



NATIONAL DISABILITY INSURANCE SCHEME

Information eBook



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WHAT IS THE NDIS?

The National Disability Insurance scheme (NDIS), established under the National Disability Insurance Scheme Act 2013 (the Act), is a system of providing funding for 'reasonable and necessary' supports for Australians with significant disabilities. It is a system designed to empower those that require assistance with respect to their needs. It was estimated in January 2019 that the NDIS provides support to more than 250,000 Australians who live with a disability.

According to the NDIS website:

The NDIS helps people with a disability achieve their goals. This may include greater independence, community involvement, employment and improved wellbeing.

As an insurance scheme, the NDIS takes a lifetime approach, investing in people with disability early to improve their outcomes later in life.

The NDIS aims to standardise the levels of support available for people across Australia who have a permanent and significant disability and provide individualised, flexible and lifetime plans. It doesn't simply address physical needs but adopts a more holistic approach which extends to community services including mainstream services, social needs, independent living, wellbeing, workforce participation, and learning and education.

A key aspect of the NDIS is that participants are able to choose how their needs are met. Rather than service providers being funded, individuals are given funding for supports and are able to choose which services they would like to utilise.

The agency responsible for delivering the NDIS is known as the National Disability Insurance Agency (NDIA).

DO YOU QUALIFY?

To become an 'NDIS participant' and receive funding, you must satisfy the following requirements set out in the NDIS Act:

1. Age requirement.
2. Residency requirement.
3. Disability or early intervention access requirements.

1. AGE REQUIREMENT

You must be aged under 65 years.

2. RESIDENCY REQUIREMENT

You must be an Australian citizen, have a Permanent Visa or have a Protected Special Category Visa.

3. DISABILITY OR EARLY INTERVENTION ACCESS REQUIREMENTS

You must meet the 'disability threshold'.

You will meet the disability threshold if:

- you have an impairment or condition which is likely to be permanent (lifelong); and
- your impairment substantially reduces your ability to participate or perform tasks; and
- your impairment detrimentally impacts your capacity to work or to enjoy a normal social life; and
- you're likely to need NDIS support for your lifetime.

Your disability may be regarded as permanent even if the intensity of the disability fluctuates.

For example, you may qualify if you have a chronic injury that flares up on some days and not others so long as it is unlikely to completely resolve.

The NDIS has an [eligibility checklist](#) on its website which sets out questions to assist you in assessing whether you have an impairment or condition which detrimentally impacts your capacity to work or to enjoy a normal social life.

You may also be eligible for NDIS funding if you meet the early intervention threshold. The aim of early intervention is to reduce the effect of a person's impairment on their functional capacity by providing support at the earliest time possible. This category of funding is intended to reduce a person's need for supports in the future.

You are likely to meet the early intervention threshold if:

- you need some supports now to reduce your support needs in the future; and
- you have an impairment or condition that is likely to be permanent (lifelong); or
- you are a child under 6 years of age with a developmental delay and the delay means you usually need more help with self-care, communication, learning or motor skills than another child of the same age.

A PERSONALISED PLAN

The background image shows the interior of a wheelchair-accessible van. A metal ramp is extended from the back of the vehicle onto the ground. Inside the van, there are several rows of black seats with blue accents. Yellow handrails are visible along the sides of the vehicle. The floor is a light-colored metal grating. The van is parked outdoors, with trees and a clear sky visible in the background.

Once you become an NDIS participant you will be contacted by the NDIA. An NDIA staff member will work with you to devise a personalised support plan. This is known as an 'NDIS plan'.

During this process you will be able to request funding for certain supports. To receive funding for particular supports, an NDIA staff member will need to be satisfied that the requested supports are 'reasonable and necessary'. Supports may only be funded by the NDIS if:

- the support is related to a participant's disability;
- the support represents value for money; and
- the support is likely to be effective and beneficial to the participant.

