

NDIS Access Frequently Asked Questions



Is everyone with a disability eligible for the NDIS?

Not all people with disability are eligible for the NDIS. The NDIS is designed for people with significant and permanent disabilities whose ability to take part in everyday activities is substantially reduced. When a person is approved access to the NDIS, the person becomes an 'NDIS participant'.

Just because you receive the Disability Support Pension it does not mean you will automatically be able to get on the NDIS. This is because the criteria for these government-funded supports are very different.

To be eligible to access the NDIS, you must:

- Meet the [age requirements](#) (aged under 65 at the time of application),
- Meet the [residency requirements](#),
- Meet the [disability requirements](#) OR the [early intervention requirements](#).

Most people access the NDIS based on the disability requirements, which are:

1. you have an impairment,
2. the impairment is permanent,
3. the impairment results in substantially reduced functional capacity,
4. the impairment affects your social or economic participation, and
5. you are likely to require support under the NDIS for your lifetime.

In this fact sheet we refer to the [Becoming a Participant Rules](#), which provide more information about the meaning of the access requirements, so you can know the rules the NDIA must follow.

What is an impairment?

An impairment is the loss of, or damage to, a physical, sensory or mental function.

Impairments may be:

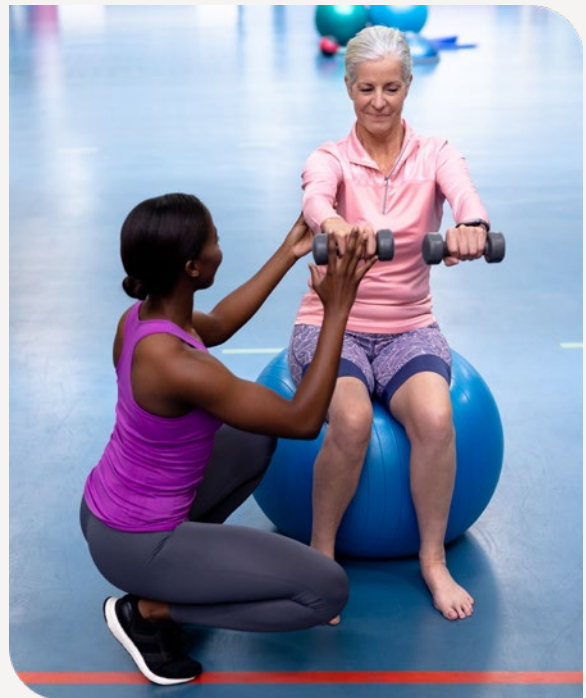
- intellectual (how a person thinks)
- cognitive (how a person concentrates, remembers information, and makes decisions)
- neurological (how a person's nervous system works)
- sensory (a person's senses such as hearing and seeing)
- physical (a person's ability to move parts of their body)
- psychosocial (associated with a diagnosis such as anxiety or depression).

The law requires the NDIA to focus on a person's impairments, not underlying medical diagnoses, so you need to describe the impairments you live with to the NDIA.

When is an impairment permanent?

An impairment will be permanent if there are no known, appropriate, evidence-based treatments available which would remedy it. Examples of treatments include surgery, medication, psychological therapy and physical therapies.

If there are treatments which may help some of your symptoms but won't be a cure, your medical specialist needs to explain the expected impact of the treatment. Statements like "physiotherapy may help" are not enough. The medical specialist needs to say what help they will be.



If there is a treatment "available" which could remedy the impairment and that treatment has not been tried or not completed, the impairment will not be considered permanent.

An example is the case of [MacFarlane and National Disability Insurance Agency \[2018\]](#). Mr MacFarlane who had chronic pain, had his case considered by the Administrative Appeals Tribunal. The Tribunal said his impairment was not permanent because he had started treatment at a multidisciplinary pain program but stopped the program before it was finished.

