



AAT Case Management Guide

Supportable Impairments

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Field	Content	Reference Documents
Title	Supportable Impairments	
Purpose	This document is part of a suite of guidance documents for case managers to use in formulating their approach to managing individual cases before the Administrative Appeals Tribunal (AAT).	
Scope	<p>A participant's disability or impairment can permanently and substantially reduce their functional capacity or their ability to undertake activities.</p> <p>For the purposes of this document, an impairment can be:</p> <ul style="list-style-type: none"> • intellectual; • cognitive; • neurological; • sensory; • physical; or • one or more of the above, to which a psychosocial disability is attributable. 	<p>Section 24 of the National Disability Insurance Scheme Act 2013</p> <p>Operational Guideline – Applying for the NDIS</p> <p>Do you meet the disability requirements?</p> <p>Does your impairment substantially reduce your functional capacity?</p> <p>Do you have an extreme functional impairment or very high support needs?</p>
Escalation to Hearing Oversight Committee (HOC)	If a matter is within the parameters of this document, the AAT Case Management Branch Manager may approve proceeding to hearing. Where there is substantial risk or the matter is outside the parameters of this document, the matter should be referred to HOC.	
Current National Disability Insurance Agency (NDIA) policy on the subject	<p>The AAT process is often seen as stressful and adversarial by the participants and our focus should be on resolving issues as practicably and quickly as possible. The role of the NDIA is to assist the AAT and the participant in reaching the best possible resolution for the participant by agreement.</p> <p>Participants are generally ineligible to receive NDIS funding if:</p> <ul style="list-style-type: none"> • their impairment is temporary; or 	<p>NDIA Dispute Resolution Policy</p> <p>Appendix B to the Legal Services Directions 2017</p> <p>Section 24 of the National Disability Insurance Scheme Act 2013</p>



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	<ul style="list-style-type: none"> their impairment is treatable, whether treatment is ongoing or whether there are unexplored treatment options available to the participant. <p>The NDIA is also unable to fund supports which would more appropriately be funded by other mainstream service delivery systems.</p>	List B: Conditions that are likely to result in a permanent impairment
NDIA Posture in relation to this subject	<p>Whether the NDIA is able to offer support funding in relation to a particular impairment will typically hinge on whether or not:</p> <ul style="list-style-type: none"> the impairment is, or is likely to be, permanent; and whether the support needed is most appropriately funded by the NDIA. <p>Most impairments and health conditions are managed or remedied by the health system.</p> <p>Where this is the case, and a participant receives support for a particular impairment through the health system, the participant is generally ineligible to receive funding from the NDIA for the same impairment. This is because treatment options available to a participant through the health system may mean that the impairment is not, or is not likely to be, permanent, or because this could represent a duplication of funding.</p>	Operational Guideline – Applying for the NDIS Section 25 of the National Disability Insurance Scheme Act 2013
Evidence recommended to inform NDIA position in a specific matter before the Administrative Appeals Tribunal (AAT)	<p>The primary concern of the NDIA is the participant's wellbeing. The NDIA will rely on the available evidence and best practice when considering whether a participant is entitled to receive funding from the NDIA for a particular impairment.</p> <p>The NDIA will refer to evidence from health and allied health providers, expert evidence, opinion evidence and witness statements. The NDIA will also closely consider a participant's daily support needs as a result of their impairment when considering the appropriate level of funding to provide, wherever possible.</p>	Providing evidence of your disability Persons Giving Expert and Opinion Evidence Guideline Administrative Appeals Tribunal
Other considerations	<p>Some participants may have an impairment which will improve over time, meaning that the participant will require progressively less disability support over time. In those circumstances, participants may be eligible to receive early intervention support funding.</p>	Do you need early intervention? Sections 24, 25 and 27 of the National



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	<p>In those circumstances, the NDIA will consider:</p> <ul style="list-style-type: none"> • whether the impairment is likely to be permanent; • whether early intervention supports are likely to reduce the need for future supports; and • whether the early intervention needed is most appropriately funded by the NDIA. 	<p>Disability Insurance Scheme Act 2013</p> <p>Rule 6.9 of the National Disability Insurance Scheme (Becoming a Participant) Rules 2016</p>
<p>Previous matters that may advise the NDIA position</p>	<p>The question is not whether the impact of a participant's impairment is significant in <i>general</i> terms, or whether a support <i>is</i> actually funded by another mainstream service delivery system. Instead, the test is whether or not the <i>legislative</i> requirements are met; which is to say, whether a participant's impairment is permanent and substantially reduces their functional capacity, and whether or not support funding in relation to that impairment is most appropriately provided by the NDIA, and not another mainstream service delivery system.</p> <p>The AAT affirmed a decision of the NDIA on the basis that it was not satisfied these legislative requirements were met, on the available evidence.</p>	<p>Allen and National Disability Insurance Agency [2018] AATA 3851</p>
<p>Document admin</p>	<p>Assistant Director, Policy, Continuous Improvement</p>	<p>10 September 2024</p>
<p>Approved</p>	<p>Director, Continuous Improvement</p>	<p>10 September 2024</p>



