Reviewing our decisions

Quick summary: If you don't agree with a decision we make, please contact us. We can explain the decision and our reasons. You may also ask for an internal review of the decision. This means that one of our staff, who wasn't involved in the original decision, will have a look and decide if that decision was right. There are a number of decisions we can review. We call these reviewable decisions. If you still don't agree with our decision after the internal review, you can ask the Administrative Appeals Tribunal to review our decision. We call this an external review.

This guideline has information on what decisions we can review, how you can ask for a review of a decision, and what happens during the review.

What's on this page?

- What if you don't agree with a decision we make?
- What are internal and external reviews?
- How can you ask for an internal review?
- What happens during an internal review?
- How can you ask for an external review?
- What happens during an external review?
- Appendix 1: What decisions can we review?

You may also be interested in:

- Changing your plan
- Creating your plan
- Applying to the NDIS
- Reasonable and necessary supports
- Principles we follow to create your plan

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

What if you don't agree with a decision we make?

We're committed to helping you understand how and why we make decisions. We're also committed to helping you have a decision reviewed, if you believe the original decision we made was wrong.

We will give you written notice and the reasons for our reviewable decisions.[1] You can ask us at any time about how we make decisions. We can explain our decision and answer your questions. We If you'd like more information about one of our decisions, get in touch. You can contact us by phone, email or at one of our offices. If you're a participant, you can also speak to your planner, local area coordinator or early childhood partner.

If you don't agree with our decision, you may be able to ask for a review of the decision.

If you're not satisfied with our service, you can always give us feedback or make a complaint.

If you want to ask us to make changes to your plan, this is called a plan reassessment or plan variation. This is different to asking us to review a reviewable decision.

If you're not satisfied with a service provider, you can contact them directly. You can also contact the NDIS Quality and Safeguards Commission.

We're committed to improving our services and making sure you get the reasonable and necessary disability supports you need. We encourage you to let us know if things aren't right.

What do we mean by reviewing a decision?

We make decisions under the law for the NDIS.[2]

This law tells us how we should make decisions that affect you and your NDIS plan. We need to make all our decisions under this law.

We are committed to making the right decisions under the law. If you don't agree with our decision, you may have a right to have that decision reviewed.[3] If you want a decision reviewed,[4] you will need to ask for a review within 3 months of the decision being made.

Having a decision reviewed means someone who wasn't involved with the original decision will have a look at our decision. They check if we made the right decision under the law, or if the decision needs to be made again.

Learn more about internal and external reviews.

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

What are internal and external reviews?

There are processes we have to follow to review our decisions. This is called doing an internal review. There are also processes the Administrative Appeals Tribunal need to follow when reviewing our decisions. We call this an external review.

First, we need to make the decision. You can't ask for a review before we make the decision. We call this the **original decision**. For example, we could decide you're not eligible for the NDIS. Or if you're a participant, we could decide to approve your plan.

If you don't think our original decision is right, you may be able to ask for an **internal review**. This is where one of our staff, not involved in the original decision, checks if we made the right decision the first time.

If you don't agree with the internal review decision, you may then ask the Administrative Appeals Tribunal for an **external review**. This is where the Tribunal checks if the internal review decision was the right decision.

The Tribunal is separate to us, so external reviews are independent from our decisions. You can't have an external review until we've done the internal review.

What decisions can be reviewed?

The NDIS law tells us what decisions can be reviewed.

Many decisions are reviewable. Some of the common ones include when we decide:

- you're not eligible for the NDIS[5]
- you're no longer eligible for the NDIS[6]
- to approve your plan, which includes approving the supports we fund in your plan[7]
- not to do a plan reassessment[8]
- not to do a plan variation[9]
- to vary your plan[10]
- if you need a plan nominee or a different child representative.[11]

If you're a participant and don't agree with your plan, you can ask us to review some parts of your plan. We can review:[12]

- what NDIS-funded supports we include in your plan
- how we describe those supports
- how your funding is managed
- how long your plan goes for

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

- how your plan has been varied.

Learn more about how we create and approve your plan.

If the original decision we make is reviewable, we'll write to you to let you know about our decision and the reasons for our decision.[13] The reasons for our decision are included in the letter we send you when we make our decision. When we say 'you', we mean only those people who are directly affected by our decision.

If you're not sure if our decision is reviewable, you can look at Appendix 1: What decisions can we review? for a list of all the decisions we can review.

What's the difference between an internal review and other ways to change your plan?

You can ask for an **internal review** if you don't agree with a decision we make, such as our decision to approve your plan.[14]

The laws for the NDIS changed on 1 July 2022. From 1 July 2022, a **plan review** is called a **plan reassessment**.

From 1 July 2022, if you want us to make changes to your plan,[15] you can ask for either a **plan reassessment**[16] or a **plan variation**[17]. We can only vary your plan in limited circumstances.[18]

Learn more about how we deal with plan reviews requested before 1 July 2022 and the internal review of those decisions.[19]

Learn more about plan reassessments and plan variations.

How can you ask for an internal review?

After we inform you of the original decision, you then have **3 months** to ask for an internal review.[20] This is 3 months from the day after you receive our decision in writing.[21]

We can't do an internal review if you ask us after more than 3 months. If you ask us after 3 months, we'll let you know what other options you have.

For example, if we decided you're not eligible for the NDIS, and it's been more than 3 months since we let you know about our decision, you can apply again. You can also apply again if you used to be a participant, and it's been more than 3 months since we let you know that you're not eligible anymore. Learn more about applying to the NDIS.

