

NDIS APPEALS: A GUIDE TO THE ADMINISTRATIVE APPEALS TRIBUNAL (AAT)

What happens if I disagree with the result of my NDIS Internal review?

If you disagree with a decision made by the National Disability Insurance Agency (NDIA), you must first ask the Agency to review the decision. This is called an internal review. If you then disagree with the decision of the internal review, you can apply for an external review of the decision with the [Administrative Appeals Tribunal \(AAT\)](#), an independent body. The decision you have been given by the Agency will say whether or not the AAT can review it. For example, it could say

If you are not satisfied with the decision, you can apply to the Administrative Appeals Tribunal (AAT) for an external review within 28 calendar days of receiving the internal review decision in writing. Information about how to apply is available on the AAT website (aat.gov.au), or by calling 1800 228 333.

If it does not then it will not be considered an internal review and the AAT cannot review it. When this fact sheet refers to “you” it means the NDIS participant, and includes their nominee, representative or support person.

Some of the decisions the AAT can review are:

- a decision that a person does not meet the access criteria
- a decision to approve the statement of supports in a participant's plan
- a decision not to review a participant's plan
- a decision to make, or not to make, a determination about who may do things on behalf of a child
- a decision to make, or not to make, a determination that a person has parental responsibility for a child
- a decision to appoint a plan nominee or a correspondence nominee.

When reviewing a decision, the AAT has the power to:

- **Affirm** the decision (meaning the decision is not changed); or
- **Vary** the decision (meaning part of the decision is changed); or

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- **Set aside** the decision and substitute a new decision: the decision is replaced with a new decision
- **Set aside and remit** the decision: the matter is sent back to the agency to make a new decision.

HOT TIP



This external review will look at everything afresh so wait until you have received the Statement of Issues before deciding what further evidence or information you need to provide. The Statement of Issues (SOI) is the document that will now be referred to throughout this process.

How do I Apply?



First, read the Guide to Applying for Review located at the back of [the AAT application form](#). You can submit your application by post, email or fax. The AAT can help you complete an application if you need assistance. Remember to attach a copy of the decision letter or if you cannot, give a brief description of the decision in your letter/email.

To appeal an internal NDIS decision you must submit your AAT application within the 28-day timeframe. You can always forward additional evidence during the process but the initial submission must be within that timeframe.

There is no application fee to apply for a review of an NDIA decision.



[This video link explains the process](#): How to apply for an External review at the AAT

If you miss the 28 day cut-off, [you can apply for an extension of time](#). If you change your mind, you can write at any time to withdraw your application without having to explain why, or the AAT can send you a withdrawal form.

It is worth revising all the information that was submitted to the NDIA for your internal review (S100). If someone else submitted your Internal Review you can check what information the NDIA used to make their decision by submitting a [Participant Information Access request \(PIA\)](#). This can take 28 days to receive so as stated above, submit the initial AAT application while you wait.

The Internal Review decision letter will identify the criteria the decision was based on, submit this with your application along with why you think the decision is wrong.

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What happens after lodging your application?

- AAT sends a letter to you confirming your application has been received.
- 3 days after AAT receive your application – a Contact Officer will be assigned and contact you to discuss what will happen next.
- The AAT will also inform the NDIA of your application and request them to provide a copy of the decision and all documents relevant to the decision to both the AAT and to you. (these are called T documents)
- 2-4 weeks after AAT receives the T documents the first case conference will usually be held either at an AAT office or by telephone.



HOT TIP

The focus throughout the AAT process will be on the statement of issues, so don't spend time explaining other aspects of your life or other issues outside of the SOI.

1st Case Conference: The respondent (NDIA's representative) talks, the Applicant (NDIS Participant & or nominee who applied for the external review) listens

A few hours before the 1st case conference the respondent (NDIA) will send a 'Statement of Issues' ('SOI').

Your role as the applicant/participant is to attend, listen, take notes and ask questions!

You are not expected to contest the issues, you will have time to consider and prepare your response in the next case conference.

2nd Case Conference: The applicant talks and the respondent listens.

Typically, there are a couple of months between 1st and 2nd case conferences giving the applicant time to gather evidence and information to address the arguments from the 1st case conference.

The applicant is required to provide an updated Statement of Issues it can be as simple as preparing a word document addressing all the issues from the 1st case conference.

Daily impact functionality statement of lived experience and carers impact statement are only needed if they directly relate to the SOI's

You have an hour to address all issues which is not very long so every minute counts, although having opportunity to tell your story and being heard might be important to you that time taken

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may mean that you are not able to address all the issues and therefore reduce your chances of succeeding with your appeal. So you need to:

- strongly address the key issues from the SOI's.
- be concise in how you present information
eg Support (a) is distinguished from Support (b) because of these 6 reasons
We have 4 reports to substantiate this, the evidence in OT report (xyz) page 3 paragraph 5 etc
- be specific with your evidence to directly address the issues in the SOI.



