

# APPEALING AN **NDIS** DECISION

### Who this factsheet is for:

This factsheet is for people who have received a decision from the National Disability Insurance Scheme (“NDIS”) that they think should be reviewed.

You might want to appeal a NDIS decision if:

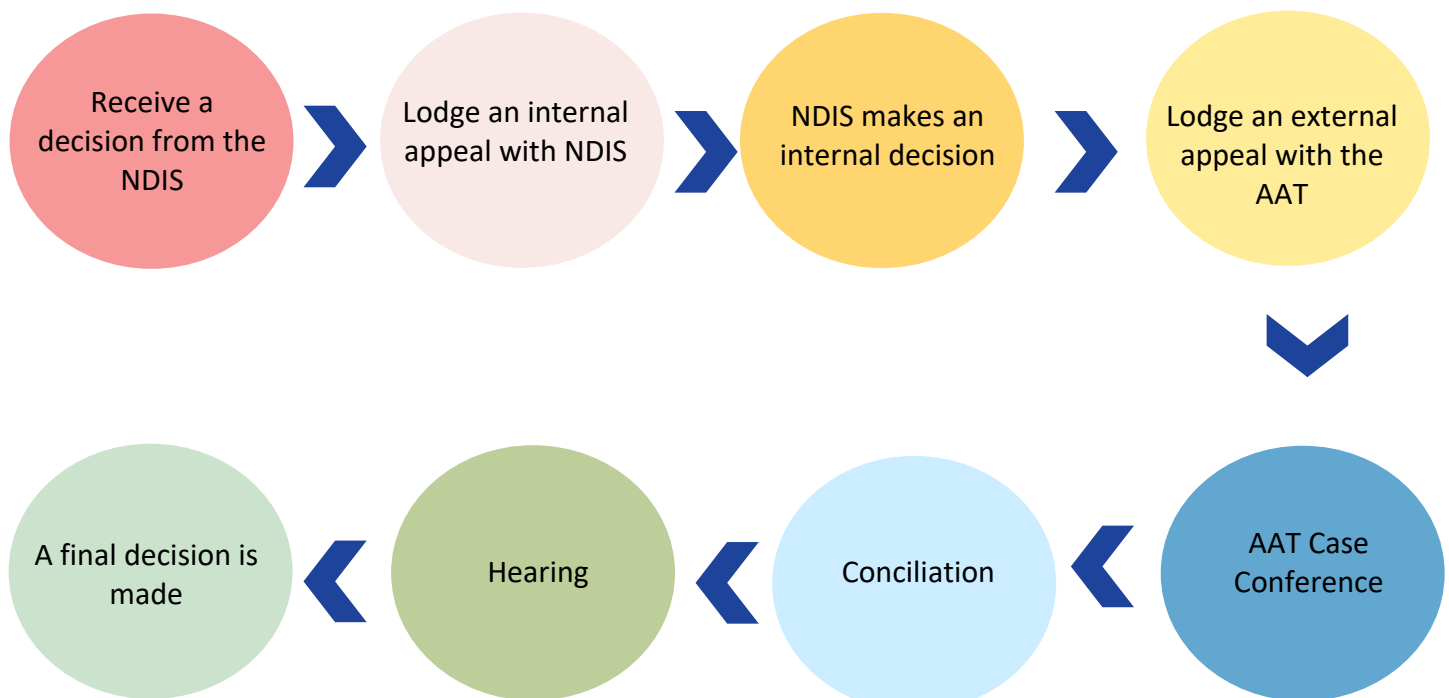
- ⇒ a decision is not the one you were expecting
- ⇒ you think the NDIS should make a different decision
- ⇒ there is any information you have that you would like the NDIS to reconsider
- ⇒ you have any new evidence, such as medical or therapy reports, that you would like the NDIS to consider

### What is in this factsheet:

This factsheet explains how to appeal a decision made by the NDIS. This factsheet will also explain each process, and give you tips on what you might need to do to make an appeal.

