



# Terms of Business for Registered Providers

Effective 1 July 2016, updated January 2020

## Introduction

This document contains the National Disability Insurance Agency's (NDIA; the Agency) Terms of Business.

The Terms of Business establish protocols and processes that are binding on a Registered Provider of supports in the National Disability Insurance Scheme (NDIS; the Scheme). Failure to comply with the Terms of Business may provide grounds for the NDIA to consider revoking the Registered Provider's registration.

See sections 70(1)(d) and 72(1)(a) of the NDIS Act and paragraphs 3.8 and 5.2(a) of the Rules.

## Scheme Objectives

The purpose of the NDIS is to:

- support people with disability to pursue their goals and maximise their independence and social and economic participation
- develop the capacity of people with disability to participate in the community and in employment
- build a sustainable scheme that is based on insurance principles.

By becoming a Registered Provider, the provider agrees to uphold the objectives of the NDIS Act and work with participants to achieve individual outcomes.

## Compliance

Registered Providers must act in good faith and in the interests of the participant.

When delivering supports or conducting a business in relation to the delivery of supports, Registered Providers must comply with each of the following:

- the NDIS Act, the Rules, all relevant NDIS guidelines, and all policies issued by the NDIA (as in force from time to time)
- the Registered Provider's own Code of Conduct, Code of Ethics or Service Charter, and
- any Commonwealth, State or Territory laws, and any other requirements, that are applicable to the Registered Provider, including, but not limited to the Privacy Act 1988 (Cth), the Australian

Consumer Law, and any relevant quality and safeguard laws, including Quality Assurance and Safeguards Working Arrangements and the Guide to Suitability.

In relation to the final dot point, Registered Providers must comply with relevant Commonwealth, State and Territory quality and safeguarding arrangements regardless of whether they are bound by such requirements under the applicable law. The relevant State and/or Territory arrangements will be those that are in force in the jurisdiction(s) in which the Registered Provider delivers supports.

Further information on quality and safeguarding arrangements are available on the NDIS website, including in the Guide to Suitability and Quality and Safeguards Working Arrangements.

Registered Providers must notify the NDIA if they are in breach of any Commonwealth, State or Territory law, including any Commonwealth, State or Territory disability service standards.

Registered Providers must also notify the NDIA if they become subject to any investigation for breach of a Commonwealth, State or Territory law and/or quality and safeguard arrangements.

## Business Practice & Service Delivery

### Service agreements

Registered Providers should work with a participant to establish a written agreement, in the participant's preferred form of communication, about the expected outcomes and the nature, quality and price of supports to be provided, and any agreed terms and conditions. All supports must be delivered in accordance with that agreement, and the provider must ensure that the participant is regularly provided with, or has access to (for example, through myplace), details of services delivered, and the amount charged for those services. Providers must also abide by relevant consumer laws regarding the provision of receipts and itemised bills.

Service agreements must be consistent with the NDIS's pricing arrangements, guidelines and the requirements of the *A New Tax System (Goods and Service Tax) Act 1999* regarding the application of the goods and services tax to its services.

For a participant who is managing the funded supports in their plan (self-managing participant), the service agreement must clearly set out the costs to be paid in relation to the support, when delivery of the support is to be performed and method of payment.

The service agreement must also provide information on complaint handling and dispute resolution processes.

### Withdrawal or termination of services by the Registered Provider

Service agreements must include a time frame for the notice of termination of services by the provider. The minimum allowable notice period for this purpose must be no less than 14 days or such longer period as is adequate to enable the participant, his or her nominee, or the Agency to nominate an alternative Registered Provider to deliver those support services. Subject to this minimum period, the time frame may otherwise vary between participants depending on the nature and frequency of the support.

If a Registered Provider intends to withdraw or terminate its services to a participant, notice must be given in accordance with the service agreement.

Registered Providers and participants (except for those that are self-managing) cannot contract out of the Price Guide. Where there are any inconsistencies between the Service Agreement and the Price Guide, the Price Guide prevails.

## **Insurance**

Registered Providers must maintain an adequate level of insurance, including public liability insurance, professional indemnity insurance, and workers compensation insurance when employing workers.

