



Submission to DSS

Feedback on Draft Panel Contract Terms and Conditions and Service Specifications

30 June 2025

Submitted by New Zealand Disability Support Network (NZDSN)

Member acknowledgement - Feedback for this submission has largely been collated by IDEA Services.

Introduction

Thank you for the opportunity to provide feedback on the draft Panel Contract (terms and conditions) for the Residential Services Agreement. We appreciate the effort that has gone into updating the contract and the intention to build clearer expectations and better outcomes for disabled people.

This submission highlights some areas where further discussion with providers would help ensure the final agreement is practical, balanced, and sustainable.

Several clauses feel weighed more heavily toward the funder's interests without matching obligations or flexibility for providers. We believe that strengthening the contract as a true partnership document will be critical to achieving the goals we all share.

We also note the importance of retaining a variation clause like the one in the previous agreement, so there is a clear commitment to talk and document any issues that arise from significant events impacting service costs, even when solutions aren't immediately agreed.

Detailed Feedback and Recommendations

Below we've summarised specific clauses and suggested improvements.

Exiting People from Services – Clause 9.1(e)(iii)

Issue:

The draft limits when a person can be exited from services, without recognising lawful reasons.

Suggestion:

It would be helpful to set out clear examples of when exit may be necessary, such as situations where there is a serious, unmanaged health and safety risk.

Role of Family/Whānau – Clauses 9.1(e)(iv), (v), (vii)

Issue:

Family and whānau involvement is essential but needs to reflect the rights of the disabled person.

Suggestion:

We recommend clarifying that the provider's main responsibility is to the disabled person themselves, and that where there is disagreement, the person's preferences are the final guide unless there is a legal order in place.

Absence for hospitalisation or assessment or treatment 15.3

If a disabled person goes to hospital, forensic facility, respite, or another facility as a bail condition:

- First 28 days: Full payment continues, if the provider keeps the bed unoccupied.
- After 28 days (up to 10 more weeks): 50% payment continues, if the bed remains unoccupied.

This creates significant financial and operational burden on the provider to reserve capacity for extended periods with no clarity about when the person will return. If the absence unexpectedly extends beyond 10 weeks, the provider may have no funding at all and still be unable to fill the bed. There is no allowance for partial occupancy or shared use of the bed during prolonged absence.

Suggestion:

Consider more flexible options, e.g. partial occupancy, a tiered payment rate, or a clear process for releasing the bed after a threshold.

Payment following death 17.1

If a Disabled Person dies at any time on a particular day, the Purchasing Agency will make payments for the full day on which the Disabled Person died and 5 further calendar days following their death, provided that the bed of the deceased Disabled Person is not occupied by another person during that period.

Clearing a room, supporting grieving whānau/family, adjusting rosters and arranging for the next person often takes longer than five days. Giving five days creates pressure to accelerate processes that should be handled sensitively and puts financial burden on the provider to absorb unplanned vacancies.

Suggestions:

Increase the funded period to 10–14 days to reflect actual time needed for:

- Property clearance.
- Cultural practices (e.g., tangihanga).
- Family engagement.
- Preparation for the next placement.

Annual Leave – Clause 15.2

Issue:

This clause does not align with Enabling Good Lives or the idea of an ordinary life. It puts providers in the role of managing where people go, which isn't appropriate.

Suggestion:

Consider removing this provision. Instead, require providers to report absences so the NASC or funder can engage directly if needed. Providers should not be financially penalised for absences, as shared resources mean costs do not reduce proportionally.

Invoicing – Clauses 18.1 and Schedule Two, Clause 3.1

Issue:

These sections don't accurately describe how invoicing currently works.

Suggestion:

Update references to reflect that residential services use a BCTI process, with Whaikaha issuing the invoice.

Benefit Contributions – Clauses 19.1 and 19.2

Issue:

Clause 19.1 asks providers to take on more responsibility than is realistic.

Clause 19.2 contains a small drafting error.

Suggestion:

Amend to say providers are required to “support and encourage” contributions, acknowledging the limits of their role.

Correct Clause 19.2 to read “before the date of notification.”

Consider clarifying the legal basis for requiring contributions, so providers can confidently explain obligations to individuals.

Cooperation – Clause 23.1

Issue:

The concept of “active governance” isn’t clear.

Suggestion:

We’d welcome more detail about the intended role of all parties, so expectations are transparent.

Health and Safety – Clause 26 and Related Subclauses

Issue:

The clause is quite one-sided. Including reciprocal obligations for Whaikaha to engage would better reflect the Health and Safety at Work Act.

Suggestion:

Reference provider policies rather than undefined policies (Clause 26.2(b)(i)).

Correct the drafting to read “not reasonably practicable to minimise them” (Clause 26.2(b)(vi)).

Performance Measures – Clause 29.3(a) and (b)

Issue:

New reporting requirements may be difficult to meet without preparation time.

Suggestion:

Include a process for engaging with providers about feasibility, lead times, and resourcing before any changes are implemented.

Audit Costs – Clause 31.12

Issue:

Making providers pay for funder-initiated audits could make it harder to have open conversations about findings.

Suggestion:

Remove this requirement and retain a shared approach to reflecting on and responding to audits.

Improvement Plan – Clause 34.3

Issue:

The clause is too open to interpret at this stage.

Suggestion:

Provide more information about what processes and expectations will sit behind this provision.

Information Storage – Clauses 40.4(c) and (e)

Issue:

Clause 40.4(c): Modern storage practices often include cloud and offshore storage.

Clause 40.4(e): Needs to cross-reference other legal obligations.

Suggestion:

Update Clause 40.4(c) to allow cloud and offshore storage.

Cross-reference Clause 40.4(e) with other legal retention requirements.

Intellectual Property – Clause 42.2

Issue:

The draft no longer defaults IP ownership to providers, although the agreement does not fund IP creation.

Suggestion:

Maintain the previous approach, with each party retaining IP it develops.

Variations – Clause 49.3

Issue:

Allowing unilateral variation is inconsistent with a partnership model.

Suggestion:

Require both parties to agree to any contract changes.

Publication and Communications – Clause 59.1

Issue:

The clause limits providers' ability to make public statements or use branding.

Suggestion:

We recommend a more balanced approach, allowing both parties to make appropriate statements and ensuring any restrictions are mutual.

Closing Comments

Thank you again for the chance to provide feedback. We recognise that developing a contract that is fit for purpose, future-focused, and supports disabled people to live good lives is a shared goal.

NZDSN, along with a small group of providers, are very happy to meet to discuss any of these suggestions further or help work through solutions in partnership.