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National Disability Insurance Agency

Chief Counsel Division

**Standard Operating
Procedure: Resolved by
Hearing**

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1. Introduction

1.1 Purpose

This Standard Operating Procedure will help Case Managers undertake the necessary steps when a matter progresses to a Hearing before the Administrative Review Tribunal (ART).

1.2 Scope

This procedure applies nationally across the External Review Branch (ERB), and is to be used by:

- Case Managers (CM)

1.3 Roles and Responsibilities

The roles and responsibilities set out in the [Standard Operating Procedure: Document Control](#) apply also to this procedure.

2. Considerations for Hearing

Topic	Checklist
Pre-Requisites	<input type="checkbox"/> A matter has been listed for a hearing before the ART
Considerations	<input type="checkbox"/> Is resolution unlikely or not possible at this time? <input type="checkbox"/> What evidence is currently before the ART? <input type="checkbox"/> Would resolving the matter present a significant risk to the Agency or the sustainability of the Scheme? <input type="checkbox"/> Would proceeding to a hearing of the matter present a significant risk to the Agency?

3. Procedure

The ART will list a matter for a substantive hearing if an agreement cannot be reached during the Dispute Resolution (DR) pathway, such as at or after a Case Conference or Conciliation. When listing a matter for hearing, the ART will confer with the parties and make timetabling Directions around calling witnesses and gathering further evidence.

3.1 Identify when a matter is listed for hearing

The Listing Notice will specify the date, time, and location of the hearing.

3.2 Prepare for the hearing

In preparation for the hearing, CMs must obtain (or seek to obtain):

- Technical Advice and Practice Improvement Branch (TAPIB) advice
- Compensation advice (if applicable)
- Home & Living advice (if applicable)
- Independent Expert Clinician (IEC) report / assessment (if applicable)
- Hearing Certificate
- Counsel availability and rate (if applicable)
- Counsel brief and advice (if applicable)
- Statement of Facts, Issues and Contentions (SFIC)

OFFICIAL For Internal Use Only**3.2.1 Requesting an Internal Legal Officer (ILO)**

To request that an ILO be allocated to the matter, send an email to [s47E\(d\) - certain operations of agencies](#). A template email is contained at **Annexure A – Email requesting allocation of an ILO**.

For matters under the previous **2022–24 fixed fee arrangements** (matters outsourced to an external law firm before 14 February 2024), it will be necessary to reclassify the matter as ‘non-routine’ when it is listed for hearing.

3.2.2 Requesting TAPIB advice

Before a matter can proceed to hearing, it is preferable for CMs to seek technical advice from TAPIB regarding the available evidence, and whether the requested supports are reasonable and necessary.

Further information is available on the [TAPIB intranet page](#) and the [TAPIB Hub](#).

TAPIB advice request forms can be accessed from the [ERB Guidance Library and Directory](#).

3.2.3 Engaging an Independent Expert Clinician (IEC)

It may become necessary to engage an IEC if independent clinical expertise is necessary to clarify or better understand a participant or prospective participant’s impairment(s) or support needs, or to help the ART or the Agency determine whether the requested support(s) meet the [NDIS funding criteria](#).

The Lawyer with carriage will generally advise whether it is necessary to engage an IEC. TAPIB may also make a recommendation to engage an IEC.

The engagement of an IEC, and the associated cost, must be approved in accordance with the [Case Management Oversight Matrix](#).

For further information and procedural guidance, refer to the [Standard Operating Procedure: Engaging an Independent Expert Clinician](#).

CMs will review the recommendations of the IEC as set out in their report, and consider whether the matter can be resolved by agreement, without the need to progress to a hearing. For further guidance, please refer to the [Standard Operating Procedure: Resolved by Consent](#).

Note: The IEC may be required to attend the hearing and give evidence.

3.2.4 Engaging Counsel or a Solicitor Advocate

Counsel is a member of the independent Bar Association in their respective State or Territory (a **Barrister**). The role of Counsel is to appear before the Tribunal at the hearing and to provide independent legal advice on prospects.

The Agency may alternatively elect to engage a **Solicitor Advocate** to appear at the hearing before the ART. Solicitor Advocates are employed by an external law firm and are contracted to work closely with the CM on the matter.

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The [Participant Service Charter](#) (PSC) sets out what participants and prospective participants can expect from the Agency. Participants and prospective participants tell us they want a less adversarial approach to matters in the ART, with greater transparency. Wherever possible, the engagement of Solicitor Advocates should be preferred to the engagement of Counsel.

As soon as it becomes necessary to engage Counsel or a Solicitor Advocate, the CM will work with an Internal Legal Officer (ILO) in the Dispute Resolution and Litigation Branch (DR&L) to identify appropriate and available Counsel (if required), and to obtain the appropriate written approval. To request that an ILO be assigned to the matter, refer to [3.2.1](#) above.

As soon as approval is obtained, CMs are responsible for ensuring that Counsel's details are accurately recorded in LEX.

It is the responsibility of the Lawyer with carriage to engage and brief Counsel.

It is important to have a discussion with Counsel or the Solicitor Advocate and the Lawyer with carriage to ensure that everyone has the same understanding of the issues raised, and the strategies which the Agency will employ at the hearing.

3.2.5 Statement of Facts, Issues, and Contentions (SFIC)

Either Counsel or the Solicitor Advocate will prepare a SFIC before the hearing, for review and clearance by the Agency.

CMs will need to review the document to ensure that the position outlined in the SFIC aligns with the Agency's current position, and the available evidence. An ILO in DR&L will then need to clear the SFIC, before the CM is able to instruct the Lawyer with carriage to file a copy with the Tribunal.

To request that an ILO be assigned to the matter, refer to [3.2.1](#) above.

3.2.6 Hearing Certificates

Hearing Certificates set out the availability of the parties, and any witnesses, to attend the hearing. This includes the CM, the Lawyer with carriage, Counsel or the Solicitor Advocate, and the IEC (where necessary).

The Lawyer with carriage will draft the Hearing Certificate for review and clearance by a CM. Once cleared, the CM will instruct the Lawyer to file a copy with the Tribunal.

3.3 Pre-ALOC and ALOC

Approval from the Appeals and Litigation Oversight Committee (ALOC) is required to proceed to a substantive hearing before the Tribunal.

All matters **must** be discussed at Pre-ALOC **before** being referred to ALOC for final determination on whether to proceed to a substantive hearing.

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For detailed procedural guidance on listing a matter on the Pre-ALOC agenda and referring a matter to ALOC, please refer to the [Standard Operating Procedure: Appeals and Litigation Oversight Committee \(ALOC\) and Pre-ALOC](#).

3.4 Attend the hearing

Together with the ILO, CMs will attend the hearing on the date and time and at the location specified in the Listing Notice.

3.5 After the hearing**3.5.1 Closing submissions**

The ART may direct the Agency to file written closing submissions. Either Counsel or a Solicitor Advocate will draft the Agency's closing submissions for review by the CM, and clearance by an ILO.

CMs must ensure that a copy of the closing submissions (if any) is uploaded to LEX, and appropriately categorised.

3.5.2 Hearing report

The Lawyer with carriage will prepare a report on the hearing which includes a summary of the hearing, and which gives an overall assessment of prospects.

CMs must ensure that a copy of the hearing report is uploaded to LEX, and appropriately categorised.

3.5.3 ART Decision

After the hearing, the Tribunal will likely **reserve** its decision. This means that their decision will be handed down at a later date, once the Tribunal has had a chance to review all the evidence and complete written reasons for their decision. There is no prescribed timeframe in which the Tribunal is to do so.

Once handed down, the ART will provide a copy of its decision to the participant or prospective participant (or their representative), the Lawyer with carriage, and the Agency (by email to **s47E(d) - certain operations of agencies**).

The ART Correspondence inbox is managed by the ART Operations team, IAP. The ART Operations team will upload a copy of the email from the ART as well as a copy of the Decision to LEX, before forwarding copies to the CM, ILO, and Paralegal inbox – in accordance with the [Standard Operating Procedure: Intake and Processing – Correspondence](#).

The Lawyer with carriage will complete a summary of the decision within 24 hours. CMs must **forward this summary** to the ILO, their Director, and the Branch Manager, ERB. The Lawyer with carriage will comment on whether the decision is likely to have adverse consequences for the Agency.

OFFICIAL For Internal Use Only**3.5.4** **Appealing an ART Decision**

Any appeal to the Federal Court of Australia must be made within 28 days of receiving a copy of the ART decision, and must raise a question of law (under section 44 of the [Administrative Review Tribunal Act 2024](#)).

The ILO is responsible for preparing a brief to the Chief Counsel and, if required, CEO for a decision on whether or not to appeal against a decision of the Tribunal. The ILO may discuss the matter with the CM and their Director, for the purposes of preparing the brief.

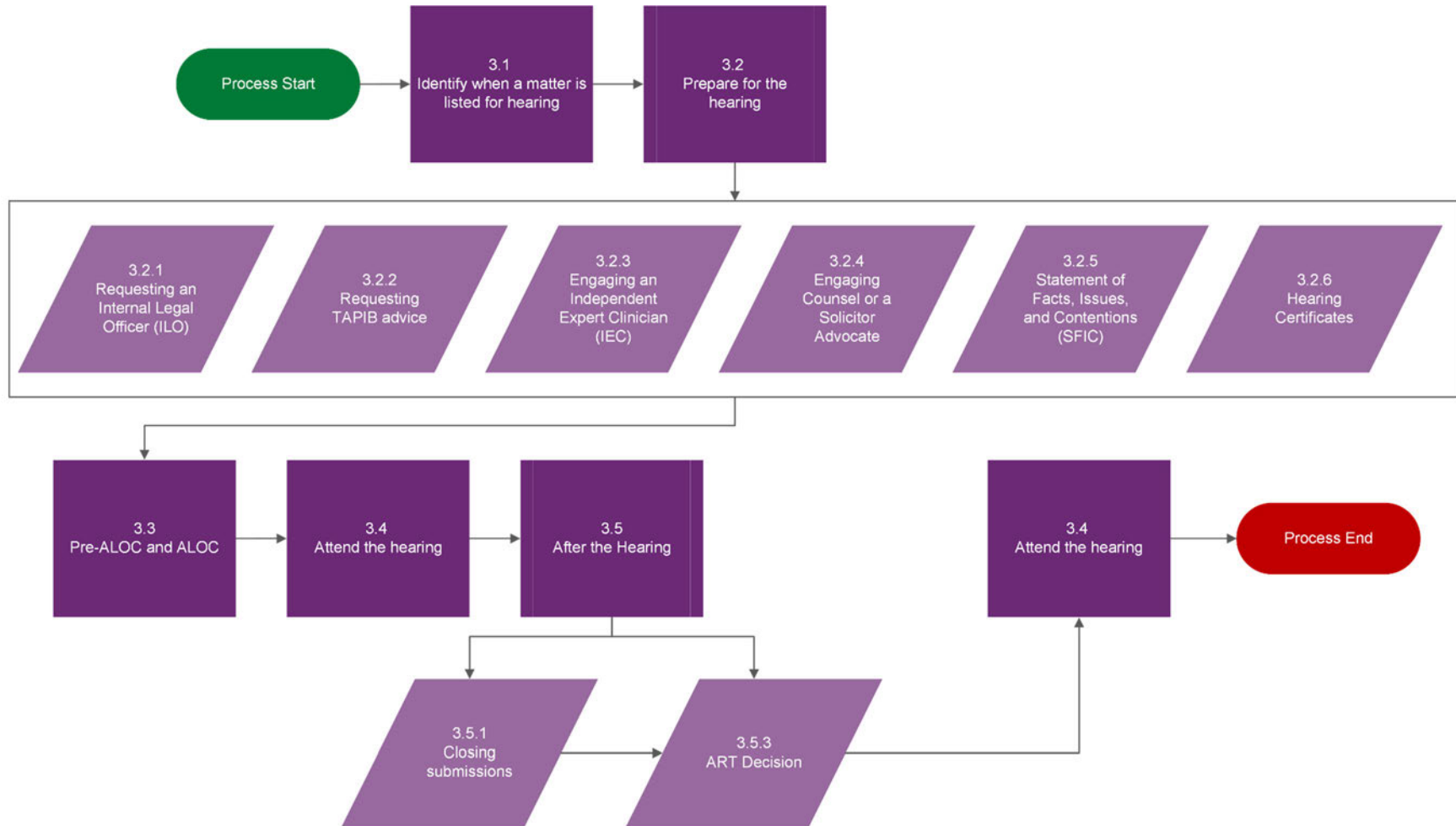
Note: An appeal against a decision of the Tribunal does not limit the 28-day statutory timeframe in which to implement the decision.