All insurance must be taken out with an insurer:

- recognised by the Australian Prudential Regulation Authority, or
- regulated by a State/Territory Auditor-General.

## **Identification as a NDIS Scheme provider and use of the NDIS logo**

Registered Providers may identify their NDIS registration by stating 'Registered NDIS Provider'.

The NDIS logo and colour scheme must not be used by a Registered Provider in any publicity material, including use on vehicles, buildings, emails, stationery, websites and social media channels.

## **Conflicts of Interest**

Registered Providers must act in the best interests of participants, ensuring that participants are informed, empowered and able to maximise choice and control. A Registered Provider must 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.

The Agency may, from time to time, issue Operational Guidelines and pricing arrangements relating to conflict of interest. These must be adhered to by the Registered Provider.

### **Actions to manage actual or perceived conflicts**

Registered Providers must ensure that they proactively manage perceived and actual conflicts of interest, including through development and maintenance of organisational policies. These policies must specify how the provider will:

- ensure its organisational or ethical values do not impede a participant's right to choice and control
- 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 the Provider) is transparent and promotes choice and control.

The Agency may request a copy of these policies at any time.

Registered Providers must also have in place governance arrangements that ensure that all participants are treated equally, and that no participant is given preferential treatment above another in the receipt or provision of supports.

### **Provision of services**

The Agency may issue, from time to time, specific policies on how Registered Providers are to manage conflicts of interest in cases where there is heightened risk to the participant, due to either the vulnerability of the participant, or the scope and magnitude of supports.

The steps that the Agency will require Registered Providers to take to manage these specified conflicts will be contained in the Operational Guidelines or pricing arrangements and guidelines, as updated from time to time. These steps will be proportionate to the risk to a participant, and their ability to exercise informed and empowered choice and control.

### **Gifts, benefits and commissions**

Registered Providers 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 the participant. Further, a Registered Provider 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.

## **Payments and Pricing**

***This section applies to the provision of services to all participants, except those that are self-managing.***

Registered Providers must adhere to the NDIA Price Guide or any other Agency pricing arrangements and guidelines as in force from time to time.

Registered Providers must declare relevant prices to participants before delivering a service. This includes declaring any notice periods or cancellation terms. Participants are not bound to engage the services of the Registered Provider after their prices have been declared.

Registered Providers can make a payment request once that support has been delivered or provided.

Prices charged to participants must not exceed the price level prescribed for that support in the Pricing Guide.

No other charges are to be added to the cost of the support, including credit card surcharges, or any additional fees including any 'gap' fees, late payment fees or cancellation fees. These requirements apply to all Registered Providers regardless of whether funding for the support is managed by the participant, or managed by a Registered Provider, or managed by the Agency.

A claim for payment is to be submitted within a reasonable time (and no later than 90 days from the end of the Service Booking).

Providers cannot charge cancellation fees, except when specifically provided for in the NDIA Price Guide.

## **Specialist Disability Accommodation**

Registered providers of Specialist Disability Accommodation (SDA) must comply with the *Specialist Disability Accommodation Addendum to the Terms of Business for Registered Providers* as annexed to these Terms of Business for Registered Providers, and as amended from time to time.

# Maintenance, Records & Audit

## **Maintaining records.**

A Registered Provider must keep full and accurate accounts and financial records of the supports delivered to NDIS participants, along with records of service agreements. The accounts and financial records must be maintained on a regular basis and in such detail that the Agency is able to accurately ascertain the quantity, type and duration of support delivered.

Financial records and accounts are to be retained by a Registered Provider for a period of no less than 5 years from the date of issue.

In addition to these requirements, the retention of all records must also comply with all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or Local Authority.

## **Provision of information**

A Registered Provider will be required to recommit to the Terms of Business as in force on an annual basis. The Provider Portal (myplace) will auto-generate a notice to renew their agreement to the Terms of Business. Failure to do so will result in the provider being unable to request payment until compliance is achieved.

If requested by the Agency, a Registered Provider must provide to the Agency within 30 days from the date of the request or within the time specified in the request, any of the following documents:

- a copy of the Registered Provider's most recent financial statements
- a copy of the Registered Provider's most recent insurance certificate, and
- any document that would reasonably be connected with the Registered Provider's provision of supports.

