# Frequently asked questions about the Independent Expert Review

## What is the IER? How does it impact your Administrative

## Appeals Tribunal application?

The NDIA Independent Expert Review (IER) trial is an initiative funded until 30 June 2023 to reduce the backlog of NDIS matters in the Administrative Appeals Tribunal (AAT).

If you have an existing Administrative Appeals Tribunal (AAT) application that has not been heard by final hearing, you can express interest or may be invited to take part in the Independent Expert Review (IER) trial program. This means an Independent Expert will review your matter and make a recommendation to you and the National Disability Insurance Agency (Agency) as to its appropriate outcome. You will have a choice as to whether you accept that recommendation or continue with your AAT proceedings.

## Is the IER voluntary and free?

Yes, the IER is voluntary and free.

You do not have to agree to take part in the IER. If you do not want to take part, your application will continue through existing AAT processes.

## Is the IER accessible?

Yes. The Agency’s language interpreting services are available. More information about these services is available at <https://www.ndis.gov.au/understanding/language-interpreting-services>

## Do I need to be represented by a lawyer or advocate to participate in the IER?

No, representation is not required.

## I am participating in the IER. Where can I find support?

The Department of Social Services (DSS) is funding advocacy and legal support through the ‘NDIS Appeals Program’ for participants who are invited by the Agency to have their AAT application considered through the IER program.

If you have received an invitation to participate in the IER program, you may wish to contact the Independent Expert Review Advice Service (IERAS). The IERAS is a free, national legal advice service that can support people with disability, their families and carers participating in the IER process.

The IERAS is an initiative of National Legal Aid and can provide information, advice and referral to an advocate (NDIS Appeals advocate) and/or a lawyer in your state/territory.

The IERAS is currently funded until 30 June 2023. However, legal support via the IERAS and advocacy support through the NDIS Appeals Program will continue to be available for participants with active IER matters.

You can contact the IERAS information line (staffed by Legal Aid Queensland) by telephone on 1800 44 1800 or by email to ieradvice@legalaid.qld.gov.au.

The Agency can also provide general information about the IER program. Enquiries can be made by email to independentexpertreview@ndis.gov.au.

## How can an NDIS Appeals advocate assist me with the IER?

NDIS Appeals advocates providing IER support can:

* provide information on the IER process
* help you to decide on whether to participate in the IER whilst your application at the AAT is continuing
* refer you to the IERAS
* help prepare documents for the IER
* assist you to decide whether to accept the recommendations of the Independent Expert or to continue with your ongoing AAT application.

## How can an IERAS lawyer assist me with the IER?

When you receive a recommendation from an Independent Expert, you may wish to obtain advice from an IERAS lawyer to help you decide whether to accept the recommendation or continue with your application at the AAT. To access legal assistance, contact the IERAS Information line on 1800 44 1800 or email ieradvice@legalaid.qld.gov.au.

## What is the Oversight Committee?

The Oversight Committee has been created to monitor the implementation, processes and outcomes of the IER program. The Oversight Committee will ensure:

* Independent Expert Reviews are conducted independently of the Agency
* perspectives of the disability sector are embedded in the IER process
* transparency on progress and outcomes of the IER program.

The Oversight Committee is chaired by Mr Graeme Innes AM, and includes eight independent members and three government members representing the Agency and the Department of Social Services (government members only observe meetings). The Oversight Committee members represent a wide range of disability and advocacy sectors, bringing their own experience of disability and experience of going through the AAT process.

## Who are the Independent Experts?

The Independent Experts have the relevant experience, skills and training to review your AAT application and provide a recommendation to you and the Agency. The Independent Experts operate independently of the Agency.

The Independent Expert will have:

* current involvement with the disability sector
* a positive attitude towards disability and
* experience as an advocate, judge or mediator.

## How is the IER conducted?

You are able to choose the way the IER will be conducted. For example, you may:

* meet with the Independent Expert (with your representative) to discuss your AAT application;
* discuss with the Independent Expert any matters that you have raised with the Agency; and/or
* if the Independent Expert considers it may assist to resolve the matter, and if you agree, invite you and the Agency to attend a discussion about your application.

If you do not wish to meet with or discuss your AAT Application with the Independent Expert, you can request the Independent Expert make a recommendation by reviewing the material before the AAT, without meeting with you or the Agency.

You may withdraw your consent to take part in the IER at any time.

## What documents will the Independent Expert be provided with?

To take part in the IER, you will need to ask the Agency to provide information about you and your AAT application to the Independent Expert.

By taking part in the IER, you understand and consent to the Agency providing the Independent Expert with any information and relevant documents the Agency holds about your AAT application. This includes relevant AAT T-Documents and/or any other documents filed by you or the Agency (relevant documents).

The Independent Expert will also be provided with information about the legislative framework and relevant Agency Operational Guidelines.

The Agency will give you a copy of the documents provided to the Independent Expert.

