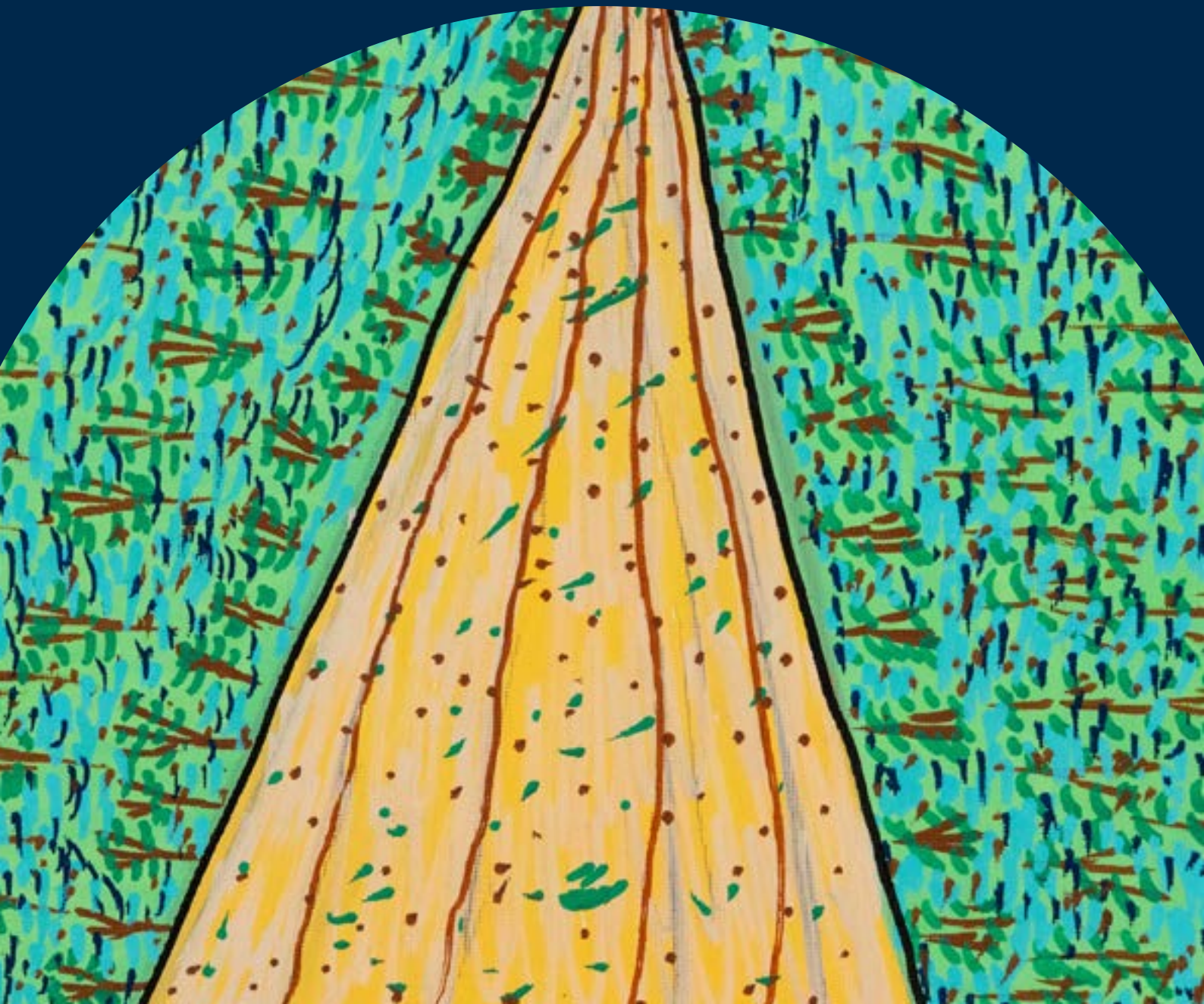


“ I would have given
up without it.

**AN EVALUATION OF THE NDIS
APPEALS PROGRAM LEGAL SERVICES**



This report is published by the Law and Justice Foundation of New South Wales, an independent, not-for-profit organisation that seeks to advance the fairness and equity of the justice system, and to improve access to justice, especially for socially and economically disadvantaged people.

National Library of Australia Cataloguing-in-Publication entry

Author(s): Kate Davies, Sarah Ratcliffe, Emily Kothe, Sandra Takchi

Title: 'I would have given up without it': An evaluation of the NDIS Appeals Program Legal Services

ISBN: 978-0-6450832-9-3

Subjects: Legal needs; Legal Aid, disability, evaluation, National Disability Insurance Scheme

Suggested Citation

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

Publisher

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www.lawfoundation.net.au

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Cover image: *Walking to the Echo Mountain* by Thom Roberts, courtesy of Studio A. Thom Roberts works out of Studio A, a Sydney-based supported studio for artists with intellectual disability.

studio A

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This report was commissioned and funded by National Legal Aid.

