

s47F-personal pr

Lauren

From: Elise Kinsella <Kinsella.Elise@abc.net.au>
Sent: Thursday, 9 July 2026 11:05 AM
To: media
Subject: ABC story about NDIS appeals
Categories: Julia, Active Media Enquiry

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Hi media team,

I am working on a story for ABC News about NDIS appeals/appeal rights. I have been speaking to participants/lawyers/disability advocates who have said the following;

- The NDIA often gets its decision-making wrong when it comes to individual plans, with the ART changing nearly 80 per cent of plans for participants who appealed to the tribunal in the last year. Advocates say this figure doesn't include cases where a change is made during mediation, and comes in the context where the NDIA regularly outguns participants with expensive legal representation.
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Can I please get a response to the following questions by the end of tomorrow? I can be contacted on

s47F-personal privacy

Thanks

Elise

1. Why are so many plans changed by the ART on appeal? Does this show the agency gets its decisions wrong often?
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From: s47F-personal p Julia on behalf of media
To: Elise Kinsella: media
Subject: RE: ABC story about NDIS appeals [SEC=OFFICIAL]
Date: 09 July 2026 11:15:33
Attachments: image001.jpg
 image002.jpg
 image003.png

Hi Elise,

Confirming we've received the below and will come back to you by COB tomorrow.
 Can you confirm whether you have also approached the Minister's Office/DHDA? The NDIA is unable to speak to proposed reforms that have not been passed.

Thanks,

Julia

Julia s47F-personal privacy

Assistant Director, Media

Communications and Media Branch

National Disability Insurance Agency

M s47F-personal privacy E julia. s47F-personal privacy @ndis.gov.au

Please note I work Monday, Wednesday and Thursday



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From: [647F-person](#) Lauren on behalf of [media](#)
To: [Elise Kinsella](#); [media](#)
Subject: RE: ABC story about NDIS appeals [SEC=OFFICIAL]
Date: 10 July 2026 15:41:21
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.png](#)

Hello Elise,

Please see the below agency response.

Can you please reply to this email confirming you have received it.

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The Agency supports the right of all participants to seek a review of Agency decisions including through the Administrative Review Tribunal (ART).

The Agency has invested in new approaches to dispute resolution which are focused on providing earlier, quicker, and fair outcomes for all participants.

The majority of matters in 2024–25 were resolved without requiring a hearing before the ART, with only 4% proceeding to a substantive hearing. Of those matters, approximately 73.5% resulted in a determination favourable to the Agency's position.

To assist the Tribunal, the Agency will often seek additional information which was not available to the original decision maker and may lead to a different outcome.

Background, to inform reporting only (not for attribution):

The NDIA does not use Artificial Intelligence (AI) in systems that interact directly with participants or providers or for any decisions on NDIS funding or eligibility.

The NDIS has grown considerably to over 774,000 participants and the Agency is making more decisions than ever before, more decisions naturally lead to more reviews.

In 2024-2025, 70% of matters were resolved by consent, with a further 18% withdrawn, 8% dismissed and 4% of matters required a decision at hearing. Of those matters proceeding to a hearing decision, 26.5% were set aside.

A set aside decision from the Tribunal is not necessarily an indication that the internal review decision was incorrect based on the information available to the decision maker. To assist the Tribunal, the Agency will often seek additional information (for example through targeted questions to treating practitioners or review by an independent expert). This information was not available to the original decision maker and may lead to a different outcome.

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Noting this, separate to Tribunal reporting on affirmed/set aside decisions, the Agency tracks decisions which are favourable/unfavourable to the Agency position. Over the last 12 months, decisions in favour of the NDIA position at substantive hearing have been ~73.5%. This is important in implementing learnings from merits review as many set aside decisions are consistent with Agency submissions or agreed with the participant.

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Lauren 

a/g Assistant Director Media

Media | Strategic Communications Division

National Disability Insurance Agency

Phone: 0477 703 960

Email: media@ndis.gov.au



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From: Elise Kinsella

Sent: Thursday, 9 July 2026 11:05 AM

To: media

Subject: ABC story about NDIS appeals

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From: [Elise Kinsella](#)
To: [media](#)
Subject: Re: ABC story about NDIS appeals [SEC=OFFICIAL]
Date: 22 July 2026 09:56:30
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.png](#)

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Hi Lauren,

Just coming back to fact check your statement below.

