



Australian Government
Department of Social Services

Operational Guidelines for the NDIS Appeals Program
(January 2023)

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1. Introduction

1.1 Activity Overview

The National Disability Insurance Scheme (NDIS) provides 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.

The Australian Government has established the National Disability Insurance Agency (NDIA) to administer the NDIS.

The *National Disability Insurance Scheme Act 2013* creates the framework for the NDIS, including eligibility criteria, age requirements, what constitutes reasonable and necessary support, and review of decisions.

The aim of NDIS Appeals is to ensure the NDIA decisions are fair and robust. The Administrative Appeals Tribunal (AAT) is the external merits body for the NDIS. 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 NDIA decisions, and support services (NDIS Appeals Program)

1.2 Why is disability advocacy important?

The primary purpose of disability advocacy is to protect and uphold the human rights of people with disability. This involves:

- acting in a partisan manner (i.e. being on their side and no-one else's)
- being primarily concerned with their fundamental needs
- remaining loyal and accountable to them in a way which is empathetic and vigorous (whilst respecting the rights of others)
- ensuring duty of care at all times.

Effective disability advocacy promotes, protects and supports a persons, or group of persons, full and equal human rights. Advocates support or work on behalf of a person with disability to help them to speak out and defend their rights and interests. This is particularly important in situations where people with a disability may not be able to speak up for themselves, or even identify when they have been exploited, abused or neglected.

2. Program Description

The NDIS Appeals Program provides assistance to NDIS applicants and participants, and others affected by reviewable decisions of the NDIA. The program is designed to support clients to navigate external merits review process in the AAT or agreed alternative dispute resolution (ADR) pathways that support resolution of disputes arising from NDIA decisions.

Funding is provided to a number of existing National Disability Advocacy Program (NDAP) providers around Australia, selected by the Department of Social Services (the Department or DSS) provide the additional advocate services, in specified service areas. While the focus is on non-legalistic advocacy services, there may be some cases which progress to an AAT review or through an ADR mechanism where there is a legitimate need for applicants to access legal services. Funding is to be provided where the merits of the case warrant funding or where the applicant does not have the capacity to self-represent.

Recognising this, the NDIS Appeals Program provides funding to Legal Aid Commissions in every state and territory for legal representation, and designated Legal Aid Commissions to

support the ADR. Participants engaging in the ADR mechanism, the Independent Expert Review (IER) program, are able to seek legal advice from select Legal Aid Commissions on recommended outcomes provided by the Independent Expert.

Assessments of eligibility for legal services are undertaken by the Legal Aid Commissions. Applicants may be referred to a Legal Aid Commission by: the AAT; an NDIS Appeals Program advocate or other legal representatives of the applicant; or they may self-refer.

The majority of NDIA decisions that are 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).

Section 99 of the *National Disability Insurance Scheme Act 2013* sets out which decisions are subject to review.

If legal services are provided, the NDIS Appeals advocate, subject to the applicant's agreement, continues to support the applicant through the AAT process or ADR mechanism.

2.1 The role of NDIS Appeals advocate

The NDIS Appeals advocate:

- provides assistance and advice to applicants who wish to put their own cases forward (self-advocate) for a review of a reviewable NDIA decision before the AAT
- where self-advocacy is not appropriate, provides individual advocacy support, developing and implementing an individual plan in partnership with the applicant
- assists applicants to navigate the process of seeking a review of NDIA decisions, including preparing documents, attending conferences and hearings
- refers to the relevant Legal Aid Commission where legal issues are highlighted and an application has been made to the AAT, for a determination to be made as to whether legal services are warranted
- provides information about the availability and role of the advocate
- refers AAT applicants to the relevant NDIS Appeals Legal Aid Commission if they require legal advice on their application for an external review
- educates the community and potential applicants on NDIS Appeals and the review process
- conducts individual or group self-advocacy sessions.

NDIS Appeals advocates also assist participants through the ADR mechanism, the IER program process, such as:

- advise participants on the IER program and support them to make a decision on whether to participate in the IER program or continue with their appeal to the AAT
- support participants who choose to participate in the IER, with tasks such as information provision, gathering required evidence, review of documents, and engagement with legal aid (if required)
- support participants to decide whether to accept the recommendation/s of the IER, or continue to the AAT.

