

NDIS POSSIBILITIES: PATHWAYS TO BETTER CLIENT OUTCOMES



Outline

1. Overview of the NDIS (15 minutes)
2. Case studies (20 minutes)
 - a) Access for Aboriginal and Torres Strait Islander people with intellectual / cognitive impairment and forensic issues (Dean)
 - b) Internal review for access (Mitch)
 - c) Planning and internal reviews (Courtney)
 - d) Appeals to the AAT (Caitlin)
3. Learning from case studies (15 minutes)
4. Implementation issues (10 minutes)
5. Collective action from CLCs (20 minutes)

ACCESSING THE NDIS

What you need to know about accessing the NDIS

What are the access requirements for the NDIS?

Age requirements - Section 22 (1) (a)

The person is aged under 65 when the access request is made.

Residence requirements - Section 23

The person (a) resides in Australia; and (b) is one of the following:

- (i) an Australian citizen;
- (ii) the holder of a permanent visa; or
- (iii) a special category visa holder who is a protected SCV holder.

Disability Requirements - Section 24 (1) (a)

The person has a disability that is attributed to one or more intellectual, cognitive, neurological, sensory or physical impairments or to one or more impairments attributed to a psychiatric condition; **and**

Section 24 (1) (b) the impairment or impairments are, or are likely to be, permanent

Evidence to Submit

- GP/Specialist Letter
 - Stating your client's disability is permanent and that there is no further treatment available and or appropriate; or that the treatment your client receives focuses on relieving their symptoms but that they still require support with daily tasks.

If your client is applying for access under a psychosocial disability they may also need to provide evidence of specific treatments trialled; medication and therapeutic, including:

- names of the treating specialists;
- dates;
- what was trialled; and
- the outcomes of the trials.

Section 24 (1) (c) the impairment or impairments result in substantially reduced functional capacity to undertake, or psychosocial functioning in undertaking, or more of the following activities:

Mobility

- Walking
- Navigating obstacles
- Sitting
- Standing
- Mobility aids
- Fine motor skills
- Muscle control
- Range of motion
- Muscle strength and tone
- Grasp
- Endurance
- Appropriate motor responses
- Coordination

Communication

- Talking
- Understanding others
- Age appropriate conversation
- Following directions
- Written communication

Social Participation

- Keeping friendships
- Finding friends
- Family relationships
- Intimate relationships
- Social appropriateness

Self-care: the living skills necessary to maintain self

- Showering
- Dressing
- Hygiene/ grooming
- Cooking
- Nutrition/ fluid intake
- Cleaning

Learning

- Attention and Concentration
- Memory
- Sensorimotor

Self-Management: high order purposeful activities completed to achieve self-development, social contribution and livelihood

- Medication management
- Sleep patterns
- Emotional regulation
- Safety and security (handling sharps, poisons, using electricity and gas etc.).
- Responsibility
- Problem solving
- Decision making
- Household management
- Financial management
- Clothing care/ laundering
- Shopping
- Planning and organisational skills
- Transport
- Orientation and direction
- Vocational paid work, volunteer, studies, and training)

Section 24 (1) (d) the impairment or impairments affect the person's capacity for social or economic participation; and

Section 24 (1) (e) the person is likely to require support under the NDIS for the person's life.

FUNDED SUPPORTS

What you need to know about supports funded by the NDIA

SECTION 34 - REASONABLE AND NECESSARY SUPPORTS

Everything funded by the NDIS must tick off all the criteria in s34 of the *NDIS Act 2013*.

- a) The support assists the participant to **pursue goals, objectives and aspirations** included in the participant's statement of goals and aspirations;
- b) The support assists the participant to undertake activities so as to facilitate the participant's **social and economic participation**;
- c) The support represents **value for money** in that the costs of the support are reasonable, relative to both the benefits achieved and the cost of alternative support;
- d) The support is, or is likely to be, **effective and beneficial** for the participant, having regard to current good practice;
- e) The funding or provision of the support takes account of what it is **reasonable to expect families, carers, informal networks and the community to provide**;
- f) The support is **most appropriately funded** or provided through the NDIS, and is not more appropriately funded or provided through other general systems of service delivery or support services offered by a person, agency or body, or systems of service delivery or support service offered:
 - i. As part of a universal service obligation; or
 - ii. In accordance with reasonable adjustments required under a law dealing with discrimination on the basis of disability.

CHANGE OF CIRCUMSTANCES

What you need to know if your client's needs change

SECTION 48 CHANGE OF CIRCUMSTANCES (CoC)

A CHANGE OF CIRCUMSTANCES IS DIFFERENT TO AN INTERNAL REVIEW

A change of circumstances is related to everyday life.

- Examples – Your client moves house, their condition changes, their informal support moves or passes away; or they graduate from school etc.

Your client needs to supply evidence to the NDIA that the change of circumstances has changed their support requirements.

The NDIA must decide whether or not to conduct the review within 14 days after receiving the request.