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Acknowledgements

We thank National Legal Aid for their leadership in commissioning this important piece of work and their collaboration throughout the study. We are grateful for the many contributions by the hardworking teams at Legal Aid Australian Capital Territory, Tasmania Legal Aid, Legal Aid New South Wales, Legal Aid Queensland, Legal Aid Western Australia, Legal Services Commission of South Australia, Legal Aid Northern Territory and Victoria Legal Aid.

We appreciate the enthusiastic participation of the many disability advocates, lawyers and other professionals who took time out of their incredibly busy work to contribute to this study.

Most significantly, we express our heartfelt thanks to the people with disability who shared their stories, wisdom and ideas with us during the study. We are grateful to our expert panel of advisors Margherita, Tammy and Melanie who challenged us to think deeply and differently. We also acknowledge the many other people who have paved the way for this type of study through their advocacy, generosity and commitment to justice for people with disability.

We acknowledge the Traditional Custodians of the Country on which we work and live. We acknowledge their history, culture and continuing connection to land, sea, sky and community. We pay our respects to Elders past and present.

Glossary

Administrative Appeals Tribunal (AAT)

Up until October 2024 the AAT was the body that provided independent reviews of decisions made by Australian Government agencies, departments and ministers.

Administrative Review Tribunal (ART)

From October 2024 the ART replaced the AAT as the body that provides independent reviews of decisions made by Australian Government agencies, departments and ministers. The ART is also referred to as the Tribunal in this report.

Applicant

In this report the term ‘applicant’ refers to a person who has lodged an appeal with the ART. In this report this term also includes family members or guardians who may be acting on behalf of the person, such as parents.

Attorney-General’s Department (AGD)

In this report, this refers to the Australian Government Attorney-General’s Department which delivers national programs and policies related to Australia’s law and justice framework.

Client

In this report, the term ‘client’ is used to describe people who have accessed the NDIS Appeals Program Legal Services, whether for advice or representation. We recognise that the term ‘client’ can be problematic in some contexts for its lack of person-centredness, but it is used here given the specific nature of examining the person’s interaction with a service.

Department of Social Services (DSS)

The Department of Social Services is the Australian Government department that has responsibility for social security, families and communities, disability and carers and housing.

Disability Advocate

This is someone who supports or represents people with disabilities to help them understand and access their rights. In this report, this refers to people employed as disability advocates by organisations funded to deliver the NDIS Appeals Program Disability Advocacy service.

Joint Standing Committee on the National Disability Insurance Scheme (Joint Standing Committee)

This committee undertakes inquiries to the NDIS in relation to implementation, performance, governance, administration and expenditure. It presents an annual report to Parliament and undertakes specific inquiries as required.

Legal Aid Commissions (LACs)

LACs are independent statutory authorities that provide legal services, often free, including information, advice and representation.

National Disability Insurance Scheme (NDIS)

The NDIS is a government-funded program that provides individual funding for supports and services for eligible people with disability.

National Disability Insurance Agency (NDIA)

The NDIA is the independent statutory agency that implements the NDIS.

National Legal Aid (NLA)

NLA represents the eight independent LACs in each Australian state and territory.

National Access to Justice Partnership (NAJP)

NAJP is a five-year agreement (2025-30) between the Commonwealth, state and territory governments that provides funding for legal assistance services.

NDIS access decision

This refers to a decision by the NDIA about whether a person is eligible for the NDIS.

NDIS supports decision

This refers to a decision by the NDIA about the services, items and equipment that will be funded under an NDIS participant's plan.

NDIS Participant

This refers to a person who has an active plan with the NDIS. Note that applicants to the ART may be NDIS participants if they are appealing a matter about supports, or may not be NDIS participants if they are appealing a matter about access.

People with disability

This refers to any person who self identifies as having a disability.

Executive summary



Overview

This project evaluated the implementation and impact of the National Disability Insurance Scheme (NDIS) Appeals Program Legal Services delivered by Legal Aid Commissions (LACs). It was commissioned by National Legal Aid.

The NDIS Appeals Program has been funded by the Australian Government Department of Social Services since 2016. The two components of the NDIS Appeals program are access to disability advocacy support and access to funding for legal services. This evaluation focused specifically on the access to funding for legal services component of the NDIS Appeals Program.

The evaluation drew on data collected via a series of interviews with 45 staff from LACs, National Legal Aid, the NDIA, disability advocacy organisations, and clients of the NDIS Appeals Program Legal Services. Qualitative and quantitative data from annual workplan reports from each state and territory LAC were also analysed. In addition, a range of publicly available data sources were used, including reports from the previous Administrative Appeals Tribunal (AAT), reports from the newly established Administrative Review Tribunal (ART), National Disability Insurance Agency (NDIA) reports, and submissions to Joint Standing Committee on the National Disability Insurance Scheme inquiries.