Although all aspects of the role of the NDIS Appeals advocate, as described above, are funded under the NDIS Appeals Program, priority rests with the provision of supports to AAT applicants, AAT applicants participating in the IER program and promotion of assistance available to persons seeking an external review of NDIA decisions.

NDIS Appeals advocacy providers should, wherever possible, seek to see all applicants within five days of contact.

NDIS Appeals advocacy providers are required to have a referral strategy in place to refer applicants to other NDIS Appeals advocacy providers when necessary. For example, if there is another provider better located or if the provider is at capacity.

2.2 Legal services

The NDIS Appeals Legal Aid Commission's

- provide legal counsel throughout the AAT process for applicant's eligible for legal services under the NDIS Appeals Program
- provide advice for AAT applicants and their advocate on their application for an external review, upon referral from an NDIS Appeals advocacy provider
- assesses eligibility for legal services, using publicly available national guidelines

Although all aspects of the role of NDIS Appeals Legal Aid Commission, as described above, are funded under the NDIS Appeals Program, priority rests with the provision of legal counsel to AAT applicants eligible for legal support.

To support the IER Program Legal Aid Queensland will operate an intake and triage advice line (1800 44 1800) which will:

- provide information to NDIS participants on the IER process
- assist NDIS participants to determine whether to participate in the IER program
- provide necessary procedural advice and referrals to advocates or legal aid.

Legal Aid Commission of New South Wales, Legal Aid Queensland and Victoria Legal Aid can provide legal advice to the NDIS participant on the outcome of the IER program.

Legal Aid Commission of New South Wales is project managing the implementation and delivery of the phone line and capability training for IER program processes in collaboration with the Disability Advocacy Network Australia (DANA) as the peak body, NDIA and AAT, drawing on their expertise and materials.

NDIS Appeals Legal Aid Commissions are required to have a referral strategy in place for NDIS Appeals advocacy providers to contact when seeking advice on behalf of their client.

3. Aims and objectives

The objective is to ensure that all people with disability and other affected persons have:

- access to an advocate (for applicants seeking review of NDIA decisions)
- access to legal services in circumstances where applicants are found eligible for NDIS Appeals legal services funding (for applicants seeking an external merits review in the AAT)
- access to legal advice in relation to recommendations made under the IER program.

4. Service provider eligibility

The Department will identify NDAP providers for the provision of an advocate.

Eligible NDAP providers for funding under the NDIS Appeals Program 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 NDIS Appeals **legal services** if they are a Legal Aid Commission, or a legal practitioner engaged pursuant to existing arrangements for Legal Aid Commissions.

5. Participants/target group

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

For participants engaging in the IER, where both parties agree to the recommendation from the independent expert, the NDIA will request the AAT to direct the Agency to the terms of the plan, or undertake orders dismissing the proceedings before the AAT and issue an NDIS Plan for the Participant. If the participant and the NDIA both do not accept the recommendation, the case will continue through to AAT proceedings.

The primary participant group for the NDIS Appeals Program are people with disability, but applicants may also be guardians and nominees of people with disability and carers and family members of people with disability. NDIS Appeals Program support is not available to service providers.

The Department requires the delivery of a fair and equitable NDIS Appeals Program service that is accessible to people from culturally and linguistically diverse and/or Indigenous backgrounds, and from regional or remote localities.

All NDIS Appeals providers have a responsibility to provide support to Aboriginal and Torres Strait Islanders and to people from diverse cultural and linguistic backgrounds.

Under the NDIS Appeals Program, funding is provided to some NDIS Appeals providers 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 providers may act in an advisory capacity to assist the generalist providers to provide culturally appropriate advocacy support.

6. Funding for the activity

6.1 Funding for the advocate

The funding for NDIS Appeals advocacy is separate from other advocacy funding provided under NDAP, and must be used to meet the costs of employing an advocate (and other eligible costs as per 7) and deliver services as outlined in 2.1. The funding has been distributed based on potential numbers of people in service areas and a percentage of those likely to seek review in the AAT or IER program.

Funding is provided subject to NDIS Appeals providers:

- signing a Grant Agreement (including any subsequent Deed of Variations) 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
- complying with the Program Guidelines and these Operational Guidelines.