## What if a third party’s personal information is included in the relevant documents?

If the relevant documents contain a third party’s personal information (for example, the personal information of another participant), the third party will need to consent in writing to the release of that information to the Independent Expert. If this is the case, the Agency will provide you with a form to provide to that third party requesting they provide their written consent to the release of the relevant documents.

## What happens if I don’t consent to the Agency providing information to the Independent Expert?

If you do not consent to the Agency providing information to the Independent Expert, you will not be able to take part in the IER.

## Can I withdraw my consent for the Agency to give information to the Independent Expert?

Yes. You can withdraw your consent at any time. Doing so will mean you are not able to continue to take part in the IER.

## What happens to information given to the Independent Expert at the end of the IER?

At the end of the IER, or if you withdraw your consent to the Independent Expert having your information or if you withdraw from the IER, the Independent Expert will:

* return to the Agency all documents containing information about the matter; and
* destroy any personal notes taken for the purpose of the IER or alternatively, if any personal notes are retained, keep them in a safe place and de-identify them to the extent possible.

## Can further documents be provided to the Independent Expert?

If you identify further documents or information that has not been provided to the Independent Expert, you are able to provide those documents or information to them.

This may extend the IER timeframe.

## Can the Independent Expert ask you and/or the Agency for further information?

Yes. If the Independent Expert thinks further documents or information would be useful to assist in considering your AAT application, the Independent Expert may ask you or the Agency to provide them.

You will be given an opportunity to obtain the further information, and the Agency may provide funding to support you in doing this.

The sourcing of further information may extend the IER timeframe.

## Does the Independent Expert consider legislation, rules, operational guidelines and/or case law?

Yes. When considering your AAT application, the Independent Expert will be considering the legislative criteria under the National Disability Insurance Scheme Act 2013 (NDIS Act), any relevant Rules and any relevant Operational Guidelines. The Independent Expert may also consider case law or other information relevant to your application.

Importantly, the Independent Expert will consider the facts and circumstances of your individual matter, and how the criteria in the legislation and case law apply to you.

You, your advocate and/or legal representative (if relevant) and the Agency will be provided with a copy of the documents provided to the Independent Expert.

## How long will IER take?

It usually takes 2 weeks to provide information to the Independent Expert, 2 weeks for the Independent Expert to provide their recommendation and 2 weeks for the Agency to consider the recommendation.

However, the exact timeframe will depend on how many documents and how much information is considered by the Independent Expert and whether further information is provided or requested.

## Can you withdraw from the IER?

Yes. You can withdraw from the IER at any time.

## What happens to your AAT appeal while you participate in the IER? Do I still have to be involved with the AAT, attend listings and comply with AAT orders?

If you agree to take part in the IER, your application remains before the AAT at all times.

You won’t lose your place in the queue in the AAT by any action taken by the Agency during the IER process. In some circumstances, it may be appropriate to request the AAT to provide alternative dates for compliance with AAT orders during the IER process, such as the date for filing a document with the AAT, provided this does not delay or defer any information required for the IER, or any date fixed for hearing of your application. We will not agree to defer any hearing of your matter before the AAT.

While participating in the IER, you are required to attend AAT listings (case conferences, directions hearings, conciliations) and comply with all directions or requirements of the AAT including filing documents.

## What happens after the Independent Expert considers your application?

The Independent Expert will provide a written recommendation on the appropriate outcome of your application and request that you and the Agency decide whether to accept it.

You can accept (in full or in part) or refuse the Independent Expert recommendation. To help you with this decision, you may wish to obtain legal advice about your options from the IERAS. You can contact the IERAS Information line on 1800 44 1800 or by email on ieradvice@legalaid.qld.gov.au.

The Agency has committed to:

* act in good faith in this process and intends to accept recommendations unless it has substantial reasons for not doing so such as where the recommendation does not comply with the law, there is a clear legal or factual error, or it is inconsistent with the Agency’s Operational Guidelines
* provide written reasons for not accepting the recommendation.

If you and the Agency both accept the Independent Expert recommendation (in full or in part), then the Agency will prepare documents to implement this as outlined below under ‘if an agreement is reached, how will it be implemented?’.

If you do not accept the Independent Expert recommendation, your application will continue through existing AAT processes.

If you do not accept the Independent Expert recommendation, but then decide at a later time, you wish to accept it, the options outlined below under ‘if an agreement is reached, how will it be implemented?’ will apply.

## What is a full agreement?

If you and the Agency accept the Independent Expert’s recommendation completely, this is a full agreement.

## What is a part agreement?

If you and the Agency only accept part of the Independent Expert’s recommendation, this is a part agreement. For example, if you and the Agency agree to some parts, but not others, of the Independent Expert’s recommendation.

## If an agreement is reached, how will it be implemented?

If you and the Agency both accept the Independent Expert’s recommendation (in full or in part) it can be implemented by a request to the AAT for orders to be made reflecting the recommendation.

In the case of a full agreement, this will mean that the AAT proceedings are ended by consent, to reflect the accepted recommendation.