- If they do not make a decision within the period, they are taken to have decided not to conduct the review.
- If they decide to conduct a review they must complete the review as soon as reasonably practicable.

NDIS APPEALS

What you need to know if your client disagrees with a decision made by the NDIA

SECTION 100 - INTERNAL REVIEW

If your client is **unhappy** with a decision made by the NDIA they can request an internal review within **three months** of receiving the decision.

A 'review of a reviewable decision' under Section 100 of the NDIS Act can be done by completing an application form (linked at <https://www.ndis.gov.au/applying-access-ndis/how-apply/receiving-your-access-decision/internal-review-decision>), attaching supporting documentation that justifies the request for support, and emailing it to enquiries@ndis.gov.au.

The decision maker completing the Internal review must not have been involved in making the original decision.

The timeframe for an internal review is 'as soon as reasonably practicable'.

If your client's review is about supports in a plan they should continue to utilise the supports available.

EXTERNAL APPEALS

If your client still disagrees with a decision after the internal review has been completed, they can apply to the Administrative Appeals Tribunal (AAT) to conduct an external merits review.

An application to the AAT must be made within **28 days** of receiving the decision of an internal review by the NDIA;

<http://www.aat.gov.au/resources/forms>.

- **E.g. if you received notification on 01 June 2019, your application is due 27 June 2019.**

The external appeals process is very different to the internal review as they use alternative dispute resolution to:

- Talk with the parties to the review about the decision and the issues in dispute
- If possible help parties reach an agreement before a hearing
- If an agreed outcome cannot be reached, prepare for a hearing.

EXTERNAL APPEALS PROCESS

Case Conferences

A case conference is an informal, private meeting arranged by the AAT to talk about your client's case and reach an agreement. It will usually be held between 6 and 10 weeks after lodging the application and it could be held in person at the AAT or by telephone.

The case conference will be conducted by an AAT Conference Registrar or Member, and attended by:

- You and your client, your client can also bring a support person if they would like.
- A legal representative of the NDIA.

In most cases it is the first step after the AAT accepts the application, and many cases are resolved at this stage. If there is no agreement, the AAT will prepare a case plan about how the review will proceed.

It is possible to have several case conferences.

EXTERNAL APPEALS PROCESS CONT

Conciliation

Conciliation is an informal private meeting to help you, your client and the NDIA consider possible options to reach an agreement.

If your client's case plan includes conciliation, it will usually be held within 4 weeks after their case conference. Conciliation is conducted by an AAT Conference Registrar or Member, and attended by you, the client, and the representative of the Agency.

Hearing

If the review is not resolved at an earlier stage, the AAT will usually hold a hearing. The hearing is an opportunity for you and your client to present information and talk about why you disagree with the decision under review.

The hearing will usually be conducted by one Tribunal Member. The Member is the person who will make a decision about the review.

AAT DECISIONS

After conducting a hearing the AAT will usually make a decision in writing. The Agency must put the decision into action or lodge an appeal with the Federal Court within 28 days after receiving the decision.

Decisions are usually made publically available on the internet including on the AustLII website (http://www8.austlii.edu.au/cgi-bin/sinosrch.cgi?mask_path=au%2Fcases%2Fcth%2FAATA&method=auto&query=NDIA).

AAT Decisions are not precedent however, they can be a useful tool.

CASE STUDIES

- a) Access for Aboriginal and Torres Strait Islander People with intellectual / cognitive impairment and forensic issues (Dean)
- b) Internal review for access (Mitch)
- c) Planning and internal reviews (Courtney)
- d) Appeals to the AAT (Caitlin)

Access for Aboriginal and Torres Strait Islander People with Intellectual / Cognitive Impairment and forensic issues (Dean)

- Try to think outside the box when supporting Aboriginal and Torres Strait Islander clients, especially when it comes to sourcing supporting evidence
- Supporting evidence can come from a number of places
- Cultural awareness is key. There are small Aboriginal organizations that will be able to give your organization insight and support. This awareness needs to be local!

Access not met internal review (Mitch)

- Remember time frame – 3 month from date of letter access not met dated
- Use NDIS review of reviewable decision form to avoid confusion
- Apply freedom of information from state disability services and Centrelink as relevant. Client needs to sign.
- Assess whether a statement from the person would be possible
- Collect information about functional capacity from other people who work with or assist this person.
- Get the person to complete a self-assessment if relevant – like WHODAS 2.0
- Relate the information received with the categories under s24.

Planning & Internal Reviews (Courtney)

Ask providers for progress reports and ask them to include:

- Some achievements and outcomes your funding has resulted in (line it up with your current and new goals)
- Recommendation for hours/service for the following plan and what you intend to use it for (especially for therapy funding)
- Use your CB daily activity/improved daily living funding to have your assessments for assistive technology completed before your plan review to have them included in the new plan (saves you asking for a review a few months in to your new plan)
- If you have underutilised your funds, have your explanation as to why prepared, in writing.

If you gained access to the NDIS under a 'defined program' – previously had funding from Disability Services QLD and didn't have to apply for the NDIS, it will be beneficial to have a functional assessment completed by an Occupational Therapist prior to your review.

