

Review of National Disability Insurance Agency decisions in the Administrative Appeals Tribunal

Central Assessment Provider Guidelines for Assessment of Complex or Novel Matters

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Part 1 - Central Assessment Provider (CAP) role

- 1.1 The role of the CAP is to decide, on referral and having regard to these guidelines, whether applications to the Administrative Appeals Tribunal (**AAT**) to review decisions of the National Disability Insurance Agency (**NDIA**) (referred to in these Guidelines as **matters**) raise complex or novel legal issues..
- 1.2 The CAP role will be performed by designated officers within DSS Legal (**CAP Officers**).

Part 2 - Making a referral to the CAP

- 2.1 An application must be lodged with the AAT before a matter will be assessed by a CAP Officer and funding for the provision of legal services to the AAT applicant made available.
- 2.2 A matter may be referred to the CAP by an AAT applicant's External Merits Review Support Person or by a Legal Aid Commission or other legal representative of the AAT applicant.
- 2.3 A referral must be made in writing by submitting a completed **Referral for Assessment of Complex or Novel Legal Issues** form to DSS.
- 2.4 The AAT applicant (or his or her legal guardian) must give written consent to the referral and the disclosure of information and documents required in order for the CAP to assess whether the matter raises a complex or novel legal issue (consent is a required component of the referral form).
- 2.5 Referrals can be submitted to DSS by email to: centralassessmentprovider@dss.gov.au or by post to:

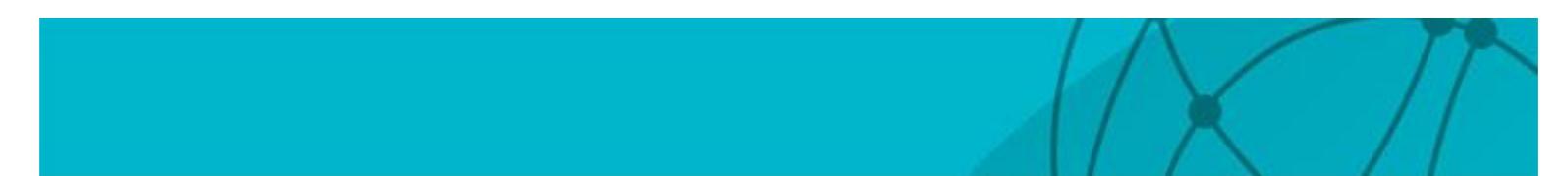
Central Assessment Provider
Department of Social Services (DSS)
Public Law Branch, TOP CW2
PO Box 7576
Canberra Business Centre ACT 2610

Part 3 - Funding for complex or novel matters

- 3.1 Funding for the provision of legal services is available in circumstances where a CAP Officer decides that a matter raises a complex or novel legal issue, and financial approval is granted by the Department of Social Services (DSS) delegate with responsibility for policy oversight of the External Merits Review – Support Component.
- 3.2 Where a CAP Officer decides that a matter raises a complex or novel legal issue, and funding is subsequently approved by the delegate, the matter will be referred by the CAP to the Legal Aid Commission (**Commission**) in the relevant State or Territory. A capped amount of funding will be made available by DSS to that Commission, for use in providing legal services to the AAT applicant. Limited additional funding may be made available to a Commission for expert reports.
- 3.3 The use of funds by Commissions (including any additional funds provided by DSS for expert reports) will be in accordance with the agreement between DSS and each Commission in relation to the review of National Disability Insurance Agency (NDIA) decisions in the AAT.
- 3.4 Once a matter has been referred by a CAP Officer to the relevant Commission, it will be a matter for that Commission to determine and provide appropriate legal services.
- 3.5 The CAP Officer will inform the AAT applicant, in writing, of the decision whether a matter raises a complex or novel legal issue and whether funds for the provision of legal services will be made available to the relevant Commission. The decision will be notified to the AAT applicant within 30 days of receipt of a referral. If additional time is considered necessary to make a decision, the CAP Officer will advise the AAT applicant of this and the extended timeframe for making a decision. Any dates that have been set by the AAT will also be taken into account where possible.
- 3.6 The CAP officer will inform the NDIA, AAT and the AAT applicant's External Merits Review Support Person, in writing, of the outcome of the application.

Part 4 - Complex or novel factors

- 4.1 A CAP Officer may, subject to the consent of the AAT applicant (or his or her 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 a CAP Officer may have regard in making a decision that a matter raises a complex or novel legal issue include, but are not limited to, the following:

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

- a) Whether interpretation 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

- 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;
 - ii. will resolve an important question of law arising under the NDIS Act or rules;
 - iii. is likely to 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) In considering whether an AAT decision in relation to a matter will settle an uncertain or contentious area of law or resolve an important question arising under the NDIS Act or rules, a CAP Officer may have regard to relevant available supporting information including:
 - i. any views of the applicant set out in the Referral for Assessment of Complex or Novel Legal Issues;

- ii. the views of relevant State or Territory government agencies;
 - iii. a report of a Parliamentary Committee, commission of inquiry or group with a special interest in the law.
- e) The merit of a matter is not determinative of whether it raises a complex or novel legal issue. However, a CAP Officer must have regard to whether the appeal is frivolous or raises only speculative arguments and whether the matter is likely to proceed to hearing.
- f) The CAP Officer may decide the weight to be given to relevant factors.

Part 5 - Financial considerations

- 5.1 When deciding whether to give financial approval for referral of a matter, the DSS delegate will comply with all obligations under the *Public Governance, Performance and Accountability Act 2013*.
- 5.2 The DSS delegate, with input from the CAP Officer as appropriate, may have regard to financial considerations including, but not limited to, the following:
- a) the availability of funds, in any given year, under the relevant appropriation;
 - b) the number and relative merits of other matters referred to the CAP for assessment and funding from the relevant appropriation;
 - c) the number and relative merits of matters likely to be funded from the relevant appropriation.

Part 6 - Review of CAP 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 *National Disability Insurance Scheme Act 2013* and accordingly is not a reviewable decision under that Act.