

# MAKING COMPLAINTS

This Fact Sheet is about your rights as a person using the NDIS or as a person who wants to use the NDIS. If you want more information about how the NDIS works, including on issues covered in this Fact Sheet, go to Advokit <http://www.advokit.org.au> 

## **AAT:**

The Administrative Appeals Tribunal. This is a panel of people who can decide whether or not the NDIA should change a decision you are unhappy with.

## **The Agency:**

Another name for the National Disability Insurance Agency. They deliver and administer the NDIS.

## **Complaints mechanism:**

A technical term to describe the steps you can go through when you are not happy with some aspect of the service and support you are getting from the NDIA.

## **Hearing:**

A formal meeting where the Administrative Appeals Tribunal listens to why you want the NDIA to change some of their decisions about your participant plan. The Administrative Appeals Tribunal will then decide whether or not the decision should be changed.

## **NDIA:**

The National Disability Insurance Agency. They deliver and administer the NDIS.

## **NDIS:**

The National Disability Insurance Scheme. This is the name of the overall program set up to organise your support and services.

## **NDIS Act:**

The National Disability Insurance Scheme Act. Sometimes it is just called 'the Act', or 'the legislation'. It is the legislation that outlines how the National Disability Insurance Scheme will work.

## **Necessary and reasonable supports:**

This is the term used in the NDIS Act to describe the extent of support you are entitled to receive. It means that the support you get must not exceed what you require, and it must be support that is reasonable. There can sometimes be a lot of debate about what this will mean for a particular person.

## **Participant:**

This is the word used to refer to a participant who is getting support through the NDIS.

## **Participant plan:**

This sets out the sort of supports a person with a disability will get through the NDIS.

## **Rules:**

The NDIS Rules provide details about how the NDIS is to operate. The NDIS Act outlines what sorts of issues the Rules should address. The Rules are then used alongside the NDIS Act.

## **Scheme:**

A short way of saying 'the National Disability Insurance Scheme'.

Complaints can be made about any aspect of your contact with the NDIS, including your contact with the National Disability Insurance Agency, and any of the services or supports you receive through the Scheme. This Information Sheet is about your rights when you want to make a complaint.

### **The importance of advocacy:**

The information on this sheet is only basic information. Working out how to apply it to your circumstances can be complex, because everyone's situation is different.

It is important to obtain further information and advice from an advocate if you find yourself in a position of needing to make a complaint or pursue your rights on anything covered by this Fact Sheet.

### **1: What the NDIS Act says about complaints:**

There are many different types of complaints you can make under the NDIS. You can complain about decisions the Agency makes about your eligibility and your support. You can complain about how you are treated by the Agency. Some of these complaints are referred to by other terms, such as 'review of decisions'. There are different processes to follow, depending on who and what you are complaining about. An advocate can help you choose the right type of complaint to make, and to prepare for it as well as possible.

There are different types of complaints that can be made when you are getting support, or trying to get support, through the NDIS. Different terms are used for different types of complaints and this can sometimes be confusing. Sometimes you might find the words are being used in different ways by different people. Try not to worry about this too much. It is not your responsibility to know all the different terms used by the NDIA. If you want to make a complaint, or want a decision changed, don't worry too much about what the correct term is – just be clear about what you want changed, and whose decision or actions you are not happy with.

#### **a: Complaints about the NDI Agency Decisions**

Sections 99 – 103 of the NDIS Act set out what to do if you are not happy with a decision made by the Agency.

Section 99 lists what decisions you are able to complain about. It's a long list and basically covers all the different decisions the Agency can make in relation to:

- your eligibility;
- the content of your plan and how it is drawn up;
- who will be accepted as a registered provider of services;
- who is accepted as having responsibility for a child;
- decisions about nominees; and
- decisions about compensation.

## 1: a: Complaints about the NDI Agency Decisions - continued

This means that you can ask for a review of pretty much any decision the Agency makes in relation to you and the NDIS.

Section 100 of the Act says that you must get written notice of decisions that affect you. Then you, or anyone affected by the decision, can ask for the decision to be reviewed, but you must ask for this within three months of receiving the letter that tells you about the decision. The NDIA will not be flexible on this. You can ask for a review in writing, or you can ask for it personally or by phone.


