

# How to navigate an NDIS appeal for support - frequently asked questions

This fact sheet is for people who have lodged an appeal in the Administrative Review Tribunal (Tribunal) about a decision by the National Disability Insurance Agency (NDIA). For information about how to lodge an appeal, see our Lodging an ART Appeal fact sheet.

## I've received my T-Documents and a case conference date, what next?

Be proactive!

### 1. Check the T-Documents:

This bundle should include all the documents you gave to the NDIA with your access request or for your plan review and any additional documents you provided with your internal review request.

If you are appealing a planning decision you can lodge a Participant Information Access Request to ask for a copy of the notes the planner made at your meeting if these are not included in your T-Document bundle. These notes will be relevant and may be helpful to your appeal.

### 2. Consider what specific supports you are seeking:

Sometimes, this is not clear in the internal review decision and your support needs may have changed since the plan was made.

### 3. Email the NDIA and the Tribunal to:

- Confirm what supports you need. You can use our [template 'table of requested supports'](#) to help you clearly list your supports (if you need more than one support)
- Include any documents that were not in the T-Documents

- Include any documents which are likely to be helpful to your appeal and you have obtained since the internal review decision
- Note any concerns you have. For example, if you are running out of funds in your NDIS plan (see below for more information about this).

This should help you to manage your case efficiently so the NDIA and Tribunal know what you want before the first case conference. This may also help the NDIA to prepare a better 'Respondent Statement of Issues'.

## What is a 'Respondent Statement of Issues'?

At the Tribunal, the 'Respondent' is the NDIA. You will be called the 'Applicant'. A 'Respondent Statement of Issues' is a document prepared by the NDIA's lawyers and sets out:

- your requested supports (as they understand them)
- the evidence you have submitted
- their position on the matter.

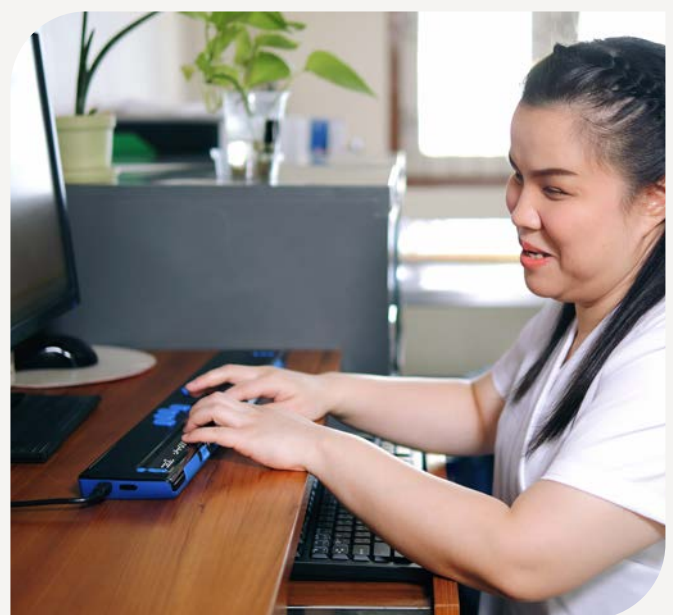
The NDIA must give you their statement of issues before the case conference.

## How do I contact the NDIA and the Tribunal

You should send all your documents and emails to both the NDIA and the Tribunal. The NDIA should contact you after you make your application to the Tribunal and tell you who:

- the NDIA's lawyer will be
- the NDIA case manager will be

You should make note of both these contacts. If you don't have these details, you can email the NDIA at [art.correspondence@ndis.gov.au](mailto:art.correspondence@ndis.gov.au) and the Tribunal at [artreviews@art.gov.au](mailto:artreviews@art.gov.au).



**Tip:** Always put your case number as the subject to the email.

This number is in this format: (202# – ###-###)

## What is a case conference?

A case conference is a phone conversation (usually via Microsoft Teams) between you and the NDIA (their lawyer and/or case manager) and is facilitated by a person from the Tribunal called a Registrar. The case conference is not a hearing and is just step one in the Tribunal's alternative dispute resolution process.

