Reviewing our decisions

Quick summary: If you don't agree with a decision we've made, please contact us. We can explain the reason for our decision. You can also ask for an internal review and an internal reviewer will review the decision. NDIS laws tell us what decisions we can review. We call these reviewable decisions. If you still don't agree with our decision after the internal review, you can ask the Administrative Review Tribunal (the Tribunal) to review our decision. We call this an external review.

This guideline has information on what decisions we can review and how you can ask for a review of a decision. It also has information on what happens during the review, and what you can do if you don't agree with our review.

What's in this guidance?

This guideline covers:

- What if you don't agree with a decision we make?
- What are internal and external reviews?
- When can you ask for an internal review?
- What happens during an internal review?
- When can you ask for an external review?
- What happens during an external review?
- Appendix 1: What decisions can we review?

You may also be interested in Our Guidelines:

- Applying to the NDIS
- Creating your plan
- Plan variations
- Plan reassessments
- Reasonable and necessary supports
- Principles we follow to create your plan

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What if you don’t agree with a decision we make?

We’re committed to helping you understand how and why we make decisions. We’re also committed to helping you have a decision reviewed, if you believe the original decision we made was wrong. When we say reviewable decisions, we mean decisions that can be reviewed under NDIS laws.

We’ll give you written notice and the reasons for our reviewable decisions.[1] You can ask us at any time about how we make decisions. We can explain our decision and answer your questions. If you’d like more information about one of our decisions, get in touch. You can contact us by phone, email or at one of our offices. If you’re a participant, you can also speak to your my NDIS contact, local area coordinator or early childhood partner.

If you don’t agree with our decision, you may be able to ask for a review of the decision.

What do we mean by reviewing a decision?

We make decisions under the law for the NDIS.[2]

This law tells us how we should make decisions that affect you and your NDIS plan. We need to make all our decisions under this law.

We are committed to making the right decisions under the law. If you don’t agree with our decision, you may have a right to have that decision reviewed.[3] If you want a decision reviewed,[4] you’ll need to ask for a review within 3 months of when we made the decision.

If you ask for a decision review, someone who wasn’t involved with the original decision will have a look at it. They’ll check if we made the right decision under the law, or if they need to make a new decision.

Learn more about internal and external reviews.

What are my other options besides a review of a decision?

If you need to ask us to change your plan, you can ask for a plan reassessment or plan variation. This is different to asking us to review a reviewable decision.

You can also give us feedback or make a complaint.

We’re committed to improving our services and making sure you get the reasonable and necessary NDIS supports you need. We encourage you to let us know if things aren’t right.

If you’re not satisfied with a service provider, you can contact them directly. Or you can contact the NDIS Quality and Safeguards Commission to make a complaint about a service provider. The NDIS Quality and Safeguards Commission also handle all internal reviews relating to provider registration.

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What are internal and external reviews?

There are processes we have to follow to review our decisions. We call this an internal review. There are also processes the Administration Review Tribunal (ART or Tribunal) needs to follow when reviewing our decisions. We call this an external review.

First, we need to make the decision. You can't ask for a review before we make the decision. We call this the **original decision**. For example, we could decide you're not eligible for the NDIS. Or if you're a participant, we could decide to approve your plan without some requested supports.

If you don't think our original decision is right, you may be able to ask for an **internal review**. This is where one of our staff, not involved in the original decision, checks if the right decision was made the first time.

If you don't agree with the internal review decision, you may then ask the Tribunal for an **external review**. This is where the Tribunal checks if the internal review decision was the right decision.

The Tribunal is an independent legal body that can review reviewable decisions made by the NDIA. The Tribunal is separate to us, so external reviews are independent from our decisions. You can't have an external review until we've done the internal review.

To find out more about the Tribunal, go to When can you ask for an external review?

What decisions can be reviewed?

NDIS laws tell us what decisions can be reviewed.[5]

Many decisions are reviewable. Some of the common ones include when we decide:

- you're not eligible for the NDIS[6]
- you're no longer eligible for the NDIS[7]
- to approve your plan, which includes approving the supports we fund in your plan[8]
- not to do a plan reassessment[9]
- not to do a plan variation[10]
- to vary your plan[11]
- if you need a plan nominee or a different child representative[12]
- the categories of impairment you meet for the disability requirements, early intervention requirements or both.[13]

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A decision by an authorised Agency official to issue, vary or revoke a compliance notice is also a reviewable decision under the NDIS Act.[14]

If you're a participant and don't agree with your plan, you can ask us to review some parts of your plan. We can review:[15]

- what NDIS supports we include in your plan
- how we describe those supports
- how your funding is managed
- how long your plan goes for
- how your plan has been varied
- how we group your NDIS supports
- funding periods we apply to your plan.

Learn more about how we create your plan.

We'll write to you when we make a decision that is reviewable.[16] We'll let you know our decision and reasons. When we say 'you', we mean only those people who are directly affected by our decision.

If you're not sure if our decision is reviewable, you can look at Appendix 1: What decisions can we review? for a list of all the decisions we can review.

If you've requested a review of the decision that you aren't eligible for the NDIS, you can't reapply while we are doing the review. This includes when you apply for the NDIS or leave the NDIS after your status as a participant has been revoked.[17] To learn more, you can go to Leaving the NDIS.

What can't be reviewed?

We fund NDIS supports in your plan. NDIS laws set out what we can and can't fund.[18]

Sometimes, we may agree that you can spend your funding on a support that isn't an NDIS support if the NDIS laws allow for it.[19] We call this a 'replacement support'. You can only spend your funding on a replacement support if we have agreed in writing that you can buy the support.

