# Blind Citizens Australia logo

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# NDIA and the Administrative Appeals Tribunal (AAT)

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NDIS Appeals has been set up to ensure that people with disability, and other people affected by reviewable decisions of the National Disability Insurance Agency (NDIA), have access to support when seeking review of those decisions in the Administrative Appeals Tribunal (AAT).

There are two types of supports available via NDIS Appeals:

* access to a skilled disability advocate who acts as a support person, and
* access to funding for legal services, where there is wider community benefit and/or disadvantage that would substantially benefit from legal representation. It is unlikely that legal services will be given to people at the case conference stage due to being completely overrun with requests for support.

## Blind Citizens Australia Can Help

BCA’s National Advocacy Projects Officer can assist you with the Review of reviewable decision process and AAT process by:

* explaining the review process, including what is involved in appealing.
* helping to prepare documents.
* providing advice and skills so you can better represent yourself, or
* attending AAT conferences and hearings to help you put your case to the AAT.

## Lodging an AAT Application

The process for AAT hearings is a lengthy one and involves many stages. The process is as follows:

* Lodgement of the AAT application
* T-Documents will be issued by the NDIS. T-Documents are all the documents that you have submitted to the agency for your plan review. Then a
* Case conference date set, usually within 10 weeks of the application being lodged however recently this has been significantly longer given the significant increase in appeals being lodged with the AAT.
* Statement of Issues (SOI) will be lodged by the NDIS about 2 days prior to the first case conference. This will outline what further information NDIS are seeking in the matter. There is no way of preparing or “guessing” what they will request, in the matters.
* After the SOI and 1st Case conference you will be given time to submit further evidence and a direction will be issued to set timeframes.
* 2nd Case conference to go over further evidence that has been submitted after first case conference. Hopefully either before or at this case conference and agreement can be made.
* Conciliation
* Hearing

## What happens after I lodge my application?

The AAT will send you a letter to confirm that they have received the application.

The AAT will also notify the National Disability Insurance Agency (the Agency) that they have received the application. You and the Agency are parties to the review.

The first process in an AAT matter is to attend a case conference.

## What can I expect through this process?

You can expect for the process to go for some time, the average length is around 12 months from the lodging the application to finalising the matter however some matters can take 2 or more years to resolve. There has been a 300% increase in appeals to the AAT in the last 2 years resulting in the AAT being overstretched and timeframes blowing out.

You can also expect for further information to be requested, this will be requested via a statement of issues and may be requested a number of times through out the proceedings.

## What is a case conference?

A case conference is an informal, private meeting arranged by the AAT to talk about your case. In most cases it is the first step after the AAT accept the application, and many cases are resolved at this stage. If there is no agreement, the AAT will prepare a written case plan setting out how the application will proceed.

It will be conducted by an AAT Conference Registrar or Member, and attended by:

* you or your representative
* a representative of the National Disability Insurance Agency (the Agency). In most cases this is a solicitor but often is a solicitor and at least 1 NDIA employee.

If you want to, you can bring a support person such as a friend or family member, however they cannot be someone you think you may get to provide evidence if the matter proceeds to a hearing.

When and where will the case conference be held?

A case conference will usually be held between 6 and 10 weeks after the AAT receive the application. It might be held in person at an AAT office or by telephone. Since the pandemic most case conference is now held over the phone.

Your AAT Contact Officer will tell your advocate the date, time and location of the case conference. They will also write to you with this information.

Usually, case conferences last about 30 to 45 minutes, but they can last up to an hour or more. So, ensure you have plenty of time aside to attend the case conference.

## How can I prepare for the case conference?

### Representation

You do not need a lawyer when you go to the AAT. However, if you want legal advice or representation you should arrange this before the case conference, legal aid generally will not be an option at this stage due to their availability.

### Review Documents

Read all the review documents you have been given, and make sure you bring them to the case conference – this includes all the documents that have been sent to you, as well as the T documents and any other documents sent to you by the Agency after you lodged the application. If this is difficult for you then BCA’s advocate will also have these on hand during the case conference and would have made myself familiar with them prior.

### Future Availability

Be ready to tell the AAT suitable dates for a future conciliation or hearing, in case you and the Agency cannot reach agreement

## What happens at the case conference?

The AAT will help you and the Agency reach an agreement, if possible.

If you do not reach an agreement, the AAT will prepare a written case plan setting out:

* the issues resolved, and the issues that remain in dispute
* date, time and location of a conciliation or hearing
* any additional information that you or the Agency must give the AAT
* whether there are other persons, such as family members, carers or doctors, who you want to attend the conciliation or hearing
* what information you and the Agency will present at a Hearing
* any accessibility and communication need you have
* anything else that will ensure the process is fair and as quick as possible.