3.5.5 **Implementing the Decision and Closing the Matter**

For detailed procedural guidance on implementing an ART decision, please refer to the [Standard Operating Procedure: Implementing an ART Decision, Order or Notice](#).

For detailed procedural guidance on closing the matter in LEX, please refer to the [Standard Operating Procedure: Closing an ART Matter](#).

3.6 Process Flowchart



4. Annexures

4.1 Annexure A – Email requesting allocation of an ILO

To: s47E(d) - certain operations of agencies
Subject: Internal Lawyer required: [Name or Pseudonym] and NDIA –
[ART Proceeding Number] – LEXD [LEX ID]

Hello Paralegals

Action Required:

- Assign internal lawyer to ART matter [ART Proceeding Number]; and
- Internal lawyer to review SFIC prior to clearance / recommend Counsel or Solicitor Advocate based on options put forward by external lawyer in email correspondence below

I am currently working on the matter of [Name or Pseudonym] and NDIA. A Direction has been made requiring the Agency to [include as appropriate].

This matter [has/has not yet] been briefed out to [Counsel / a Solicitor Advocate] for prospects advice [delete if not applicable] however our external lawyer, [name of law firm], is currently making enquiries in relation to this. A specific Hearing date [has not yet been set / has been set for [date]].

Could we please have an internal lawyer allocated to this matter? We also kindly ask if the internal lawyer could review [delete if not applicable: the **attached** SFIC prior to clearing same] [delete if not applicable: recommended Counsel/Solicitor Advocates based on options put forward by the external lawyer, below].

Brief Background of Matter (also see attached most recent SOI):

[insert relevant points]

Kind regards

[Email signature]

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National Disability Insurance Agency

Reviews and Information Release Division

**Standard Operating
Procedure:
Appeals and Litigation
Oversight Committee
(ALOC) and Pre-ALOC**

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1	5/11/2025	All	Original

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1. Introduction

1.1 Purpose

This procedure outlines the process of referring a matter to Pre-ALOC for guidance and support around the most appropriate course of action to progress a matter before the Administrative Review Tribunal (ART), and/or to ensure that the matter is ready to proceed to ALOC for further decision.

This procedure also outlines the process of referring a matter to the Appeals and Litigation Oversight Committee (ALOC) for final determination on whether to proceed to a substantive hearing before the Tribunal, or on the most appropriate course of action to progress the matter.

Approval from ALOC is required to proceed to a substantive hearing.

1.2 Scope

This procedure applies nationally across the External Review Branch (ERB), the Dispute Resolution and Litigation Branch (DR&L), and the Information Access and Privacy Branch (IAP), and is to be used by:

- Pre-ALOC and ALOC Secretariat
- Director, Case Strategy
- Case Managers (CM)
- Internal Legal Officers (ILO)

1.3 Roles and Responsibilities

The roles and responsibilities set out in the [Standard Operating Procedure: Document Control](#) apply also to this procedure.

2. Checklist

Topic	Checklist
<p>Pre-requisites</p>	<ul style="list-style-type: none"> <input type="checkbox"/> A matter has been, or is expected to be, listed for a substantive hearing before the ART; or <input type="checkbox"/> it is identified that a matter is likely to raise significant risk to the Agency as it progresses before the ART; or <input type="checkbox"/> escalation to either Pre-ALOC or ALOC is required to resolve a matter, in keeping with the Decision-Making Authority for Case Managers.
<p>Actions</p>	<p>Pre-ALOC Meetings</p> <ul style="list-style-type: none"> <input type="checkbox"/> 3.1.1 Who attends Pre-ALOC meetings <input type="checkbox"/> 3.1.2 Listing a matter on the Pre-ALOC meeting agenda <input type="checkbox"/> 3.1.3 Information required by Pre-ALOC <input type="checkbox"/> 3.1.4 Pre-ALOC meeting outcomes <p>ALOC Meetings</p> <ul style="list-style-type: none"> <input type="checkbox"/> 3.2.1 Who attends ALOC meetings <input type="checkbox"/> 3.2.2 Listing a matter on the ALOC meeting agenda <input type="checkbox"/> 3.2.3 ALOC Papers <input type="checkbox"/> 3.2.4 Before for the ALOC meeting <input type="checkbox"/> 3.2.5 The day of the ALOC meeting <input type="checkbox"/> 3.2.6 Out-of-session consideration of matters <input type="checkbox"/> 3.2.7 After the ALOC meeting <input type="checkbox"/> Error! Reference source not found. Error! Reference source not found. <p>Process Flowchart</p>

This document was released under the Freedom of Information Act 1982 by the National Disability Insurance Agency.

3. Procedure

3.1 Pre-ALOC Meetings

Pre-ALOC meetings are held **weekly**.

The primary purpose of the Pre-ALOC meeting is to discuss:

- matters which have been, or which are expected to be, listed for a substantive hearing before the Tribunal – including any necessary action which must be undertaken before the matter is referred to ALOC;
- matters where the responsible Case Manager requires guidance; and
- matters which raise, or are likely to raise, a significant risk for the Agency.

Pre-ALOC will provide guidance in relation to the future conduct of the matter – including whether further attempts should be made to resolve the matter and whether any other action should be undertaken before the hearing.

Matters **must** be discussed at Pre-ALOC **before** being referred to ALOC for final determination.

3.1.1 Who attends Pre-ALOC meetings

Each Pre-ALOC is attended by:

- Branch Manager, External Review Branch
- Director, Case Strategy
- Directors, External Review Branch
- Deputy Chief Counsel, Dispute Resolution and Litigation Branch
- Principal Lawyers, Dispute Resolution and Litigation Branch
- Representatives from the Technical Advice and Practice Improvement Branch (TAPIB)
- ALOC Secretariat

The Secretariat will forward the Pre-ALOC meeting invitation to additional attendees who are required to attend. This may include:

- Case Manager with carriage of the matter being presented
- Internal Lawyer assigned to the matter
- any other relevant person who can provide additional information or expertise on the matter or on the issues raised

OFFICIAL For Internal Use Only**3.1.2 Listing a matter on the Pre-ALOC meeting agenda**

Ahead of each meeting, the ALOC **Secretariat** will:

- prepare a meeting agenda based on upcoming *Substantive Hearing* reminders which are recorded in LEX, and any other matters which a Case Manager has requested be considered by Pre-ALOC; and
- extend meeting invitations to the relevant Case Managers and ILOs, attaching a copy of the final meeting agenda.

To request that a matter be listed on the Pre-ALOC agenda or to advise of any changes to the agenda, the **Case Manager** must email the Secretariat **(s47E(d) - certain operations of agencies)** by **1:00pm (AEDT) the business day before** the scheduled Pre-ALOC meeting.

The email should contain the following information:

- The name of the matter and LEX matter number
- The type of matter (e.g., planning / access / compensation)
- The name of the CM and ILO allocated to the matter
- Whether the matter has been listed for a substantive hearing, and if so, the date of the hearing

3.1.3 Information required by Pre-ALOC

Case Managers are required to verbally provide the following information when presenting a matter to Pre-ALOC:

- Brief background to the matter, and all identified risks (~1-2 minutes)
- Evidence – including:
 - the strengths and limitations of the available evidence;
 - any known gaps in the available evidence; and
 - whether further evidence is yet to be provided by the participant, prospective participant, or Independent Expert Clinician (IEC).
- Counsel – including:
 - whether Counsel been briefed, and if so, who;
 - whether Counsel has received the necessary and relevant information and copies of all available evidence; and
 - whether the Agency has received written or verbal legal prospects advice.
- Timetabling – including:
 - whether the matter has been timetabled; and
 - whether witness lists have been finalised (if required).

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- Any other relevant issues

A matter summary template is contained at **Annexure A** – Pre-ALOC Summary Template to assist CMs in preparing for Pre-ALOC meetings.

3.1.4 Pre-ALOC meeting outcomes

Pre-ALOC will provide guidance in relation to the most appropriate course of action to progress the matter – including whether:

- the matter is to be **referred to ALOC** for determination, in accordance with [3.2](#) below. The ALOC Secretariat will confirm a date on which the matter is to be presented to ALOC;
- additional information is required** to inform the Agency position. This may include engaging an Independent Expert Clinician (IEC), or seeking additional advice from TAPIB (as determined by Pre-ALOC); or
- the matter can be **resolved** on the basis of the evidence available. For further procedural guidance, refer to the [Standard Operating Procedure: Resolved by Consent](#). Any matters that have been partially resolved should be incorporated into the plan as soon as possible.

The **Secretariat** will update the Pre-ALOC tracker after each meeting to reflect the outcome of the discussions around each of the matters considered by Pre-ALOC. Where a matter is to be referred to ALOC, the Secretariat will include the date on which the matter is to be considered by ALOC (once decided).

The Secretariat will also create a **file note** in LEX to record the date on which the matter was considered at Pre-ALOC.

3.2 ALOC Meetings

ALOC meeting frequency is determined by the Chair in consultation with the Members.

The role of ALOC is to determine the future conduct of a matter which has been listed for hearing before the Tribunal – including whether the Agency should seek to resolve the matter without proceeding to hearing. ALOC will also consider any other matters which are likely to raise significant risk.

Matters will be presented to ALOC for consideration by a Director, ERB.

ALOC will also provide guidance and advice to the Deputy CEO and CEO in relation to Agency-initiated appeals to the Federal Court of Australia, appeals to the High Court of Australia, or second instance referrals to the ART Guidance and Appeals Panel (GAP), against decisions of the Tribunal.

OFFICIAL For Internal Use Only**3.2.1 Who attends ALOC meetings**

ALOC meetings are attended by:

- Chair – General Manager, Reviews and Information Release
- Member – Chief Counsel
- Member – General Manager, Policy and Practice Leadership
- Member – General Manager, National Operations and Performance
- Member – General Manager, Specialised Service Delivery

The following are also required to attend ALOC meetings:

- Branch Manager, External Review Branch
- Deputy Chief Counsel, Dispute Resolution and Litigation Branch
- Director, Case Strategy
- ALOC Secretariat

The Chair can request attendance from other NDIA staff as needed to address issues which require subject matter expertise. The ALOC Secretariat will confirm attendance in advance of each meeting.