Can I check this is accurate "Of those matters, approximately 73.5% resulted in a determination favourable to the Agency's position?"

Are you getting that stat from the ART annual report? Because it reports that figure as changed outcomes, which would be outcomes that you couldn't describe as in the NDIA's favour because the tribunal has changed the initial decision by the agency. Can I also ask again about the issue of the ART losing the power to overturn funding decisions.

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Are these planned changes still be occurring? Is there a date where the ART will lose the ability to overturn a funding decision?

Thanks

Elise

From:  Lauren on behalf of media
Sent: Friday, 10 July 2026 3:41 PM
To: Elise Kinsella ; media
Subject: RE: ABC story about NDIS appeals [SEC=OFFICIAL]

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a/g Assistant Director Media

Media | Strategic Communications Division

National Disability Insurance Agency

Phone: 0477 703 960

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From:  Lauren on behalf of [media](#)
To: [Elise Kinsella](#); [media](#)
Subject: RE: ABC story about NDIS appeals [SEC=OFFICIAL]
Date: 22 July 2026 10:11:52
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.png](#)

Hello Elise,

Confirming we have received your email and will come back to you shortly to clarify the first question.

Regarding your question on changes to ART decision making, these will need to be referred to DHDA for comment.

Thank you

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a/g Assistant Director Media

Media | Strategic Communications Division

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From: Elise Kinsella

Sent: Wednesday, 22 July 2026 9:56 AM

To: media

Subject: Re: ABC story about NDIS appeals [SEC=OFFICIAL]

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From:  Lauren <Lauren.@ndis.gov.au> on behalf of media <media@ndis.gov.au>

Sent: Friday, 10 July 2026 3:41 PM

To: Elise Kinsella <Kinsella.Elise@abc.net.au>; media <media@ndis.gov.au>

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 Media | Strategic Communications Division
 National Disability Insurance Agency
 Phone: 0477 703 960
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From:  Julian on behalf of [media](#)
To: [Kinsella, Elise@abc.net.au](mailto:Kinsella.Elise@abc.net.au)
Cc: [media](#)
Subject: FW: ABC story about NDIS appeals [SEC=OFFICIAL]
Date: 22 July 2026 13:25:08
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.png](#)

Hi Elise,

We will get you some written information, but I'm also happy to try and explain some of this over the phone.

If you'd like to give me a call, my number is below.

Cheers,

Julian  (he / him)

Media Operations Director

Strategic Communications Division

National Disability Insurance Agency

E: @ndis.gov.au">julian.@ndis.gov.au

M: 

From:  Lauren On Behalf Of media
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Phone: 0477 703 960

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Note to media: all information contained in this email is on background and should not be attributed unless specified otherwise.

From: Elise Kinsella <Kinsella.Elise@abc.net.au>
 Sent: Wednesday, 22 July 2026 9:56 AM
 To: media <media@ndis.gov.au>
 Subject: Re: ABC story about NDIS appeals [SEC=OFFICIAL]

You don't often get email from kinsella.elise@abc.net.au. [Learn why this is important](#)

Hi Lauren,

Just coming back to fact check your statement below.

Can I check this is accurate "Of those matters, approximately 73.5% resulted in a determination favourable to the Agency's position?"

Are you getting that stat from the ART annual report? Because it reports that figure as changed outcomes, which would be outcomes that you couldn't describe as in the NDIA's favour because the tribunal has changed the initial decision by the agency. Can I also ask again about the issue of the ART losing the power to overturn funding decisions.

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Are these planned changes still be occurring? Is there a date where the ART will lose the ability to overturn a funding decision?

Thanks

Elise

From:  Lauren <@ndis.gov.au">Lauren.@ndis.gov.au> on behalf of media <media@ndis.gov.au>

Sent: Friday, 10 July 2026 3:41 PM

To: Elise Kinsella <Kinsella.Elise@abc.net.au>; media <media@ndis.gov.au>

Subject: RE: ABC story about NDIS appeals [SEC=OFFICIAL]

Hello Elise,

Please see the below agency response.

