The National Disability Insurance Scheme

CHAPTER CONTENTS

Introduction

The National Disability Insurance Scheme (NDIS) provides funding for supports and services for eligible people living with an intellectual, physical, sensory, cognitive and/or psychosocial disability.

The NDIS is administered by the National Disability Insurance Agency (NDIA), a federal government agency. The NDIA is responsible for assessing applications from people with disability seeking access to supports and services, and subsequently determining the nature of the supports to be provided to successful applicants (participants).

The law that underpins the NDIS is the *National Disability Insurance Scheme Act 2013* (Cth) (NDIS Act). There are a number of accompanying Rules, including the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016* (Cth) (Becoming a Participant Rules) and the *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Cth) (Supports for Participants Rules).

The NDIA applies the Act and Rules to determine an applicant's eligibility to access the NDIS and to determine the funded supports a participant will receive in their individualised NDIS plan.

The NDIA also rely on their Operational Guidelines, however, the guidelines cannot be relied upon when they are inconsistent with the Act and Rules (see *Re Drake and Minister for Immigration and Ethnic Affairs (No 2) [1979]* AATA 179).

Most legal issues arise when the NDIA refuses to grant a person access to the NDIS or approves an NDIS Plan with which a participant is not satisfied. These decisions are reviewable.

This chapter will outline the decision-making processes of the NDIA, including the considerations it must make and the steps a person can take if they are not satisfied with a decision made by the NDIA that impacts them.

Overview of the National Disability Insurance Scheme Journey

The journey starts with a person submitting an access request and, if approved, they become a participant in the NDIS (an access decision is a reviewable decision; see How to Appeal a National Disability Insurance Agency Decision below).

The participant then meets with a planner to discuss their support needs and a draft plan is prepared.

An NDIS plan is approved, incorporating a Statement of Goals and Aspirations and a Statement of Supports (a decision to approve a statement of supports is a reviewable decision; see How to Appeal a National Disability Insurance Agency Decision below).

The participant, NDIA, plan manager or a combination of these then use the funds available in the NDIS plan to pay for supports for the participant. The participant has the choice and control over whom they engage to provide support.

Towards the end of the plan period (usually between 12 to 36 months), a scheduled plan review is conducted, and the NDIA approves a new Statement of Supports.

A participant can ask for an unscheduled review of their plan at any time if their circumstances change before the plan review date (s 48 NDIS Act).

How to Access the National Disability Insurance Scheme

A person can apply to access the NDIS by calling the NDIA on 1800 800 110 or by contacting their local area coordinator or local NDIA office. An access request form must be completed and submitted with supporting evidence. This form is not available online and must be requested from the NDIA or local area coordinator.

A person will be eligible to access the NDIS (and become a participant) if they:

- are under 65 years of age at the time they lodge their access request
- live in Australia and are an Australian citizen, permanent resident or protected special category visa holder and
- meet the disability or early intervention requirements (s 21 NDIS Act).

A person will meet the disability requirements if:

- they have a permanent impairment as a result of a diagnosed condition and
- the impairment results in the person having a substantially reduced capacity to undertake certain activities of daily life and
- the impairment impacts their ability to engage in employment and/or the community and
- they will be likely to require support for their lifetime (s 24 NDIS Act).

A person will meet the early intervention requirements if:

- they have a permanent impairment or they are a child under six years of age with a developmental delay and
- the provision of early intervention support is likely to reduce the person's future need for support and
- the provision of early intervention supports will likely benefit the person (s 25 NDIS Act).

Most commonly, people experience difficulty in accessing the NDIS due to a failure to establish that their impairment is permanent (as required by both ss 24 and 25 of the NDIS Act) and/or a failure to establish that their impairment impacts them to such an extent that their capacity to undertake activities of daily living is substantially reduced (as required by s 24 of the NDIS Act).

In both cases, evidence from independent sources, such as a medical specialist or allied health professional, is generally required.

