



Review of National Disability Insurance Scheme Decisions

This Direction is given under section 18B of the *Administrative Appeals Tribunal Act 1975* (AAT Act).

1. About this Direction

- 1.1 This Direction explains what we will do when we review a decision made by the National Disability Insurance Agency (the Agency) under the *National Disability Insurance Scheme Act 2013* (NDIS Act). It also explains what an applicant and the Agency must do. These procedures apply to all kinds of decisions that we review under the NDIS Act.¹
- 1.2 This Direction has effect from 1 July 2015.
- 1.3 When this Direction refers to “you” it means the applicant, his or her nominee, representative or support person. When it refers to “we” or “us” it means the Administrative Appeals Tribunal (AAT).

2. When we receive an application

What we will do

- 2.1 We will write to you confirming we have received your application
- 2.2 We will assign a Contact Officer who will be your AAT contact throughout the review. The Contact Officer will contact you within 3 working days to discuss:
 - What will happen with your application;
 - Your contact details and how you would like us to communicate with you;
 - Who is helping you with your application;
 - Any assistance you will need to participate in the review process including assistive technology, interpreters or other access requirements;
 - The most suitable times and places for you to attend a Case Conference, Conciliation or Hearing.
- 2.3 We will tell the Agency we have received your application and ask them to send us all the documents they have that are relevant to your application. (These are called the T-documents.)

¹ These procedures may be altered to suit individual cases but only by a specific direction of an AAT Member or Conference Registrar.

What you must do

- 2.4 You do not have to do anything at this stage but you can contact your Contact Officer at any time for information about your application.

What the Agency must do

- 2.5 As soon as possible after being notified that we have received your application, the Agency must send a copy of the T-documents to you and to us.

3. When we receive the T-documents**What we will do**

- 3.1 We will consider the best way to process your application. In most cases, we will ask you and a representative of the Agency to attend a Case Conference which will be held 2 to 4 weeks after we receive the T-documents.
- 3.2 If we think there are special circumstances why your application should proceed directly to a Hearing, we will refer your application to an AAT Member and arrange a Directions Hearing to discuss with you and the Agency how your application will proceed.
- 3.3 We will tell you and the Agency the date, time and place of the next step in the review and what you need to do before then.

What you must do

- 3.4 You must prepare for the next step in the review. (See below for how to prepare for a Case Conference, Conciliation and a Hearing.)

What the Agency must do

- 3.5 The Agency must prepare for the next step in the review.

4. The case conference

- 4.1 A Case Conference is an informal meeting to discuss whether you and the Agency can reach agreement and, if agreement is not possible, to plan how your application will proceed.

PREPARING FOR THE CONFERENCE**What we will do**

- 4.2 Your Contact Officer will discuss with you the date, time and place of the Case Conference, what will happen at the Case Conference and how you can prepare for it.

What you must do

- 4.3 You must:
- read the T-documents and identify any further information you think is relevant to your application and, where possible, obtain that information and send it to us and to the Agency;
 - think about what outcome you want from your application;

- be ready to tell us the dates that are suitable to you for any future Conciliation or Hearing;
- decide whether you want to ask for a Fast-Track Hearing (see below).

What the Agency must do

4.4 The Agency must:

- review the T-documents, identify any further material they think is relevant to your application and, where possible, gather and send that information to us and to you;
- consider how your application might be resolved;
- consider the dates that will be suitable for any future Conciliation or Hearing;
- tell us if your case raises any novel or complex issues which may require a specially constituted tribunal;
- ensure that their representative at the Case Conference will have full authority to settle the case if agreement is reached.

AT THE CASE CONFERENCE

What we will do

4.5 An AAT Conference Registrar or Member will help you and the Agency reach agreement if that is possible. If you reach agreement, we will record your agreement in writing.

