



Australian Government

**Department of Families,
Housing, Community Services
and Indigenous Affairs**

Part C: Application Information for the External Merits Review – Support Component

Preface

The Australian Government Department of Families, Housing, Community Services and Indigenous Affairs (or the Department) has a suite of documents (the **Program Guideline Suite**) which provide information relating to the program. They provide the key starting point for parties considering whether to participate in the program and form the basis for the business relationship between FaHCSIA and the funding recipient.

They are:

- **Part A: Program Guidelines** which provides an overview of Program and the Activities relating to the program;
- **Part B: Information for Applicants** which provides information on the Application, Assessment, Selection and Complaints processes; Financial and Funding Agreement arrangements.
- **Part C: Application Information** provides specific information on the Activity, Selection Criteria, Performance Management and Reporting. This part should be read in conjunction with the [Terms and Conditions of the Standard Funding Agreement](#).
- The **Application Form** which is completed by applicants applying for funding during a selection process.

FaHCSIA reserves the right to amend these documents from time to time by whatever means it may determine in its absolute discretion and will provide reasonable notice of these amendments.

Table of Contents

PREFACE	2
1 PROGRAM OVERVIEW	4
1.1 PROGRAM OUTCOMES	4
1.2 OBJECTIVES	5
2 ACTIVITY OVERVIEW	6
2.1 EXTERNAL MERITS REVIEW - SUPPORT COMPONENT (SUPPORT PERSONS AND LEGAL SERVICES)	6
2.2 SUPPORT PERSONS' ROLE	7
2.3 AIMS AND OBJECTIVES	7
2.4 SERVICE PROVIDER ELIGIBILITY	7
2.5 PARTICIPANTS/CLIENTS/RECIPIENTS/TARGET GROUP	8
2.6 FUNDING FOR THE ACTIVITY	8
2.7 ELIGIBLE AND IN-ELIGIBLE ACTIVITIES	9
2.8 ACTIVITY LINKS AND WORKING WITH OTHER AGENCIES AND SERVICES	10
2.9 SPECIALIST REQUIREMENTS (E.G. LEGISLATIVE REQUIREMENTS)	10
2.10 INFORMATION TECHNOLOGY	10
2.11 ACTIVITY PERFORMANCE AND REPORTING	11
2.12 COMPLAINTS ABOUT ADVOCACY AGENCIES AND LEGAL SERVICES	11
3 APPLICATION PROCESS	13
3.1 OVERVIEW OF THE APPLICATION PROCESS	13
3.2 SELECTION CRITERIA	13
4 CONTACT INFORMATION	14

PROGRAM OVERVIEW

The Australian Government helps to support people with disability, their families and carers, through the provision of income support payments and allowances (including Disability Support Pension, Carer Payment and Carer Allowance) and support services for people with disability and their carers.

The Services and Support for People with Disability Program provides support to people with disability, their families and carers, through grants and funding to organisations that deliver services for people with disability.

Under Services for People with Disability, the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) funds a number of services for people with disability and their carers, including supported employment services, advocacy, a national booking service for Auslan interpreting services, print disability services, respite services, services to make the community more accessible, supported accommodation for people with disability, leadership support for people with disability and outside school hours care for teenagers with disability.

The Australian Government will continue to work with the states and territories on the launch of the National Disability Insurance Scheme, and toward the full roll-out of the scheme. This work will include implementation and evaluation of the launch, monitoring performance, developing further long-term policy for the scheme and supporting change in the disability sector and its workforce.

In 2012–13, key developments towards a national scheme included the passage of the *National Disability Insurance Scheme Act 2013* and the establishment of the National Disability Insurance Agency.

As well, agreements were achieved with the states and territories on launch design and for launch sites from July 2013 in the Barwon area of Victoria, the Hunter area in New South Wales, Tasmania and South Australia, and from July 2014 in the Australian Capital Territory, the Barkly region of the Northern Territory and the Perth Hills area in Western Australia.