The NDIA staff member must take into account whether informal supports are currently provided by a participant's family or carers. Funding will not be approved for day-to-day living costs that are not related to a participant's disability support needs.

The types of supports that the NDIS may fund include:

- support for daily personal activities;
- transport to enable participation in the community and participation in social, economic and daily life activities;
- support to enable the retention of employment;
- therapeutic supports including behavioural support;
- help with household tasks;
- help from someone skilled in assessing, setting up or training in aids or equipment for home modification design and construction;
- equipment that helps your mobility; and
- vehicle modifications.



INTERNAL REVIEW OF NDIA DECISIONS

If a request for a particular support is denied by the NDIA you can request that the decision be reviewed. The request for a review must be made within three months of the decision having been made. You can also seek a review if you have been found to not satisfy the requirements necessary to become an NDIS participant. The decision will be reviewed internally by the NDIA.

The NDIS website provides a [factsheet on how to submit an application for an internal review](#) of a decision.

EXTERNAL REVIEW OF NDIA DECISIONS

If you are dissatisfied with the outcome of an internal review you can apply for an external review by the Administrative Appeals Tribunal (AAT). You must lodge an application for an external review with the AAT within 28 days of the internal review.

NDIS Appeals and External Merits Review Information

If you are dissatisfied with the outcome of an external review by the AAT, you can apply to have the AAT decision reviewed by the Federal Court of Australia. In order to successfully appeal a decision of the AAT, you must be able to show that the AAT failed to apply the law correctly. Successful appeals of AAT decisions with respect to NDIA decisions to the Federal Court of Australia are rare.

If you intend to lodge an AAT appeal or appeal to the Federal Court you may require the assistance of a lawyer.

It is clear from the Act that funding is not generally available for legal assistance when seeking a review of NDIA decisions. **However, funding may be available via Legal Aid if it is considered** (by the Department of Social Services) **that your appeal raises a novel and complex issue.**

To apply for Legal Aid funding for your appeal please view the [Guidelines for the Assessment of Applications for NDIS Appeals Legal Services funding](#). You will also be required to submit an [Application for NDIS Appeals Legal Services](#).

Applications for funding of legal services need to be made by either email or post. This information can be found on the NDIS Appeals Application Form.

There is a 30 day processing period for assessments.

In NSW, Disability Advocacy NSW provides an independent support person to help you with your application. The support person can assist you to understand the process, attend conferences and hearings with you and assist you in putting your case to the AAT. The [Disability Advocacy Finder](#) can assist in locating organisations acting as Disability Advocates that provide support for NDIS Appeals.

GENERAL REVIEW OF NDIS PLANS

You can seek a general review of your NDIS plan even if you are satisfied with decisions made by the NDIA. In fact, NDIS plans are regularly reviewed to ensure that adequate supports are provided.

Your first plan will generally be in place for approximately 12 months after which it will be reviewed. Your future plans may be in place for a longer or shorter period of time depending on your needs. You can ask the NDIA to review your plan at other times, which you may like to do if your circumstances change significantly. It is important when seeking a review to make clear that you are seeking a general review of your plan as opposed to a review of a decision to deny funding for a particular support or a determination that you cannot become a NDIS participant.

When the NDIA reviews your plan it will review all of your funded supports.

If you are unhappy with the review you have three months to request a further review.

EXAMPLES OF OUTCOMES OF AAT APPEALS

The following are examples of decisions made by the AAT with respect to requests for external review of NDIA decisions.

Reasonable and necessary support

PPFQ v National Disability Insurance Agency

[2019] AATA 1092 - May 2019

The applicant suffered from hearing loss involving tinnitus and hyperacusis (sensitivity to certain sound frequencies). He received free-to-client hearing aids in 2014, which he found ineffective and ceased wearing. When he applied to the NDIS his statement of support was approved but did not include the funding he was seeking for a pair of high technology hearing aids. This funding was denied on the basis that there had not been enough investigation of other sources of funding, and that there had not been enough consideration of the effectiveness of the free-to-client hearing aids.