You can't ask for a review if we don't agree to your request to buy a replacement support with your NDIS funding. This is because this is not a reviewable decision.

For more information about replacement supports, go to What is a replacement support.

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If a support determination has been applied to your plan, you can't ask us to review this decision. But you might be able to ask us for a plan variation instead, if you have high support needs and receive 24-hour funded NDIS supports.[20] You need to ask us for this type of plan variation within 90 days of the date the support determination was applied to your plan.[21] Learn more in Our Guideline – Plan variations.

When can you ask for an internal review?

After we inform you of the original decision, you then have **3 months** to ask for an internal review.[22] This is 3 months from the day after you receive our decision in writing.[23]

We can't do an internal review if you ask us after more than 3 months. If you ask us after 3 months, we'll let you know what other options you have.

For example, if we decided you're not eligible for the NDIS, and it's been more than 3 months since we made our decision, you can apply again. You can also apply if you used to be a participant, and it's been more than 3 months since we let you know that you're not eligible anymore. Learn more about applying to the NDIS.

If you want us to review the supports in your plan, but it's been more than 3 months since our decision to approve your plan, you can ask for a:

- plan reassessment[24]
- plan variation.[25]

If we decide not to do a plan reassessment or variation, we can review your situation at your next check-in.

Learn more about plan reassessments and plan variations.

Example

Amir is an NDIS participant and just received his first plan. He doesn't think we made the right decision on the NDIS supports we included in his plan. He wants to ask for an internal review.

He received his plan in the mail on 1 July. He has 3 months from the day after he received our decision in writing to ask for an internal review.

This means Amir will need to ask for an internal review on or before 2 October.

Amir can't ask for an internal review after 2 October.

If his situation changes after we approved his plan, he can ask us for plan reassessment or plan variation at any time.

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Who can ask for an internal review?

You can ask for an internal review if you're **directly affected** by our decision.[26]

Who can ask for an internal review depends on the decision. We have a list of who can usually ask for an internal review for different types of decisions.

Example

Sharon is an NDIS participant. She had funding in her first plan for physiotherapy. Her new plan doesn't include funding for physiotherapy. We didn't have evidence that physiotherapy still meets the NDIS funding criteria for Sharon.

Sharon can ask for a review of our decision to approve her plan without funding for physiotherapy. She's directly affected by our decision, as it's about her and the NDIS supports we included in her plan.

But her physiotherapist can't ask us for a review, as they're not directly affected by the decision. Even though this might cause Sharon to stop going to the physiotherapist because it's not in her plan, the link isn't direct. It's Sharon's decision if she wants to use her own money to keep going to the physiotherapist.

I need help to ask for an internal review.

You can get help to ask for an internal review from your family or friends.

Your local area coordinator, early childhood partner, my NDIS contact, or an advocate can also help you if you need them to. We can also help you book a translator or interpreter if you need one.

How to give someone consent to ask for an internal review.

If someone is helping you to ask for an internal review, you need to let us know they have your permission. We call this **consent**. This could be someone like a family member, friend, advocate, or a support coordinator.

We prefer you let us know in writing if you're giving someone consent. You can:

- send us a letter or email telling us that you give someone consent to ask for a review
- look at our how to give consent information
- contact us and we'll make a written note of this.

We check that your consent is for the internal review we received, and your consent still applies. We may still contact you to check you're happy for us to do an internal review.

You can provide consent for a set period of time and can also take away your consent at any time. Learn more about consent.

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Can other people ask for an internal review on your behalf?

You can give someone consent to ask for an internal review on your behalf. If a person wishes to apply for an internal review without your consent, they'll need to have legal authority to act on your behalf.

If you're a participant under 18 years and have a child representative, they'll have legal authority to request an internal review on your behalf.[27]

If you're a participant aged 18 years or older and have a nominee, they may be able to request an internal review on your behalf. Your nominee will need to check if the consent you have provided allows them to request this review.

If your support coordinator has your consent to request an internal review, we need to check that you know about this request before we proceed. We won't proceed with an internal review request from your support coordinator if you haven't provided consent for them to request this on your behalf.

How do you ask for an internal review?

There are a few ways to ask us for an internal review. You can:

- complete our form
- contact us by phone or at one of our offices
- send us a letter or email.

Remember, you need to ask for the internal review within **3 months** after we inform you of our original decision.

We need to know why you're asking for an internal review. This will help us understand your situation and make the internal review decision. We'll contact you if we need more information to make our decision.

To help us do the internal review, let us know:

- what decision you were expecting
- why you think we should make a different decision
- if there is any information you've already given us that you'd like us to reconsider
- if you have any new evidence, such as medical or therapy reports, you'd like us to consider.

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We'll note the day you ask us for an internal review. This will be either:

- the day you ask us in person or over the phone
- the day we receive your letter or email.

What if we need more information to do the internal review?

In some situations, we may need more information to make our decision. If we do, we'll contact you to let you know what information we need and why we need it.

You might also want to give us more information to help with the internal review. If you want to, you can also give us consent to discuss your situation with your doctor or other appropriately qualified person.

If we ask you for more information, or you want to provide more information, we'll wait for up to **28 days**. This means you'll have time to give us the information we need.

If you give us the information we need before 28 days have passed, we can sometimes make the internal review decision sooner.

If we don't get the information within 28 days, we need to make our decision based on the information we have. If you think you need more time to provide the information or send us a report, let us know. We may be able to give you more time if your request is reasonable.