From 2013–14, this initiative will see about 26,000 people with significant and permanent disability, their families and carers benefit from this first stage of the scheme. The launch will enable governments to learn from experience and feedback from participants, their families and carers, service providers and community organisations. This experience can then inform the policy and delivery of the full scheme.

FaHCSIA will also continue to work with the states and territories to implement the National Disability Strategy 2010–2020 to bring about change in all mainstream and specialist services and programs, as well as community infrastructure, to ensure that they are accessible and responsive to the needs of people with disability.

In addition to this work, FaHCSIA will continue to progress initiatives under the National Carer Strategy.

1.1 Program Outcomes

Outcome 5 – Disability and Carers

To provide an adequate standard of living, improved capacity to participate economically and socially and manage life-transitions for people with disability and/or mental illness and carers through payments, concessions, support and care services.

1.2 Objectives

Outcome 5.4 - Services and Support for People with Disability

To provide supported employment and improve access to information, advocacy and services for people with disability so they can develop their capabilities and actively participate in community and economic life.

Services for People with Disability

To provide social support and community-based care for people with disability, their carers and their families, to promote independence, self-reliance and participation in the community.

2 Activity Overview

From 1 July 2013, the National Disability Insurance Scheme will launch in the Barwon area of Victoria, the Hunter area in New South Wales, Tasmania and South Australia, and from July 2014 in the Australian Capital Territory, the Barkly region of the Northern Territory and the Perth Hills area in Western Australia (the launch sites).

The National Disability Insurance Scheme will provide long-term, high quality individualised care and support that is reasonable and necessary to meet the needs of people with permanent disability, where their disability significantly affects their communication, mobility, self-care or self-management. This may include an individual plan and an individually funded package.

The Australian Government has established the National Disability Insurance Agency that will implement the first stage of the scheme. The National Disability Insurance Agency will work closely with people with disability, governments, representative organisations, service providers and participating communities in launch sites to ensure the transition to the new arrangements take account of local needs and experience.

The *National Disability Insurance Scheme Act 2013* creates the framework for the National Disability Insurance Scheme, including eligibility criteria, age requirements, and what constitutes reasonable and necessary support. The framework set up by the legislation will be supported by detailed rules that keep it flexible and allow it to be adapted.

The aim of external merits review is to ensure the National Disability Insurance Agency decisions are fair and robust. The Administrative Appeals Tribunal (AAT) is the external merits body for the launch phase of the National Disability Insurance Scheme. To ensure the external merits review process is accessible and as non-adversarial as possible for people with disability, the Government has established a designated division of the AAT, a fee waiver for applicants seeking a review of National Disability Insurance Agency decisions, and support services (the support component).

2.1 External Merits Review - Support Component (Support Persons and Legal Services)

The support component provides support persons to assist applicants in navigating the process of AAT review of National Disability Insurance Agency decisions. The support person's role may involve attending AAT conferences and hearings with applicants, fostering self-advocacy for applicants to put their own cases before the AAT, or providing individual advocacy in cases where the person is unable to self-advocate.

Funding will be directly provided to one existing National Disability Advocacy Program (NDAP) agency in each launch site for the provision of support persons.

While the focus is on non-legalistic self-advocacy services, there may be some cases where there is a legitimate need for applicants to access legal services; those cases which raise complex or novel legal issues.

Recognising this, the support component also provides capped funding to legal aid commissions in launch sites.

To ensure that assessments of eligibility for legal services are handled consistently and by persons with appropriate legal expertise, a central assessment provider (the CAP) is available. Applicants would primarily be referred to the CAP by the AAT or the support persons. The CAP role will be undertaken by FaHCSIA Legal Branch.

The CAP will determine whether a case is complex or novel and thus eligible for legal services through the legal aid commissions. There will only be a small number of cases that will satisfy the criteria for assistance (which are that a case raises complex or novel legal issues).

