribed bodies include agencies that provide statutory out-of-home care, NSW government agencies, schools, public health agencies and private hospitals, children’s services (such as pre-schools) or the police.

Effective information exchange arrangements help improve decision-making and coordination of services between government and non-government services. However, the collection, use and disclosure of personal information must also comply with Australian privacy law.

This policy provides guidelines on:

- interagency coordination and the circumstances in which personal information can be requested, used and disclosed
- safeguards to minimise the risk of inappropriate collection and disclosure or personal information restrictions on the disclosure of the identity of persons making child protection reports
- informing children and young people and their parents of information exchange arrangements and their rights to access and correct information held by VOOHC agencies or the Children’s Guardian.

For the purposes of this policy, personal information includes any details about a person that could be used to identify that person.

## Information exchange responsibilities

Responsibilities for information exchange:

- the CEO or VOOHC Coordinator must authorise all information exchange requests
- the CEO or Leadership Management Team (LMT) role will delegate the VOOHC Coordinator to create and store an accurate written record of each authorised information exchange

## What information can be exchanged under Chapter 16A

Only information that is relevant to the safety, welfare or wellbeing of a child or young person (or a class of children and young people) may be exchanged under Chapter 16A.

Relevant information may include information about:

- a child or young person's circumstances or history
- a parent or other family member
- a person who has a relationship with a child or young person
- an employee or carer
- an agency's dealings with a child or young person, including past support or service arrangements, and the outcomes of those dealings.

The information exchange may be done:

- in writing (in letter format, or electronically via email),
- in person, or
- verbally (such as over the phone)

Where information is exchanged orally, What Ability will ensure a written record of the information exchange is recorded on file e.g. in case conference meeting minutes etc.

If What Ability has any doubt about the identity of a person orally requesting information on behalf of a prescribed body, we will confirm the person's identity by contacting the agency before providing the information or will ask that the request be put in writing.

## Information exchanged under Chapter 16A

All requests for information under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* must be escalated to the CEO or VOOHC Coordinator for their consideration and authorisation/decline, as appropriate. A record of all requests and decisions will be made using the appropriate What Ability Information Exchange form (using the appropriate What Ability template: information request, agreement or decline), which is then saved and stored securely in an electronic format.

What Ability will only exchange information under Chapter 16A for the purpose of assisting another other agency to:

- make a decision or undertake an assessment or plan relevant to the safety, welfare or wellbeing of a child or young person (or a class of children and young people)
- initiate or conduct an investigation relevant to the safety, welfare or wellbeing of a child or young person (or a class of children and young people)
- provide a service relating to the safety, welfare or wellbeing of a child or young person (or a class of children and young people)
- manage any risk to a child or young person (or a class of children and young people) that might arise in the agency's capacity as an employer or designated agency.

If we receive a request for information under Chapter 16A, we must provide the requested information if:

- we reasonably believe providing the information will assist the body making the request for one of the purposes referred to above
- an exemption listed below (under Declining a request) does not apply.

Note: Any agreement to an information exchange request for information with another prescribing body must be made using the current What Ability Ch16A\_Response\_agreement letter template.

## **Declining a request for information under Chapter 16A**

A VOOHC agency or other prescribed body is not obliged to provide any information requested if it reasonably believes this would:

- endanger a person's life or physical safety
- contravene any legal professional or client legal privilege
- prejudice the investigation of any contravention or possible contravention of a law, a coronial inquest or inquiry, or care proceedings
- enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained
- prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a breach or possible breach of a law
- not be in the public interest.

Where What Ability decides not to provide information under chapter 16A, we will notify the requesting agency in writing along with the reasons for not complying with the request, including reference to at least one of the listed reasons above.

Note: Any correspondence declining a request for information exchange must be made using the current What Ability Ch16A\_Response\_declining letter template.

## **Requesting information from another prescribed body**

If What Ability requests information about a child or young person from another prescribed body (identified via the VOOHC Registry) e.g. schools, clinicians, informal supports, G.P.s etc., we will contact the other agency first by phone before making the request, to discuss the needs and

ensure clarity of the request and its purpose. The following information will be provided to the other agency:

- who the information request is regarding and, if it is not the child or young person, who it is and what is the subject's relationship to the child or young person
- an explanation of how the information requested relates to the safety, welfare or wellbeing of the child or young person (or class of children or young people)
- the reason why the information will assist the VOOHC agency to make a decision, assessment or plan, to initiate or conduct an investigation, to provide a service, or to manage any risk to the child or young person
- the purpose of the request and how to locate the relevant information in an efficient manner
- the background to the request, including whether or not the VOOHC agency has informed the child, young person or parents that the information has been sought and if not, why not
- the time period for which the information is sought (e.g. for the last 6 months) and the type of information sought
- a realistic timeframe for the prescribed body to provide the information (an agreed due date), to enable prioritisation of information based on urgency or risk

Note: Any request for information from another prescribing body must be made using the current What Ability Ch16A\_Information\_request letter template.

## **Use of information obtained under Chapter 16A of the Act**

Any information received under Chapter 16A of the Act will be used by What Ability to assess whether we are able to meet the child/young person's immediate and going needs, and to support and ensure the safety, welfare or wellbeing of the child or young person (or class of children and young people) to whom the information relates, unless such use or disclosure is otherwise required or permitted by any law (e.g. responding to a subpoena).

## **Proactive exchange of information under Chapter 16A**

What Ability will consider proactively sharing information about a child or young person with other prescribed bodies, such as schools, clinicians, informal supports and G.P.s even when no request has been received. This will be considered only if the information is relevant to the safety, welfare or wellbeing of the child or young person.

Any employee that believes What Ability should initiate the sharing of information with another prescribed body because it is relevant to the safety, welfare or wellbeing of a child or young person, should discuss the matter with the VOOHC Coordinator or CEO. Approval for the sharing of information is required by the CEO or VOOHC Coordinator. Refer to the VOOHC information exchange process for more details.

## **Exchanging information with Dept. of Communities and Justice (DCJ)**

VOOHC agency information exchange with DCJ is governed by section 248 of the Act.

DCJ may request information from a VOOHC agency which relates to the safety, welfare and wellbeing of a child or young person (or class of children and young people).

DCJ will provide information under section 248 to a VOOHC agency when:

- the agency needs assistance and/or advice to make decisions about future supports and service delivery arrangements for the child, young person and their family
- the agency has ongoing contact with the child or young person and their safety or wellbeing and the service outcomes would be compromised without that information
- the agency is providing a service under a case plan together with DCJ (this is more likely in a supported care setting)
- the agency discovers that allegations against an employee have been reported to DCJ on a child protection matter, and details of that report need to be given to the Ombudsman by the agency head
- the agency needs to determine (generally for the purposes of an investigation under Part 3A of the Ombudsman Act 1974) whether a person might pose a threat to a child or young person
- the police need to manage a child or young person for a short time until an appropriate person or agency can take responsibility for assisting them.

If What Ability requests an exchange of information with the DCJ under Chapter 16A, the DCJ will apply the objects and principles applicable under Chapter 16A when responding to any VOOHC agency request for information under section 248.

## **Information exchange with the Children's Guardian**

What Ability will provide the following information to the Children's Guardian:

- VOOHC placement, supervision arrangement, case plan and case plan review (via the VOOHC Register)
- when timeframes for supervision and case planning are not met.

At other times, the Children's Guardian may request additional information as per the requirements of Chapter 16A.

In addition, the Children's Guardian may issue a formal direction under section 185 of the Act to provide the Guardian with information relating to the safety, welfare and wellbeing of a child or young person (or a class of children and young people). What Ability will comply with a request such as this, understanding that any failure to comply is a criminal offence.



## Protection for workers who provide information in good faith

If a person acts in good faith when providing any information under Chapter 16A, he or she:

- is not liable to any civil or criminal action, or any disciplinary action, for providing the information, and
- cannot have breached any code of professional etiquette or ethics or departed from any accepted standards of professional conduct.

Similar protections apply to people in disclosing information to DCJ or the Children’s Guardian under the Act.

## Information collection and use permitted by clause 20 of the Regulation

Clause 20 provides authorisation for What Ability to collect and use any information relevant to VOOHC that is provided, arranged or supervised by the agency. However, Clause 20 does not apply where a law prohibits a person providing information.

## Information relating to clauses 75-79 of the Regulation

Regarding the provision of information relating to a child/participant or young person in, or leaving voluntary out-of-home care, What Ability will provide the Children’s Guardian with the following information in relation to each child or young person who is, or has been in a voluntary out-of-home care placement:

- a) the full name of the child or young person
- b) any other name by which the child or young person has previously been known
- c) the gender of the child or young person
- d) the date of birth of the child or young person
- e) the place of birth of the child or young person
- f) whether, in the opinion of the relevant agency, the child or young person is in the target group within the meaning of the Disability Services Act 1993
- g) the date on which the child or young person was placed in voluntary out-of-home care provided by the relevant agency,
- h) the date on which the child or young person ceased to be in voluntary out-of-home care provided by the relevant agency.

The information referred to above (a-g), will be provided in a manner and format approved by the Children’s Guardian, within 5 working days of the child or young person being placed in voluntary out-of-home care provided by What Ability.

The information referred to above (h), will be provided in a manner and format approved by the Children’s Guardian, within 5 working days of the child or young person ceasing to be in voluntary out-of-home care provided by What Ability.

What Ability will notify the Children’s Guardian (in a format approved by the Children’s Guardian) if:

- the child or young person has been in voluntary out-of-home care (whether provided by What Ability or any other organisation) for more than 90 days in any period of 12 months, and
- the voluntary out-of-home care is not supervised by a designated agency or the Children’s Guardian.

What Ability may have access to information kept on the VOOHC Register (unless What Ability knows the information is incorrect), to ascertain whether a child or young person has been in voluntary out-of-home care for more than a total of 90 days in any period of 12 months.

Clause 78 - “Designated agency to provide information about case plans”

In clause 78 of the Regulation, **responsible designated agency** for a child or young person in voluntary out-of-home care means:

- if a designated agency supervises care provided by a relevant agency (including care provided by another designated agency), the designated agency that supervises the care, or
- if the care is provided by a designated agency and no other designated agency supervises that care, the designated agency that provides the care.

What Ability is aware that:

- the **responsible designated agency** for a child or young person must notify the Children’s Guardian (in a format approved by the Children’s Guardian), of the existence of any case plan prepared in respect of the child or young person that meets the needs of the child or young person and the date the case plan was prepared, and
- the date of any review of such a case plan.

A notice required under a and b (above) must be given within 5 working days after the case plan has been prepared or reviewed.

What Ability is also aware that the **responsible designated agency** for a child or young person must, as soon as is practicable, notify the Children’s Guardian (in a format approved by the Children’s Guardian) if:

- the child or young person has been in voluntary out-of-home care (whether provided by the agency or any other organisation) for more than a total of 180 days in any period of 12 months, and
- the child or young person does not have a case plan that meets his or her needs.

What Ability may have access to information kept on the VOOHC Register (unless What Ability knows the information is incorrect), to ascertain whether a child or young person has been in voluntary out-of-home care for more than a total of 180 days in any period of 12 months.

What Ability is also aware that a **relevant agency** (in relation to any voluntary out-of-home care provided or supervised by the relevant agency) and the Children's Guardian (in relation to any such care supervised by the Children's Guardian) **must retain** the following information:

- a copy of any case plan that was prepared to meet the needs of the child or young person while in voluntary out-of-home care provided or supervised by the relevant agency or supervised by the Children's Guardian (as the case may be),
- a copy of any review of the case plan.

According to clause 79 of the Regulation, the information must be retained until the relevant child or young person reaches 18 years of age, also acknowledging that there may be further record keeping obligations in relation to the information under the State Records Act 1998.

### Identifying a person who has made a child protection report

We will not provide information that could be used to identify someone who has made a child protection report unless:

- the person who made the report consents, or
- leave is granted by the court or other body before which proceedings related to the report are conducted.

### Informing children or young people and parents of information exchange arrangements

We will inform children, young people (to the extent of their capacity) and parents in a manner and language they can understand:

- that information relevant to the child or young person's safety, welfare or wellbeing may be shared with other organisations or bodies
- that information about the child or young person will be entered onto the VOOHC Register
- of their rights to access and correct information held by us or entered onto the VOOHC Register.

There may be exceptions when we are not able to inform children or young people and parents of an information exchange. This may only occur:

- if we believe it would jeopardise a child or young person's safety, welfare or wellbeing or place any person at risk of harm
- where it is not practicable because:
  - we are unable to contact the child or young person and parents and the matter is urgent, or
  - disclosing information about past care arrangements where they have no current contact with the child or young person and their parents.

## **Right to access and correct information**

If requested and as their first point of action, What Ability will enable children or young people or their parents to access information held about them, unless we believe this would jeopardise a child or young person's safety, welfare or wellbeing or place any person at risk of harm.

If a child or young person or their parent satisfies us that information stored about them is inaccurate or not up to date, then What Ability will correct or update the information.

After firstly requesting access to access information held about them through What Ability (see above), children/young people and their parents also still have the right to ask the Children's Guardian to access information held about them on the VOOHC Register and to correct that information.

## **Secure storage of personal information**

What Ability securely stores and limits access to all personal information as per the Information security policy. All personal records are permanently stored electronically in a secure fashion.

## 6. VOOHC information exchange process

### Start

This process describes the steps to request exchange of information under Chapter 16A of the Children and Young Persons (Care and Protection) Act 1998 (NSW) (the Act).

Refer to the VOOHC information exchange policy for guidelines.

### Step 1 – Request authorisation

Discuss the need for information exchange with the VOOHC Coordinator. The VOOHC Coordinator will request authorisation with the CEO.

### Step 2 – Complete VOOHC information exchange record form

Once approved, complete a VOOHC information exchange record form and sign off by the CEO.

### Step 3 – Complete information exchange

Complete the information exchange:

- verbally (over the phone)
- electronic (email), or
- in person.

### Step 4 – Record the information

Record the information and the VOOHC information exchange record form in the person's record.

## 7. Abuse neglect and exploitation policy

### Legislation

Children’s Guardian Act 2019 (NSW)  
 Child Protection (Working with Children) Act 2012 (NSW)  
 Children and Young Persons (Care and Protection) Act 1998 (NSW)  
 National Disability Insurance Scheme Act 2013 (Cwth)  
 NDIS (Quality Indicators) Guidelines 2018 (Cwth)

### Introduction

Every person has a right to live a life free from the fear of violence, abuse, harm, neglect and exploitation regardless of their gender, age, disability, background or any other characteristic. We are committed to ensuring the safety and wellbeing of all supported participants.

### Applicability

When
<ul style="list-style-type: none"> <li>• applies at all times and in all locations.</li> </ul>

Who
<ul style="list-style-type: none"> <li>• applies to all representatives of What Ability Pty. Ltd. including key management personnel, directors, full time workers, part time workers, casual workers, contractors, volunteers.</li> </ul>

### Definitions

Term	Description
abuse	Single acts or patterns of abuse, such as: <ul style="list-style-type: none"> <li>• physical abuse—physical or chemical restraints or coercion, hitting, slapping, burning, choking, pinching, pushing or restraining</li> <li>• sexual abuse—any sexual contact between an adult and child 16 years of age and younger; or any sexual activity with a young person or adult who is unable to understand, has not given consent, is threatened, coerced or forced to engage in sexual behaviour</li> <li>• emotional or psychological abuse—verbal assaults, threats of maltreatment, harassment, humiliation or intimidation, or failure to interact with a person or to acknowledge that person’s existence including denying cultural or religious needs and preferences</li> <li>• financial abuse—illegal or improper use and/or mismanagement of a person’s money, property or resources including forgery, stealing, forced changes to a will, unusual transfer of money or property to another person or withholding of funds</li> <li>• accidents or near accidents caused by unsafe equipment or practices</li> </ul>

	<ul style="list-style-type: none"> <li>• unregulated restrictive practices such as those unapproved and/or unauthorised.</li> </ul>
Exploitation	<p>Any case where:</p> <ul style="list-style-type: none"> <li>• someone in a position of trust and confidence knowingly, by deception or intimidation, obtains or uses, or tries to obtain or use, a participant’s funds, assets or property with the intent to temporarily or permanently deprive that person of the use, benefit or possession of those funds, assets or property for the benefit of someone other than the participant</li> <li>• a person who knows or should know that the participant lacks the capacity to consent, and obtains or tries to obtain or use, the participant’s funds, assets or property with the intent to temporarily or permanently deprive the participant of the use, benefit or possession of the funds, assets or property for the benefit of someone other than the participant.</li> </ul> <p>Examples of exploitation:</p> <ul style="list-style-type: none"> <li>• taking or using the assets, funds or other possessions of a participant without their consent</li> <li>• tricking or threatening the participant to purchase an item or service that they do not want or that will not be used for their benefit.</li> </ul>
Neglect	<p>Any case where a person’s basic needs are not met. This includes:</p> <ul style="list-style-type: none"> <li>• physical neglect—failure to provide adequate food, shelter, clothing, protection, supervision, medical and/or dental care or exposing someone to undue risks through unsafe environments or practices</li> <li>• emotional neglect—failure to support and encourage, protect and provide stimulation needed for the social, intellectual and emotional growth or wellbeing of a person</li> <li>• passive neglect—failure to provide or wilful withholding of the necessities of life, including food, clothing, shelter or medical care</li> <li>• supervisory neglect—intentional or reckless failure to adequately supervise or support a participant that also:             <ul style="list-style-type: none"> <li>o involves a gross breach of professional standards</li> <li>o has the potential to result in the death of, or significant harm to, a participant.</li> </ul> </li> </ul>

## Preventing abuse and neglect

What Ability Pty. Ltd. (referred to hereafter as What Ability) will prevent abuse and neglect by:

- providing supports and services in an environment free of abuse and neglect
- ensuring people with high support needs and/or communication difficulty are well supported to enable detection and prevention of abuse and neglect
- ensuring staff are trained to recognise, prevent or minimise the occurrence or recurrence of abuse and neglect of participants.

## Responding to abuse and neglect

What Ability will respond to any case of abuse, neglect or exploitation by:

- promoting a culture of no retribution for reporting of suspected cases of abuse or neglect
- escalating all alleged or suspected incidents of abuse or neglect to key management personnel immediately
- ensuring any victim of suspected or alleged abuse or neglect is adequately supported by an independent person such as a relative, friend, advocate or legal practitioner
- responding promptly and sensitively where an alleged case of abuse or neglect has occurred, to protect the person from further harm, and coordinating appropriate responses in line with duty of care obligations
- where relevant (especially for criminal acts), preserving and recording the evidence, maintain the scene of the incident, by taking photos and protecting any person articles involved
- recording what is known about the incident including the services and people involved and any witnesses
- informing participants about what is going to happen before taking action and throughout any response to abuse and neglect
- ensuring appropriate physical, emotional and psychological support is available to and easily accessible by a person following a report or allegation of abuse or neglect
- ensuring the victim, family, guardian or other support person has the choice of pursuing the matter through the legal system and be supported to access advice and services required.

### **Abuse and neglect responsibilities**

- all staff are responsible for providing supports and services in a manner consistent with the Code of Conduct and treating participants with respect and dignity at all times
- all staff are responsible for responding promptly and sensitively to protect the victim from further harm
- key management personnel are responsible for ensuring all staff and volunteers are aware of, trained in, compliant with, and implement the policies and processes to prevent and respond to abuse, neglect and exploitation of participants
- key management personnel are responsible for informing the appropriate authorities (e.g. police), and the victim's family, guardian or substitute decision maker of alleged or suspected incidents of abuse or neglect, unless the guardian or decision maker is the alleged or suspected perpetrator
- all staff and witnesses will cooperate with the investigations of police or other external agency.

### **Protecting the health, safety, welfare and wellbeing of children and young people**

All employees of What Ability have a responsibility to protect the health, safety, welfare and wellbeing of children and young people with whom they have contact. What Ability employees will:

- respond appropriately to the vulnerabilities, risks, and needs of families, children and young people when providing any VOOHC service



- collaborate across all What Ability's services and with interagency partners to support and strengthen families and promote child and young people's safety, welfare, and wellbeing
- use the Mandatory Reporter Guide (MRG) and seek assistance from the VOOHC Coordinator to help identify children or young people at suspected risk of significant harm (ROSH)
- actively seek feedback from other community services after making a child protection report and continue to support the child, young person, or family consistent with the VOOHC Statutory Procedures
- follow the Child Wellbeing and Child Protection - NSW Interagency Guidelines and other agreed interagency procedures when working with children, young people, and families, including in relation to information exchange
- collaborate with any investigation as requested by external agencies including police, DCJ and NDIS Commission
- document feedback about a child protection report
- only investigate an incident of ROSH if given the all clear by DCJ and police
- all staff are trained in first aid
- all respite activities are closely monitored and supervised by staff
- all children and young people are encouraged to follow their routine.

Refer to Manage suspected ROSH for more details on how to provide a report on ROSH.

Refer to the Investigate incident process for details on conducting an investigation.

## What is not abuse and neglect?

It is not considered abuse and neglect:

- to restrain a child/participant in accordance with an approved behaviour support plan authorised by a restricted practices authorisation mechanism and in accordance with the limitations set out in section 158 of the Children and Young Persons (Care and Protection) Act 1998, as detailed in What Ability policies and procedures (VOOHC policy and Behaviour Support policy).
- to take reasonable steps to disarm a participant seeking to harm themselves or others
- to separate participants who are fighting
- to move a participant out of harm's way
- to restrain a participant from causing intentional damage to property, in self-defence, or in the defence of others.

## Breach of abuse and neglect policy

Any workers found to be perpetrating any form of abuse or neglect will lead to disciplinary action including termination of employment.

Any attempt to cover up or failure to report suspected or actual incidents of abuse will lead to disciplinary action including termination of employment.

## 8. Behaviour support policy

### Legislation

Children’s Guardian Act 2019 (NSW)  
 Children and Young Persons (Care and Protection) Act 1998 (NSW)  
 Children and Young Persons (Care and Protection) Regulation 2012 (NSW)  
 NDIS (Restrictive Practices and Behaviour Support) Rules 2018 (Cwth)

### Resources

**NSW Restrictive Practices Authorisation Policy (2019)**  
**NSW Regulated Restrictive Practices with Children and Young People with Disability: Practice Guide (2021)**

This policy should be read in association with the Restrictive practices policy.