Evidence required to establish an impairment is permanent

A person will need a letter or report from their general practitioner and/or specialist confirming the nature of their diagnosis, and that there are no available treatments that will likely remedy the impairment the person experiences as a result of that diagnosis (rr 5.4–5.7 Becoming a Participant Rules).

Generally, it is insufficient for a medical practitioner to state that the impairment is permanent. Rather, the medical practitioner will need to provide detailed information about past treatment options considered and/or trialled (e.g. medication, therapy or otherwise), current treatments and any future treatments and the likely outcome of those treatments (i.e. benefits and risks). This will enable the NDIA to make its own assessment of permanency against this legislative criterion.

The distinction between treatment helping a person to manage their symptoms and treatment remedying an impairment is important (see for example *MHZQ and National Disability Insurance*

Agency [2019] AATA 810 (8 May 2019) [67]–[72], in which the tribunal noted that although the applicant's mobility may improve with weight loss, it would not remedy the applicant's bilateral knee impairment.

In the absence of one detailed report regarding the treatment of a person's impairment, evidence collected over time that demonstrates the longevity of a person's impairment and continued symptoms despite treatment may be sufficient to rely upon as evidence of permanency (see for example *KDYG and National Disability Insurance Agency [2019]* AATA 3411 (10 September 2019) [26]–[28], which concerned a person with long-standing mental health conditions).

If medical letters or reports provided to the NDIA suggest additional treatment is open to a person (e.g. via a referral to a therapist), it will be important for the person to demonstrate, via the provision of a further letter or report, that the suggested treatment has been explored and/or trialled but will not remedy their impairment.

Evidence required to establish a substantially reduced functional capacity

A person will have a substantial reduction in functional capacity if they usually require help from others or are dependent on equipment (other than commonly used items), technology or home modifications in order to completely and effectively undertake activities of daily life (r 5.8 Becoming a Participant Rules).

See for example *Mulligan and National Disability Insurance Agency [2015]* AATA 974 (17 December 2015), in which Mr Mulligan failed to establish he had a substantial reduction in functional capacity to mobilise because

> Mr Mulligan's evidence is that he can undertake these activities without assistive technology, equipment other than a walking stick, or home modification. He is able safely to complete these tasks or activities within an acceptable time period even if he does so more slowly or in a different manner from others. He does not usually require assistance from other people to mobilise. [124].

See also *Arnel and National Disability Insurance Agency [2019]* AATA 4778 (18 November 2019), in which the tribunal determined that Ms Arnel could not completely and effectively engage in the activity of showering and therefore had a substantial reduction in functional capacity in the area of self-care.

Activities of daily life are categorised into the following areas:

- mobility—moving physically within and outside of the home
- communication—expressing needs, being understood and understanding others
- learning—possessing skills required to learn, including concentration and memory
- social interaction—making and keeping relationships and interacting with others in the community
- self-care—maintaining personal hygiene, grooming, feeding and health care

- self-management—having the capacity and skills required to take responsibility for oneself, including making decisions, planning, managing and organising daily tasks, finances and accommodation.

A person will only need to demonstrate that they have a substantial reduction in functional capacity in one of these areas.

To evidence this, statements of lived experience by the person and their friends and/or family will be helpful to paint the picture for the NDIA about the person's capacity to undertake activities of daily life. The more detail that can be incorporated into the statements, including examples of help the person requires, the better.

However, self-assessment and reporting will generally not be sufficient. Prospective participants will also need to provide a report by a health professional (e.g. an occupational therapist or psychologist), who has undertaken a functional capacity assessment of the person or who can otherwise objectively comment on the person's capacity based on direct observation.

Just because a person may cope somehow without help from others, equipment, technology or home modifications does not mean they do not require assistance to participate in activities of daily living. See *KDYG and National Disability Insurance Agency [2019]* AATA 3411 (10 September 2019), in which the tribunal noted '… that the Applicant struggled and survived before having the current level of assistance does not persuade the Tribunal that she does not require the assistance she is currently receiving. [87]'.