## **Inspection of records**

Registered Providers may be reviewed by the Agency in relation to supports funded for a NDIS participant. Registered Providers must cooperate fully with the Agency officers who are undertaking review activities.

As part of any review, or as otherwise reasonably requested by the Agency in carrying out its rights and obligations under law, a Registered Provider must give the Agency or persons authorised by the Agency ('those permitted') access to premises where accounts and records associated with the provision of services to participants are stored and allow those permitted to inspect and copy all records associated with the provision of services to participants.

A Registered Provider must provide all reasonable assistance requested by those permitted including making available all accounts and records relating to the provision of services to participants at the Registered Provider's registered office or the Registered Provider's principal place of business or other place as agreed.

The rights referred to above are subject to:

- the provision of reasonable prior notice by those permitted (except where those permitted believe there is an actual or apprehended breach of the law); and
- the Registered Provider's reasonable security procedures.

The requirement for access as specified above does not in any way reduce a Registered Provider's responsibility to perform its obligations in accordance with any agreement related to the provision of services to participants.

A Registered Provider must ensure that any subcontract entered into for the purposes of providing services to participants allows those permitted to have access to accounts and records associated with the provision of services to participants.

Where a decision by the NDIA is the subject of a merits review or complaint, the Registered Provider is required to cooperate in providing any documents or other information requested. Pursuant to section 6C of the *Freedom of Information Act 1982 (FOI Act)*, the Registered Provider must provide all documents to the Agency that are relevant to a request made under the FOI Act within 7 days receipt of a request from the Agency.

### **Fraudulent claims**

If a Registered Provider makes a fraudulent claim, the Agency retains the right to commence criminal and/or civil proceedings.

See sections 182 and 183 of the NDIS Act.

### **Contact details**

It is the responsibility of the Registered Provider to maintain accurate contact details with the NDIA. A Registered Provider must advise the NDIA of any changes to the information contained within the application for registration as soon as is practicable.

See paragraph 4.1 of the Rules.

## **Complaints**

Registered Providers are to have clear and accessible complaints handling and dispute resolution processes. Records related to complaints are to be maintained for at least 5 years or as required by law.

Where a Registered Provider provides services that are regulated by Commonwealth, State or Territory law, complaints may also be referred to the relevant complaints body for investigation, including the relevant Ombudsman.

Note that some jurisdictions, have legislation in place for mandatory reporting of certain complaints or incidents to the appropriate complaints body. Providers are responsible for ensuring they remain compliant with the relevant state and territory legislation with respect to complaints and other safeguards.

## **Interpretation**

References to the National Disability Insurance Agency or NDIA in these Terms of Business include references to any name the NDIA goes by from time to time, including the National Disability Insurance Scheme Launch Transition Agency and Disability Care Australia.

To comply with these Terms of Business, Registered Providers must ensure that their officers, employees, agents and subcontractors comply with these Terms of Business.

In these Terms of Business:

- **Agency** means the National Disability Insurance Scheme Launch Transition Agency
- **NDIS Act** means the *National Disability Insurance Scheme Act 2013*
- **Records** include documents, information and data stored by any means and all copies and extracts of the same
- **Registered Provider** means a person or entity approved under section 70 of the NDIS Act as a registered provider of supports
- **Rules** means the National Disability Insurance Scheme (Registered Providers of Support) Rules 2013.



# Specialist Disability Accommodation - Addendum to the Terms of Business for Registered Providers

**Updated 1 April 2017**

This document contains the National Disability Insurance Agency's (NDIA) Terms of Business for registered providers of Specialist Disability Accommodation (SDA).

The Terms of Business for Registered Providers, including the SDA addendum to the Terms of Business, establish protocols and processes that are binding on a Registered Provider of SDA. Failure to comply with the Terms of Business will provide grounds for the NDIA to consider revoking a Registered Provider's registration.

See sections 70(1)(d) and 72(1)(a) of the NDIS Act.

## Service agreements

A Registered Provider must not provide SDA unless the Provider has a written service agreement with the participant that contains all of the terms listed below (Rules 7.12 to 7.15 of the SDA Rules).

