

National Disability Insurance Agency Decision Reviews in the Administrative Appeals Tribunal

Guidelines for the assessment of applications for NDIS Appeals legal services funding 1 January 2018 to 31 December 2018

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Part 1 - Assessment role

1. In a Legal Aid Commission (LAC) in the relevant State or Territory the role of officers making NDIS Appeals legal services funding assessment (LAC Grants Officers) is:
 - i) to determine, having regard to these Guidelines, whether or not legal representation will be funded with respect to applications made to the Administrative Appeals Tribunal (AAT) by:
 - a) National Disability Insurance Scheme (NDIS) participants seeking review of decisions of the National Disability Insurance Agency (NDIA),
and
 - b) applicants seeking review of NDIA decisions refusing their participation in the NDIS,
and
 - ii) having determined that a matter will be funded, to arrange legal representation for such applicants at the discretion of the LAC.

Part 2 - Applying for NDIS Appeals Legal Services Funding

- 2.1 An application must be lodged with the AAT before a matter will be assessed and funding for legal services to the AAT applicant made available.
- 2.2. An application for funding for legal representation (LAC funding application) must be lodged with the relevant LAC by submitting a completed and signed Application Form, and should include the following documents:
 - the NDIA decision in dispute;
 - any application to the AAT for a review of an NDIA decision together with supporting documents;
 - any NDIA internal review decision, and
 - any other relevant supporting documentation (including the most recent plan, if the applicant is a participant).
- 2.3 The relevant LAC is the one located in the state or territory in which the applicant resides.
- 2.4 The Application Form, when completed and signed by the applicant



or their legal guardian, shall be the consent for the LAC to seek disclosure of information about the applicant from the NDIA and other service providers for the purposes of assessing the applicant's request for funding of legal representation.

- 2.5 The Application Form may be accessed from the Department of Social Services (DSS) website and from the websites of the LACs.
- 2.6 LAC funding applications are not subject to means testing, and no contribution towards the cost of the LAC providing legal services is recoverable from applicants.


Part 3 - Funding for complex or novel matters

- 3.1 Funding for legal services may be granted in circumstances where LAC Grants Officers decide that a matter raises a complex or novel legal issue.
- 3.2 Where LAC Grants Officers decide that a matter raises a complex or novel legal issue, and funding is approved, it will be a matter for the relevant LAC, in its discretion, to determine the nature and extent of appropriate legal services, and to make such provision.
- 3.3 The use of funds by Commissions will be in accordance with the agreement between DSS and each LAC in relation to the provision of NDIS Appeals legal services.
- 3.4 The LAC Grants Officers will inform the AAT applicant (or guardian, if applicable) in writing of the outcome of their LAC funding application within 30 days of its receipt.
- 3.5 Upon appointment, the LAC appointed lawyer shall in writing inform the NDIA and the AAT that they represent the applicant.

Part 4 - Complex or novel factors

- 4.1 An LAC Grants Officer may, with the consent of the AAT applicant (or their legal guardian), obtain information and documents about the matter from the NDIA for the purpose of assessing whether the matter raises a complex or novel legal issue.
- 4.2 The factors to which an LAC Grants Officer may have regard in making a decision that a matter raises a complex or novel legal issue may include, but are not limited to, the following:

Factors relating to the National Disability Insurance Scheme Act 2013 (NDIS Act) and rules

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- a) Whether interpretation or application of a provision under NDIS Act, or rules made under the NDIS Act (rules):
 - i. has been considered and fully addressed by the AAT or a court;
 - ii. is not comparable to another provision that has been considered and fully addressed by the AAT or a court;
 - iii. is not well understood or does not have an obvious meaning, including where there is ambiguity.
 - b) The evidence base (including where there is limited or no evidence base) in relation to a disability, therapy or support.

Factors relating to the administration of the National Disability Insurance Scheme (NDIS)

- c) Whether a decision in relation to the matter:
 - i. will clarify an uncertain or contentious area of law in relation to the NDIS Act or rules or the application of policy;
 - ii. will resolve an important question of law arising under the NDIS Act or rules;
 - iii. may result in improvements or beneficial changes to the administration of the NDIS;
 - iv. is likely to affect a significant number of participants in the NDIS.

Other considerations

- d) If a case is determined to raise a complex or novel issue, the LAC Grants Officers may also have regard to the following considerations:
 - i. the reasonable prospect of success of the application to the AAT;
 - ii. the number and relative merits of other applications for funding for legal services;
 - iii. good use of public money;
 - iv. whether the application is frivolous or raises only speculative arguments.
- e) The merit of a matter is not determinative of whether it raises a complex or novel legal issue.
- f) The LAC Grants Officers may determine the weight to be given to relevant factors.

Part 5 - Financial considerations

- 5.1 When assessing LAC funding applications and determining if a matter will be funded for the provision of legal services, the LAC will comply with all obligations under the grant agreement with DSS and as outlined in these Guidelines.
- 5.2 The LAC Grants Officers must have regard to financial considerations including, but not limited to, the following:
- a) the availability of funds, in any given year, under the relevant grant of funding;
 - b) the number and relative merits of matters likely to be funded from the relevant appropriation.

Part 6 - Reconsideration of Legal Services funding decisions

- 6.1 A decision that a case does or does not raise a complex or novel legal issue is not a decision under the NDIS Act and accordingly is not a reviewable decision under that Act.
- 6.2 If an applicant is not satisfied with the outcome of their LAC funding application they may make a request, in writing, for the decision to be reconsidered. A request for reconsideration of a decision must be made in accordance with the relevant LAC's review processes, and will not involve an LAC Grants Officer involved in the original decision.