6.2 Funding for legal services

Funding for NDIS Appeals Legal Aid Commissions (payable to the Legal Aid Commission, not the applicant) is separate from other Commonwealth funding provided to Legal Aid Commissions. It must be used to meet the costs of employing legal experts (and other eligible costs as per 7) and delivering services as outlined in 2.2. The funding has been distributed based on potential numbers of people in service areas and a percentage of those likely to seek review in the AAT and the IER program.

The funding is used to cover the costs of running a case, assessing applications for legal support and providing legal advice to AAT applicants referred by NDIS Appeals advocacy providers. This includes the provision of expert reports that may be required.

Funding to the Legal Aid Commissions is provided subject to:

- signing a Grant Agreement with the Department (including any subsequent Deed of Variations)
- meeting all relevant legislative requirements
- meeting all performance requirements
- complying with the Program Guidelines and these Operational Guidelines.

7. Eligible activities

The funding provided to NDIS Appeals advocacy providers may be used for:

- staff salaries and on-costs which can be directly attributed to the provision of advocates in the identified service area or areas as per the Grant Agreement.
- operating and administration expenses directly related to the delivery of advocacy, such as:
 - telephones
 - rent and outgoings
 - computer/IT/website/software
 - insurance
 - utilities

- postage
- stationery and printing
- accounting and auditing
- travel/accommodation costs
- motor vehicle purchase or lease; and
- Auslan interpreting services. For translating interpreting services refer to **8.10**.

The funding provided to NDIS Appeals Legal Aid Commissions may be used for:

- staff salaries and on-costs which can be directly attributed to the provision of legal services and assessments of applications for legal services.
- operating and administration expenses directly related to the delivery of legal services and assessment of applications for the provision of legal services, such as:
 - telephones
 - rent and outgoings
 - computer/IT/website/software
 - insurance
 - utilities
 - postage
 - stationery and printing
 - accounting and auditing
 - travel/accommodation costs
 - motor vehicle purchase or lease.
- covering the legal costs in running a case in the AAT in the identified service area as per the Grant Agreement.
- covering the legal costs involved in reviewing and providing advice on IER recommendations.

8. Access to disability advocacy support

All people with disability residing in the service area defined in the Grant Agreement or Activity Work Plan (AWP) should have equal access to advocacy support. In delivering advocacy, NDIS Appeals providers are expected to meet the diverse needs of their community and ensure all groups can access culturally appropriate support.

Access to advocacy support under the NDIS Appeals Program should be based on vulnerability and fundamental need and cannot:

- be based on religious or spiritual considerations. Further, people accessing disability advocacy support cannot be required to undertake religious or spiritual education to access support
- require people to become members of any organisation.

NDIS Appeals advocacy providers are required to ensure they are accessible during advertised operating hours. Strategies must be in place, within existing resources, to ensure continuity of service provision during times when staff are absent or on leave.

If operational circumstances require a provider to close for short periods of time (less than five

business days), NDIS Appeals advocacy providers must provide advice, for example, by updating their telephone answering message and a notice on the door which provides alternative contact details.

NDIS Appeals advocacy providers should not be closed for extended periods of time (more than five business days), except during Christmas and New Year. If a provider anticipates it will need to close for more than five business days outside this period, it must notify the Department immediately.

The above arrangements also apply where a provider is required to close for short periods of time or extended periods (as described above) due to a state/national emergency being declared e.g. pandemic, bushfires or floods.

8.1 Promotion of services

NDIS Appeals advocacy providers must make the details of their service publically available on their websites and in their offices, and should raise awareness of their service availability, for example, through networking, social media, and promotional materials.

When promoting services, consider:

- awareness: people need to be aware that the service exists
- education: people need to understand the service provided and see the value in accessing the service
- accessibility: services should be accessible and welcoming for people with disability
- diversity and inclusivity: be non-discriminatory, be relevant to the local community and reflect its ethnic and cultural values; ensure promotional materials are available in commonly spoken languages in your local community
- individuality: tailor services based on the needs of individual participants
- continuity: provide support and enable a relationship to develop.

It is best practice to consult with the Department on developing any communication materials.