Key insights

The evaluation found that the NDIS appeals process is complicated, daunting and very difficult for people with disability to navigate without support. Requirements regarding the amount and type of evidence, and the extent to which the NDIA is represented by lawyers, were considered to necessitate legal support to the appeal applicants to ‘level the playing field’. The provision of advice and representation services by Legal Aid lawyers was suggested to lead to efficiencies for the appeals process by ensuring that applicants are adequately prepared and informed early about the merits of their case.

The success of the NDIS Appeals Program Legal Services was attributed to the specialist skills of Legal Aid lawyers, collaborations with partners such as disability advocates, active contributions by people with disability and their support networks, and the way that the program’s design allows for local contextualisation, resources to support collation of evidence, and shared insights across LACs and across other parts of the legal and disability sectors.

Challenges for implementing the program and, more broadly, supporting people through the appeals process, included the complex and time-consuming nature of the work, the legalistic and often overwhelming nature of the appeals process, and, most commonly reported, a lack of secure and adequate funding for the program.

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

Recommendations

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

SYSTEMS CHANGE

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

PROGRAM DESIGN AND DELIVERY

- Provide permanent contracts to Program staff and invest in professional development.
- Ensure multiple referral pathways into the Program, including via disability advocates, self-referral and the Administrative Review Tribunal.
- Provide access to advice services as a standard part of the Program and continue to provide high quality representation services.
- Retain the flexibility for Legal Aid Commissions to tailor the Program to local contexts and communities.
- Identify, and reach out to, groups of people who are missing out on the Program.

PARTNERSHIPS

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

DATA COLLECTION

- Set up a nationally consistent approach to data collection.

About this report

Background and purpose of the evaluation

This project evaluated the implementation and impact of the National Disability Insurance Scheme (NDIS) Appeals Program Legal Services (the Program), delivered by Legal Aid Commissions (LACs). It was commissioned by National Legal Aid.

The NDIS Appeals Program has been funded by the Australian Government Department of Social Services since 2016. The NDIS Appeals Program includes two components:

- Access to a skilled disability advocate who acts as a support person.
- Access to funding for legal services, where there is wider community benefit and/or disadvantage that would substantially benefit from legal representation.

This evaluation focused specifically on the 'access to funding for legal services' component of the NDIS Appeals Program. The evaluation collated and analysed existing and new data based on approximately eight years of program implementation.

The following questions were examined via a five-month mixed methods process evaluation:

- How is the Program designed and delivered across different LACs?
- What have been the challenges and enablers for implementation of the Program?
- What are some of the impacts associated with the Program?
- Who has been supported by the Program and in what ways?
- What lessons from the implementation of this Program can be applied to inform future, similar legal support policies and programs?

This report provides an overview of the Program and its development. It also offers new insights into its implementation and impacts from the perspectives of those who have delivered and accessed the Program.

Overview of the NDIS Appeals Program Legal Services

Legal Aid Commissions (LACs) in each state and territory are funded by the Australian Government Department of Social Services to deliver the legal services component of the NDIS Appeals Program. Eligible applicants must have an existing application with the Administrative Review Tribunal (ART) appealing a review of a decision made by the National Disability Insurance Agency (NDIA). Broadly, the kinds of decisions that are considered relate to either:

- Supports: If the person is an existing NDIS participant, appealing a decision in relation to their plan, usually about the types, amounts and/or timing of funded supports, or
- Access: If the person has applied to become an NDIS participant but has been deemed ineligible for the NDIS, or has been an NDIS participant and been deemed no longer eligible.

NDIA decisions that may be reviewed also include those related to plan variations, plan reassessments, child representatives, plan nominees, compensation, debt recovery and specialist disability accommodation.

There are, broadly, two types of legal support available, although these are delivered in different ways across different LACs:

- Legal advice, and
- Legal representation.

The eligibility criteria for accessing legal support have evolved over the life of the Program and are applied in slightly different ways depending on the capacity and structure of each LAC. Broadly, funding for legal representation through the Program will only be granted where:

- It is likely that legal representation will lead to wider community benefit, or
- The applicant is experiencing disadvantage and as such would benefit substantially from legal representation, and
- The applicant meets the merit tests otherwise prescribed by the LAC [1].

From 2016 to 2018 the assessment of eligibility for legal support was managed centrally by the Department of Social Services, and applications deemed eligible were allocated to LACs. LACs received a standard amount of funding for each case. This has since been decentralised and LACs now assess and administer legal assistance grant applications directly and receive lump sum payments from the Department of Social Services for this work.

There is a widely recognised need for legal and advocacy support for people with disability to navigate health and human services in Australia, to support fairness and accessibility for people who often experience structural and systemic discrimination. This was recognised by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability [2] and is supported by evidence that NDIS participants feel generally ill-equipped for self-advocacy with only about 37% of NDIS participants feeling able to advocate for themselves [3].

The NDIS appeals process

The NDIS was piloted from 2012 and rolled out nationally in 2016, at which time the NDIS Appeals Program commenced.