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Purpose	<p>This document is part of a suite of guidance documents for Case Managers to use in formulating their approach to managing individual matters before the Administrative Review Tribunal (ART).</p> <p>This Guide applies nationally to the conduct of all matters within the Administrative Review Tribunal Case Management Branch.</p>	
Scope	<p>A participant's impairment and associated disability can permanently and substantially reduce their functional capacity or their ability to undertake activities.</p> <p>For the purposes of this document, an impairment can be:</p> <ul style="list-style-type: none"> • intellectual; • cognitive; • neurological; • sensory; • physical; or • an impairment to which a psychosocial disability is attributable. 	<p>Section 24 of the National Disability Insurance Scheme Act 2013</p> <p>Operational Guideline – Applying for the NDIS</p> <p>Do you meet the disability requirements?</p> <p>Does your impairment substantially reduce your functional capacity?</p> <p>Do you have an extreme functional impairment or very high support needs?</p>
NDIA policy on this subject	<p>The ART process is often seen as stressful and adversarial by participants and prospective participants of the Scheme. The NDIA will adopt a participant-focused approach to resolving disputes before the ART, and will work directly with participants and prospective participants to provide better and earlier outcomes, where possible.</p> <p>The role of the NDIA is to assist the ART in reaching the correct and preferable decision, including by assisting participants and prospective participants in reaching the best possible resolution by agreement.</p> <p>Participants are generally ineligible to receive NDIS funding if:</p>	<p>NDIA Dispute Resolution Policy</p> <p>Appendix B to the Legal Services Directions 2017</p> <p>Section 24 of the National Disability Insurance Scheme Act 2013</p> <p>List B: Conditions that are likely to result in a permanent impairment</p>



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	<ul style="list-style-type: none"> • their impairment is temporary; or • their impairment is treatable, whether treatment is ongoing or whether there are unexplored treatment options available to the participant. <p>The NDIA is also unable to fund supports which would more appropriately be funded by other mainstream service delivery systems.</p>	
NDIA posture in relation to this subject	<p>Whether the NDIA is able to offer support funding in relation to a particular impairment will typically hinge on whether or not:</p> <ul style="list-style-type: none"> • the impairment is, or is likely to be, permanent; and • whether the support needed is most appropriately funded by the NDIA. <p>Where the engagement with health is aimed at curing the impairment, the NDIS would not provide supports</p> <p>A person can have engagement with the health system and still require disability supports that work alongside the health system's management of permanent impairments.</p>	<p>Operational Guideline – Applying for the NDIS</p> <p>Section 25 of the National Disability Insurance Scheme Act 2013</p>
Evidence recommended to inform NDIA position in a matter before the ART	<p>The primary concern of the NDIA is the participant's wellbeing. The NDIA will rely on the available evidence and best practice when considering whether a participant is entitled to receive funding from the NDIA for a particular impairment.</p> <p>The NDIA will refer to evidence from health and allied health providers, expert evidence, opinion evidence and witness statements. The NDIA will also closely consider a participant's daily support needs as a result of their impairment when considering the appropriate level of funding to provide, wherever possible.</p>	<p>Providing evidence of your disability</p> <p>Persons Giving Expert and Opinion Evidence Guideline Administrative Review Tribunal</p>
Other considerations	<p>Some participants may have an impairment which will improve over time, meaning that the participant will require progressively less disability support over time.</p>	<p>Do you need early intervention?</p>