Section 8.3 of the *Access to the NDIS Operational Guideline* provides additional guidance as to what may be a substantial reduction in functional capacity, including '… reliance on equipment means specialist disability equipment and not commonly used items (such as a walking stick, non-slip bath mat, grab rails, child-safety locks, and stair rails)'.

See *Ditchfield and National Disability Insurance Agency [2019]* AATA 2121 (23 July 2019), in which it was determined that Mr Ditchfield, who had a leg-length discrepancy, had a substantial reduction in functional capacity to mobilise because he relied on an orthotic designed to help him balance and walk.

A person's functional capacity will be assessed against that which is to be expected of someone of a similar age. See *KDYG and National Disability Insurance Agency [2019]* AATA 3411 (10 September 2019), in which the tribunal found that the help the applicant requires is not consistent with normal expectations of a person of a similar age [86].

Access via the early intervention requirements

Access to the NDIS via s 25 of the NDIS Act should be considered where a person is having difficulty establishing that they experience a substantial reduction in functional capacity, as required by the s 24 (NDIS Act) access criteria.

Generally, additional expert evidence will be required to demonstrate that intervention will change the likely trajectory of a person's impairment. However, young children (under 6 years of age) who have

been diagnosed with developmental delay will not need to provide evidence regarding the benefit of early intervention supports on the child's impairment (rr 6.8–6.11 Becoming a Participant Rules).

See *James and National Disability Insurance Agency [2019]* AATA 4248 (18 October 2019), in which the tribunal noted that '… the early intervention requirements look at the likely trajectory and impact of a person's impairment over time and the potential benefits of early intervention on the impact of the impairment on the person's functional capacity [49]'.

Streamlined access for people diagnosed with certain conditions

The NDIA has published lists of conditions within their Operational Guidelines that enable a streamlined access process for people diagnosed with certain conditions.

People diagnosed with a List A condition will be accepted as meeting the disability access requirements without further assessment. People diagnosed with a List B condition will be accepted as having an impairment that is permanent and will only require assessment in relation to the remaining criteria concerning the impact of their impairment and need for support from the NDIS throughout their lifetime. Children under seven years of age diagnosed with a condition on List D will be accepted as meeting the early intervention access requirements without further assessment.

It is therefore important to review these lists in the first instance to avoid unnecessary assessments in cases where a streamlined option is available to the person seeking access to the NDIS.

Supports for Participants

Once a person becomes a participant in the NDIS, the person will be invited to meet with an NDIA planner or local area coordinator for their first planning meeting. The planner or local area coordinator has a conversation with the participant about their living arrangements, activities and needs, and prepares a plan, which may be approved at the time of the planning meeting or, subsequently, by an authorised representative of the NDIA.

Each plan includes a statement of supports, normally in the form of a Table setting out each support that the NDIA has agreed to fund.

In order to approve funding for a support for a person with disability, the NDIA must be satisfied that the support is 'reasonable and necessary'.

It is important for any newly accepted participant in the NDIS to prepare for their first planning meeting by considering the supports they want the NDIA to fund, and how they may satisfy the NDIA that the supports meet the 'reasonable and necessary' criteria. More information to help people prepare for their first planning meeting is available on the NDIS website.

Must supports relate to the impairment on which access to the NDIS was granted?

Once a person is a participant in the NDIS, it does not matter on what basis they gained access.

This means that if a person meets the access criteria in relation to one impairment, the supports they receive need not be limited to addressing the participant's needs in relation to that one impairment. All impairments should be considered for the purposes of planning, and the supports that

will be funded should be determined by assessment against the s 34 (NDIS Act) criteria and the Supports for Participants Rules. It is a separate decision-making process. See *Mulligan v National Disability Insurance Agency [2015]* FCA 544 (3 June 2015), in which the Federal Court noted, at [151-152], that the threshold issue of access is distinct from the subsequent issue of funding of supports.