As of 31 December 2024, there were 692,823 active NDIS participants [4]. Children and young people aged 18 years and under accounted for 361,504 of these participants. The highest number of participants was in New South Wales (205,597 people), followed by Victoria (185,989 people), with the lowest number of participants in the Northern Territory (6,270 people). The majority of participants resided in major cities (474,923 people, 69% of participants), with only 10,768 participants living remotely/very remotely (1.55%). There were 61,300 (8.8% of participants) who identified as culturally and linguistically diverse. There were only 55,675 people (8.0% of participants) who identified as Aboriginal or Torres Strait Islander. The rate of Aboriginal and Torres Strait Islander NDIS participants is particularly notable given that the rate of Aboriginal and Torres Strait Islander people with disability (25.3%) is higher than that of the non-Indigenous population (21.4%) [5].

Up to 31 December 2024, 86% of people who had been assessed for NDIS access were granted access. NDIS applicants least likely to be deemed eligible were those where their primary disability type was psychosocial disability (67% deemed eligible), other physical disability (43%), and other sensory/speech disability (47%) [6].

There are a number of stages to the NDIS review and appeals process [7].

First, there is an internal review process. If a person does not agree with the NDIA's original decision about, for example, their eligibility (for a person seeking access to the NDIS) or supports (for an existing NDIS participant) they have three months to request an internal review.

Second, if the person does not agree with the decision of the internal review, they can request the ART (previously AAT) to review the decision. Requests for external review must be made within 28 days of receiving the internal review decision in writing.

Third, the decision of the ART can be reviewed by the Federal Court. A very small number of matters are heard by the Federal Court. There is also a recently established mechanism for a further review, in particular circumstances, via the Tribunal's Guidance and Appeals Panel [8].

Legislative, policy and process changes have influenced the types of issues about which applications to the Tribunal have been made over time. For example, several NDIS legislation changes came into effect on 3 October 2024. There was an increase in requests for internal reviews of NDIS decisions between October and December 2024 resulting in an increase in planning-related applications to the ART during that period [4].

Similarly, implementation of the National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Act 2022 which changed the way the AAT could reassess and vary plans before the Tribunal coincided with an increase in lodgements in 2021-22. The AAT reported that the Participant Service guarantee increased the range of issues and potential complexity for matters within the NDIS Division [9].

In response to the substantial increase in numbers of dispute cases being escalated to the AAT, the NDIA piloted the Independent Expert Review Program, between October 2022 and June 2023. This program used a mediation and conciliation process, where an independent legal and disability expert reviewed a matter and made non-binding recommendations, but has not continued beyond the pilot [10].

The investment by the Australian Government in the NDIS Appeals Program (including advocacy and legal services) was \$5.6 million for the year 2016-17 and peaked at \$15.4 million for the year 2021-22. As at the time of reporting, funding arrangements for 2025-26 were still under consideration. The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability recommended that the NDIS Appeals Program be funded at \$27.3 million for 2025-26 in order to address unmet need [2]. Data provided to Senate Estimates shows that between 1 July 2021 and 30 April 2022 the NDIA had spent more than \$41.4 million on legal costs related to NDIS funding decisions, compared to a commitment of \$5.1 million for LACs to deliver the NDIS Appeals Program for that full financial year [11].

In 2024 the Administrative Appeals Tribunal (AAT) was replaced with the Administrative Review Tribunal (ART). This Tribunal is a federal review body. It asserts that it is designed to be 'user-focused, efficient, accessible, independent and fair' [8, 12]. The NDIA, as per its obligations under the 2017 Legal Services Directions, is required to act as a 'model litigant' in the ART, which includes dealing with matters promptly and not causing unnecessary delays, acting consistently in the handling of matters and aiming to avoid, prevent and limit the scope of legal proceedings wherever possible [13].

The Administrative Review Tribunal and NDIS appeals

The numbers and types of appeals to the AAT and ART relating to the NDIS have varied substantially over time. In 2014-15 there were only 18 NDIS-related lodgements to the AAT, understandably low given that the NDIS did not fully roll out nationally until July 2016. In 2020-21 there were 2,160 lodgements and this almost tripled in 2021-22 when the number of lodgements peaked at 5,918. In addition to increases in the number of matters lodged at the NDIS, changes in the types of matters over time also have important implications for understanding the nature of ART utilisation, and by extension the potential need for legal support for NDIS participants at the ART.

The AAT has reported an increase in the number of appeals related to access decisions. Such decisions are less likely to be resolved by agreement [14] and more likely to require a hearing. As a result, they take longer to resolve on average, with the median time to finalisation at the ART currently 12 weeks longer for access appeals than for appeals relating to supports (35 weeks vs. 23 weeks) [15]. See [Table 1](#) for a summary of the most recent caseload statistics for the ART.