Here is a look at the what an appeal process might look like. It is important to remember that this is an outline of all the steps, and your appeal may reach a conclusion before a hearing is needed.

We will discuss each of these steps throughout this factsheet.



## Appealing to the NDIS (Internal Review):

## 1. You get a decision from the NDIS

The first sign that the NDIS have made a decision that affects your payments is usually in writing. If you want to challenge this decision, you must ask the NDIS to review the decision first.

## 2. You can request an appeal of that decision

Only certain decisions of the NDIS can be appealed. See page 7 for decisions that can be appealed.



**Time limit!**

You must ask the NDIS to review the decision **within 3 months** from the day you received it in writing. There are a few ways you can ask the NDIS to review a decision. These include:

- ⇒ Completing a [Request for a Review of a Decision Form](#) and sending it to the NDIS
- ⇒ Send the NDIS an email with supporting evidence at [enquiries@ndis.gov.au](mailto:enquiries@ndis.gov.au). We will discuss what evidence might be helpful to support your application below.
- ⇒ Call the NDIS on 1800 800 110
- ⇒ Visit an [NDIS office](#)

You can also send a letter with supporting evidence to:

Chief Executive Officer  
National Disability Insurance Agency  
GPO Box 700  
Canberra ACT 2601

After you ask for the decision to be reviewed, the NDIS will look at their decision again. This is called an internal review.

## 3. NDIS makes an internal decision

Once the NDIS have received your request for a review, they will try to complete the review within **60 days** (which is about 2 months).



When the NDIS have finished the review, they will let you know reasons for their decisions in writing. Once they have made a decision, the NDIS cannot make another decision on the same matter.

## Appealing to the AAT (External Review):

If the outcome of the internal review is not what you hoped for, you may want to request an external review. An external review is completed by the Australian Administrative Appeals Tribunal (“AAT”).

### 1. You receive review decision from the NDIS

An external review can only be asked for after the internal review has been done.

### 2. You can request an external review by AAT

You must request an external review by the AAT within **28 days** after you receive a decision from the NDIS. As with internal reviews, only certain decisions can be reviewed. Check out page 7 for all reviewable decisions.

If you are out of time, you can apply in writing for an extension as long as you explain why the application is late. How to do this can be found [here](#).



**Time limit!**

You can ask the AAT to review a decision by:

- ⇒ Applying [online](#); or
- ⇒ Filling out an application form, which can be found [here](#); or
- ⇒ Writing a letter or email which includes:
  - Your name, address, telephone number, and email address
  - The date you received the decision from the NDIS
  - Reasons why you think the decision is wrong
  - A copy of the decision, or a brief description of the decision

### 3. Case Conference

A case conference is a private meeting arranged by the AAT to discuss your case. It is run by the AAT Conference registrar or Member and attended by you (or your representative) and a representative of the NDIS. The point of the meeting is to see whether you and the NDIS can reach an agreement. During the conference, you can bring a support person (e.g., friend or family member) and a representative. It can be held at in the AAT or via the phone. The conference usually lasts about 30-45 minutes. Many cases are solved at this stage.

### 4. Conciliation

If an agreement is not reached at the Case Conference, the next step is a conciliation. This will usually happen around 4 weeks after your case conference.

Like a case conference, the conciliation will be heard at the AAT or via the phone. You can bring a support person with you.

#### How to Prepare

- ⇒ Think about the strengths & weaknesses of your case
- ⇒ Think about the strengths and weaknesses of the other party’s case
- ⇒ Seek legal advice

For more information and ideas, see the [Conciliation Preparation Toolkit](#).

At conciliation, you will be able to talk about your case from your perspective, and hear other people's point of view. If an agreement is not reached at the Conciliation, there will need to be a hearing.

## 5. Hearing

A hearing is the final stage of the appeal, if your case does not resolve in the earlier steps.