You might give us information that's different to what you're asking for in the internal review. If so, we'll work with you to decide what we should do.

For example, you may be a participant lodging an internal review about a decision we have made that you don't agree with. You may also need different NDIS supports since we approved your plan if your functional capacity and disability support needs have significantly changed. This may mean you need a plan reassessment or in some limited circumstances, a plan variation. Or we may be able to consider those NDIS supports as part of our internal review.[28]

What if you don't want an internal review anymore?

You can withdraw your request for an internal review any time before we make our internal review decision.[29]

To withdraw your request for an internal review, you can:

- contact us by phone or in person at one of our offices
- send us a letter or email.

If you tell us in person or over the phone that you withdraw your request, we'll make a note of this. This will include the date you let us know.[30]

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When do we do an internal review without you asking?

There are some situations where we need to do an internal review even though you haven't asked for one. This happens if you've requested a particular decision, and we didn't make that decision within our legal timeframes. This is because under the NDIS law, we must do an internal review if we didn't make our original decision on time. We call this an automatic internal review.

This could happen if you ask for:

- a plan variation and we don't decide within **21 days**[31] or tell you that we need more time to decide[32]
- a plan reassessment and we don't decide within **90 days**.[33]

This could also happen when you apply to the NDIS, if:

- we don't decide if you're eligible for the NDIS, or ask you to give us more information to help us decide you're eligible for the NDIS, within **90 days**[34]
- we asked for and you gave us more information to help us decide if you're eligible for the NDIS[35] and we don't make a decision or ask for more information within **14 days** of receiving the additional information.[36]

We'll let you know the outcome of the automatic internal review in writing.[37] You don't need to do anything unless we contact you to ask for more information to help us make a decision. We'll then let you know what the outcome is when we've made a decision.

What happens during an internal review?

After you ask for an internal review, our original decision will stand until we finish the review.[38]

For example, you might be a participant and ask for an internal review of your current plan. If so, you can keep using the same NDIS supports described in your plan until we have made a decision.

Or you might ask for an internal review because we decided you're not eligible for the NDIS.

A local area coordinator or early childhood partner can help you link in with other supports.

Who does the internal review?

The person who does the internal review will be one of our staff. They can only do the internal review if they weren't involved in making the original decision.[39] We call this person the internal reviewer.

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Your internal reviewer will look at:

- your situation, for example, if you're a participant and we're reviewing our decision to approve your plan[40]
- NDIS laws
- Our guidelines
- reasons for the original decision and the information we used to make the original decision
- any new information you give us.

We'll make our decision based on the evidence at the time of our internal review decision.[41]

How long will your internal review take?

We aim to complete all internal reviews within **60 days** after you ask for one. This is 60 days from the day after we receive your request for an internal review.[42]

If this isn't possible, we'll contact you, or the person who asked for the internal review. We'll explain why we need more time and let you know when we'll make a decision.

Find out more about our Participant Service Guarantee.

When the original decision is reviewed automatically, the 60 days to make an internal review decision begins on the day after the timeframe to make the original decision ended.[43]

For example, if you asked for a plan variation and we didn't make a decision **within 21 days**, then we'll be taken to have made a decision not to vary your plan.[44] This decision will be automatically reviewed.[45] We will need to make an internal review decision within 60 days, beginning on the day after the 21 days expired.[46]

What if you need your internal review done sooner?

We can sometimes do urgent internal reviews sooner. We may do this if:

- there's a risk of harm to your health or wellbeing or for someone you care for
- you're at risk of homelessness or have unstable accommodation
- your informal support arrangements are at risk. For example, if your informal supports can't care for you while we make our review decision
- there's a risk relating to your disability, for example, if your disability is rapidly changing or becoming more serious
- you're in hospital waiting for discharge

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- you're waiting for urgent assistive technology, home modifications or supported independent living NDIS supports.

If you're in one of the above situations, let us know when you ask for a review. We'll contact you or the person who asked for the internal review within 48 hours to talk about your situation. We'll then complete the internal review as soon as we reasonably can.

What if you need a change to your current plan while we are completing your internal review?

If you're a participant and your situation changes while you're waiting for an internal review, contact us. We'll let you know what options are available for your situation and how this might affect your plan and your internal review.

Your plan may need to change **before** we complete our internal review:

- You can ask for a plan reassessment or a plan variation. We call these a participant-requested plan reassessment [47] or a participant-requested variation.[48]
- Depending on your situation, we may decide to do a plan reassessment or vary your plan. We call these a CEO-initiated plan reassessment[49] or a CEO-initiated variation.[50] You can then ask for an internal review of this decision if you don't agree.

Example

Robert is an NDIS participant.

He has requested an internal review as he is unhappy with the plan management decision in his plan. Robert wants to self-manage some of his NDIS supports.

While the internal review officer is reviewing Robert's request, he mentions his sister has been admitted to hospital.

Robert lives with his sister and relies on her to help him daily.

The internal review officer can vary Robert's plan to include additional supports as part of the internal review decision.

This means Robert will have some new NDIS supports in his plan to help him while his sister is in hospital. His internal review of the plan management decision is then considered at the same time.

If Robert doesn't agree with the decision we make relating to his internal review, he can ask for an external review.

Robert may also decide he doesn't want to proceed with his internal review due to his change of circumstances.

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What happens if we make a second decision to approve a new plan or vary your current plan before your internal review is complete?