Or if you're a participant and want us to reconsider the supports in your plan, and it's been more than 3 months since we let you know about our decision to approve your plan, you can ask for a plan reassessment or variation. If we decide not to do a plan reassessment or variation, we can always consider your situation at your next check-in.

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

Learn more about plan reassessments and plan variations.

Example

Amir is an NDIS participant and just received his first plan. He doesn't think we made the right decision on what supports we included in his plan. He wants to ask for an internal review.

He received his plan in the mail on 1 July. He has 3 months from 2 July – the day after he received our decision in writing – to ask for an internal review.

This means Amir will need to ask for an internal review on or before 2 October.

Amir can't ask for an **internal review** after 2 October.

But if his situation changes after we approved his plan, he can still ask us at any time to change his plan either by a **plan reassessment** or **plan variation** at any time.

Learn more about plan reassessments and plan variations.

Who can ask for an internal review?

You can ask for an internal review if you're **directly affected** by our decision.[22]

Who can ask for an internal review depends on the decision. We have a list of who can usually ask for an internal review for different types of decisions.

Example

Sharon is a NDIS participant. She had funding in her first plan for physiotherapy. Her new plan doesn't include funding for physiotherapy. We didn't have evidence that physiotherapy still meets the NDIS funding criteria.

Sharon can ask for a review of our decision to approve her plan without funding for physiotherapy. She's directly affected by our decision, as it's about her and the supports we included in her plan.

But her physiotherapist can't ask us for a review, as they're not directly affected by the decision. Even though this might mean Sharon stops going to the physiotherapist, the link isn't direct. There's a step in between. It's Sharon's decision if she uses her own money to keep going to the physiotherapist.

Can other people help you ask for an internal review?

Yes. Other people can help you ask for an internal review, if you want them to. For example, you can ask your family or friends to help you make your own request.

Your local area coordinator, early childhood partner, planner, or an advocate can help you if you want them to. We can also help you book a translator or interpreter if you need one.

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

Can other people ask for an internal review on your behalf?

You can give someone consent to ask for an internal review on your behalf. If a person wishes to apply for an internal review without your consent, they will need to have legal authority to act on your behalf.

If you are a participant under 18 years and have a child representative, they will have legal authority to request an internal review on your behalf.[23]

If you are participant aged 18 years or older and have a nominee, they may be able to request an internal review on your behalf, depending on whether the decision to be reviewed falls within the scope of the nominee's appointment.

Can you give someone consent to ask for an internal review for you?

Yes. If you're able to ask for an internal review, you can give someone else permission to ask for you.

You need to let us know they have your permission. We call this consent. This could be someone like a family member, friend, advocate, or a support coordinator.

We prefer you let us know in writing if you're giving someone consent. You can:

- send us a letter or email telling us that you give someone consent to ask for a review
- fill in the Consent for a Third Party to Act on Behalf of a Participant form
- contact us and we'll make a written note of this.

We check that your consent is for the internal review you're asking for, and your consent still applies. We may still contact you to check you're happy for us to do an internal review.

Learn more about consent.

How do you ask for an internal review?

There are a few ways to ask us for an internal review. You can:

- complete our form
- contact us by phone or at one of our offices
- send us a letter or email.

Remember, you need to ask for the internal review within **3 months** after we inform you of our original decision.

We need to know why you're asking for an internal review. This will help us understand your situation and help us make the internal review decision. We'll contact you if we need more information to make our decision.

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

To help us do the internal review, let us know:

- what decision you were expecting
- why you think we should make a different decision
- if there is any information you've already given us that you'd like us to reconsider
- if you have any new evidence, such as medical or therapy reports, you'd like us to consider.

We'll note the day you ask us for an internal review. This will be either:

- the day you ask us in person or over the phone
- the day we receive your letter or email.

What if we need more information to do the internal review?

In some situations, we may need more information to make our decision. If so, we'll contact you to confirm what information we need and why we need it.

You might also want to give us more information to help with the internal review. If you want to, you can also give us consent to discuss your situation with your doctor or treating health professional.

If we ask you for additional information or you want to provide more information, we'll wait for up to **28 days**. This means you'll have time to give us the information we need.

If you give us the information we need earlier than 28 days, we can sometimes make the internal review decision sooner.

If we don't get the information within 28 days, we need to make our decision based on the information we have. In some situations we can give you more time, so let us know if you need it.

You might give us information that's different to what you're asking for in the internal review. If so, we'll work with you to decide what we should do.

For example, you may be a participant and need different supports in your plan because your support needs have changed. This may mean you need a plan reassessment or in some limited circumstances, a plan variation. We may consider those supports as part of our internal review.[24]

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

What if you don't want an internal review anymore?

You can withdraw your request for an internal review any time before we make our internal review decision.[25]

To withdraw your request for an internal review, you can:

- contact us by phone or in person at one of our offices
- send us a letter or email.

If you tell us in person or over the phone that you withdraw your request, we'll make a note of this. This will include the date you let us know.[26]

When do we do an internal review without you asking?

There are some situations where you don't need to ask us to do an internal review. This is because under the NDIS law, we must do an internal review if we didn't make our original decision on time. We call this an automatic internal review.

This could happen if you ask for:

- a plan reassessment and we don't decide within **21days** if we'll do the plan reassessment.[27]
- a plan variation, and we don't decide within **21 days** if we'll do the plan variation[28] or inform you that we need more time to decide.[29]

There are also two situations where this could happen when you apply to the NDIS:

- We don't decide if you're eligible for the NDIS, or ask you to give us more information, within 21 days of you applying to the NDIS.[30]
- You gave us more information, or provided an assessment, after we made a request[31], but we don't decide if you're eligible, or ask for more information again, within **14 days** of receiving the last information or report.[32]

We'll let you know in writing if we'll do an automatic internal review.[33] You don't need to do anything.

