

National Legal Aid Submission

Joint Standing Committee on the National Disability
Insurance Scheme: Annual Report Inquiry

15 October 2025



Acknowledgement of country

National Legal Aid acknowledges Traditional Owners of Country throughout Australia and recognises the continuing connection to lands, waters and communities. We pay our respects to Aboriginal and Torres Strait Islander cultures, and to Elders both past and present.



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Written requests should be directed to National Legal Aid.

www.nationallegalaid.org

Executive Summary

National Legal Aid emphasises the critical importance for people with disability to have access to legal assistance to resolve issues related to their disability, including to appeal decisions made by the National Disability Insurance Agency (NDIA).

The Department of Social Services (DSS) funds Legal Aids to deliver the legal services component of the NDIS Appeals Program (the Program), including legal advice and representation. A 2025 evaluation of the Program undertaken by the Law and Justice Foundation of NSW¹ (the Evaluation) found that legal assistance for NDIS appeals resulted in better outcomes for clients, helped clients be more informed and prepared, enhanced access to justice and fairness, reduced delays, supported the fair and efficient operation of the ART and the NDIS (including by filtering out non-meritorious cases), and represented value for money.

The Evaluation made a number of recommendations² in relation to the Program which NLA supports and commends to the Committee for consideration:

Recommendations

The NDIS Appeals Program Legal Services (the Program) should be ongoing, with opportunities to continue strengthening the program including:

Systems Change

- Make the appeals process less complicated, daunting and legalistic.
- Ensure secure and adequate funding for the Program.

Program Design and Delivery

- Provide permanent contracts to Program staff and invest in professional development.
- Ensure multiple referral pathways into the Program, including via disability advocates, self-referral, and the Administrative Review Tribunal.

¹ Davies K, Ratcliffe S, Kothe E, Takchi S (2025) 'I would have given up without it': An evaluation of the NDIS Appeals Program Legal Services.' Law and Justice Foundation of NSW.

² Ibid, p 2.



- Provide access to advice services as a standard part of the Program and continue to provide high quality representation services.
- Retain the flexibility for Legal Aid Commissions to tailor the Program to local contexts and communities.
- Identify, and reach out to, groups of people who are missing out on the Program.

Partnerships

- Continue to build strong relationships with disability advocacy organisations.
- Improve national and local information sharing and relationship building between Legal Aid Commissions, the Administrative Review Tribunal and the National Disability Insurance Agency.
- Ensure nationally consistent reporting and communications between LACs and the Department of Social Services.
- Embed the expertise of people with disability in program design and development.

Data Collection

- Set up a nationally consistent approach to data collection.

About National legal Aid

Who are we?

National Legal Aid represents the eight independent Legal Aid Commissions in each state and territory of Australia. These Commissions work collaboratively to deliver essential legal services, making sure that justice is accessible to all Australians. We strive to support those who are most in need, ensuring fair and equitable legal outcomes. Legal Aid Commissions are independent, statutory bodies established by respective state or territory enabling legislation and funded by Commonwealth and State or Territory governments to provide legal assistance to people.

What do we do?

Legal Aid Commissions are the largest providers of legal services to people with disability across Australia, including grants of aid for ongoing legal representation, duty lawyer services at courts and tribunals, legal advice, family dispute resolution conferences, community legal education, and information and referrals.⁷ Each year, we provide 1.7 million legal assistances. 25 percent of our clients receiving legal representation have a disability.³ The Australian Government funds Legal Aid Commissions in each state and territory to provide specialist legal advice and representation for NDIS appeals to the Administrative Review Tribunal (ART).

Why do we do it?

Our shared vision is that all people experiencing disadvantage have access to legal assistance and fair justice outcomes that contribute to safe, thriving families and communities. We are the 'safety net' of the legal system – there to assist families and individuals in times when they are in highest need. Our clients include people most in need of legal assistance including First Nations peoples, victim-survivors of domestic and sexual violence, and people with disabilities.