Table 1: ART provisional caseload statistics 14 October 2024 - 31 March 2025

Type of Application	Applications lodged	Applications finalised	Applications on hand at period end	% finalised within 12 months	Median time to finalise	% where decision changed
All NDIS	3,558	2,283	5,034	78%	24 weeks	71%
Access	729	527	1,078	66%	35 weeks	66%
Plans ¹	2,829	1,756	3,956	82%	23 weeks	73%

Most applicants to the Tribunal do not have legal representation. The AAT previously reported that the number of finalised NDIS matters where the applicant had legal representation (not including those who had legal advice only) was 18.5% in 2020-21, 12.5% in 2021-22 and 9.7% in 2022-23 [14, 16, 17].

The Tribunal has emphasised the importance of legal representation in supporting the efficient and effective operation of its NDIS Division, noting in the 2023-24 Annual Report:

We continued to experience challenges associated with the inherent complexity of cases in this Division in 2023–24 which resulted in them taking longer to finalise than many other case types. These ongoing challenges include a lack of authoritative jurisprudence to inform decision-making and a lack of adequate legal or skilled advocate representation for applicants [18].

¹ The term 'Plans' here is used by the ART to refer to lodgments that were in relation to an NDIS participants' existing plan, referred to as 'supports' elsewhere in this report.

Methods

This was a mixed methods evaluation that examined the design and implementation of the Program by each Legal Aid Commission (LAC) nationally, with more detailed collection and analysis of stakeholder data at three sites – Tasmania, New South Wales (NSW) and Queensland (QLD). It predominantly drew on process evaluation methods. Process evaluations are useful for understanding how a program works, the systems and mechanisms that underpin a program's success, and the factors that influence the achievement of outcomes [19].

Given the variations in outcomes sought by individual participants, organisations and the Program, there were limitations in the extent to which the evaluation was able to quantify effectiveness and achievement of outcomes. There were also limitations associated with the availability of data. Reporting mechanisms changed in 2018, when LACs took on the assessment of applications and were required to provide more detailed information to the Department of Social Services on numbers of participants supported. Prior to this time, the Department of Social Services held the data centrally on participant numbers and this data was not made available during the evaluation. There are also voices who are missing from the data and this report is not intended to offer a representative view of the issues. In particular, the clients most likely to nominate to take part in interviews may be those who have had largely positive experiences and who may feel particularly motivated and comfortable to participate. This gap was addressed through the analysis of public submissions to inquiries written by people who had been ineligible or unable to access legal support during an appeal to the Tribunal.

By drawing on a range of qualitative and quantitative data sources it was possible to identify patterns in the numbers of participants over time and perspectives from diverse stakeholders on the strengths, challenges and impacts of the Program. The data collection methods were selected in consideration of the availability of existing data, feasibility of recruitment, and accessibility of participation for different stakeholder groups.

Consultation and advisory functions

There were two key groups that provided input to the development of methods and verification of findings.

- Representatives from each LAC took part in a pre-evaluation consultation to discuss methods for data collection, and post-evaluation consultation to reflect on findings and recommendations.
- An expert panel of people with disability took part in a pre-evaluation consultation to provide feedback on recruitment materials and engagement with program participants, and also post-evaluation consultation to reflect on findings and recommendations. These panel participants were financially reimbursed for their contributions.

Document analysis

Program documents: A range of relevant documents were reviewed including specific NDIS Appeals Program guidelines and policies, as well as evaluations and reports related to NDIS appeals and the ART/AAT more broadly. These provided context and an understanding of the design and operation of the Program.

Annual activity reports: Each state and territory LAC provided copies of their annual workplan reports for the Program. These offered qualitative data to inform an understanding of the Program's impacts and key lessons. They were also the primary source for collating data on the number of clients since 2018 (when LACs took over assessment of applications).

Submissions to inquiries: A sample of submissions to inquiries conducted by the Joint Standing Committee on the National Disability Insurance Scheme was analysed to understand diverse perspectives on the legal needs of NDIS applicants and participants, and their experiences with the appeals process. A full list of completed and ongoing inquiries included in the sample of submissions is included in [Table SI](#), and the selection process is summarised in the PRISMA flow diagram ([Figure SI](#)). Included submissions came from people with disability, carers, disability advocacy organisations, health professionals, peak bodies and government agencies.

Semi-structured interviews

Key stakeholders were invited to participate in either a semi-structured interview or focus group, depending on preference. Three states – Queensland, New South Wales and Tasmania – were selected as sites for more in-depth exploration of specific examples of Program design and implementation. These sites reflected a mix of small, medium and large Programs (in terms of state population size and numbers of Program participants).

Four stakeholder groups were invited to take part in interviews:

- LAC staff (all LACs)
- Disability advocacy organisations (for the three target sites only)
- Agencies or groups involved in the administration and delivery of the NDIS appeals program ART process (national)
- Program clients (for two target sites only).

Relevant stakeholders were invited to participate via email, by a representative of the LAC or by the interview team directly. Participation was voluntary and participants were able to withdraw participation at any point up until analysis of data, with the option to only respond to questions they felt comfortable in doing so. All participants received an information summary about the evaluation, with client participants also receiving this in Easy Read format. Written consent was provided via email or online portal. Client participants were reimbursed for their time and expertise via a pre-paid gift card. Interviews and focus groups were mostly conducted online via Teams, with one telephone interview and one face-to-face interview.