There are some changes to the laws of the NDIS from **1 July 2022**. The changes apply to internal review requests made on or after 1 July 2022. Under the changes, some decisions that affect your plan will be reviewed automatically, as part of an existing internal review.

Learn more about what happens if we make a second decision to approve a new plan, or vary your plan, before your internal review is complete?

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

What happens during an internal review?

After you ask for an internal review, our original decision will stand until we finish the review.[34]

For example, you might be a participant and ask for an internal review of your current plan. If so, you can keep using the same NDIS-funded supports in your plan.

Or, you might ask for an internal review because we decided you're not eligible for the NDIS. A local area coordinator or early childhood partner can help you link in with other supports.

Who does the internal review?

The person who does the internal review will be one of our staff. They can only do the internal review if they weren't involved in making the original decision.[35] We call this person the internal reviewer.

Your internal reviewer will look at:

- your situation – if you're a participant and we're reviewing our decision to approve your plan, [36] we will make our decision based on the facts and circumstances at the time of our internal review decision.[37]
- The NDIS laws
- Our Guidelines
- the principles we follow to create your plan – if you're asking for a review of the supports in your plan
- reasons for the original decision, and the information we used to make the original decision
- any new information you give us.

How long will your internal review take?

We aim to complete all internal reviews within **60 days** after you ask for one. This is 60 days from the day after we receive your request for an internal review.[38]

If this isn't possible, we will contact you, or the person who asked for the internal review. We will explain why we need more time, and let you know when we'll make a decision.

Find out more about our Participant Service Guarantee.

Where the original decision is reviewed automatically, the 60 days to make an internal review decision begins on the day after the timeframe to make the original decision ended.[39]

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

For example, if you asked for a reassessment to your plan and we did not make a decision **within 21 days**, then we will be taken to have made a decision not to reassess your plan.[40] This decision will be automatically reviewed[41] and we will need to make an internal review decision within 60 days, beginning on the day after the 21 days expired.[42]

What if you need your internal review done sooner?

We can sometimes do urgent internal reviews sooner. We may do this if:

- there's a risk of harm to your health or wellbeing, or for someone you care for
- you're at risk of homelessness or have unstable accommodation
- your care arrangements are at risk – for example, if your primary carer can't care for you while we make our review decision
- there's a risk relating to your disability – for example, if your disability is rapidly changing or becoming more serious
- you're in hospital waiting for discharge
- you're waiting for urgent assistive technology, home modifications or supported independent living supports.

If you're in one of the above situations, let us know when you ask for a review. We'll contact you, or the person who asked for the internal review, within 48 hours to talk about your situation. We will then complete the internal review as soon as we reasonably can.

What if you need a change to your current plan, while we are completing your internal review?

If you're a participant, and your situation changes while waiting for an internal review, contact us. We'll let you know what options are available for your situation, and how this might affect your plan and your internal review.

You may need a change to your plan **before** we complete our internal review:

- You can ask for a plan reassessment or variation to your plan, which we call a participant-requested plan reassessment[43] or participant-requested variation.[44]
- Depending on your situation, we may decide to do a plan reassessment or vary your plan, which we call an agency-initiated plan reassessment,[45] or agency-initiated variation.[46] You can then ask for an internal review of this decision, if you don't agree.

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

Example

Robert is a NDIS participant.

He has requested an internal review as he is unhappy with the plan management decision in his plan. Robert wants to self-manage some his supports.

While the internal review officer is reviewing Robert's request, he mentions his sister has been admitted to hospital.

Robert lives with his sister and relies on her to help him daily.

The internal review officer can complete a CEO initiated plan variation to also include some additional supports for Robert at the same time as they are completing the internal review.

This means Robert will have some new supports in his plan to help him while his sister is in hospital and his internal review of the plan management request considered at the same time.

If Robert doesn't agree with the decision we make relating to his internal review, he can ask for an external review.

Robert may also decide he doesn't want to proceed with his internal review due to his change of circumstances.

If Robert doesn't agree with the decision we make relating to his internal review, he can ask for an external review.

Robert may also decide he doesn't want to proceed with his internal review due to his change of circumstances.

There are some changes to the laws of the NDIS from **1 July 2022**. The changes apply to internal review requests made on or after **1 July 2022**. Under the changes, some decisions that affect your plan will be reviewed automatically, as part of an existing internal review.

What happens if we make a second decision to approve a new plan, or vary your current plan, before your internal review is complete?

The NDIS laws changed on 1 July 2022. This means the answer will depend on whether your internal review request was **made on or after 1 July 2022**.[47]

Requests for internal review made before 1 July 2022:

If you request an internal review **before 1 July 2022** and we make a second decision **after 1 July 2022**, to approve a new plan, or vary your plan, **before** we make our internal review decision, then you will need to request an internal review of the second decision if you are unhappy with that decision. The NDIS Act changes will not apply to your internal review,

which means the second decision will **not** be reviewed automatically as part of your existing internal review.[48]

Requests for an internal review made from 1 July 2022:

If you request an internal review **from 1 July 2022** about a decision to approve a new plan, or vary your current plan, then later decisions to vary or approve a new plan may affect the scope of the internal review.[49]

If we approve a new plan or vary your current plan **before** we make our internal review decision, then the internal review will now cover both:

- The first decision to either approve a new plan, or vary your plan (**original decision**); and
- The later decision to either approve a new plan, or to vary your plan (**second decision**).[50]

This means if you are unhappy with the second decision, you will **not** need to seek another internal review because the internal reviewer will review the second decision automatically (as part of the current review process). The internal reviewer will consider if both decisions have been made correctly.