### Applicability

When
<ul style="list-style-type: none"> <li>• applies when supporting participants, children or young people with behaviour support.</li> </ul>
Who
<ul style="list-style-type: none"> <li>• applies to all What Ability Pty. Ltd. employees, volunteers, supervisors and key management personnel involved in supporting participants with behaviours of concern.</li> </ul>

### Introduction

This policy provides guiding principles when supporting participants/children/young people with behaviours of concern (previously known as challenging behaviours). Behaviours of concern is any behaviour that may cause a risk of actual harm or psychological distress to the person or others. Behaviours of concern develop as a way of communicating a need or indicating distress.

Examples of behaviours of concern include:

- verbal or physical aggression
- self-harm
- destruction of property
- impulsive or dangerous behaviour
- withdrawn behaviour
- socially inappropriate behaviour
- sexually inappropriate behaviour.

What Ability will provide behavioural support in accordance with the NDIS Commission’s requirements for positive behaviour support, as detailed in the NDIS Quality and Safeguards Commission’s Positive Behaviour Support Capability Framework.

Positive behaviour support is a comprehensive, person-centred approach which combines assessment, planning and implementation to meet a participant’s needs. It uses integrated

collaboration with participants and their families, skilled workers and evidence-based strategies with the aim to firstly increase the quality of life for the participant and secondly to reduce and manage behaviours of concern. This is documented in a behaviour support plan.

Refer to the Restrictive practices policy for general guidelines on the use of restrictive practices and what are prohibited practices.

Positive Behaviour Support Capability Framework,

## Positive behaviour support plans

Positive behaviour support strengthens helpful behaviours through positive reinforcement rather than punishment (response cost). It develops supportive environments that reduce agitation, discomfort or triggers, and anticipates where things might go wrong by planning to avoid such instances. Positive behaviour support emphasises the importance of creating and implementing changes in lifestyle and quality of life as the primary response and purpose. The secondary intention of a positive behaviour support plan is to reduce the use of behaviours of concern.

Following an assessment of the participant/child/young person's needs and their environment, a positive behaviour support plan may be developed by a practitioner with relevant NDIS approved qualifications. The plan aims to summarise the positive supports required to address the participant's needs and to foster changes in lifestyle which encourages positive behavioural responses. It should include strategies for improving quality of life through systems change, skills acquisition and environmental redesign. The plan should provide information to all workers supporting the person on what they need to do to help the person to address the behaviour of concern.

A positive behaviour support plan may be appropriate where:

- there are reasonable concerns over risk of harm or serious injury to a participant or to others
- existing strategies have not been effective in managing the behaviour
- there are concerns over the use of existing strategies for other reasons
- the behaviour of concern may prevent other significant needs being met
- existing strategies appear to prevent significant needs being met
- the participant is in jeopardy of being excluded from other services, employment or from school
- the capacity of the service is under significant stress.

When developing and provisioning a positive behaviour support plan, collaboration with a range of parties is required (but not limited to):

- the participant/child/young person
- the participant/child/young person's parents and carers
- the participant/child/young person's guardian, if one has been appointed
- the participant/child/young person's advocate
- significant others who are important to the participant/child/young person (e.g. case worker, siblings, extended family members, friends)

- other professionals who are involved with provision of care and/or support to the participant/child/young person (e.g. therapist, teacher, neurologist, paediatrician, psychiatrist)
- practitioners from other disciplines not involved in providing a service to the participant/child/young person, or to others within their support system (e.g. mental health worker, probation and parole officer).

A positive behaviour support plan must include a functional behavioural assessment and detail:

- what the objectives of the plan are
- why the person uses behaviours of concern as a function of behaviour
- environmental modifications to minimise the need for behaviours of concern (e.g. minimising the noise), in order to make this behaviour unnecessary
- specific approaches for teaching the person new skills so that they do not have to rely on behaviours of concern to have their needs met
- early warning signs—what behaviours to look for that indicate the person’s needs are not being met and early response options to minimise the chance of escalation
- reactive strategies in response to behaviours of concern
- how the participant/child/young person and the participant/child/young person’s stakeholders (i.e. their family, carer and workers) will contribute to implementing the plan.

It’s important to remember that a positive behaviour support plan will work best if there is already good supports in place for the participant/child/young person.

A positive behaviour support plan must be endorsed by the practitioner who developed it. As part of endorsement, it must include:

- the date of the plan
- the author’s name, position, agency, location, contact details
- the schedule for regular review.

Additionally, positive behaviour support plans:

- must have the consent of the child or young person’s parents if related to voluntary out-of-home care
- must be endorsed by What Ability Pty. Ltd. (referred to hereafter as What Ability).

This policy will address the following aspects which relate to behaviour support plans, as outlined by the NDIS Quality and Safeguards Commission Positive Behaviour Support Capability Framework:

1. interim responses
2. functional assessment
3. planning
4. implementation
5. monitoring and evaluation
6. restrictive practices
7. continuing professional development and supervision.

## Interim behaviour support plans

Interim behaviour support plans are plans that are rapidly implemented, under exceptional circumstances. As described by the NDIS Quality and Safeguards Commission, interim behaviour support plans must be developed with the purpose of immediately protecting participants, children or young people and others, with the aim of minimising and eliminating the risk of harm.

The plan must be developed by a suitably qualified behaviour support practitioner, within one month of engaging the practitioner. If the behaviour support practitioner is working with a new participant, where an interim response is first needed, and their skills fall outside their scope of practice, then a practitioner rated as proficient or above needs to provide supervision.

Interim behaviour support plans must always be developed in consultation and consent with the participant or their substitute decision-maker, support network and any other relevant professionals.

If the interim behaviour support plan is inclusive of restrictive practices, appropriate authorisation requirements must be followed. This includes submission to the NDIS Quality and Safeguards Commission and the ongoing reporting of the use of restrictive practices.

If there is an ongoing need for behaviour support, then a comprehensive behaviour support plan must be developed within 6 months of engaging the behaviour support practitioner.

## Key management responsibilities for interim responses

As described by the NDIS Quality and Safeguards Commission, it is our obligation to:

- recruit and retain appropriate workers that are qualified and skilled in the relevant areas to their work, this may include:
  - behaviour support for participants with varying degrees of complexity
  - implementation of strategies
  - de-escalation techniques
- regularly review policies and processes that support the use of interim behaviour support plans to reduce the immediate risk and likelihood of serious or crisis incidents
- assist behaviour support practitioners to conduct an initial assessment
- provide support and resources to immediately engage medical professionals if required
- provide regular and consistent training in the use of restrictive practices, their implications and reporting requirements, as well as the consequences of using unauthorised restrictive practices
- ensure staff are released to attend training in the implementation of an interim behaviour support plan
- have a mechanism in place to record and review incident reports and collect other initial data as necessary
- facilitate debriefing for involved workers, participants and their support networks, and any other people involved in a critical or serious incident
- include all relevant stakeholders including (but not limited to), participants, participant support networks, workers in post-incident reviews
- use post-incident reviews and stakeholder input to inform continuous improvement as an NDIS service provider.

## Functional assessment

The development of a comprehensive behaviour plan begins with the engagement and consent of the participant or their substitute decision maker to conduct a behaviour support assessment, including a functional behaviour assessment. A behaviour support assessment and functional behaviour assessment should be collaboratively developed once consent is granted with the appropriate mainstream services, allied health, participant's support network and any other relevant stakeholders. All assessments must be person-centred and inclusive of the participant and their support network through all stages of development, implementation and review.

A functional behaviour assessment must identify:

- strengths of the participant, child or young person
- the participant/child/young person's preferences, will, goals and desires (and the preferences, goals and desires of the parents, if the participant is a child or young person)
- the environmental context.

## Key management responsibilities for functional assessments

As described by the NDIS Quality and Safeguards Commission, it is our obligation to:

- support the participant/child/young person (and their parents) to contribute to the assessment, through means of preferred communication
- facilitate and enable behaviour support practitioners to conduct information-gathering for the assessment, in accordance with all laws and regulations relating to privacy and sensitive information
- identify the key stakeholders for the practitioner
- support the practitioners to conduct an initial risk assessment
- ensure staff have the training and skills to effectively participate in data collection through ongoing and regular staff training and review
- arrange medical reviews as required.

## Planning and development

The outcome of the functional assessments will inform all strategies that seek to support the participant's behaviour. The planning stage must be participant-centred and include all relevant workers, allied health practitioners, support networks carers and any other relevant stakeholders.

The strategies will:

- be proactive
- be reflective of the participant's needs
- improve the participant's quality of life
- encourage and support positive behavioural changes
- create opportunities for participation in the community
- create structure through meaningful daily activities guided by the participants goals, values and ambitions
- reduce and eliminate the use of restrictive practices (where restrictive practices are used).

To nurture positive skills building, positive behaviour support plans will:

- support and encourage participants to develop skills
- support and encourage participants to be involved in recreation, education, work, social and community settings
- support participants to develop appropriate ways to communicate their needs
- develop the participant's skills in daily living to meet potential gaps in being able to engage in meaningful activities
- seek to deliver positive, measurable and sustainable outcomes for participants and their families which improves quality of life and the confidence of the support system.

As part of a positive behaviour support, each proposed restrictive practice must include:

- description of the proposed practice
- expected outcomes related to the proposed practice
- rationale for the use of the proposed practice, i.e. an explanation as to why positive practices alone are unable to achieve the desired outcomes
- roles and responsibilities, contextual variables, proposed frequency of use, event monitoring requirements, reporting protocols associated with the proposed practice/strategy
- formal data collection procedures for the proposed strategy
- schedule of review of the proposed practice, and
- fade-out strategies, where appropriate.

## Key management responsibilities for planning and development

As described by the NDIS Quality and Safeguards Commission, it is our obligation to:

- to enable systems and processes that provide a safe, predictable and stable environment, this may include:
  - worker rostering and training
  - environmental adaptations or modifications
  - regular, structured daily interactions and activities
- be aware of environmental aspects that may pose risk factors, which will be informed and mitigated by risk assessments
- provide supervision and support to workers responsible for implementing and monitoring a behaviour support plan, including clarification
- provide effective and adequate time and resources for workers to read and understand a participant's behaviour support plan
- provide effective leadership through supports and adaptations to ensure workers understand a behaviour support plan and follow it correctly.

## Implementation

We understand the successful implementation of a behaviour support plan is dependent on:

- person-centred practices
- collaboration between the service provider, participants, implementing practitioner, workers, support networks and any other stakeholders involved in supporting the participant

- understanding, knowledge and training in the implementation of the plan, its strategies and underlying reasons, including supervision for workers where necessary
- structure and consistency
- monitoring through data collection and reporting to inform evaluation.

## Key management responsibilities for implementation

As described by the NDIS Quality and Safeguards Commission, it is our obligation to:

- support, and ensure links exist and are accessible between workers and the community
- provide workers with ongoing training, supervision and support in the implementation of a behaviour support plan
- ensure staff supporting the participant have good links with the community or help build the necessary links to support the participant
- provide clear expectations of staff and their role in developing meaningful daily activities for the participant
- lead and monitor the implementation of the behaviour support plan by engaging the participant, staff and support networks in regular discussion about the plan and recording any feedback
- provide necessary and practical resource to support implementation
- provide staff with ongoing training, supervision and support in the implementation of a behaviour support plan
- regularly review staff performance to ensure staff implement and are using the outlined strategies in a behaviour support plan
- provide critical incident debriefing, counselling and/or other professional services for all involved parties when necessary
- provide mechanisms and clear reporting guidelines to inform evaluation.

## Monitoring and evaluation

Following the implementation of a positive behaviour support plan, we will continue to systematically monitor and evaluate the effectiveness of the plan and its implementation. We recognise that continual monitoring and evaluation is to ensure ethical and accountable practices within our organisation and reflect an evidence-based approach to supporting participants.

We recognise that positive behaviour support plans are fluid documents that should be regularly reviewed and updated to incorporate data and results from monitoring and evaluation.

## Key management responsibilities for monitoring and evaluation

As described by the NDIS Quality and Safeguards Commission, it is our obligation to:

- support workers to collect ongoing data to evaluate the effectiveness of a behaviour support plan
- provide information and data on how consistently workers are implementing a behaviour support plan that may be affecting evaluative data
- support the participant and other key people to contribute to a behaviour support plan's evaluation and review meeting through their preferred means of communication
- use the participant's outcomes as performance indicators
- ensure mechanisms are in place to collect and report on incident report data.



## Restrictive practices

A restrictive practice is any practice or intervention used to restrict the rights or freedoms of a person for their own safety or the safety of others. Under the NDIS Act 2013 (Cwth), there are 5 regulated restrictive practices:

- seclusion (whilst seclusion is a restrictive practice for an adult, it is prohibited for children under 18 years in NSW)
- chemical restraint
- mechanical restraint
- physical restraint
- environmental restraint.

The use of restrictive practices has significant impacts on participants and workers. Therefore, each participant, and with their consent, their support network, providers implementing behaviour support plans, and other relevant stakeholders are engaged in discussions about the need for restrictive practices and they understand the risks associated with their use. As part of these discussions, alternatives to the use of restrictive practices are promoted. Due to the serious risks associated with restrictive practices, behaviour support plans that use such strategies will only be developed by, or under the direct supervision of, a behaviour support practitioner who is rated proficient or above.

The NDIS (Restrictive Practices and Behaviour Support) Rules 2018 specify that any use of restrictive practices must be:

- Used only after non-restrictive strategies and options have been explored and exhausted.
- Used only in response to a risk of harm to the person with disability or others, as a last resort, in the least restrictive way possible.
- Authorised in accordance with state and territory requirements and the NDIS (Restrictive Practices and Behaviour Support) Rules 2018 (Cwth) and any other policy requirements.
- In proportion to the risk of harm and used only for the shortest possible time.
- Associated with 'fade out' strategies that will lead to the reduction and elimination of any restrictive practices included in a positive behaviour support plan.
- Any use of a regulated restrictive practice must be reported to the NDIS Commission. Use of restrictive practices that are not detailed in a behaviour support plan or do not have the required authorisation and consent are deemed a reportable incident under the NDIS (Incident Management and Reportable Incidents) Rules 2018. This must be reported within 5 days of the service provider being made aware of this occurrence, or within 24 hours if an individual was harmed or resulted in the death of a participant.
- For a comprehensive overview of how we implement, authorise and report the use of restrictive practices see: Restrictive practice policy.

## Continuing professional development and supervision

We recognise the ongoing importance to maintain, expand and improve relevant and evidence-informed practices, knowledge and information through continued professional development (CPD). We encourage and support CPD of all our behaviour support practitioners across, all levels through various forms of training. Training may include:

- industry recognised seminars and conferences
- industry or tertiary education
- other relevant industry recognised training.

In addition to CPD, the NDIS Commission requires behaviour support practitioners at all levels to receive supervision. Supervision, as detailed by the Commission strengthens practice and building capability for the behaviour support workforce. It may be undertaken in various forms including:

- direct professional supervision provided by a behaviour support practitioner with a higher level of skill and knowledge
- peer supervision focused on reflective practice
- managerial supervision
- supervision that is mandated or recommended by professional registration bodies.

## Key management responsibilities for continuing professional development and supervision

As described by the NDIS Quality and Safeguards Commission, it is our obligation to:

- encourage a culture of continuous improvement, including supervision and professional development planning (See: Worker training plan, Staff training and development register)
- provide clear aims, structures and processes for supervision through worker training plans
- provide access to (internal and/or external) workers who can provide high-quality behaviour support supervision
- allow workers time to engage in supervision
- clearly articulate the modalities of supervision available to workers (including any compulsory components)
- communicate and provide clear information about professional development opportunities for workers, including compulsory training, time allowances to attend professional development and any budgetary considerations.

## Authorisation to implement restrictive practices as part of a positive behaviour support plan

The use of a restricted practice must be informed by strict guidelines which provide clear conditions and limitations on their use. These conditions and limitations should be detailed in a documented Behaviour Support Plan (BSP):

- appropriate informed consent; and
- authorisation by and reported to the NDIS Commission as part of a documented regulated restrictive practices, as prescribed in the National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018
- complies with the requirements of the NSW Restrictive Practices Authorisation Panel, as detailed in the NSW Restrictive Practices Authorisation Policy (2019) and the NSW Regulated Restrictive Practices with Children and Young People with Disability: Practice Guide (2021).

What Ability has in place an RPA mechanism that comprises a properly constituted RPA Panel which meets specified membership requirements e.g.

1. a senior What Ability manager who has experience in behaviour support and restrictive practices
2. an experienced specialist Behaviour Support Practitioner and
3. a panel member independent of What Ability and the person with disability (sourced via the DCJ)

A senior What Ability manager is the chair of the RPA Panel.

Any recommendation for the use of a restrictive practice requires formal authorisation from the RPA Panel. The Panel considers the appropriateness of a documented behaviour support plan and evaluates the recommendations in the context of What Ability's operations, as well as the appropriateness of the strategy to achieve the intended therapeutic outcomes.

The Panel's decision **to authorise** a restrictive practice is unanimous. The outcome of the Panel's process is captured on the online NSW RPA system.

On making its determination the Panel specifies the length of time for which the authorisation applies for the shortest amount of time possible, not exceeding 12 months.

## Consent Requirements

In the context of restricted practices consent is the permission given by the participant (where they have the capacity to consent) or person(s) with appropriate legal authority for the use of a specific practice as a component of an overall behaviour support strategy.

If required, parental consent will be obtained for all behaviour support plans (not only those with restrictive practices) and will be endorsed by What Ability's management e.g. VOOHC Coordinator, for use within the organisation. This consent is documented in the child or young person's case plan.

Note: The NSW Guardianship Act 1987 defines a child as being under 18 years of age. The NSW Children and Young Persons (Care and Protection) Act 1998 distinguishes between a child (under 16 years) and a young person (16-18 years).

### Consent for Young People and Adults

Where the person does not have the capacity to consent to the use of a restrictive practice as a component of a behaviour support plan, and where there is no appropriate person(s) to consent or agree to the use of the practice on their behalf, a legally appointed guardian is required. In such cases specific authority to consent may be granted to a guardian by the Guardianship Division of the NSW Civil and Administrative Tribunal. This guardian will have a restrictive practice function.

Any prescribed treatment or therapy that is not reportable as a restrictive intervention must be documented as part of the person's support plan as a specific management strategy and be reviewed by the relevant medical or health professional.

What Ability will:

- not apply any unauthorised restrictive practice
- document all uses of interventions as required
- report any concerns and/ or inappropriate use of restrictive practice to the NDIS Commission and any appropriate external agency.

What Ability always aims to provide support that avoids restrictive practices, and works to support regulated restrictions approved by the correct legal authority, prescribed by an appropriate professional and with the appropriate consent obtained.

## Implementation

What Ability's staff undertake professional development to maintain an understanding of practices considered restrictive and the risks associated with those practices. This policy ensures that restrictive practices are applied in accordance with National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018, the NSW DCJ Restrictive Practice Authorisation Policy, Practice Guidelines and Portal and in compliance with the NSW Restrictive Practices Authorisation Panel . We ensure any authorisation that is required is obtained and that any reporting or compliance obligations are adhered to and reported promptly.

All restrictive practices are part of an overall Behaviour Support Plan (BSP) that ultimately seeks to reduce or eliminate restrictive practices. Any risk identified in the implementation of restrictive practices is documented using our Risk Management policy and framework and staff and other stakeholders involved in implementing the BSP are informed of these risks and are trained in how to mitigate them, monitor progress and report any incidents that may occur as part of the implementation of the BSP.

Restrictive interventions are only used when a person displays a behaviour that places the person or others at risk, and behaviour change has not occurred with non-restrictive interventions, which may also be identified from their behavioural support plan.

A regulated restrictive intervention can only to be used if:

1. It is necessary to prevent the person from:
  - causing physical harm to themselves or others, or
  - destroying property where to do so could involve the risk of harm to themselves or others. (Property destruction alone is not a reason to implement a restrictive intervention).
2. It is the least restrictive alternative for the person and the other people living in the house
3. The use and form of restraint or is:
  - part of the person's approved Behaviour Support Plan (BSP).
  - administered and recorded in accordance with the person's approved BSP.

- only applied for the period of time that has been approved by the approved professional.
- explained to the person and/or family/carer by an independent person

Note: while seclusion is a restrictive practice for an adult, it is prohibited for children under 18 years in NSW).

## Monitoring Restrictive Practice

The What Ability Restrictive Practices policy ensures our compliance with monthly online reporting requirements in relation to the use of regulated restrictive practices, as prescribed in the National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018. This reporting is monitored and facilitated by the VOOHC Coordinator.

Processes are in place via What Ability's internal audit system to monitor restrictive practices nearing the end of their authorisation validity (12 months) to prompt timely re-submission for renewal of authorisation.

## Continuous Improvement

Any evidence or learnings gathered from the use of restrictive practice are used to improve our practice and are entered into our Continuous Improvement Framework to inform our quality improvement process. This data will also be used to develop our workforce, and if agreed to by the participant/family, shared with other supports to ensure we are proactively reducing or eliminating restrictive practices.

## Crisis Response to a Critical Incident

Where any critical incident occurs, we are guided by our Incident Management Policy and Procedure. This policy outlines how we systematically respond to incidents including alerting emergency health services, the NSW Police and other health or allied health professionals who may be working with the participant.

We will notify the NDIS Commission in accordance with National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018 if any changes or incident occurs in relation to the use of restrictive practices.

In circumstances where immediate intervention may be considered necessary under What Ability's Duty of Care to manage the risk. In these circumstances the incident is recorded as a critical response. As such, it is fully documented, the levels of injury and/or threat reported and dealt with and the appropriate reporting forwarded to the NDIS Commission and any other relevant agency.

A critical response may require the use of a restricted practice in order to prevent serious self-injury or harm to another person. The critical response should involve the minimum amount of restriction or force necessary, the least intrusion, and be applied

only for as long as is necessary to manage the risk. A critical response should never be used as a de facto routine behaviour support strategy.