4.6 If there is no agreement, we will discuss with you and the Agency whether your application should be listed for Conciliation and a Hearing, or proceed straight to a Hearing. We will prepare a written Case Plan setting out:

- any issues that have been resolved and any issues that remain in dispute;
- what will happen next;
- the dates and places of the Conciliation or Hearing;
- any additional material that you or the Agency must give us;
- who will be attending the Conciliation or Hearing;
- what information you and the Agency will present at a Hearing and whether there are other persons, such as family members, carers or doctors, who you will want us to hear from;
- any accessibility and communication needs you have;
- anything else that will ensure the process is as fair and as quick as possible.

What you must do

4.7 You must come prepared, and willing to reach agreement with the Agency if at all possible, and:

- bring any relevant documents that you have not already given us or are not already in the T-documents;
- be ready to discuss what you want to include in your Case Plan if you do not reach agreement;
- decide if you want a Fast-Track Hearing (see below).

What the Agency must do

4.8 The Agency must come prepared, and willing to reach agreement with you if at all possible, and:

- bring any relevant documents they have not already given us or are not already in the T-documents;
- be ready to discuss how the matter should proceed if agreement is not reached.

5. Requesting a fast-track hearing

What we will do

- 5.1 We will give you a Fast-Track Hearing if you ask for it and if:
- you will have all the relevant information necessary for a decision to be made about your application by the date of the Hearing; and
 - we are satisfied that a Fast-Track Hearing would not disadvantage you or the Agency.
- 5.2 We will schedule a Fast-Track Hearing within 6 weeks after the Case Conference.
- 5.3 If we schedule a Fast-Track Hearing, we will expect you and the Agency to be ready on the day set for the Hearing. We will not ordinarily adjourn a Fast-Track Hearing unless there are very good reasons.

What you must do

- 5.4 You must give us any further information or evidence you want us to consider no later than 14 days before the Hearing. We will not ordinarily allow you to submit evidence after that time unless there are very good reasons.
- 5.5 To help us to understand what decision you want us to make, you may send us a written summary of your position no later than 7 days before the Hearing.
- 5.6 If you send us any further information or evidence, or a summary of your position, you must also send a copy to the Agency. If you need help to send documents to the Agency, your Contact Officer can help you.

What the Agency must do

- 5.7 The Agency must give us any further relevant information or evidence no later than 14 days before the Hearing. We will only allow the Agency to submit material after that time if the material was not previously in its possession or if there are very good reasons. The Agency must send you and us, as soon as practicable, any relevant documents that come into its possession before our decision is made.
- 5.8 The Agency may send us and you a written summary of its position no later than 7 days before the Hearing.

6. Conciliation

- 6.1 If your Case Plan includes Conciliation, it will usually be scheduled within 4 weeks after you Case Conference. Conciliation is a form of alternative dispute resolution that will be used when we review National Disability Insurance Scheme decisions.

What we will do

- 6.2 Your Contact Officer will confirm the date, time and place of the Conciliation and will discuss what you need to do to be ready.
- 6.3 At the Conciliation, an AAT Conference Registrar or Member will work with you and the Agency to help you reach agreement if possible.
- 6.4 If you and the Agency reach agreement, we will record your agreement in writing.
- 6.5 If you do not reach agreement, or only reach agreement about some parts of your application, we will confirm the date and place of the Hearing. We will record this on your Case Plan and send you a copy.

What you must do

- 6.6 You must do all of the things that the Case Plan requires you to do before the Conciliation, and come to the Conciliation willing and prepared to reach agreement with the Agency if possible.
- 6.7 If there is any information you have not already given us about your application, you must bring it to the Conciliation.

What the Agency must do

- 6.8 The Agency must do all of the things that the Case Plan requires them to do before the Conciliation and come to the Conciliation willing and prepared to reach agreement with you if possible.
- 6.9 The Agency must ensure that their representative at the Conciliation will have full authority to settle the case if agreement is reached.

7. The hearing

- 7.1 The hearing is an opportunity for you and the Agency to tell your sides of the case to an AAT Member who will make a decision.