If we approve a new plan or vary your current plan **before** we make our internal review decision, the internal review will cover both:

- the first decision to either approve a new plan or vary your plan (**original decision**); and
- the later decision to either approve a new plan or to vary your plan (**second decision**).[51]

This means if you're unhappy with the second decision, you **won't** need to ask for another internal review. This is because the internal reviewer will review the second decision automatically as part of the current review process. The internal reviewer will consider if both decisions have been made correctly.

What if we approve a new plan or vary your current plan after your internal review is complete?

If the second decision is made **after** we make our internal review decision, then we can't consider the second decision as part of the existing internal review. This is because the internal review decision has already been made.[52]

If you're unhappy with the decision, you'll need to ask for an internal review within 3 months after you receive notice of the second decision in the usual way.[53]

Example

Neha is an NDIS participant. We undertake a reassessment of Neha's plan and approve a new plan (**original decision**). Neha isn't happy with the NDIS supports in her new plan and requests an internal review.[54]

While the internal review is in progress, Neha requests a plan variation to change the way her funding is managed. As a result, we decide to make a further decision to vary her plan (**second decision**).

What happens if we make a second decision to vary or approve a new plan before Neha's internal review is complete?

If our **second decision** occurs **before** our **internal review decision**, Neha's internal review will now include both:

- our **original decision** to approve her plan, and
- our **second decision** to vary her current plan.

This means the internal reviewer will review both decisions.[55]

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What happens if we decide to approve a new plan or vary Neha's current plan after we have made her internal review decision?

If the **second decision** occurs **after** our **internal review decision**, Neha will need to ask for an internal review if she's not happy with the decision. Neha will need to ask for an internal review within 3 months from when she receives the notice of our decision.

In the letter we send Neha with the outcome of our decision, we would tell her about her review rights.

What internal review decisions can we make?

When we complete the internal review, there are 3 different types of decisions we can make. We can:[56]

- **confirm** the original decision – we don't make any changes
- **vary** the original decision – we make some changes to the original decision
- **set aside** the original decision and make a new decision.

We review all the information we have when we make our internal review decision. For example, we can look at new information you give us after we made our original decision.

When we conduct an internal review of the original decision to approve your plan, we look at the decision we've made. We do this based on the evidence we have at the time we make our internal review decision.[57] We call the decision that fits best, based on NDIS laws, the preferable decision.

The internal reviewer can also consider NDIS supports that were not raised or requested by you when we made our original decision to approve your plan.[58]

When would we confirm the original decision?

We may confirm the original decision.[59] This means there's no change to the original decision.

We confirm the original decision if we decide it was the correct or preferable decision.[60] This means out of the decisions we could make, the internal reviewer decides the original decision is the correct decision or the decision that fits best, based on:

- NDIS laws
- the evidence
- the facts.

For instance, we might decide you're not eligible for the NDIS and the internal reviewer confirms the original decision. This means you're still not eligible for the NDIS.

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Example

Jasmine asked for an internal review of our decision to approve her NDIS plan. Her plan includes $3,000 funding for therapy, but she believes she needs more.

Jasmine's internal reviewer looks at all the information we have about Jasmine and her NDIS supports. Her internal reviewer decides the original plan was the preferable decision under the law. This means her plan does not change. She still has $3,000 funding for therapy.

Example

Aimee seeks an internal review of the decision not to give her access to the NDIS.

Aimee's internal reviewer looks at the information about Aimee's age. Aimee was 70 years of age when she made her access request. The internal reviewer decides the original decision was the correct decision under NDIS laws because Aimee doesn't meet the age requirements.[61] This means the original decision not giving Aimee access to the NDIS does not change.

When would we vary the original decision?

We may also vary the original decision.[62] This means we decide to change part of the original decision.

For example, we could decide to include a different funding component amount or a different number of hours for a particular NDIS support. If so, you'll get a new plan with a revised funding component amount or hours for that NDIS support. The rest of the plan will stay the same.

Example

Sam asks for an internal review of our decision to approve her plan. Her plan includes $3,000 for therapy.

Sam's internal reviewer looks at all the information we have, including a new report from her occupational therapist with additional information.

Sam's internal reviewer decides to vary the original plan and include $4,000 for therapy in a new plan. All the other NDIS supports in Sam's plan stay the same.

When would we set aside the original decision, and make a new decision?

Finally, we may set aside the decision and make a new decision.[63] This means the original decision no longer applies. The internal reviewer will now make a new decision.

We do this if we decide the original decision wasn't correct or preferable. Out of the decisions we could make, there's one that fits better with the NDIS laws based on the facts and evidence.

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For example, if we originally decided you're not eligible for the NDIS, the internal reviewer could decide you are eligible.

Example

Jamal asks for an internal review of our decision to approve his plan. His plan did not include funding for occupational therapy. We didn't have enough evidence that it met the NDIS funding criteria. After asking for an internal review, Jamal gives us more evidence on why he needs occupational therapy.

Jamal's internal reviewer looks at all the information and decides the original plan wasn't the correct or preferable decision.

His internal reviewer decides to set aside the original decision. His internal reviewer makes a new decision to approve a plan that includes funding for occupational therapy.

What happens after we make the internal review decision?

We'll let you know in writing about what decision we made and why.

Our letter or email will explain:

- our internal review decision
- the reasons for our decision
- what evidence we looked at if we decided to confirm or vary the original decision, or make a new decision
- what you can do if you don't agree with the internal review decision.

If we vary or set aside the decision, your internal reviewer will make the changes to your NDIS record or NDIS plan to reflect their new decision.