This fact is important for anyone who has been granted access to the NDIS and is preparing for their first planning meeting, as it is not uncommon for planners to look solely at a person's 'primary' disability (on which they relied to gain access) when discussing the supports the person may be funded to receive. A failure by the NDIA to consider and include supports for secondary impairments may be grounds for requesting an internal review of the decision to approve a participant's statement of supports (see How to Appeal a National Disability Insurance Agency Decision below).

What is reasonable and necessary?

The 'reasonable and necessary' criteria are listed in s 34 of the NDIS Act. To be reasonable and necessary, a support must:

- assist the person to pursue their goals, objectives and aspirations (s 34(1)(a))
- assist the person to undertake activities that facilitate the person's social and economic participation (s 34(1)(b))
- represent value for money (s 34(1)(c))
- be, or likely to be, effective and beneficial for the participant, having regard to current good practice (s 34(1)(d))
- take into account what is reasonable to expect families, carers, informal networks and the community to provide (s 34(1)(e))
- be most appropriately funded through the NDIS, and not through another service system (such as the health system) (s 34(1)(f)).

A support will only be funded through the NDIS if the NDIA is satisfied that all the reasonable and necessary criteria are met.

The Supports for Participants Rules detail what the NDIA must consider when assessing whether a support meets the reasonable and necessary criteria and set out additional 'general criteria for supports' in rr 5.1–5.3 (Supports for Participants Rules), which exclude certain kinds of supports from being funded through the NDIS.

Most commonly, people have trouble satisfying the NDIA that their requested support represents value for money, that it is beyond what is reasonable to expect of their family/carers/ and/or community to provide, that the support is related to their disability, and/or that the support is most appropriately funded by the NDIA.

In all cases, the Supports for Participants Rules provide helpful guidance as to what evidence will likely be required to satisfy the NDIA that their requested support does in fact meet the legislative criteria.

What is value for money?

A support will represent value for money if, among other things, there are no comparable supports that would achieve the same outcome at a substantially lower cost (r 3.1 Supports for Participants Rules).

See *Mazy and National Disability Insurance Agency [2018]* AATA 3099 (9 August 2018) in which the tribunal determined that nursing assistance for the administration of insulin to a participant with diabetes did represent value for money in circumstances where the participant was not able to self-administer insulin or use an insulin pump. The tribunal noted that '… it should not fall to the participant to fully explore alternative supports which may be less expensive … If the Agency claims that there are alternative supports which are preferable to those sought by the Applicant, it is incumbent on the Agency to assist the Tribunal by providing evidence to support its argument …' [59].

See also *PPFQ and National Disability Insurance Agency [2019]* AATA 1092 (31 May 2019) in which the tribunal accepted evidence to approve funding for more expensive, but equally more beneficial hearing aids for the participant, rather than the lesser expensive standard issue hearing aids the NDIA suggested were sufficient.

What is reasonable to expect of families, carers and other supports?

Families with people with a disability do a lot to support their loved ones. But what is reasonable and what is beyond reasonable? Rule 3.4 of the Supports for Participants Rules provides what factors the NDIA must consider in answering this question, including whether a child's needs are substantially greater because of the child's disability, the extent of any risks to the wellbeing of the participant arising from their reliance on their family/carers/others (informal supports), and the intensity and type of support required and whether it is age and gender appropriate for the family member or carer to be providing that support.

While the NDIA expects families to provide support to their loved ones with a disability, it is clear there are limits. See *JQJT and National Disability Insurance Agency [2016]* AATA 478 (6 July 2016) in which the tribunal determined that while parents are expected to meet a child's transport needs, it was not reasonable to expect parents of a child with complex and high-level needs to drive their child to and from their weekend community access support, because '… without the inclusion of transport in his plan, transporting JQJT to community access support increases the burden on them, reduces the benefit of respite during those hours, and poses a risk to their wellbeing …' [40].