The majority of National Disability Insurance Agency decisions that will be subject to review are likely to relate to the application of eligibility criteria to individual circumstances (entailing questions of fact rather than law) or to decisions about the content of participants' plans (entailing subjective assessments of individuals' circumstances rather than complex or novel legal questions). Clause 99 of the *National Disability Insurance Scheme Bill 2012* sets out which decisions are subject to review. Of these, a small number are expected to potentially raise complex or novel legal issues – for example, decisions about who is to speak on behalf of a child participant (clause 74 of the Bill) may potentially raise complex legal issues, and decisions about compensation issues (clauses 111 and 116 of the Bill).

If legal services are provided, the support person would, subject to the applicant's agreement, continue to support the applicant through the AAT process.

2.2 Support Persons' Role

The support person will:

- foster self-advocacy (supporting individuals to put their own case before the AAT);
- where self-advocacy is not appropriate, provide individual advocacy support, developing and implementing an individual plan in partnership with the applicant;
- assist applicants to navigate the process of seeking AAT review of National Disability Insurance Agency decisions, including preparing documents, attending conferences and hearings;
- refer to the CAP where legal issues are highlighted for a determination to be made as to whether legal services are warranted (for complex or novel legal cases);
- provide information about the availability and role of the support person; and
- conduct individual or group self-advocacy sessions.

Funding through the External Merits Review - Support Component is not available for National Disability Insurance Agency applicants or participants prior to their application for review in the AAT. The support person will be available for the applicant from the time they apply to the AAT. All applicants seeking a support person will be seen within five days of contacting the service provider.

2.3 Aims and objectives

The objective is to ensure that all people with disability and other affected persons have access to support when they are seeking review in the AAT of National Disability Insurance Agency decisions through:

- access to a support person; and
- access to legal services in circumstances where a case raises complex or novel legal issues.

2.4 Service provider eligibility

FaHCSIA will identify one high performing advocacy agency in each launch site who is a provider under the NDAP for the provision of support persons.

Eligible organisations for funding for the NDAP are defined in section 7 of the *Disability Services Act 1986*.

This covers the following entity types:

- a) Incorporated Associations (incorporated under State/Territory legislation, commonly have 'Association' or 'Incorporated' or 'Inc' in their legal name);
- b) Incorporated Cooperatives (also incorporated under State/Territory legislation, commonly have "Cooperative" in their legal name);
- c) Companies (incorporated under the Corporations Act 2001 – may be not-for-profit or for-profit proprietary company (limited by shares or by guarantee) or public companies);

- d) Aboriginal Corporations (incorporated under the Corporations (Aboriginal and Torres Strait Islander) Act 2006);
- e) Organisations established through a specific piece of Commonwealth or State/Territory legislation (many public benevolent institutions, churches, universities, unions etc);

Service Providers are eligible for providing **legal services** if they are a legal aid commission in each of the launch sites, or a legal practitioner engaged pursuant to existing arrangements for legal aid commissions.

2.5 Participants/clients/recipients/target group

A person who is directly affected by a reviewable decision by National Disability Insurance Agency may request review by the AAT under s103 of the *National Disability Insurance Scheme Act 2013*.

Applicants will access the External Merits Review - Support Component once they have exhausted all avenues of review in the National Disability Insurance Agency and have made an application to the AAT. Upon application to the AAT, a participant will be made aware of the availability of a support person.

The primary participant group for External Merits Review - Support Component will be people with disability, but applicants may also be guardians and nominees of people with disability and carers and family members of people with disability. The External Merits Review - Support Component will not be available to service providers.

Legal services will only be available if it is determined that the case raises complex or novel legal issues. The participant will be advised if legal services are available to them after an assessment is made by the CAP.

The External Merits Review - Support Component requires the delivery of a fair and equitable service that includes those from culturally and linguistically diverse or Indigenous backgrounds, and from regional or remote localities.