What we will do

- 7.2 Your Contact Officer will contact you between 7 and 14 days before the Hearing to confirm the date, time and place of the Hearing and discuss what will happen at the Hearing. At the Hearing, the Member will ask you about your application and what decision you want. The Member will ask the Agency to do the same.
- 7.3 The Member will consider all of the information that you and the Agency present. Generally, this will mean the documents you and the Agency have provided about your case. You and the Agency have the right to call witnesses but often that will be unnecessary. The Member will usually only hear from other persons such as family members, carers, doctors or other experts if you or the Agency want and ask for that.
- 7.4 The Member will control the procedure in the Hearing, which will be as informal as possible. We will not allow the formalities that usually apply in courts. The rules of evidence that apply in courts do not apply in the AAT. We will consider all the evidence that is relevant to the issues to be determined unless there is a legal reason why we cannot consider it.

- 7.5 If there are expert witnesses, such as specialist doctors, we will expect them to give their evidence at the same time. For more information about this, see the Use of Concurrent Evidence in the AAT Guideline.
- 7.6 The Member will give you a decision at the end of the Hearing if that is possible. If he or she cannot make a decision immediately, the Member will write his or her decision and we will send it to you as soon as possible. Even if your case involves novel or complex issues, we will give you our decision no later than 60 days after the Hearing.

What you must do

- 7.7 You must do everything that the Case Plan requires you to do before the Hearing and be ready to proceed on the day of the Hearing.
- 7.8 You must give us any further documents or evidence you want us to consider no later than 14 days before the Hearing. We will only allow you to submit documents after this time if there are very good reasons.
- 7.9 If you wish to send us a written summary of your position, you should do so no later than 7 days before the Hearing.
- 7.10 You must make sure any witnesses who will give evidence at the Hearing on your behalf will be available on the day and at the time of the Hearing.
- 7.11 If you send us any additional material, or a summary of your position, you must send a copy to the Agency as well. If you need help to send documents to the Agency, your Contact Officer can help you.

What the Agency must do

- 7.12 The Agency must:
- do all of the things that the Case Plan requires to be done before the Hearing;
 - be ready to proceed on the day of the Hearing;
 - send you and us any further documents or evidence in the Agency's possession at least 14 days before the Hearing. We will only allow the Agency to submit documents already in its possession after this time if there are very good reasons;
 - send you and us any relevant documents that come into the Agency's possession after this time, as soon as practicable, up until our decision is made;
 - send you and us a copy of a summary of their position no later than 7 days before the Hearing;
 - send you and us a list of any cases they will refer to during the Hearing at least 2 days before the Hearing; and
 - make sure any witnesses who will give evidence at the Hearing are going to be available on the day and at the time of the Hearing.

8. Other matters

Adjournments

- 8.1 You and the Agency must be ready to proceed on the day of the Case Conference, Conciliation or Hearing. We will only grant an adjournment if there are very good reasons to do so.

If you do not attend, or do not comply with directions

- 8.2 If you fail to attend a Case Conference, Conciliation or Hearing, or do not do something we have directed you to do, and you do not have a good reason, we may dismiss your application.

Directions hearings

- 8.3 Sometimes we will need to have a Directions Hearing to discuss with you and the Agency how best to proceed. If this happens, we will contact you and the Agency to tell you why we think a Directions Hearing is needed and to arrange a suitable time.
- 8.4 You or the Agency may request a Directions Hearing at any time. A request for a Directions Hearing should be in writing and explain why a Directions Hearing is necessary. Directions Hearings are normally held by telephone.

Consent decisions

- 8.5 You and the Agency can come to an agreement about your application at any stage of the review. If this happens, the Agency will record your agreement in writing and send you a copy to sign. If we are satisfied with the agreement, we will make written orders and send you a copy. If we think there is a problem with the agreement, we will contact you and the Agency to discuss the problem.

Justice Duncan Kerr
President

30 June 2015