Participants were asked to reflect on their experiences and perspectives in relation to:

- Implementing or accessing the Program
- Value and strengths of the Program
- Challenges and limitations of the Program
- Impacts or changes associated with the Program
- Recommendations for future legal support options for NDIS appeals.

Interviews were audio-recorded, transcribed and de-identified. NVivo software was then used to thematically code the interview transcripts.

A total of 45 people contributed to individual or group interviews (see [Table 2](#)). Staff from Department of Social Services were invited to participate but declined due to internal policy requirements.

Table 2: Description and number of participants from stakeholder groups who participated in interviews

Stakeholder group	Description	Numbers of participants
State and territory Legal Aid Commission and National Legal Aid staff	Senior managers, staff with direct responsibility for the administration and management of the NDIS Appeals Program, lawyers	21 participants from 8 Legal Aid Commissions and National Legal Aid (Referred to in Findings as LACs)
Other stakeholders: Disability Advocacy service providers, National Disability Insurance Agency staff	Staff from a sample of the government and non-government organisations involved with the NDIS appeals process	14 participants from 6 different services/agencies (Referred to in Findings as Disability Advocates or NDIA)
NDIS Appeals Program Legal Services clients	Sample of clients who had received representation services in NSW and Tasmania	10 participants (Referred to in Findings as Clients)

Findings

Program design

This is a national program delivered by state and territory-based Legal Aid Commissions (LACs). Some national oversight and supports are provided through National Legal Aid, including coordinated advocacy, facilitation of a national working group and access to training. The design and implementation of the Program varies slightly throughout the country. LACs have developed their service models based on factors such as staff capacity, fluctuating demand for the service, fit within the LAC's other suite of services, and contextual factors such as geography and demographics of the population. Some examples of contextual factors include: the availability of specialists to provide evidence varies greatly between metropolitan and regional or rural areas, and between larger and smaller states and territories; the Northern Territory has only very recently had an ART registry located in Darwin, so previously had limited access for face-to-face engagement with the Tribunal; the numbers and types of specialisation of disability advocacy organisations varies significantly across the various states and territories.

In each state or territory, the service model has evolved over the past eight years. This has also been in response to changes in the administration of funding by the Department of Social Services, which was originally block funding per case, then moved to a grant funding model.

[Table 3](#) summarises key similarities and differences in how the program operates across jurisdictions. This should not be interpreted as an exhaustive list of the work done by each LAC and it is noted that some jurisdictions may have updated their procedures since the time of the review.

Table 3: Examples of key similarities and differences in Program implementation

Step	Key similarities and differences between jurisdictions
Referral	<p>All jurisdictions accept clients into the Program through multiple referral pathways, including referrals from disability advocacy organisations, self-referrals, and referrals via the ART Registry. The pathways available and the processes involved vary between jurisdictions.</p> <p>Disability Advocacy Referrals: All jurisdictions accept some clients through referrals from disability advocacy organisations, although the proportion of clients accessing the Program this way varies between jurisdictions.</p>

Step	Key similarities and differences between jurisdictions
	<p>Self-Referrals: The processes for a person to directly refer themselves differ. For example:</p> <ul style="list-style-type: none"> • NSW: Self-referring clients are advised to contact the ART to book an appointment with a Legal Aid NSW lawyer. • WA and Tas: Self-referring clients are booked in for assistance when they contact the LAC . • ACT: Self-referring clients are advised to contact Legal ACT directly or through their nominated disability advocate. <p>ART Registry Referrals: Most Legal Aid Commissions have arrangements with their local ART Registry to allow for the referral of clients allocated to that registry. However, the process differs between jurisdictions:</p> <ul style="list-style-type: none"> • NSW, WA, Tas, Vic and SA: The ART books appointments with a Legal Aid lawyer on behalf of the client, into pre-allocated ART advice clinic timeslots. • ACT: ART forwards consenting clients' information to the LAC and the LAC makes appointments directly. • Other jurisdictions: The ART registry may only provide information about Legal Aid services, with clients required to contact the LAC independently.
<p>Advice</p>	<p>All LACs provide some advice services to clients navigating NDIS appeals. Most jurisdictions deliver advice through advice clinics, although service models vary.</p> <p>Amount of Advice Available: The amount of advice available to clients differs between jurisdictions. For example:</p> <ul style="list-style-type: none"> • Vic: Clients are typically offered a single, one-hour advice session. • WA, Tas and QLD: Clients can access multiple advice sessions over the course of their case. <p>Service Delivery Differences: There are differences in how advice services are delivered across jurisdictions. For example:</p> <ul style="list-style-type: none"> • NSW: Most services are delivered via scheduled ART advice clinics on specific days. • ACT: Some services are provided via a duty lawyer service. <p>Engagement with Supporting Documentation: All Legal Aid lawyers engage with substantial supporting documentation. How and when they do this varies. In some cases, T-Documents are reviewed in depth prior to the first appointment to assess eligibility and service need, while in others more detailed assessment of T-Documents occurs after the first appointment once eligibility has been ascertained.</p>