See also *PNFK and National Disability Insurance Agency [2018]* AATA 692 (28 March 2018) in which the tribunal considered the need for respite support for parents with a high-needs child, work commitments and other children. The tribunal noted it was up to families to provide basic care for children but determined in accordance with r 7.11 of the Supports for Participants Rules that it was '… necessary to provide further hours of respite care for PNFK to enable the family, and especially the other three children to have time with their parents … This added respite care will assist the parents to continue to care for PNFK in her own home …' [127].

What supports are attributable to participant's disability support needs?

Generally, day-to-day living costs will not be funded through the NDIS, unless the day-to-day living costs are incurred as a direct result of a participant's disability needs (e.g. an i-pad may be required as a communication aid) and/or the costs are ancillary to another support that is funded through a participant's NDIS plan (e.g. additional insurance premiums that are payable for a modified vehicle) (r 5.2 Supports for Participants Rules).

Just because many people may own certain equipment or undertake certain activities does not mean the associated costs are day-to-day living costs. Such costs are discretionary for people who do not have a disability, but it may be established, with reference to relevant evidence, that these costs are necessary for a person with a disability.

See *Milburn and National Disability Insurance Agency [2018]* AATA 4928 (20 December 2018) in which the tribunal approved funding for a gym membership and personal trainer fees for a participant with arthritis and fibromyalgia, and *McKenzie and National Disability Insurance Agency [2019]* AATA 3275 (5 September 2019) in which the tribunal approved funding for ducted air-conditioning for a participant with multiple sclerosis living in Central Queensland.

What is most appropriately funded through the National Disability Insurance Scheme?

Schedule 1 of the Supports for Participants Rules sets out the considerations the NDIA must make in determining whether a support is most appropriately funded by the NDIA and not by another service system. The schedule considers the intersection of responsibility for funding in the areas of health (rr 7.4–7.7), early childhood development (rr 7.8–7.10), child protection and family support (rr 7.11–7.12), education (rr 7.13–7.16), employment (rr 7.17–7.18), housing and infrastructure (rr 7.19–7.20), transport (rr 7.21–7.22) and justice (rr 7.23–7.25).

The intersection of funding responsibility between the NDIS and other service systems can cause problems for many participants who fall, or are at risk of falling, through a gap between two or more service systems. Guidance as to which service system may be responsible for funding a particular support can be found within the Council of Australian Governments principles guide, and subsequent communiques and factsheets published by the COAG Disability Reform Council (see the disability-related health supports factsheet).

In *Burchell and National Disability Insurance Agency [2019]* AATA 1256 (4 June 2019) the intersection between the health system and the NDIS was considered. This was a critical decision in which the tribunal analysed the wording of s 34(1)(f), which requires the NDIA to be satisfied that a support is most appropriately funded through the NDIS and not more appropriately funded or provided through other systems of service delivery or support services offered by a person, agency or body.

It was determined that if a support is not made available by another service system, it cannot be more appropriately funded by that service system. The tribunal concluded that as the health system did not offer (or make available) thickened fluids to Mr Burchell, which he required as a result of an

impairment associated with his cerebral palsy, the thickened fluids could not be said to be more appropriately funded by the health system.

See also the case of *LNMT and National Disability Insurance Agency [2018]* AATA 431 (6 March 2018), which considered the intersection of funding responsibility between the child protection service system and the NDIS.

The Challenge of Obtaining Necessary Evidence

The NDIA, as a Commonwealth agency, is bound to apply the law and must be satisfied the legislative criteria are met before granting a person access to NDIS or approving funding for a requested support. It is for this reason that the NDIA requires independent evidence from experts upon which it may base its assessment about a person's eligibility to access the scheme and/or their reasonable and necessary supports.

However, the gathering of recent, relevant and sufficiently detailed evidence can be burdensome for people with a disability seeking access to funded supports. A person may have difficulty securing necessary evidence because of their disability and/or because of the cost involved.

Where a person is unable to afford medical assessments and reports, the person may ask the NDIA to provide financial assistance to help them cover the costs (s 6 NDIS Act).