The Tribunal will contact you and the NDIA at the scheduled time. If you want, you can have a support person such as a friend or family member with you for the call.

Make sure you have:

- the Respondent's Statement of Issues
- the T-Documents
- any other documents you have been able to gather, as you will need to refer to them.

The Registrar will ask you about your appeal and then ask the NDIA about their response. Most often, the discussion will be about the documents you have provided and what further information the NDIA thinks is necessary. The aim is to work out the next steps you and the NDIA need to take to progress your appeal.

If you are asked to get more documents, you should tell the Registrar how long it will take you, and you should ask the NDIA to help (by preparing targeted questions for your practitioners and/or paying for further reports) if needed. Do not be afraid to ask for more time if you need.



Ask questions about anything you do not understand and if you do not agree with the NDIA, say so. The Registrar should help you to understand the process and next steps.

After the conference, the Tribunal should email you a timetable, often in the form of Tribunal 'directions', setting out who needs to do what next. You will most likely have more than one case conference as your appeal progresses.

## Should I agree to an independent medical assessment?

Sometimes, the NDIA may ask an applicant in a NDIS appeal to agree to be assessed by an expert paid for by the NDIA. The NDIA choose the expert. These assessments can be helpful when the NDIA is not satisfied the documents available are enough to demonstrate the criteria in the law are met.

Although the Tribunal cannot force a person to be assessed by an independent expert, the Tribunal may 'stay' or put a hold on the progress of their appeal until the assessment is done.

If the NDIA has asked you to agree to an assessment, you can ask them to first explain why it is needed and who will do the assessment before agreeing to it. You should consider the documents you have provided to the NDIA and any difficulty you may have in gathering the further information the NDIA says is required. You do not have to agree to an assessment, but in our experience they can be helpful. If you are not sure about agreeing to an independent medical assessment, we recommend you speak with an NDIS advocate or Legal Aid.



## What can I do if I am running out of funds in my NDIS plan?

It can take up to 12 months, or sometimes longer, before an appeal is finalised. If you are an NDIS participant, you should not be left without supports if this will place either you or your informal supports at risk while your appeal is being considered.

If the funds in your NDIS plan are running low, email the NDIA and Tribunal to alert them, and to give them an estimated date of when you expect to run out of funds.

You may be using the funds in your plan at a faster rate because you are accessing supports which the NDIA do not yet agree are reasonable and necessary. If this is the case, you should emphasise the risks to you, if you are unable to continue to access those supports.

There are different ways in which a new plan may be issued for you while your appeal is at the Tribunal. Ask the NDIA and Tribunal what will be best in your case.

New plans will often be for a shorter period (e.g. 6 months) and provide funds for supports on a pro rata basis, so that you can access supports until your appeal at the Tribunal is finalised. If you have run out of funds in your plan and you are still receiving supports, you should urgently get advice from Legal Aid or an NDIS appeals advocate.

## Can my support coordinator represent me?

Yes. If you have a support coordinator who has been helping with your appeal, they should be able to continue to do so. But be aware they may have a conflict of interest in the outcome of your appeal, and they cannot use your plan funds to attend to help you with your appeal.



## Does the NDIA have to follow the Tribunal's instructions?

Yes, they should follow the Tribunal's instructions. The instructions are given as 'directions' and are sent to you after a case conference. If the NDIA is not following the Tribunal's directions, write to the Tribunal to alert them and express your concern about any delay.