All disability advocacy agencies funded under NDAP have a responsibility to provide disability advocacy support to Aboriginal and Torres Strait Islanders and to people from diverse cultural and linguistic backgrounds. Under the NDAP, funding is provided to some agencies that specialise in providing advocacy support to people from an Aboriginal or Torres Strait Islander background, from a culturally and linguistically diverse background, or with a specific type of disability. These specialist agencies act in an advisory capacity to assist the generalist agencies to provide culturally appropriate disability advocacy support.

2.6 Funding for the activity

Funding under the External Merits Review - Support Component for 2013–17 will be around \$2.5 million. This comprises funding for support persons and for legal services.

Funding for the Support Person

The funding for the support person, through the NDAP agencies selected in the launch sites will be separate from other advocacy funding provided to NDAP agencies. Agencies will be provided with the funding to meet the costs of employing a support person (and other eligible costs as per 2.5) through twice yearly payments. Agencies will initially be provided with a funding agreement for 2013–16 as the number of people with disability seeking assistance is expected to change as new bilateral agreements with the states and territories are negotiated.

The funding will be distributed based on potential numbers of people in launch sites and a percentage of those likely to seek review in the AAT.

The funding currently available for the launch sites for 2013–17 is:

Barwon area of Victoria - \$557,233.00
Hunter area in New South Wales - \$437,848.70
Tasmania - \$182,399.20
South Australia - \$272,208.70
Australian Capital Territory (2014–17) - \$102,849.20

Other areas that will become part of the launch from 2014 have yet to be costed, including the Barkly region of the Northern Territory and the Perth Hills area in Western Australia.

Funding for the support person will be provided subject to NDAP agencies:

- Signing a Funding Agreement and complying with the Terms and Conditions of the grant of financial assistance;
- complying with the *Disability Services Act 1986*;
- meeting all other relevant legislative requirements;
- meeting all performance requirements; and
- complying with these Program Guidelines.

Funding for legal services

Funding for legal services (payable to the legal aid commission, not the applicant) will be made available where a case is determined by the CAP to raise complex or novel legal issues.

The capped legal services funding available per applicant is \$6,720.00 (GST exclusive), which is payable to the legal aid commissions - to cover their costs in running a case - monthly in arrears. This excludes the provision of expert reports that may be required. In those cases a determination will be made by the legal aid commission and the CAP and additional funds (up to a capped amount of \$2,000 per applicant) will be made available.

The estimate for the average cost of legal services for cases raising complex or novel legal issues would be \$883,280.00 (GST exclusive) over the four year period (2013–17).

This includes:

- 44 cases in 2013–14;
- 39 in 2014–15;
- 40 in 2015–16; and
- 1 in 2016–17.

Funding to the legal aid commissions will be provided subject to them:

- Signing a Memorandum of Understanding with FaHCSIA;
- meeting all relevant legislative requirements;
- meeting all performance requirements; and
- complying with these Program Guidelines.

2.7 Eligible and in-eligible activities

The funding provided to the NDAP agencies may be used for:

- staff salaries and on-costs which can be directly attributed to the provision of support persons in the identified service area or areas as per the Funding Agreement;

- operating and administration expenses directly related to the delivery of support persons, such as:
 - telephones;
 - rent and outgoings;
 - computer/IT/website/software;
 - insurance;
 - utilities;
 - postage;
 - stationery and printing;
 - accounting and auditing;
 - travel/accommodation costs; and
 - motor vehicle purchase or lease.

The funding provided to legal aid commissions may be used to cover all the legal costs in running a case in the AAT in the identified service area as per the Memorandum of Understanding.

The funding provided under the External Merits Review – Support Component may **not** be used for:

- the provision of a support person or legal services for the National Disability Insurance Agency internal review; and
- the provision of a support person or legal services in jurisdictions beyond the AAT.