3.2.2 Listing a matter on the ALOC meeting agenda

Ahead of each meeting, the ALOC **Secretariat** will prepare a meeting agenda based on the matters which have been referred to ALOC by Pre-ALOC.

3.2.3 ALOC Papers**ALOC Paper Template**

Three weeks prior to the scheduled ALOC meeting, the **Secretariat** will send an ALOC Paper template to the CM responsible for the matter. The email will be copied to the CM's Director and the ILO allocated to the matter.

Preparation

The **Case Manager** is responsible for preparing the ALOC Paper with the assistance of the Internal Legal Officer (ILO) and any external Legal Service Providers (LSPs) engaged in the matter.

The ALOC Paper should include a risk assessment of the matter, which is to be completed using the ALOC Risk Assessment Matrix contained at **Annexure B** – ALOC Risk Matrix.

Case Managers must ensure that the completed ALOC Paper is appropriately reviewed by their Director. The Case Manager must ensure that any concerns raised during that review are appropriately addressed in the ALOC Paper, before returning a copy to the ALOC Secretariat.

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ALOC Papers do not require clearance from a Principal Legal Officer (PLO) prior to being submitted to the Secretariat. Completed ALOC Papers must be returned to the Secretariat no later than **ten days before the ALOC meeting**.

The Secretariat will send a courtesy email to the CM and ILO at least one day prior to the date on which the completed ALOC Paper is due.

Clearance

The **Secretariat** will conduct an initial review of the ALOC Paper to ensure all required information has been provided. Where necessary, the Secretariat will liaise with the CM to address any identified gaps in the information provided.

Once reviewed, the Secretariat will send a link to the ALOC Paper to the **Principal Legal Officer** scheduled to attend the ALOC meeting and the **Director, Case Strategy** for review and clearance no later than three days before the ALOC meeting.

The PLO's role is to review the ALOC Paper for legal accuracy and potential Scheme risk, and to ensure the Agency is meeting its model litigant obligations or to identify possible model litigant obligation concerns.

Where an ALOC Paper requires amendment, the **Secretariat** will contact the CM and the ILO allocated to the matter to request that the ALOC Paper be amended, prior to being resubmitted for final PLO-clearance.

TABLE 1 – ALOC PAPER GOVERNANCE MATRIX

ALOC Paper	Person Responsible
Drafted by	CM, with support from the ILO, and subject to review by the relevant CM's Director
Reviewed by	ALOC Secretariat
Cleared by	Director, Case Strategy Principal Legal Officer

Finalisation

Once ALOC Papers have been cleared by the nominated PLOs and the Director, Case Strategy, the **Secretariat** will update the meeting agenda by:

- ordering the matters as they appear in the agenda, grouped by matter type (access matters and planning matters) and risk;
- including a summary, prospects, and risk rating of each matter; and
- including the recommendation for determination by ALOC, regarding whether to proceed to hearing (if applicable).

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The Secretariat will then number each ALOC Paper to align with the meeting agenda and save a copy of each paper in PDF format – before sharing with the meeting attendees.

Late Papers

Completed ALOC Papers must be submitted by their due date.

ALOC Papers which are not received by the specified due date may be escalated to the **ALOC Chair**.

The timely completion, submission, and clearance of ALOC Papers is essential to ensure that ALOC proceeds efficiently. Out-of-session meetings will only be conducted in exceptional circumstances ([3.2.6](#)).

3.2.4 Before for the ALOC meeting

It is preferable that **Counsel's advice on prospects** is obtained before the matter is presented to ALOC for consideration and determination.*

**In the absence of Counsel's advice on prospects, external and/or internal legal advice on prospects must be obtained as a minimum. If Counsel's advice on prospects is unavailable at the time the paper is due, a verbal update on prospects can be provided at the meeting.*

It is also preferable that **internal specialist advice** from TAPIB has been obtained before the matter is presented to ALOC.

At least **two business days** prior to the scheduled ALOC meeting, the **Secretariat** will:

- email PDF copies of the relevant ALOC Papers to the Committee;
- upload accessible copies of the ALOC Papers to the meeting invitation;
- forward the meeting invitation to all additional required attendees, including ERB Directors who are responsible for presenting to ALOC; and
- email PDF copies of the relevant ALOC Papers and the meeting agenda to the ERB Directors responsible for presenting to ALOC.

3.2.5 The day of the ALOC meeting

On the day of the ALOC meeting, the **Secretariat** will:

- before** the meeting commences – send an email to the Executive Assistant to the ALOC Chair, to advise of any apologies, late withdrawal of ALOC Papers, or other updates; and
- during** the meeting – take minutes of discussions and determinations of each matter presented at ALOC.

OFFICIAL For Internal Use Only**3.2.6 Out-of-session consideration of matters**

In exceptional circumstances, ALOC may consider a matter out-of-session.

In these circumstances, the ALOC Secretariat will co-ordinate consideration of the ALOC Paper in consultation with the Chair.

Papers will only be considered out-of-session where:

- a matter is fast-tracked to a substantive hearing, and there is insufficient time before the hearing for the matter to be considered by ALOC at the next scheduled meeting; *or*
- the Chair has requested that a matter be considered out of session.

Note: ALOC Papers will *not* be considered out-of-session solely because of delays in the timely completion and submission of ALOC Papers.

3.2.7 After the ALOC meeting

One business day after the ALOC meeting, the **Secretariat** will:

- prepare a **meeting outcome document and minutes**, which will be sent to the Chair and the Director, Case Strategy for their review and clearance; and
- send an email to the relevant CM responsible for each matter to advise of the ALOC outcome. The email will be copied to the ILO allocated to the matter, and the CM's Director.

Two business days after the ALOC meeting, the **Secretariat** will:

- ensure that the ALOC Decision Tracker has been identified to reflect the risk rating, issues in dispute and outcome of each matter;

Note: The status of each matter as it appears in the ALOC Decision Tracker is also updated monthly to reflect Tribunal outcomes, and to include hyperlinks to decisions which are published to the [Australian Legal Information Institute \(AustLII\) website](#).

- update LEX to reflect the date of the ALOC meeting, the ALOC determination, and any other relevant information discussed by ALOC – and upload a copy of the final version of the ALOC Paper; and
- forward a copy of the meeting outcomes and the ALOC Decision Tracker to the IAP Performance, Policy, and Quality team for reporting purposes.

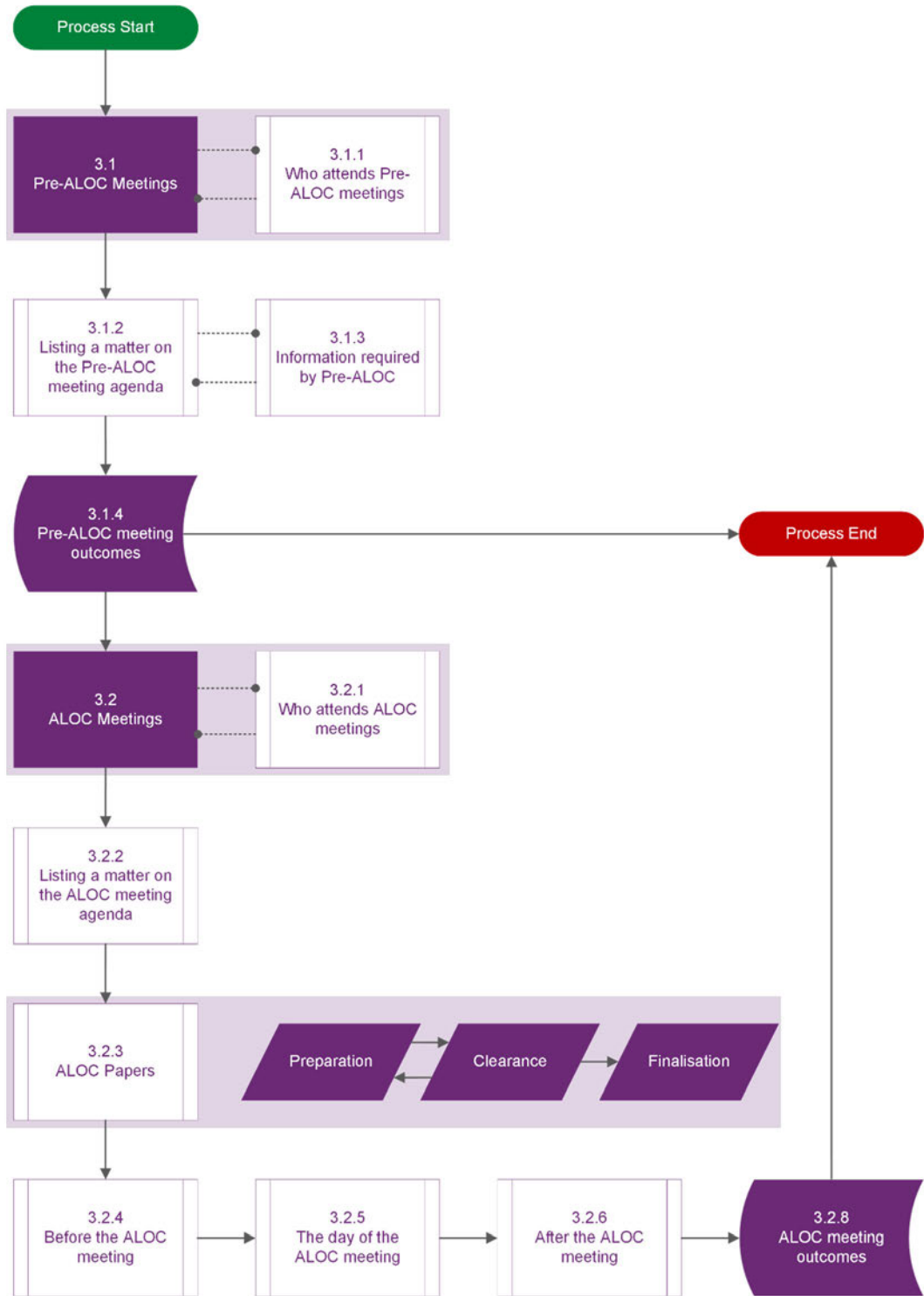
OFFICIAL For Internal Use Only**3.2.8 ALOC meeting outcomes**

As a decision-maker, ALOC will determine the most appropriate course of action to progress the matter.

In its determination, ALOC may instruct the CM to proceed to hearing, to make further attempts to resolve the matter (either partially or in full), or to obtain further information or advice for further consideration by ALOC. ALOC may also refer the matter to other areas of the Agency for further consideration, advice, and assistance.

Where new information or evidence becomes available after a matter has been considered by ALOC, the matter must be referred to the ALOC Secretariat to determine whether reconsideration by ALOC is required.