Appeals to the AAT (Caitlin)

At the case conference you can

- Ask the NDIA to confirm in writing any conceded matters and if any matters remain in dispute, what those matters are;
- Confirm any further evidence you intend to obtain and the period of time you require to obtain it;
- Ask the NDIA to specify what, if any, further information they require from you, and a date by which you must file this information; and if required request the Agency fund these reports;
- Agree on a further case conference or agree that the matter be listed for conciliation or hearing;
- Where possible, include dates for the completion of tasks in a case plan prepared during the case conference.
- Ask the NDIA for a Statement of Issues Facts and Contentions.
- Gather further evidence required.
- If an agreement is made prior to Hearing, the NDIA will draft Terms of Agreement. Ensure these have all of the requested supports and a timeframe.

Appeals to the AAT (Caitlin)

- **The evidence needed and how Josh might obtain it**
- Participant and Cares statements are very effective. They should focus on the participant and the support provided because of the participants disability.
- Recommendations should be as up to date as possible and include: recommended hours, why that amount is required, how this particular support is related to the participants disability, what are the risks if the support is available, what goals is the participant hoping to achieve with this support, what progress has previously been made with this support.
- Evidence should be specific to the NDIA Act, Rules, Operational Guidelines and language.
- Conflicting or irrelevant information can be negative.
- Ask the NDIA to fund the requested reports.
- **Key Points to assist Josh**
- Know the amount of support hours that you are requesting and the reasons why this amount is required.
- If contacted by the NDIA Early Resolution Team, copy the Tribunal into all correspondence.

IMPLEMENTATION ISSUES

Key issues with service providers and Consumer Law

Implementation Issues

- The NDIA completing change of circumstances (s48) reviews instead of internal reviews (s100) when an internal review has clearly been requested – removing a persons right to externally review.
- Service agreements (consumer law);
- Travel charges;
- Interface between other systems; health, education, justice, aged care and the NDIS (COAG);
- Lack of State funded services for people ineligible for the NDIS including NZ citizens and people with chronic diseases;
- Lack of disability awareness from NDIA/planners/LAC's;
- NDIS operational guidelines and systems (SIL's) contradict the NDIS Act 2013 and UNCRPD.

COLLECTIVE ACTION

What can CLCs do collectively to make the NDIS better for everyone?

Tip # 1 Understand the NDIS language

NDIA / The Agency – National Disability Insurance Agency delivers the NDIS.

NDIS – National Disability Insurance Scheme.

Delegate / Planner – Direct employee of the NDIA / NDIS. These are the ‘decision makers’.

LAC / Partner in the Community – Contractors to the NDIA / NDIS. Information gathers however, **NOT decision makers.**

Tip # 2 Understand the relevant Legislation - Including; the relevant parts of the NDIS Act 2013, Rules, Operational Guidelines.

Tip # 3 Put Everything in writing

Tip # 4 Keep following up with the NDIA

Tip # 5 Raise systemic issues – with systemic advocacy organizations, Members of Parliament, the NDIA and the NDIS Quality and Safe Guards Commission.

Tip # 6 Know that there is advocacy available!

Helpful Resources

- NDAP Finder <https://disabilityadvocacyfinder.dss.gov.au/disability/ndap/>
- QAI Factsheets <https://qai.org.au/resources/legal-information-and-guides/>
- QDN GP Toolkit
http://www.brisbanenorthphn.org.au/content/Document/BNPHN_Understanding_Your_Role_NDIS_GP_Toolkit_May2018_FINAL_WEB.pdf.
- Summer Foundation Getting the Language Right
<https://www.summerfoundation.org.au/wp-content/uploads/2018/04/getting-the-language-right-web.pdf>.
- VALID 10 Steps to Excellent NDIS Therapy Reports <https://www.valid.org.au/10-steps-excellent-ndis-therapy-reports>
- National Disability Insurance Scheme Act 2013
<https://www.legislation.gov.au/Details/C2018C00276>.
- National Disability Insurance Scheme (Supports for Participants) Rules 2013
<https://www.legislation.gov.au/Details/F2013L01063>.

Helpful Resources Cont

- Council of Australian Governments (COAG), Principles to Determine the Responsibilities of the NDIS and Other Service Systems
<https://www.coag.gov.au/sites/default/files/communique/NDIS-Principles-to-Determine-Responsibilities-NDIS-and-Other-Service.pdf>.
- AAT Decisions http://www8.austlii.edu.au/cgi-bin/sinosrch.cgi?mask_path=au%2Fcases%2Fcth%2FAATA&method=auto&query=N
[DIA](#)
- AAT Summaries <https://www.latrobe.edu.au/lids/resources/aat-ndis-decision-digest>
- DSS Guideline for Psychosocial Access <https://www.dss.gov.au/mental-health/publications-articles/accessing-the-ndis-assisting-people-with-psychosocial-disability-to-access-the-ndis-a-guide-for-commonwealth-funded-community-mental-health-providers>