As soon as practicable after the critical incident has been managed, steps should be taken to ensure any incident that occurs is documented in our incident management system as part of our Incident Management Policy and Procedure (either our system or a partner support service should the incident occur there). As part of our Incident Management framework any incident will be reviewed by us with the participant and their family/carer and any other relevant stakeholders to ensure measures are put in place to reduce the likelihood of a similar incident happening again.

## Review of Restrictive Practice

The use of restrictive practice will be reviewed at least monthly or as prescribed in the Behaviour Support Plan. In the event of a change of circumstance or incident we will use the outcomes of any investigation or data collected to inform a review. The outcomes of the debrief and investigation will be documented.

With the consent of the participant/family we will also include other support and health professionals working with the participant to fully inform these reviews. If the debrief and investigation highlight that the behaviour support plan requires adjustment, or the plan requires a complete review, we will facilitate these adjustments or reviews with the appropriate specialist in accordance with the National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018 and the NSW DCJ Restrictive Practice Authorisation Policy and Practice Guidelines.

## Prohibited Practices

Prohibited practices include those that are abusive, those that constitute assault and those that constitute wrongful imprisonment. Such practices are prohibited and not permissible. All are criminal offences and civil wrongs and may lead to legal action.

Prohibited practices also include those that may not be unlawful but are unethical.

Prohibited practices include those that:

- Cause physical pain or serious discomfort;
- Restrict access to basic needs or supports;
- Are degrading or demeaning to the Service User;
- May reasonably be perceived by the participant as harassment or vilification;
- Are aversive, unethical; and
- Constitute an unauthorised restricted practice.

In addition, it should be noted that the Children and Young Persons (Care and Protection) Regulation (2000) requires that an organisation's behaviour management policy includes a ban on:

- Any form of corporal punishment;
- Any punishment that takes the form of immobilisation, force-feeding or depriving of food; and

- Any punishment that is intended to humiliate or frighten a Service User.

## Communication

Communication about this policy should be implemented in a way that suits each person with regard to their cultural background e.g. use of an interpreter or easy to read documents. This policy will be:

- communicated to the participants, their carers/family, key internal and external stakeholders of What Ability;
- communicated to What Ability staff through induction and training;
- accessible through What Ability.

Relevant policies and legislation

- Risk Management
- Code of Conduct
- Individual Planning and Outcomes
- Rights and Responsibilities
- Complaints and Feedback
- Participant Advocacy
- NDIS (Restrictive Practices and Behaviour Support) Rules 2018
- NDIS Practice Standards (2021)
- NSW DCJ Restrictive Practice Authorisation Policy and Practice Guidelines.

## Environmental restraint

Where environment restraint is used within the context of a behaviour support plan, details of each implementation must be recorded in an environmental restraint register.

Any use of environmental restraint (response cost) must not involve the child or young person's:

- personal possessions
- money
- attendance at school, work or day placement
- access to family or support person
- denial of food, shelter, comfort or access to toileting.

## Seclusion

**SECLUSION IS A PROHIBITED PRACTICE FOR ANYONE UNDER THE AGE OF 18 IN NSW.**

## Chemical restraint

Psychotropic medication prescribed by a practitioner as part of a treatment plan for a diagnosed mental illness, psychiatric disorder, etiological or contributory psychiatric symptoms is not a restrictive practice.

Use of psychotropic medication must not be the primary behaviour support strategy for a child or young person with intellectual disability.

Use of psychotropic medication must be part of a documented behaviour support plan developed by qualified practitioners e.g. psychiatrist, psychologist.  
Consent is always required for the administration of psychotropic medication.

## Physical restraint

Physical restraint is the intentional restriction of a child or young person's movement or behaviour by the use of a device or physical force.

*The Children and Young Persons (Care and Protection) Act 1998 (s.158)* permits a carer to physically restrain a child or young person if, in the opinion of the relevant carer of a child or young person, the child or young person is behaving in such a manner that, unless restrained, he or she might seriously injure himself or herself or another person. Any other use of physical restraint for a person under 18 years is a prohibited practice.

While physical restraint is a restrictive practice for an adult, it must not be used for children under 18 years in NSW unless used in accordance with s.158 of the *Children and Young Persons (Care and Protection) Act 1998*.

Section 158 of the Act (above) applies if, in the opinion of the relevant carer of a child or young person, the child or young person is behaving in such a manner that, unless restrained, he or she might seriously injure himself or herself or another person.

In these circumstances, the relevant carer:

1. may restrain the child or young person, but only on a temporary basis and only to the extent necessary to prevent injury to any person, and
2. may seize and take from the child or young person:
  - any weapon or other thing that is being used by the child or young person in a dangerous manner, and
  - any alcohol, and
  - any illegal substance, and
  - any other thing, the deprivation of which is necessary to prevent the child or young person from causing injury to any person.
3. If a child or young person is restrained under this section, the restraint must be consistent with any behaviour management requirements of a care plan applying to the child or young person, otherwise reasonable force may be used.
4. The Secretary of the DCJ may specify procedures that may be followed for the purposes of section 158 of the Act.
5. A relevant carer who acts in accordance with section 158 of the Act or any procedure specified by the Secretary of the DCJ for the purposes of this section, and who is able to satisfy the court on the balance of probabilities that his or her actions were reasonable in all the circumstances of the case, is immune from any criminal or civil liability that arises as a consequence of so acting.
6. In section 158 of the Act, the relevant carer of a child or young person means—
  - a parent of the child or young person, or
  - the authorised carer of the child or young person, or



- a person who is providing voluntary out-of-home care in respect of a child or young person.

What Ability will only use physical restraint as a form of intervention:

- in accordance with all relevant legislation and practice requirements
- as a last resort and in the least intrusive way possible only where a child or young person may seriously injure themselves or others if not restrained
- to remove the child or young person from any weapon, alcohol, illegal substance or other to prevent injury to any person
- providing the restraint is consistent with any behaviour management requirements of a care plan applying to the child or young person—where behaviour management requirements have not been set out, reasonable force may be used
- only on a temporary basis—continued use of restraint indicates a need to consider a more appropriate behaviour support/management plan
- in accordance with the Act and where we are able to satisfy a court that the actions used were reasonable in all the circumstances
- if appropriate support and counselling is also provided to the child or young person who was restrained.

Physical restraint is a one-off use of physical restraint to prevent a child or young person injuring themselves or others.

The use of physical restraint must be:

- only used as part of a documented behaviour support plan developed by a qualified practitioner
- the least restrictive restraint used
- not the primary support strategy
- followed up with appropriate support and counselling.

Physical restraint does not include physical assistance or support for involuntary movement, or assistance in activities in daily living (washing, dressing or eating).

## **Mechanical restraint**

Mechanical restraint is the use of a device to prevent, restrict, or subdue a person's movement for the primary purpose of influencing a person's behaviour. This does not include the use of devices for therapeutic or non-behavioural purposes.

Mechanical restraint:

- must only be used as part of a documented behaviour support plan developed by a qualified practitioner
- should only be used in limited circumstances as a last resort
- must not be the first response to behaviours of concern
- must not be used as a substitute for adequate supervision.

## **Worker development and qualifications**

Developing workers qualified to support children or young people involves:

- providing relevant on-the-job training for workers, supervisors and managers
- ensuring only those qualified can create behaviour support plans
- ensuring workers have access to professional advice on behaviour support
- ensuring workers have suitable supervision and peer support
- ensuring workers involved in supporting behaviour support are confident in developing and reviewing behaviour support plans.

Workers supporting a child or young person with behaviour support plans must be:

- appropriately trained in behaviour support principles (restrictive practices, positive behaviour support, skills building, prohibited practices etc.)
- appropriately trained in the child or young person's behaviour support plan whom they are supporting.

## **Implementation of behaviour support plans**

What Ability is registered with the NDIS Commission to implement behaviour support plans.

## **Unauthorised Use of a Restrictive Practice**

Where an unauthorised use of a restrictive practice or prohibited practice is used, an enquiry will be made with the OCG Reportable Conduct Directorate to assist with assessing whether it meets the threshold for notification to the OCG as an allegation of reportable conduct.

## 9. Child safe policy

### Legislation

Children’s Guardian Act 2019 (NSW)  
 Child Protection (Working with Children) Act 2012 (NSW)  
 Children and Young Persons (Care and Protection) Act 1998 (NSW)  
 Children and Young Persons (Care and Protection) Regulation 2012 (NSW)  
 National Disability Insurance Scheme Act 2013 (Cwth)  
 NDIS (Quality Indicators) Guidelines 2018 (Cwth)

### Introduction

The commencement of the Children’s Guardian Act 2019 (NSW) brings the functions of the Children’s Guardian together under one Act and contributes significantly to building an integrated child safe scheme in NSW.

The protection of children and young people is a cornerstone in safeguarding and improving the lives of children and young people with a disability. While providing supports and services under the NDIS, workers are uniquely placed to identify and respond to the needs and vulnerabilities of children or young people with disability. Everyone has a responsibility to protect the wellbeing and safety of children or young people whom they have contact with and report any case a child or young person is suspected to be at risk of significant harm.

### Applicability

When
<ul style="list-style-type: none"> <li>applies to all sites and services involved in providing support to children and young people.</li> </ul>

Who
<ul style="list-style-type: none"> <li>applies to all representatives of What Ability Pty. Ltd. involved in providing services for children and young people including key management personnel, directors, full time workers, part time workers, casual workers, contractors, and volunteers.</li> </ul>

### Definitions

Term	Description
mandatory reporter	Mandatory reporters are people who deliver the following services, wholly or partly, to children as part of their paid or professional work: <ul style="list-style-type: none"> <li>Health care (e.g. registered medical practitioners, specialists, general practice nurses, midwives, occupational therapists, speech therapists, psychologists, dentists and other allied health professionals working in sole practice or in public or private health practices)</li> </ul>

	<ul style="list-style-type: none"> <li>• Welfare (e.g. psychologists, social workers, caseworkers and youth workers)</li> <li>• Education (e.g. teachers, counsellors, principals)</li> <li>• Children’s services (e.g. child care workers, family day carers and home-based carers)</li> <li>• Residential services (e.g. refuge workers)</li> <li>• Law enforcement (e.g. police)</li> </ul>
child	Anyone under the age of 16 years.
reasonable grounds	Defined by: <ul style="list-style-type: none"> <li>• first-hand observations of the child, young person or family</li> <li>• what the child, young person, parent or another person has disclosed</li> <li>• what can reasonably be inferred based on professional training and/or experience.</li> </ul>
significant harm	Any case where there is reasonable grounds to suspect a child or young person is experiencing, or has experienced: <ul style="list-style-type: none"> <li>• physical abuse</li> <li>• sexual abuse</li> <li>• neglect, including:               <ul style="list-style-type: none"> <li>• supervision</li> <li>• physical shelter/environment</li> <li>• food</li> <li>• medical care</li> <li>• mental health care</li> <li>• education</li> </ul> </li> <li>• problematic sexual behaviour</li> <li>• psychological harm</li> <li>• relinquishing care</li> <li>• carer concerns, such as:               <ul style="list-style-type: none"> <li>• parent/carer substance abuse</li> <li>• parent/carer mental health</li> <li>• parent/carer domestic violence</li> </ul> </li> <li>• or there are concerns for an unborn child.</li> </ul>
young person	A person over 16 years but under 18 years.

## NSW Child Safe Standards

What Ability Pty. Ltd. (referred hereafter as What Ability) is a child safe organisation which has developed relevant policies and processes underpinned by relevant provisions in the Children’s Guardian Act 2019, and which adheres to the 10 Child Safe Standards -

1. Child safety is embedded in organisational leadership, governance and culture
2. Children participate in decisions affecting them and are taken seriously
3. Families and communities are informed and involved
4. Equity is upheld and diverse needs are taken into account
5. People working with children are suitable and supported
6. Processes to respond to complaints of child abuse are child focused

7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training
8. Physical and online environments minimise the opportunity for abuse to occur
9. Implementation of the Child Safe Standards is continuously reviewed and improved
10. Policies and procedures document how the organisation is child safe

These standards are communicated to participants and their families in the What Ability Participant and Family Welcome Pack.

## Mandatory reporting

As a provider of voluntary out-of-home care (VOOHC), we have a mandatory requirement to report any case where a child is at risk of significant harm. While it is not mandatory to report a young person at risk of significant harm, these cases may also be reported.

A child or young person is at risk of significant harm where:

- their parent/carer is not meeting their basic physical or psychological needs—including cases where care is relinquished without alternative care arrangements being in place
- their parent/carer has not arranged necessary medical care
- they are at risk of physical or sexual abuse or ill-treatment
- the behaviour of their parent/carer towards them causes or risks them suffering psychological harm, or
- there are incidents of domestic violence where the consequence is the child or young person is at risk of serious physical or psychological harm.

Anyone who makes a report to the Child Protection Helpline is protected by the Children and Young Persons (Care and Protection) Act 1998 (NSW). The reporter's identity can only be disclosed to a law enforcement agency in very limited circumstances. It also ensures that people who make reports to the Helpline or a child wellbeing unit in good faith are protected from any criminal, civil or disciplinary action in connection with that disclosure.

## Child safe commitment

What Ability Pty. Ltd.'s (referred to hereafter as What Ability) child safe commitment will:

- maintain professional and courteous relationships with children and their families
- provide services in a way that does not exploit or abuse our position
- listen to the views of children or young people and respect what they say and involve them when we make decisions, especially about matters that will directly affect them—the views of children or young people are recorded during intake (e.g. VOOHC intake form), during assessments (assessment notes), and during reviews (review notes, meeting minutes)
- respect children and young people's rights, background, culture and beliefs as set out in the UN Convention on the Rights of the Child
- implement the [Child Safe Standards](#)
- ensure the Child Safe Standards are communicated to the child/young person through provision of this information in the Welcome Pack provided to all children/participants/families - both in the What Ability Participant and Family

- Handbook, and also of the OCG’s “NSW voluntary out-of-home care : Information for families “ brochure)
- comply with all relevant Commonwealth, state or territory laws protecting children and young people
  - follow mandatory reporting requirements for children or young people suspected to be at risk of significant harm
  - ensure all staff have completed training in mandatory reporting
  - report any concerning staff conduct towards children or young people, including any suspected risk of significant harm to a child, to the key management personnel
  - safeguard children or young people at all times and not place them at risk of abuse, or condone behaviour which is unsafe
  - use appropriate language for the age and understanding of the child or young person, and avoid confusing or age-inappropriate discussions with sexual, discriminatory or violent references
  - avoid any actions or words intended to threaten, intimidate, shame, humiliate, belittle, embarrass or degrade children or young people
  - not attend work affected by illegal drugs or alcohol, consume them whilst on duty or supply them to children or young people in our care
  - not smoke whilst on duty.

## Educating and supporting children and young people

What Ability uses a range of strategies and resources to support children and young people to recognise behaviour that makes them feel unsafe or uncomfortable and to encourage them to report any concerns. These include:

- encouraging the child/participant to communicate with staff if/when they feel unsafe, or when they feel that something just isn’t right, whatever/whenever that may be
- encouraging the child/participant to talk about their feelings related to feeling safe or unsafe and talk about where, when and with whom they feel safe or unsafe during VOOHC placements
- providing education, training and support to all What Ability staff providing VOOHC placements related to supporting children/young people to recognise behaviour that makes them feel unsafe or uncomfortable, and to encourage them to report any concerns they may have.

Children and young people are encouraged to participate in cooking and cleaning while they are in VOOHC—this is closely monitored and supervised by What Ability staff. Children and young people are encouraged to follow their routines.

## Recruiting for child safe

What Ability will maintain rigorous and consistent recruitment with worker screening and selection process. All workers are required to have and maintain a valid Working With Children Check (WWCC) as per the Worker Screening policy. The *Working With Children Check (WWCC)* is required for all staff in child-related work per section 6 of the *Child Protection (Working with Children) Act 2012* as defined by clause 8 of the *Child Protection (Working with Children)*

Regulation 2013, including clauses 16B and 16C of the Regulation applying to the Principal Officer and Leadership Team.

What Ability will keep records of employees who require a Check and when they were verified.

What Ability will remind employees to renew their Check, commencing three months prior to the expiry of their current check. Any renewed WWCC will be verified on the Office of the Children’s Guardian website. The WWCC of the principal officer and leadership team will be verified on the Office of the Children’s Guardian website. A person will not be engaged in child-related work unless What Ability has verified a person’s WWCC on the Office of the Children’s Guardian website.

What Ability will not employ anyone in child related work unless they have a valid WWCC clearance or application

What Ability will remove any existing employees from child related work whose WWCC has:

1. expired or
2. been cancelled or
3. who receives a subsequent interim bar or bar.

Any existing worker who cannot renew their WWCC must notify key management as soon as possible.

## **Communication of child safe policy**

What Ability will discuss this policy with all new participants under 18 years of age participating in VOOHC placements and their families, as well as with all staff providing VOOHC placements, all new staff and volunteers.

## **Breach of child safe policy**

Failure to disclose—all adults in Australia with a reasonable belief that an adult has committed a sexual offence against a child have an obligation to report that information to the police.

Failure to protect—key management will commit an offence if they know of a substantial risk of child sexual abuse and have the power or responsibility to reduce or remove the risk, but negligently fail to do so.

Breach of this policy may result in disciplinary action; however, a serious breach may be deemed a criminal offence under relevant legislation.

## 10. Complaint management policy

### Legislation

Children’s Guardian Act 2019 (NSW)  
 Children and Young Persons (Care and Protection) Regulation 2012 (NSW)  
 National Disability Insurance Scheme Act 2013 (Cwth)  
 NDIS (Complaints Management and Resolution) Rules 2018 (Cwth)  
 NDIS (Quality Indicators) Guidelines 2018 (Cwth)  
 Complaint Handling Guide: Upholding the rights of children and young people 2019 (Cwth)

### Introduction

This policy is about complaints made to a provider related to the provision of voluntary out-of-home care (VOOHC) placements, not complaints about the NDIS.  
 All complaints are taken seriously, all people treated fairly, and corrective actions completed in a timely manner.

### Voluntary out-of-home care

As a provider of VOOHC, What Ability Pty. Ltd. (referred to hereafter as What Ability) is required to have in place a system to handle complaints from a child or young person or their family regarding a VOOHC placement.

### Definitions

A *complaint* is an expression of dissatisfaction with the provision of a service, including how a previous complaint was handled, for which a response or resolution is expected.

### Applicability

When
<ul style="list-style-type: none"> <li>• applies when participants want to submit feedback or make a complaint about an NDIS service</li> <li>• applies when children/young people and parents submit feedback or make a complaint about a VOOHC service</li> <li>• applies to all feedback and complaints received regardless of the source.</li> </ul>
Who
<ul style="list-style-type: none"> <li>• applies to all representatives of What Ability Pty. Ltd. including key management personnel, directors, full time workers, part time workers, casual workers, contractors and volunteers.</li> </ul>



## Our commitment

What Ability is committed to ensuring that a robust and effective complaint handling is in place to identify and respond to any concerns of children/participants in VOOHC placements, and their parents.

To ensure this is the case, What Ability will:

- implement and maintain a complaint management system
- ensure that new workers are trained in the complaint management system
- ensure that existing workers get timely refresher training on the complaint management system
- make sure people can easily make a complaint
- deal with all complaints fairly and quickly
- have information available on how to:
  - submit a complaint
  - submit a complaint to the Commissioner
- keep records on all complaints received.

## Who can make a complaint?

Anyone can make a complaint to What Ability at any time, including:

- a child/participant
- a child/participant's family or guardian
- a child/participant's financial manager
- a child/young person in VOOHC
- the parents of a child/young person in VOOHC
- an advocate
- an employee
- a community visitor
- a professional
- a member of the public.

Complaints can be made:

- in person
- by email
- in writing, using the What Ability Complaints form
- by phone
- via the What Ability web-site.

Complaints are seen by What Ability as a valued means to obtain direct feedback from children/participants and families about their experiences when accessing What Ability's supports, and to:

- identify problems
- improve services
- provide better outcomes to children/participants and their families.

Complaints can be made about any aspect of the supports provided such as:

- the way services are provided
- decisions we have made
- about the conduct of our employees
- about personal information not being kept private.

Complaints can be made anonymously. Complaints can be made to What Ability, directly to the Commissioner (regarding NDIS services) or directly to the NSW Ombudsman (regarding VOOHC services).

Complaint will not result in retribution of any sort.

## Complaint monitoring

- all complaints are documented and monitored using a Complaints Register
- the Complaint Register includes up-to-date progress of each complaint and whether it is currently open or closed (resolved)
- if there is any doubt about the end resolution of a complaint, seek feedback from the person who made the complaint
- reports from the Complaint Register are provided to the What Ability Leadership Management Team (LMT) quarterly for review.

## Complaint records and review

Accurate information about all complaints received including details of the complaint investigation, decisions made, actions taken and eventual outcomes are recorded/documentated in the Complaints Register. This allows What Ability to:

- enable reviews of any complaints received
- assist in identifying any systemic issues raised
- allow a response to the Commissioner, if required
- store complaint records securely and ensure their accessibility only to the people handling complaints.

Records related to complaints related to children/participants accessing voluntary out-of-home care placements will be retained indefinitely to ensure the availability of all records in the circumstances where historical reviews of complaints are required or requested.

## Complaint referrals

Complaints to the NDIS Commissioner may be referred to other agencies or bodies if needed including:

- non-compliance with the NDIS code of conduct
- inappropriate or unauthorised use of restrictive practice
- employee screening issues e.g. if an employee of the What Ability was found to have a criminal history (for more information, refer to the worker screening policy)
- incidents relevant to other bodies (police, consumer affairs agencies or other regulatory bodies).

## What Ability's complaints system

Our complaints system is documented, and information on how to make a complaint is available in the Participant and Family Welcome Pack to child/participants, their families, guardians or advocates in a way that is culturally appropriate and is provided in the language, mode of communication and terms that the child/participant is most likely to understand.

We work to ensure children/participants and their families :

- are aware of their right to make a complaint
- feel empowered to make a complaint
- are supported to make a complaint
- are involved in the resolution process after making a complaint
- know they won't be adversely affected as a result of making a complaint.