If a Registered Provider has worked with the participant to establish a written service agreement but has not been able to reach agreement with the participant, the Registered Provider must not provide SDA for the participant unless the Provider:

- produces a written service agreement that is the agreement proposed by the Provider and the proposed agreement contains all of the terms listed below; and
- provides a copy of the proposed agreement to the participant; and
- provides SDA to the participant in accordance with the terms of the proposed agreement.

A participant who is a Registered Provider who provides SDA to themselves is not required to have a written service agreement.

The Registered Provider is to pay the costs associated with the written service agreement and is not to charge the participant.

A written service agreement may be a standalone document or the terms below may be included in a document that includes other things, such as a tenancy or occupancy agreement.



## **Terms that must be included in an SDA service agreement or a proposed agreement**

Registered Providers are required to include all of the terms below in the written service agreement, or proposed agreement in alignment with any legislation, unless State or Territory legislation prevents a term from applying:

- (a) specify the rent that must be paid by the participant and the method and timing of making rental payments;
- (b) specify the amount of any bond and the management arrangements that apply to the bond;
- (c) specify any board payments that have been agreed with the participant, what the board payments cover and the method and timing of making board payments;
- (d) the provider must issue a receipt for any payment made by the participant;
- (e) specify the minimum period of notice that will be given by the Provider before the Provider increases the amount of any rent or any board payable by the participant;
- (f) specify:
  - (i) the name, telephone number and address of the Provider's agent (if any) and the responsibilities of the agent; or
  - (ii) if the provider does not have an agent, the address and telephone number of the Provider;
- (g) require the Provider to notify the participant in writing within 5 business days of any change of the matters in paragraph(f), unless State or Territory law provides for another notice period;
- (h) specify the commencement date of the agreement, the duration of the agreement, and the manner in which the agreement can be extended;
- (i) specify the circumstances in which the agreement can be terminated by either the participant or the Provider;
- (j) require the Provider to give a participant a minimum of 90 days' notice before the participant is required to vacate the premises, unless shorter notice is required to address the risk of harm to the participant or others;
- (k) require the Provider to ensure that the premises are reasonably clean before the commencement of the agreement;
- (l) require the Provider to ensure that the property is in a good state of repair and is being appropriately maintained, having regard to the safety, security and privacy of the residents;
- (m) explain the process for requesting repairs or maintenance to be undertaken;
- (n) explain the process for making a complaint about the SDA;
- (o) specify any house rules the participant is expected to comply with;
- (p) specify the circumstances in which the Provider or the Provider's agent is entitled to access the premises, and the notice that must be provided before the Provider or the Provider's agent enters the premises;
- (q) specify any reasonable responsibilities or obligations of the participant; and
- (r) declare to the participant any conflict of interest in relation to other services provided to the participant. In particular, any affiliation with a provider of Supported Independent Living services to the participant.

Providers should note that the requirement to include the terms above in a written agreement does not remove or change the application of other requirements in State or Territory laws. The State or Territory requirements continue to apply.

## SDA prices

The amounts set out in the *NDIS Price Guide for SDA* are specified in terms of the SDA type and location of the dwelling with allowances for particular features such as fire sprinklers.

Providers should note that the amounts in the Price Guide are the maximum amount that will be paid and quotes above those amounts cannot be accepted. The SDA Rules make it clear that funding can only be provided up to the amount set out in the *NDIS Price Guide for SDA* or, for Legacy Stock, the Legacy Stock Price List (see SDA Rule 5.4).

## Reasonable rent contribution

The payment of SDA prices by the NDIA on behalf of a participant to a Provider does not prevent the Provider obtaining a reasonable rent contribution (RRC) directly from the participant.

The amount of the RRC must not exceed the amount of the RRC specified below (SDA Rule 5.7).

### The amount of the RRC

If the participant receives the Disability Support Pension, the RRC to be paid by a participant must not exceed an amount that is:

- 25 per cent of basic rate of the Disability Support Pension;
  - Plus: if the participant receives a pension supplement - 25 per cent of the Pension Supplement received;
  - Plus: if the participant receives a Youth Disability Supplement - 25 per cent of the Youth Disability Supplement received;
- Plus: if the participant receives Commonwealth Rent Assistance - 100 per cent of Commonwealth Rent Assistance received.