What if we approve a new plan, or vary your current plan, after your internal review is complete?

If the second decision is made after we make our internal review decision, then we cannot consider the second decision as part of the existing internal review because the internal review decision has already been made.[51]

This applies even where the request for an internal review is **made on or after 1 July 2022**. It is not possible to consider the second decision as part of the internal review if the internal review decision has already been made.

If you are unhappy with the decision, you will need to ask for an internal review within 3 months after you receive notice of the second decision in the usual way.[52]

Example

Neha is a NDIS participant. We undertake a reassessment of Neha's plan and approve a new plan (**original decision**). Neha is not happy with the supports in her new plan and requests an internal review **on or after 1 July 2022**.[53]

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

What happens if we make a second decision to vary or approve a new plan before Neha's internal review is complete?

If our **second decision** occurs **before** our **internal review decision**, Neha's internal review will now include both:

- Our **original decision** to approve her plan; and
- Our **second decision** to vary her current plan.

This means the internal reviewer will review both decisions.[54]

What happens if we decide to approve a new plan, or vary Neha's current plan, after we have made her internal review decision?

If the **second decision** occurs **after** our **internal review decision**, then Neha will need to seek an internal review if Neha is not happy with the decision outcome. Neha will need to request an internal review within 3 months from when Neha receives the notice of our decision.

What internal review decisions can we make?

When we complete the internal review, there are 3 different types of decisions we can make. We can:[55]

- **confirm** the original decision – we don't make any changes
- **vary** the original decision – we make some changes to the original decision
- **set aside** the original decision and make a new decision.

We review all the information we have when we make the internal review decision. For example, we can look at new information you give us after we made our original decision.

When we internally review a decision to approve your plan, we look at whether we have made the correct or preferable decision based on the facts and circumstances at the time we make our internal review decision.[56] We call the decision that fits best, based on the laws of the NDIS, the preferable decision.

The internal reviewer can consider supports that were not raised, or requested, by you when we made our original decision to approve your plan.[57]

When would we confirm the original decision?

We may confirm the original decision.[58] This means there's no change to the original decision.

We confirm the original decision if we decide it was the correct or preferable decision.[59] This means, out of the decisions we could make, the internal reviewer decides the original

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

decision is the correct decision, or the decision that fits best, based on the law for the NDIS, the evidence and facts.

For example, we might decide you're not eligible for the NDIS, and the internal reviewer confirms the original decision. This means you're still not eligible for the NDIS.

Example

Jasmine asked for an internal review of our decision to approve her NDIS plan. Her plan includes $3000 funding for therapy, but she believes she needs more.

Jasmine's internal reviewer looks at all the information we have about Jasmine and her support needs. Her internal reviewer decides the original plan was the preferable decision under the law. This means her plan does not change. She still has $3000 funding for therapy.

Example

Aimee seeks an internal review of the decision not to give her access to the NDIS.

Aimee's internal reviewer looks at the information about Aimee's age. Aimee was 70 years of age when she made her access request. The internal reviewer decides the original decision was the correct decision under laws for the NDIS because Aimee doesn't meet the age requirements. This means the original decision not giving Aimee access to the NDIS does not change.

When would we vary the original decision?

We may also vary the original decision.[60] This means we decide to change part of the original decision.

For example, we could decide to include a different amount of funding, or a different number of hours, for a particular NDIS-funded support. If so, you'll get a new plan with a revised amount of funding or hours for that support. The rest of the plan will stay the same.

Example

Sam asks for an internal review of our decision to approve her plan. Her plan includes $3000 for therapy.

Sam's internal reviewer looks at all the information we have, including a new report from her occupational therapist.

Sam's internal reviewer decides to vary the original plan and include $4000 for therapy in a new plan. All the other supports in Sam's plan stay the same.

When would we set aside the original decision, and make a new decision?

Finally, we may set aside the decision and make a new decision.[61] This means the original decision no longer applies. The internal reviewer will now make a new decision.

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

We do this if we decide the original decision wasn't correct or preferable. Out of the decisions we could make, there's one that fits better with the NDIS law based on the facts and evidence.

For example, if we originally decided you're not eligible for the NDIS, the internal reviewer could decide you are eligible.

Example

Jamal asks for an internal review of our decision to approve his plan. His plan did not include funding for occupational therapy. We didn't have enough evidence that it met the NDIS funding criteria. After asking for an internal review, Jamal gives us more evidence on why he needs occupational therapy.

Jamal's internal reviewer looks at all the information, and decides the original plan wasn't the correct or preferable decision.

His internal reviewer decides to set aside the original decision. His internal reviewer makes a new decision to approve a plan that includes funding for occupational therapy.

What happens after we make the internal review decision?

We'll let you know in writing about what decision we made and why.

Our letter or email will explain:

- our internal review decision
- the reasons for our decision
- what evidence we looked at if we decided to confirm or vary the original decision
- what you can do if you don't agree with the internal review decision.

If we vary or set aside the decision, your internal reviewer will make the changes to your NDIS record or NDIS plan to reflect their new decision.

What happens to your plan after an internal review decision?

If you're a participant, your plan may need to change depending on our internal review decision.