Children and young people in voluntary out-of-home care (and their parents) are provided with the What Ability Complaints policy as well as a complaints form during the intake and assessment process. In addition, information on the complaint handling process is included in the Welcome Pack in language that is accessible and understood by children and young people, provided to all children/participants and their families/guardians on service commencement.

If a complaint is reported to What Ability which concerns the CEO or members of What Ability's LMT, the VOOHC Coordinator will contact an independent body, such as the NSW Ombudsman's office, children's commission or a regulator for advice, to ensure the investigation of the complaint is conducted in a fair and unbiased manner.

Any complainant has the right to report or refer their complaint to an external body such as the NSW Ombudsman and/or the NDIS Quality and Safeguards Commission. Complainants may choose to do this in any circumstances, including if the complaint involves or concerns the CEO or members of What Ability's LMT.

## Complaints delegation and management: VOOHC

All complaints received by What Ability related to VOOHC placements are documented in What Ability's Complaints Register by the initial recipient of the complaint, who is responsible for its initial categorisation and for notifying the VOOHC Coordinator of the complaint.

The VOOHC Coordinator is responsible to review the complaint as documented in the Complaints Register and to discuss and clarify the details of the complaint with the initial recipient.

The VOOHC Coordinator then confirms or revises the categorisation of the complaint, and informs the CEO of the complaint, if appropriate.

Depending on the final categorisation of the complaint, the VOOHC Coordinator will determine whether there is a criminal element requiring a report to police or whether the concerns reach the risk of significant harm threshold requiring a report to the Child Protection Helpline. If this is

the case, the VOOHC Coordinator will facilitate the appropriate reporting processes immediately on review, within a maximum period of 24hrs.

The VOOHC Coordinator will assess whether the complaint involves a reportable incident or reportable conduct allegation. If this is the case, the complaint will be managed according to What Ability's incident management policies and procedures.

Please note: Any information obtained during a complaints handling process or review may be used for a reportable conduct investigation.

## Actual or Potential Conflicts of Interest

If a complaint cannot be handled internally, such as when the complaint involves or concerns the CEO or members of What Ability's LMT, What Ability will employ an independent investigator to ensure complaint reviews are conducted appropriately to ensure that any real or perceived conflicts of interest are addressed.

## Findings from Complaints Reviews

At the end of the complaints review process, an explanation of the action taken and reasons for any decisions will be given to the complainant by the What Ability CEO, VOOHC Coordinator (or a delegated LMT member).

If at this point, a child/participant and/or their family expresses disagreement with the findings, action taken and/or reasons for any decisions, they can appeal to the VOOHC Coordinator for a further internal review of the decision to be undertaken. Any request for a further internal review of this nature will be supported and facilitated by What Ability.

This review will be conducted by an alternative investigator of the child/participant/family's choice, including by an independent investigator.

If following this further review, the child/participant and/or their family remain in non-agreement with the findings, any reporter, person or other entity who is not satisfied with What Ability's response to a reportable allegation, can make a complaint to the Office of the Children's Guardian under section 28 of the Children's Guardian Act 2019.

Complaints related to VOOHC placements can be made to the NSW Ombudsman if the VOOHC placement is provided or funded by the NSW government. The NSW Ombudsman can investigate complaints about actions and decisions to see if they are wrong, unjust, unlawful, discriminatory or unfair.

If the VOOHC arrangement is funded by the NDIS, the NDIS Quality and Safeguards Commission is the appropriate complaints handling body.

While the Children's Guardian is not a complaints handling body, the Children's Guardian requires notification of complaints that relate to reportable conduct.

## Complaints Reporting

- Any complaint that involves reportable incidents will be notified to the NDIS Commission.
- Any complaint that involves activities of a criminal nature will be referred to the police.
- Complaints which may reach the risk of significant harm threshold will be reported to the Department of Communities and Justice.

## Complaints Involving a Criminal Offence or Risk of Significant Harm

In these circumstances, What Ability will not proceed with any complaint resolution until it obtains clearance from the police or DCJ to proceed and/or undertake any actions requested by the external agency, so as not to interfere with their investigation.

If clearance to investigate is obtained from the external agency, the complaint will be investigated by the CEO or the VOOHC Coordinator (or delegated to an independent investigator if required). If the complaint involves a child and or young person, the investigating person will refer to The Nine Guidelines and associated tools as provided in the Complaint Handling Guide: Upholding the rights of children and young people.

## Staff induction and training on complaints

New staff receive training in handling complaints as part of their induction training with refresher training at least every 12 months. Staff are required to sign that they have read and understood all company policies including the Complaint Management policy before their first shift. If required, What Ability will employ an external trainer to conduct any required additional staff training in this regard.

## 11. Managing complaints process

### Introduction

This process is about complaints made to a provider, not complaints about the NDIS. Complaints are important as they help us identify issues and improve our services. All workers are trained in the complaint process and in providing participants information on the complaints process. Information on how to make a complaint is provided:

- when participants start new supports or services
- at any time upon request
- annually (for existing participants).

Refer to the Complaint management policy for guidelines on complaints handling at What Ability Pty. Ltd..

### Step 1 - Receive complaint

Before submitting a complaint, we encourage the participant or representative to talk to the person they have a concern with. If this does not help to fix the problem, we encourage the person to submit a complaint.

If we become aware someone wants to make a complaint, we:

- ensure appropriate support and assistance is provided to any person who wishes to make a complaint
- ensure that the complainant or participant affected by the complaint know they can take their complaint to the commissioner, if they wish.

If a participant wants advice or support to make a complaint, we will suggest they contact an external advocate or the NDIS Complaints Commissioner.

Participants, their family/guardian or advocate, are able to make complaints directly to the commissioner about a provider's services or conduct. If you make a complaint to the commissioner about our conduct or services, we are prepared to:

- work with the commissioner by providing information, advice and assistance
- where possible and appropriate, work towards a mutually agreed resolution with the participant affected by the issue.

### Step 2 - Record complaint

When recording a complaint, capture as much detail as possible to understand the concerns. The information should include:

- what happened
- where it happened
- date and time of the incident
- who was involved
- any witnesses
- what the desired outcome is.

When a complaint is received:

- acknowledge and assess the complaint in a fair and timely manner
- provide the complainant expected time frames for actions
- take appropriate action in relation to the issues raised in the complaint
- keep accurate details of the complaint
- take reasonable steps so complainants, or participants affected by the complaint, are not adversely affected as a result of making a complaint
- ensure that information provided in the complaint is kept confidential.

Keep accurate information of complaints received including decisions made, actions taken and eventual outcomes. Records of complaints must be kept for 7 years from the date of the complaint (unless the complaint relates to VOOHC as these records must be stored until the child or young person reaches 18 years of age). Complaints records:

- enable reviews of any complaints received
- assist in identifying any systemic issues raised
- allow a better response to the Commissioner, if required
- must be stored securely and accessible only by the people handling complaints.

### **Step 3 - Categorise complaint**

Categorising complaints helps to prioritise based on seriousness. By law, complaints involving serious incidents may need to be reported to other bodies. When we assess and prioritise complaints, this is in accordance with the urgency and/or seriousness of the issues raised. If a matter concerns an immediate risk to safety or security, the response will be immediate and escalated appropriately. In our complaints system, complaints are categorised as follows:

- standard complaints – complaints that involve dissatisfaction about a decision made, the conduct of a worker, how services are being delivered, or allegations of discrimination
- serious complaints – complaints related to incidents that involve:
  - fraud
  - physical or sexual assault, or sexual misconduct of a participant committed by an employee
  - physical or sexual assault, or sexual misconduct of a participant committed by another participant while in the care of the provider
  - abuse or neglect
  - serious unexplained injury
  - death of a participant
  - unauthorised use of restrictive practices.

### **Step 4 – Serious complaint**

Is the complaint related to an incident?

While we are careful to keep all complaints confidential, disclosure of complaints related to serious incidents may need reporting to third parties as required by law. This includes any complaints related to a child at risk, criminal activity, or a reportable incident.

### **Step 5 – Resolve complaint**

NOTE: if police or Department of Communities and Justice (DCJ) are involved, clearance should be confirmed prior to resolving or investigating a complaint.

Resolve the complaint keeping in mind:

- procedural fairness must be applied when communicating with the participant affected
- procedural fairness must be applied when making decisions
- to ensure the participant's involvement in the resolution process
- to keep the participant affected informed during the resolution process
- to inform the participant affected on the reasons for any decisions made
- to provide the participant affected ample time to provide feedback or to request redress or review.

## Step 6 – Follow up complaint

After the complaint is resolved, follow up with the complainant to check that resolution actions are effective.

If a complainant (the person making the complaint) is not satisfied with the way a complaint has been handled, they can take their complaint to the NDIS Complaints Commissioner. Complaints can also be made directly to the Commissioner. When a complaint is received by the Commissioner, the Commissioner may:

- take no further action, such as when:
  - the complaint was not valid
  - there wasn't enough information provided
  - the complaint or issue has been resolved, or in the process of being resolved
  - the complaint was withdrawn
  - the complaint was referred to another agency or body
- provide assistance or advice to the complainant or participant affected by the issue and the provider
- start a resolution process, which may:
  - require the provider to try and resolve the issue
  - request the related parties resolve through conciliation
  - require the provider to take remedial action to resolve the complaint or issue
  - involve other action as deemed appropriate by the Commissioner
- arrange an inquiry:
  - if there are concerns regarding the issues connected to the complaint
  - if there are concerns regarding a series of complaints.

Complaints to the Commissioner may be referred to other agencies or bodies if needed. This could include any complaints relating to:

- non-compliance with the NDIS code of conduct
- inappropriate or unauthorised use of restrictive practice
- employee screening issues e.g. if an employee of the provider was found to have a criminal history (for more information, refer to the Worker Screening Policy)
- incidents relevant to other bodies (police, consumer affairs agencies or other regulatory bodies).

## Step 7 – Review complaint

Review the complaint including:



- the cause
- the resolution
- follow up feedback
- lessons learned.

Document the review as it will assist in the continuous improvement process.

### **Step 8 - Monitor complaints (ongoing)**

At regular intervals, key management personnel review all complaints recorded to:

- check that complaints are being resolved in a timely fashion
- look for patterns which might indicate systemic issues
- look for patterns which might indicate improvements.

## 12. Conflict of interest policy

### Legislation

National Disability Insurance Scheme (Code of Conduct) Rules 2018 (Cwth)  
 NDIS Terms of Business

### Introduction

This policy helps to identify, disclose and manage any actual, potential or perceived conflicts of interest. All representatives must be aware of their obligations to disclose any conflicts of interest that they may have. All representatives of the organisation must comply with this policy to ensure conflicts of interests are effectively managed.

### Definitions

A *conflict of interest* occurs when a person's personal interests conflict with their responsibility to act in the best interests of the organisation and the people supported. Personal interests include direct interests as well as those of family, friends, or other organisations a person may be involved with or have an interest in (for example, as a shareholder, board member or business owner). A conflict of interest may be actual, potential or perceived and may be financial or non-financial. These situations present the risk that a person will make a decision based on, or affected by, these influences, rather than in, the best interests of the organisation and must be managed accordingly.

### Applicability

When
<ul style="list-style-type: none"> <li>• applies to any situation which could affect a person's impartiality</li> <li>• applies to any situation which could affect a participant's choice and control.</li> </ul>

Who
<ul style="list-style-type: none"> <li>• applies to all representatives of What Ability Pty. Ltd. including key management personnel, directors, full time workers, part time workers, casual workers, contractors and volunteers.</li> </ul>

### Organisation responsibilities

The responsibilities of What Ability are to:

- ensure organisational or ethical values do not impede a participant's right to choice and control
- manage, document and report on individual conflicts of interest as they arise
- ensure that advice to a participant about support options (including those not delivered directly) is transparent and promotes choice and control.

## Responsibilities of representatives

All staff and representatives of What Ability will :

- avoid conflicts of interest where possible
- identify/declare and disclose any conflicts of interest
- carefully manage any conflicts of interest - through regular review of the Conflict of Interests Register during Leadership Management Team (LMT) meetings
- adhere to the conflict of interest policy and respond to any breaches.

## Key management personnel responsibilities

The responsibilities of key management personnel are to:

- work with all representatives to avoid or manage any conflict of interest
- record all declared/reported conflicts of interest in the Conflict of Interest Register.

## Gifts and benefits

Representatives of the organisation must not accept any offer of money, gifts, services or benefits that could cause them to act in a manner contrary to the interests of a participant. Representatives must have no financial or other personal interest that could directly or indirectly influence or compromise the choice of provider or provision of supports to a participant—this includes the obtaining or offering of any form of commission.

## Examples of conflicts of interest

The following are examples of conflicts of interest:

- financial interests
- personal and family relationships between employees/volunteers
- decisions regarding appointments, promotions or other decisions relating to employees
- acceptance of gifts or benefits e.g. monies, jewellery, make up, clothing, flights or holidays
- use of confidential and official information
- reproduction or use of copyright information for organisation's purposes only
- membership of, or employment in, another organisation that comes into serious competition with another organisation
- use of the organisation's facilities and equipment for personal benefit or the benefit of a third party.

## What is not conflict of interest

The following are not conflicts of interest:

- membership or affiliation with other organisations where there is no possible benefit or perception of benefit
- union representation or membership
- approved collaboration with other organisations.

## **Breach of conflict of interest policy**

Failure to disclose a potential, perceived or actual conflict of interest is a breach of this policy. Disciplinary action may follow if it is deemed to be an incident of misconduct, wrongdoing or an abuse of power.

## **How What Ability will avoid conflicts of interest**

To avoid conflicts of interest, What Ability will:

- focus on providing efficient and effective services which are individualised and responsive
- provide families with a range of options for services and providers
- maintain that the child or young person and their family is at the centre of supports and services
- enable declaration of any actual or potential conflicts of interest
- monitor and manage any declared conflicts of interest

## **Complaints and conflicts of interest**

Complaints about staff will be investigated by the VOOHC Coordinator. If a complaint is received about the CEO/LMT member or the VOOHC Coordinator, What Ability will employ and delegate this for review by an independent investigator.

## 13. Decision making and consent policy

### Legislation

National Disability Insurance Scheme Act 2013 (Cwth)  
 NDIS (Quality Indicators) Guidelines 2018 (Cwth)

### Introduction

*Consent* is the permission given by a person or substitute decision maker concerning decisions that affect a person’s life. Consent requires a person to be informed about what they are giving consent to or for. Consent requires an understanding of the decision at hand which is referred to as *capacity*. When a person has the capacity to make a particular decision, they can:

- understand the facts and choices involved
- weigh up the consequences, and
- communicate the decision.

Some people may need support to exercise their capacity to make decisions that affect them, and to increase their decision making skills and confidence. Participants are always presumed to have the capacity to make their own decisions and give consent when it is required, unless there is evidence otherwise. We don’t assume a person lacks capacity because of their age, appearance, disability, behaviour, language skills or any other condition or characteristic.

### Applicability

When consent is required
<ul style="list-style-type: none"> <li>• when a participant/child/young person (or their parents) provide us sensitive personal information</li> <li>• when providing supports and services to children, young people or participants</li> <li>• when creating or reviewing plans for children, young people or participants</li> <li>• before a child, young person or participant begins a planned activity</li> <li>• before a child, young person or participant undertakes a health assessment</li> <li>• when supporting children, young people or participants to have medical or dental treatment</li> <li>• when supporting children, young people or participants to take medicine</li> <li>• if we intend to share a participant’s personal information with a third party</li> <li>• before planning the use of any of the child, young person or participant’s funds</li> <li>• before implementing a behaviour support plan (whether the behaviour support plan includes a restrictive practice or not)</li> <li>• when images or video of the child, young person or participant is to be used for promotional purposes</li> <li>• when a forensic procedure is required for a police investigation.</li> </ul>

When consent is not required
<ul style="list-style-type: none"> <li>• any routine treatment or non-intrusive examination for diagnostic purposes, such as a visual examination of the mouth, throat, nose, eyes or ears</li> <li>• first aid medical or dental treatment</li> <li>• when urgent medical treatment is required to save the person’s life, to prevent serious damage to a person’s health or to alleviate significant pain or distress.</li> </ul>

Who
<ul style="list-style-type: none"> <li>• applies to all representatives of What Ability Pty. Ltd. including key management personnel, directors, full time workers, part time workers, casual workers, contractors and volunteers.</li> </ul>

## Consent for medical treatment

- the medical practitioner must advise the participant about the general nature and effects of the proposed treatment
- the medical practitioner must advise the child, young person (or their parents) or participant any risks associated with the proposed treatment
- the medical practitioner must advise the child/participant, young person (or their parents) of the general nature, effects, benefits and risks of alternative treatments or of not having treatment.

## Autonomous decision making

For participants with the capacity to make their own choices without support, all decisions must be referred to them.

Participants with the capacity to make their own choices can talk to family or friends, or carry out their own research before making any decisions. Young people with capacity for decision making should be involved in the decision making process as much as possible.

Children, young people and participants are supported to make informed choices about the benefits and risks of decisions under consideration.

## Supported decision making

Children, young person or participants that need help to make decisions and give consent will be supported in ways that best suits the individual, e.g. arranging an interpreter, supporter or advocate, getting information, communication tools, or arranging a certain time or place that best supports the child, young person (and their parents) or participant.

Where a participant has been assessed as not having the capacity to make his or her own decisions, we will support substitute decision makers, either informal or formal.

Where a child or young person has been assessed as not having the capacity to make his or her own decisions, we will refer decisions to the child or young person's parents (unless other form decision makers have been documented).

Children (to the best of their ability), young people or participants are always encouraged to make their own decisions no matter if their decision-making capacity is only small.

At any stage, children, young people (and their parents) or participants are provided sufficient time to consider and review their options and seek advice if required, e.g. during assessment, planning, provision, review and exit.

## **Impaired decision-making capacity**

If a child, young person or participant is assessed to have impaired decision-making capacity, substitute decision making is required. Impaired decision-making capacity is when a person is unable to make decisions at a particular time because they are incapable of either:

- understanding any information that may be relevant to the decision
- retaining such information
- using such information in the course of making the decision
- communicating his or her decision in any manner
- by reason of being comatose or otherwise unconscious, is unable to make a particular decision about his or her medical treatment.

A child, young person or participant's capacity can be lost or regained depending on a number of factors.

## **Informal decision making**

Informal decision making is where a person making a decision on behalf of another person has not been legally appointed.

Informal decision makers can include the person's parents, other family members, friends, carer or nominated support, and can help make decisions on behalf of a child, young person or participant about who the participant wishes to see, their work, leisure, recreation, holidays or accessing services.

Details for informal decision makers is recorded for each child, young person or participant and this information is available to all relevant workers.

## **Formal decision making**

Formal decision making:

- is where a legally appointed guardian or person responsible can make decisions for a child, young person or participant
- can assist if there is conflict over decisions being made about the person
- can assist if that person's safety or the safety of others is at risk and a guardianship order is in place by the relevant state or territory authority
- can assist where there is specific legislation that requires it, such as consent for medical treatment

Details for formal decision makers:

- is recorded for each child, young person or participant and this information is available to all relevant workers
- are recorded for children, young people or participants, if relevant, and are available to all relevant workers.

## Substitute decision makers

If there is uncertainty over who can provide consent when a supported person with an impaired decision-making capacity requires it, the order of priority is:

- a guardian (including an enduring, private or public guardian) who has been appointed with a medical and dental consent function
- a spouse, de facto spouse, or partner who has a close and continuing relationship with the person
- the carer or person who arranges care regularly and is unpaid (the carer's pension does not count as payment)
- the carer of the person before they went into residential care, or
- a close friend or relative

If a person above is not capable of consenting for the child, young person or participant, or they refuse to consent, the next person in the hierarchy can consent.

If we think it is in a supported person's best interest to get help from a substitute decision maker, we should:

- explain to the supported person why we think someone needs to make a decision for them
- ask the relevant state or territory authority (usually a civil administrative tribunal) to look at whether or not to appoint a guardian or administrator.

An application for consent by the relevant state or territory authority is required for supported person with impaired decision-making capacity for medical treatments which include:

- special medical treatment (e.g. termination of pregnancy, treatment likely to result in significant side effects, or for removal of tissue for transplanting to another person)
- significant medical or dental treatment, and there is no person responsible or the person responsible is not available, or
- significant or routine medical treatment when the patient is objecting and there is no appointed guardian authorised to override such objection.

## Consent rights for children, young people or participants

Consent is required every time a child, young person or participant seeks access to services to ensure they are fully informed of their rights and our obligations.

Children (to the extent of their capacity), young people and participants have the right to make decisions about things that affect their lives and to take calculated risks.

Children (or parents) and young people have a right to be involved in decisions that affect them in ways appropriate to their age and stage of development.



Each child (or parents), young person or participant must have sufficient time to consider and review their options and seek advice if required, at any stage of support provision, including assessment, planning, provision, review and exit.

A child (or parents), young people or participant has the right to withdraw or amend their consent if they wish.

## **Our consent responsibilities**

What Ability Pty. Ltd. will:

- encourage and support children (to the extent of their capacity), young people or participants to make informed decisions when their consent is required
- ensure consent arrangements for children, young people or participants, including any legal authorisations required, are recorded in the participant's file, and are reviewed and updated regularly
- ensure consent for financial matters is obtained from the participant, or legally appointed financial manager or person appointed under a Power of Attorney
- obtain consent from the child, young person participant or legally appointed guardian, for life decisions such as accommodation, medical and dental treatment, forensic procedures, and behaviour support
- obtain consent from the child, young person or participant prior to collecting, using and storing a participant's information and provide reasons why the information is needed
- obtain consent before disclosing any of a child, young person or participant's personal information (such as case notes, management plans or assessments) to other parties
- only disclose personal information without consent if we believe the person is at risk of harm, an unlawful act has occurred or as otherwise required by law
- not influence or limit decision making and self-determination with our interests, beliefs or values when providing decision making support.

## **How we obtain consent**

Consent from a child, young person or participant or a substitute decision maker should always be in writing but if this is not practicable, verbal consent is acceptable providing it is later confirmed in writing.