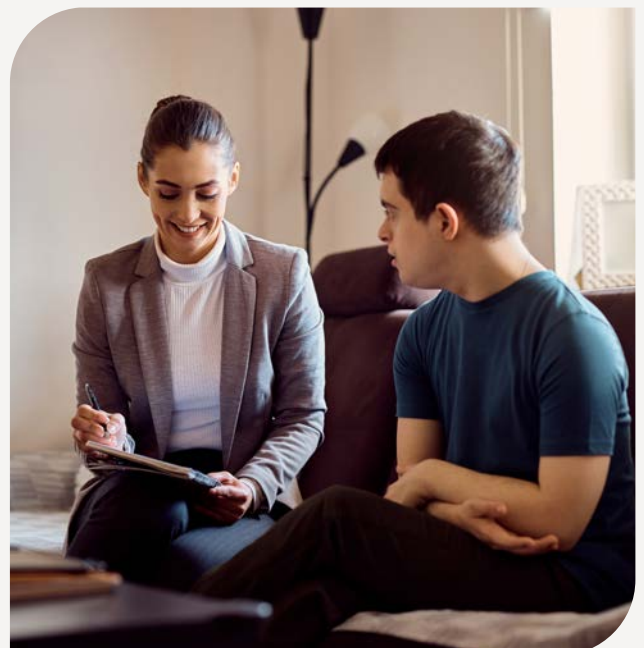
The Tribunal has practices to assist people who don't have a lawyer or advocate. Tribunal staff can help you to understand and engage in the process. The NDIA has a lawyer and they will be your point of contact for the NDIA while you are at the Tribunal. The NDIA and their lawyer have a duty to act as a 'model litigant' which requires them to act consistently and quickly to try and resolve your appeal.

For example, they should not request additional evidence that is not really required to resolve the issues in dispute.

The NDIA's job at the Tribunal is to assist the Tribunal to perform its function: to reach the correct or preferable decision on the material before it. The NDIA has no 'stake' in the outcome, other than assisting the Tribunal to reach the correct or preferable decision" (the Federal Court made this clear in [National Disability Insurance Agency v Davis \[2022\] FCA 1002](#)).

## Does the NDIA have to follow the Tribunal's instructions?

If you are appealing a supports decision, most often, once you have given the NDIA more evidence about the supports you need, or you have participated in an independent medical assessment, the NDIA will make an offer to fund some of the supports you requested. If you are not sure about whether to accept the offer, seek advice from an advocate or Legal Aid lawyer (you can find an advocate or lawyer using the [table on this page](#)).



## Will I have a hearing?

It is unlikely your appeal will need to progress to a final hearing. Most cases resolve by agreement with the NDIA, once sufficient evidence has been made available and considered by the NDIA.

When you reach an agreement with the NDIA, the NDIA will prepare and send terms of agreement to you. If you are appealing a supports decision, check the terms of agreement carefully to make sure the agreement includes all the supports which the NDIA have approved.

Once you have signed the agreement, the NDIA will provide a copy to the Tribunal and the Tribunal will prepare a decision to give effect to the agreement. The NDIA must then act on the Tribunal's decision within 28 days. If you are appealing a supports decision, this means the NDIA must issue a new NDIS plan including all the supports which have been agreed. If you are appealing an access decision and have been successful, this means the NDIA must grant you access to the NDIS as a participant.

## Should I withdraw my appeal?

If at any time you are unsure whether to proceed with your appeal, or if the NDIA suggest you should withdraw, we strongly recommend you seek advice from an advocate or Legal Aid lawyer first (you can find an advocate or lawyer using the [table on this page](#)).

If you are already an NDIS participant and the NDIA suggest you withdraw your appeal from the Tribunal and instead request a plan reassessment, do not withdraw your Tribunal application until you have received the new plan (following the reassessment done by the NDIA) and know it contains the supports that you need. If you withdraw beforehand and then find the new plan doesn't include the supports you need, you will need to re-start the review process, starting with an internal review, all over again, which can take months.

## Where can I get help?

### Ask Izzy

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

 [askizzy.org.au](https://askizzy.org.au)

## Legal Aid

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

 [1300 65 11 88](tel:1300651188)  [legalaid.qld.gov.au](http://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](mailto:qai@qai.org.au)  [qai.org.au](http://qai.org.au)

This fact sheet has been written by Queensland Advocacy for Inclusion (QAI), an independent, community-based systems and advocacy organisation for people with disability in Queensland.

This publication is for general information only. It must not be relied on as legal advice. You must seek legal advice about your own particular circumstances.