In the case of a part agreement, this will mean your NDIS plan is updated, to reflect the accepted part/s of the recommendation; and the AAT proceedings may continue, so that the AAT can determine the remaining issues in dispute.

Alternatively, your application can be withdrawn, and a new decision made by the Agency, reflecting the recommendation.

## What happens if an agreement (part or full) cannot be reached by you and the Agency?

If you or the Agency do not accept the Independent Expert’s recommendation, your application will proceed in the AAT without any loss of priority.

This means, your application will continue through existing AAT processes.

If the Independent Expert cannot provide their recommendation 10 business days before the scheduled hearing of your matter before the AAT, the IER will end and the AAT hearing will proceed.

## If the Agency does not accept the recommendation

If the Agency does not accept the Independent Expert’s recommendation, it will provide to you written reasons why within 10 business days.

## Can the Independent Expert’s recommendation and Agency reasons be provided to the AAT?

The Independent Expert’s recommendation, and the Agency reasons, can only be provided to the AAT as evidence in your proceedings if you request this. The Agency will not oppose your request.

## Is the IER confidential?

The Independent Expert’s recommendation and Agency reasons can only be provided to the AAT as evidence in your application at your request.

If you provide the Independent Expert’s recommendation and Agency reasons to the AAT as evidence in your application, it may be referred to by the AAT including in any published decision.

## Will the recommendation be published?

If you consent, the Independent Expert’s recommendation and Agency reasons and information about your application may be published in a de-identified and summarised format.

## Will there be an evaluation of the IER?

Yes. The IER trial’s effectiveness will be evaluated.

The Agency’s Research and Evaluation Branch is expected to deliver the IER evaluation report in mid-2023.

The report will include feedback from various stakeholders including:

* + survey responses from participants, their representatives and Independent Experts
	+ interview responses from key stakeholders from inside and external to the Agency.

The report will include data around timeliness, costs and outcomes to help assess the IER trial.

Our IER trial learnings are already informing our:

* people-centric approach to dispute resolution
* use of co-design principles and engagement with the disability community
* response to the NDIS Review and the Administrative Review Taskforce to establish a new Federal Administrative Review Body.

Once the IER evaluation is complete, we will continue to communicate and engage with stakeholders to identify ways to improve our dispute resolution processes.

## When does the IER finish?

The IER is a trial and funding ends on 30 June 2023.

The IER trial is one of the Alternative Dispute Resolution (ADR) initiatives we introduced to reduce our AAT case backlog and [improve our dispute resolution processes](https://www.ndis.gov.au/about-us/legal-matters/improved-approach-dispute-resolution). Other initiatives include:

* + improved case review processes
	+ introduction of an early assessment team.

As a result of these ADR initiatives, over 5,000 NDIS AAT cases have been resolved since 1 June 2022.

Along with the other initiatives, the IER trial has achieved its key goal of resolving most of the legacy cases.

Additionally, learnings from this trial will further improve our dispute resolution processes.

Though the trial is ending:

* + we will continue referring planning matters to our Independent Experts until 30 June 2023 provided evidence is available and/or a hearing date has not already been scheduled in the next few months;
	+ any active IER matters as at 30 June 2023 will be progressed to completion;
	+ legal support via the Independent Expert Review Advice Service (IERAS) and advocacy support through the NDIS Appeals Program will continue for participants with active IER matters. Participants with active IER matters can contact the IERAS by telephone on 1800 44 1800 or by email to ieradvice@legalaid.qld.gov.au until 29 September 2023.

Active IER matters include:

* + invitations to participate in the IER program that have been accepted by a participant;
	+ matters that are being prepared by the Agency for referral to an Independent Expert;
	+ matters that have been referred to an Independent Expert, but a recommendation has not yet been received;
	+ matters that are being considered by the Agency and/or a participant following a recommendation from an Independent Expert.

Participants with a current IER matter or anyone considering applying for an IER before 30 June 2023 can find further information by:

* + visiting our [website](https://www.ndis.gov.au/about-us/legal-matters/improved-approach-dispute-resolution)
	+ sending an email to independentexpertreview@ndis.gov.au.

Not all matters will be suitable for referral to an Independent Expert but we have other initiatives to support the resolution of AAT matters including the early assessment of AAT applications and the focus on the resolution of aged AAT matters (over 12 months).

We will continue looking for ways to improve our dispute resolution processes and provide a better experience for participants.

## How do I provide feedback or make a complaint about the IER or the conduct of the Independent Expert?

In addition to the independent survey being developed, the usual feedback and complaints process is in place for feedback or complaints. Information about providing feedback or making a complaint is available at <https://www.ndis.gov.au/contact/feedback-and-complaints>.

## What if the recommendation contains an error? For example, if it is factually incorrect?

If the recommendation contains an error, the Participant and/or Agency should not accept the recommendation. The Participant and the Agency can contact the Independent Expert to request that the error in the recommendation be corrected.

You may wish to contact the IERAS for assistance. You can contact the IERAS Information line on 1800 44 1800 or email ieradvice@legalaid.qld.gov.au.