## **When consent is refused**

If consent is refused:

- a note of a child, young person or participant's refusal to consent must be documented in their file.
- there are no consequences for a participant, child or young person (or their family) in terms of receiving services.

## **When consent is not possible**

Informal decision making can help make decisions for the child, young person or participant when there is no legal arrangement.

Formal decision making may be required if there is conflict over decisions about the child, young person or participant, their safety or the safety of others is at risk, or the law requires it.

## 14. Human resources policy

### References

NDIS Quality, Safety and You online orientation training

### Introduction

This policy provides guidance on managing workers including:

- hiring new workers
- inducting new workers
- training new workers
- performance reviewing workers
- letting workers go
- worker resignations.

### Applicability

When
<ul style="list-style-type: none"> <li>• applies when managing new workers including hiring, training, performance reviewing and letting workers go.</li> </ul>

Who
<ul style="list-style-type: none"> <li>• applies to all What Ability Pty. Ltd. key management personnel.</li> </ul>

### When to hire new workers

Taking on workers allows the organisation to:

- offer additional services and supports
- provide services and supports to new participants
- improve the customer experience.

New workers should be hired when:

- participants are being turned away due to lack of workers to provide the requested supports or services
- participants are going elsewhere because the agreed supports or services cannot be provided
- the budget can afford new workers—in this case identify what gaps could best be filled with new workers
- new supports or services are planned and additional resources are required to provide those.

### Criteria for selecting new workers

- is the candidate suitably qualified for the role?
- will the candidate fit the culture?

- will the candidate be of value to the organisation?

## Employment contracts

All workers including full time, part time, casual or contractors require a documented and signed employment contract which sets out:

- the job title and type of job (e.g. full time, part time, casual or contract)
- the commencement date
- the worker's duties
- the worker's hours
- the worker's entitlements including any overtime or penalties
- the notice required for dismissal or resignation
- how changes to the employment contract can be made.

## Inductions of new workers

Inductions of new workers includes:

- completing the [NDIS Quality, Safety and You](#) online orientation training
- training on child safety, including the [Child Safe Standards](#)
- legislative requirements for working with vulnerable people
- how the new worker fits into the organisation
- the worker's general duties and responsibilities including duty of care expectations
- if the new worker is to be part of the Shared Lives team, voluntary out-of-home care philosophy, legislation and requirements
- behaviour support principles (restrictive practices, positive behaviour support, skills building, prohibited practices etc.)
- specific behaviour support plans of children or young people they will be supporting
- organisational policies and processes (e.g. abuse and neglect, bullying, harassment and discrimination, information security, risk management, WHS)
- training in preventing, identifying, responding to abuse, neglect, harm and exploitation
- incident reporting including referrals to appropriate authorities
- handling complaints and escalating complaints
- orientation of the work site (e.g. bathrooms, kitchen, parking, emergency exits)
- training involuntary out-of-home care and what is expected when providing this support.

## Position descriptions

Each worker role's documented position description outlines:

- identified skills and knowledge required for the role
- responsibilities of the role
- scope and limitations of the role
- any mandatory training required for the role.

## Performance management

What ability staff performance reviews are conducted at least annually by the worker's supervisor. Performance reviews are used to:

- identify performance issues early
- provide feedback
- build skills and confidence
- set clear performance measures
- keep the worker motivated and accountable.

## Worker grievances

A grievance is a wrong or hardship suffered (real or perceived), which is grounds for a complaint. A worker grievance can also include any allegation of discrimination, bullying or harassment by another worker or manager.

A worker with a grievance should, in order of preference:

- attempt to resolve the issue e.g. discuss the issue with the person involved
- if not resolved, notify their supervisor or manager, preferably in writing
- if still not resolved, the manager or supervisor should notify key management personnel of the issue
- if still not resolved, pursue the matter with external authorities.

## Dismissals

All worker dismissals are conducted in line with legislative requirements, this includes:

- the notice given
- the worker's entitlements
- organisational responsibilities
- record keeping to avoid claims of unfair dismissal.

Workers may be dismissed without prior notice if they are implicated in cases of serious misconduct, have seriously breached abuse and neglect, bullying, harassment and discrimination policies, or breached duty of care responsibilities.

Refer to the Manage worker performance process for more information on how dismissals can be carried out correctly.

## Resignations

Worker resignations should comply with the worker's employment contract including any required notice period. Workers that have resigned are given an opportunity to provide feedback via an exit interview.

## 15. Worker screening policy

### Legislation

Children’s Guardian Act 2019 (NSW)  
 Child Protection (Working with Children) Act 2012 (NSW)  
 NDIS (Practice Standards – Worker Screening) Rules 2018 (Cwth)  
 NDIS (NDIS Worker Screening Law) Determination 2020 (Cwth)  
 NDIS (Quality Indicators) Guidelines 2018 (Cwth)

### Introduction

Worker screening helps to reduce unnecessary risks to participants and ensure a high standard of quality of services. Worker screening ensures employees are properly qualified and have no criminal history.

This policy is mandatory and applies to all employees (including casual, temporary or permanent employees), board members, volunteers, self-employed people, contractors, subcontractors or consultants, and students undertaking training as part of an educational or vocational course or program (other than school students on work experience).

As of 1 February 2020, the NDIS worker screening check is now in effect. The new worker screening check establishes a nationally consistent approach to screening for workers by using a centralised database and a worker screening unit operating in each state and territory. All registered providers are required to maintain a list of risk-assessed roles which require a valid NDIS worker screening clearance (or equivalent state or territory screening check during the transition period).

### Applicability

When
<ul style="list-style-type: none"> <li>• applies to supports and services provided to all participants.</li> </ul>

Who
<ul style="list-style-type: none"> <li>• applies to What Ability Pty. Ltd.’s CEO, all staff, volunteers, contractors and subcontractors.</li> </ul>

## Identifying personnel that require a worker screening check

Our organisation will assess all roles and identify all risk assessed roles. All risk assessed roles require worker screening checks. According to the NDIS Commission, risk assessed roles include:

- key management roles
- roles that include the provision of direct supports or services for a person with a disability as part of normal duties
- roles that require more than incidental contact with a person with a disability, this includes:
  - physical touch
  - building rapport
  - working with multiple people with a disability as part of a service or in a disability accommodation setting.

Other roles that are generally not risk assessed (e.g. administrative staff) do not require a worker screening check. However, we may request workers that are not risk assessed to also complete worker screening checks.

## Pre-employment checks

When taking on a new employee, the organisation requires:

- at least one referee check (two recommended)
- an NDIS worker screening clearance (or during the transitional period, a criminal record check\* that is less than 4 years old)
- a valid WWCC (if services are provided to participants under 18 years of age).

Note 1: What Ability staff will not be engaged in child-related work unless the staff member's WWCC has been verified on the Office of the Children's Guardian website.

Note 2: All employees with existing criminal records checks are required to apply for a new NDIS worker screening clearance prior to the expiry of their criminal records clearance. What Ability must be suitably satisfied that any criminal record check certificate is genuine and has been prepared by an Australian police service or an ACIC-accredited agency.

## NDIS worker screening clearance

When an applicant applies for an NDIS worker screening clearance, the worker screening unit considers a range of factors including the applicant's criminal history, disciplinary misconduct, and other relevant history to determine whether they present an unacceptable risk of harm to people with disability in the course of undertaking their work.

When a check is finalised, the applicant is granted:

- a clearance—they are permitted to work with people with disability in a risk assessed role for a registered NDIS provider, or
- issued with an exclusion—they are prohibited to work with people with disability in a risk assessed role for a registered NDIS provider.

## Objections to an NDIS worker screening check

If a prospective employee refuses an NDIS worker screening check (or equivalent check during the transition period), this person *cannot* be employed in a risk assessed role.

## Working with children check

A Working With Children Check (WWCC) is a check system of a person's criminal history specifically relating to crimes involving children. A WWCC is valid for 5 years. The person whom the WWCC is for is responsible for ordering a WWCC and paying the cost. Note that a WWCC is not a substitute for an NDIS worker screening clearance.

All staff WWCCs, including the Organisations key personnel will be checked for validity with the [Children's Guardian](#) by the VOOHC Coordinator. Workers and managers cannot verify their own WWCC. The VOOHC Administration verifies the Organisation's key personnel's WWCC. Any worker with a WWCC bar or interim bar must be removed from child-related work.

## Worker screening exemptions

A worker may be allowed to undertake risk-assessed roles before obtaining their worker screening checks if:

- they are in the process of obtaining a clearance
- they are supervised by a worker that has received all necessary checks, and
- there is a relevant and thorough risk management plan in place.

High school students on formally organised work placements do not need worker screening checks. At all times, students on work placement must be directly supervised by a worker that has received all necessary checks.

## Hiring contract workers

We will identify all contract workers that intend to engage in risk-assessed roles and ensure that only workers with appropriate checks (or legitimate exemptions) can work with participants. We will arrange a formal contract with the company responsible for the contract worker. This contract will include sections about:

- all relevant worker screening requirements
- the requirement to disclose reasons (if there are any) for the contract worker not being able to work in risk-assessed roles (e.g. exclusion or suspension)
- the requirement for a contractor to comply with our requests to assist with investigating incidents and complaints involving their worker
- responding to requests for information about how the company is complying with their contractual obligations
- extending all obligations to all workers that are engaged by the contractor to provide services for our organisation.



## Managing worker screening records

We will maintain an up-to-date list of workers that engage in risk-assessed roles and record this in a risk assessed roles register. This register will include the following information:

- the worker's name, date of birth and address
- the risk-assessed role that is undertaken by the worker
- details of their exemptions (if the worker has one), including:
  - exemption start and end date
  - name of the worker's supervisor
- if the worker is applying for a check, their application number and the due date of the outcome
- if the worker has their clearance, the reference number and expiry date
- any information about any suspensions or exclusions and actions taken in response
- information by any allegations against a worker with a clearance, including
  - details of the allegations
  - actions we have taken in response to the allegations.

## 16. Incident management policy

### Legislation

Child Protection (Working with Children) Act 2012 (NSW)

Children’s Guardian Act 2019 (NSW)

NDIS (Incident Management and Reportable Incidents) Rules 2018 (Cwth)

### Introduction

This policy defines incidents including serious incidents and incidents which are reportable to the NDIS Quality and Safeguards Commission, and reportable conduct which is reportable to the Office of the Children’s Guardian. An incident is broadly defined as:

- any event or circumstance that resulted, or could have resulted, in unintended and/or unnecessary harm to a person, or loss or damage to property
- a near miss which did not cause harm, but had the potential to do so
- a medication error involving a preventable event that may cause or lead to inappropriate medication use or harm to a participant while being supported
- any event which deviates from standard policy or procedure
- anything illegal (e.g. assault, sexual misconduct, fraud).

Disclosing reports or alleged misconduct by the VOOHC Coordinator or the CEO will be made to another member of the What Ability Leadership Management Team.

### Applicability

When
<ul style="list-style-type: none"> <li>• applies to supports and services provided to all participants.</li> </ul>

Who
<ul style="list-style-type: none"> <li>• applies to all representatives of What Ability Pty. Ltd. (referred to hereafter as What Ability), including key management personnel, directors, full time workers, part time workers, casual workers, contractors and volunteers.</li> </ul>

### Our commitment

- we are committed to ensure the rights of people with disability are upheld and supported
- we aim to provide a high standard of duty of care and to ensure the safety and well-being of each participant using our services, our employees and members of our community
- we will foster a culture of continuous improvement with a proactive approach to preventing incidents
- if an incident occurs, we will promptly and appropriately respond to the incident in an equitable, objective and fair manner
- we will record all incidents, report (if required) and investigate (if required)

- we will ensure the principles of procedural fairness are maintained by providing those affected an opportunity to give their side of the story and to comment on any adverse views
- we will maintain an incident management system to aid in recording, managing and resolving incidents
- the incident management policy and process is accessible to workers via the Centro ASSIST web app
- the incident management policy and process is provided to participants and stakeholders via email or hard copy during on-boarding and at any time by request
- comply with the reportable conduct scheme as per the Children's Guardian Act 2019 (NSW).

## Organisational responsibilities when responding to incidents

When responding to an incident, it is the organisation's responsibility to:

- immediately respond to an incident to ensure the safety and wellbeing of participants and others at risk
- report to police (if appropriate)
- contact relevant support services e.g. sexual assault support services (if appropriate)
- conduct a risk assessment for any reportable incidents (see Risk management for more details)
- preserve evidence of the incident
- notify relevant next of kin, family or guardian (as appropriate)
- plan and undertake actions to provide ongoing support to those affected by the incident
- document key actions undertaken in an internal incident report
- The VOOHC Coordinator (or delegate) will review each incident within 24 hours of the incident being reported by the Support Worker involved
- the VOOHC Coordinator (or delegate) will document incidents in the Incident Register as soon as an incident has been reported (within 24 hours of the incident occurring)

**Note:** If the incident occurs after hours, the VOOHC Coordinator or CEO can be contacted via phone.

## Incident escalations

At What Ability, all incidents are handled according to an incident escalation process.

If reportable/notifiable (or unsure) contact the VOOHC Coordinator immediately after becoming aware of the incident. Information required will be: -

- Name and address of the person giving notice - Date and time of the event - The place where the dangerous occurrence happened - The apparent cause - The nature and extent of the damage or harm - The work that was being carried out at the time of the incident - Name and contact details of any injured/affected parties
- Follow the process set down in the NDIS (Incident Management and Reportable Incidents) Rules.

- Contact the NDIS Commission, the Police and SafeWork NSW, (where applicable) and implement the Freedom from Abuse, Neglect Violence and Exploitation policy if required.
- Caution must be taken not to commence the investigation without adequate information as this may contaminate evidence
- The VOOHC Coordinator or LMT delegate should clarify the nature of the incident by using who, what, where questions only and document the allegation in the words used by the reporter/witness.

The person with management or control of the workplace must ensure, so far as reasonably practicable, that the site where the incident occurred is not disturbed until either a SafeWork NSW inspector, Police, NDIS Commission or What Ability Leadership Team informs you that the area is no longer required to be preserved.

Note: If the incident is notifiable and you are unsuccessful in contacting What Ability Leadership Team (in the first instance) within the required time, contact SafeWork NSW, NDIS Commission and/or the Police directly.

Incidents that must be reported to the [NDIS Quality and Safeguards Commission](#) include any incident that involves:

- the death of a participant
- the serious injury of a participant
- abuse or neglect of a participant
- unlawful sexual or physical contact with, or assault of, a participant
- sexual misconduct committed against, or in the presence of, a participant, including grooming for sexual activity
- unauthorised use of a restrictive practice in relation to a participant.

Other incidents may require reporting to other agencies, for example:

- data breach or breach of personal information ([OAI](#))
- injury or death of a worker while on duty (local state or territory [WHS authority](#)).

For VOOHC services, incidents that involve reportable conduct must be reported to the OCG.

This includes any incident that involves:

- a sexual offence
- sexual misconduct
- ill-treatment of a child
- neglect of a child
- an assault against a child
- an offence under section 43B or 316A of the Crimes Act 1900
- behaviour that causes significant emotional or psychological harm to a child.

As a registered VOOHC agency, What Ability must notify the OCG as soon as possible after being made aware of an allegation or conviction by a worker (no later than 7 business days after becoming aware).

For incidents alleged to involve workers as part of VOOHC services, we must provide a report to the Children's Guardian which includes:

- details of the allegation or conviction
- whether the worker has been the subject of disciplinary action or other action, and the reasons for taking or not taking this action
- any written submissions made by the worker about what action should be taken against them.

The report to the Children's Guardian must be submitted within 30 days of the CEO becoming aware of the incident unless all of the following are provided:

- an interim report
- a reason for not submitting a report within 30 days
- an estimated timeframe for the complete report.

All incidents involving crimes such as assault, theft and fraud must be reported to police.

## Responsibilities of management

Key management personnel are responsible for:

- ensuring employees have the necessary skills to manage incidents
- recording serious incidents
- managing escalated incidents and serious incidents
- risk assessment
- reporting serious incidents to the NDIS Quality and Safeguards Commission
- reporting reportable allegations related to voluntary out-of-home care to the Children's Guardian
- reporting matters that involve a criminal element to the police and matters that reach the risk of significant harm threshold to the Department of Communities and Justice Child Protection Helpline
- responding to any media enquiries
- investigating incidents or arranging an external investigator to investigate
- reviewing incidents and instigating improvements.
- The Chief Executive Officer (CEO) is the organisational representative with overall responsibility for these processes.

Note: The CEO may choose to delegate this process to the VOOHC Coordinator/an LMT Delegate if the CEO is unable to complete these process duties. In these circumstances, this delegation will be documented in the records of the management of the incident.

- Incidents relating to senior management should be reported to another member of the LMT to ensure any actual and/or potential conflicts of interest are managed appropriately. LMT will nominate a delegate to take over the investigation of the incident and management of the conflict of interest.
- An external third party investigator may also be nominated to investigate the matter.

## **Responsibilities of workers**

Workers are responsible for:

- immediately respond to any incident to ensure the safety and wellbeing of participants and any others at risk
- report any serious incident to the VOOHC Coordinator immediately, to ensure appropriate support is provided, and actions are taken
- provide any additional information required by the VOOHC Coordinator to enable appropriate incident response and management
- promptly document any incidents using the on-line incident reporting tool (within 24 hrs)

## 17. Incident management process

### Start

This process defines incidents including serious incidents such as any incident reportable to the NDIS Quality and Safeguards Commission or any incident involving reportable conduct which is reportable to the Office of the Children's Guardian.

An incident is broadly defined as:

- any event or circumstance that resulted, or could have resulted, in unintended and/or unnecessary harm to a person, or loss or damage to property
- a near miss which did not cause harm, but had the potential to do so
- a medication error involving a preventable event that may cause or lead to inappropriate medication use or harm to a participant while being supported
- any event which deviates from standard policy or procedure
- anything illegal (e.g. assault, sexual misconduct, fraud).

If the incident involves a participant, the participant has the right to (and must be supported to) access an advocate at any step of this process, if they wish.

### Step 1 – Identify incident

Incidents that must be recorded and managed include:

- any incident where a participant/child/young person is harmed or could have been harmed while being supported
- any breach of privacy and confidentiality of an individual's personal information which has the potential to expose them to harm
- any incident where another person (e.g. a worker, a member of the general public, or another participant being supported) is harmed or could have been harmed by a participant/child/young person while being supported
- any serious incident that occurred, or alleged to have occurred, while a participant/child/young person is being supported.

A serious incident is any incident that involves:

- the death of a participant/child/young person while being supported
- a serious injury of a worker while on duty, or a participant/child/young person while being supported
- abuse or neglect of a participant/child/young person while being supported
- unlawful sexual or physical contact with, or assault of, a participant/child/young person while being supported, or a worker while on duty
- sexual misconduct committed against, or in the presence of, a participant/child/young person while being supported, including grooming of the person for sexual activity
- unauthorised use of a restrictive practice in relation to a participant/child/young person
- any discrimination, bullying or harassment of a participant/child/young person while being supported, or a worker while on duty
- a data breach or breach of privacy and confidentiality which poses a serious risk to the individuals affected as a result of the breach.

All serious incidents involving NDIS participants (also known as reportable incidents) must be reported to the NDIS complaints commissioner.

All incidents involving children and reportable conduct will be reported to the Children's Guardian within 7 business days of becoming aware of the incident.

A data breach, where there is a serious risk of harm to the persons affected by the data breach, must be reported to the [Office of the Australian Information Commissioner \(OAIC\)](#).

## **Step 2 – Record incident**

An incident report can be made to the Leadership Management Team in person, via phone, email, note or by using the online incident report process. If the incident occurs after hours, the VOOHC Coordinator or CEO can be contacted via phone. Additionally, the online incident report form prompts staff to notify the VOOHC Coordinator or LMT member via phone when an incident occurs as part of the report process.

If reportable/notifiable (or unsure) contact the VOOHC Coordinator immediately after becoming aware of the incident. Information required will be:

- o Name and address of the person giving notice
- o Date and time of the event
- o The place where the dangerous occurrence happened
- o The apparent cause
- o The nature and extent of the damage or harm
- o The work that was being carried out at the time of the incident
- o Name and contact details of any injured/affected parties

Follow the process set down in the NDIS (Incident Management and Reportable Incidents) Rules.

Contact the NDIS Commission, the Police and SafeWork NSW, (where applicable) and implement the Freedom from Abuse, Neglect Violence and Exploitation policy if required.

The person with management or control of the workplace must ensure, so far as reasonably practicable, that the site where the incident occurred is not disturbed until either a SafeWork NSW inspector, Police, NDIS Commission or What Ability Leadership Team informs you that the area is no longer required to be preserved.

Note: If the incident is notifiable and you are unsuccessful in contacting the What Ability Leadership Team (in the first instance) within the required time, contact SafeWork NSW, NDIS Commission and/or the Police directly.

The VOOHC Coordinator and LMT members receive notification of all incidents as soon as they are logged by a staff member, and must read and review each incident within 24 hours of the incident being logged.



### Step 3 - Escalate incident

All serious incidents must be escalated to management to direct the incident response and to report the incident, if required, by the VOOHC Coordinator or LMT delegate.

NOTE: wait for clearance from DCJ or police before starting preliminary investigations into an incident.

### Step 4 – Respond to incident

NOTE: wait for clearance from DCJ or police before starting preliminary investigations into an incident.

To respond to an incident:

- see to the participant's immediate needs
- provide first aid or call an ambulance
- provide the participant appropriate support
- notify parents, family or guardian
- report to police (if necessary)
- record details of the incident (internal incident report)
- provide additional employee training, or discipline/remove the employee
- investigate incident, review and update relevant participant support plans or risk management plans.

Use the internal incident report recorded to add a summary, with the outcome, to the incidents register (internal document for recording incidents).

Incidents related to voluntary out-of-home care must be assessed by the VOOHC Coordinator or LMT delegate as to whether a risk assessment is required. The risk assessment should consider:

- whether a risk of serious harm (ROSH) report to Department of Communities and Justice (DCJ) is required
- risks to the child or young person
- risks to other children or young people
- risks to the alleged perpetrator
- risks to What Ability Pty. Ltd.'s reputation
- risks to the integrity of the investigation.