What happens to your plan after an internal review decision?

If you're a participant, your plan may need to change depending on our internal review decision.

If we confirm the original decision to approve your plan, your plan will stay the same. You'll have the same NDIS supports, the same plan management and your plan review date will stay the same.

If we vary or set aside the original decision, we'll then vary or replace your plan. This means your replacement plan will have any changes we decided to make about:[64]

- the reasonable and necessary supports in your plan
- how we describe the NDIS supports in your plan

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- how the funding in your plan is managed
- how we group your NDIS supports
- funding periods within your plan
- when we'll next review your plan.

What if you're still not happy after the internal review decision?

If you disagree with our internal review decision, you can ask for an external review of the decision. You have **28 days** after you receive our internal review decision to ask the Tribunal for an external review.

When can you ask for an external review?

If you don't agree with the internal review decision, you can ask the Administrative Review Tribunal to review it.[65] We call this an external review. You can't ask for an external review until after we make the internal review decision.

The Administrative Review Tribunal reviews decisions made by Australian Government ministers, departments and agencies. This includes our decisions, as well as decisions from other parts of government like Centrelink.

We call the Administrative Review Tribunal 'the Tribunal' in this guideline. It is also called the ART.

The Tribunal is separate from us. It has different processes on how it makes decisions, and it has different staff and its own laws. The reviews it does are independent of our decisions.

For more information about asking for an external review of an NDIS decision, check out the Tribunal website.

Who can ask for an external review?

You can ask for an external review if you're **directly affected** by the internal review decision.[66]

If you were able to ask for an internal review, you should be able to ask for an external review. The Tribunal will decide if you can ask for an external review.

You can also ask a friend, family member, advocate, or lawyer to help you.

How long do you have to ask for an external review?

After we make the internal review decision, you then have **28 days** to ask for an external review. This is 28 days from the day after you receive our internal review decision in writing.

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In some situations, you can get more than 28 days to ask for an external review. The Tribunal may give you more time if it thinks it's reasonable, based on your circumstances.[67]

If you need more time, you'll need to fill out an application for extension form on the Tribunal's website or write to the Tribunal. Learn more about how the Tribunal can help you.

How do you ask for an external review?

- You can apply for a Tribunal review online.
- You can fill out an application form. Lodge the form directly with the Tribunal in person, by email, by fax, or by post.

You can also give the Tribunal new information if you think it will help them with the external review.

If you need help asking for an external review, you can contact the Tribunal.

What if you don't want an external review anymore?

You can write to the Tribunal at any time to withdraw your application.[68] You must notify the Tribunal in writing. You can use the notice of withdrawal form or send them an email or letter. For more information go to Ending a review without a hearing.

What happens during an external review?

When you ask the Tribunal for an external review, it'll go through a few steps before making a decision.

You can find information about the steps in the external review process on the Tribunal website.

You can provide more information to the Tribunal to help them make a decision. We may also ask you, or other people, for more information to help us resolve the issue or help the Tribunal decide. If you're a participant or applying for the NDIS, we may ask you to get an assessment. Learn more information about what happens to evidence given to the Tribunal?.

If you're a participant, you can still use the same NDIS supports described in your plan during the Tribunal process.

What support can you get at the Tribunal?

If you want an advocate or legal support at the Tribunal, you may be eligible for the NDIS Appeals Program. For example, someone could represent you at the Tribunal and help you explain your situation.

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If you're a participant, you can use your NDIS funding for NDIS supports during the hearings. For example, you might need support for personal care or communication supports to help you participate in discussions.

But you can't use your NDIS funding for someone to represent you at the Tribunal. For example, you can't use your NDIS funding for a lawyer, support coordinator or other provider to represent you. We also can't fund any legal advice or legal support when you go to the Tribunal.[69]

Learn more about the support you can get at the Tribunal.

What's our role and how can we support you at the Tribunal?

We are committed to the principles of our Participant Service Charter. We want a fair outcome and to support you through the Tribunal process.

We'll let you know in writing which of our staff is assigned to work with you at the Tribunal. We call them a case manager.

You can contact your case manager if you have any questions about the process. They can also answer any questions you might have on how the process could affect you.

We will also have a lawyer if we are not able to resolve your issues quickly. They will help you and the Tribunal with the legal aspects of the review. For example, they prepare documents that explain the issues.

To help the Tribunal make a decision, they can use the information on your NDIS record or information requested during the external review.

We need to have lawyers to meet our legal obligations at the Tribunal. We need to help the Tribunal make its decision and act as a model litigant at the Tribunal.[70]

For example, this means we must act honestly and fairly at the Tribunal by:[71]

- dealing with matters quickly and without unnecessary delay
- acting consistently and working with you the same way we work with all other people at the Tribunal
- avoiding or limiting Tribunal hearings where possible, including trying to reach an agreement together where this is the best outcome for everyone
- not taking advantage of people who don't have a lawyer at the Tribunal.

We can still act firmly and properly at the Tribunal to pursue our interests as a government agency.[72] For example, we can still defend our decision at the Tribunal if we think the right decision was made.

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In some situations, we may need the Tribunal to make a decision instead of us making an agreement together. This might be if there's a complex and unclear area of law we need to resolve at the Tribunal.

You can read more about our legal obligations in the Legal Services Directions on the Federal Register of Legislation website.

What if your situation changes while waiting for the external review?

An external review means the Tribunal decides if we made the correct or preferable decision or if it needs to make the decision again.

