



## NDIS Service Agreement: Not worth the paper they're written on?

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Russell Kennedy has become aware that some NDIS providers believe they are not required to enter into written Service Agreements with participants and are commencing supports without a written agreement.

This practice is both risky and is not the standard of behaviour expected of NDIS providers, which may lead to a breach of the obligations of registered providers.

While there is no express requirement under the Terms of Business or the NDIS Act to enter into a service agreement, the Terms of Business specify that providers should enter into service agreements with participants. The Provider Toolkit Module 5 states that:

*"A participant who chooses to engage someone to provide supports under an NDIS plan will generally enter into a written agreement with the provider (a Service Agreement). A Service Agreement will help to ensure that the participant and provider have an agreed set of expectations of what supports will be delivered and how they will be delivered."*

There are consequences under the NDIS Act for failing to comply with the Agency's Terms of Business. At worst, a provider's NDIS registration can be revoked in serious cases of contravention.

Providing supports to participants without a Service Agreement is also problematic for other reasons. At its most basic level, the purpose of a Service Agreement is to set out the rights and obligations of the service provider and the participant and the costs the provider will charge to the NDIS package. The Service Agreement is how the participants agrees to these critically important aspects of the relationship.

The Service Agreement documents the fees that the participant has agreed to pay. This supports submissions of invoices to the NDIA or plan/fund managers so that the provider can be paid.

Another key function of a Service Agreement is to document the participant's consent (either directly, or through their authorised representative) to receiving the supports. It is important to remember that providing supports without valid consent which involve any form of physical contact can constitute a criminal offence.

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Service Agreements are also important for complying with privacy laws. The agreement is generally the way in which the provider obtains the participant's agreement to the collection, use and disclosure of their sensitive personal information.

NDIS providers who choose not to enter into a written agreement with participants are more exposed in a range of ways including:

- Potential compliance action for failing to comply with the Terms of Business;
- Claims for the refund of fees;
- Breach of privacy claims; and

For this reason, Russell Kennedy strongly recommends providers continue to enter into written Service Agreements with their clients.

Russell Kennedy offers a template Service Agreement to clients, and can customise Service Agreements for your specific circumstances.

For more information please contact [Jonathan Teh](#) or [Anita Courtney](#) on (03) 9609 1555 if you would like to find out more.

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