Step	Key similarities and differences between jurisdictions
Representation	<p>All LACs provide representation services to clients navigating NDIS appeals. Potential clients are required to complete a standard application form, which is then assessed by the LAC.</p> <p>When and how to apply for representation: The process for applying for representation services varies between jurisdictions. For example:</p> <ul style="list-style-type: none"> • WA: Clients are invited to apply when Legal Aid WA staff assess that the application is likely to be successful for a grant-of-aid. This assessment is made after the provision of advice. • QLD, ACT and Vic: While most clients receive advice before applying for a grant-of-aid, some LACs also accept direct applications without a prior advice appointment.

Broadly, there are two types of legal services most commonly provided under the Program, advice and representation.

The number of advice services and the number of grants-of-aid for representation approved within each financial year were estimated based on documents provided by each LAC (see [Figure 1](#)). Individuals may receive multiple advice services over the course of their case, and/or may receive both an initial advice appointment and subsequent ongoing representation. As such, the sum of advice and representation services cannot be used to determine the proportion of cases for which the applicant received some form of legal assistance through the Program. Additionally, since representation services are ongoing and many appeals take over 12 months to resolve, the number of cases on hand within a financial year is higher than the number of new grants-of-aid.

Figure 1: NDIS Appeals Program Legal Services vs. Cases lodged in AAT NDIS Division 2018-19 to 2023-2024

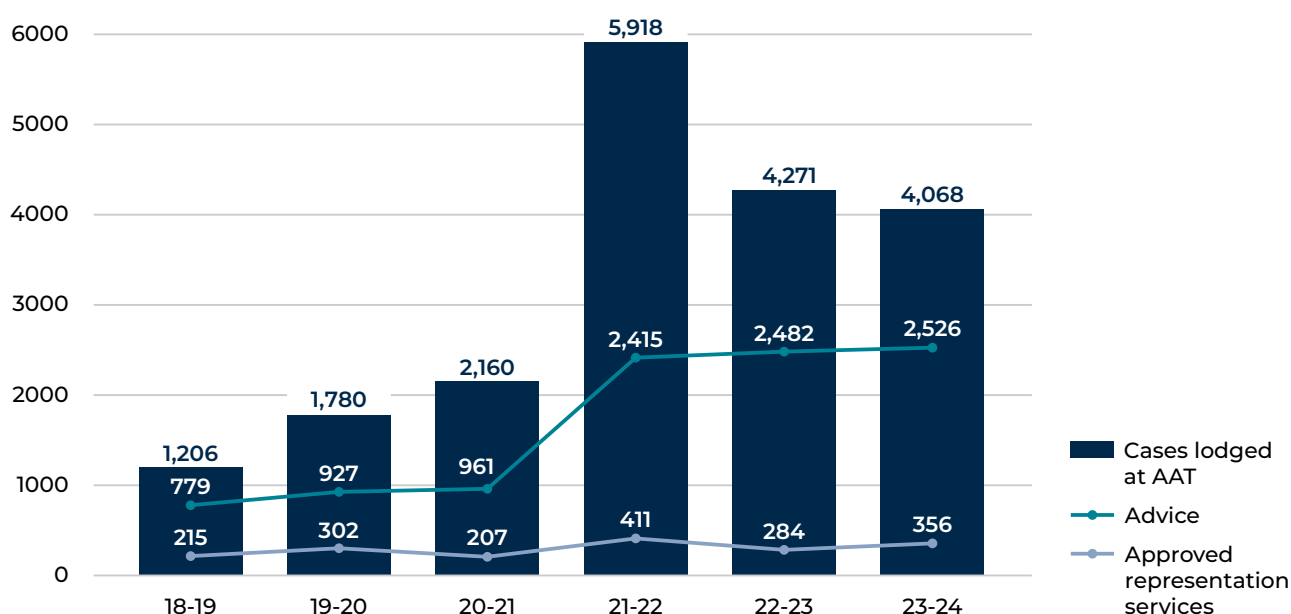


Figure 1 shows fluctuations in the numbers of NDIS Appeals Program Legal Services activities in contrast to the numbers of NDIS-related lodgements to the Tribunal. The number of incidents of advice services more than doubled between 2020-21 and 2021-22. This illustrates an increase in the demand for advice services that aligns with the significant increase in numbers of lodgements. This increase also likely reflects that the number of LACs offering advice services increased over that time.

Despite fluctuations in the number of lodgements, the number of approved representation services has been fairly consistent since 2018-19. Taking this into consideration, alongside the plateauing of numbers of advice services since 2021-22, it is likely that the Program is currently operating at maximum capacity. Irrespective of the demand or need for the Program, there is a ceiling on the number of people who can be supported and quantity of services that can be provided, based on the capacity and resources of the LACs to do this work.