If you're a participant and your situation changes during the external review process, contact us. You may need a plan reassessment or a plan variation while the Tribunal is reviewing a decision about your plan.

Your case manager will explain the options available to you. We may also need to let the Tribunal know what we think we should do as it might affect your external review.

You can still use the NDIS supports described in your plan while the Tribunal considers your external review. And you can contact us at any time if you have questions about your plan.

What if we approve a new plan or vary your current plan before the Tribunal completes their external review?

Some decisions that affect your plan will be reviewed by the Tribunal automatically, as part of an existing external review.[73]

If you're unhappy with our internal review decision and have applied for an external review, the Tribunal will review the original decision. This is the decision reviewed by the internal reviewer. But they will also review any later decisions made after you applied to the Tribunal that either approve a new plan or vary your plan.[74]

Example

Tim is an NDIS participant and is unhappy with our internal review decision. Tim applies to the Tribunal for an external review **on 1 July 2022**.

Any later decisions to approve a new plan or vary Tim's existing plan, made after 1 July 2022, will be included in the Tribunal's external review.

This means that the Tribunal will be able to review all decisions that have changed Tim's plan after he applied to the Tribunal for an external review. The Tribunal will consider all plans and variations approved after Tim applied to the Tribunal. The Tribunal's review will not be limited to the original decision, which was reviewed by the internal reviewer.

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Can we make an agreement together instead of waiting for a Tribunal decision?

Yes. We can make an agreement together at any time during the external review. This means we come to an agreement about the decision, instead of the Tribunal making a decision.

This often means you can get the decision faster and avoid some of the Tribunal process.

Any agreement we make needs to follow NDIS laws. The Tribunal also needs to approve the agreement to make sure it's fair and you're happy with it. This is called a consent decision.

If we don't come to an agreement, the Tribunal will make a decision after the hearing.

What external review decisions can the Tribunal make?

The Tribunal will take an independent look at:

- your situation, for example, if you're a participant and the Tribunal is reviewing our decision to approve your plan[75]
- NDIS laws
- Our guidelines
- the reasons for our internal review decision and the information we used to make the internal review decision
- any new information you give the Tribunal.

The Tribunal will then make the 'correct or preferable' decision.[76] This means, out of the decisions it can make, it will make the decision it thinks is the correct decision, or the best decision, under the law based on the evidence.

When the Tribunal reviews our decision to approve your plan, the Tribunal will look at whether we made the correct or preferable decision based on the evidence at the time the Tribunal makes its decision.[77]

After the hearing, the Tribunal can make one of 4 types of decisions. It can:

- **affirm** the internal review decision[78] – the Tribunal agrees with the internal decision and doesn't make any changes
- **vary** the internal review decision[79] – the Tribunal makes some changes to the internal review decision
- **set aside** the internal review decision and **make a new decision**[80]

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- **set aside** the internal review decision and **send it back to us** for further consideration.[81]

If the Tribunal sends the decision back to us, it often gives us instructions on how to make the new decision.

The Tribunal will give reasons for its decision and provide you with a written copy of the decision. Most of the time, it'll publish those reasons on the AustLII website.

Learn more about the types of decisions the Tribunal can make.

Learn more about the steps in the external review process.

What happens after the Tribunal makes its decision?

Once the Tribunal makes the external review decision, it'll let you and us know. The Tribunal may tell you their decision verbally or in writing. For more information about how you will receive the decision, go to the Tribunal's website.

If the Tribunal changes our decision, we'll then apply its decision. This means we may need to make changes so your NDIS record or NDIS plan reflects the Tribunal's decision. We're committed to doing this within **28 days** of the Tribunal's decision.

What if you don't agree with the Tribunal's decision?

You can't ask for an internal review or an external review of the Tribunal's decision.

The Tribunal's decision can only be appealed to a Federal Court. It's a good idea to get legal advice if you're thinking of appealing to a Federal Court.

A lawyer can tell you if you can appeal the decision. If so, they can help you lodge an appeal if that's what you want to do.

What happens to evidence given to the Tribunal?

During the external review process, we may assist the Tribunal. We may recommend you seek more information or assessments. We may also obtain our own evidence from an independent expert. This helps the Tribunal make their decision.

After the external review process, we may add the information received through the Tribunal process to your NDIS record. For example, assessments and reports about the impact of your disability and your support needs. We also record the Tribunal's decision letter and their instructions to us on your NDIS record.

We may use this information in future planning and eligibility decisions.

For how we handle your evidence go to our Privacy page or our Privacy and Information guideline.

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Appendix 1: What decisions can we review?

We have made a list of the decisions we can review under NDIS laws. We have also made a list of the common groups of people who can ask for a review of those decisions.

If this list says you can ask for a review, you can also give someone else consent to ask for you.

If you're not included in this list, you may still be able to ask for a review. But you'll need to show us that you're directly affected by our decision.

If you're not sure if you can ask for a review, contact us and we'll help you work it out.

Applying to the NDIS

- if we decide you're not eligible to become an NDIS participant[82]
- if we decide not to give you more than 90 days to give us information or a report for your NDIS application[83]
- if we decide to change, or not to change, your impairment categories information.[84] Under the NDIS law, this is called a notice of impairment.

Who can usually ask for a review?

- The person who applied to the NDIS
- their plan nominee or child representative
- a person appointed by a court or tribunal to make decisions for the person who applied to the NDIS.

Leaving the NDIS

- if we decide you're no longer eligible for the NDIS.[85]

Who can usually ask for a review?