If we confirm the original decision to approve your plan, your plan will stay the same. You'll have the same supports, the same plan management, and your plan review date will stay the same.

If we vary or set aside the original decision, we'll then replace or vary your plan. This means your replacement plan will have any changes we decided to make about:[62]

- the reasonable and necessary supports in your plan

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

- how we describe the supports in your plan
- how the funding in your plan is managed
- when we'll next review your plan.

What if you're still not happy after the internal review decision?

If you disagree with our internal review decision, you can ask for an external review of the decision. You have **28 days** after you receive our internal review decision to ask the Administrative Appeals Tribunal for an external review.

Learn more in How can you ask for an external review?

How can you ask for an external review?

If you don't agree with the internal review decision, you can ask the Administrative Appeals Tribunal to review it.[63] We call this an external review. You can't ask for an external review until after we make the internal review decision.

The Administrative Appeals Tribunal reviews decisions made by Australian Government ministers, departments and agencies. This includes our decisions, as well as decisions from other parts of government like Centrelink.

We'll call the Administrative Appeals Tribunal 'the Tribunal' in this guideline. It is also called the AAT.

The Tribunal is separate from us. It has different processes on how it makes decisions, and it has different staff and its own laws. The reviews it does are independent of our decisions.

For more information about asking for an external review of an NDIS decision, check out the Tribunal website.

Who can ask for an external review?

You can ask for an external review if you're affected by the internal review decision.[64]

If you were able to ask for an internal review, you should be able to ask for an external review. But the Tribunal will decide if you can ask for an external review.

You can also ask a friend, family member, advocate, or lawyer to help you ask for an external review.

How long do you have to ask for an external review?

After we make the internal review decision, you then have **28 days** to ask for an external review. This is 28 days from the day after you receive our internal review decision in writing.

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

In some situations, you can get more than 28 days to ask for an external review. The Tribunal may give you more time if it thinks it's reasonable, based on your circumstances.[65]

If you need more time, you'll need to fill out an application for extension form on the Tribunal's website, or write to the Tribunal. Learn more about how the Tribunal can help you.

How do you ask for an external review?

You can apply for a Tribunal review online, or you can fill out an application form. Lodge the form directly with the Tribunal in person, email, by fax, or by post.

You can also give the Tribunal new information, if you think it will help them with the external review.

If you need help asking for an external review, you can contact the Tribunal.

What if you don't want an external review anymore?

You can write to the Tribunal at any time to withdraw your application.[66] You can also ask the Tribunal to send you a withdrawal form to sign and return if you prefer.

What happens during an external review?

When you ask the Tribunal for an external review, it'll go through a few steps before making a decision.

You can find information about the steps in the external review process on the Tribunal website.

You can provide more information to the Tribunal to help them make a decision. We may also ask you, or other people, for more information to help us resolve the issue or help the Tribunal decide. If you're a participant or applying to the NDIS, we may ask you to get an assessment.

If you're a participant, you can still use the supports in your plan during the Tribunal process.

What support can you get at the Tribunal?

If you want an advocate or legal support at the Tribunal, you may be eligible for NDIS Appeals Supports. For example, someone could represent you at the Tribunal and help you explain your situation.

If you're a participant, you can use your NDIS funding for disability related supports during the hearings. For example, you might need support for personal care or communication supports to help you participate in discussions.

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

But you can't use your NDIS funding for someone to represent you at the Tribunal. For example, you can't use your NDIS funding for a lawyer, support coordinator or other provider. We also can't fund any legal advice or legal support when you go to the Tribunal.[67]

Learn more about the support you can get at the Tribunal.

What's our role and how can we support you at the Tribunal?

We are committed to the principles of our Participant Service Charter. We want a fair outcome and to support you through the Tribunal process.

We'll let you know in writing which of our staff is assigned to work with you at the Tribunal. We call them a case manager.

You can contact your case manager if you have any questions about the process. They can also answer any questions you might have on how the process could affect you.

We will also have a lawyer if we are not able to resolve your issues quickly. They will help you and the Tribunal with the legal aspects of the review. For example, they prepare documents that explain the issues.

We need to have lawyers to meet our legal obligations at the Tribunal. We need to help the Tribunal make its decision, and act as a model litigant at the Tribunal.[68]

For example, this means we must act honestly and fairly at the Tribunal by:[69]

- dealing with matters quickly and without unnecessary delay
- acting consistently, and working with you the same way we work with all other people at the Tribunal
- avoiding or limiting Tribunal hearings where possible, and trying to reach an agreement together where this is the best outcome for everyone
- not taking advantage of people who don't have resources for legal representation at the Tribunal.

We can still act firmly and properly at the Tribunal to pursue our interests as a government agency.[70] For example, we can still defend our decision at the Tribunal if we think we made the right decision.

In some situations, we may need the Tribunal to make a decision, instead of us making an agreement together. This might be if there's a complex and unclear area of law we need to resolve at the Tribunal.

You can read more about our legal obligations in the Legal Services Directions on the Federal Register of Legislation website

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

What if your situation changes while waiting for the external review?

An external review means the Tribunal decides if we made the correct or preferable decision, or if it needs to make the decision again.

If you're a participant and your situation changes during the external review process, contact us. You may need a plan reassessment or a plan variation while the Tribunal is reviewing a decision about your plan.

Your case manager will explain the options available to you. We may also need to let the Tribunal know what we think we should do, as it might affect your external review.

You can still use the supports in your plan while the Tribunal considers your external review and you can contact us at any time if you have questions about your plan.