3.3 Process Flowchart



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4. Annexures

4.1 Annexure A – Pre-ALOC Summary Template

Summary of background, issues, risks	
Provide a brief overview of the participant or prospective participant: <ul style="list-style-type: none"> • Age • Diagnosis • Impact of their reported conditions, impairments and disabilities • Tasks that they can and cannot complete independently 	
The support(s) requested by the participant – including: <ul style="list-style-type: none"> • Type of support • How many hours • Dollar value of support 	
What the evidence says. Does the evidence support the request(s)? <ul style="list-style-type: none"> • Talk through your R&N justification • Flag any criteria that may not be met and address them • Talk about any contradictions in the evidence 	
Recommendation <i>i.e., Based on the evidence provided, my recommendation is to make an offer for:</i> <ul style="list-style-type: none"> • 	

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Summary of background, issues, risks	
<p>Summary of Hearing preparation</p> <p>Evidence</p> <ul style="list-style-type: none"> • Are we waiting on any from the participant or prospective participant? Have we sourced evidence (e.g., independent assessment, expert evidence, summons)? Have we received TAPIB / internal advice? <p>Counsel</p> <ul style="list-style-type: none"> • Who have we briefed? Have we received advice (verbal or written)? <p>Timetabling</p> <ul style="list-style-type: none"> • Has it been timetabled? • Have we finalised our witnesses? <p>Any other relevant issues?</p> <ul style="list-style-type: none"> • What offers has the Agency made to resolve the matter? • Which of those offers have been accepted, and which have not? 	

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STANDING INSTRUCTIONS

Administrative Appeals Tribunal

(October 2023)

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1. NDIA Legal Provider Management Framework
2. Summary of Standing Instructions
3. Litigation Strategy template
4. Statement of Issues / Position (**SOI**) (and chronology) template

A: NDIA STANDING INSTRUCTIONS

A.1 Purpose

1. Legal service providers (**LSPs**) are engaged by the National Disability Insurance Agency (**Agency or NDIA**) to act on behalf of the NDIA Chief Executive Officer to support the management of Agency Administrative Appeals Tribunal (**Tribunal**) applications for review of reviewable decisions under the *National Disability Insurance Scheme Act 2013* (Cth) (**NDIS Act**).
2. Any request to deviate from these Standing Instructions:
 - a. in a particular case, should be raised with the CM (and Internal Legal Officer (**ILO**) if one is assigned/ if any)
 - b. on more than a case-by-case basis, should be made to the Deputy Chief Counsel, AAT Dispute Resolution & Litigation (**DCC DRL**) cc Chief Counsel Division (**CCD**) Contract Relationship Manager. (See contact list at NDIA Legal Provider Management Framework (**Framework**) Appendix 1).
3. These Standing Instructions should be read in conjunction with the Framework and are aligned to, and comply with the following, which take precedence over the Standing Instructions to the extent of any inconsistency:
 - a. NDIS Act, including objectives
 - b. NDIS Rules
 - c. Agency Operational Guidelines
 - d. Obligation to assist the Tribunal (section 33(1AA) and (1AB) *Administrative Appeals Tribunal Act 1975* (Cth) (**AAT Act**))
 - e. AAT Practice Directions (incl Review of National Disability Insurance Scheme Decisions Practice Direction)
 - f. *Legal Service Directions 2017* (**Directions**), noting compliance for the Agency as a corporate Commonwealth entity (other than a government business enterprise) includes:
 - Appendix B – The Commonwealth’s Obligations to Act as Model Litigant (MLOs)
 - Appendix D – Engagement of Counsel
 - Appendix F – Procurement of Commonwealth legal work, including when pro bono legal work is undertaken by a legal services provider
 - Handling of claims of public interest immunity
 - Reporting on litigation involving Constitutional issues and another Commonwealth agency
 - Reporting obligations on legal service expenditure and receipt of service of documents
4. Standing Instructions, all Appendices and the Framework will be subject to quarterly reviews and updates provided ahead of LSP quarterly meetings with the Agency.



B: APPROACH TO DISPUTE RESOLUTION

B.1. Overview

1. The Agency’s focus is on the early assessment and resolution of applications by **Participants** (including prospective participants) to the Tribunal, having regard to the NDIS Act and correct or preferable decision-making, and noting the Agency and its representatives are required to

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adhere to the **MLOs** in the Directions. Under the AAT Act, the Agency and its representatives are also required to assist the Tribunal and use best endeavours to assist the Tribunal to make its decision in relation to the proceeding.

2. The Agency seeks to ensure that all Tribunal applications, including those outsourced to external law firms/ LSPs, are managed proactively, appropriately, and in a timely manner (i.e., wherever possible within 12 months) with an aim to resolve each application as quickly, fairly, and efficiently as reasonably practicable (having due regard to the CCD mission (as set out in the Framework) and Litigation principles (below).
3. Participants seeking external review of Agency decisions in the Tribunal frequently have a lifelong relationship with the Agency and may make an application at times of pressure in Participant's lives. Adversarial approaches to the resolution of applications are not appropriate, may have long-term adverse impacts on the Participant and their relationship with the Agency, and may cause significant relationship damage with the Tribunal and other stakeholders (such as advocacy groups that assist Participants in proceedings). LSPs are strongly encouraged to take an inquisitorial, rather than adversarial, approach to Tribunal matters.

B.2. Litigation Principles

4. The LSP's partnership with the Agency for reviews under the NDIS Act will promote Tribunal matters that build trust in the Agency based on MLOs, assisting the Tribunal, promoting the correct or preferable decision, and compliance with law.
5. Many Participants, and their families and carers, may find Tribunal proceedings overly legalistic, adversarial, confusing, and distressing. When undertaking matters for the Tribunal, both LSPs and ILOs, are instructed by the CM, and have a responsibility to assist Participants having regard to Agency litigation principles including:
 - a. human and Participant-centred interactions, based on respectful, empathetic approach seeking to understand all perspectives
 - b. disability and trauma informed engagement
 - c. an inquiring / non-adversarial and minimally legalistic approach
 - d. promoting plain English and accessibility
 - e. practical, evidence-based, risk-based, whole-of-person resolution focus
 - f. integrity, equity, and good conscience
 - g. objectivity and considering strategic Scheme issues in analysis and advice
 - h. attention to detail, accuracy, reporting, record-keeping, and timeliness
 - i. collaborative, professional, and supportive approach when working with others
 - j. proactive case management, and
 - k. innovation and attention to continuous improvement.
6. The Framework provides an overview and measurement of Key Performance Indicators and the NDIS Specific Performance Measures, including acting consistently with the NDIA's Participant Service Charter, and also informs litigation approaches.

C: AGENCY INSTRUCTIONS



C.1 Agency Legal Operations and Early Assessment

- 1 The Agency Legal Operations team will provide initial instructions to an LSP through a Letter of Instruction or allocate a file to an ILO by email, and T-documents.
- 2 If is anticipated that a CM (Early Assessment) will have been allocated a Participant's AAT application for review prior to the Letter of Instruction or allocation of the file. The CM (Early

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Assessment) will have spoken to the Participant and may have made offers of resolution, and may also have made suggestions for the further engagement with a Participant and the management of the Tribunal application.

C.2 NDIA Case Managers (CM)

- 3 The CM is responsible for providing instructions to both an ILO or LSP. However, at times, another CM may provide instructions (e.g. a CM's supervisor or another person in their team (e.g. if the CM is out of office)) as part of the team to resolve the Tribunal application. The CM will instruct on all proposed alternative dispute resolution proposals.
- 4 In some cases, an ILO will be appointed to assist on a matter that has been outsourced to assist with consistency on a particular issue or preparation for hearing. The CM will inform a LSP where an ILO has been appointed or when a matter is within a cohort where there is a general oversight by a senior internal principal legal officer (**PLO/ Cohort lead**).

C.3 Agency Internal Legal Officers (ILO, if any)

- 5 The key roles of an ILO where working with an LSP on a matter are to:
 - a. review Statement of Facts, Issues and Contentions (**SOFIC**), and other substantive written submissions (e.g., jurisdiction, other substantive interlocutory issues – not including SOIs, unless requested to do so)
 - b. review and provide legal input on prospects advice, evidence, and Litigation Strategies, and consequently to consider instructions regarding high-level litigation strategy and hearing preparation (including identifying Counsel or Solicitor-Advocate) and advise on matters relevant to assisting with management and mitigation of Agency risk
 - c. attend conciliations and hearings, unless ILO's supervisor agrees otherwise, and
 - d. provide any necessary input on any legal arguments in relation to the AAT Act or relevant jurisprudence and litigation approach.
- 6 An LSP should include the ILO (as a cc) on all non-administrative correspondence to CMs, and invite an ILO to relevant meetings with CM. The ILO will usually only attend meetings about substantive matters (e.g., key conferences with Counsel or meetings where instructions are required from the Agency).
- 7 An LSP can consult with the ILO e.g., on issues for legal consistency, particularly significant matters where there is a PLO/ Cohort lead.

C.4 Internal ILOs and External LSPs – roles and responsibilities

Lawyer experience	Responsibility
Junior Lawyer less than around 2 years PQE	Prepare SOIs (and chronology) Advise Tribunal who is acting for the Agency and contact details Draft summaries of evidence eg summons materials or expert report Draft first version of litigation strategies and SOFICs Assist in preparations for conferences and hearings Prepare ADR arrangements (eg section 42D orders) Draft Hearing Certificate Prepare brief to Counsel

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Lawyer experience	Responsibility
	[Will not represent at, or attend conferences, unless there is permission from a PLO]
Lawyer more than around 2 years PQE	In addition to the responsibilities for a junior lawyer: Finalise SOIs and Litigation Strategy/ Updates Attend / conduct Direction hearings/ Jurisdiction hearings Attend and with CM conduct Case conferences and Conciliation conferences Assist the Participant to obtain evidence/issue summons and review summonsed material/brief experts and finalise summaries of evidence Finalise Hearing Certificates and brief to Counsel
Senior Lawyer more than 5 years PQE	In addition to the responsibilities for a lawyer: Finalise Litigation strategies (other than Updates) and SOFICs Manage substantive hearings Solicitor advocacy at hearing, (with prior Principal Legal Officer (PLO) approval).

D: KEY STEPS IN THE TRIBUNAL APPLICATION (for LSPs and ILOs)



(See Summary of Standing Instructions – Appendix)

D.1 Tribunal documents (T-documents)

- 1 LSPs will receive a Letter of Instruction from the Agency (Legal Operations Team) containing the basic details of the matter, and access to the relevant documents (including the T-documents, any listing notices and NDIS Triage form) by GovTEAMS. The ILO will receive an internal file allocation and access to documents.
- 2 An Extension of time request to lodge an application will also usually be agreed by the Agency, prior to allocating a matter, unless it is contested. Contested Extension of time requests will usually be managed by an ILO, working to the PLO with responsibility for Jurisdictional matters.

Key step	Timeframe	Templates/ references	Responsible
ILO/ LSP ¹ must advise the Tribunal and all directly interested parties that they act for the Agency, and provide contact details, including the name of the relevant CM	Within 48 hours/ 2 days of receiving the Letter of Instruction to LSP or email allocating matter to ILO		Junior lawyer and above

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Key step	Timeframe	Templates/ references	Responsible
(Tribunal contacts may need to be updated by the ILO or LSP, if there was previously an Interlocutory Directions Hearing conducted by an ILO).			

