



Disability Services Commission

# Western Australian National Disability Insurance Scheme (WA NDIS) Operational Policy

## Reviewing and Appealing WA NDIS Decisions

Document reference number: N27

Version: 1.2

Publish Date: 1/07/2017

### 1. Keywords

Review, appeal, decision, reviewable decisions, complaints, Consumer Liaison Officer, Health and Disability Services Complaints Office, Ombudsman, eligibility, reasonable and necessary, funded support, self-management, grace period, plan, compensation.

### 2. Policy statement

This operational policy outlines the process by which a reviewable decision may be reviewed and appealed in WA NDIS. This review and appeals process is illustrated at Appendix 1.

The following decisions are reviewable and appealable within WA NDIS:

- **Eligibility** – decisions regarding the determination of a person's eligibility for WA NDIS
- **Reasonable and necessary funded supports in the plan** - decisions regarding a person's request for reasonable and necessary funded supports
- **Self-management of funds** – decisions regarding a person's request to self-manage the funding for supports in the plan
- **Extension of grace period** – decisions regarding a person's request for an extension to the six week grace period that a person can be absent from Australia without affecting their plan
- **Review of a WA NDIS Plan** – decisions regarding a person's request to review their plan
- **Application of Compensation Reduction Amounts** – the application of a person's awarded or deemed compensation payment against funding for reasonable and necessary supports in the person's plan.

### 3. Principles

WA NDIS will support people with disability to maximise their level of choice and control, including the right to request a review of key decisions.

People with disability, their families, and carers must be informed about the internal and external processes available to them to seek review of a reviewable decision.

People with disability can involve others to support them in the review and appeal process including appointing an independent advocate.

The principles of natural justice will apply for all parties involved in a review or appeal.

### 4. Definitions

#### **Appeal**

An appeal is when a previous reviewable decision is reconsidered after it has been internally reviewed. The appeal is considered through the WA NDIS Appeals process, which may make a recommendation to the Director General for final decision.

#### **Internal review of decision**

An internal review is where the reasoning for a reviewable decision and relevant policy criteria along with any new information are examined by one or more parties not involved in the original decision.

#### **Reviewable decision**

Certain key decisions made in WA NDIS are reviewable decisions and that may be reviewed and appealed through a structured review process.

#### **WA NDIS Appeals Panel**

Appeals Panels are convened when a decision is appealed and progresses to the hearing stage of the process. Panels comprise at least three people, the majority of whom must be people who are not staff of the Disability Services Commission (the Commission). Panel members will be drawn from a pool of members who have expertise and knowledge of disability and appealable decision related subjects.

### 5. Implementation

This operational policy will be implemented in WA NDIS. It outlines:

- the key decisions that are reviewable and can be formally appealed within WA NDIS
- how a person can request a review and/or appeal of a decision
- the stages of internal review and appeal to the Commission's WA NDIS Appeals Panel and the Director General.

## **Reviewable and appealable decisions**

There are a number of decisions made in WA NDIS which are reviewable on request (as listed on page 1). Requests for a review of a decision can be made by the person with a WA NDIS plan or their representative (such as a family member or a disability advocacy organisation). The person may have a formal or informal decision maker and can also appoint someone to advocate on their behalf.

### **Review of reviewable decision**

At the time a reviewable decision is made, the person will be advised that the decision is reviewable, and how a review request can be made.

If the person wishes to request a formal review of a reviewable decision, they can tell their Local Coordinator or make a request in another way that suits them. The person will be notified in writing that a formal review process is underway. At any point in the process, a person can appoint an advocate or other person to represent them and/or support them.

Each stage of the internal review process examines the original decision, any supporting documentation and any new information which becomes available after the original decision. The original decision may be confirmed or changed following an internal review.

If the person does not agree with the outcome of the internal review process, they can appeal the decision.

### **Original decision made**

The Local Coordinator will support the person with disability through open and transparent decision-making, and will encourage informal resolution of any concerns or differences between expectations and outcomes of decisions. The person, or their representative, is encouraged to discuss their concerns about a decision with the Local Coordinator in the first instance, especially if they feel important information was not considered, or there is new information. If the person wishes, they (or their representative) may also approach the Area Manager or another Local Coordinator to be involved in the review process.

If this process of discussion does not resolve the issue, the person may request a review of the decision. The Local Coordinator will explain the review process and how a review request can be made, and provide a copy of this policy to the person. Written advice can be provided, if requested. There is no time limit to submit an appeal.

### **WA NDIS internal review**

1. If a review of a decision is requested, a Local Coordination Manager not involved in making the original decision will review the decision made and consider any supporting documentation. The Manager will give the person an update on the progress of the review as soon as possible, but no less than 10 working days after the request was made.



The Manager will confirm or change the original decision. If the original decision is confirmed, the Manager will advance the decision to the Executive Director, Local Operations for review. Where the Executive Director Local Operations (or the Director General) was the original decision maker, Executive Director Sector Engagement and Development will undertake the review.

2. The Executive Director may confirm or change the original decision, or recommend the decision be referred directly to the WA NDIS Appeals Panel.