The tribunal accepted expert evidence that the high technology hearing aids represented value for money, as the costs were reasonable and necessary in the circumstances. In reaching this decision, the tribunal took into account the fact that the hearing aids were not available through any other payment system that the applicant would qualify for, and the high technology hearing aids were the minimum level of hearing aid which could effectively improve the applicant's outcome.

Perosh v National Disability Insurance Agency

[2018] AATA 980 - April 2018

This case concerned an application by a young quadriplegic with cerebral palsy for funding for taxi fares.

The Tribunal found that the applicant could not use public transport independently and without substantial difficulty. It held that the taxi fares for transport to and from TAFE and

the gym were reasonable. However, funding for taxi fares to a local shopping centre were held not to be a reasonable and necessary support.

In reaching its decision, the Tribunal took into consideration the need to ensure the financial sustainability of the NDIS.

Way v National Disability Insurance Agency

[2018] AATA 983 - April 2018

The applicant had an acquired brain injury and sought a review of a decision to reject further funding. The requested funding included six hours of support so that staff could take the applicant on outings, and a further 14 hours of assistance for showering and at bed time. The applicant asserted that the increase in funding was necessary and reasonable.

The AAT upheld the NDIA's denial of further funding. This was because the circumstances at the applicant's group home had changed and because the applicant had not exhausted funding already approved.

ZCPY v National Disability Insurance Agency

[2017] AATA 3052 - December 2017

The applicant had a diagnosis of autism and sought the review of a plan that did not include provision for a literacy program.

The Tribunal sought to determine whether the literacy program was a reasonable and necessary support under section 34 of the NDIS Act. Key considerations for the AAT were whether the literacy program represented value for money and whether it would facilitate social and economic participation. The AAT also considered whether it was appropriate for the NDIS to fund the program or whether it was more appropriately funded through the education system. The Tribunal noted:

The question in an application like this about where the line lies between the responsibilities of the NDIA arising under the NDIS and the responsibilities of other departments and agencies under other general systems, such as the education system, is extremely difficult. Such a determination is difficult because the overlap in the objectives of the two systems and also the overlap in the intended benefits to be achieved by the provision of the supports in question.

The Tribunal upheld the appeal, varying the reviewable decision to include the literacy program four hours per day, five days per week for a consecutive duration of eight weeks.

King v National Disability Insurance Agency [2017] AATA 643 - May 2017

The applicant's conditions included "spastic quadriplegic cerebral palsy, a mild intellectual disability and mild vision and hearing impairments". The applicant sought funding for a gym membership and an additional 20 hours of physiotherapy. The NDIA had rejected an application for funding for these supports on the basis that the supports were not reasonable and necessary.

The AAT found that the physiotherapy was reasonable and necessary because it would assist the applicant achieve goals and aspirations and facilitate their social and economic participation. Further, the AAT was satisfied that the sessions represented value for money. The gym membership was also found to be reasonable and necessary.

PNMJ v National Disability Insurance Agency [2015] AATA 866 - November 2015

This case concerned an application for funding for a full-time in-home carer for a 3 year old child that suffered from a number of medical conditions including epilepsy. The epilepsy caused the child to have hundreds of seizures per day. In issue was the extent to which informal support was already available to the applicant.

There were several complexities in this case including difficulties finding trained carers and the fact that the applicant's parents suffered from medical conditions.

Ultimately, the AAT determined that support from an in-home care for 168 hours per week was reasonable and necessary.

McCutcheon and National Disability Insurance Agency [2015] AATA 624 - August 2015

The applicant suffered from a number of medical conditions including spina bifida and scoliosis. The NDIA rejected her request for funding for chiropractic treatment. The NDIA considered that there was insufficient evidence that the treatment would be effective and beneficial. Further, it considered that the treatment was more appropriately funded through the health system.