If any employee suspects that a child or young person is at ROSH, they should access the Mandatory Reporter Guide ([MRG](#)) as well as seek the assistance from the CEO, VOOHC Coordinator or LMT delegate.

The VOOHC Coordinator or LMT delegate will consider whether the matter:

- should be reported to the Child Protection Helpline
- should be reported to the Police
- is a reportable incident allegation

## Step 5 – Does the incident require reporting?

Any reportable incident or serious incidents that involves the following must be reported to the NDIS Commissioner within 24 hours by the VOOHC Coordinator or LMT delegate:

- the death of a participant while being supported
- serious injury of a participant while being supported
- abuse or neglect of a participant while being supported
- unlawful sexual or physical contact with, or assault of, a participant while being supported
- sexual misconduct committed against, or in the presence of, a participant while being supported, including grooming of the person for sexual activity
- the unauthorised use of a restrictive practice relating to a participant.

Any other type of serious incident, not listed above, (e.g. restrictive practice) must be reported to the NDIS Commissioner within 5 business days by the VOOHC Coordinator or LMT delegate.

Note: the NDIS commissioner may request other information in addition to what is described under record incident.

Incidents involving a child or young person while in a voluntary out-of-home care placement, must be reported to the Children's Guardian within 7 business days of becoming aware of the incident by the VOOHC Coordinator or LMT delegate.

### Reporting required?

**If yes, go to Step 6**

**If no, go to Step 7**

## Step 6 - Reporting incidents

The VOOHC Coordinator or LMT delegate submits an incident report as soon as possible (either an immediate notification form or a 5 day notification form) to the NDIS Commission along with any additional documents and details related, such as participant lifestyle plans, management plans, and any other details related to the incident/complaint and resolution.

The NDIS commissioner may in turn refer the incident on to:

- police
- worker screening units
- consumer affairs agencies
- other regulatory bodies.

If the incident is related to voluntary out-of-home care, the VOOHC Coordinator or LMT delegate reports the incident to the Children's Guardian.

If the incident is a data breach, the CEO (or delegate) may be required to report it to the Office of the Australian Information Commissioner (OAIC) if it is deemed to be a notifiable data breach.

## Step 7 - Assess the need for investigation

Generally, any incident that needs to be reported by the VOOHC Coordinator or LMT delegate to the NDIS Quality and Safeguards Commission will require a formal investigation.

Where an incident does not require reporting to the NDIS Commission, What Ability may decide to conduct an internal investigation regardless to ensure improvements can be made.

**Is investigation required?**

**If yes, go to Step 9**

**If no, go to Step 10**

## Step 8 - Unauthorised use of a restrictive practice

Did the incident involve an unplanned or unauthorised use of a restrictive practice in relation to a participant?

**Unauthorised use of a restrictive practice?**

**If yes, go to Step 11**

**If no, go to Step 9**

## Step 9 – Investigate incident

An investigation involves the planned and systematic gathering and analysis of all relevant facts through obtaining evidence by interviewing witnesses, examining documentation, skilled observation and obtaining expert opinion. An investigation into alleged worker to participant incidents or unexplained injuries must be person-centred.

Depending on the severity of the incident, the investigation should be carried out by an investigator, preferably someone impartial who could be:

- a senior worker
- key management personnel
- an external investigator.

The investigation should be carried out maintaining privacy and confidentiality. The result should be communicated with the participant, their family and advocate (if involved).

The investigation report should include:

- a description of the matter investigated
- details of the allegations
- details about the investigation, e.g. witnesses interviewed
- documentary evidence considered
- summary of the key evidence
- conclusions and findings based on the salient evidence.

Refer to the Investigate incident process for more details.

## **Step 10 - Resolving the incident**

Resolving an incident involves addressing any underlying patterns or causes of the incident and implementing improvements to the service to minimise recurrence of similar incidents.

Provide appropriate feedback to all parties involved while keeping in mind confidentiality and privacy requirements.

Provide participants, their family, and advocate (if involved), opportunities to provide feedback on the response, investigation (if a formal investigation was carried out) and resolution.

If the incident is a notifiable data breach, urgent remedial action is required and affected persons notified.

**Go to Step 12**

## **Step 11 - Develop interim behaviour support plan**

Work with a behaviour support practitioner to develop an interim behaviour support plan for the participant involved in the incident.

**Go to Step 9**

## **Step 12 - Review incident**

Review the incident by examining the incident from start to finish, analysing the investigation report (if a formal investigation was carried out), and reviewing response and feedback.

Improvements or corrections can now be made to ensure a similar incident does not occur again. These may include:

- additional training of workers
- better supervision of workers
- changes to routines or rosters within a service
- reviewing and refining support plans for certain participants
- improving information security (if the incident was a data breach).

Any risk assessments conducted in the course of resolving the incident should be stored with the incident documents.

When required, the outcome of an incident investigation must be provided to the NDIS Quality and Safeguards Commission.

## **Conflict of Interest**

The NDIS Terms of Business for Registered Providers and NDIS Practice Standards require providers to have policies about potential conflicts of interest in service delivery including incident reporting and management.

What Ability and its team members will ensure that when providing support to participants, any conflict of interest is declared and any risks to participants and their family/carers are mitigated. All employees will act in the best interests of participants and other stakeholders, ensuring that participants are informed, empowered and able to maximise choice and control. Staff members will not (by act or omission) constrain, influence or direct decision-making by a person with a disability and/or their family so as to limit that person's access to information, opportunities, and choice and control.

Employees will ensure that What Ability proactively manages perceived and actual conflicts of interest in service delivery. Employees will:

- Manage, document and report on individual conflicts as they arise, and
- Ensure that advice to a participant about support options (including those not delivered directly by What Ability is transparent and promotes choice and control.)

As required by the NDIA Terms of Business, all participants will be “treated equally, and no participant [shall be] given preferential treatment above another in the receipt or provision of support”.

What Ability or its staff must not accept any offer of money, gifts, services or benefits that would cause them to act in a manner contrary to the interests of a participant or their family carer. Further, employees must have no financial or other personal interest that could directly or indirectly influence or compromise the choice of provider or provision of supports to a participant. This includes the obtaining or offering of any form of commission by employees or What Ability.

Furthermore, staff are not to act in a way that could directly or indirectly influence or compromise the choice of provider or provision of supports to a participant so as to benefit a family member, friend or any other person associated with that employee, another employee or the organisation.

Any actual or perceived conflict of interest must be reported to the VOOHC Coordinator or CEO and recorded in the conflict of interest register. If a team member is unsure they must discuss the situation with the VOOHC Coordinator, CEO and/or the General Manager and document the situation as required.

If the perceived or actual conflict of interest involves a direct manager or senior management, the leadership management team would nominate a delegate to take over the investigation and management of the conflict of interest. An external third party investigator may also be nominated to investigate the matter.

## 18. Incident investigation process

### Start

This process provides the steps to follow to investigate an incident that involves a participant/child/young person. All incidents reportable to the NDIS Quality and Safeguards Commission or the Children's Guardian must be investigated. However, if police or Department of Communities and Justice (DCJ) are involved, clearance should be confirmed prior to starting an investigation.

### Step 1 - Preliminary assessment

Perform a preliminary assessment to:

- establish a specific and accurate account of the incident
- identify potential witnesses
- if appropriate, arrange for the relevant worker to be stood down or moved pending the investigation.

Ensure the immediate needs of the participant/child/young person are taken care of, including:

- providing appropriate medical attention or first aid if necessary, including a forensic medical assessment if appropriate
- separating the alleged worker involved
- any other appropriate support.

Consider the support needs of other participants/children/young people, remembering they are not just potential witnesses.

Consider any conflicts of interest for all involved in the investigation.

Follow appropriate reporting requirements including:

- the NDIS Quality and Safeguards Commission (reportable incidents)
- the Office Children's Guardian (reportable conduct related to voluntary out-of-home care)
- the police (anything illegal such as assault, sexual misconduct or fraud).

When an allegation relates to substitute residential care provided to children in statutory out-of-home-care, What Ability will contact the OCG Reportable Conduct Directorate to seek determination should there be any question about whether an allegation is within the jurisdiction of the Reportable Conduct scheme.

Preserve relevant evidence including physical or documentary evidence (take photos and record descriptions of injuries if appropriate) which may be critical to an investigation by police or service provider.

Management assess the need to conduct a risk assessment which considers:

- whether a risk of serious harm (ROSH) report is required for DCJ
- risks to the participant/child/young person
- risks to other participants/children/young people
- risk to the alleged perpetrator
- risks to What Ability Pty. Ltd. reputation
- risks to the integrity of the investigation.

## Step 2 - Plan investigation

To plan an investigation:

- appoint a manager to coordinate the investigation, this should be someone separate to the team supporting the participant/child/young person
- if the alleged perpetrator is a manager, appoint an external investigator in order to conduct an independent investigation
- if the matter has been referred to police for possible criminal charges, check with police before starting an investigation
- if the matter has been referred to DCJ (mandatory reporting), check with DCJ before starting an investigation
- keep relevant parties informed of the progress throughout the investigation
- set the purpose and scope of the investigation
- review the preliminary assessment including incident reports, all known details, circumstances, timeframes and witnesses
- appoint an investigator—incidents involving worker to participant assaults, serious unexplained injuries or potentially criminal conduct, are best handled by an external investigator, ideally someone experienced in interacting with persons with disability
- determine the framework for the investigation including:
  - o scope and purchase
  - o timeframes
  - o resources required
  - o any requirements or conditions to ensure maximum feasible involvement of the participant
  - o arrangements for an interview with the participant/child/young person with the presence of a support person (or parent for children or young people)
  - o witnesses to be interviewed and the order of interviews
  - o arrangements to interview the alleged perpetrator
  - o documentary evidence to be reviewed by the investigator
  - o arrangements for site visits
  - o arrangements to obtain expert evidence, e.g. a forensic medical assessment
  - o plans for communicating with other participants, families and workers
  - o reporting and review arrangements (for more complex investigations)
  - o a plan for effective communications with the participant, their family and advocate.

### **Informing the employee involved**

The CEO and the VOOHC Coordinator will assess the potential risk to the investigation or any individual's health and safety **before** informing an employee about a reportable allegation against them

What Ability will NOT inform the employee about the reportable allegation if doing so would compromise the investigation or put a person's health or safety at serious risk. Any decision of this kind will be documented and provided to the Guardian.

Any employee who is the subject of an allegation will be advised **as early in the process as possible** that an allegation has been raised:

- that it will be investigated
- that the allegations are reportable allegations and they have been notified to the Children's Guardian.
- the status of the response and
- what they can expect
- that information may be gathered (including using Chapter 16A to gather information from other agencies such as the DCJ).

Note: It is generally not appropriate to provide the details of the allegation(s) at that stage to the employee, as it can compromise the integrity of the investigation.

### **Support for the employee involved**

It may be stressful for employees to learn that a reportable allegation has been made against them. What Ability will provide support to the employee during this process, and will reassure the employee at the allegation stage that:

- no decision has been made regarding whether or not the alleged conduct occurred
- that the employee will be provided with the details of the allegation as soon as they are fully known
- they will be given an opportunity to respond to them, and
- If required, support and relevant information will be provided regarding mechanisms and avenues for internal and external appeals.

## **Step 3 - Investigation**

The investigator should understand the key elements of investigations:

- principles of procedural fairness
- confidentiality and privacy
- the civil standard of proof
- appropriate interview techniques
- avoiding leading questions
- evidence that is relevant to the facts at issue
- weighing the evidence according to the type of evidence
- recording the interview.



Interview the participant/child/young person in a way the person can understand:

- explain why the discussion is taking place
- explain that the person has the right to ask for a break or end the discussion at any time
- regularly check if the person would like a break
- use open-ended questions rather than questions likely to result in 'yes' or 'no' answers
- ask clear and brief questions using short words and sentences
- break down complicated concepts or information into smaller chunks
- ask the person to repeat the questions in their own words (if they have sufficient verbal skills)
- allow enough time for the person to answer the question.

Additionally, if the alleged perpetrator is an employee, be sure to:

- provide all allegations, framed appropriately, to the employee with sufficient notice
- explain the consequences of an adverse finding
- provide an option of a support person during investigation interviews
- provide the employee a genuine opportunity to respond to the allegations.
- provide the outcome of the investigation will be given to the employee in writing prior to finalising the investigation report.

The investigation process should:

- balance formality with flexibility
- consider all possible scenarios and causes in detail along with all types of evidence.

The investigation report should include:

- a description of the matter investigated
- details of the allegations
- details about the investigation, e.g. the witnesses interviewed
- documentary evidence considered
- summary of the key evidence
- summary of conducted risk assessments
- conclusions and findings based on the salient evidence while taking care to distinguish findings of facts and findings of opinion.

## **Step 4 - Decision making and investigation response**

The investigation manager scrutinises the investigation report carefully and considers whether:

- the findings are well founded
- the investigator has provided a clear and strong case based on reasonable probability the events are likely to have happened according to one view or another
- all possible evidence has been sought and considered, and the investigation does not rely on a single piece of evidence or opinion such as a forensic medical report
- the findings and recommendations include both matters of evidence and matters of outcomes (for participants and workers).

The investigation should also address any underlying patterns or causes of the incident so that systemic and practice improvements can be implemented to minimise the occurrence of similar incidents.

Findings of evidence related to alleged worker to participant assault, and whether allegations are an adverse finding or a non-adverse finding, the following language is recommended:

- adverse finding
  - used when there is sufficient evidence that the reported conduct occurred
- non-adverse finding
  - insufficient evidence—used when there is some evidence that the reported conduct occurred but not enough evidence to make a conclusive finding
  - lack of evidence of weight’—used when there is no evidence of weight that the reported conduct occurred.

Findings of outcomes should be considered from the participant’s perspective in order to acknowledge and remedy the situation. The findings should take into account:

- the impact on the participant
- whether the incident could have been prevented
- how the incident was managed and resolved
- whether other persons or bodies need to be notified.

The child/participant and parent/guardian will be advised—at least in broad terms—of the decisions and actions resulting from the investigation, including actions taken or planned to prevent future occurrences.

The investigator will draw up an action plan to address the matters and monitor the plan until all actions are finalised.

Appropriate action will be taken if an allegation against a worker is an adverse finding—the worker must not work again in the same setting. It will be documented whether or not disciplinary action has or will be taken against the perpetrator.

Where an allegation is a non-adverse finding , consider whether it is appropriate for the worker to continue working with the participant.

If action is to be taken as a result of the investigation, this should be documented including the reasons for taking such action. This also includes documenting if no action is to be taken and the reasons for not taking such action.

All investigations, whether allegations are an adverse finding or a non-adverse finding, provide opportunities for practice or systemic improvement.

For incidents relating to workers who lack skills in managing behaviours of concern or not getting the required support needed for complex work, the following may be considered:

- additional training for workers
- improved supervision of workers

- changes to routines or rosters
- reviewing and refining support plans for certain participants.

A final risk assessment will be conducted and documented at the end of the investigation by the manager of the investigator, in consultation with the VOOHC Coordinator or HRE/LMT delegate.

The employee who is the subject of the allegation can seek an internal appeal or review by contacting their direct supervisor/manager or LMT delegate should their direct supervisor/manager be involved in the investigation or unavailable. A complaint can be made by the subject of the allegation under Section 28 or the *Children's Guardian Act 2019*.

If required, What Ability will report the investigation findings and outcome to the NDIS Quality and Safeguards Commission within 60 days.

The HRE/CEO will advise the Children's Guardian within 7 days of the findings they have made after completing the investigation, including whether they have made a finding of reportable conduct, and will send the OCG the investigation report within 30 days of the CEO becoming aware of the incident, including copies of documentation that is relevant to the report.

A finding of reportable conduct in relation to sexual misconduct, a sexual offence or a serious physical assault will be referred within the Office of the Children's Guardian to the Guardian's Working with Children Check Directorate by the HRE/CEO within 7 days.

The HRE/CEO will also refer this information to the Guardian's Working with Children Check Directorate if it meets the threshold for consideration of an interim WWCC bar pending a formal risk assessment.

The HRE/CEO will also inform an employee of a finding of reportable conduct against them and that a consequent report has been made to the WWCC Directorate in relation to sustained findings of sexual misconduct, a sexual offence or a serious physical assault.

## 19. Leaving VOOHC policy

### Introduction

This policy provides guidelines on when a child or young person leaves VOOHC. A child or young person may leave VOOHC for one of three main reasons. These are:

- parents relinquishing care after a VOOHC placement
- a child or young person enters supported or statutory care after a VOOHC placement
- a young person turns 18 years of age.

### Applicability

When
<ul style="list-style-type: none"> <li>• when this policy applies when providing VOOHC services to a child or young person.</li> </ul>

Who
<ul style="list-style-type: none"> <li>• this policy applies to all representatives of the organisation involved in providing VOOHC services.</li> </ul>

### After VOOHC placement

When a child or young person's VOOHC placement is complete, we must ensure the child or young person leaves VOOHC in the custody of a parent or a person authorised by a parent.

### Parents relinquishing care after VOOHC placement

In certain circumstances, the parents of a child or young person may choose not to resume care of a child or young person after a VOOHC placement. In this case, we will:

- continue the placement for a short period, or
- assist the parents to access an alternative emergency placement while the child or young person's longer-term care arrangements are settled, and
- urgently notify the Department of Communities and Justices (DCJ) office closest to where the family resides that the parents are refusing to resume caring for the child or young person.

We will make a report to the Child Protection Helpline (or the relevant child wellbeing unit) if:

- the parents are unwilling or unable to resume providing shelter, food and supervision for the child or young person at the time a VOOHC placement ends, and
- we (and parents) are unable to arrange alternative shelter, food and supervision for the child or young person.

## **Updating the VOOHC Register**

The VOOHC Register will be updated by What Ability within 5 days of a VOOHC placement ending, including entering the date on which the child/participant or young person ceased to be in a VOOHC placement provided by What Ability.

## **A child or young person entering supported or statutory care**

Where a child or young person enters supported or statutory care whilst in a VOOHC placement i.e. is placed into the care of the Secretary of Department of Communities and Justice (DCJ), What Ability will exit the child/young person from the VOOHC Register on the date the temporary or court order came into effect.

## **Turning 18 years**

Where a young person turns 18 years old, the young person must be exited from the VOOHC Register on his/her 18th birthday. He or she may remain in our care, but for the purposes of the VOOHC Register, he/she is no longer in VOOHC. Any current supervision or case plan notification should also be surrendered. What Ability will contact the Children's Guardian to surrender any such notification.

## 20. Manage suspected Risk of Serious Harm (ROSH)

### Relevant legislation

Children's Guardian Act 2019 (NSW)

Children and Young Persons (Care and Protection) Act 1998 (NSW)

Education Act 1990 (NSW)

### Start

This process describes the steps What Ability Pty. Ltd (referred hereafter as What Ability) will take in the event a child or young person is suspected to be at risk of serious harm (ROSH).

### NSW Child Safe Standards

What Ability Pty. Ltd. (referred hereafter as What Ability) is a child safe organisation that adheres to the 10 Child Safe Standards -

1. Child safety is embedded in organisational leadership, governance and culture
2. Children participate in decisions affecting them and are taken seriously
3. Families and communities are informed and involved
4. Equity is upheld and diverse needs are taken into account
5. People working with children are suitable and supported
6. Processes to respond to complaints of child abuse are child focused
7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training
8. Physical and online environments minimise the opportunity for abuse to occur
9. Implementation of the Child Safe Standards is continuously reviewed and improved
10. Policies and procedures document how the organisation is child safe

### Mandatory reporting

Mandatory reporters are people who deliver the following services, wholly or partly, to children as part of their paid or professional work:

- Health care (e.g. registered medical practitioners, specialists, general practice nurses, midwives, occupational therapists, speech therapists, psychologists, dentists and other allied health professionals working in sole practice or in public or private health practices)
- Welfare (e.g. psychologists, social workers, caseworkers and youth workers)
- Education (e.g. teachers, counsellors, principals)
- Children's services (e.g. child care workers, family day carers and home-based carers)
- Residential services (e.g. refuge workers)
- Law enforcement (e.g. police)

Every employee of What Ability is a mandatory reporter. The *Children's Guardian Act 2019* requires all employees under the scheme to give a report about any reportable allegation they become aware of and this report must be made as soon as practicable, and that a failure to make a report could be misconduct.

A report can be made to the Leadership Management Team in person, via phone, email, note or by using the online incident report process. If the incident occurs after hours, the VOOHC Coordinator or CEO can be contacted via phone.

Note: In an emergency, where there are urgent concerns for a child's health or life, call the police using the emergency line triple zero (000). Such a report should not be delayed because of the mandatory reporting process to the Child Protection Helpline.

## Step 1 - Identify ROSH concerns

Any employee who suspects a child or young person is at ROSH, they should access the mandatory reporting guide (MRG), as well as seek the assistance of the VOOHC Coordinator, CEO or Leadership Management Team (LMT) delegate.

The employee and the VOOHC Coordinator/LMT delegate will use the MRG to identify any concerns that involve:

- the basic physical or psychological needs of the child or young person are not being met (neglect)
- What Ability or parents have not arranged necessary medical care for the child or young person (unwilling or unable to do so)
- What Ability or parents have not arranged for the child or young person to receive an education in accordance with the [Education Act 1990](#) (unwilling or unable to do so)
- risk of physical or sexual abuse or ill-treatment
- What Ability or parents behaviour towards the child causes or risks serious psychological harm (emotional abuse)
- incidents of domestic violence and as a consequence a child or young person is at risk of serious physical or psychological harm (domestic or family violence)
- the child was the subject in a prenatal report and the birth mother did not engage successfully with support services
- reportable conduct by an employee, manager or volunteer of What Ability
- reportable conduct by a representative of any other organisation, agency or institution.

## Step 2 – Report ROSH

The Chief Executive Officer (CEO) is the organisational representative with overall responsibility for all obligations related to the Reportable Conduct Scheme.

Note: The CEO may choose to delegate obligations and processes related to the Reportable Conduct Scheme to the VOOHC Coordinator and/or an LMT Delegate if the CEO is unable to complete these duties. In these circumstances, this delegation will be documented in the records of the incident.