D.2 Interlocutory Directions Hearings/ Jurisdictional and Extension of time matters/ Urgent Directions Hearings

- 3 Interlocutory Directions Hearings regarding jurisdiction or extension of time matters that are listed prior to the receipt of a substantive application are generally managed by an ILO.
- 4 An ILO must draft a Litigation Strategy/ Jurisdiction and submissions (if any) and seek CM instructions 5 days ahead of Interlocutory Directions Hearing (if at all possible) e.g., on jurisdiction or extension of time matters. Any submissions provided should be less than 10 pages. It is generally expected that the ILO will appear at the Directions Hearing.
- 5 Prior to an Interlocutory Directions Hearing, the ILO and CM should discuss the Litigation Strategy / Jurisdiction arguments and any arrangements required to accommodate accessibility issues for the Participant (or others).
- 6 An SOI should not be prepared and filed prior to a Directions Hearing without specific instructions, as Directions Hearings do not form part of the Tribunal's alternative dispute resolution (ADR) procedures, and therefore do not benefit from the protection afforded by Division 3 of Part IV of the *Administrative Appeals Tribunal Act 1975* (Cth) (**AAT Act**).
- 7 If an ILO or LSP identifies that an urgent Directions Hearing is required, or an ILO or LSP are asked by the Tribunal to attend an urgent Directions Hearing it is likely to be either:
 - a. to resolve a jurisdictional matter or other procedural issue (extension of time, for example). In this situation, please seek instructions from CM and PLO with responsibility for Jurisdictional matters about filing submissions (see above); or
 - b. to address substantive issues, where the Tribunal considers there is some urgency or risk which requires urgent attention. It is understood that the Tribunal expects the Agency to discuss substantive issues, not just procedural /interlocutory issues, and therefore it will generally be appropriate to collate a document summarising the matter (e.g., draft chronology, if not already provided) prior to the Directions Hearing for use between the Tribunal and parties. Draft submissions may also be required to be ready to address issues at the Directions Hearing.
- 8 If a listing notice does not identify the purpose of a Directions Hearing, the ILO/ LSP are instructed to immediately contact the relevant Tribunal Registry to ask the purpose of the Directions Hearing and advise the CM (and if relating to a jurisdictional or extension of time matter, the PLO with responsibility for Jurisdictional matters) of the time and purpose for the Directions Hearing.
- 9 If an LSP (or ILO) identifies a jurisdiction issue that they consider requires advice, they must notify the CM and the PLO responsible for Jurisdictional matters, noting this matter may then be allocated to an ILO for management and appearance. Examples of jurisdiction issues include but are not limited to where:
 - a. there is no internal review decision at the time the application was made to the Tribunal;

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- b. there is a dispute about whether there is a 'deemed' internal review decision;
- c. the plan currently in effect is not the plan in relation to which the internal review decision was made.

- 10 The ILO/ LPS must seek instructions from CMs (and PLO with responsibility for Jurisdictional matters if a jurisdictional matter) about submissions (no longer than 10 pages) for filing or use at a Directions Hearing. Note a submission will be taken as legal advice to the Agency.
- 11 A CM will attend these Directions Hearing, if at all possible, given the risk associated with communication with Participants, and if requested by the Tribunal, ILO or LSP.
- 12 As noted below, ILOs/ LSPs are to provide a hearing report and updated Litigation strategy if required, following a Directions Hearing within 48 hours/ 2 days of the hearing.

D.3 Case and Conciliation Conferences (CC) incl (First Case Conference (1CC))

- 13 It is anticipated that a CM (Early Assessment) will have spoken to the Participant and already confirmed contact arrangements, Confidentiality (eg pseudonym) and accessibility requirements and the ILO/ LSP should seek to confirm those arrangements with the CM within 5 days of receiving the email allocating matter to ILO or Letter of Instruction to LSP.
- 14 The CM may also have requested a Statement of Lived Experience (SOLE), and the ILO/ LSP should ask if this has been done, and if so, obtain a copy. If this has not occurred the ILO/ LSP will discuss with the CM whether the CM should ask for a SOLE, and if so, issues that the SOLE should address. The CM will liaise with the Participant regarding a request for a SOLE (if any).
- 15 The CM may reach out to the Participant and confirm 1CC arrangements and make sure all handover with CM (Early Assessment) has occurred. Any offers of resolution by the CM (Early Assessment) should be reviewed by the ILO / LSP on receipt of initial instructions, along with any suggestions for the ongoing management of the matter.
- 16 A CM will attend the 1CC, if at all possible, given the importance of establishing relationships with the Participant, and if requested by the Tribunal, ILO or LSP.
- 17 As noted below, ILOs/ LSPs are to provide a hearing report and updated send a Litigation Strategy/ Update (for 1CC) or Litigation Strategy/ ADR for other CCs (if required) following a 1CC or CC within 48 hours/ 2 days of the hearing.

D.4 Litigation Strategies

- 18 At least 5 working days prior to the first case conference (1CC), as well as any other conference, an ILO/ LSP must send a Litigation Strategy/ Preliminary Assessment (for 1CC) or Litigation Strategy/ ADR for other CCs and draft SOI (incl updated chronology) to the CM (cc ILO, if any), marked 'Subject to legal professional privilege', in accordance with the template. This will include: legal advice on legal arguments and (separately) litigation risks (e.g., witness might change evidence, assigned Member might not agree with arguments etc.)
 - options and recommendations for progressing the matter; and
 - attach a SOI (and chronology and analysis of key evidence and issues arising from the evidence).

D.5 Statements of Issues (SOIs)

Key step	Timeframe	Templates/ references	Responsible
ILO/ LSP must draft (or update) an SOI for instructions and send to the CM File the final SOI with the Tribunal and provide a copy to the Participant*	From ten working days after the LSP's receipt of the T-documents and no later than five working days before a 1CC (or 5 working days ahead of the date the Agency are directed to file them in the Tribunal) the draft SOI is to be provided to the CM The ILO/ LSOP must file the SOI, two clear working days before a conference (i.e. if conference is on Friday, file the SOI by close of business on the previous Tuesday), or otherwise in accordance with any Tribunal direction	SOI & chronology Template (Appendix)	Junior Lawyer/ Lawyer and above to finalise
SOI for subsequent case conference or conciliation conference (CC)	The ILO/ LSP must file an updated SOI at least 48 hours/ 2 working days before the CC . A draft version of the SOI must be provided to the CM at least five working days before the conciliation to enable consideration and redrafting as appropriate	SOI & chronology Template (Appendix)	Junior Lawyer/ Lawyer and above to finalise

***If the Tribunal list a Directions Hearing before it holds a first case conference, an SOI should not be filed without specific instructions.**

19 SOIs should be drafted by ILO/LSP:

- a. using the SOI template (see Appendix) and
- b. to comply with the *Review of National Disability Insurance Scheme Decisions Practice Direction (NDIS Practice Direction)* including:
 - identify any further material relevant to the application and, where possible, gather and send that information to the Tribunal and Participant (by way of Supplementary T-documents, where appropriate).
 - consider how the application might be resolved;
 - consider the dates that will be suitable for any future conciliation or hearing;
 - advise if the case raises any novel or complex issues (which may require a specially constituted Tribunal); and
 - ensure there is a CM available during the CC who has full authority to resolve the case if agreement is reached.

20 SOIs are required from ILO/ LSP for all case conferences (not just the first case conference) , even if there is no direction from the Tribunal. This requirement ensures all parties have visibility of the developing Agency position.

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21 SOIs for subsequent conferences, or which are otherwise directed to be filed, should focus on new issues/ evidence/ developments since the last conference. Use professional judgment about what is relevant for the next conference /direction hearing. It is preferred that the SOI is provided by way of clear updates to the ongoing SOI template, eg by highlighting the new material.

D.6 Other Case or Conciliation Conferences (CC)

22 At least 5 working days prior to any CC, the ILO/ LSP must send a Litigation Strategy/ ADR to the CM (cc ILO, if any), in accordance with the template.

23 There should be discussions between the ILO/ LSP ahead of all conferences to agree roles and messages (and who should speak to each message), and this is particularly for conciliation conferences which CM are expected to attend. However, if they are not able to attend a conciliation conference the ILO/ LSP are instructed to contact the CM Director to see if another CM may be able to attend, even if that is at short notice.

24 During those discussions, consideration should also be given to the benefits of a TAB officer attending a CC eg where technical medical issues will be discussed.

25 There should be limited circumstances where multiple lawyers attend conferences. If it is necessary for multiple people to attend a meeting, ILO/ LSP should:

- a. seek permission from the CM (cc ILO, if any) at least 5 working days beforehand
- b. if granted, notify the Participant and Tribunal as far as possible in advance of the listing, and if the Participant objects to multiple attendees, the ILO/ LSP should immediately escalate this to PLO or CM Director or proceed on the basis that multiple attendees cannot attend. The Agency relies on the ILO/ LSP to appropriately manage this risk and issues raised
- c. clearly explain each person's role (e.g. if in attendance for training, please make that clear, noting that generally a Participant's (and hence the Agency's preference) is that attendance for the purposes of training would only occur with represented Participants). The ILO/ LSP will introduce each person at the beginning of the conference, and themselves each time they speak at any conference that is not held face to face.

D.7 Other Evidence (summons or medical evidence)

26 The scheduling of summonses and additional assessments should be raised with the Tribunal at the 1CC. The ILO/LSP should draft terms of summons which are narrowed as far as possible, to limit privacy impacts for the Participant. The ILO/LSP should provide these to CM for instructions.

27 Before providing instructions on the terms of the summons, the CM will speak to the Participant to check if the material can be obtained directly, and regarding any suggestions to narrow the summons and the reasons for this suggestion. The CM will provide the ILO/ LSP instructions to issue a summons (if any).

28 In relation to a summons, the ILO/ LSP are then provided standing instructions to:

- a. arrange inspections of summonsed material on return of summons;
- b. provide a copy of material and a summary of summonsed material within 10 days of inspection of summons material (unless CM agrees to further time); and
- c. update Litigation Strategy/ Update and chronology (from SOI) within 10 days of inspection of summons material.

29 Instructions from a CM are required to arrange expert, medical or other assessments. A first recommendation for expert evidence should include suggested experts and an early estimate of

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professional fees. Any recommendation for seek expert evidence should consider potential innovations in seeking expert evidence, eg seeking expert evidence on the papers, or from a treating practitioner, or by an expert 'hot tubbing' with a treating practitioner, or through neutral evaluation through the Tribunal. Innovative suggestions should be discussed with the CM (and ILO or PLO/ Cohort lead, if any).