Sometimes, it is difficult for a person to get a particular treatment, because of their own particular circumstances. The Federal Court has made a decision which helps us understand the meaning of the words '**available**' and '**remedy**' (see [National Disability Insurance Agency v Davis \[2022\]](#)).

A treatment will be '**available**' if it is available to you. If there is a treatment which you cannot access because it is only available overseas, or is unaffordable, or because other circumstances mean you cannot have the treatment, then it is not 'available' to you. In Ms Davis' case, the Court confirmed that a closely supervised, intensive, and sustained dietary and exercise program was not "available" as it was unaffordable for a person reliant on the Disability Support Pension.

A treatment will '**remedy**' an impairment if it substantially relieves or cures it. The distinction between treatment helping a person to manage their impairment and treatment providing a remedy is important. If a treatment merely helps a person manage the day-to-day impact of their impairment, then this is not a 'remedy'. In Ms Davis' case, the Court noted, "the word 'remedy' should be understood to mean something approaching a removal or cure of the impairment".



In the Davis case, the Court also explained when episodic or fluctuating impairments will be permanent. A fluctuating or episodic impairment may be 'permanent' despite the changeable nature of the impairment if it endures. In Ms Davis' case, the Court noted that while the impact of an impairment on a person might fluctuate from time to time, the impairment will be permanent if it endures and is not likely to be removed or cured.

If you have an impairment that changes over time and the NDIA are not agreeing that your impairment is permanent, you can refer them to sections 24(2) and 24 (3), found in the disability requirements in Chapter 3 of the [NDIS Act](#).

See rules 5.4 - 5.7 of the [Becoming a Participant Rules](#) for more detail on the permanency criteria.

What is substantially reduced functional capacity?

A person will have a substantially reduced functional capacity if they **usually** require help from others or are **usually** dependent on disability equipment (other than commonly used items), technology or home modifications, to undertake activities of daily living.

Daily living activities are grouped into the following areas:

- mobility – moving physically within and outside of the home
- communication – expressing needs, being understood and understanding others
- learning – having 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 – being able to take responsibility for making decisions, planning, managing and organising daily tasks, finances and accommodation.

You only need to show you have a substantially reduced functional capacity in one of the areas of daily living activities so you should focus on the area/s in which you are most impacted.

How reduced does my function need to be?

The law requires a functional, practical assessment of what you can and cannot do and you must demonstrate you have a **substantial** reduction in your capacity to undertake activities, not merely a reduction.



For example, in [Mulligan and National Disability Insurance Agency \[2015\]](#) Mr Mulligan failed to show he had a substantial reduction in functional capacity in the area of mobility because he could walk, although slowly and with a walking stick, without other help, and he could also drive.

If you can undertake an activity but your impairment limits you from completing the activity effectively, you may have a substantially reduced functional capacity.

In [Arnel and National Disability Insurance Agency \[2019\]](#), the Tribunal found that Ms Arnel, who lived with complex regional pain syndrome, had a substantial reduction in functional capacity in the area of self-care as the pain she experienced while showering stopped her from showering herself effectively.

What if I have good days and bad days?

If the impact of your impairment fluctuates, your overall functioning (on good and bad days) will be assessed.

In [Baranowski and National Disability Insurance Agency \[2023\]](#) Ms Baranowski's impairments were episodic so the Tribunal looked at evidence of her function on her good and bad days. While her difficulties were more intense on days she was experiencing severe psychological symptoms, the symptoms appeared to be present all the time and the Tribunal found Ms Baranowski had a substantially reduced functional capacity to undertake the activity of social interaction.

In [Galea and National Disability Insurance Agency \[2022\]](#) the Tribunal found Mr Galea's bad days were relatively infrequent, only one every two months, and his function between them, while impaired due to his complex regional pain syndrome, was not substantially reduced. Mr Galea did not gain access to the NDIS.

What if I don't usually rely on others to help me?