2.8 Activity links and working with other agencies and services

The support persons and legal aid commissions in each launch site will be required to work with each other, the AAT, FaHCSIA, the Attorney-General's Department and the National Disability Insurance Agency.

The support persons and legal aid commissions may be asked to participate in a steering committee to provide direction on the implementation and evaluation of the External Merits Review - Support Component.

2.9 Specialist requirements (e.g. Legislative requirements)

The policy and implementation of the External Merits Review - Support Component is guided by the principles and objectives of key legislation, conventions, agreements and frameworks, including but not limited to: the United Nations Convention on the Rights of Persons with Disabilities; the National Disability Strategy; the National Disability Agreement, the National Disability Advocacy Framework; the *National Disability Insurance Scheme Act 2013* and the *Disability Services Act 1986* (the DSA).

NDAP agencies receive funding under the DSA. The DSA and its associated principles and objectives have a focus on outcomes for people with disability. All disability advocacy agencies funded under the NDAP must comply with the DSA, including the Disability Advocacy Standards.

The legal aid commissions must comply with all relevant legislation, standards and guidelines.

2.10 Information technology

Funding recipients are expected to ensure they have suitable information technology systems in place to allow them to meet their data collection and reporting obligations.

2.11 Activity performance and reporting

FaHCSIA Standard Performance Framework requires that all Standard Funding Agreement Schedules include a set of performance indicators which can be used to measure and report on the performance of the funded activities.

FaHCSIA will monitor the outcomes and service provider performance. Reporting is based on achieving the activity outcomes. Data will be collected directly from service providers and through external evaluation processes, from people with disability and other affected persons. As the External Merits Review - Support Component will be evaluated in 2015, there have been a number of data collection questions devised to test the process and design and the outcomes – through objective and experiential measures.

Performance indicators will focus on the following questions:

1. Did it make a difference (outcomes) – e.g. percentage and number of applicants reporting that they were satisfied with the support and services received;
2. How well is it being done (quality) – e.g. percentage and number of individuals from Indigenous and culturally and linguistically diverse backgrounds;
3. How much is being done (deliverables/outputs) – e.g. number of individuals assisted with a support person or legal assistance.

Service providers are required to submit to FaHCSIA a range of reports as part of government reporting and accountability requirements. In applying the proportionality principle in determining the reporting and acquittal requirements for this activity, consideration has been given to the current arrangements in place for the service providers (through existing agreements) recognising a consistent record of high performance and reliability and the policy outcomes being sought. The reporting requirements include quantitative, qualitative and milestone information and are:

- a yearly performance report against the performance indicators;
- a yearly report (quantitative) summarising individual client data (de-identified) that covers disability type, location, and nature of assistance provided. A template will be provided with the funding agreement;
- a yearly qualitative report; and
- a yearly non-audited financial acquittal report.

2.12 Complaints about advocacy agencies and legal services

NDAP agencies are required to have processes in place to manage complaints in a positive, timely and fair way. Initially, complaints (from consumers or others) should be raised directly with the disability advocacy agency.

Although most complaints should be handled by the disability advocacy agency in the first instance, particular complaints will require an external referral such as complaints of a serious or sensitive nature that cannot be handled by the disability advocacy agency. These may include allegations of assault or abuse and neglect which should be referred to police.

If a satisfactory resolution is not reached through the agency's internal complaints system, or if the complainant prefers to raise the matter with an independent agency, the complaint can be referred to the Complaints Resolution and Referral Service (CRRS) which is an independent service, funded by the Australian Government for complaints about services funded under the DSA. CRRS can be contacted on 1800 880 052 and further information can be found on the CRRS website at: www.crrs.org.au.

Each legal aid commission has a complaint process in place that outlines how matters relating to them will be dealt with. If a person is not satisfied with the outcome of their complaint by the legal aid commission they can contact the Ombudsman or the Legal Services Commission for that state or territory.

For general guidelines on complaints refer to Section 6 of Part B of the Program Guidelines Suite.