- 30 Before providing instructions on these arrangements, the CM with the ILO/LSP will speak to the Participant to explain the evidence gaps that this expert will address and seek voluntary agreement to the arrangements. This may be done at 1CC but if not, should be done by phone prior to a second or other CC.
- 31 When an ILO/LSP is drafting a letter to an expert, the questions should be drafted to draw the expert's attention to the issues relevant to the decision before the Tribunal and, where appropriate, issues which are relevant to the general management of the claim, including in compliance with such briefing of expert templates and/or guides (provided to the ILO/ LSP from time to time by the Agency). The Agency bank of questions should be consulted prior to sending the question to the Participant. The material provided to the expert should include all other relevant expert evidence, and materials from T-documents and extracts of summonsed material, and if available a Statement of Lived Experience (SOLE) from the Participant. Questions should be narrowed as far as possible, to limit privacy impacts for the Participant.
- 32 Medico-legal assessments may need to be deferred until the parties have obtained clinical notes under summons (although preliminary arrangements for the assessment should generally occur prior to a summons being issued).
- 33 TAB advice should be sought through the CM, if and as required on relevant experts and questions for experts.
- 34 When obtaining a medical or other assessment, the ILO/ LSP must comply with the AAT's Guidelines for Persons Giving Expert and Opinion Evidence (a copy of which must be attached to the brief to the expert).
- 35 Where a report of an assessment, medico-legal or otherwise, is obtained the ILO/ LSP are instructed to:
 - a. provide a copy of the report and a summary of the report to CM (cc to ILO, if any) within 5 days of receipt of report (unless CM agrees to further time);
 - b. provide advice in relation to the report and recommendations as to next steps and the impacts, if any on the outcome of the application, in an updated Litigation Strategy/ Update, within 5 days of receiving report.
 - c. file and serve the report within 2 working days of instructions being provided, or as directed by the Tribunal; and
 - if clarification regarding information in a report is recommended, any such clarification should be sought and obtained in writing from the original expert using a similar process to the original request process. (This requirement is separate to Counsel's proofing of medico-legal specialists in preparation for a hearing).
- 36 The Agency reports quarterly on the total amount and expenditure of Independent Medical Experts that are engaged on our internal and external matters (see Framework).

D.8 Social media (and other surveillance evidence)

- 37 The Agency will not proactively seek social media about a Participant to use as evidence in a Tribunal matter.

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- 38 In the very rare / exceptional circumstances that the ILO/ LSP consider it is necessary to obtain surveillance or social media evidence, seek DCC DRL and BM CM instructions with that recommendation before actioning any research, addressing:
- other forms of investigation to address an evidential issue that have been considered or tried (and assessed to be unsuitable or found to be inconclusive or unsuitable), and
 - the benefits arising from obtaining relevant information by these means (that are considered to outweigh to a substantial degree the intrusion on the privacy of the Participant and other(s)).
- 39 In the event an ILO/LSP or CM obtain social media of any kind about the Participant (e.g., an expert or other professional provides social media to an ILO/ LSP when providing their evidence – noting this should not be sought when requesting evidence), it is required that printouts of social media are appropriately stored and redacted.
- 40 The ILO/LSP is instructed to provide advice in relation to the social media and recommendation as to its impacts, if any, and to provide an updated Litigation Strategy/ Update or outcome of the application within 5 days of receipt of social media material. This should also provide privacy advice and recommendations about personal information other persons recorded in social media, and also recommending Tribunal confidentiality orders about any material provided to experts or the Tribunal.

D.9 Statement of Facts Issues and Contentions (SOFIC)

- 41 SOFICs should be provided to CM cc to ILO (if any) at least 5 days ahead of the filing date set by the Tribunal.
- 42 SOFICs should be limited to 10 pages, wherever possible, and will be treated by the Agency as legal advice in favour of the matters in the SOFIC i.e., as implementation of the ILO/ LSP's legal advice.
- 43 For that reason, the ILO/ LSP should provide a Litigation Strategy/ SOFIC with the SOFIC (i.e., at least 5 days ahead of the SOFIC due date), unless the most recent Litigation Strategy is unchanged. This should include recommendations regarding filing Supplementary T-documents, if needed.
- 44 A SOFIC should include up to date details on the Participant's current plan (including goals and unspent funding, which may be an attachment), based on instructions from the CM.

Key step	Timeframe	Templates/ references	Responsible
ILO/ LSP must file a SOFIC in accordance with CM instructions	As per Tribunal Directions		Senior lawyer and above

D.10 Alternative Dispute Resolution

- 45 The ILO / LSP will retain an inquisitorial and resolution focus throughout the Tribunal proceeding.
- 46 The CM must be notified within 48 hours/ 2 days of receipt of any Tribunal proposed alternative dispute resolution process and will make themselves available to provide instructions on that resolution process within 48 hours/ 2 days.
- 47 If a partial resolution of agreed matters is open during proceedings, consideration will be given to seeking a section 42D AAT Act remittal from the Tribunal.

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- 48 If a resolution is recommended a Litigation Strategy/ ADR should be provided attaching a draft Terms of Agreement for the Tribunal to consider under section 42D to the CM (cc to ILO, if any) for instructions. Once finalised between the LSP, ILO and CM, the CM will discuss the draft Terms of Agreement with the Participant.
- 49 Careful records should be kept by all involved (CM, LSP and ILO if any) of all offers of resolution and responses to those offers.

E: SUBSTANTIVE HEARING PREPARATION AND ATTENDANCE



E.1 Hearing Certificate/ Appeals and Litigation Oversight Committee (ALOC) Paper

- 1 Where a matter is to proceed to a substantive hearing, the ILO/ LSP is instructed to complete a Hearing Certificate after contacted those that might be required to attend a hearing. After seeking initial instructions from a CM, an ILO/LSP is instructed to prepare a Hearing Certificate for filing 5 working days after the SOFIC is due, or as directed by the Tribunal.
- 2 The Tribunal may request that the Agency assist the Participant by contacting Participant witnesses also, and the ILO/ LSP are instructed to assist to the extent possible without providing legal advice to the Participant or compromising any confidentiality/ legal professional privilege.
- 3 Within 15 working days of filing a Hearing Certificate (and no later than 10 working days ahead of pre-Appeals and Litigation Oversight Committee (**ALOC**)), an updated Litigation Strategy/ Hearing is to be provided by the ILO/ LSP (clearly dated) setting out current 'prospects advice', including Counsel advice if this has been obtained. This Litigation Strategy/ Hearing should be provided 4 to 6 weeks ahead of hearing unless circumstances do not allow this to occur. In any 'prospects advice', evidence gaps must be identified, together with recommended steps to resolve any such gaps.
- 4 CM will draft an ALOC paper based on this advice. The ALOC paper will include a current update of access of supports by Participant and will be sent to ALOC PLO cc to ILO/ LSP with at least 2 days for comments (based on deadlines to be provided by ALOC Secretariat).

E.2 Solicitor Advocate

- 5 In matters that are to proceed to a substantive hearing, as part of preparing a Hearing Certificate, approval is required before contacting a Solicitor Advocate:
 - a. ILO/ LSP must consider and provide recommendation to CM (cc ILO, if any) as to whether a Solicitor Advocate is appropriate for the matter e.g., for self-represented Participant.
 - b. if Solicitor Advocate is appropriate, ILO/ LSP should provide one or two Solicitor Advocate options with daily and estimated total fees for approval by a PLO/ Cohort lead or DCC DRL regarding which Solicitor Advocate to brief and professional fees (usually to be billed as disbursement by law firm); and
 - c. within two working days of receiving this recommendation, the Agency will provide an approval whether or not to brief Solicitor Advocate, and instructions on preferred Solicitor Advocate.
- 6 The ILO/ LSP is instructed to prepare a brief (index, documents and Memorandum) for the Solicitor Advocate and provide to the Solicitor Advocate cc to CM (and ILO, if any) within 5 working days of approval to brief Solicitor Advocate (unless more urgent) on the basis that further material or information can be identified eg by CM at a later point in time, if needed.

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- 7 In all other matters that are to proceed to a substantive hearing, the Agency is expected to be represented by external Counsel or Solicitor Advocate at the hearing.

E.3 Briefing Counsel

- 8 Engagement and briefing of Counsel from the independent Bar must be in accordance with the Directions and based on an OLSC-approved charging rate. (If Counsel has not been approved by OLSC, that approval must be obtained before Counsel is briefed on behalf of the Agency).
- 9 The Agency requires that Barristers appointed as Senior Counsel/ King's Counsel² are not to be engaged unless approved by the NDIA Chief Counsel, CCD. This approval should be obtained via DCC DRL.
- 10 As part of preparing a Hearing Certificate, the Agency instructs the ILO/ LSP to:
- consider and provide recommendation to CM (cc ILO, if any) as to whether briefing Counsel is appropriate for the matter e.g., due to complexity of cross-examination or law or lack of Solicitor Advocates;
 - provide the names of at least three Counsel with daily and estimated total OLSC rates with a recommendation as to who should be briefed and why (i.e. experience or expertise does in particular past experience regarding the NDIS Act) for approval by a PLO/ cohort lead or DCC DRL. ILOs should note the need to seek Purchase Order for Counsel fees at this time for direct briefs;
 - provide a female Counsel as an option, unless no female Counsel is available; and
 - check whether Counsel will have availability to appear on hearing dates (if known at the time), and to undertake immediate next steps (e.g. preparing prospects advice).
- 11 Within two working days of receiving this recommendation, the Agency will provide an approval whether or not to brief Counsel, and instructions on preferred Counsel.
- 12 The ILO/ LSP is instructed to prepare a brief (index, documents, and Memorandum) for Counsel and provide to Counsel cc to CM (and ILO, if any) within 5 working days of approval to brief Solicitor Advocate (unless more urgent) on the basis that further material or information can be identified e.g., by CM at a later point in time, if needed.
- 13 The Directions require that:
- a. Junior Counsel are not to be paid a daily rate above \$2,300 (GST incl) (section 5 of the Directions)
 - b. Senior Counsel are not to be paid a daily rate above \$3,500 (GST incl) and must not be paid more than \$5,000 per day (GST incl) unless approval is sought from the DCC DRL and Chief Counsel for approval by OLSC and the Attorney General (section 5 of the Directions).
- 14 A brief to Solicitor Advocate or Counsel does not require approval and is to be sent to approved Counsel cc to ILO and CM, in electronic format. A meeting should be arranged between Counsel, CM and the ILO/ LSP on receipt of advice and prior to any hearing.
- 15 ILO/ LSP are instructed to ask Solicitor Advocate or Counsel to provide prospects of success advice (and any suggested changes to SOFIC) within 10 to 15 working days of notification of receipt of brief i.e., before the hearing is scheduled – but if that is not possible, 10 days before hearing date.

² This refers to those that have received King's Counsel or Senior Counsel appointments at the independent bar.

- 16 It is expected that approved Counsel (or Solicitor Advocate) who provides this 'prospects advice' will be the same person that represents the Agency at the hearing, except where unavoidable changes are required, and immediately notified to CM (cc to ILO, if any).
- 17 ILO/ LSP are instructed to conduct at least one meeting with CM, Counsel or Solicitor Advocate (and Cohort Lead, if any) prior to hearing, to ensure arrangements for hearing and preparation to manage anticipated challenges and risks.
- 18 ILO/ LSP are instructed to collate hearing tender bundles (and Supplementary T-documents, if needed), in consultation with CM, and file these at least 5 days ahead of hearing, or as agreed by Counsel or directed by the Tribunal.

E.4 Formal advice

- 19 Formal advice must only be provided on explicit request from the Agency on a case-by-case basis. Formal prospects advice is expected to be a long form advice (with Executive summary) and should only be provided if requested by the Agency in relation to specific issues that arise in a Tribunal matter and questions provided by an ILO or LSP (on instructions from ILO or PLO/Cohort lead).
- 20 Timeframes and fees for the formal advice should be agreed with ILO or PLO/ Cohort lead at time of request for formal advice.