If the participant does not receive the Disability Support Pension – the RRC must not exceed an amount which is:

- 25 per cent of basic rate of the Disability Support Pension (see below);
- Plus 100 per cent of any Commonwealth Rent Assistance received by the participant.

The “*basic rate of the DSP*” is the amount under the *Social Security Act 1991* that is the maximum basic rate for a person who is not under 21 and not a member of a couple.

### Voluntary discretionary contributions above RRC

In exceptional circumstances a participant may choose to make a discretionary contribution over the RRC. This can only occur:

1. where the participant, despite other available options, **chooses** to access a higher cost category of SDA than is funded by the NDIS (such as SDA in a different location or of a different type); or

2. if the market rental value for a particular dwelling is higher than the SDA price plus RRC. This is unlikely but could occur due to a particular location.

If a Registered Provider proposes to charge rent that exceeds the SDA price plus the RRC because of the high market rental value for the property the Provider must not charge the participant that higher rent until the requirements in SDA Rules 7.30 and 7.31 have been met:

- a. the Provider must obtain and keep written certification from an appropriately qualified property valuer stating that the rent is fair and reasonable; and
- b. the Provider must notify the NDIA and provide the NDIA with a copy of the attestation referred to above.

Any voluntary discretionary contribution arrangements are expected to be reflected in the rent component of the written service agreement between a provider and participant as outlined above.

## **Board payments**

The written service agreement must specify any board payments that have been agreed with the participant, what the board payments will cover and the method and timing of making the board payments (see paragraph (c) of Service agreements above).

Any board must not exceed a maximum amount that is 50 per cent of the basic rate of the DSP plus 100 per cent of any Energy Supplement received by the participant under the *Social Security Act 1991*.

Any board charged at the maximum amount must include at least:

- (a) Meals and consumables
- (b) Utilities that would ordinarily be paid by occupants
- (c) Access to whitegoods and laundry facilities
- (d) Furniture and furnishings in the common areas.

If a Provider charges a participant board for any goods or services, the Provider must allow the participant to obtain those goods or services from a source other than the Provider and not pay board if the participant chooses to do so. A Provider must not disadvantage a participant if the participant chooses to obtain goods or services from a source other than the Provider.

## **Other requirements**

### **Notice of Vacancy**

A Registered Provider must notify the NDIA as soon as possible, and within five working days, if:

- a participant gives notice of termination of their occupancy; or
- the Provider gives notice to vacate to a participant; or
- a vacancy arises that is available to be filled by a participant (SDA Rules 7.29).

### **Not preference one participant over another**

Registered Providers must not give preference to a participant over other participants. All residents must be afforded the same treatment, rights and choices. The requirement not to give preference to a participant also applies when the participant receiving SDA is a relative of the Provider.

## Relatives of participants who provide SDA

The *Gifts, Benefits and Commissions* requirements in the Terms of Business for Registered Providers do not apply to a Registered Provider of SDA who provides SDA to a participant who is also a family member. In these cases registered providers of SDA may have a financial or other personal interest directly or indirectly related to the benefit they receive from providing SDA.

Registered Providers of SDA who are providing SDA to a family member must not compromise the participant's choice of SDA or other supports.

## Records and Audit

Registered Providers must comply with the requirements in the '*Maintenance, Records and Audit*' section of the Terms of Business for Registered Providers.

## Officers, employees, agents and subcontractors to comply

Registered Providers must have mechanisms in place to ensure that their officers, employees, agents and subcontractors comply, and have mechanisms in place to ensure ongoing compliance, with the Terms of Business for Registered Providers, including the terms in this SDA addendum to the Terms of Business for Registered Providers.

# Interpretation

In this SDA addendum to the Terms of Business for Registered Providers:

- The terms and references used in the SDA addendum to the Terms of Business for Registered Providers for SDA are to have the same meaning as in the Terms of Business for Registered Providers, including the Interpretation section.
- **SDA Rules** means the National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2017.