Where the CEO (or VOOHC Coordinator/LMT delegate) has reasonable grounds to suspect that a child is at risk of significant harm, and those grounds arise during the course of, or from, their work, the CEO (or VOOHC Coordinator/LMT delegate) will make a report, and contact the Child Protection Helpline (ph: 132 111), including any reference numbers, and create a journal documenting the details of the report.

The CEO (or VOOHC Coordinator/LMT delegate) will also follow up with DCJ and/or police after a referral has been made. Direct reporting to the Police will be the responsibility of the CEO (or VOOHC Coordinator/LMT delegate).

### Step 3 – If DCJ/police are involved

If the Department of Communities and Justice (DCJ) becomes involved, all staff involved are notified not to investigate any matter before obtaining clearance from DCJ first. What Ability will seek advice from DCJ if the matter needs referring to police and notify all staff that they must not investigate any matter before obtaining clearance from police first.

### Step 4 – Reporting allegations to the Children's Guardian

After reporting ROSH to DCJ, any allegation of ROSH that involves an employee, requires notification of reportable conduct to the Office of Children's Guardian (OCG) and/or reportable incident to the NDIS Commission. Reporting this is the responsibility of the CEO (or VOOHC Coordinator/LMT delegate) .

Not all reportable conduct matters constitute ROSH (e.g. historical allocation). If an allegation or matter is not identified as meeting the ROSH threshold, What Ability may still notify the OCG if it constitutes reportable conduct.

A reportable conviction in NSW or elsewhere, means a conviction of an offence involving reportable conduct (including a finding of guilt without the court proceeding to a conviction). What Ability will notify the OCG of any allegations which relate to both on duty and off duty conduct via the CEO (or VOOHC Coordinator/LMT delegate)

The CEO (or VOOHC Coordinator/LMT delegate) is required to advise the OCG within 7 business days of becoming aware of a reportable incident.

**Reportable conduct**, as defined by the Children's Guardian Act 2019, is:

- a sexual offence committed against, with or in the presence of a child
- sexual misconduct with, towards or in the presence of a child
- ill-treatment of a child
- neglect of a child
- an assault against a child
- behaviour that causes significant emotional or psychological harm to a child
- any offence under section 43B or 316A of the Crimes Act 1900, whether or not, with the consent of the child.



Note: Section 41 of the NSW Children’s Guardian Act (2019) specifies that reportable conduct **does not include**—

- conduct that is reasonable for the purposes of discipline, management or care of a child, having regard to:
  - the age, maturity, health or other characteristics of the child, and (ii) any relevant code of conduct or professional standard, or
  - the use of physical force if:
    - (i) in all the circumstances, the physical force is trivial or negligible, and
    - (ii) the circumstances in which it was used have been investigated and the result of the investigation has been recorded in accordance with appropriate procedures,or
  - conduct of a class or kind exempted from being reportable conduct by the Children’s Guardian under section 30 of the Act.

After advising the Children’s Guardian, the CEO (or VOOHC Coordinator/LMT delegate) will:

- assess and manage any risks (to children, other staff and the worker who is the subject of an allegation)
- plan and conduct an appropriate investigation, having regard to the principles of procedural fairness
- provide an update to the OCG within 30 days (either as an interim report or final report)
- make a finding for all allegations, and
- provide an Entity report to the Children’s Guardian about the finding and action taken.

If a breach of What Ability’s Code of Conduct is identified to have occurred as a result of investigation of any allegations, appropriate vacation will be taken by the CEO (or VOOHC Coordinator/LMT delegate) , including the potential for employee dismissal.

The CEO (or VOOHC Coordinator/LMT delegate) will consider several other factors when deciding how to investigate a reportable allegation, including:

- any requirement by police, DCJ or the Children’s Guardian to defer the investigation
- the safety, welfare and wellbeing of a child or children impacted by the investigation
- the rights of other parties involved in the investigation.

If a reportable incident involves a criminal offence, the CEO (or VOOHC Coordinator/LMT delegate) will refer to police and take no further action until clearance has been received.

If a reportable incident involves the CEO, the VOOHC Coordinator/LMT delegate will make a report directly to the Children’s Guardian.

Refer to the Investigate incident process for investigating an incident.

## Step 5 - Record keeping

After making a report, What Ability will:

- document what is known about the incident
- document how What Ability responded
- take any suggested immediate actions as recommended by reporting bodies

- if relevant and cleared to do so, create a preliminary investigation plan
- if relevant, conduct a risk assessment
- document all correspondence regarding the incident and subsequent emails, meeting minutes and exchanges with reporting bodies
- document any immediate learnings from the incident.

A copy of the outcome of the completed MRG will be kept with the incident report. Refer to Investigate incident process for more detail on conducting an investigation.

## Staff Training

Training at What Ability focuses on the importance of community participation and inclusion.

Specific training may be provided to assist staff to build their skills and capacity, so they can encourage participants to actively and meaningfully participate in our service, the community and civic life. This begins with the induction of staff once employed by What Ability. Staff receive:

- Training on the nature and indicators of child maltreatment, particularly abuse that occurs in organisations.
- Training on the organisation's child safe practices and child protection efforts.
- Support to develop practical skills in protecting children and responding to disclosures.

Management, staff and volunteers are aware of What Ability policies and procedures in relation to Child Protection through orientation and induction processes.

Section 7 of the What Ability NDIS Policies and Procedures (Freedom from Violence, Abuse, Neglect, Exploitation and Discrimination Policy) and the supporting documents are reviewed as part of the organisation's quality improvement process and quality management system.

# 21. NDIS Code of Conduct

## Legislation

NDIS (Code of Conduct) Rules 2018 (Cwth)

## Introduction

The NDIS Code of Conduct sets the standards for how the organisation carries out provision of NDIS supports and services.

## Applicability

When
<ul style="list-style-type: none"> <li>• applies to supports and services provided to all participants.</li> </ul>

Who
<ul style="list-style-type: none"> <li>• applies to all representatives of What Ability Pty. Ltd. including key management personnel, directors, full time workers, part time workers, casual workers, contractors and volunteers.</li> </ul>

## Code of Conduct

The Code is to:

- act with respect for individual rights to freedom of expression, self-determination and decision-making in accordance with applicable laws and conventions
- respect the privacy of people with disability
- provide supports and services in a safe and competent manner, with care and skill
- act with integrity, honesty and transparency
- promptly take steps to raise and act on concerns about matters that may impact the quality and safety of supports and services provided to people with disability
- take all reasonable steps to prevent and respond to all forms of violence against, and exploitation, neglect and abuse of, people with disability
- take all reasonable steps to prevent and respond to sexual misconduct.

## 22. Privacy and confidentiality policy

### Legislation

Children and Young Persons (Care and Protection) Act 1998 (NSW)  
 NDIS (Provider Registration and Practice Standards) Rules 2018 (Cwth)  
 NDIS (Quality Indicators) Guidelines 2018 (Cwth)

### Introduction

This policy ensures we protect and handle personal information in accordance with the requirements of the NDIS, the Children's Guardian and relevant privacy legislation. We acknowledge an individual's right to privacy while recognising that personal information is required to be collected, maintained and administered in order to provide a safe working environment and a high standard of quality.

The information we collect is used to provide services to participants in a safe and healthy environment with individual requirements, to meet duty of care obligations, to initiate appropriate referrals, and to conduct business activities to support those services.

### Applicability

When
<ul style="list-style-type: none"> <li>• applies to all personal information and sensitive personal information including the personal information of employees, participants and children/young people in voluntary out-of-home care</li> <li>• applies to all company confidential information - that is any information not publicly available.</li> </ul>

Who
<ul style="list-style-type: none"> <li>• applies to all representatives of What Ability Pty. Ltd. including key management personnel, directors, full time workers, part time workers, casual workers, contractors and volunteers.</li> </ul>

### Definitions

Term	Description
data breach	A data breach is a type of security incident where personal, sensitive or confidential information normally protected, is deliberately or mistakenly copied, sent, viewed, stolen or used by an unauthorised person or parties. A data breach where people are at risk of serious harm as a result, is reportable to the <a href="#">Office of the Australian Information Commissioner</a> .
personal information	Personal information includes (regardless of its accuracy): <ul style="list-style-type: none"> <li>• name</li> </ul>

	<ul style="list-style-type: none"> <li>● address</li> <li>● phone number</li> <li>● email address</li> <li>● date of birth</li> <li>● recorded opinions or notes about someone</li> <li>● any other information that could be used to identify someone.</li> </ul>
sensitive personal information	<p>Sensitive personal information can include personal information that is normally private such as:</p> <ul style="list-style-type: none"> <li>● health information</li> <li>● ethnicity</li> <li>● political opinions</li> <li>● membership of a political association, professional or trade association or trade union</li> <li>● religious beliefs or affiliations</li> <li>● philosophical beliefs</li> <li>● sexuality</li> <li>● criminal record</li> <li>● biometric information (such as fingerprints).</li> </ul>

## Privacy and confidentiality guidelines

What Ability Pty. Ltd. (referred hereafter as What Ability) is committed to complying with the privacy requirements of the Privacy Act, the Australian Privacy Principles and for Privacy Amendment (Notifiable Data Breaches) as required by organisations providing disability services.

What Ability is fully committed to complying with the consent requirements of the NDIS Quality and Safeguarding Framework and relevant state or territory requirements.

What Ability will comply with information exchange requirements outlined in the Children and Young Persons (Care and Protection) Act 1998 (NSW) (the Act).

We provide all individuals with access to information about the privacy of their personal information. Each individual has the right to opt out of consenting to and providing their personal details if they wish.

Participants have the right to request access to their personal records by requesting this with their contact person.

Where we are required to report to government funding bodies, information provided is non-identifiable and related to services and support hours provided, age, disability, language, and nationality.

Personal information will only be used by What Ability, and will not be shared outside the organisation without the participant's permission except in strict accordance with Chapter 16A of the Act or unless required by law (e.g. reporting assault, abuse, neglect, or where a court order is issued).

NOTE: Chapter 16A of the Act overrides the Privacy Act if it is relevant to the safety, welfare and wellbeing of a child or young person.

Images or video footage of participants will not be used without participant consent. Participants have the option of being involved in external NDIS audits if they wish.

## Information exchange for VOOHC services

The Act governs exchange of information as part of providing voluntary out-of-home care services. Refer to the VOOHC information exchange policy for more detail.

## Security of information

In order to safeguard the security of information at What Ability:

- we take reasonable steps to protect the personal information we hold against misuse, interference, loss, unauthorised access, modification and disclosure.
- personal information is accessible to the participant and is able for use by relevant workers
- security for personal information includes password protection for IT systems, locked filing cabinets and physical access restrictions with only authorised personnel permitted access
- personal information no longer required\* is securely destroyed or de-identified.

\* Personal information related to voluntary out-of-home care must be retained for each child or young person until they turn 18 years of age.

All personal information at What Ability is stored securely in electronic format. This may include intake forms, consent forms, assessments, meeting minutes, safety checklists and case plans.

## Child/young person/parents access to personal information

If a child/young person/guardian were to contact What Ability to request information about them be corrected or to view information held about them, they should:

- Email: [info@whatability.com](mailto:info@whatability.com) or call 02 9719 9014 and ask for the VOOHC Coordinator.
- The VOOHC Coordinator will schedule a time to meet with the child/young person/guardian at their convenience, to share any information requested.
- Information can also be sent by registered post when requested.

## Data breaches

We will take reasonable steps to reduce the likelihood of a data breach occurring including storing personal information securely and accessible only by relevant workers.

If we know or suspect your personal information has been accessed by unauthorised parties, and we think this could cause you harm, we will take reasonable steps to reduce the chance of harm and advise you of the breach, and if necessary the Office of the Australian Information Commissioner.

## **Breach of privacy and confidentiality**

A breach of privacy and confidentiality is an incident—follow the Manage incident process to resolve. A breach of privacy and confidentiality may require an investigation.

An intentional breach of privacy and confidentiality will result in disciplinary action up to and including termination of employment.

## 23. Restrictive practice policy

### Legislation

Children and Young Persons (Care and Protection) Act 2018 (NSW)  
 Children and Young Persons (Care and Protection) Regulation 2012 (NSW)  
 NDIS (Quality Indicators) Guidelines 2018 (Cwth)  
 NDIS (Restrictive Practices and Behaviour Support) Rules 2018 (Cwth)

### Introduction

This policy is about regulated restrictive practices. A restrictive practice is defined as any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability, with the primary purpose of protecting the person or others from harm.

For information on the approval process of a restrictive practice, please refer to the Behaviour support policy.

### Regulated restrictive practices

The following are regulated restrictive practices which are allowed and then only with strict controls in place. However, seclusion and physical restraint ARE BOTH PROHIBITED PRACTICES for anyone under 18 years. (Only in exceptional circumstances can physical restraint be used with a person under 18 years—refer to the VOOHC policy for more details). Regulated restrictive practices include:

- Seclusion
- Chemical restraint
- Mechanical restraint
- Physical restraint
- Environmental restraint

Any other type of restrictive practice other than regulated, is prohibited.

### Applicability

When
<ul style="list-style-type: none"> <li>● applies to supports and services provided to participants with a positive behaviour support plan that include the use of a regulated restrictive practice</li> <li>● applies when a prohibited practice or unauthorised regulated practice is used.</li> </ul>

Who
<ul style="list-style-type: none"> <li>● applies to all representatives of What Ability Pty. Ltd. including key management personnel, directors, full time workers, part time workers, casual workers, contractors and volunteers.</li> </ul>

### Restrictive practice principles



What Ability supports the reduction and elimination of the use of restrictive practices. Any use of restrictive practice will take into consideration the participants cultural and communicative needs. We will only use restrictive practices:

- as a last resort, and with proof all other ways of evidence-based, person-centred and proactive strategies have been tried first
- if the behaviour might harm the person or others
- for the shortest time possible
- in the least restrictive way possible
- that are proportionate and justified
- if the participant or the participant's guardian has given consent
- if the appropriate authorisation by state or territory bodies has been granted
- if we have first understood why the participant has complex behaviour and how the restrictive practice will affect the rights of the participant
- if the practice is written in an NDIS lodged positive behaviour support plan developed by a positive behaviour practitioner or specialist in consultation with the participant, the participants' family, support network and/or advocate.

We will be transparent and accountable for the use of restrictive practices through accurate record keeping and reporting.

We will regularly review records to assess the success, need and application of restrictive practices.

## **Impact of restrictive practices**

Research has demonstrated the use of restrictive practices does not effectively address underlying behavioural functions nor modify persistent concerning behaviour.

Research has also demonstrated the impact of routine and ongoing restrictive practices has on participants, participant support networks and the workers can be profoundly negative.

The use of restrictive practice whether on a single or ongoing occasion, according to the NDIS Quality and Safeguards Commission can result in:

- participants feeling a loss of dignity
- reduced interpersonal relationships between participants and others
- limited freedom and potential human rights violations
- medication dependency
- physiological and neurological changes
- increased mental health illnesses
- trauma and psychological distress including post-traumatic stress disorder (PTSD) for participants, workers and support networks
- secondary forms of concerning behaviours in response to the use of restrictive practices.

It is with this knowledge and understanding we continuously monitor, evaluate and seek to reduce the use of restrictive practices with the goal of total restrictive practice use elimination.

## **Reduction and elimination**

What Ability is committed to the reduction and elimination of restrictive practices and to upholding the human rights of people with disability in line with the UN Convention on the Rights of Persons with Disabilities, NDIS Safeguarding Framework and the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector.

We are committed to achieve this by following the core strategies detailed below:

Core strategy	Description
person-centred focus	Including the perspectives and experiences of people with disability and their families, carers, guardians and advocates during restrictive practice incident debriefing, individualised positive behaviour support planning, staff education and training, and policy and practice development.
leadership towards organisational change	Making a goal of reducing use of restrictive practices a high priority and providing support to staff to achieve it.
use of data to inform practice	Mechanisms such as periodic review of positive behaviour support plans containing a restrictive practice, provider reporting on use of restrictive practices, reporting client assessments and individual/positive behaviour support plans—should be used to assess whether restrictive practices are still needed, and consider possible alternatives. Data is also important to determine what factors are effective in reducing or eliminating the use of restrictive practices as well as highlighting areas for workforce training and development.
workforce development	Key needs include understanding positive behaviour support and functional behaviour assessment, and skills for trauma informed practice, risk assessment, de-escalation, and alternatives to restrictive practices.
use within disability services of restraint and seclusion reduction tools	Use of evidence-based assessment tools, emergency management plans and other strategies integrated into each individual’s positive behaviour support plan. Changes to the therapeutic environment. Meaningful activities aimed at lifestyle improvement and increased engagement.
debriefing and practice review	Regular reviews of the use of restrictive practices to identify areas for practice and systemic improvement. If an unanticipated or emergency use of a restrictive practice occurs an immediate debriefing should occur to ensure that everyone is safe, that satisfactory information is available to inform later structured debriefing and the participant is safe and being appropriately monitored.

## Participant assessment

We will assist in identifying participants with complex behaviour support needs and refer them to an NDIS approved positive behaviour support practitioner for assessment. A positive behaviour support practitioner, in consultation with the participant, participant's family, support network and/or advocate and the organisation, will be responsible for establishing a positive behaviour support plan which may include restrictive practices. The use of restrictive practices in a participant's positive behaviour support plan will have clear protocols for implementation and use. These practices will be reviewed at least every 12 months with the intent to reduce or eliminate the requirement of restrictive practices.

## Authorising restrictive practice

Commonwealth, state and territory legislative and policy frameworks provide guidelines around the use of restrictive practices, including that the intervention is the least restrictive response available, is used only as a last resort, and that the risk posed by the proposed intervention is in proportion to the risk of harm posed by the behaviour of concern.

Use of a restrictive practice must only be approved in a positive behaviour support plan. Where a participant/child/young person is unable to consent themselves, this must be approved by the parents (if under 18), legal guardian, public guardian or equivalent, state or territory administrative tribunal, or other legally authorised person with responsibility for approving the inclusion of a restrictive practice as part of a positive behaviour support plan.

All behaviour support plans must be endorsed by What Ability Pty. Ltd. prior to their implementation.

## Record keeping

We will keep record of the following:

- restrictive practices that are ongoing (e.g. chemical restraint with a daily fixed dose)
- restrictive practices that are 'unscheduled' (e.g. physical restraint, seclusion, chemical restraint prescribed on an 'as needed' basis, also known as PRN medication)
- occasions when the use of an unauthorised restrictive practice is defined as a serious incident—also reported as a serious incident.

The detail of the report on the use of regulated restrictive practices includes:

- a description which includes:
  - the impact on to the participant or others
  - any injury to the participants or others
  - whether the use was a reportable incident
  - why it was used
- a description of the behaviour of the participant that lead to its use
- the time, date and place at which its use started and ended
- the names and contact details of the persons involved in its use
- the names and contact details of any witnesses to its use
- the actions taken in response to its use

- what other less restrictive options were considered or used before
- the actions taken leading up to its use, including any strategies used to prevent the need for the use of the practice.

What Ability, as a registered agency providing substitute residential care (as a schedule 1 entity under the Children’s Guardian Act 2019), has systems and processes in place with regards to records related to reportable conduct matters. Therefore, What Ability retains this information/records indefinitely, to ensure we are able to provide any relevant information requested by the Children’s Guardian.

## **Reporting authorised restrictive practices to the NDIS**

If we support participants with positive behaviour support plans that include the routine use of a regulated restrictive practice, we will report on the use of those practices each month to the NDIS Commission. This report will include:

- type of restrictive practice used
- a brief description of the practice
- details of medication (if required)
- related behaviour concern.

If we support participants with positive behaviour support plans that include as needed use (PRN) of a regulated restrictive practice, we will report on the use of those practices each month to the NDIS Commission. This report will include:

- type of restrictive practice used
- a brief description of the practice
- details of medication (if required)
- related behaviour concern
- date used
- time commenced
- time ceased
- our incident report reference.

If we support participants with positive behaviour support plans that include the use of a regulated restrictive practice, but the practice was not used during the reporting month we will submit a NIL report to the NDIS Commission.

If we are supporting participants with short term approval from a state or territory on the use of a regulated restrictive practice, we will provide a report to the Commissioner every 2 weeks on the use of those regulated restrictive practices while the approval is in force.

## Supporting participants when a restrictive practice has been used

If a restrictive practice is used, participants and workers will be immediately supported to manage the impact of the use of restrictive practices.

If the incident is deemed a reportable incident, a participant should be immediately referred to, and assessed by a medical practitioner (where appropriate). The immediate procedure following the use of a restrictive practice for a participant must be detailed in the participants behaviour support plan and detailed in the incident report submitted to the NDIS Commission.

Participants, and with their consent their support network should be included in the review of their support plan following the use of any restrictive practice.

## Unauthorised use of restrictive practices

Unauthorised use of restrictive practices is any instance of use:

- without a positive behaviour support plan and not compliant with state or territory legislation (during transitional stages of the NDIS)
- without the proper authorisation
- without knowing that something is a restrictive practice
- for too long and without regular review
- for reasons other than keeping people safe
- to control a person or to make a person act in a certain way
- as a form of abuse and neglect
- due to a lack of training, knowledge or reflection about less restrictive alternatives.

If we have instigated any form of unauthorised restrictive practices described above, we must:

- report the incident to the NDIS Quality and Safeguards Commission within five business days or 24 hours if the incident harmed the participant
- report the incident to any state or territory as required.

If the regulated restrictive practice will be ongoing then we will:

- obtain authorisation (however described) for the ongoing use of the regulated restrictive practice from the relevant state or territory as soon as reasonably practicable
- lodge evidence of that authorisation with the NDIS Commissioner as soon as reasonably practicable after it is received
- arrange the development of an interim behaviour support plan for the participant by a specialist behaviour support provider that covers the use of the practice within one month after its first use
- arrange the development of a comprehensive behaviour support plan for the participant by a specialist behaviour support provider that covers the use of the practice within 6 months after its first use.

## Training and worker requirements

The use of restrictive practices poses a serious risk due to the significant and severe impact they have on participants and their support networks, as well as workers.