A final decision is not made at the case conference; however, an agreement can be made at case conference for an 42C agreement to be developed and agreed.

The next stage in the process if an agreement has not been made at the case conference stage is to move to conciliation.

## What is conciliation?

Conciliation is an informal, private meeting to help you and the National Disability Insurance Agency (the Agency) consider possible options to reach an agreement.

Conciliation is conducted by an AAT Conference Registrar or Member, and attended by you, your advocate, and the representative of the Agency.

## How can I prepare for the conciliation?

Do all the things that the case plan requires you to do before the conciliation, your advocate will assist you with this.

You need to think about what outcome you want, and what you can negotiate and compromise on. This information does not need to be given to the AAT or another party but will give the BCA advocate a really good understanding of what are your non-negotiables and what you may be willing to negotiate on.

Come willing and prepared to reach agreement, if possible - you do not have to agree to anything you do not think is acceptable

Bring any new information you have not already given to the AAT.

## What happens at conciliation?

The AAT Conference Registrar or Member will give you and the Agency an opportunity to:

• discuss the issues in the case from your perspective

• discuss information about the case and hear each other’s point of view

• consider possible options for reaching your own agreement

• record facts or issues where there is agreement, saving time at a hearing.

If you do not reach full agreement at conciliation, then a date and place of the hearing will be set.

## Ending a review without a hearing

### Can I withdraw an application?

Yes, you can withdraw an application at any time before a decision is made if you are the applicant. There is no cost to withdraw an application.

You must withdraw in writing. You can use the Notification of withdrawal form or you and your advocate can send the AAT an email or a letter.

### What happens after the review is withdrawn?

The AAT will send you a confirmation letter that your application has been brought to an end.

The decision under review remains unchanged.

### Coming to an agreement

You and the National Disability Insurance Agency (the Agency) can come to an agreement about the decision at any time during the review. The terms of the agreement must be put in writing, signed by all parties and sent to the AAT. Generally, BCA’s advocate does this negotiation for you and provides that AAT with any documents required.

If the agreement was reached at a case conference or other alternative dispute resolution (ADR) process, the AAT will not decide for 7 days after they receive the agreement. You and the Agency can withdraw from the agreement during this time. In any other case, the AAT can decide immediately, i.e., at a hearing.

If through the above process you and the NDIA have been unable to reach an agreement the matter will be referred for a hearing.

## What is a hearing?

The hearing is an opportunity for you, and the representative of the National Disability Insurance Agency (the Agency), to present information and arguments to the AAT about the decision under review. You will be able to talk about why you disagree with the decision.

The hearing is relatively informal and will usually be conducted by one Tribunal Member. The Member is the person who will make a decision about the review.

The AAT will hold a hearing if the review has not been resolved at an earlier stage in the review process, such as at a case conference.

## Who will be at the hearing?

As well as you, there will be:

* the Member(s)
* an AAT staff member
* a representative of the Agency, generally more than one.

There might also be:

* your representative, such as a lawyer or your advocate
* a support person such as a friend or family member

## Is the hearing open to the public?

Yes, hearings are usually open to the public. The AAT can order that a hearing be held in private, but only if there is a good reason to do so. You can apply for such an order by telling the AAT in writing why you require a private hearing.

## What happens at a hearing?

The Member will explain what will happen during the hearing

If represented by a professional person such as a lawyer, your representative will usually talk on your behalf

The Member might ask the Agency’s representative to talk briefly about the main issues in the review

You will be asked to take an oath or make an affirmation that you will tell the truth at the hearing

You will have an opportunity to present information, and the Member and representative of the Agency can ask questions

Any witnesses will be asked to give evidence. You, the representative of the Agency, and the Member can ask questions of each witness

You and the representative of the Agency will have an opportunity to give a brief summary of all the main arguments in the review.

The length of a hearing might be between 2 and 3 hours but can vary from case to case.

You might receive the decision at the end of the hearing, or at a later date. The AAT will make an audio recording of the hearing.

## What happens next?

Once an agreement has been made via any of the above stages The Agency must put the AATs decision into action or lodge an appeal with the Federal Court within 28 days after receiving our decision.

If the Agency has not been put the decision into action and there has been no appeal after 28 days, the advocate will contact the person who represented the Agency at the hearing. They should be able to explain why there might be a delay.