3 Application Process

3.1 Overview of the Application Process

The process for selecting NDAP providers and legal service providers in the launch sites will be a direct selection process.

The process selected has been informed by consideration of the policy outcomes being sought; the purpose and value of the grant; the nature and type of deliverables; the nature and level of the risks involved; the timeframe for delivery; the specific location of the service provision; and the capability of service providers. The direct process selected for the launch phase offers the opportunity to deliver in the launch sites with known, low risk and high performing providers.

3.2 Selection Criteria

Support Person

The support person role will be provided through **one** high performing, currently funded NDAP agency in each launch site. FaHCSIA will directly select a single agency in each launch site, based on a range of criteria (all criteria are weighted equally):

- currently funded NDAP provider. This direct approach achieves value with public money as it uses an existing provider and therefore there is a lower administrative cost in implementing this measure - an efficient, effective, economical and ethical use of Commonwealth resources;
- risk –the agency must be assessed as ‘low risk’ against the FaHCSIA Service Provider Risk Assessment. This tool considers a range of elements which include financial management, governance, and issues management;
- reporting – the service provider must have met all milestones for performance, data and financial reporting against their existing FaHCSIA Funding Agreement Schedule;
- performance – the agency must have demonstrated their ability to respond to new initiatives and measures introduced by FaHCSIA; expand to meet new service delivery requirements; have demonstrated flexibility and responsiveness in meeting FaHCSIA’s requests; and have demonstrated an ability to problem solve and adjust their service delivery approach to meet the needs of people with disability;
- timeframe – there is urgency in the timing of the delivery of this measure as the National Disability Insurance Scheme launch will commence on 1 July 2013 and the agreement with providers will need to be in place before appeals begin flowing to the AAT. The agency must have capacity to deliver the services within the timeframe for implementation; and
- quality assurance – must have achieved certification in the NDAP Quality Assurance system and have demonstrated compliance against the Disability Advocacy Standards.

Legal Services

Legal services will be provided by the legal aid commissions in each launch site on the basis of their:

- existing reporting arrangements with government and existing data collection in place which can be enhanced at no cost. This will enable the collection of standardised data by legal aid commissions to accurately reflect the requirements of applicants receiving legal advice and representation;
- relevant experience in providing services to people with disability and existing expertise in working in an AAT environment. This proven capability and experience reduces the lead time necessary for the service provider to understand the full scope of the work;
- national coverage and a physical presence in each launch sites;

- ability to draw on existing expertise within their services - able to consult with other legal assistance providers, including the National Association of Community Legal Centres and the Aboriginal and Torres Strait Islander Legal Services (ATSILS) as required. As Indigenous Australians have significantly higher disability rates than non-Indigenous Australians, the ATSILS provide culturally appropriate services nationally and would be best equipped to provide assistance;
- the high likelihood of the legal aid commissions being approached for grants of assistance for many people seeking AAT review and their agreement to the limited funding for complex or novel matters (funding is capped at \$6,720 per case);
- time available for conducting a selection process – there is urgency in the timing of the delivery of this measure as the National Disability Insurance Scheme launch will commence on 1 July 2013 and the agreement with providers will need to be in place before appeals begin flowing to the AAT;
- this approach allows for standardised training to be provided as well as ensuring consistent advice and representation to applicants during the National Disability Insurance Scheme launch stage, and feedback on the process to FaHCSIA; and
- value with public money – as existing providers there is a lower administrative cost in implementing this measure, therefore this is an efficient, effective, economical and ethical use of Commonwealth resources.

The final recommendation for service providers will be made by the Manager, External Merits Review, following recommendations from each FaHCSIA state office in the launch sites. The final approval of service providers will be made by the Branch Manager, Disability and Carers Payments Policy, as Delegate under the *Financial Management and Accountability Act 1997*.

The selected service providers will be informed directly in writing.

4. Contact information

For further information, contact FaHCSIA:

Manager
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