An AAT Officer will contact you between 7 and 14 days before the hearing to tell you the date, time and place of the hearing.

### How to Address Members:

- Their title (e.g. Deputy President, Senior Member, or Member); or
- Their name (e.g. Ms. Smith) or
- A combination of both (e.g. Senior Member Smith)

A hearing is an opportunity for you and the NDIS to present all your information and arguments. A hearing is quite informal and will be held by one Tribunal Member. The Tribunal Member will look at your information and arguments, and make a decision about your matter.

The length of the hearing is usually about 2-3 hours, but will be different for every case.

What happens at the Hearing:

- ⇒ The Member might ask the NDIS to talk about the main issues in the review;
- ⇒ You will be asked to take an oath/make an affirmation that you will tell the truth at the hearing;
- ⇒ You can present your information, and ask questions;
- ⇒ Any witnesses will be asked to give evidence (if there are any witnesses);

## Tips For Evidence You May Need:

### Internal Review with the NDIS:

- ⇒ What information you were expecting;
- ⇒ Why you think the NDIS should make a different decision;
- ⇒ Any information you think the NDIS should reconsider;
- ⇒ Any new evidence that you would like the NDIS to consider;
- ⇒ Any reports or letters that detail your disability and how it affects your daily life;

The NDIS have information about what to give them, depending on the type of disability [here](#).

#### External Review with the AAT:

- ⇒ The AAT say that you can give them any information that you think might support your case.

The AAT prefer you to send any information electronically if possible.

#### New Evidence:

Here are some examples of what new evidence you might want to give the NDIS to reconsider:

- ⇒ Medical reports by a health professional such as:

- General Practitioner (GP)
- Paediatrician
- Orthopaedic Surgeon
- Occupational Therapist
- Speech Pathologist
- Neurologist
- Psychologist
- Psychiatrist
- Physiotherapist

- ⇒ Useful evidence is evidence that may be:

- Recent
- Completed by a health professional that is relevant to your disability
- Describes further treatments you may want the NDIS to know about
- Shows how your disability impacts your daily life

## Reviewable Decisions:

Here is a table of what decisions can be reviewed. If your decision is not one of the below decisions, it cannot be reviewed.

No.	Decision:	Meaning/Example:
1	A person does not meet the access criteria	The NDIS will look at: <ul style="list-style-type: none"> <li>• Your age;</li> <li>• If you are an Australian Citizen or resident;</li> <li>• You meet the disability requirements;</li> <li>• If you have a disability that is covered by the NDIS</li> </ul>
2	Not to specify a period	
3	To revoke a person's status as a participant	This might be done if you do not meet: <ul style="list-style-type: none"> <li>• The residence requirements; or</li> <li>• The disability requirements; or</li> <li>• The early intervention requirements</li> </ul>
4	To approve the statement of participant supports in a participant's plan	Your plan must have a statement that outlines: <ul style="list-style-type: none"> <li>• Your general supports;</li> <li>• The date when the NDIS will review your plan;</li> <li>• Management and funding support</li> </ul>
5	Not to extend a grace period	The normal grace period is 6 weeks, but the CEO can choose to allow a longer period.
6	To vary a participant's plan	The NDIS might want to make changes to your plan, but it must be prepared with you, and they cannot change your statement and goals in your plan.
6A	To not vary a participant's plan	If you requested that the NDIS not change your plan, they must tell you their decision not to within 21 days.
6C	Not to conduct a reassessment of a participant's plan	If you requested that the NDIS do not reassess your plan, they must tell you their decision not to within 21 days. If the NDIS have not contacted you within 21 days, it means they have not decided to reassess your plan.
9	To refuse to register a person as a registered NDIS provider	In making this decision the NDIS will look at: <ul style="list-style-type: none"> <li>• You are suitable to provide support to people with a disability;</li> <li>• You have been assessed by an auditor and meet the standards;</li> <li>• Any staff you have are suitable to provide support to people with a disability</li> </ul> If the NDIS decide to not register you, they must give reasons for the decision.
10	To impose conditions to which a person's registration as a	A condition might be given to you at the time of your registration, or at any other time.

