Working in the NDIS – legal issues, challenges & (possible) solutions

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About Moores

- Moores focuses on sectors we know and understand; the disability support sector is one of them
- Moores regularly advises providers in this sector on:
  - ❖ NDIS
  - ❖ Project planning
  - ❖ Works and services contracts
  - ❖ Compliance issues, including privacy
  - ❖ Claims and dispute management
  - ❖ Funding agreements
- Moores always works to an agreed scope and fixed price. No hourly rates. No surprises.

Today's session

- Contract Law 101
  - Content and form
  - Parties to the contract
- Contracting in the NDIS
- (Possible) solutions

Contract law 101 – content and form

- Contract comprises more than just what is written

- Statutory requirements (generally can't contract out)
  - Building Act
  - Domestic Building Act
  - Building Code of Australia
  - ACL / Fair Trading Acts
  - SOP Act
  - OH&S / WH&S Acts
  - Unfair Contracts Act

- Terms implied at law

Contract law 101 – content and form (cont)

- Building Acts

  - Licencing requirements

  - Legislative basis of Building Code of Australia

- Domestic / Home Building Acts

  - Form and content requirements

  - Restrictions on certain works

  - Implied warranties

- Jurisdiction and work specific

Contract law 101 – parties to the contract

- Privity of contract
  - Contract is between the parties to it
  - Generally no obligations and duty of care to third parties
  - Generally no recovery rights against third parties

- Agency relationships
  - Agents enter into contracts on other's behalf
  - Rights and responsibilities owed by and to the 'other', not the agent

Working in the NDIS

- The trouble with template agreements
  - Not aligned with statutory requirements
  - Not tailored to your works

- Who's your contract with?
  - NDIA, provider, participant?

- Capacity of participants

- Some statutory requirements can be subcontracted

(Possible) solutions

- Appropriate template contracts?
- Legislative exemptions?

Questions or comments?