³ National Legal Aid, Strategic Plan 2025-2030.

Legal assistance for NDIS appeals

The NDIS Appeals Program provides access to legal assistance for people who are seeking to appeal a decision made by the National Disability Insurance Agency (NDIA) - for example in relation to supports they need or their eligibility for the NDIS. The Department of Social Services (DSS) funds Legal Aids to deliver the legal services component of the NDIS Appeals Program (the Program), including legal advice and representation.⁴ The Program is part of the broader National Disability Advocacy Program which provides support to people with disabilities to resolve issues related to their disability.

To be eligible for Legal Aid assistance, applicants must have an existing application with the Administrative Review Tribunal (ART) appealing a review of a decision made by the NDIA. If an applicant is seeking review of a NDIS decision, appeals to the ART can be made following the NDIS' internal review process. Further review of ART decisions is available via the ART's Guidance and Appeals Panel and the Federal Court.

There are eligibility criteria to access Legal Aid assistance which varies between LACs. This includes that the applicant is experiencing disadvantage and meets the relevant merit tests.

A 2025 evaluation of the NDIS Appeals Program (the Evaluation), conducted by the Law and Justice Foundation of NSW, found that

*'...the appeals process is complicated, daunting, exhausting, resource intensive and difficult to navigate without the support of a lawyer, advocate or similarly experienced person.'*⁵

It is NLA's strong view that legal assistance is critical for Applicants in order to navigate this complex process. Currently, most Applicants are not able to access legal representation for NDIS Appeals, and Legal Aids are not able to meet the demand for the Program due to insufficient funding.

Increasingly adversarial nature of NDIS appeals matters

Legal Aids' experience of running NDIS appeals matters is that people with NDIS appeals are significantly disadvantaged and experience barriers to access at the ART due to the legalistic, adversarial, and extended process for appeals.

In NDIS appeal matters Legal Aids have observed a more formal and increasingly adversarial environment with government agencies legally represented in the context of most applicants being self-

⁴ Davies et al, n1.

⁵ Ibid, p.23.

represented. We note recent reports that the NDIA paid \$60.7m to external law firms in 2024-25 to represent it at ART representing a 60% increase from the previous year.⁶

Case examples: Increasingly adversarial nature of NDIS Appeals

The increasingly adversarial nature of NDIS appeal matters is demonstrated by the following case examples.

1. In a recent matter, the NDIA sought interlocutory hearings to prevent a particular practitioner from giving evidence, and a second interlocutory hearing was held after the hearing to prevent the Applicant from filing further evidence which responded to an issue raised in the evidence by the NDIA's witness at the hearing for the first time. That barrister consistently objected to questions during the hearing on the basis of their relevance, it transpired later on the basis of an incorrect understanding of the state of the law. A non-adversarial approach to the conduct of that matter would have been greatly beneficial to allow the Applicant to put forward his case without technicalities and to ensure that he felt his case had been fairly heard.
2. In a matter in which there were some questions about how objective the Applicant's witnesses were, the NDIA made threats to report the Applicant's witnesses to AHPRA. While it is possible these professionals did not understand the line between advocacy and being an expert witness, these threats are counter-productive to applicants being able to obtain evidence of any kind and cause significant anxiety and distress to applicants.

Legal Aids observe that the increasingly adversarial nature of NDIS Appeals matters has caused significant distress for applicants, who are people with disabilities and their families seeking access to the NDIS to get support, or access to particular supports they need. For example, Legal Aids report examples of self-represented applicants being brought to tears from aggressive cross-examination by NDIA barristers. In one instance, a Tribunal Member was moved to apologise to the Applicant for how adversarial the hearing had been. Legal Aids also report NDIA barristers using technical arguments in proceedings which cause obstacles to reaching the correct and preferable decision and leave applicants feeling they have not had a fair hearing.