	registered NDIS provider is subject	Some examples of conditions of registration may be: <ul style="list-style-type: none"> <li>• Types of audits you may have to do;</li> <li>• Timing of any audits you may have to do;</li> <li>• Types of support you are allowed to provide</li> </ul>
11	To vary, or refuse to vary, the registration of a registered NDIS provider	If the NDIS decide this, they must tell you in writing. The changes can include: <ul style="list-style-type: none"> <li>• Impose, vary or revoke any conditions of registration;</li> <li>• Lessen or increase the time your registration is for;</li> <li>• Lessen or increase the supports you are allowed to provide.</li> </ul>
12	To suspend the registration of a registered NDIS provider	The NDIS might suspend your registration if it believes: <ul style="list-style-type: none"> <li>• You have contravened the NDIS Act (2013);</li> <li>• You submit a false or misleading application;</li> <li>• You are insolvent;</li> <li>• You are not suitable to provide support;</li> <li>• Your staff are not suitable to provide support;</li> </ul>
13	To revoke, or not to revoke, the registration of a person as a registered NDIS provider	May revoke if the NDIS believe: <ul style="list-style-type: none"> <li>• Person contravened, is contravening or proposing to contravene; or</li> <li>• Application contained false information; or</li> <li>• Person is insolvent under administration; or</li> <li>• Person is no longer suitable to provide support services; or</li> <li>• Commissioner is no longer satisfied that the key personnel are suitable to be involved in the provision of support or services</li> </ul>
13A	To refuse to approve a person or body as an approved quality auditor	If a person or body requests an approval, the Commission must make a decision to make an approval or refuse the approval
13B	To specify conditions in an approval given under subsection 73U(1)	The Commissioner may approve a person or body to be an approved quality auditor for the purposes under the NDIS Act
13C	A decision to vary an approval given under subsection 73U(1)	The Commissioner may approve a person or body to be an approved quality auditor for the purposes under the NDIS Act
13D	To revoke an approval given under 73U(1)	If a person or body requests an approval, the Commission must make a decision to make an approval or refuse the approval
14	To give a compliance notice to an NDIS provider	Commissioner may give an NDIS provider a written notice if the Commissioner is: <ol style="list-style-type: none"> <li>a. Is satisfied that the NDIS provider is not complying with the Act; or</li> </ol>



		b. Is aware of information that suggests that an NDIS provider may not be complying with the NDIS Act
14A	To vary or revoke a compliance notice	Commissioner must consider any submissions that are received from the provider before the end of any reasonable period
15	To make a banning order	Commissioner can, by written notice, make an order prohibiting or restricting specified activities by an NDIS provider, if: <ul style="list-style-type: none"> <li>• Commissioner had revoked registration of the person as a registered NDIS provider; or</li> <li>• The person is convicted of an offence involving fraud or dishonesty;</li> <li>• Person becomes insolvent'</li> <li>• The Commissioner reasonably believes <ul style="list-style-type: none"> <li>⇒ The person has contravened, is contravening or likely to contravene the Act</li> <li>⇒ Person is involved or is likely to be involved in the contravention of this Act by another person</li> <li>⇒ Person is not suitable to provide support or services to people with a disability</li> <li>⇒ The NDIS provider – there is an immediate danger to the health, safety or wellbeing of the person with a disability</li> </ul> </li> </ul>
16	To vary, or to refuse to vary or revoke, a banning order	Commissioner may vary or revoke a banning order if the Commissioner is satisfied that it is appropriate to do so
17	To make, or not to make a determination in relation to a person	Relates to permits for things to be done by or in relation to children – in relation to if the CEO is satisfied that it is not appropriate – a person determined in writing by the CEO
18	To make or not to make a determination that subsections 74(1) and (2) do not apply to a child	However 17 (above) does not have effect in relation to a participant who is a child if the CEO makes a determination that those subsections do not apply to the child
19	To make, or not to make, a determination that a person has parental responsibility for a child	A person who has guardianship over a child – they have parental responsibility over that child – unless the CEO determines that one or more of the persons have parental responsibility
20	To appoint a plan nominee	CEO may appoint a plan nominee