Can you please reply to this email confirming you have received it.

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Media | Strategic Communications Division

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Sent: Thursday, 9 July 2026 11:05 AM

To: media <media@ndis.gov.au>

Subject: ABC story about NDIS appeals

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Hi media team,

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- The NDIA often gets its decision-making wrong when it comes to individual plans, with the ART changing nearly 80 per cent of plans for participants who appealed to the tribunal in the last year. Advocates say this figure doesn't include cases where a change is made during mediation, and comes in the context where the NDIA regularly outguns participants with expensive legal representation.
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some participants have been openly discussing on social media a desire to try and access VAD laws if they lose their NDIS supports.

Can I please get a response to the following questions by the end of tomorrow? I can be contacted on [s47F-personal privacy](#)

Thanks

Elise

1. Why are so many plans changed by the ART on appeal? Does this show the agency gets its decisions wrong often?
2. Are there problems with NDIA decision-making? Are you too reliant on AI/automated decision-making?
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From: [Elise Kinsella](#)
To: [media](#)
Subject: Re: ABC story about NDIS appeals [SEC=OFFICIAL]
Date: 24 July 2026 12:45:30
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.png](#)

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Hi Julian,
 How is a revised statement coming along?
 Thanks
 Elise

From: [\[redacted\]](#) Julian on behalf of media
Sent: Wednesday, 22 July 2026 1:25 PM
To: Elise Kinsella
Cc: media
Subject: FW: ABC story about NDIS appeals [SEC=OFFICIAL]

Hi Elise,
 We will get you some written information, but I'm also happy to try and explain some of this over the phone.

If you'd like to give me a call, my number is below.

Cheers,

Julian [\[redacted\]](#) (he / him)

Media Operations Director
 Strategic Communications Division
 National Disability Insurance Agency

E: [julian.\[redacted\]@ndis.gov.au](mailto:julian.[redacted]@ndis.gov.au)

M: 04 [\[redacted\]](#)

From: [\[redacted\]](#) Lauren On Behalf Of media
Sent: Wednesday, 22 July 2026 10:12 AM
To: Elise Kinsella ; media
Subject: RE: ABC story about NDIS appeals [SEC=OFFICIAL]

Hello Elise,

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Regarding your question on changes to ART decision making, these will need to be referred to DHDA for comment.

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Lauren [\[redacted\]](#)
 a/g Assistant Director Media
 Media | Strategic Communications Division
 National Disability Insurance Agency
 Phone: 0477 703 960

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 Media | Strategic Communications Division
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From: ^{s47f-personal} Julian on behalf of [media](#)
 To: [Elise Kinsella](#)
 Cc: [media](#)
 Subject: RE: ABC story about NDIS appeals [SEC=OFFICIAL]
 Date: 24 July 2026 14:45:02
 Attachments: [image001.jpg](#),
[image002.jpg](#),
[image003.png](#)

Hi Elise,

Apologies for the delay.
 Shouldn't be too much longer.
 Cheers,
 Julian.

From: Elise Kinsella
 Sent: Friday, 24 July 2026 12:45 PM
 To: media
 Subject: Re: ABC story about NDIS appeals [SEC=OFFICIAL]

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Media Operations Director
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 National Disability Insurance Agency

E: ^{s47f-personal privacy} julian.ndis.gov.au

M: ^{s47f-personal privacy}

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To: [Elise Kinsella](#); [media](#)
Subject: RE: ABC story about NDIS appeals [SEC=OFFICIAL]
Date: 24 July 2026 16:49:15
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.png](#)

Hi, Elise.

Thanks for your patience,

Please see below.

If you could confirm you've received, that would be great thanks.

Regards,

Dan.

//

Background only

The NDIA and the Administrative Review Tribunal (ART) measure review outcomes differently because they assess different things.

The ART records outcomes based on the legal disposition of a matter, including whether an NDIA decision is affirmed, varied or set aside.

The NDIA assesses whether the final outcome is favourable or unfavourable to the Agency's position.

