

# NEEDS ASSESSMENT

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'.

Needs assessment is about deciding how much support you can get through the NDIS. It is based on assessments that are done by the NDIA. In doing the assessment, the NDIA staff will try to work out just how your disability affects you. If your disability affects you in ways that make it more difficult for you to live as a happy, participating member of the community, the NDIA should try to plan supports for you that will help you to overcome those difficulties.


### **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.


The NDIS Act says that your Participant Plan should outline what sort of support you will receive, and how it will be funded and organised.


## **1. What the NDIS Act says about needs assessment**

In the [NDIS Act](#) , assessing needs is referred to as 'preparing participants' plans'. The Act says that your plan should:

- Explain your current living situation as well as your goals, objectives and aspirations;
- Outline what support the NDIA will provide to you;
- Outline what support the NDIA will fund for you;
- Outline how and when all your supports will be organised.

The support provided by the NDIA will mostly be around organising your plan and helping get everything into place.

The NDIA will fund whatever the assessment process determines to be 'reasonable and necessary supports'. The Act explains that this includes supports that help you to attain your goals and aspirations and that assist you to be part of the community, but also represent good value for money, and are reasonable in what they require of your family, friends and community. The Act also says that the supports should be reasonably likely to be effective, and they should be supports that are best provided through the [NDIS](#)  rather than in some other way.

You can get more information about the conditions for becoming a participant from the [Advokit Becoming a Participant page](#) .

## 2. Needs assessment and your rights

You are entitled to expect your Participant Plan will reflect what you really need in order to meet your personal life goals and to participate in your community. You are entitled to expect your Participant Plan will reflect what you want.

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Here are some important rights issues to keep in mind in relation to assessing your needs, and the laws that can be relevant to it:

### a. The NDIS Act

The NDIS Act tries to balance a few competing issues in its provisions for assessing your needs. These include, on the one hand, considerations about what you need in order to meet your goals and to participate meaningfully in your community while, on the other hand, also looking at value for money.

You don't have to be the one who balances all of these factors. That is the job of the NDIA. You are entitled to put your side of things as strongly as you wish. You don't have to weigh up the costs. You are entitled to argue for what you think will help you meet your goals, and for what you think will enable you to participate in the community.

Even though the supports you need might cost a lot of money, they can still represent very good value for money. For example, providing high quality supports might increase your independence, and therefore reduce your need for more services in the long run, even though it might be more expensive in the short term. Good supports can help you to be more active, to get a better education or to get a better job, or to be involved in your community in other ways. This is what is meant by economic and social participation. You may need to be ready to argue some of these points when your needs are being assessed.

The Act also looks at how effective the supports are likely to be. This is important both in terms of your rights to quality services that work, as well as the NDIA's interest in investing only in supports that work. This doesn't mean, though, that you will always agree with the NDIA about what services are the most effective. If you know a particular type of service works, or have good reason to think that it will, you may need to be ready to argue this if the staff at the NDIA have different views about that service, or are unfamiliar with it.

### b. Pursuing your rights about needs assessment under the NDIA

Some of the points you may need to argue when pursuing your rights about needs assessment are:

- That the supports you think you need really are vital to achieving your goals and being able to participate meaningfully in the community (it can be helpful to be able to explain how the supports will help you achieve these goals);

## 2: b: Pursuing your rights about needs assessment under the NDIA: - continued

- That different or cheaper ways won't work as well (it can be particularly helpful if you can demonstrate this through giving examples of how particular supports or approaches have or haven't worked in the past);
- That providing levels of support lower than what you believe you need will not be enough to help you achieve those goals or to participate in the community (it can be particularly helpful to give examples of what lower levels of support will mean for you in a practical sense, especially in terms of how it will affect your ability to participate in the community or to live with maximum independence and be able to make decisions for yourself).

When making a complaint about your Participant Plan, 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, including why the Plan doesn't help you to meet your goals or to participate in the community. 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. The NDIA

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

If your complaint is about how the staff at 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 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](#) .

### 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 about your needs assessment under the NDIS. The NDIS should operate in a way that respects your rights under the Convention. An advocate can help you to refer to the correct parts of the Convention in support of your complaint.

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.

Some of the rights that might be particularly relevant when you are having your needs assessed include:

- 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 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 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.

The UN Convention is mainly of use as a way of backing up your arguments about your rights when you are pursuing them through a particular channel. This means that if you are arguing an aspect of your needs assessment with the NDIA, or if you are asking for a decision about your needs assessment to be reviewed, you might find it useful to refer to the relevant Articles in the Convention. These Articles are important in that they should guide how any legislation is interpreted and administered, or how any government programs are implemented.

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

Some of the points you may need to argue in doing this are:

- What the particular Article of the Convention means to you in practical terms: the practical difference in your life between having the right recognised and not recognised;
- The role that services and supports play in realising that right;
- Why the particular services and supports you are asking for are critical to that role.

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

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.

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