Just because you may 'cope' somehow without help, does not mean you do not usually require it. For example, in [KYDG and National Disability Insurance Agency \[2019\]](#) the Tribunal found that although the Applicant, who lived with psycho-social impairments, didn't access help from others to undertake self-care tasks, she did usually require that help.



What type of equipment is 'disability' equipment?

If you usually rely on equipment for daily living activities, you must show the equipment is specialist disability equipment and not just a commonly used item.

In [Gardner and National Disability Insurance Agency \[2023\]](#) the Tribunal concluded that Mrs Gardner's walking stick, which she used inside her home, was a commonly used item but her walker, which she used outside, was specialist disability equipment. Because Mrs Gardner was always reliant on her walker outside her home – to maintain her balance while walking and rest upon – she had a substantially reduced functional capacity in the area of mobility.

Glasses, walking sticks, non-slip bathmats, and grab rails are categorised as commonly used items in the NDIS Guidelines. While mobility scooters and four-wheeled walkers may be categorised as disability equipment, particularly if the equipment has been recommended by a medical doctor or other health professional.

However, the NDIA should consider each person's circumstances and the equipment they use to determine if it is 'disability' equipment, instead of simply relying on their guidelines.

For example, in [Beaumont and National Disability Insurance Agency \[2024\]](#) Mr Beaumont used a light-weight aluminium folding chair, purchased from Kmart, to help him access the community, pausing every now and then and sitting on the chair to help him manage his pain and fatigue. The Tribunal found that although the chair was not a walker prescribed by a medical practitioner, it could be classified as disability equipment as it was being used by Mr Beaumont "to improvise for equipment that is assistive in nature like a walker".

See rule 5.8 [Becoming a Participant Rules](#) for more detail about the substantially reduced functional capacity criteria.

What if I don't have substantially reduced functional capacity?

If you do not have a substantial reduction in your functional capacity, you may still gain access to the NDIS, based on the early intervention requirements, instead of the disability requirements. The NDIA will need to agree that early intervention supports will likely reduce your need for future supports and lessen the impact of your impairment, improve (or prevent deterioration in) your function, or strengthen the sustainability of your informal supports.

For example, in [Van Hout and National Disability Insurance Agency \[2023\]](#) Ms Van Hout did not have substantially reduced functional capacity and therefore was not eligible to access the NDIS based on the disability requirements. However, the Tribunal found that Ms Van Hout, who lived with Diabetes type 1 and autonomic neuropathy, would benefit from allied health therapy, which would likely improve her functional capacity and reduce her need for future supports. Ms Van Hout was granted access to the NDIS based on the early intervention requirements.



Access to the NDIS based on the early intervention requirements may be available to you even if you have a long-standing diagnosis or a degenerative condition.

In [James and National Disability Insurance Agency \[2019\]](#) the Tribunal noted it is important to look at the likely trajectory and impact of a person's impairment over time and the potential benefits of early intervention. It may be possible for a person with a degenerative condition to meet the early intervention requirements where the impairments that flow from the underlying condition (which may be long-ago diagnosed) are still at an early stage.

Access to the NDIS based on the early intervention requirements is available to both children and adults.

About the cases mentioned in this resource

Case references are included to help you understand how the law (the criteria and rules) is applied. Each case is determined based on the person's circumstances and available evidence. It may help you to refer to these cases, but only the Federal Court cases create legal precedents that must be followed.

Where can I get help with NDIS access?

Ask Izzy

You can find an advocate using Ask Izzy's disability advocacy finder.

 askizzy.org.au

Legal Aid

You can seek advice from a Legal Aid lawyer if you have an appeal at the AAT.

 [1300 65 11 88](tel:1300651188)  legalaid.qld.gov.au

Our NDIS service at QAI

Our NDIS Support Service gives advice to people on reviews and appeals of NDIA decisions.

 [1300 130 582](tel:1300130582)  qai@qai.org.au  qai.org.au