E.5. Conduct of hearing

- 21 State or Territory PLO approvals are required before seeking a transcript of any Tribunal proceeding/ hearing and are more likely to be provided if there are multiple day hearings.
- 22 An ILO/LSP is instructed to arrange and attend one meeting between Counsel/ Solicitor Advocate and each witness called by the Agency, ahead of hearing.
- 23 ILO is to keep a check on whether Counsel's estimate is at 80% of amount in Work Order for Counsel (on direct brief matters), in order to take steps to avoid a financial breach. In matters where Counsel is briefed by a law firm, the LSP should provide an update to CM (cc ILO if any) in relation to Counsel fees exceeding original estimate.
- 24 For multiple day hearings, an ILO/LSP is provide a short post hearing report on evidence received and issues raised to CM cc ILO (if any) within 12 hours each day. The post final hearing report is required within 48 hours/ 2 days of the end of the hearing.

F: POST CONFERENCE / HEARING

F.1. Conference/ conciliation/ hearing reports

- 1 ILO/ LSP are to provide reports following a conference, conciliation, or hearing (referred to as 'hearing reports') within 48 hours/ 2 days.
- 2 This report should be accompanied by an updated Litigation Strategy if any changes are required to the Litigation Strategy as follows:
 - After 1CC – Litigation Strategy/ Update
 - After CC – Litigation Strategy/ ADR
 - After (include Interlocutory DH) – Litigation Strategy/ DH
- 3 The Litigation Strategy should also identify if this is a significant matter /cohort, and set out next steps following those conferences/ hearings.

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- Hearing reports should report on discussions with Participants, including before or after the hearing/conference (noting that hearing reports will often be read by people who do not have the background to the matter and need to know the final summarised positions at hearing – so should delineate what is confidential from a conference and what is public information from outside a conference). The Hearing Report should include a summary of relevant information at the beginning including the Registry, the name of the advocate or other representative (if any), names of all present, the time the conference started and concluded.
- Hearing reports must include any positive or negative comments by the Tribunal about the running of the matter or the Agency. In any event negative comments must also be raised with CM (cc ILO, if any) within 48 hours/ 2 days that the comments are made.
- All hearing reports are to have a summary upfront headed “Outcome and next steps”, stating very briefly the outcome (e.g., new timetable/ actions by the Agency or Participant) and what is to be done next, and by whom.
- Provide information in any template provided, and for post final hearing and DH, include advice as to the prospect of an adverse decision (as discussed with Solicitor Advocate or Counsel).

G: ADVICE

G.1 Knowledge Bank and Advice generally

- The Agency expects legal advice, including advice in relation to jurisdiction or formal advice, to be approved and endorsed by a firm’s partner, who has knowledge of, and expertise in, Agency matters. For Litigation Strategy/ Updates, these may be signed off at Senior Associate level if this accords with firm arrangements, and the Senior Associate has knowledge of, and expertise in, Agency matters.
- Jurisdiction and formal advice and any other novel or complex Litigation Strategy should be provided for Knowledge Bank within 5 working days of being finalised and in any event prior to the file being closed by sending to **s47E(d) - certain operations of agencies** with Subject Heading: **KNOWLEDGE BANK UPDATE:** Name of Knowledge Bank Page/cohort.
- If legal advice is provided in draft, the ILO/ LSP must finalise the advice on receipt of Agency instructions. If the advice is not finalised with 10 weeks of the advice being provided, the ILO/ LSP should follow up with the Agency to seek instruction to finalise the advice, within three months of receipt of the draft advice.

H: DECISIONS

H.1 Closing a file/implementation of decisions

- On receipt of the Tribunal's decision, seek instructions to write to the Participant cc to the CM about implementation of the decision. Inquiries from the Participant about implementation should be referred to the instructing CM, cc the ILO (if any).
- The LSP should consider if all records have been provided to the Agency (e.g., summons material) for Agency filing, and provide any documents not already provided to the Agency at the end of each matter.

H.2 New decisions

- On receipt of a Tribunal decision, send the decision to the CM cc ILO (if any) with the subject line starting with ‘DECISION’.

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Note: To address the possibility that they were not copied into the original email from the Tribunal please also cc **s47E(d) - certain operations of agencies**

- 4 Within 2 working days (unless further time agreed by ILO) after receiving a Tribunal decision that is not a decision by agreement (i.e., under the AAT Act), the ILO/ LSP should:
 - a. send a short one to two-page summary of the decision, with a short Executive Summary paragraph of the outcome and key findings to CM cc ILO (if any) and cc BM CM and DCC DRL;
 - b. where possible, this summary should be informed by discussions with Counsel or Solicitor Advocate on that matter. For an adverse decision, this summary should provide preliminary views about whether there is an error of law or fact, or inconsistency with arguments made at hearing, and in any event, provide advice whether any adverse decision is of such significance that it should be considered for appeal to the Federal Court;
 - c. if ILO instruct that the Agency seeks more formal advice on prospects of success (e.g., where an appeal to a higher Court is being contemplated by the Agency), new Counsel is likely to be required to provide fresh advice within 5 to 8 days (given internal briefs are required within 10 working days of decision). The earlier arrangements for briefing Counsel (Solicitor Advocate will not be considered for higher Court appeals) should be followed on an expedited basis. They should be asked to review the reasons for decision and any possible grounds for appeal, and prospects of success of that appeal. Counsel's preliminary views can be provided verbally if time requires, in which case this should be recorded by ILO/ LSP and a copy of the verbal advice provided to Counsel, CM and ILO.

I: APPEALS

- 1 These Standing Instructions for Federal Court appeals, are in addition to the requirements of:
 - section 44 of the AAT Act
 - Federal Court rules and Directions of the Federal Court of Australia, including by way of the Administrative Decisions (Judicial Review) Act 1975 (Cth) and an application under the Judiciary Act 1903 (Cth).
- 2 Instructions to appeal matters will be conveyed to a LSP primarily by ILOs following internal clearances from the CEO of NDIA as the primary instructor. Instructions on significant issues may require 5 to 7 working days or more.

I.1 Conduct of Appeals

- 3 In deciding whether to appeal to the Federal Court, the Agency will consider a range of matters including whether an issue of legal principle is involved and its application across the jurisdiction and the potential impact of an appeal on the operation of the Scheme:
 - a. Can the Agency appeal (i.e., is there an error of law) including whether the Tribunal decision:
 - relies on an incorrect interpretation of the NDIS Act
 - erodes or contradicts an accepted, longstanding interpretation of the NDIS Act which can only be resolved by judicial review
 - supports the Agency's obligation to act as a model litigant.
 - b. Should the Agency appeal (i.e., is this a good vehicle to appeal the identified issue from a factual or policy perspective)
 - to test the principle or interpretation
 - the impact on the Participant

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- the costs to the Scheme, in terms of future claims management, in leaving the Tribunal's decision unchallenged
 - the prospects of success and the cost effectiveness of the appeal or application generally.
- 4 A meeting should be arranged between Counsel, ILO/ LSP and DCC DRL with CM also invited, on receipt of advice prior to any hearing. However, immediate instructions should be sought to commence drafting a Notice of Appeal if advice recommends appeal (in case that is required).

I.2 Instructions regarding Appeals

- 5 Where a Federal Court application is lodged by a Participant, LSPs have no authority to accept service.
- 6 If an LSP is sent an appeal or application on behalf of the Agency, the LSP should immediately forward the appeal or application from the Tribunal decision to the DCC DLR and BM CM cc CM (and ILO, if any).
- 7 If the LSP is instructed to act on behalf of the Agency by the DCC DRL or BM CM, within 48 hours/ 2 days of receipt of those instructions, the LSP is instructed to:
- a. advise on arrangements for a Notice of Appearance, a Response, the possibility of a Cross-appeal notice or contention and whether it is appropriate to apply for a stay of the implementation of the Tribunal decision
 - b. provide an estimate of the fees and disbursement likely to be incurred by the Agency in pursuing any such action, including Counsel fees, and
 - c. set a proposed timetable for the management of the proceedings including estimated dates for hearings and conferences, filing and serving documents, discovery and any other matters that may be ordered by the Court.

I.3 Non-Agency initiated Appeals

- 8 Within one week of receipt of Participant initiated proceedings, and prior to the first case conference /hearing an ILO/ LSP must provide a Litigation strategy on the Agency's prospects of success that includes:
- a. any broader impacts of the Participant's grounds of appeal;
 - b. recommended strategy in the proceedings, including alternative dispute resolution (ADR) and whether a notice of contention or cross appeal should be filed;
 - c. any options to resolve the proceedings; and
 - d. recommendations for Counsel (if not already instructed).
- 9 Within 48 hours/ 2 days the ILO/ LSP must provide a note of Directions hearings and notice of substantive hearings.
- 10 At least 48 hours/ 2 days before they are due to be filed (or earlier, if requested), draft submissions for a hearing are to be provided by ILO/ LSP for review.
- 11 An LSP must not file and/or serve any documents or submissions (other than a notice of appearance or appeal books) unless instructions are provided by the ILO.

I.4 Appeal books

- 12 The LSP should finalise appeal books, without instructions and without engaging Counsel (unless you receive instructions to the contrary or a significant issue arises). Within 48 hours/ 2 days of filing, a copy of the appeal books must be provided to the ILO cc CM.

13 Within 48 hours / 2 days of filing, the LSP is to provide a copy of all filed documents from all parties to the CM and ILO.

I.5 Transcripts/ Evidence

14 A copy of the transcript of Court proceedings should only be obtained on instruction from an ILO (and approval by a PLO) and is more likely where there are multiple days of hearing.

15 An expert should be commissioned to conduct an examination or investigation and/or to provide a report only on instruction from an ILO (and approval by a PLO).

16 Within 24 hours of receipt of a court decision, the LSP is to provide a copy of a decision of the court to the CM, ILO, the BM CM and the DCC DRL.

NB: The ILO would advise if a matter appealed to the Federal Court requires engagement with the Agency's Chief Counsel and/ or Legal Services branch.

I.6 Communications protocol regarding Appeals

17 All correspondence regarding an appeal is to be sent to the CM and ILO and copied to the BM CM and DCC DRL.

J: ESCALATIONS

J.1 Escalations

1 An ILO/ LSP should consult the legal positions set out in the NDIA Knowledge Bank in the management of a Tribunal matter and prior to the provision of all legal advice.

2 If an ILO/LSP do not agree on a legal position in the NDIA Knowledge Bank it should be escalated to the contact officer/ content officer on the relevant page.

3 If agreement on legal position is still not agreed, it should then be escalated to the ILO's PLO, and then the DCC DRL.

4 If there is an individual disagreement between the LSP and the Agency or in relation to the Participant and Tribunal this should be raised with the relevant PLO and then the DCC DRL.

K: COMMUNICATION PROTOCOLS AND DOCUMENT MANAGEMENT

K.1 Self-Represented Participant

1 Where a Participant is self-represented, the ILO/ LSP are particularly instructed to:

- a. first check with the CM or otherwise proactively ask how the Participant would like to communicate and engage with a Participant on that basis to ensure they understand the process, their rights, and obligations.
- b. adapt communication (e.g., tone and language and accessibility arrangements which should be visibly recorded) with the Participant, as appropriate to their circumstances;
- c. take appropriate steps to manage or mitigate any barriers to effective engagement with the litigation process;
- d. where appropriate, engage with third parties (for example, treating practitioners) and consider the tone of any questions to be asked of them;
- e. consider whether reasonable adjustments, additional or alternative supports are required to progress the litigation, and encourage the Participant to appoint a support person, advocate or representative.