Evidence must address the relevant criteria and, in cases where it does not, the NDIA may ask for further information from the person. The NDIA have published guidelines about the circumstances in which it is appropriate to ask a person to undergo additional assessment and/or provide further information to support its assessment of access requests (s 10.2 Access to the NDIS Operational Guideline) and reasonable and necessary supports (s 8.3 Planning Operational Guideline).

See *Liddle and National Disability Insurance Agency [2018]* AATA 5071 (7 June 2018) in which the tribunal refused a request of the NDIA to direct a person to undergo an assessment by an occupational therapist in circumstances where that person had already undergone an assessment. This decision will be helpful in cases where an applicant (and/or their advocate) considers that sufficient evidence has already been provided to the NDIA.

Further information about the type of evidence that may support an access request is available on the NDIS website. The NDIA has developed an 'evidence of psychosocial disability' form to assist people with psychosocial disability in the access process.

Scheduled Reviews and Change of Circumstances

Review of a participant's supports in their plan

Once a person is a participant in the NDIS, their support needs will be reviewed on a scheduled basis. Scheduled reviews occur prior to the end date specified on participants' NDIS plans (which may run for a period of 12 to 36 months). As a result of a scheduled review, a new plan will be issued for the participant for a further defined period.

In recognition that a person's needs may change prior to the date of a scheduled review, the NDIS Act provides a mechanism for a person to request a review at any time (an unscheduled review) (s 48 NDIS Act).

A change in circumstances can include a change in a participant's impairment (e.g. a deterioration of functional capacity), a change in their family or informal support network, or provision of an updated assessment recommending different care, support or assistive technology for the participant.

It is important for participants to let the NDIA know about important changes in their lives so their plans meet their current needs.

A participant seeking an unscheduled review will need to provide evidence that their circumstances have changed, and an earlier review of their plan is warranted (*Burston v National Disability Insurance Agency [2014]* AATA 456).

Although unscheduled reviews provide an important review mechanism to participants whose circumstances have changed, including following the expiry of the three-month internal review time limit (see How to Appeal an NDIA Decision below), it is a mechanism that should be accessed only when necessary. This is because in cases where a participant is dissatisfied with the NDIA's response to their request for an unscheduled review, the participant will gain little practical benefit of pursuing the matter further in the Administrative Appeals Tribunal (AAT) due to the limited jurisdiction of the AAT to review decisions of this nature.

For this reason, the mischaracterisation of requests for reviews as unscheduled reviews has been problematic and is considered in the case of LQTF and National Disability Insurance Agency [2019] AATA 631 (2 April 2019).

Review of a participant's goals

Section 47 of the NDIS Act provides that a participant can ask the NDIA to change the participant's goals at any time and, in response to such a request, the NDIA must prepare a new plan including the changed version of the participants goals within seven days of receiving the request from the participant.

How to Appeal a National Disability Insurance Agency Decision

A person affected by a decision of the NDIA can seek review of that decision if it is reviewable. All decisions that are reviewable are listed in s 99 of the NDIS Act.

Importantly, a decision to refuse a person access to the scheme and a decision to approve a participant's statement of supports are both reviewable decisions (items 1 and 4 of s 99 of the NDIS Act).

There are two stages of review:

- internal review
- external review.

Although there are no costs associated with pursuing either an internal or external review, time limits apply.

Internal review

Under s 100 of the NDIS Act, a person affected by a reviewable decision of the NDIA can ask for an internal review of the decision over the phone, by email, by letter or by completing an internal review application form.

For more information about the process of requesting an internal review, visit the NDIS website.

Requests for internal review must be lodged within three months of a person receiving the notice of the decision with which they are dissatisfied.