This distinction is important because some matters that are recorded by the ART as a variation or set aside of an NDIA decision may reflect the outcome sought by the Agency. The Agency would record this as a decision favourable to the NDIA's position.

This provides a more accurate picture of whether the final outcome aligns with the Agency's assessment of appropriate supports and helps inform continuous improvement from merits review outcomes.

//

Daniel s47F-personal privacy

Senior Media Officer

Media, Marketing and Digital Communication Branch

National Disability Insurance Agency

M s47F-personal privacy E [daniel.s47F-personal privacy@ndis.gov.au](#)



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 Sent: Wednesday, 22 July 2026 9:56 AM
 To: media
 Subject: Re: ABC story about NDIS appeals [SEC=OFFICIAL]

You don't often get email from kinsella.elise@abc.net.au. [Learn why this is important](#)

Hi Lauren,

Just coming back to fact check your statement below.

Can I check this is accurate "Of those matters, approximately 73.5% resulted in a determination favourable to the Agency's position?"

Are you getting that stat from the ART annual report? Because it reports that figure as changed outcomes, which would be outcomes that you couldn't describe as in the NDIA's favour because the tribunal has changed the initial decision by the agency. Can I also ask again about the issue of the ART losing the power to overturn funding decisions.

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Are these planned changes still be occurring? Is there a date where the ART will lose the ability to overturn a funding decision?

Thanks

Elise

From:  Lauren <Lauren.647f-personal@ndis.gov.au> on behalf of media <media@ndis.gov.au>

Sent: Friday, 10 July 2026 3:41 PM

To: Elise Kinsella <Kinsella.Elise@abc.net.au>; media <media@ndis.gov.au>

Subject: RE: ABC story about NDIS appeals [SEC=OFFICIAL]

Hello Elise,

Please see the below agency response.

Can you please reply to this email confirming you have received it.

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The following can be attributed to an NDIA spokesperson:

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Lauren 

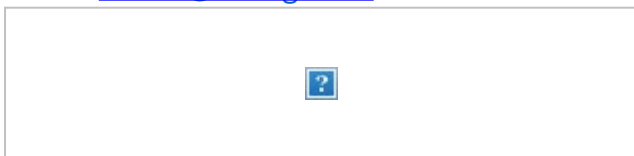
a/g Assistant Director Media

Media | Strategic Communications Division

National Disability Insurance Agency

Phone: 0477 703 960

Email: media@ndis.gov.au



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Sent: Thursday, 9 July 2026 11:05 AM

To: media <media@ndis.gov.au>

Subject: ABC story about NDIS appeals

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Can I please get a response to the following questions by the end of tomorrow? I can be contacted on [s47F-personal privacy](#)

Thanks

Elise

1. Why are so many plans changed by the ART on appeal? Does this show the agency gets its decisions wrong often?
2. Are there problems with NDIA decision-making? Are you too reliant on AI/automated decision-making?
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From: [Elise Kinsella](#)
To: [media](#)
Subject: Re: ABC story about NDIS appeals [SEC=OFFICIAL]
Date: 24 July 2026 17:01:34
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.png](#)

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And confirming you perform your own self-assessment of how you thought things went? And the NDIA thinks 73 per cent of cases had outcomes in your favour? Even though most cases have changed outcomes which disability lawyers say means changes in favour of a participant?

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Sent: Friday, July 24, 2026 4:49 PM
To: Elise Kinsella ; media
Subject: RE: ABC story about NDIS appeals [SEC=OFFICIAL]

Hi, Elise.

Thanks for your patience,

Please see below.

If you could confirm you've received, that would be great thanks.

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This provides a more accurate picture of whether the final outcome aligns with the Agency's assessment of appropriate supports and helps inform continuous

improvement from merits review outcomes.

//

Daniel ^{s47F-personal privacy}

Senior Media Officer

Media, Marketing and Digital Communication Branch

National Disability Insurance Agency

M ^{s47F-personal privacy} E ^{s47F-personal privacy} daniel.ndis.gov.au



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Lauren ^{s47f-personal}
 a/g Assistant Director Media
 Media | Strategic Communications Division
 National Disability Insurance Agency
 Phone: 0477 703 960
 Email: media@ndis.gov.au



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From:  Julian on behalf of [media](#)
To: [Elise Kinsella](#)
Cc: [media](#)
Subject: RE: ABC story about NDIS appeals [SEC=OFFICIAL]
Date: 27 July 2026 11:28:26
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.png](#)
[image004.png](#)

Hi Elise,

We've updated the below to attributable, as well as adding an additional sentence that how the Agency comes to a favourable decision, is structured and decided by the Agency's Chief Counsel.