A significant amount of evidence was heard about the clinical benefits of chiropractic treatment. The AAT overturned the NDIA decision and found that the treatment was reasonable and necessary and consistent with current good practice. The AAT took into account the fact that the applicant had found chiropractic treatment beneficial in the past. The AAT was satisfied that NDIS funding for this support was appropriate even though Medicare benefits were available.

ZNDV v National Disability Insurance Agency [2014] AATA 921 - November 2014

The applicant, a child with Asperger's Syndrome, sought a review of the NDIA's decision not to fund a fully equipped occupational therapy room in the applicant's home.

On balance, the AAT was not satisfied that the provision of an occupational therapy room was likely to be of long-term benefit to the applicant or substantially improve management of the effects of the applicant's disorder. The cost of the proposed room was found to be "significant". It was determined that the proposed room did not represent value for money.

TKCW v National Disability Insurance Agency **[2014] AATA 501 - July 2014**

This case concerned a 3 year old participant with autism spectrum disorder. Funding had been sought for audio therapy and a carer for the applicant's twin brother while the applicant's mother took the applicant to appointments with an occupational therapist and speech therapist.

The AAT denied the appeal. It found that there was insufficient measurable data concerning the benefits of the audio therapy. The tribunal was not satisfied that the therapy would be effective and beneficial for the applicant or that it represented value for money. The request for a carer for the participant's twin brother while the applicant attended appointments was not considered to be reasonable and necessary.

Young v NDIA [2014] AATA 401 - June 2014

The applicant was found by the NDIA to be eligible for NDIS funding but the NDIA refused his request for improved supports which would have made life more convenient. He had sought funding for a portable oxygen concentrator and an insulin pump.

The applicant's appeal failed because the AAT decided that his existing supports met his needs. The improved supports were not reasonable and necessary supports because, although they were more convenient and less cumbersome, Mr Young was able to undertake activities of daily living and participate in the community without them.

The AAT further categorised the supports sought as clinical treatment because their primary purpose was treatment of Mr Young's health conditions and they were also funded or subsidised under the health systems and/or health insurance. Even though the health system would not in fact provide the improved supports, it did not mean that the NDIS was obliged to provide them. The Tribunal noted:

Whether or not funding is available through other general systems is not the test of whether it is most appropriately funded or provided through the NDIS. The fact that the health system does not fund entirely, or even at all, what is essentially clinical treatment... does not make it the responsibility of the NDIS... the purpose of the NDIS is not to respond to any shortfalls in mainstream services (nor does it purport to impose any obligations on another service system to fund or provide particular supports).

Scope of funding and support


JQT v National Disability Insurance Agency **[2016] AATA 678 - July 2016**

This matter concerned the review of a support plan for a 13 year old boy who had "severe autism, severe intellectual language delay, and attention deficit hyperactivity disorder". He required constant supervision and assistance with all aspects of daily living.

The key issue for determination by the AAT was whether the NDIS should fund the transport costs of a support worker so that the worker could accompany the applicant in the community or whether it was reasonable to expect the applicant's parents to provide the transport. The tribunal concluded that transport costs during school holidays would not be funded as it was reasonable to expect that the applicant's parents could provide this transport during those periods. However, the tribunal did approve funding for transport costs on the weekends as a result of the additional burden this would place on the parents.

Fear v National Disability Insurance Agency **[2015] AATA 706 - September 2015**

The applicant's condition was a "catastrophic brain injury" which rendered him completely dependent for all aspects of his care. The applicant sought funding for a pulse oximeter, and a bedside and portable oral suctioning machine. The key issue for determination by the AAT was whether the supports were appropriately funded through the NDIS, as opposed to the health system.



The AAT found that when determining whether a support should be funded through the NDIS, it was necessary to consider what the primary purpose of the support was. It was found that the primary purpose of the requested supports was to manage the applicant's health and therefore, it was not appropriate for them to be funded through the NDIS.