What if we approve a new plan or vary your current plan before the AAT completes their external review?

There are some changes to the laws of the NDIS from **1 July 2022**. The changes apply to internal review requests made on or after 1 July 2022. The changes apply to Tribunal applications **made on or after 1 July 2022**.[71] Under the changes, some decisions that affect your plan will be reviewed by the Tribunal automatically, as part of an existing external review.[72]

Application for an external review made on or after 1 July 2022:

If you are unhappy with our internal review decision and have applied for an external review in the Administrative Appeals Tribunal **on or after 1 July 2022**, the Tribunal will review the original decision (which has been reviewed by the internal reviewer), but they will also review any later decisions made after you applied to the Tribunal that either approve a new plan or vary your plan.[73]

Applications for an external review made before 1 July 2022:

If you are unhappy with our internal review decision and apply for an external review in the Administrative Appeals Tribunal **before 1 July 2022**, then the Tribunal will review the original decision (which has been reviewed by the internal reviewer).

The Tribunal will only be able to review later decisions that change your plan, if:

- The later decision has been reviewed by an internal review (i.e. there is an internal review decision with respect to the decision we have made); and
- you have applied to the Tribunal for an external review of that internal review decision.

This means later decisions that have changed your plan while the external review is ongoing will not be reviewed automatically by the Tribunal if the Tribunal application is **made before 1 July 2022**.

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

Example

Neha is a NDIS participant and is unhappy with our internal review decision. Neha applies to the Administrative Appeals Tribunal for an external review **on 1 July 2022**.

Any later decision/s to approve a new plan, or vary Neha's existing plan, made after 1 July 2022, will be included in the Tribunal's external review.

This means that the Tribunal will be able to review all decisions that have changed Neha's plan after Neha applied to the Tribunal for an external review. The Tribunal will be able to consider all plans and variations approved after Neha applied to the Tribunal. The Tribunal's review will not be limited to original decision, which was reviewed by the internal reviewer.

Can we make an agreement together instead of waiting for a Tribunal decision?

Yes. We can make an agreement together at any time during the external review. This means we come to an agreement about the decision, instead of the Tribunal making a decision.

This often means you can get the decision faster and avoid some of the Tribunal process.

Any agreement we make needs to follow the law for the NDIS. The Tribunal also needs to approve the agreement, to make sure it's fair and you're happy with it. This is called a consent decision.

If we don't come to an agreement, the Tribunal will make a decision after the hearing.

What external review decisions can the Tribunal make?

The Tribunal will take an independent look at:

- your situation – if you're a participant and the Tribunal is reviewing our decision to approve your plan,[74] the Tribunal will make its decision based on the facts and circumstances at the time of the Tribunal's decision.[75]
- the law
- Our Guidelines
- the principles we follow to create your plan – if you're asking for a review of the supports in your plan
- the reasons for our internal review decision, and the information we used to make the internal review decision
- any new information you give the Tribunal.

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

It will then make the 'correct or preferable' decision.[76] This means, out of the decisions it can make, it will make the decision it thinks is correct decision, or the best decision, under the law based on the evidence and facts.

When the Tribunal reviews our decision to approve your plan, the Tribunal will look at whether we made the correct or preferable decision based on the facts and circumstances at the time the Tribunal makes its decision.[77]

After the hearing, the Tribunal can make one of 4 types of decisions. It can either:

- **affirm** the internal review decision[78] – the Tribunal doesn't make any changes
- **vary** the internal review decision[79] – the Tribunal makes some changes to the internal review decision
- **set aside** the internal review decision and **make a new decision**[80]
- **set aside** the internal review decision, and **send it back to us** for further consideration.[81]

If the Tribunal sends the decision back to us, it often gives us instructions on how to make the new decision.

The Tribunal will give reasons for its decision. Most of the time, it will publish those reasons on the AustLII website.

Learn more about the types of decisions the Tribunal can make.

Learn more about the steps in the external review process.

What happens after the Tribunal makes its decision?

Once the Tribunal makes the external review decision, it will let both you and us know.

If the Tribunal changes our decision, we'll then apply its decision. This means we may need to make changes so your NDIS record or NDIS plan reflects the Tribunal's decision. We're committed to doing this within 28 days of the Tribunal's decision.

What if you don't agree with the Tribunal's decision?

You can't ask for an internal review or an external review of the Tribunal's decision.

The Tribunal's decision can only be appealed to a Federal Court. It's a good idea to get legal advice if you're thinking of appealing to a Federal Court.

A lawyer can tell you if you can appeal the decision. If so, they can help you lodge an appeal if that's what you want to do.

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

Appendix 1: What decisions can we review?

This list has all the decisions we can review under the law. It also has a list of the common groups of people who can ask for a review of those decisions.

If this list says you can ask for a review, you can also give someone else consent to ask for you.

If you're not on this list, you may still be able to ask for a review. But you'll need to show us that you're directly affected by our decision.

If you're not sure if you can ask for a review, ask us and we'll help you work it out.

The NDIS Quality and Safeguards Commission handles all internal reviews relating to provider registration.

Applying to the NDIS

- If we decide you're not eligible to become an NDIS participant.[82]
- If we decide not to give you more than 90 days to give us information or a report for your NDIS application.[83]

Who can usually ask for a review?

- The person who applied to the NDIS.
- A person appointed by a court or tribunal to make decisions for the person who applied to the NDIS.
- A parent or legal guardian for a child younger than 18 applying to the NDIS.