NDIS Appeals advocacy providers are encouraged to periodically review their service details on the Askizzy Disability Advocacy Finder available at <https://askizzy.org.au/disability-advocacy-finder>. Follow the prompts on the website to update contact details.

8.2 Specialised NDIS Appeals advocacy providers

Some providers specialise in providing NDIS Appeals advocacy support to certain cohorts, such as people from an Aboriginal or Torres Strait Islander background, from a culturally and linguistically diverse background, or with a specific type of disability.

This is intended to ensure priority of access to specified populations. NDIS Appeals advocacy providers offering specialist support should provide advocacy support to people who are outside of their specialisation as resources allow.

NDIS Appeals advocacy providers that offer specialist disability advocacy can act in an advisory capacity to assist the generalist providers to deliver culturally or disability appropriate advocacy support that relate to NDIS Appeals processes.

8.3 Aboriginal and Torres Strait Islander access

All NDIS Appeals advocacy providers have a responsibility to provide NDIS Appeals advocacy support to Aboriginal and Torres Strait Islander people with disability in their service area.

8.4 Culturally and Linguistically Diverse background access

All NDIS Appeals advocacy providers have a responsibility to provide NDIS Appeals advocacy

support to people from Culturally and Linguistically Diverse (CALD) backgrounds in their service area. The Department's funding for interpreting services through the Translation and Interpreter Service (TIS) supports this.

8.5 LGBTQIA+ access

All NDIS Appeals advocacy providers have a responsibility to provide NDIS Appeals advocacy support to people with a disability in their service area who identify as LGBTQIA+.

8.6 Providing advocacy support outside the service area

NDIS Appeals advocacy providers are funded to provide advocacy support within a specified service area. Where a person moves outside a provider's service area, a referral to an appropriate NDIS Appeals advocacy provider should be arranged, where possible.

NDIS Appeals advocacy providers must not provide advocacy support to people with disability outside their service area, as defined in their Grant Agreement, without gaining prior approval from the Department.

8.7 Rural and remote access

It is expected that most NDIS Appeals advocacy providers funded to provide NDIS Appeals advocacy support in rural and remote areas will have an outlet in the region where that support is provided.

However, if it is not feasible to have an outlet, the following alternatives can be considered:

- Mobile service – NDIS Appeals advocacy providers may travel to deliver services
- Virtual service delivery – provided it is appropriate and preferred by the participant, advocacy providers may deliver services virtually e.g. by video link or telephone.
- Co-location – NDIS Appeals advocacy providers may co-locate or share outlet facilities with other community organisations.

The Department must be informed of operational arrangements, including the locations of outlets and the home base of the mobile services.

8.8 Subcontracting

The Department considers any parts of the activity which are not directly delivered by the grant recipient, and are instead delivered by a third party pursuant to an agreement between the grant recipient and the third party, to be subcontracting.

In line with the Grant Agreement, the Department must provide prior written consent before a provider enters into any subcontracting arrangement, and the Department may impose any conditions it considers reasonable and appropriate when giving consent. The Department may request a copy of the agreement between the provider and the subcontractor.

The provider using the services of a subcontractor must ensure that all services delivered by the subcontractor are in line with the Grant Agreement, and these Guidelines.

Reporting requirements for subcontracted services is the responsibility of the provider that the Department has the Grant Agreement with, unless otherwise agreed by the Department.

8.9 Closure of an agency

NDIS Appeals providers funded to deliver the NDIS Appeals Program must notify the Department immediately if they become insolvent or are no longer able to provide NDIS Appeals advocacy support as required under the Grant Agreement. In this instance, the provider is expected to work with the Department to ensure that people currently receiving NDIS Appeals advocacy support are referred to another NDIS Appeals advocacy provider or appropriate agency.

8.10 Interpreting services

From 1 July 2018, the Department covers the cost of interpreting services used by NDIS Appeals providers during the delivery of funded NDIS Appeals advocacy support to people from diverse cultural and linguistic backgrounds.

Interpreting services is available through an arrangement between the Department and the Department of Home Affairs' Translating and Interpreting Service (TIS National).

Payment of interpreting services for languages other than those provided by TIS National will be considered on a case-by-case basis, and will be dependent on Departmental funding availability.