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	<p>In those circumstances, participants may be eligible to receive early intervention support funding.</p> <p>In those circumstances, the NDIA will consider:</p> <ul style="list-style-type: none"> • whether the impairment is likely to be permanent; • whether early intervention supports are likely to reduce the need for future supports; and • whether the early intervention needed is an NDIS support 	<p>Sections 24, 25 and 27 of the National Disability Insurance Scheme Act 2013</p> <p>Rule 6.9 of the National Disability Insurance Scheme (Becoming a Participant) Rules 2016</p> <p>Case Management Guide – Access to the NDIS</p>
Previous matters that may inform the NDIA position	<p>The question is not whether the impact of a participant's impairment is significant in <i>general</i> terms, or whether a support <i>is</i> actually funded by another mainstream service delivery system. Instead, the test is whether or not the <i>legislative</i> requirements are met; which is to say, whether a participant's impairment is permanent and substantially reduces their functional capacity, and whether or not support funding in relation to that impairment is most appropriately provided by the NDIA, and not another mainstream service delivery system.</p> <p>The AAT affirmed a decision of the NDIA on the basis that it was not satisfied these legislative requirements were met, on the available evidence.</p>	<p>Allen and National Disability Insurance Agency [2018] AATA 3851</p>

Document Control	Responsible Person	Date
Document author	Continuous Improvement	October 2024
Document approver	Director, Continuous Improvement	28 October 2024



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Model Litigant Obligations

Field	Category	Reference Documents
Title	Model Litigant Obligations (MLO)	
Purpose	<p>This document is part of a suite of guidance documents for Case Managers to use in formulating their approach to managing matters before the Administrative Review Tribunal (ART).</p> <p>This Guide outlines the Model Litigant Obligations with which the NDIA is required to comply.</p>	<p>Appendix B to the Legal Services Directions 2017</p> <p>NDIA Participant Service Charter (page 9)</p> <p>Section 56 of the Administrative Review Tribunal Act 2024</p>
Scope	This Guide applies nationally to the conduct of all matters within the ART Case Management Branch.	
Policy statement	<p>The NDIA acts honestly and fairly in litigation by:</p> <ul style="list-style-type: none"> • handling matters promptly; • making an early assessment of the prospects of success in legal proceedings, and the potential liability in claims against the Commonwealth; • acting consistently in the handling of claims and litigation; • endeavouring to avoid, prevent, and limit the scope of legal proceedings wherever possible, including by giving consideration in all cases to the alternative dispute resolution before initiating legal proceedings, and by participating in alternative dispute resolution processes where appropriate; • where it is not possible to avoid litigation, keeping the costs of litigation to a minimum, including by: <ul style="list-style-type: none"> ○ not requiring the other party to prove a matter which the Commonwealth or the NDIA knows to be true; ○ not contesting liability if the Commonwealth or the NDIA knows that the dispute is really about quantum; 	<p>NDIA Model Litigant Guidelines</p> <p>NDIA Dispute Resolution Policy</p>



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Model Litigant Obligations

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	<ul style="list-style-type: none"> ○ not taking advantage of a person who lacks the resources to litigate a matter; ○ not relying on technical defences unless the interests of the Commonwealth or the NDIA would be prejudiced by the failure to comply with a particular requirement; and ○ not undertaking and pursuing appeals unless the NDIA believes that it has reasonable prospects of success, or the appeal is otherwise justified in the public interest; and ● apologising where the Commonwealth or the NDIA is aware that it (or its lawyers) has acted wrongfully or improperly. 	
MLO Complaints	<p>The NDIA will make all reasonable efforts to comply with the Model Litigant Obligations and the Participant Service Charter. All allegations or concerns (from any source) that the NDIA has not met its obligations will be referred by the person that has become aware of the allegation or concern, to the NDIA MLO Team at s47E(d) - certain operations of agencies.</p> <p>The manner in which the allegation or concern will be referred will vary according to the source of the allegation or concern, as outlined below.</p> <p><u>Internally identified</u></p> <p>Where an NDIA staff member becomes aware of a possible MLO issue, the issue is to be reported to the NDIA MLO Team by email at s47E(d) - certain operations of agencies.</p> <p><u>Externally identified</u></p> <p>External complaints and allegations are directed by the Feedback and Complaints area to the NDIA MLO Coordinator. If necessary, the MLO Coordinator may refer the allegation to an external party for further investigation. Lawyers with carriage, Case Managers, and their Directors may be asked to provide information to support that investigation.</p>	<p>Standard Operating Procedure: Model Litigant Obligation Complaints</p> <p>NDIA Model Litigant Obligations – Breaches, Themes and Learnings</p>



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	<p><u>Reporting</u></p> <p>The Agency is responsible for reporting all alleged or proven MLO breaches – whether identified internally or externally – to the Office of Legal Services Coordination (OLSC).</p> <p>The MLO Coordinator will also report to the Senior Leadership Team (SLT) on any significant issues and emerging trends, as they arise.</p>	

Document Control	Responsible Person	Date
Document author	Continuous Improvement	October 2024
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