The Agency must then ask someone who was not involved in the first decision to review it. The person who reviews the first decision can confirm the first decision, change it or make an entirely new decision. The decision must be reviewed as soon as is practical.


Section 103 of the Act says that if you are still not happy with the decision after it has been reviewed you may make a complaint to the Administrative Appeals Tribunal (AAT).

### b: Complaints about other service providers

The NDIS Act does not set out a process for dealing with complaints about the support you are receiving from a service provider.

You are nevertheless entitled to complain about a service provider to the NDIA who can remove that service provider's status as a Registered Provider of Support. This is more about the relationship between the Agency and the service provider and will not necessarily address your concerns with the service provider and the support you are receiving from it. For example, if the service provider has harmed you in some way, the Agency could decide that the service provider is not fit to continue providing services under the NDIS, but this will not address the harm you have suffered.

To deal with complaints about the support you are receiving from a service provider, you will generally need to go to the relevant complaints-handling mechanisms in your State or Territory. All of these are listed on the [Advokit website](#) 

Sometimes your complaint might also involve issues about contract law. You can read more about your rights under the NDIS in terms of contracts on the Fact Sheet titled "[Contracts](#)" .

Remember – whenever you want to make a complaint, whether it is about the NDIA or about another service provider, it can be a good idea to first talk with an advocate.

## 2. Complaints and your rights:

When making a complaint, usually you will start by asking the Agency to change a decision it has made. If this doesn't work, you may need to go to the AAT. You don't have to argue legal issues when you make a complaint. You just have to show why you think the decision is incorrect. Having an advocate or a lawyer help you, especially if you are arguing your case to the AAT, can help keep you on track and give you a better chance of having your side of the story heard properly.

Here are some important rights issues to keep in mind about complaints, and the laws that are relevant to it:

### i. The NDIA

The National Disability Insurance Agency has its own internal complaints handling processes.

If your complaint is about how the staff of the Agency has treated you, or about delays in getting things done, or anything else to do with the way the Agency operates, there is a complaints-handling process within the Agency for dealing with this. The staff is required to explain this process to you, if you want to make this sort of complaint. If you are not happy talking about this with the staff member you have been dealing with, then you can talk to another staff member about it. It can be very helpful to have an advocate to support you in this.

If your complaint is about a decision that has been made, such as whether or not you are eligible for support, or what sort of support you can get, then there is a different process. This involves:

- First, asking the Agency to review the decision;
- Second, asking the Administrative Appeals Tribunal (AAT) to review the decision.

You should ask the Agency to review the decision before going to the AAT.

Here's a little bit more about what the process of making complaints involves, and what your rights are:

In making a complaint under the NDIS Act, you are entitled to expect the matter to be handled fairly and as quickly as possible.

You are also entitled to have an advocate support you. This can be whatever advocate you choose. It does not have to be an advocate suggested by the Agency.

In arguing for a decision to be reviewed under the NDIS Act, you don't have to prove any particular legal issue; you just have to explain why you don't like the decision that was originally made.

But your chances of getting the decision changed, and getting the decision you want, are likely to be better if you can couch your argument in terms of one of the laws that the

Agency is expected to be upholding. This can mean arguing things such as:

- There is a better way to help you meet your personal goals and aspirations than the first decision;
- There are better ways of helping you become included in the community than the first decision;
- The first decision doesn't really represent good value for money;
- The first decision doesn't respect your choices adequately, or didn't give you enough of a chance to have your say;
- The first decision in some way discriminates against you because of your disability;
- The first decision doesn't respect one or more of your rights under the UN Convention.

### ii. The AAT

Complaining about a decision the Agency has made usually begins with asking the Agency to review the decision. If you are still unhappy with their decision, you can take the matter to the AAT.

If you want the AAT to review a decision the Agency has made, you normally have to ask for this within 28 days of the Agency making the first decision. The AAT can sometimes extend this time if they think it is reasonable to do so, but you have to apply for this and explain why it is reasonable to give you more time beyond the 28 days.