9. Activity links and working with other agencies and services

All NDIS Appeals providers, including NDIS Appeals advocacy providers and NDIS Appeals Legal Aid Commissions, are required to work collaboratively with each other, the Department, the AAT, NDIA and other relevant representative organisations.

NDIS Appeals advocates and Legal Aid Commission personnel may be asked to attend meetings or participate on committees contributing to government policy, service and development of the NDIS Appeals Program.

10. Key legislative requirements, standards and guidelines

The policy and implementation of the NDIS Appeals Program 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; Australia's Disability Strategy 2021-2031; the National Disability Agreement, the National Disability Advocacy Framework; the *National Disability Insurance Scheme Act 2013* and the *Disability Services Act 1986* (the DSA).

The DSA and its associated principles and objectives have a focus on outcomes for people with disability. All NDIS Appeals advocacy providers must comply with the DSA and all relevant Commonwealth, state and territory legislation and supporting documents. This includes any legislative standards in force (currently the National Standards for Disability Services {NSDS}).

The NSDS define the elements of quality support for people with disability. Funding is conditional upon active certification against these standards. However, as all NDIS Appeals providers are also National Disability Advocacy Program (NDAP) providers, only one certification for your organisation is necessary, ensuring re-certification at the appropriate intervals. It is the responsibility of the provider to ensure certification remains active whilst delivering both NDAP and NDIS Appeals Program activities. More information on the NSDS available at <https://www.dss.gov.au/our-responsibilities/disability-and-carers/standards-and-quality-assurance/national-standards-for-disability-services>.

11. Privacy

As stipulated in the Grant Conditions, when dealing with personal information in carrying out the Activity, the NDIS Appeals provider agrees not to do anything which, if done by the Commonwealth, would be a breach of an Australian Privacy Principle.

12. Information technology

Grant recipients are expected to ensure they have suitable information technology systems in place to allow them to meet their data collection and reporting obligations under the Grant Agreement, including supplying data through the DSS Data Exchange (DEX).

13. Activity performance and reporting

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

The Department monitors the outcomes and service provider performance. Reporting is based on achieving the activity outcomes. Data is collected directly from NDIS Appeals advocacy providers through the DSS Data Exchange (DEX). Data is collected directly from Legal Aid Commissions through provision of a monthly data report.

NDIS Appeals providers are required to submit to the Department 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 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:

- six monthly performance reports against the activity work plan
- six monthly reports (quantitative) summarising individual client data (de-identified) as reported in DEX
- a yearly non-audited financial acquittal report.

13.1 Activity Work Plan

The purpose of the Activity Work Plan (AWP) is to include output-level detail for the funded activity negotiated with the Department. The information listed against each activity should include the activity details, deliverables, timeframes for delivery and measures of achievement. It may include a budget or other administrative controls intended to help manage activity risks.

All NDIS Appeals providers are required, as part of their Agreement, to submit an AWP. Once mutually agreed the AWP will form part of the Agreement

13.2 Activity Work Plan Report

The AWP Report seeks details of progress on requirements in the AWP for the reporting period, including any compliance requirements. This report is intended to detail the achievements/outcomes for the previous 12 months undertaken by the NDIS Appeals provider and should align with the content of the AWP.

13.3 Six monthly performance reporting (NDIS Appeals advocacy providers only)

DEX has two standardised six monthly performance reporting periods each financial year:

- Reporting Period 1 runs from 1 July to 31 December

- Reporting Period 2 runs from 1 January to 30 June

NDIS Appeals advocacy providers can enter data at any time within a reporting period, and are encouraged to do so regularly to make best use of the self-service reports and avoid unnecessary backlog.

The reporting period automatically closes at the end of the 30 days (i.e. 30 July and 30 January each year). NDIS Appeals advocacy providers are required to finalise the submission of data within the Data Exchange for each reporting period within 30 days of the reporting period ceasing, known as 'closing periods'.

Once a reporting period has closed, data relating to that period of time will no longer be able to be recorded. Data outside a reporting period may only be entered if a NDIS Appeals advocacy provider has sought and been granted an extension.

13.4 Reporting targets

Individual reporting targets are negotiated with each NDIS Appeals provider. The Department is aware that varying models of support and providing support to people with complex needs or multiple matters may affect targets. NDIS Appeals providers should discuss variances with their Departmental Funding Arrangement Manager (FAM).