- the person who used to be a participant
- a person appointed by a court or tribunal to make decisions for the person who used to be a participant
- a plan nominee or child representative of the person who used to be a participant.

Creating your plan

- approving your plan.[86] This includes:
  - what NDIS supports we include

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- how we describe those NDIS supports
- how we group your supports
- funding component amounts and funding periods
- how long your plan goes for, and
- who manages the funding in your plan.

Who can usually ask for a review?

- the participant
- a plan nominee or child representative
- a person appointed by a court or tribunal to make decisions for the participant.

Your plan

- if we decide not to extend a grace period for your temporary absence from Australia.[87]
  - the grace period is 6 weeks unless we decide to extend it. Your plan is suspended from the end of the grace period, until you return to Australia.
- if we decide to suspend your plan as we're unable to contact you after we ask you for information to make a decision about the supports you need.[88]

Who can usually ask for a review?

- the participant
- a plan nominee or child representative
- a person appointed by a court or tribunal to make decisions for the participant.

Plan variation

- if you ask for a plan variation and we decide to vary your plan,[89] or decide not to vary your plan[90]
- if you ask for a plan variation because a support determination has been applied to your plan and:
  - we decide you meet, or don't meet, the high support needs criteria[91]
  - if we decide you meet the high support needs criteria, and we decide to vary or not vary your plan.[92]

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Who can usually ask for a review?

- the participant
- a plan nominee or child representative
- a person appointed by a court or tribunal to make decisions for the participant.

Plan reassessment

- if you ask for a plan reassessment and we decide not to reassess your plan.[93]

Who can usually ask for a review?

- the participant
- a plan nominee or child representative
- a person appointed by a court or tribunal to make decisions for the participant.

Child representatives

- if we decide that someone, who doesn't have parental responsibility, is a child representative for a participant younger than 18. Or, if we don't decide they're the child's representative[94]
- if we decide that a child can't represent themselves[95]
- if we decide that someone with parental responsibility for a child is the child's representative, instead of the child's guardian.[96] Or, if we don't decide they're the child's representative
- if we decide that only some of the people with parental responsibility are child representatives.[97] For example, if we decide one parent is a child representative, and another parent isn't.

Who can usually ask for a review?

- a participant younger than 18
- a person who has parental responsibility for someone younger than 18, including a parent or guardian
- a State or Territory Minister, or the head of a State or Territory government department.

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Nominees

- if we decide to appoint a plan nominee[98]
- if we decide to appoint a correspondence nominee[99]
- if we decide whether we cancel or suspend the appointment of a nominee.[100]

Who can usually ask for a review?

- the participant
- a person appointed by a court or tribunal to make decisions for the participant
- a nominee, someone who wants to be appointed as a nominee, or someone who used to be a nominee.

Compensation

- if we decide that a participant must take reasonable action to claim or obtain compensation[101]
- if we refuse to extend how much time a participant has to take reasonable action to claim or obtain compensation[102]
- if we decide to take action to claim or obtain compensation[103]
- if we decide to take over the conduct of a compensation claim[104]
- if we give notice that we propose to recover an amount of compensation.[105] We call this a 'recovery notice'.
- if we decide that not all or part of a compensation payment was fixed by a judgment or settlement, for the purposes of calculating how much we can recover.[106]

Who can usually ask for a review?

- the participant
- a plan nominee or child representative
- a person appointed by a court or tribunal to make decisions for the participant.

Debt recovery

- if we decide not to write off a debt.[107] That is, we decide we'll still try to recover a debt.
- if we decide not to waive a debt, or we don't need to waive a debt.[108] That is, we decide a person still owes us money.

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Who can usually ask for a review?

- the person who owes us money.

Specialist Disability Accommodation – dwelling enrolment

- if we decide not to enrol a dwelling[109]
- if we decide to cancel a dwelling enrolment.[110]

Who can usually ask for a review?

- the service provider who wants to enrol the dwelling, or had enrolled it, as specialist disability accommodation.