//

Attributable to an NDIA spokesperson:

The NDIA and the Administrative Review Tribunal (ART) measure review outcomes differently because they assess different things.

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The Agency would record this as a decision favourable to the NDIA's position.

This provides a more accurate picture of whether the final outcome aligns with the Agency's assessment of appropriate supports and helps inform continuous improvement from merits review outcomes.

//

Cheers,

Julian  (he/him)

Media Director

Media phone: 0477 703 960

Media email: media@ndis.gov.au



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Sent: Friday, 24 July 2026 5:01 PM

To: media

Subject: Re: ABC story about NDIS appeals [SEC=OFFICIAL]

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Sent: Friday, July 24, 2026 4:49 PM

To: Elise Kinsella <Kinsella.Elise@abc.net.au>; media <media@ndis.gov.au>

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Daniel s47F-personal privacy

Senior Media Officer
Media, Marketing and Digital Communication Branch

National Disability Insurance Agency

M ^{s47F-personal privacy} E ^{s47F-personal privacy} daniel.ndis.gov.au



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a/g Assistant Director Media

Media | Strategic Communications Division

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Criteria to Treat Decision as Favourable

There are three categories of favourable ART decisions on NDIA planning matters:

1. Favourable in that the ART decision agrees with the Agency on **all** points (not controversial /would be covered by the criteria below)
2. Favourable in that the ART concurs with the Agency offer or negotiating position at hearing,
3. and the **matter is remitted** for decision accordingly (not controversial /would be covered by the criteria below)
4. **Favourable** in that the decision is overall:
 - **materially and**
 - **substantively****favourable**, notwithstanding some unfavourable elements or findings against the Agency (addressed below)

To assist with defining what is **materially and substantively** a favourable decision, the following criteria can be applied:

An ART decision that is set aside or varied and is a planning matter (only):

- A. Will be considered a **FAVOURABLE** decision if the **number of supports that were in dispute at the end of the ART hearing** and the decision involves:
 - **2 or less supports in dispute** – 1 or more supports were determined consistently with the Agency's submission (50%) in the ART decision
 - **3, 4 or 5 supports in dispute** – 2 or more supports were determined consistently with the Agency's submission (66 to 40%) in the ART decision
 - **6 or more supports in dispute** – 50% or more of the supports were determined consistently with the Agency's submission, in the ART decision.

s47E(d)-certain operations of agencies

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Version	Amended by	Brief Description of Change	Status	Date
1.0	Anton s47F-personal privacy	Drafted	Draft	29-01-26
1.1	Anton s47F-personal privacy	Minor edits (inserting opening paragraph)	Draft	11-02-26
2.0		Quality Checked	Draft	
3.0		Finalised	Final	

Post ART Decision Checklist for Adverse Substantive ART Decisions

IMPORTANT – PLEASE READ:

- When creating a brief, do not save over this document, but 'save as' to create a new document.
- Please delete this before finalising

Name of decision and ART reference	XXXX and NDIA
Decision Date (double click to edit) →	DD/MM/YYYY