13.5 Monthly reporting (Legal Aid Commissions only)

Each NDIS Appeals Legal Aid Commission is to provide reporting on the 15th of the following month as detailed in the AWP.

13.6 Partnership approach

For all NDAP and NDIS Appeals advocacy providers, participation in the 'partnership approach' is a requirement of funding from Reporting Period 2, January 2021. By participating, NDIS Appeals advocacy providers will provide some additional information in exchange for the receipt of regular and relevant reports.

The main focus of the 'partnership approach' is collecting information about the outcomes achieved by clients as a result of service delivery. The 'partnership approach' also includes some extended data items that provide additional information about client demographics, needs and circumstances. As part of the partnership approach, NDIS Appeals advocacy providers are to record client outcomes known as the Standard Client/Community Outcomes Reporting (SCORE).

NDIS Appeals advocacy providers must meet minimum requirements as specified in the Program Specific Guidance which can be found on the Data Exchange website:

<https://dex.dss.gov.au/sites/default/files/documents/2022-08/1471-program-specific-guidance.pdf>. The Program Specific Guidance is updated periodically when amendments are required. Providers will be advised if the guidance is updated via their Funding Agreement Manager.

13.7 Financial Acquittal Report

A Financial Acquittal must be submitted for each financial year (FY) funded under the Grant Agreement - to align with the relevant FY 1 July to 30 June and submitted on 31 October following the end of the FY. This declaration is a certification from the grant recipient stating that the funds were spent for the purpose as outlined in the Grant Agreement and in-which the grant recipient is required to declare unspent funds.

14. Dealing with conflicts of interest

Conflict of interest arises when a provider or staff has a competing interest with the interests of the person with disability, which a reasonable person would regard as making it difficult for the provider or staff to properly discharge their responsibilities to the person with disability.

In meeting the needs of a person with disability, NDIS Appeals advocacy providers must:

- operate independently
- avoid, where possible, any conflict or perceived conflict of interest in relation to the conduct of its advocacy work
- deal with any conflict or perceived conflict transparently.

In line with the Commonwealth Standard Grant Conditions, providers must notify their FAM of any conflict of interest, whether actual, perceived or potential.

NDIS Appeals providers must also notify of any material change to a previously disclosed conflict of interest.

When declaring a conflict of interest, NDIS Appeals providers should include relevant information surrounding the circumstances of the conflict of interest, and how they will manage the conflict of interest.

15. Complaints about NDIS Appeals providers

NDIS Appeals advocacy providers are required to have processes in place for the management of complaints in a positive, timely and fair manner. In the first instance complaints (from consumers or others) should be raised directly with the provider. Clients must be made aware of the avenues available to them to make a complaint, e.g. in person, in writing, over the phone, and via email.

NDIS Appeals advocacy providers must maintain a formal register of complaints received, including the nature of the complaint and actions taken to resolve the client's issues and concerns, and how it was resolved, including whether it was referred to another authority. Providers must supply the register to the Department, if requested. Providers should refer to the Department's [Complaints Procedures](#) for further information.

If a satisfactory resolution is not reached through the NDIS Appeals providers/ internal complaints system, or if the complainant prefers to raise the matter with an independent organisation, 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, including advocacy providers. CRRS can be contacted on 1800 880 052 and further information can be found on the CRRS website at: <https://www.jobaccess.gov.au/complaints/crrs>

Each NDIS Appeals Legal Aid Commission is required to have 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 NDIS Appeals Legal Aid Commission, they can contact the Ombudsman in the relevant state or territory.

NDIS Appeals providers must immediately notify their FAM about significant complaints, that is, those related to serious harm or misconduct, or serious injury to a client, and keep their FAM informed of developments.

Although most complaints should be handled by the NDIS Appeals provider 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 provider. These may include allegations of assault or abuse and neglect which should be referred to police.

