

SERVICE PROVIDERS

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'.

The main role of the National Disability Insurance Agency is to work with you to plan and fund your supports. Other agencies and service providers will provide the actual support. Some of these will be general agencies and providers that support anyone in the community; some will just be for people with disabilities. This Information Sheet is about what you are entitled to expect of people providing you with that support.

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 says about service providers:

The NDIS Act says that any service provider supporting you under the scheme has to help you meet your goals, it has to be good value for money, and it has to be consistent with good practice. There are other laws it must comply with, too, such as Occupational Health and Safety. It must employ staff that are competent and trained to do their job properly.

Section 34 of the NDIS Act sets out the overarching criteria that all supports provided under the NDIS are expected to meet. These criteria mean that the supports you get should:

- help you meet your goals and become involved in the community;
- be good value for money; and
- be consistent with good practice.

Service providers may be "Registered Providers of Supports" under Sections 69 – 73 of the Act. This means they are registered under the Act as providers of particular supports to participants.

Section 73 of the Act allows for the NDIS (Registers Providers of Supports) Rules to provide further criteria for becoming a Registered Provider of Support.

The criteria set out in these Rules are quite broad and include such things as:

- Compliance with workplace health and safety laws;
- Compliance with all other laws relevant to what they do;
- That the provider has the experience, qualifications and skill to provide the support they intend to provide;
- Mechanisms for dealing with any conflicts of interest that might arise if the same provider is managing the funds of the person with the disability as well as providing them with other support.

1: What the NDIS says about service providers: - continued

If your service provider is not a Registered Provider of Support it will not necessarily be bound by these particular criteria, although it should still comply with those listed in Section 34. It will still have obligations under other laws, such as anti-discrimination laws and health and safety laws if it is an employer. Specific laws that relate to the particular type of organisation it is, or to the particular type of work it does, and the common law, such as its duty of care to its clients and staff will also still apply.

2: Service providers and your rights:

You are entitled to expect good support under the NDIS. If you are not happy with the support you are receiving, you can either complain about the service provider and get them to change what they are doing, or ask to be supported by a different service provider altogether.

Here are some important rights issues to keep in mind about service providers, and the laws that are relevant to them:

a: The NDIS Act

The implications of Section 34, which sets out the criteria under which any supports can be funded under the Act, mean you are entitled to expect support that:

- Will genuinely help you to meet your aspirations and to participate in the community;
- Is good value for money;
- Operates in ways that are consistent with what is considered good practice at the time.

If you are getting support from a Registered Provider of Support you are also entitled to expect that the support is delivered by people who are competent, qualified and experienced, as set out by the rules developed for registered providers of supports under Section 73. It is a point that is arguably implied by the criteria in Section 34 anyway, which means it may apply to all service providers.

b. Pursuing your rights about service providers under NDIS Act

If you feel the support you are getting is not meeting the criteria set out in Section 34, you can:

- Ask the NDIA to review your Plan and replace it with a new plan under Section 48 of the Act, in which case you may want to argue that a different provider be funded to help you meet your goals and aspirations; or
- Pursue the complaints mechanisms set up in your State for pursuing complaints about a disability service provider under the NDIS.

You can also make a complaint to the Agency about a Registered Provider of Support under Section 72 (1A)(b) of the Act, which can lead to that provider's registration being revoked.

2: b. Pursuing your rights about service providers under NDIS Act: - continued

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 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.

i. 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

<http://www.aat.gov.au/ApplyingForAReview/NDIS.htm> 

c. Other laws

There are many laws outside the NDIS that might be relevant if you want to pursue your rights in relation to service providers. These include anti-discrimination law, consumer law, contract law, negligence law and human rights law. It is important to get legal advice so you know which law is the best one for you to use.

There are a vast number of laws, in both legislation and common law, that give you rights as someone receiving support from a service provider, regardless of whether that provider is or isn't registered under the NDIS Act.

In summary, these include:

- *Disability services legislation*, which means that you will continue to be entitled to expect a disability service provider to meet the standards, and to respect your rights, in the ways that have always been required of it under whatever disability services legislation operates in your state. Most services will continue to operate under this legislation. Even though the NDIS is intended to give you more choice and control, services still have to meet all their usual legislative obligations.
- *Anti-discrimination law*, which means that you are entitled to expect a service to treat you as well as it would treat someone who does not have your disability, as well as to make whatever reasonable adjustments you need in order to use their service.
- *Consumer law*, which gives you general rights as a consumer to be treated in a fair way when you purchase goods and services or make contracts with service providers. These rights include things such as: being protected from the misleading or unconscionable conduct of service providers and from unfair contracts, even if you have already signed them; a right to safe services and products from providers; your right to have service providers fix defects in their services and products; and your right to proper information about what the provider is providing.
- *Contract law*, which gives you a range of rights and responsibilities in relation to the agreements you make with your service provider, especially if you are managing your Participant Plan (the plan that sets out what supports you will receive) yourself. Generally this means you have a right to expect the service provider to do what they have agreed to do, and this agreement should be one that is fair, particularly in terms of what the service provider is being funded to do.
- *Negligence law*, which means you have a right to expect a service provider to do whatever is reasonable to ensure that you are not harmed or injured as a result of their service. A service might be negligent if it does something it shouldn't do, or if it fails to do something it should, and you are harmed or lose money as a result of this. The standard for deciding what a service should and shouldn't do is based on what a reasonable person would expect in the circumstances. This will vary from one situation to the next.

- *Human rights law*, including the UN Convention on the Rights of Persons with Disabilities, which gives you the right to expect services to respect your full range of human rights, including your rights to things such as independence, choice, freedom of movement, assistance to be part of the community, respect for your personal integrity, non-discrimination and exercise of legal capacity.

d. How the United Nations Convention on the Rights of Persons with Disabilities is relevant to your rights

There are many laws outside the NDIS that might be relevant if you want to pursue your rights in relation to service providers. These include anti-discrimination law, consumer law, contract law, negligence law and human rights law. It is important to get legal advice so you know which law is the best one for you to use.

Australia is a signatory to the UN Convention, which recognises a large number of important rights for people with disabilities. Some of these will be very relevant in arguing how the NDIS Act should be understood and applied. 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.

Because these laws are very wide-ranging, and some of them can be quite complex in terms of how they might apply to your situation, it is always sensible to get legal advice if you think one of these areas of law might apply to you. Each of them involve very different courses of action, and it is important that you are guided through those processes with the help of someone who knows that area of law. Community Legal Centres can be a valuable first port of call in finding out what your legal options are in these areas.

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