Leaving the NDIS

- If we decide you're no longer eligible for the NDIS.[84]

Who can usually ask for a review?

- The person who used to be a participant.
- A person appointed by a court or tribunal to make decisions for the person who used to be a participant.
- A nominee or child representative of the person who used to be a participant.

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

Creating your plan

- Approving your plan.[85] This includes what supports we include, how we describe those supports, how long your plan goes for, and who manages the funding in your plan.

Who can usually ask for a review?

- The participant.
- A plan nominee or child representative for the participant.
- A person appointed by a court or tribunal to make decisions for the participant.

Your plan

If we decide not to extend a grace period for your temporary absence from Australia.[86]

- The grace period is 6 weeks unless we decide to extend it. Your plan is suspended from the end of the grace period, until you return to Australia.

Who can usually ask for a review?

- The participant.
- A plan nominee or child representative.
- A person appointed by a court or tribunal to make decisions for the participant.

Varying your plan

- If we decide to vary your plan,[87] or decide not to vary your plan when you request a variation to your plan.[88]

Who can usually ask for a review?

- The participant.
- A plan nominee or child representative.
- A person appointed by a court or tribunal to make decisions for the participant.

Plan reassessment

- If we decide not to do a participant-requested plan reassessment.[89]

Who can usually ask for a review?

- The participant.

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

- A plan nominee or child representative.
- A person appointed by a court or tribunal to make decisions for the participant.

Child representatives

- If we decide that someone, who doesn't have parental responsibility, is a child representative for a participant younger than 18. Or, if we don't decide they're the child's representative.[90]
- If we decide that a child cannot represent themselves.[91]
- If we decide that someone with parental responsibility for a child is the child's representative, instead of the child's guardian.[92] Or, if we don't decide they're the child's representative.
- If we decide that only some of the people with parental responsibility are child representatives.[93] For example, if we decide one parent is a child representative, and another parent is not.

Who can usually ask for a review?

- A participant younger than 18.
- A person who has parental responsibility for someone younger than 18, including a parent or guardian.
- A State or Territory Minister, or the head of a State or Territory government department.

Nominees

- If we decide to appoint a plan nominee.[94]
- If we decide to appoint a correspondence nominee.[95]
- If we decide whether we cancel or suspend the appointment of a nominee.[96]

Who can usually ask for a review?

- The participant.
- A person appointed by a court or tribunal to make decisions for the participant.
- A nominee, someone who wants to be appointed as a nominee, or someone who used to be a nominee.

Compensation

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

- If we decide that a participant must take reasonable action to claim or obtain compensation.[97]
- If we refuse to extend how much time a participant has to take reasonable action to claim or obtain compensation.[98]
- If we decide to take action to claim or obtain compensation.[99]
- If we decide to take over the conduct of a compensation claim.[100]
- If we give notice that we propose to recover an amount of compensation.[101] We call this a 'recovery notice'.
- If we decide that not all or part of a compensation payment was fixed by a judgment or settlement, for the purposes of calculating how much we can recover.[102]

Who can usually ask for a review?

- The participant.
- A plan nominee or child representative.
- A person appointed by a court or tribunal to make decisions for the participant.

Debt recovery

- If we decide not to write off a debt.[103] That is, we decide we'll still try to recover a debt.
- If we decide not to waive a debt, or we don't need to waive a debt.[104] That is, we decide a person still owes us money.

Who can usually ask for a review?

- The person who owes us money.

Specialist Disability Accommodation – dwelling enrolment

- If we decide not to enrol a dwelling.[105]
- If we decide to cancel a dwelling enrolment.[106]

Who can usually ask for a review?

- The service provider who wants to enrol the dwelling, or had enrolled it, as Specialist Disability Accommodation.

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

Reference list

[1] NDIS Act s 100(1).
[2] NDIS Act and delegated legislation made under the NDIS Act.
[3] NDIS Act ss 99 and 100(2).
[4] NDIS Act s 100(2); also see s 100(1A)(a)(ii) for the decisions that will be reviewed automatically.
[5] NDIS Act ss 99(1) item 1; 20(1)(a); 21(3); 26(2)(c).
[6] NDIS Act s 99(1) item 3; 30.
[7] NDIS Act s 99(1) item 4; 33(2).
[8] NDIS Act s 99 (1) item 6C.
[9] NDIS Act s 99 (1) item 6B.
[10] NDIS Amendment Act 2022 s99 (1) item 6
[11] NDIS Act s 99(1) items 17-22.
[12] NDIS Act s 33(2).
[13] NDIS Act s 100(1).
[14] NDIS Act s 100(2).
[15] NDIS Act s 47A(1).
[16] NDIS Act s 48(2).
[17] NDIS Act s 47A(1).
[18] NDIS Act s 47A(1).
[19] NDIS Amendment (PSG and Other Measures) Act 2022 s 65(6); NDIS Act (prior to 1 July 2022), s 48(1)-(3); 49; 99(1), 100(1A); 100(5).
[20] NDIS Act s 100(2).
[21] Acts Interpretation Act s 36.
[22] NDIS Act s 100(2).
[23] NDIS Act s 74(1).
[24] *QDKH, by his litigation representative BGJF v National Disability Insurance Agency* [2021] FCAFC 189
[25] NDIS Act s 102.
[26] NDIS Act s 102(2).
[27] NDIS Act ss 48(4);100(1A)(a)(ii).
[28] NDIS Act ss 47A(5); 100(1A)(a)(ii).
[29] NDIS Amendment Act 2022 s47A(4)(d)
[30] NDIS Act ss 20; 21(3)(a);100(1A)(a)(ii).
[31] NDIS Act ss 21(1)(b); 26(1).
[32] NDIS Act ss 21(3)(b); 26(2); 100(1A)(a)(ii).
[33] NDIS Act ss 21(3); 47A(5); 48(4); 100(1).
[34] NDIS Act s 100(7).
[35] NDIS Act s 100(5)(d).
[36] NDIS Act s 33(2).
[37] *Frugtniet v Australian Securities and Investment Commission* (2019) 266 CLR 250 at [14]-[15] (Kiefel CJ, Keane and Nettle JJ).
[38] NDIS Act s 100(6A)(b)(i).
[39] NDIS Act s 100(6A)(b)(ii).
[40] NDIS Act s 47A(5).
[41] NDIS Act s 100(1A)((a)(ii).
[42] NDIS Act s 100(6A)(b)(ii).
[43] NDIS Act s 48(2).
[44] NDIS Act s 47A(2).
[45] NDIS Act s 48(2).
[46] ;s 47(2).
[47] NDIS Amendment (PSG and Other Measures) Act 2022 s68(1).
[48] NDIS Amendment (PSG and Other Measures) Act 2022 s68(1).
[49] NDIS Act s 101(2); NDIS Amendment (PSG and Other Measures) Act 2022, s68(1).
[50] NDIS Act s 101(2).

