

CONTRACTS

This Fact Sheet is about your rights as a person using the NDIS or as a person who wants to use the NDIS. If you want more information about how the NDIS works, including on issues covered in this Fact Sheet, go to Advokit <http://www.advokit.org.au> 

AAT:

The Administrative Appeals Tribunal. This is a panel of people who can decide whether or not the NDIA should change a decision you are unhappy with.

The Agency:

Another name for the National Disability Insurance Agency. They deliver and administer the NDIS.

Complaints mechanism:

A technical term to describe the steps you can go through when you are not happy with some aspect of the service and support you are getting from the NDIA.

Hearing:

A formal meeting where the Administrative Appeals Tribunal listens to why you want the NDIA to change some of their decisions about your participant plan. The Administrative Appeals Tribunal will then decide whether or not the decision should be changed.

NDIA:

The National Disability Insurance Agency. They deliver and administer the NDIS.

NDIS:

The National Disability Insurance Scheme. This is the name of the overall program set up to organise your support and services.

NDIS Act:

The National Disability Insurance Scheme Act. Sometimes it is just called 'the Act', or 'the legislation'. It is the legislation that outlines how the National Disability Insurance Scheme will work.

Necessary and reasonable supports:

This is the term used in the NDIS Act to describe the extent of support you are entitled to receive. It means that the support you get must not exceed what you require, and it must be support that is reasonable. There can sometimes be a lot of debate about what this will mean for a particular person.

Participant:

This is the word used to refer to a participant who is getting support through the NDIS.

Participant plan:

This sets out the sort of supports a person with a disability will get through the NDIS.

Rules:

The NDIS Rules provide details about how the NDIS is to operate. The NDIS Act outlines what sorts of issues the Rules should address. The Rules are then used alongside the NDIS Act.

Scheme:

A short way of saying 'the National Disability Insurance Scheme'.

Agreements that are made between you, the National Disability Insurance Agency and service providers will all be subject to contract law. This Information Sheet explains a little bit about your rights under contract law in relation to the NDIS.

The importance of advocacy:

The information on this sheet is only basic information. Working out how to apply it to your circumstances can be complex, because everyone's situation is different.

It is important to obtain further information and advice from an advocate if you find yourself in a position of needing to make a complaint or pursue your rights on anything covered by this Fact Sheet.

1. What the NDIS Act says about contracts:

There are many different sorts of contracts that can be set up under the NDIS, including contracts between you and the Agency, contracts between you and service providers, and contracts between the Agency and service providers.

A range of contracts can be set up under the NDIS. The most important of these are:

- Contracts between you and the NDIA – which is basically the agreement that is made between you and the NDIA when you develop your participant plan, including the general supports that the NDIA agrees to provide to you;
- Contracts between you and a service provider – which basically relates to whatever agreements you make with the service provider about the support you will receive, especially when you are managing your Participant Plan, or some aspect of it, yourself;
- Contracts between the NDIA and service providers – which basically refers to the arrangements set up between the NDIA and service providers to enable them to receive funding and to provide you with support.

2. Contracts and your rights:

You are entitled to expect people to do what they agree to do when they make a contract with you. This includes the Agency and service providers who are supporting you through the NDIS. It is important to know just who your contract is with, so you know who has an obligation towards you. A lawyer can help explain this to you.

A contract is formed whenever two parties come together and make an agreement that involves some sort of exchange between them – such as agreeing to pay for a service.

A contract does not have to be in writing, but when it is in writing it is much easier to know what each party has agreed to do for the other.

2: Contracts and your rights: - continued

When a contract is made you have a right to expect the other party to do what they agreed to do. This means that if the NDIA or a service provider undertakes to provide you with a particular type of support, they are bound by law to do this.

It is important that you are clear about who you have a contract, or agreement, with:

- If your plan is being managed by the NDIA, then your contract will mainly be with the NDIA.
- If you are managing your own plan, then your contract will mainly be with the service providers who are supporting you.
- If you have another agency managing your plan on your behalf, then your contract will mainly be with that agency.

Some of the areas in which contracts, and contract law, might become relevant in the context of the NDIS and your supports include:

- Whether or not you are getting the amount and type of support that has been agreed to;
- Whether or not the service is helping you to achieve what it agreed to;
- Whether or not the service is operating according to the conditions that have been agreed between it and the NDIA.

Contracts also create responsibilities for you, but only towards the parties with whom you have the contract – and only to do whatever you agree to do in the contract.

If you are being asked by the NDIA or a service provider to make changes to your support arrangements, you may want to check out whether or not your contract with them allows them to expect this of you.

You should always seek legal advice when dealing with issues of contract law.

3. Pursuing your rights about contracts

If you have a contract with someone and they do not do what they agree to do, you may be able to take legal action to fix the situation. Legal advice is very important if you are thinking about doing this.

If you feel the support you are getting is not what has been agreed to, then you may be able to deal with this as a breach of contract.

If the contract is between you and the service provider, you will probably need to pursue this yourself. It is vital that you get legal advice when doing this.

If your contract is with the NDIA or another agency that is managing your plan, then you should ask them to pursue this matter for you.

3: Pursuing your rights about contracts: - continued

Make sure you seek legal advice before trying to take any action about contracts. Taking action about contracts involves going to court and this can be drawn out and very expensive.

Also, contract law can be very complicated because it is based on a long history of decisions that have been made by the courts in other cases. This can make it even more difficult to understand than law that is based on a piece of legislation. A lawyer through a Community Legal Centre will be able to give you helpful and free advice about whether or not it is a good idea to pursue a matter that you think might be a breach of contract, and what your best options are.

4. How the United Nations Convention on the Rights of Persons with Disabilities is relevant to your rights

Australia is a signatory to the UN Convention, which recognises a large number of important rights for people with disabilities. Some of these will be very relevant in arguing how the NDIS Act should be understood and applied. If you want to pursue a matter under the United Nations Convention, remember that it is mainly relevant to how the law should be interpreted and implemented. It is therefore always important to relate the right from the Convention back to the actual interpretation of the NDIS Act, or to the way the Agency is administering it, whichever of these is most relevant to your particular issue.

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