If the person remains dissatisfied with the Executive Director's decision, the person may then appeal the decision.

### **WA NDIS Appeals Panel**

WA NDIS appeals will progress through a two stage process: case conference and panel hearing.

The Panel Chair will convene a case conference to clarify what the appeal is about. It does not consider the merits or strength of the appeal. No decisions can be made about the outcome of the appeal at Case Conference.

The appeal will then progress to a Panel Hearing. At the Panel Hearing, the Appeals Panel will consider the facts of the appeal and interpret and apply existing WA NDIS rules and policies in the context of their own specialist knowledge. The Panel cannot make recommendations that contravene WA NDIS legislation or policies. However, Panel recommendations will inform how these policies are applied. The Panel will make recommendations to the Director General to affirm, vary or set aside the decision being appealed and the Director General's decision is binding upon the Commission and the person.

The Appeals Panel will provide its recommendation and reasons to the Director General in writing. The Director General considers the panel's recommendation and makes a decision on the case. The decision and rationale is provided to the person in writing, as well as information about avenues for complaints about the process. The Executive Director, Local Operations and relevant staff will also be informed of the decision and rationale.

The Appeals Panel has specific Terms of Reference and operational procedures.

The members of a Panel convened to hear an appeal will have had no previous involvement with the person to whom the appeal relates, nor any involvement in the making of the decision which is being appealed.

The person who is appealing the decision (or their representative) can provide a verbal or written submission to the Appeals Panel, or other supporting evidence as they choose.



## **General complaints**

A complaint is an expression of dissatisfaction with any aspect of services provided by the Commission and is a separate process to the review and appeal of 'reviewable decisions' within WA NDIS.

As with all services provided by the Commission, a person with disability or their representative can lodge complaints about a service provided by WA NDIS either directly with their Local Coordinator, the Local Coordinator's manager or with the Commission's Consumer Liaison Officer.

The Commission's Consumer Complaints and Concerns Management Policy and Procedures are available on the Commission's website or in hard copy on request.

If this process is unsatisfactory to the person, she or he can also make complaints at any time to external avenues. Options include the Health and Disability Services Complaints Office (an independent statutory authority offering a free service to all users of disability and health services); and the Ombudsman WA.

Complaints in regard to services provided by disability sector organisations (i.e. that are external to the Commission) are not covered in this policy, and should in the first instance be directed to that organisation's complaints policy and processes. If the complainant feels no satisfactory outcome has been achieved then they can be referred to Health and Disability Services Complaints Office for further exploration.

## **6. Communication**

This document will be published on the Commission's website and intranet, and relevant employees and other stakeholders advised of its existence.

## **7. Evaluation and review**

This policy will be reviewed in 24 months or whenever required by a significant change to relevant policy, people, process, technology and/or information. Evaluation of the policy will take into account operational learning, feedback from stakeholders and relevant data.

## **8. Related documentation**

Disability Services Commission Consumer Complaints and Concerns Management Policy and Procedure December 2014

WA NDIS Operational Policies:

- Eligibility
- Funded Supports in the Plan – Reasonable and Necessary
- Grace Periods
- Review of Plans
- Compensation

## Appendix 1

### **Original Decision Maker review**

- The Local Coordinator will encourage informal resolution of any concerns or differences between expectations and outcomes of decisions.
- The person, or their representative, is encouraged to discuss their concerns about a decision with the Local Coordinator in the first instance, especially if they feel important information was not considered, or there is new information.
- The Local Coordinator will be open and transparent about the process and rationale for the decision made.
- The Local Coordinator will notify the person when a reviewable decision is made.

If the process of discussion does not resolve the issue, the person may request a review of the decision. The Local Coordinator advances the review to the Manager for further consideration and decision, and will notify the person in writing that a formal review process is underway.



### **Internal Review – Manager, Local Operations**

- A Manager not involved in making the original decision, reviews the decision and supporting documentation.
- The Manager confirms or changes original decision.
- If the original decision is confirmed, the Manager progresses the review to the Executive Director, Local Operations for further consideration and decision.

The Manager will give the person an update on the progress of the review as soon as possible, but no more than 10 working days after the request was made.



### **Internal Review – Executive Director, Local Operations**

- The Executive Director, Local Operations (or Executive Director Sector Engagement and Development) reviews all information related to the previous decision, confirms or changes the decision, or refers the matter directly to the WA NDIS Appeals Panel.

If the person remains dissatisfied with the decision, she or he can appeal the Executive Director's decision to the WA NDIS Appeals Panel.



### **WA NDIS Appeals Process**

- The Panel Chair convenes a case conference to clarify the matters relating to the appeal. Following the case conference a Panel Hearing is convened, comprising at least three members, each with relevant expertise.
- The person may provide a submission to the Appeals Panel if desired, together with other supporting evidence.
- The Appeals Panel will make a recommendation to the Director General to affirm, vary or set aside the decision.

The Director General will consider the recommendation of the panel and make the final decision on the appeal. The decision and rationale is provided to the person in writing, with information about avenues for complaints about the process.