Eligibility

McFarlane v National Disability Insurance Agency [2018] AATA 4727 - December 2018

The applicant had lived with fibromyalgia and chronic pain since 2008. His evidence showed this adversely affected his ability to undertake activities of daily living. He required assistance from his wife and relied on a wheelchair for mobility ninety per cent of the time. His GP had previously expressed the view that his condition was chronic and unlikely to "go away".

The Tribunal relied on evidence from consultants for its finding that Mr McFarlane's fibromyalgia and chronic pain syndrome were impairments that significantly affected his physical, sensory and mental function. However, both specialists agreed that fibromyalgia was usually responsive

to treatment and suggested there was an evidence base for various ways of managing fibromyalgia.

On the facts, the Tribunal was not satisfied that Mr McFarlane had attempted all appropriate and available treatments. Therefore, the Tribunal found that fibromyalgia and chronic pain syndrome were impairments, which significantly affected the applicant's functioning but, in this specific case, these impairments were not found to be permanent as treatment options had not been fully pursued.

Pomeroy v National Disability Insurance Agency [2018] AATA 387 - November 2018

The Tribunal in this matter refused an application for review of a decision of the NDIA. The NDIA had rejected an application for funding for a person suffering from morbid obesity. The applicant sought funding for modifications to a bathroom and for consultations with a dietician and physiotherapist.

The AAT found that morbid obesity was not a permanent condition and, therefore, the requested supports could not be funded through the NDIS.

Mulligan v NDIA [2014] AATA 374 - June 2014

The applicant sought funding through the NDIS for maintenance of his lawn. The NDIA had decided that he did not qualify to participate in the NDIS. Mr Mulligan sought a review of the NDIA's decision.

The AAT confirmed that in order to meet the disability threshold under the Act, all of the requirements for "disability" under section 24(1) must be met. In this case, the applicant's application failed because his inability to mow the lawns was not regarded as substantially reducing his functional capacity for self-management.

Early intervention access

Allen v National Disability Insurance Agency

[2018] AATA 3851 - October 2018

Ms Allen sought access to the NDIS. She has hypermobile Ehlers Danlos Syndrome (hEDS), which is a prevalent genetic disorder of connective tissue but often subject to delayed diagnosis in Australia. As a result of the condition the applicant experiences joint dislocations and subluxations. She has comorbid fibromyalgia.

The Tribunal assessed whether the applicant met the disability requirements under section 24 of the Act or could be admitted as an early intervention participant under section 25.

While her condition was permanent, the Tribunal found Ms Allen did not have the substantially reduced functional capacity required under section 24(1)(c). While noting that her hEDS "causes her pain and discomfort", the Tribunal concluded these did not yet meet the statutory threshold for access.

The Tribunal found that both the occupational therapy and physiotherapy early intervention supports were "time limited, goal oriented" therapies whose predominant purpose was directly related to Ms Allen's health. As such they were more appropriately funded by the health system rather than NDIS.

YPRM v National Disability Insurance Agency

[2016] AATA 1023 - December 2016

The applicant was a 5 year old girl with diabetes. The applicant sought funding for interventions which aimed to increase the applicant's capacity for self-care and monitoring, resilience, flexibility and mental endurance.

The principal issue for determination was whether the applicant met the section 25 early intervention criteria. The Tribunal held that the applicant's diabetes did not affect her functional capacity for social interaction, learning, self-care and self-management in any relevant sense. Further, the AAT found that the requested supports were more appropriately funded through the health system.

You can read more decisions by the AAT at the La Trobe University website in their [NDIS Decision Digest](#).

FURTHER INFORMATION ABOUT THE NDIS

If you would like further information, please visit the official [NDIS website](#) or call the NDIA on 1800 800 110.

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This eBook has been compiled by Catherine Henry Lawyers.

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