HOT TIP

you can be proactive and put forward settlement options.

3rd case conference = Both the applicant and the respondent talks.

The respondent will usually send an updated SOI prior to the 3rd case conference responding to the arguments and evidence lodged by the applicant.

At this conference there can be discussion about a need for any further evidence.



HOT TIP

If you feel you are being asked for excessive evidence you can go back to the SOI and check that all issues have been addressed. Be empowered to push back on providing more information.

If all has gone well so far either you or the NDIA can put forward a settlement option by emailing the AAT, you can put forward the minimum you would accept and also communicate that all other parts of the plan not being contested will stay the same

Either you or the NDIA may come back with a counter offer

If you both agree they will write up a settlement offer listing all the terms of the plan which you will have to sign.

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HOT TIP

Be aware that the AAT can look at the entire plan and you may get less than you got at the internal review - there is no guarantee you will get more. Everything is looked at fresh. This is why when settling you request all other plan supports outside the SOI stays the same.

If you do not reach an agreement, the AAT representative will prepare a written case plan setting out the next steps.

Conciliation

A conciliation is no different from a case conference. It will operate exactly how the previous case conferences have. All via phone conference call.



HOT TIP

This is the final opportunity to settle the case before going to the more formalised hearing.

Note – tribunal members do not have decision making power until the hearing stage. A tribunal member is not permitted to make any rulings during case conferences or conciliation. The only way to resolve a matter is through settlement or withdrawal of application.

Hearing

Final stage of the AAT process and can take a year to get there.

Applicant has the right to submit evidence. Generally, the respondent will prepare an evidence bundle. The applicant just needs to lodge any additional evidence they wish to be considered at hearing.



HOT TIP

Some applicants have been assisted by the NDIS's legal team to put together the evidence bundle – they don't have to do this but it is not uncommon for them to assist.

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Did you know you have power in this process?

- You can lodge any new evidence
- You have the right to call any witness. Applicant needs to compile a witness list and lodge. You can ask the AAT representative how to do this.
- Any witnesses you call should not be involved in the previous case conference processes as they might be seen as having a conflict of interest.
- You have the right to cross-examine any of the NDIA's witnesses.
- You have the right to subpoena evidence, as well as to view a copy of any evidence the agency subpoenas. The AAT representative will assist you with the subpoena process and issue summonses.
- You need to be very thorough going through any evidence that has been subpoenaed to prepare for any cross examination and you too can question and cross examine.

Outcome: decided by a member of the tribunal.



This link provides step by step information identifying the responsibilities of the AAT, the NDIA and you: [Administrative Appeals Tribunal Practice Direction](#).

It also breaks down the processes in the external review process including;

In 2023 the NDIA introduced an [early dispute resolutions process](#) in an effort to improve the review process. The purpose of these processes is to increase the number of Appeals being resolved before going to hearing.

If you are contacted by the NDIA Early Resolution Team, **copy the AAT into all correspondence.**



Hot Tip:

You do not have to make decisions on the spot, you can request more information be sent to you about this process and you can request they contact you at a time when you can have a support person present. You can also contact Family Advocacy for further information on these processes.

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Where can I get subsidised legal advice?

You can call Law Access NSW on 1300 888 529 for information and advice about any NDIS problem.



Hot Tip:

The AAT also offer one off legal advice.

The majority of external appeals are resolved without needing to go to hearing. There are many families who have had successful outcomes at the AAT without legal representation.



Hot Tip:

You can also ask the NDIA lawyer to explain anything you don't understand, others have found this helpful when they have not had legal representation.

It is mostly only novel¹ cases that are approved for free legal aid representation, however Legal Aid NSW offer 2 x 30-minute free legal advice sessions. Legal Aid NSW suggest saving your advice session until after your 1st Case Conference when you receive the NDIA's Statement of Issues (SOI), and the second session will be helpful to either review the details within an agreed settlement or to prepare for going to a Hearing. This is general advice and may vary in some instances.

Things to consider when accessing any legal support:

- Be familiar with the Statement of Issues
- Have your evidence at hand
- Prepare any questions ahead of time.
- Prepare a chart linking evidence to the issues listed in the SOI

Statistics show that the AAT has changed the decision under review in nearly 77% of applications, so it is worthwhile making an application to the AAT.

[Click here for more statistics.](#) You can also contact Family Advocacy as it can be helpful to hear about similar cases that have gone through this process.

¹ Novel case is a case for which no precedent can be found

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Contact us

Contact us if you need more information or have any questions.

Family Advocacy

Phone: 02 9869 0866 or 1800 620 588

Email: communications@family-advocacy.com

Web: www.family-advocacy.com