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Reference List

[1] NDIS Act s 100(1).
[2] NDIS Act and delegated legislation made under the NDIS Act.
[3] NDIS Act ss 99 and 100(2).
[4] NDIS Act s 100(2); also see s 100(1A)(a)(ii) for the decisions that will be reviewed automatically.
[5] NDIS Act s 99.
[6] NDIS Act ss 99(1) item 1; 20(1)(a); 21(3); 26(2)(c).
[7] NDIS Act ss 99(1) item 3; 30(1)(5); para 30A(1)(c); subs 30A(7).
[8] NDIS Act s 99(1) item 4; 33(2).
[9] NDIS Act s 99 (1) item 6C.
[10] NDIS Act s 99 (1) item 6B.
[11] NDIS Amendment Act 2022 s 99 (1) item 6.
[12] NDIS Act s 99(1) items 17-22.
[13] NDIS Act ss 32(BA); 99(1) item 3A.
[14] NDIS Act 2013 s73ZSI(1), s73ZSI(5)
[15] NDIS Act s 99(1).
[16] NDIS Act s 100(1).
[17] NDIS Act s 19(2).
[18] NDIS Act s 10.
[19] NDIS Act s 10.
[20]NDIS Act s 47B(1).
[21] NDIS Act s 47B(3).
[22] NDIS Act s 100(2).
[23] Acts Interpretation Act s 36.
[24] NDIS Act s 48
[25] NDIS Act s 47
[26] NDIS Act s 100(2).
[27] NDIS Act s 74(1).
[28] *QDKH, by his litigation representative BGJF v National Disability Insurance Agency* [2021] FCAFC 189.
[29] NDIS Act s 102.
[30] NDIS Act s 102(2).
[31] NDIS Act ss 47A(5); 47B(6); 100(1A)(a)(ii).
[32] NDIS Amendment Act 2022 s 47A(4)(d).
[33] NDIS Act s 100(5)(b).
[34] NDIS Act ss 20; 21(3)(a);100(1A)(a)(ii).
[35] NDIS Act ss 20(1)(b); 26(1).
[36] NDIS Act ss 21(3)(b); 26(2); 100(1A)(a)(ii).
[37] NDIS Act s 100(1).
[38] NDIS Act s 100(7).
[39] NDIS Act s 100(5)(d).
[40] NDIS Act s 33(2).
[41] *Frugtniet v Australian Securities and Investment Commission* (2019) 266 CLR 250 at [14]-[15] (Kiefel CJ, Keane and Nettle JJ).
[42] NDIS Act s 100(6A)(b)(i).
[43] NDIS Act s 100(6A)(b)(ii).
[44] NDIS Act s 47A(5).
[45] NDIS Act s 100(1A)((a)(ii).
[46] NDIS Act s 100(6A)(b)(ii).
[47] NDIS Act s 48(2).
[48] NDIS Act s 47A(2).
[49] NDIS Act s 48(2).
[50] NDIS Act s 47(2).
[51] NDIS Act s 101(2).
[52] NDIS Act s 101(2).
[53] NDIS Act s 100(2).
[54] This means that the *new* subsection 101(2) of the NDIS Act applies. See *NDIS Amendment (Participant Service Guarantee and Other Measures) Act 2022*, s68(1).

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[55] NDIS Act s 101(2)(c).
[56] NDIS Act s 100(6).
[57] *Frugtniet v Australian Securities and Investment Commission* (2019) 266 CLR 250 at [14]-[15] (Kiefel CJ, Keane and Nettle JJ).
[58] *QDKH, by his litigation representative BGJF v National Disability Insurance Agency* [2021] FCAFC 189. [59] NDIS Act s 100(6)(a).
[60] *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577 at 591 (Bowen CJ and Deane J).
[61] NDIS Act s 22.
[62] NDIS Act s 100(6)(a).
[63] NDIS Act s 100(6)(c).
[64] NDIS Act ss 33(2); 33(2A).
[65] NDIS Act s 103.
[66] NDIS Act s 103; ART Act s 17.
[67] ART Act s 19.
[68] ART Act s 95.
[69] NDIS Act s 200A.
[70] Legal Services Directions 2017; see also ART Act s 56.
[71] Legal Services Directions 2017, Appendix B, paragraphs 2-3.
[72] Legal Services Directions 2017, Appendix B, paragraph 2, Note 4.
[73] NDIS Act s 103(2).
[74] NDIS Act s 103(2); NDIS Amendment (PSG and Other Measures) Act 2022 s 68(2).
[75] NDIS Act s 33(2).
[76] *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577 at 591 (Bowen CJ and Deane J).
[77] *Frugtniet v Australian Securities and Investment Commission* (2019) 266 CLR 250 at [14]-[15] (Kiefel CJ, Keane and Nettle JJ).
[78] ART Act s 105 (a).
[79] ART Act s 105 (b).
[80] ART Act s 105 (c)(i).
[81] ART Act s 105 (c)(ii).
[82] NDIS Act ss 20 (1)(a); 21(3); 99(1) item 1.
[83] NDIS Act ss 26(2)(b); 99(1) item 2.
[84] NDIS Act ss 32(BA); 99(1) item 3A.
[85] NDIS Act ss 99(1) item 3; 30(1)(5); para 30A(1)(c); subs 30A(7).
[86] NDIS Act 2013, ss 33(2); 99(1) item 4.
[87] NDIS Act ss 40(2)(b); 99(1) item 5.
[88] NDIS Act s40A.
[89] NDIS Act ss 99(1), item 6; 47A(1).
[90] NDIS Act ss 99(1), item 6A and item 6B; 47A(4)(b); 47A(5); 47A(8).
[91]NDIS Act s 99(1) item 6BA
[92]NDIS Act s 99(1) item 6BB, 6BC.
[93] NDIS Act ss 99(1) item 6C; 48(3)(c); 48(4).
[94] NDIS Act ss 99(1) item 17; 74(1)(b).
[95] NDIS Act ss 99(1) item 18; 74(5)(c).
[96] NDIS Act ss 99(1) item 19; 75(2).
[97] NDIS Act ss 99(1) item 19; 75(3).
[98] NDIS Act ss 99(1) item 20; 86.
[99] NDIS Act ss 99(1) item 21; 87.
[100] NDIS Act ss 99(1) item 22; 89-91.
[101] NDIS Act ss 99(1) item 23; 104.
[102] NDIS Act ss 99(1) item 24; 104(5A).
[103] NDIS Act ss 99(1) item 25; 105(4)(a).
[104] NDIS Act ss 99(1) item 25; 105(4)(b).
[105] NDIS Act ss 99(1) item 26; 111.
[106] NDIS Act ss 99(1) item 27; 116.
[107] NDIS Act ss 99(1) item 29; 190.
[108] NDIS Act ss 99(1) items 30-33; 193; 195.
[109] NDIS Act s 99(2); NDIS (SDA) Rules r 26(3).
[110] NDIS Act s 99(2); NDIS (SDA) Rules r 27(4).

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