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K.2 Accessible format of documents to Tribunal and/or Participant

- 2 Any submissions, SOFICs and litigation strategy should be limited to 10 pages, wherever possible.
- 3 Emails seeking instructions should provide a date for when instructions are required, and LSP/ ILO should seek follow up instructions from the CM if instructions not received within 48 hours/ 2 days of the date for instructions.
- 4 Final versions of all documents or correspondence to be provided to the Tribunal and Participant must be in PDF and Word versions and sent to the Participant in an accessible form that takes into account the Participant's impairment (this can be confirmed by checking the initial document/ triage form 'key contacts' section provided to LSP when a new matter is allocated by the Agency and/or asking the CM or Participant).

K.3 Correspondence

- 5 Within 48 hours/ 2 days of receipt (or sooner if the matter is close to a case conference/ directions hearing/ conciliation/ hearing), the ILO/ LSP are requested to provide significant documents and correspondence to or from the Participant and Tribunal (including if it has bearing on the Agency's or the Participant's position or the status of the matter generally) to the CM (cc to any ILO) – if not already provided.
- 6 The ILO/ LSP should normally provide observations on Participant and Tribunal correspondence, including next steps, or requests for instructions.
- 7 If providing observations will delay sending a document, the ILO/ LSP are requested to send the document within 48 hours/ 2 days of receipt, setting out when they will provide further observations/ advice.

K.4 Written correspondence protocol

- 8 At a minimum, an ILO/ LSP should start a new email chain whenever a new or significant event or step in the litigation occurs, and in a manner that preserves legal professional privilege over correspondence with LSPs in email correspondence, the ILO/ LSP should set out:
 - a. an Executive Summary, and recommendation for instructions and provide brief reasons for that recommendation(s),
 - b. the matters on which instructions are sought (use numerical/list formats to make responding easier where multiple instructions sought); and
 - c. in the subject line of an email, that the subject is a request for instructions, and the date/time instructions are required (e.g., 'FOR ACTION by [time] [date] – [brief description of instructions sought] – matter name and LEX ID').

K.5 Notification of notices

- 9 Within 48 hours/ 2 days of receipt from the Tribunal, an ILO/ LSP must email:
 - a. Tribunal notice(s) including Withdrawal, Direction, Order, Listing and Decision notices etc., and
 - b. Tribunal decisions (other than decisions made by agreement pursuant to s42C) with a short paragraph of key findings, to:
 - CM, and
 - ILO (if any); and

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- **s47E(d) - certain operations of agencies** (only if they were not an original recipient – to avoid duplication of work) in order to record information in the Agency’s case management system – LEX.

K.6 Definitions

10 In these Standing Instructions:

Agency means the National Disability Insurance Agency

Agency Tribunal email means **s47E(d) - certain operations of agencies**

BM CM means the Business Manager of the AAT Claims Management branch, Chief Counsel Division

CM means a Case Manager who is the Instructing Officer in the AAT Claims Management branch, Chief Counsel Division

DCC DRL means the Deputy Chief Counsel of the AAT Dispute Resolution and Litigation branch, Chief Counsel Division

ILO means Agency internal legal officer of the AAT Dispute Resolution and Litigation branch instructed as solicitor on record for a matter

LSP means an external legal service provider

ILO/ LSP throughout this document means ILO if they are the lawyer with carriage OR LSP if they are the lawyer with carriage

Legal Operations means the Legal Operations team in the Chief Counsel Division, responsible for compiling T-Documents and other administrative matters.

NDIS or Scheme means National Disability Insurance Scheme

NDIS Act means *National Disability Insurance Scheme Act 2013*

Participant means the person or entity that applied for Tribunal review of a Reviewable Decision, including a prospective participant, and their representatives, unless the contrary intention appears

Tribunal means the Australian Tribunal that conducts independent merits review of administrative decisions made under Commonwealth laws of the Australian Government



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Case Management Guide
Conciliation

Field	Category	Reference Documents
Title	Conciliation	
Purpose	<p>This document is part of a suite of guidance documents for Case Managers to use in formulating their approach to managing individual matters before the Administrative Review Tribunal (ART).</p> <p>This Guide applies nationally to the conduct of all matters within the Administrative Review Tribunal Case Management Branch.</p>	
What is Conciliation?	<p>Conciliation is a <i>dispute resolution processes</i> for the voluntary resolution of disputes, which involves an informal, private meeting arranged by the ART to help the parties try to reach an agreement before a substantive hearing. Conciliation is an opportunity to discuss the matter, and any information related to the issues in dispute; to consider possible options for resolution; to agree on particular facts or supports to narrow the issues in dispute at the substantive hearing; and to discuss next steps, where the matter cannot be resolved in full at this time. Conciliation is facilitated by a Conference Registrar or Tribunal Member who is impartial to the proceedings.</p>	<p>Section 4 of the ART Act 2024</p> <p>Part 4, Division 6, Subdivision C of the ART Act 2024</p> <p>Conciliation AAT</p>
The role of a Case Manager	<p>To enable meaningful participation, it is expected that Case Managers will have the authority to resolve the matter at the Conciliation, where appropriate.</p> <p>Case Managers are authorised to resolve the matter on the basis of the NDIA position going into the Conciliation (as reviewed by their Line Manager). Alternatively, where the NDIA position changes based on evidence or information provided during the course of the Conciliation, Case Managers are authorised to resolve the matter where their decision to do so is supported by legal or internal specialist advice, and where their decision to do so has been approved by their Line Manager.</p> <p>Case Managers must ensure that they will be able to contact their Line Manager during the course of the Conciliation, if required.</p>	<p>Decision-Making Authority for Case Managers</p> <p>Case Management Guide: Decision Making</p>

Commented [AF1]: Would something like "TAPIB Conciliation Support" be a more accurate title?

Commented [AF2]: This should be the case, although it may become more common for Registrars to facilitate (given the expanded powers conferred on Registrars)



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Conciliation

Field	Category	Reference Documents
The role of a TAPIB Advisor	<p>The role of an Advisor from the Technical Advice and Practice Improvement Branch (TAPIB) is to:</p> <ul style="list-style-type: none"> • discuss or explain technical concepts or supports which a CM may have difficulty articulating – including disability-related health supports, home and living supports, complex home modifications, and/or specialised assistive technology; • to provide specific clinical guidance where required, including to promote a trauma-informed approach to conversation; • to help facilitate productive conversations in relation to complex matters, by being able to ask clarifying questions in the moment; • to assist the CM in formulating offers to resolve the matter – before the Conciliation, and during the Conciliation through Microsoft Teams or during a break-out session conversation between the Advisor, the CM, and the Lawyer with carriage; and/or • to help explain how current and/or proposed plan funding could be used, to enable the participant to achieve similar outcomes as other requested supports (which the NDIA may be unable to fund). 	<p>TAPIB Hub NDIA Dispute Resolution Policy Section 56 of the Administrative Review Tribunal Act 2024</p>
Preparing TAPIB for Conciliation	<p>Before and during Conciliation, the Advisor will need:</p> <ul style="list-style-type: none"> • a copy of the latest Statement of Issues (SOI) lodged on behalf of the NDIA; • a copy of any internal specialist advice previously provided in relation to the matter; • a copy of the T-Documents; • access to the participant’s current NDIS Plan in PACE or CRM (if applicable); and 	<p>Standard Operating Procedure: Reviewing the Matter Standard Operating Procedure: Alternative Dispute Resolution Communication Policy</p>

Commented [AF3]: are the examples necessary?



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Conciliation

Field	Category	Reference Documents
	<ul style="list-style-type: none"> information about the presentation and participation of the participant or prospective participant during previous interactions. <p>Pre-Conciliation Discussion</p> <p>Once a request for Conciliation support is received, the allocated TAPIB Advisor will contact the CM to arrange a pre-Conciliation discussion with the Advisor, the CM, and the Lawyer with carriage (and an Assistant Director, TAPIB if required).</p> <p>In the leadup to the Pre-Conciliation discussion, the Advisor will review the SOI to determine whether the NDIA position aligns with previous advice.</p> <p>The purpose of the pre-Conciliation discussion is to:</p> <ul style="list-style-type: none"> confirm the NDIA position and identify any gaps in the available evidence; confirm the roles and responsibilities of each person attending the Conciliation – including who will be responsible for leading discussion around specific topics; determine the most effective approach to communicating with the participant, prospective participant, their family, or their representative; determine the desired outcomes of Conciliation – including to resolve particular issues in dispute, to seek additional information or clarification in relation to the issues in dispute, or to restore relationships; confirm whether the CM has the authority to present an offer to resolve the matter, or whether possible resolution will be informed by information and specialist advice provided during the course of Conciliation; and confirm whether it will be necessary for the Advisor to attend Conciliation. 	



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Conciliation

Field	Category	Reference Documents
When should TAPIB <i>not</i> attend Conciliation?	<p>It may not be appropriate for a TAPIB Advisor to attend Conciliation where:</p> <ul style="list-style-type: none"> it may be detrimental to the participant's or prospective participant's wellbeing to have multiple NDIA staff in attendance – including where it may be confusing or confronting for the person, or where the person has a history of heightened emotional response; there has been no pre-Conciliation discussion; internal specialist advice has not been provided previously; previous TAPIB advice has indicated that further information is required, which has not yet been provided; internal specialist advice provided by TAPIB does not align with the NDIA position; the issues in dispute are not technical in nature, and where the level of support needed by the CM is available in the suite of nationally published guidance material; the supports in dispute relate to day-to-day living costs, or to supports which are more appropriately funded by other mainstream systems of support; an Advisor has previously attended a Conciliation to discuss or explain technical concepts or supports, and the purpose of their attendance would be to repeat information already provided; there is limited likelihood of resolution; where the desired outcomes of Conciliation have not been determined by the CM or Lawyer with carriage; and/or the roles and responsibilities of each person attending the Conciliation have not been confirmed ahead of the Conciliation. 	<p>Case Management Guide: Model Litigant Obligations</p> <p>Appendix B to the Legal Services Directions 2017</p> <p>Administrative Review Branch Guidance Library and Directory</p>

Commented [AF4]: will this be at the discretion of the Advisor?

Commented [AF5]: is this participant-centric?

Commented [AF6]: these speak to the purpose of the pre-Conciliation discussion - are these points not covered above (where there has been no pre-Conciliation discussion)?



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Conciliation

Field	Category	Reference Documents
Alternative Conciliation support	<p>Where it would not be appropriate for a TAPIB Advisor to attend Conciliation, the Advisor may still be able to support the Case Manager by:</p> <ul style="list-style-type: none"> coaching the CM and Lawyer with carriage to be able to speak confidently to the themes of advice(s) previously provided, and to identify what further information may be required; assisting in the development of strategies to manage the relationship with the participant or prospective participant; suggesting a series of questions or requests for information, to be posed by the CM to the participant, prospective participant, or Independent Medical Expert (IME); recommending further action to support resolution – for example, by suggesting that an IME be engaged where additional information cannot be obtained from the participant's or prospective participant's treating practitioners; being available on standby (on Microsoft Teams) to respond to any queries or requests for clarification from the CM during the course of the Conciliation. 	<p>Communication Policy Communication Protocol NDIA Dispute Resolution Policy</p>

Commented [AF7]: is this the role of a clinician?

Document Control	Responsible Person	Date
Document author	Continuous Improvement	October 2024
Document approver	Director, Continuous Improvement	