

# NEGOTIATING WHO PROVIDES SERVICES

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'.

When your plan is being prepared for supports under the NDIS, decisions have to be made about who will provide the supports that you and the Agency agree are needed. This Information Sheet is about your rights when those decisions are being made.


### **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 service providers under the scheme must be able to help you meet your goals, help you to participate in the community, be good value for money and be consistent with good practice. Some services are Registered Services. The NDIA will help manage your plan if it involves getting support from Registered Services. If you want to be supported from someone who is not a Registered Service, you can still receive funds for this through the NDIS, but you will have to manage that part of your plan yourself.


### **1. What the NDIS Act says about negotiating who provides supports:**

In negotiating who provides your supports and services, section 34 of the NDIS Act says that the National Disability Insurance Agency must be satisfied that services can meet your personal goals, help you to be more independent and to participate in the community and represent good value for money. This is all part of the process of assessing your needs or, as it is referred to in the Act, preparing your [Participant Plan](#) .

The NDIS Act has provisions for specialist disability service providers that are contracted directly by the NDIA to deliver support to people with disabilities. These are called "Registered Providers of Supports" and, in order to become a Registered Provider of Support, they must be approved by the NDIA through a process set out in Sections 69-73 of the Act.

The NDIA will only manage your plan to the extent that it is with Registered Providers of Supports. Managing the plan means things like managing the finances between you and the service, and all of the other administrative arrangements that need to be maintained in relation to you getting support from that provider.

The Act does not limit you to getting support only from Registered Providers of Support. But it does require that, whoever provides you with support, does so in ways that meet the criteria set out in Section 34.

If you receive support from a provider that is not a Registered Provider of Support then you may need to manage that part of your plan yourself, appoint a nominee to manage it on your behalf, or have a registered plan management provider manage it for you. You can find more information on this on the Advokit page [Managing Supports and Services](#) .

## 2. Negotiating who provides services and your rights:

The NDIS Act puts a lot of emphasis on your right to choose your supports. Sometimes the Agency may want you to receive support from a different provider than the one you prefer. You should not have to argue why your preferred provider is better, but you may have to convince the Agency that your preferred provider at least meets all the requirements of the Act. An advocate can help you to do this.

Here are some important rights issues to keep in mind about negotiating who provides services, and the laws that are relevant to it:

### a. NDIS Act

The NDIS Act's emphasis on the rights of people with disabilities to autonomy and self-determination is particularly clear in Section 4 (8) of the Act, which asserts the rights of people to determine their own best interests, to choice and control, and to engage as equal partners in decisions that affect their lives. Section 4 (9) also recognises that people are entitled to be supported in asserting those rights in their dealings with the NDIA.

This provides the basis for recognising your own right to choose who provides you with support, as long as that support complies with the criteria for approved supports set out in Section 34 of the Act. Therefore, in negotiating who provides your supports you will need to show how they meet these criteria. These points are set out below:

### b. Pursuing your rights about negotiating who provides your supports under the NDIS Act

In principle, you have the right to choose how you are supported. If the Agency doesn't agree with your choice, it is up to them to explain why. This means the Agency should be able to tell you why they do not think the service you've chosen meets the requirements set out in the Act.

There is nothing in the Act that says the service you choose has to meet the Act's requirements better than every other service. It has to meet all the requirements of the Act, but not necessarily better than other services which the NDIA might prefer you to use. Remember – your right to choose is a crucial part of how the NDIS works.

In preparing to argue your case on this, it may be a good idea for you to think about how you will argue that your choice of service fits within what the Act requires – that is, that it is necessary and reasonable, that it is good value for money and that it is consistent with modern practice. While it shouldn't be up to you to have to argue this, but rather it should be the role of the Agency to prove why the service does not meet these criteria, it is nevertheless a good idea to be prepared.

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.

## 2: b. Pursuing your rights about negotiating who provides your supports under the NDIS Act: - continued

### 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 (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.

## 2: b. Pursuing your rights about negotiating who provides your supports under the NDIS Act: - continued

### 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. 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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