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

[51] NDIS Act s 101(2).
[52] NDIS Act s 100(2).
[53] This means that the *new* subsection 101(2) of the NDIS Act applies. See *NDIS Amendment (Participant Service Guarantee and Other Measures) Act 2022*, s68(1).
[54] NDIS Act s 101(2)(c).
[55] NDIS Act s 100(6).
[56] *Frugtniet v Australian Securities and Investment Commission* (2019) 266 CLR 250 at [14]-[15] (Kiefel CJ, Keane and Nettle JJ).
[57] *QDKH, by his litigation representative BGJF v National Disability Insurance Agency* [2021] FCAFC 189.
[58] NDIS Act s 100(6)(a).
[59] *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577 at 591 (Bowen CJ and Deane J).
[60] NDIS Act s 100(6)(a).
[61] NDIS Act s 100(6)(c).
[62] NDIS Act s 33(2).
[63] NDIS Act s 103.
[64] NDIS Act s 103; AAT Act s 27(1).
[65] AAT Act ss 29(7)-(8).
[66] AAT Act s 42A(1A).
[67] NDIS Act s 200A.
[68] Legal Services Directions 2017; see also AAT Act ss 2A; 33(1AA); 33(1AB).
[69] Legal Services Directions 2017, Appendix B, paragraphs 2-3.
[70] Legal Services Directions 2017, Appendix B, paragraph 2, Note 4.
[71] NDIS Amendment (PSG and Other Measures) Act 2022 s 68(2).
[72] NDIS Act s 103(2).
[73] NDIS Act s 103(2); NDIS Amendment (PSG and Other Measures) Act 2022 s 68(2).
[74] NDIS Act s 33(2).
[75] *Frugtniet v Australian Securities and Investment Commission* (2019) 266 CLR 250 at [14]-[15] (Kiefel CJ, Keane and Nettle JJ).
[76] *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577 at 591 (Bowen CJ and Deane J).
[77] *Frugtniet v Australian Securities and Investment Commission* (2019) 266 CLR 250 at [14]-[15] (Kiefel CJ, Keane and Nettle JJ).
[78] AAT Act s 43(1)(a).
[79] AAT Act s 43(1)(b).
[80] AAT Act s 43(1)(c)(i).
[81] AAT Act s 43(1)(c)(ii).
[82] NDIS Act ss 20(a); 21(3); 99(1) item 1.
[83] NDIS Act ss 26(2)(b); 99(1) item 2.
[84] NDIS Act ss 30; 99(1) item 3.
[85] NDIS Act 2013, ss 33(2); 99(1) item 4.
[86] NDIS Act ss 40(2)(b); 99(1) item 5.
[87] NDIS Act ss 99(1), item 6; 47A(1).
[88] NDIS Act ss 99(1), item 6A and item 6B; 47A(4)(b); 47A(5); 47A(8).
[89] NDIS Act ss 99(1) item 6C; 48(3)(c); 48(4).
[90] NDIS Act ss 99(1) item 17; 74(1)(b).
[91] NDIS Act ss 99(1) item 18; 74(5)(c).
[92] NDIS Act ss 99(1) item 19; 75(2).
[93] NDIS Act ss 99(1) item 19; 75(3).
[94] NDIS Act ss 99(1) item 20; 86.
[95] NDIS Act ss 99(1) item 21; 87.
[96] NDIS Act ss 99(1) item 22; 89-91.
[97] NDIS Act ss 99(1) item 23; 104.
[98] NDIS Act ss 99(1) item 24; 104(5A).
[99] NDIS Act ss 99(1) item 25; 105(4)(a).
[100] NDIS Act ss 99(1) item 25; 105(4)(b).

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.

[101] NDIS Act ss 99(1) item 26; 111.
[102] NDIS Act ss 99(1) item 27; 116.
[103] NDIS Act , ss 99(1) item 29; 190.
[104] NDIS Act ss 99(1) items 30-33; 193; 195.
[105] NDIS Act s 99(2); NDIS (SDA) Rules r 26(3).
[106] NDIS Act s 99(2); NDIS (SDA) Rules r 27(4).

This document is correct at the date of publication.

Always visit ourguidelines.ndis.gov.au for the latest version.