#	Days since decision was received	Tasks for Internal Lawyer		Due Date
1	Immediately	Remind LWC that decision summary is to be provided within 2 business days.	☐	DD/MM/YYYY
2	Immediately	Please forward the decision, including the covering e-mail from the ART and decision summary (if received), to the Paralegal inbox for recording on the ART Decision Tracker.	☐	DD/MM/YYYY
3	2 business days	Distribute decision and summary to ER Branch and DR&L Branch, copying, Chief Counsel, GM RIR, BM IR and DCC SLLS (or anyone acting in their roles) in line with the circulation process (subject to any confidentiality order). Please only copy in the DCEO for significant adverse decisions. If there are any pseudonyms, please use them when circulating. If a summary is not received within two days, please email the LWC using this draft .	☐	DD/MM/YYYY
4	2 business days	Where it is an adverse decision (set aside or varied), and the decision is exactly in line with the Agency's final position during the proceeding, draft a template to the Chief Counsel seeking to treat the decision as favourable. If there is a non-material difference between the Agency's final position and the ART's findings, discuss immediately with DCC as to how this decision will be treated and whether it will require an appeal decision record (please put an immediate time in DCC's diary by contacting Kerry [Redacted]). If the decision is unfavourable to the Agency, a draft appeal decision record will need to be prepared. Please undertake the following: • Seek preliminary views from the LWC and existing counsel as to whether there are any issues of significance to administrative decision-making and/or errors of fact or law in the decision suitable for an application to refer to the GAP or appeal to the Federal Court. These do not need to be formal advices, but must be recorded in a file note that has been sent to the LWC and counsel (and provided to the DCC with the draft brief).	☐	DD/MM/YYYY

#	Days since decision was received	Tasks for Internal Lawyer		Due Date
		Obtain approval from the DCC if you do not think we should brief independent counsel as to prospects of referring to the GAP or appealing to the Federal Court. DR&L may choose to not brief fresh counsel when there is total agreement by existing counsel, LWC and ILO that we would never appeal this decision.		
5	2 – 10 business days	Please discuss the matter with the relevant cohort lead for their input, and so the cohort lead can liaise with the corresponding business area or stakeholder. Draft the appeal decision record as early as possible. If, after discussing with the cohort lead, you do not know whether to recommend appealing or not appealing, or opposing or not opposing a GAP appeal, put an immediate time in the DCEO's calendar to seek input.	☐	DD/MM/YYYY
6	10 business days	Provide a final version of draft appeal decision record to the DCC (copying in your PLO, Katherine ^{647F-Personal Private} and Kerryn ^{647F-Personal Private}). This does not need to be cleared by your PLO. Attach a copy of the ART decision, Decision Summary, ALOC paper and all prospects advice. When finalised by the DCEO or CEO, this may be sent to the paralegal inbox to be added to the Lessons Learned Register.	☐	DD/MM/YYYY
7	When instructed	If CEO instructs no appeal, request ER Branch implement the ART decision. If CEO instructs an application to refer or appeal, ensure that the LWC or ILO puts the applicant on notice of the application or appeal at the earliest opportunity.	☐	DD/MM/YYYY

NOTES

- The Decision Date is the date the decision was first received by the NDIA or its representative directly from the Tribunal with a dated decision covering letter. Please note this may differ from the date it is published on databases such as Austlii or LexisNexis.
- The [Standing Instructions](#) contain further guidance regarding appeal considerations.
- If an appeal is recommended, further briefings to the Executive will be required, and either the cohort lead or ILO will be nominated as the main contact point for all work on the appeal with the Special Counsel Escalated Cases.
- This checklist must be kept updated and stored in the Sharepoint matter folder (top folder) for each matter.
- If a brief is required – 10 business days are required for Executive finalisation of that brief and instructions to file a Notice of Appeal, or draft an application to refer to the GAP (if required). Note, if the GAP referral is not accepted (and the appeal decision record has agreed that there should be a Federal Court appeal in such circumstances), one business day is needed to enable an appeal; please account for this in your timeline.

DEFINITIONS

Agency means National Disability Insurance Agency.

ALOC means Appeals Litigation Oversight Committee.

ART means Administrative Review Tribunal.

BM IR means Branch Manager Internal Reviews.

CEO means Chief Executive Officer of the National Disability Insurance Agency.

DCC means Deputy Chief Counsel of the Dispute Resolution and Litigation branch.

DCC SLLS means Deputy Chief Counsel of the Scheme Legal and Legislation Services branch.

DCEO means Deputy Chief Executive Officer of the Legal, Reviews, Actuarial and Data group.

DR&L Branch means Dispute Resolution and Litigation branch.

ER Branch means External Review branch.

GAP means Guidance and Appeals Panel.

GM RIR means General Manager of Reviews and Information Release.

ILO means internal legal officer.

LWC means lawyer with carriage.