To mitigate the risks workers who support participants with a positive behaviour support plan (PBSP) that include restrictive practices will be trained and at a minimum understand:

- what a restrictive practice is
- what an authorised and unauthorised regulated restrictive practice is, including when, why and how they are to be used according to the positive behaviour support plan
- their obligations to safely and effectively implement plans
- the reporting obligations defined in the NDIS (Incident Management and Reportable Incidents) Rules 2018 (Cwth)
- the ethical and safety obligations following the use of restrictive practices including medical assessments, psychological assistance and debriefing
- this policy.

Workers who implement the use of restrictive practices will work collaboratively with the behaviour support practitioner who developed the PBSP plan as well as all relevant allied health workers to ensure the safest and most effective plan is implemented.

All training will be recorded on our staff training and development register and periodically reviewed to ensure up-to-date knowledge and practices.

## Prohibited practices

Prohibited practices include but are not limited to:

- any form of corporal punishment (for example, smacking or hitting)
- any punishment intended to humiliate or frighten a person
- any punishment that involves immobilising a person with chemical or physical restraint including supine and prone restraint holds
- force-feeding or depriving a person of food
- use of medication to control or restrain a person without a behaviour support plan, proper medical authorisation or legal consent
- use of punishing techniques, such as putting a person in a hot or cold bath, putting spice in their food, or squirting liquid on their face or body
- overcorrection, where the punishment is out of proportion to the behaviour (for example, making a person clean an entire room because they tipped their meal on the floor)
- confinement or containment of a child or young person (anyone under 18 years of age) such as forcing them to remain in a locked room or other place that they can't leave
- punishment that involves threats to withhold family contact or change any part of a person's individual lifestyle plan
- denying access to basic needs or supports
- unethical practices, such as rewarding a person with cigarettes or alcohol
- any other act or failure to act that is an offence under federal, state or territory laws.

Prohibited practices are practices that must never be used. They may be unlawful or unethical. The use of any prohibited practice may be a criminal offence or civil wrongdoing. Any use of a prohibited practice is a reportable incident under the NDIS (Incident Management and Reportable Incidents) Rules 2018 (Cwth).

## **Behaviour management in VOOHC**

The Regulation (clause 86) requires that carers use only behaviour management practices approved by their VOOHC agency. The Regulation also specifically prohibits carers from using the following to correct or manage the behaviour of a child or young person in VOOHC:

- any physical coercion or physical punishment (including corporal punishment)
- any punishment that takes the form of immobilisation, force-feeding or depriving of food
- any punishment that is intended to humiliate or frighten a child or young person.

Where a carer finds that the approved behaviour management practices are inadequate to manage the behaviour of a child or young person, the carer must notify their VOOHC agency as soon as possible.

The VOOHC agency must then assess the situation, consult the parent of the child or young person, and determine if the problem should be addressed:

- by providing appropriate advice, support and training to the voluntary carer and appropriate support to the child or young person
- by changing the placement arrangements.

## **Breach of policy**

A breach of this policy may place the organisation in breach of NDIS guidelines which could result in:

- an investigation into the organisation by the NDIS
- the organisation being de-registered from the NDIS
- civil penalties
- criminal convictions and fines.

Any employee found in breach of this policy may face disciplinary action, including potential termination of employment.

## 24. Risk management policy

### Legislation

NDIS (Provider Registration and Practice Standards) Rules 2018 (Cwth)

### Introduction

Risk management involves identifying and managing risks. This includes a wide range of risks including risks to the organisation's operation, to workers and to participants/children/young people. Risks are inevitable but risk management aims to reduce the chance of a particular event from happening. If it does happen, risk management helps to reduce its impact. Benefits of risk management can include:

- reduced business downtime
- reduced loss of cash flow
- reduced injuries or illness to participants and workers
- increased health and well-being of participants/children/young people and workers
- increased innovation, quality and efficiency through continuous improvement.

### Applicability

When
<ul style="list-style-type: none"> <li>• applies to all parts of the service.</li> </ul>

Who
<ul style="list-style-type: none"> <li>• applies to all representatives of What ability Pty. Ltd. including key management personnel, directors, full time workers, part time workers, casual workers, contractors and volunteers.</li> </ul>

### Identifying risks

Risk is the combination of the likelihood (chance) of an event occurring and the consequences (impact) if it does. Risk management aims to increase the likelihood and impact of a desirable outcome as much as possible. Risk identification is the process of finding, recognising and describing risks.

### Unmanaged risks

Unmanaged risk is the level of risk before any action has been taken to manage it. Managed risk is the risk remaining after taking into account the effectiveness of current controls (e.g. training, management plans or using personal protective equipment). In other words, it is the level of risk remaining after plans have been put in place and are being followed.



## **Risk tolerance**

Risk tolerance is an informed decision to accept a particular risk, with or without risk treatment, in order to achieve a goal.

## **Risk analysis**

Risk analysis is the process to understand the nature, sources and causes of risks to determine the degree of risk. The degree and consequences of risk together inform risk evaluation and decisions about risk treatment.

## **Risk assessment**

Risk assessment is the overall process of risk identification, risk analysis, and risk evaluation.

## **Risk evaluation**

Risk evaluation is the process of determining whether the risk is tolerable or whether it requires risk treatment.

## **Risk treatment**

Risk treatment are the measures taken to change the level of risk. Possible treatment responses include:

- avoiding the risk
- removing the risk source
- making decisions or taking actions which change the likelihood and/or the consequences
- sharing the risk with another party
- tolerating the risk by informed decision

## **Business risks**

Risks to the business are regularly identified and mitigated or managed. Risks to the business include:

- Sources of funding
- Liquidity / cash flow
- Solvency
- Succession planning for key personnel
- Insurance

## Risk matrix

A risk matrix is used during risk assessment to define the level of risk by considering the category of likelihood against the category of impact. A risk matrix aids to increase visibility of risks and assist management decision making.

<b>Impact</b>	High	M1	H2	H1
	Medium	L1	M2	H2
	Low	L2	L1	M1
		Low	Medium	High
	<b>Likelihood</b>			

## Participant risk management

Identifying risks to participants/children/young people is an important part of providing support and services and are documented in a participant's support plan. Identifying risks and regular reviews of those risks within the support plan is an ongoing process. Regular reviews help to ensure risk management strategies in place are effective and that they adequately address identified risks. With this in mind:

- risk assessments for new participants/children/young people must be conducted during the on-boarding process and documented in the participant's support plan
- risk assessment for new a child or young person in voluntary out-of-home care must include compatibility assessment to consider the risks a group may pose
- risk assessments for existing participants/children/young people must be conducted every 12 months or more often if there are changes in the person's needs
- risk management plans for participants/children/young people should be reviewed quarterly or more often if there are changes in the person's needs.

## Incident management

Risk management must consider risks that arise from incidents. Investigations into incidents reportable to the Children's Guardian must be properly risk managed. This includes an initial risk assessment be conducted after becoming aware of an incident. This risk assessment should identify and plan to avoid or minimise the risks to:

- the child or young person as the subject of the allegation
- other children with whom the perpetrator may have contact
- the perpetrator against whom the allegation has been made
- What Ability Pty. Ltd. (referred hereafter as What Ability)
- other parties to the alleged incident (such as witnesses or reporters), and
- the incident investigation.

As an investigation is conducted, additional risks may be identified. In this case, the initial risk assessment should be regularly reviewed and updated as any new risks are identified.



Following an investigation into an incident, a final risk assessment should be conducted. This assessment should assess all identified risks including:

- risks related to What Ability—does the employee need support or training or other remedial action, or is disciplinary action warranted
- risks to the children or young people involved—is there a need for counselling or other support
- the culture at What Ability —is there a need to improve education and awareness, for example, around child protection
- systems—work practices or skills gaps that may have contributed to the incident occurring, and how these might be address
- policies and procedures—do existing policies and procedures cover the issues that were uncovered in the investigation, or could they be improved
- risks outside the control of What Ability —the CEO may consider if there is a basis for releasing information about the incident to the prescribed body under Chapter 16A.

## Strategic risk management

Risk management should consider strategic risks. This includes identifying and managing risks related to the service achieving its business objectives. This may include risks to:

- funding—this might include donors, gifts and funding bodies
- mismanagement—risks to the organisation's reputation
- founder risk—where the organisation's original benefactor lacks the required business and financial skills to run the service appropriately.

Strategic risk management strategies involve thorough research and planning.

## Compliance risk management

Ensuring the organisation operates within the law carries its own compliance risks. These risks must be identified and assessed under a risk management framework. Examples of compliance risks may include:

- unregistered and/or uninsured company vehicles
- fulfilling reporting requirements to comply with legislation or funding agreements
- fundraising activities or sources which breach legislative requirements
- key management personnel operating outside their authority
- activities that are outside the organisation's constitution.

Compliance risks must be eliminated entirely unlike other types of risks where elimination may not be possible. Strategies to prevent compliance risks include (among others):

- a robust compliance culture
- internal controls in areas of compliance
- regular internal audits in areas of compliance.

## Human resources risk management

Risk management should consider risks related to human resources including:

- unplanned exit or retirement of key management personnel
- not having workers with the required knowledge and skills

- industrial action and disputes or absenteeism
- lack of diversity (gender, race, age, ability)
- recruitment of workers and their retention or dismissal.

Strategies to manage or reduce human resources risks include:

- a robust leadership, a positive culture, and a values framework
- succession planning for key roles
- documenting critical information and key processes so others can continue to run the service
- comprehensive training program for new workers
- training workers so that more than one person knows how to perform each task
- a supervision and mentoring program for workers.

## Special events risk management

Risk management is a required part of organising or participating in an event. The main risks at events includes anything that could:

- cause harm to another person
- cause damage to equipment, infrastructure or the event site, or
- harm the future of the event organiser.

Risk assessments for events may require, where appropriate:

- a risk assessment of the event site—including existing risks, risks caused by inclement weather, and risks from bodies of water
- a risk assessment of the event including all proposed activities e.g. rides, vehicles and security
- a risk assessment of all external risks such as an evacuation—if so, are there any guests that may have higher risks?

To prevent, minimise or manage identified risks, an event organiser will require appropriate management plans to ensure risks are appropriately managed.

## Work health safety risk management

Under WHS laws, key management personnel have a duty to eliminate WHS risks as far as reasonably practicable. This means risk management needs to consider work health and safety (WHS) risks. Managing WHS risks is an ongoing process which should begin when:

- starting a new business or purchasing a business
- changing work practices, processes or work equipment
- purchasing new or used equipment or using new substances
- planning to improve productivity or reduce costs
- responding to workplace incidents (even if they have caused no injury)
- responding to concerns raised by workers or others at the workplace
- required by the WHS regulations for specific purposes.

Identifying hazards involves finding things and situations that cause harm to people. This includes workers':

- physical work environment
- equipment, materials and substances used
- work tasks and how they are performance
- work design and management.

Common hazards include:

- manual handling—when lifting or moving objects or people
- gravity—fallen objects, falls, slips and trips of people
- electricity—shock, fire, burns or electrocution
- machinery and equipment—hit by moving vehicle or caught by moving parts of machinery
- hazardous chemicals—chemicals, dusts
- extreme temperatures—heat stroke, burns, fatigue, hypothermia
- noise—permanent hearing loss
- radiation—microwaves, lasers
- biological—infection, allergies
- psychosocial hazards—stress, bullying, violence, fatigue.

Finding hazards involves:

- workplace inspections
- consulting workers
- training workers to report hazards and risks
- reviewing incident reports and complaint registers.

WHS risk assessments should be carried out:

- if there is uncertainty about how a hazard may cause an injury or illness
- the work involves a number of different hazards and it is unclear how these hazards may interact to produce new or greater risks
- changes in the workplace that may impact control measures.

Once a WHS hazard or risk is identified and assessed, managing the risk may involve:

- elimination—where possible a WHS risk should be eliminated
- substitution—replacement with less hazardous options
- isolation—if elimination or substitution is not possible isolate the hazard so workers cannot come into contact with it
- control—where elimination, substitution or isolation is not possible, controls such as safe work practices and/or personal protective equipment.

## Fraud risk management

In this context, "worker" means any representative of the organisation including key management personnel, directors, employees, contractors and volunteers.

Risk management should cover risk of fraud. This includes:

- internal fraud—fraud that is carried out within the organisation such as when workers:
  - steal money or assets that belong to the organisation
  - steal cash donations that belong to the organisation
  - claim non-existent, excessive or purchase orders to obtain payment for goods and services that are not supplied
  - submit false applications for grants or other benefits
  - create non-existent beneficiaries or employees for the purposes of directing unauthorised payments
- external fraud—scams and fraud initiated externally from the organisation, such as when an external actor:
  - submits false invoices to the organisation
  - steals identifies in order to obtain credit card or bank account details
  - uses a charity's name to obtain funds fraudulently e.g. a fraudulent fund raising appeal
  - makes phone calls or sends text messages or emails which pose as another organisation to obtain funds fraudulently.

The likelihood of fraud can be reduced by:

- having a strong ethical culture with clear commitments to integrity and ethical values
- strategies in place to protect the organisation from fraud rather than just accepting the risk.

There are three accepted ways to mitigate against risk of fraud:

1. prevention—controls designed to reduce the risk
2. detection—controls designed to uncover risk when it occurs
3. response—controls designed to facilitate corrective action and harm minimisation.

Prevention controls can include:

- fraud risk assessments
- conflict of interest policy
- strong internal controls
- screening for new workers
- effective supervisory processes
- due diligence checks on suppliers and contractors
- worker training to increase awareness of ethics and on risk management strategies
- support programs for workers
- independent audits.

Detection controls can include:

- continuous internal monitoring and auditing of processes
- allocation of resources for fraud detection
- fraud detection software to provide real time data monitoring and analysis

- mechanisms to report fraud while protecting the whistle-blower
- unannounced financial and asset audits
- fraud testing.

Response controls can include having an internal investigation team and a fraud response plan.

## Financial risk management

Risk management should include managing risks to finances such as:

- liquidity risk—not enough funds to pay debts
- interest rates—when there is a dependence on borrowed funds or income generated from interest-bearing deposits
- credit risk—when goods and services are sold on credit
- risks from competitors—competition can impact market share
- risks from the market or economy—changing trends, impacts from economic downturn
- unexpected exit from business owner or partner—in the case of death or incapacitation.

Risk management strategies include:

- having the right insurance
- backup plans if things go wrong
- researching market trends.

## Key personnel succession risk management

Risks to the service with relation to key personnel should be considered. A succession plan is one way to minimise the impact of one or more unplanned absences of key personnel.

## Consequence ratings for participants

The steps to manage risks for participants are:

- identify risks—identify risks specific to each individual participant
- assess risks—understand how likely it is to happen and how bad it could be
- control risks—implement appropriate lifestyle plans to lessen the likelihood and/or the amount of harm
- review control measures—check and ensure risks are under control and there are no new risks.

Risks for participants must be managed:

- with a risk assessment as part of a periodically-reviewed individual support plan
- during a transition from one service provider to another.

## Consequence ratings for organisational risks

In the organisation, persons conducting a business or undertaking:

- are required by law to manage WHS risks
- are required by law to minimise the risks of breaches of privacy.



The steps to manage risks in the organisation:

- identify risks—find out what could cause harm
- assess risks—understand the nature of the harm that could be caused by the risk, how serious the harm could be and the likelihood of it happening
- control risks—implement the most effective control measures reasonably practicable in the circumstances
- review control measures—ensuring control measures are working as planned and there are no new risks.

\* Financial impact consequence ratings, litigation costs and costs of fines may differ depending on an organisation's size and turnover.

The following table provides example consequence ratings for organisational risks:

Consequence rating	Financial impact*	Effect on workers	Reputation	Service outputs	Legal and compliance*	Management impact	Privacy and information
Extreme	>\$1m	One or more fatalities or severe permanent disability to one or more people	Widespread negative media coverage Significant impact on funding for several years Long term loss of clients	Multiple services ended or many months	Major litigation costs of >\$1m Investigation by regulating body resulting in long term interruption of operations	Restructuring of the organisation with loss of senior managers	Major data breach of sensitive personal information affecting many thousands of records, high risk of harm to those affected, widespread negative media coverage
Major	\$500k-\$999k	Extensive injury or impairment to one or more persons	Negative media coverage Loss of key management personnel Loss of clients for many months	Disruption of multiple services for several months	Major breach of regulation Fines or litigation costs of <\$1m	Significant disruption requiring considerable time from key management personnel	Data breach of personal information of hundreds of records, risk of harm to those affected, negative media coverage
Moderate	\$250-\$499k	Injuries to one or more persons	Media coverage Loss of clients	Disruption to a service for several months	Breach of regulations Fines or litigation costs of <\$499k	Disruption requiring time from key management personnel	Breach of privacy and confidentiality or data breach, some risk of harm to those affected, some media coverage
Minor	\$10k-249k	Significant medical treatment Lost injury time <2 weeks	Complaint to key management personnel	Some service disruptions	Breach of regulations Fines or legal costs	Requires some time of key management personnel over many days	Breach of privacy and confidentiality to a few persons but little risk of harm to those affected
Insignificant	<\$10k	First aid treatment	Complaint to worker	Minimal disruption	Minor legal issues Minor breach of regulations	Requires some attention of key management personnel	Minor breach of privacy and confidentiality to a worker or client, no risk of harm to those affected

## Responsibilities of key management personnel

Key management personnel of What Ability are responsible for setting the risk management 'appetite' in the organisation. Their responsibilities are to:

- set overall risk management strategy
- understand the scope of risks faced by the organisation
- ensure robust oversight of risk at senior management levels
- promote a risk-focused culture
- promote open communications within the organisation
- assign clear lines of accountability and encourage effective risk management framework.

Key management personnel must also ensure risk management policies and processes are implemented and followed across the organisation.

## Responsibilities of workers

All workers should:

- follow participant risk management plans
- support participants to communicate and self-advocate if the participant requests or requires support
- assist the participant, if they request or require support, to maintain a risk management plan as safety needs change
- inform the team of any changes to a participant's safety needs
- seek support from key management personnel to manage a risk, if required
- collaborate with relevant parties when concerns about risk management escalate to key management personnel
- be actively engaged during supervision and team meetings to work through risk management issues
- have a basic understanding of NDIS Quality and Safeguarding Framework
- have a basic understanding of relevant WHS policies.

## Duty of care

Providing a duty of care to participants involves ensuring adequate care is taken to avoid injury.

When assessing activities or situations for possible injury, we should keep in mind:

- what is already known about a person's capacity to carry out similar activities safely
- what is known about a person's awareness of what risks might be involved and how to avoid them
- what is known about the dangers involved in the activity and whether the person can deal with them
- what can be learnt from relevant assessments or reports about the person's abilities and skills.

Participants, workers and others important to the participant should work cooperatively to develop strategies and to identify solutions for issues that challenge duty of care for workers and dignity of risk to participants. In order to achieve this, we must:

- take all steps to avoid harm
- understand the participant's capacity for making decisions about the risk they are managing
- seek advice and assistance from their line manager when they encounter something that is outside their delegation, experience or skill set
- ensure that relevant legislation, policies and procedures are part of their decision making processes
- provide information to the participant, other workers and family about any risks, duty of care obligations and the participant's right to experience and learn from risk taking
- develop lifestyle plans in consultation with the participant, family, friends and support workers, and commence with the least restrictive option for the participant
- facilitate discussion with the participant about the consequences of particular choices
- communicate with the person, family or guardian at each stage of support and document all actions, communications and decisions
- document decisions by a person or their representative, to continue behaviour they believe is reckless, and seek further advice from a line manager
- review how support is provided from a work health and safety perspective if support workers are affected by a decision
- record the reasoning behind risk management decisions, including background, decisions, issues and solutions why some strategies were adopted and others rejected.

## Breach of duty of care

The organisation and all workers must provide appropriate standards of care at all times. If a worker or the organisation is proven to have not provided the appropriate standard of care, this is a breach of duty of care.

A breach of duty of care is any case where a worker or the organisation has done something they should not have done or failed to do something they should have done—such a breach may potentially result in harm or injury to another person and a finding of negligence.

All suspected incidents of breach of duty of care should be investigated. Anyone found to be in breach of duty of care will be disciplined including termination of employment.

## 25. Managing risks to participants process

What Ability supports children/participants and young people to exercise choice and control.

This includes the choice to take reasonable risks in the pursuit of goals and in the planning and delivery of their supports. While we support participants/children/young people to exercise choice, we have a duty of care to protect them from harm or loss.

Where relevant, we will work with other providers and services to identify and manage risks to participants/children/young people, ensure safe environments, and prevent and manage injuries.

### **Step 1 - Identify risks to the child/participant or young person**

Identify, document and review risks for a participant/child/young person using a participant risk assessment template. A completed and regularly-reviewed participant risk assessment is a key component in helping to manage risks that individuals may face and should be reviewed regularly—ideally every three months.

Manage identified risks documented in the participant risk assessment using a participant risk management plan (which should refer to a participant/child/young person's lifestyle management plan). When reviewing participant risk assessment documents, any changes require review of the participant's risk management plan.

When completing the participant's risk assessment, note the following:

- risks will differ between participants—add all that are relevant to an individual
- consider and document any risks related to actions arising from the participant's lifestyle plan
- consider whether existing risk treatment strategies or any changes to the participant risk management plan enable the participant to achieve lifestyle goals and preferences.

### **Step 2 - Manage risks to the child/participant or young person**

A participant risk management plan describes actions required to manage risks identified in a participant risk assessment. The participant risk management plan is reviewed regularly—ideally every three months or at least annually, or whenever changes are made to the participant risk assessment.

When reviewing a participant risk management plan, the following should be considered:

- the participant/child/young person, the parents of the child or young person, and workers who work with the participant/child/young person must be consulted. Other

- stakeholders should also be consulted as appropriately e.g. health professionals, behaviour support specialists
- risk assessments and risk assessment plans for a child or young person in voluntary out-of-home care should consider risks posed by other household members or groups
  - consider whether existing risk treatment strategies or any changes to the participant risk management plan enable the participant/child/young person to achieve lifestyle goals and preferences.