The Department encourages participants to provide feedback on their experiences with the Department or a service provider funded by the Department. However, we recommend that participants try to resolve the matter with the relevant organisation before contacting the Department's complaints line. General complaints are dealt with under the DSS Complaints Management process, please find below the details to contact the DSS Complaints line:

Telephone: 1800 634 035

Fax: (02) 6133 8442

Email: complaints@dss.gov.au

Post: DSS Feedback, GPO Box 9820, Canberra ACT, 2601

[Online Complaints Form](#)

More information on the Department's complaints management process can be found on the Department's website: <https://www.dss.gov.au/contact/feedback-compliments-complaints-and-enquiries/complaints-page>.

Please Note: Calls made to the 1800 634 035 number will be recorded to assist in the effective management of the complaint as well as for training purposes. Please advise the complaints officer if you do not wish to have your call recorded.

Should the participant be dissatisfied with the Department's management of their complaint, they may contact the Commonwealth Ombudsman (the Ombudsman) for further investigation. For more information, refer to the Ombudsman's website: <https://www.ombudsman.gov.au/>

16. Serious incidents

If a serious incident occurs, the NDIS Appeals provider's primary obligation is to report the incident to the police or other Commonwealth/state/territory organisations that have jurisdiction over their service. Providers must comply with Commonwealth, state and territory laws if there is a serious incident in relation to providing the NDIS Appeals services.

A serious incident is an event that disrupts service provision or threatens the safety of people or property.

Examples of serious incidents include:

- incidents involving fraud (including allegations)
- unlawful sexual or physical contact with, or assault of, a client including:
 - incidents of alleged physical or sexual assault of a client committed by an employee
 - incidents of alleged physical or sexual assault of a client committed by another client while in the care of the provider
- culpable neglect
- serious unexplained injury
- incidents of self-harm
- death of a client (irrespective of cause)
- unauthorised use of restrictive practices in relation to a client, other than where the use is in accordance with authorisations (however described) of a state or territory in relation to the person (seclusion, chemical restraint, mechanical restraint, physical restraint, environmental restraint).

NDIS Appeals providers must notify their FAM of any serious incident, particularly where they affect services to clients or a client's wellbeing, within 72 hours of personnel being aware of a serious incident using the Incident Notification Form at **Attachment A**. Further updates should be

provided within 5 days of the Incident Notification Form being supplied. Information supplied to the Department is to be de-identified.

If you suspect a child or young person is in need of protection from abuse or harm you should report your concerns to the Child Protection agency in your relevant state or territory. It is best practice to report if you have belief on reasonable grounds, however for some jurisdictions reporting is mandatory. Further details and information about mandatory reporting can be obtained from the relevant statutory child protection authority in each jurisdiction.

17. Acknowledgement of support

The following wording is to be used to acknowledge the financial support of the Department in all NDIS Appeals Program material published by NDIS Appeals providers:

'Funded by the Australian Government Department of Social Services'

In circumstances where funding for advocacy is also received from other sources, the words *'part funded'* must be used.

18. Contact information

Inquiries related to the NDIS Appeals Program or the Commonwealth role in disability advocacy can be directed to disabilityadvocacy@dss.gov.au

or via post to:

Department of Social Services
Disability and Carers Group
Disability Advocacy and Counselling Supports
PO Box 9820
Canberra ACT 2601

Attachment A – Serious Incident Notification Form

Who should use this form

This template is provided for the use of NDIS Appeals providers should a serious or reportable incident occur as outlined at 16 of the Operational Guidelines.

When to use this form

Providers should use this form when notifying the Department of a serious or reportable incident, as outlined in the Operational Guidelines. NDIS Appeals providers should submit a completed form to their Funding Arrangement Manager within the timeframes outlined in the Operational Guidelines, while updates on incidents should be provided within 5 days.

Organisation details

Organisation:

Site address:

Name of site manager:

Signature of site manager:

Date:

Details of incident

Type of incident (serious or reportable):

Date of incident:

Time of incident:

No. of individual/s involved:

Gender of individual/s:

Age/s of individual/s involved:

Status of individual/s:

Location of incident (Address and location):

Incident details (Describe what occurred, including what led up to the incident, if applicable. Where there is more than one individual involved, you may refer to the individuals involved as Staff1, Client1, if needed):

Response to the incident (What actions were taken as a result of the incident occurring):

Preventative action (What has been implemented, or will be, in order to prevent the incident from happening again):

Media coverage (Outline whether media coverage is likely):