Once you have applied to the AAT for the Agency's decision to be reviewed, usually a Case Conference will be held. This involves you and someone from the Agency meeting with a staff member from the AAT to work out the best way to handle your case. Sometimes you can come to an agreement at this stage.

If you don't come to an agreement at the Case Conference, the staff member from the AAT will work out with you whether to try to resolve things at a Conciliation meeting. This is another way of trying to come to an agreement. Again, it involves sitting down and trying to talk through what you think, and what the Agency thinks, and trying to come to an agreement. A staff member from the AAT will help run the meeting.

If this doesn't work, then your case would need to go to a Hearing. This is much more formal, although not quite as formal as a court would be. Some people have a lawyer represent them at the Hearing. You can do this if you wish. The Agency might also be represented by a lawyer at the Hearing. Whether you go to the Hearing with a lawyer or without, you should at least get some legal advice beforehand, or help from an advocate, to help prepare yourself. You may need to bring a lot of paperwork and other evidence to support your argument.

Most Hearings are open to the public, but you can ask for the Hearing to be closed to the public if you wish.


There is no cost in applying to the AAT.

You can find out more about the AAT process on their [website](#) .

### iii. Other complaints-handling mechanisms

As explained earlier, if your complaint is about a service-provider rather than about the NDIA, you may need to go through a separate process. This might include dealing with complaints-handling processes set up by that service provider, or it might mean going to another body operating in your State or Territory. An advocate can help you work out the best place to go.

The things that you might need to argue or prove can vary enormously under different complaints-handling mechanisms. It can be a good idea to talk to an advocate who is familiar with using that complaints-handling mechanism so you have the best possible chance of having your side of things put clearly and taken seriously.

Here is a list of some of the main places to go if you have a complaint about support you are receiving from a service provider other than the [NDIA](#) .

## 3. The UN Convention on the Rights of Persons with Disabilities

The UN Convention gives you a broad range of rights. Some of these will be especially relevant to you when you are making a complaint under the NDIS. The NDIS should be run in a way that respects your rights under the Convention. An advocate can help you to refer to the right parts of the Convention in support of your complaint.

Whatever procedures and rules apply to your complaint, remember that the UN Convention on the Rights of Persons with Disabilities will still underpin it.

All of the rights you have under the Convention stay with you wherever you go and the NDIS should never link you into an agency or person or support that acts in ways that are inconsistent with any of those rights.

While different complaints-handling mechanisms can each tend to focus on particular types of issues, or particular areas of law, you may nevertheless find it useful to keep in mind the rights you have under the Convention and see if these can add to or enhance the arguments you are trying to make in your complaint.

Some of the most important of these rights in the context of the supports you might get through the NDIS are:

- Article 9: Your right to an accessible community, accessible information, transport, goods and services, etc.
- Article 12: Your right to extra supports to enable you to make decisions in your life and in your community in a way that is equal to other people.
- Article 14: Your right to services and supports that are adequately resourced and individualised so that you don't have to have your freedoms limited in ways that are unnecessary for you or unfair.
- Article 17: Your right to personal integrity, which includes being respected for who you are, and having your individuality respected by others.

### 3: The UN Convention on the Rights of Persons with Disabilities - continued

- Article 19: Your right to supports that will enable you to live as independently as you can and to participate as fully in the community as possible.
- Article 20: Your right to aids and equipment and access to technologies that will help you to be more mobile.
- Article 22: Your right to privacy and to be protected from arbitrary or unlawful interference with your privacy.
- Article 23: Your right to have your relationships and family connections respected.
- Article 26: Your right to disability-specific services and supports that help you develop your potential, or to mitigate the impairing aspects of your disability, such as through developmental programs, physiotherapy, and so on.
- Article 27: Your right to work and to be assisted in preparing for and getting a job.
- Article 30: Your right to participate in leisure, recreation and sport alongside other members of the community.

If you want to pursue a matter under the United Nations Convention, remember that it is mainly relevant to how the law should be interpreted and implemented. It is therefore always important to relate the right from the Convention back to the actual interpretation of the NDIS Act, or to the way the Agency is administering it, whichever of these is most relevant to your particular issue.

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