21	To appoint a correspondence nominee	CEO may appoint a correspondence nominee
22	To cancel or suspend, or not to cancel or suspend the appointment of a nominee	CEO may cancel or suspend nominees in certain circumstances: <ul style="list-style-type: none"> <li>• At the request of the participant</li> <li>• Nominee no longer has guardianship</li> </ul>
23	To give a notice to require a person to take reasonable action to claim or obtain compensation	CEO may require person to take action to obtain compensation. Notice is required in writing and to include a specified time period
24	To refuse to extend a period	The CEO on application by the participant or prospective participant, extend the specified period
25	To take action to claim or obtain compensation	If participant or prospective participant doesn't take the required action within the period and the action is to enable the person to claim or obtain compensation otherwise than under a scheme of compensation – CEO may take action to claim or obtain compensation in the name of the participant
26	To take over the conduct of a claim	If participant or prospective participant doesn't take the required action within the period and the action is to enable the person to claim or obtain compensation otherwise than under a scheme of compensation – CEO may take over conduct of the existing claim
27	To give a notice that a CEO proposes to recover an amount	CEO may send recovery notice to compensation payer or insurer
28	Not to treat the whole or part of a compensation payment as not having been fixed by a judgement or settlement	CEO may disregard certain payments
29	Not to write off a debt	CEO may write off debt on behalf of the Agency for a stated period or otherwise
30	That the CEO is not required to waive a debt	CEO must waive the right to recover the proportion of a debt that is attributable solely to an administrative error made by the Agency if the debtor received in good faith payment/s that give rise to a portion of the debt
31	Not to waive a debt	CEO may waive the right to recover debt if: <ul style="list-style-type: none"> <li>• The debt is, or is likely to be less than \$200; and</li> <li>• It is not cost effective for the Agency to take action to recover the debt</li> </ul>

32	That the CEO is not required to waive a debt	CEO can waive 20% of debt if 80% of original debt is already paid
33	Not to waive a debt	Debt can be waived in special circumstances

# GLOSSARY

Below are some common words or phrases that might be used during your appeal.

**Appeal:** A request to have your decision looked at again.

**Tribunal:** A place where there are people specially chosen to deal with problems and disputes.

**Australian Administrative Appeals Tribunal:** A tribunal that leads an independent review of decisions made by other organizations (such as the NDIS). Often shortened to “AAT”.

**T-Documents:** All documents sent by the NDIS that are about your application.

**Case conference:** A meeting to talk about your issues, and try to see whether you and the NDIS can agree. If that is not possible, the meeting will then be to plan how your application will go ahead. Usually held 6 to 10 weeks after the AAT receives the application.

**AAT Conference Registrar:** The person who will direct the case conference.

**Member:** Refers to the President, a Deputy President, a senior member or any other member of the AAT.

**Conciliation:** A private meeting between you and the NDIS to talk about options, and possibly reach an agreement. Usually held 4 weeks after your case conference.

**Hearing:** A chance for you and the NDIS to present information and arguments to the AAT about your application. Once they have heard both sides, the AAT will make a decision.

### Where to get help?

If you have any questions about this factsheet or any other questions, you can contact Advocacy Tasmania via:

Phone: 1800 005 131 (between 9am and 5pm)

Text: 0457 806 963

Email: [contact@yoursaytas.org](mailto:contact@yoursaytas.org)

