



Disability Services Commission

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

Reviewing and Appealing WA NDIS Decisions

1. Keywords

Review, appeal, NDIS, decision, reviewable decisions, complaints, Consumer Liaison Officer, Health and Disability Services Complaints Office, Ombudsman Western Australia, 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.

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 made by WA NDIS.

People with disability, their families and carers can raise concerns regarding any matter related to services provided by WA NDIS staff, and to have these investigated and resolved fairly and quickly.

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. Principles must be included in a policy document.

4. Definitions

Appeal

An appeal of a 'reviewable decision' 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 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 government agencies.

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 trial sites. It outlines:

- the key decisions that are reviewable and able to be formally appealed within WA NDIS;
- how a person can request a review and/or appeal of a decision; and,
- 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. Requests for a review of a decision can be made by the person with a WA NDIS plan or their representative. The person may have a formal or informal decision maker and can also appoint someone to advocate on their behalf.

The following decisions are reviewable and appealable within WA NDIS:

1. **Eligibility** – decisions regarding the determination of a person's eligibility for WA NDIS
2. **Reasonable and necessary funded supports in the plan** - decisions regarding a person's request for reasonable and necessary funded supports
3. **Self-management of funds** – decisions regarding a person's request to self-manage the funding for supports in the plan

4. **Extension of grace period** – decisions regarding an individual's request for an extension to the six week grace period that a person can be absent from Australia without affecting their plan
5. **Review of a WA NDIS Plan** – decisions regarding a person's request to review their plan
6. **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.

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 with their Local Coordinator or make a request in a format 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.

This process is illustrated at Attachment 1.

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 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. Written advice can be provided, if requested.

WA NDIS internal review

1. If a review of a decision is requested, a Line Manager not involved in making the original decision will review the decision made and consider any supporting documentation. The Line Manager will give the individual 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 Line Manager will confirm or change the original decision. If the original decision is confirmed, the Line Manager will advance the decision to the Executive Director, Local Operations for review.

2. The Executive Director, Local Operations 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 the matter in contention, the position of the person making the appeal and that of the Commission decision makers. If the Panel Chair is of the opinion that there is common ground between the parties, the parties will be encouraged to resolve the issue themselves. Such an option will only proceed if mutually desired by both parties. It is not compulsory for parties to do so.

If a panel hearing is required, the Appeal 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 shape 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 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. The members of a Panel will not have had any involvement in the making of the decision which is being appealed.

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

The Appeals Panel will provide its recommendation and reasons to the Director General in writing. The Director General will approve the decision and provide the decision and rationale 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.



General complaints

A complaint is an expression of dissatisfaction with any aspect of services provided by the Disability Services Commission (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, individuals 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 Procedure is available on the Commission's website or in hard copy on request.

People can also make complaints at any time to external avenues. Options include the Health and Disability Services Complaints Office (HaDSCO), which is an independent statutory authority offering a free service to all users of disability and health services, and the Ombudsman Western Australia.

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

6. Related documentation

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

WA NDIS Operational Policy – Eligibility

WA NDIS Operational Policy – Funded Supports in the Plan – Reasonable and Necessary

WA NDIS Operational Policy – Managing the Funding for Supports in a WA NDIS Plan

WA NDIS Operational Policy – Grace Periods

WA NDIS Operational Policy – Review of Plans

WA NDIS Operational Policy – Compensation

7. Evaluation and review date

30 June 2017 or earlier if required.

For further information contact

Scheme Policy & Program Transition Manager

Policy and Planning Directorate

Date 30 June 2016



Attachment 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 Line Manager for further consideration and decision, and will notify the person in writing that a formal review process is underway.

Internal Review – Line Manager

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

The Line Manager will give the individual 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

- Executive Director, Local Operations reviews all information related to the previous decisions and confirms or changes the decision, or refers the matter directly to the WA NDIS Appeals Panel.

If the person remains dissatisfied with the decision, the person 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 and where there is sufficient common ground, encourages resolution between the parties.
- For matters unresolved at the case conference or where the person requests a panel hearing, the Panel Chair convenes an Appeals Panel 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 approve the recommendations and provide a written decision and rationale to the person, with information about avenues for complaints about the process.