The increasingly adversarial nature of NDIS appeals reflects a broader need to improve NDIA conduct during reviews in general, in order to ensure processes are trauma-informed and facilitate effective progress of litigation. Legal Aids observe consistent re-traumatisation of applicants through non-trauma

⁶ Kate Lyons, 'They've engaged a barrister!' Parents of high-needs children say Labor is waging lawfare over disability support', The Guardian, 24 September 2025.

informed approaches from the Respondent agency, or misunderstandings of the issues which cause alienation and distress.

Some examples of this are:

- The use of 'step down approaches' to funding supports for adult children who have profound disabilities, with families regularly being told - on the basis of no evidence - that with capacity building funding they will no longer require supports.
- Lack of trauma-informed approaches in ADR processes, including:
 - The NDIA telling clients that their disabilities are not permanent, contrary to all available evidence.
 - The NDIA making inappropriate comments such as telling a wheelchair user that they did not need an exercise physiologist, but that they should 'just go for a walk'.
 - The NDIA engaging in conduct making the Applicant feel they were being blamed for their own disability, causing significant distress (through use of arguments that the Applicant acted against medical advice by discharging themselves from hospital one day early, with no evidence this impacted their recovery and in the context of the NDIS not being a fault-based scheme).
- The NDIA acting inconsistently with model litigant obligations, for example, by making an offer during a conciliation and then after the Applicant agreed to resolve the matter on that basis, rescinding the offer without reasons given.

The experience of Legal Aids and their clients is supported by the Evaluation findings⁷ that:

- Many advocates and applicants experience the ART as overly legalistic.
- Many participants in the process suggest the NDIA's model litigant responsibilities are not being met.
- Many found the extent to which the NDIA was represented by solicitors and barristers was surprising and confronting.
- The language used and the nature of hearings were seen to necessitate legal support in order that ART applicants are not disadvantaged.
- Despite the ART's aims to be less adversarial, Legal Aid clients reported that it was in fact a very adversarial and confronting process requiring legal expertise and support.
- There are significant concerns about evidence requirements (discussed further below).

⁷ Davies et al, n1, pp. 23–26.

Challenging evidence requirements

The Evaluation found there are significant concerns in relation to the amount, complexity, and costs associated with gathering the evidence required in the appeals process, which is having a substantial impact on clients, lawyers, advocates, and the wider sector. In particular, the Evaluation found⁸ that:

- The evidence required for appeals matters was extensive, particularly in relation to very specific reports required from medical and allied health experts (and in addition, there was often a shortage of professionals available to provide these reports).
- The evidentiary requirements from the NDIA were inconsistent and would often change during the appeals period.
- Health professionals hold concerns regarding the requirements of NDIS reports and the burden this placed on them and people with disability (including repeated requests for the same information and financial implication of having to provide these without compensation), and therefore some will no longer provide NDIS reports.
- The costs for gathering evidence are high.
- These challenges are particularly difficult for people living in rural, regional and remote areas.

Benefits of the Program

The Evaluation found that legal assistance for NDIS appeals resulted in better outcomes for clients, helped clients be more informed and prepared, enhanced access to justice and fairness, reduced delays, supported the fair and efficient operation of the ART and the NDIS (including by filtering out non-meritorious cases), and represented value for money.

The NDIS Appeals Program Legal Services has evolved into a unique specialist program that helps the legal system function better, promotes transparent and fair NDIA decisions and, most importantly, gives people with disability better access to justice and necessary supports that can change lives.⁹

Need for secure, ongoing funding

Legal Aids are not able to meet demand for the NDIS Appeals Program within the current funding provided (2023 data shows that just 65% of the demand for the Program was being met).

⁸ Ibid, pp. 26-28.

⁹ Ibid, p. 2.

The insecure funding arrangements for the Program have resulted in a number of challenges for Legal Aids, including challenges with retaining highly skilled staff, and in taking on clients with matters that are likely to be ongoing for an extended period of time.

Data

We support improvements to Program data collection to support Program improvements, including enhancing consistency in reporting formats across state and territory offices.

Recommendations

NLA supports the Evaluation recommendations¹⁰:

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¹⁰ Ibid.



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