It is important that a person seeking review is clear about the nature of their request. That is, they should state that they are seeking 'a section 100 internal review of a reviewable decision' and explain why they are seeking the review (e.g. they do not agree with the NDIA decision to refuse to grant them access to the NDIS, or they do not agree with the NDIA decision to refuse to fund certain supports). This will help to minimise the chances of the person's request for an internal review being mischaracterised as an unscheduled review request or a complaint about the NDIA's processes.

The NDIA must complete the internal review as soon as reasonably practicable, the outcome of which will be a decision by the NDIA to either confirm, vary or set aside and substitute a new decision (s100(6) NDIS Act).

External review

Under s 103 of the NDIS Act, a person who is dissatisfied with the outcome of their internal review may pursue the matter further by lodging an external review (an 'appeal') in the AAT.

Where a person has not received an outcome to their request for an internal review, the person may nevertheless be able to apply for an appeal in the AAT. See *NNXF and National Disability Insurance Agency [2019]* AATA 5552 (23 December 2019) in which the AAT determined that it has jurisdiction to determine certain applications where an internal review decision may be deemed to have been made.

For more information about the process of requesting an external review, which may be lodged online, or via letter or application form, visit the AAT website.

Requests for external review must be lodged within 28 days of a person receiving the notice of the NDIA internal review decision with which they are dissatisfied. Requests for external review lodged outside of this time period may be accepted where a person can provide good reasons for their delay.

An external review by the AAT is a 'hearing de novo', which means that the AAT will look at a person's case afresh and consider all the material, including new material filed by an applicant and/or the NDIA, to determine the person's case.

Typically, an external review application will proceed through the following steps:

- Provision of T-documents—all the documents that are in the NDIA's possession that are relevant to the review must be collated by the NDIA and filed in the AAT and provided to the applicant.
- Case conference—an informal meeting with the AAT and NDIA is scheduled to discuss whether an agreement can be reached and, if not, to prepare a 'to-do list' for the progress of the external review application. To-dos may require an applicant to file further evidence, and the NDIA to consider and respond to that evidence by set dates before the listing of a further case conference.
- Directions hearing—this hearing is held prior to a final hearing for the purposes of preparing a timetable for the progress of a case to a hearing.
- Final hearing—the applicant and NDIA present arguments in support of their case and can call witnesses to give evidence to the AAT member/s.

Most commonly, external review applications resolve by agreement between the applicant and the NDIA, without the need for the AAT to determine the matter at a final hearing. In all cases, the AAT will issue a decision either confirming, varying or setting aside and substituting a new decision once a matter is determined (either by agreement reached between the parties or as a result of a final hearing).

More information about the external review process within the AAT is available on the AAT website.

Model litigant rules and complaints

In cases where a person is concerned about the NDIA's conduct in review proceedings, it may be helpful for the person to raise the requirement of the NDIA to comply with the 'model litigant rules'. The NDIA, as a Commonwealth Government agency is required to comply with these rules, which set standards for conduct of NDIA staff and its lawyers, and are found in Appendix B to the Legal Services Directions 2017.

Complaints about the NDIA may be made directly to the NDIA or to the Commonwealth Ombudsman. The NDIS Quality and Safeguards Commission receives and investigates complaints against service providers.

In addition, in Queensland, complaints may be made about registered NDIS service providers under the *Human Rights Act 2019* (Qld) (Human Rights Act), where the complainant considers that the provider has acted or made a decision in a way that is not compatible with human rights or, in making a decision, the provider has failed to consider a human right that is relevant to the decision (s 58 Human Rights Act). Complaints that progress to the Human Rights Commission may be referred by the Human Rights Commissioner to the NDIS Quality and Safeguards Commission (s 73 Human Rights Act). For more information about the right to complain and the complaint-making process, visit the Human Rights Commission website.

Free Advocacy and Legal Services

There are a number of disability advocacy agencies that receive funding to help people with appeals of NDIA decisions.

Legal Aid Queensland operates an advice and representation service. There is no means test for applicants seeking help through this service. Advice is provided to all people who contact the service, and representation in appeals cases is provided in limited circumstances (subject to assessment on application).

Legal Notices

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