ADVICE SERVICES

Advice, and at times minor assistance such as preparation of specific documents, is provided by LACs in slightly different ways. There is, in most cases, not an assessment of merit or other criteria applied to determine access to advice, unlike for representation services. Some LACs offer one-off advice sessions and others may offer multiple advice sessions if a client's circumstances change, or as they move through different parts of the appeal process.

For some LACs an advice session is recommended before a matter will be considered for representation. Some LACs consider documents ('T-Documents' is the term used for the package of Tribunal documents for a particular case) in full at the point of providing advice, while others conduct a targeted preliminary review of documents as needed for advice, then assess the documents in more detail if the matter is deemed meritorious for representation.

Advice clinics were not initially offered as standard parts of the Program. However, many LACs have introduced and tested different approaches to offering advice during the life of the Program for the following reasons:

- Demand for representation services could not be met and providing advice allowed LACs to support more people.

We've done this a couple of times, reflected and changed the way we provide the service so we can help everyone because we didn't want a waiting list ... So now we basically do a bit of both, which is give some advice and some support to self-represent and also take some on for representation. (Interview 04, LAC)

However, there were trade-offs and in some cases the capacity to provide advice clinics was limited because it would detract from capacity to provide representation.

The problem is that the funding level and the staff capacity and the volume of matters has meant that we can barely cope with the appeals work, let alone the advice work. (Interview 18, LAC)

- The merit requirements for representation excluded some people who could benefit from a less intensive service, such as those needing more information to understand evidence requirements or those needing some advice to help them in self-representing.

There's a real value in the service in providing advice to people throughout the process, regardless of whether they have merit, because it makes things go a lot smoother for the Tribunal and for the person...they're prepared from the beginning. (Interview 11, LAC)

- Providing advice was found to be a useful first step in assessing the merit of a matter and determining whether or not an application for representation should proceed.

Advice can be extremely useful to people in early stages so they know what to expect and they can get a fair assessment of their case. It helps people to decide whether they're going to continue or whether they're not going to continue. In some cases, it's possible to give everybody everything they need from advice. (Interview 9, LAC)

- Providing advice can support some people to autonomously navigate the Tribunal process. Indeed, some clients shared that access to advice before applying for, or having, representation from Legal Aid of would be 'really useful' (Interview 25, client).

We help a huge number of people through repeat advice. We sort of will hand hold them through the Tribunal and say, 'All right, here's what you need to do next. Come back to me if you need to.' (Interview 14, LAC)

- Advice support can be scaled up or down more easily, depending on availability of funding – it's hard to commit to representation of cases that will run for months or years, when funding is due to cease.

Every year we're waiting for that funding rollover to come through ... it creates difficulties in the number of cases we can take on because we might have capacity at that point in time, but if then we're worried we're going to lose staff, we have to take that into account in the number of grants-of-aid we approve. Whereas I guess with advice work, it's much easier to scale that back quicker. (Interview 15, LAC)

Most commonly, clients are referred to LACs for advice by:

- Disability advocates: This may involve a disability advocate seeking advice on behalf of the client (with consent), setting up contact between the LAC and the client to arrange an advice session, or it might be the first step towards the advocate helping the client to apply for Legal Aid representation.
- ART: Most LACs have now established arrangements with the ART such that the ART can book applicants directly into allocated advice clinics. This has been initiated at different times over the past couple of years by different LACs.
- Some applicants contact the LAC directly seeking support and are directed to an advice session.

REPRESENTATION

A limited number of NDIS Appeals Program applicants are eligible for a grant-of-aid for representation. Initially the criterion for grant-of-aid for representation was that the case is complex and novel and then the criterion of having wide community benefit was included. In response to advice from LACs, the Department of Social Services later added the criterion that the level of disadvantage of the applicant could be considered. However, access to representation is also dependent on each LAC's capacity to provide that service at any given point in time.

The support provided to a person who is granted representation is predominantly the support provided by an allocated Legal Aid lawyer, the elements of which are described well in the quote below.

The representation service is stepping through the entire process with someone. We have tended to do that in stages, either an alternative dispute resolution process or when the matter is going to hearing, and evaluating where we are in between. So, if someone had representation all the way through, then they have a person who's putting together their evidence, helping them to put together a statement, get together their expert evidence, advising them throughout trying to resolve it, and then ultimately representing them at hearing. I think that makes a huge difference because they are really intensive matters to go through and having somebody to coordinate the evidence, to speak on your behalf at various alternative dispute resolution processes and to represent at hearing is, I think really impactful. And I wish we could do it for everyone. (Interview 21, LAC)

There are also other components that may be available via a grant-of-aid, particularly via disbursement funds that can pay for evidentiary reports and counsel to appear at hearings.

OTHER SERVICES

In addition to the core functions of advice and representation, LACs have devised activities that respond to the contexts of their particular state or territory. Some examples, though not an exhaustive list, are provided below.

- Legal Aid Northern Territory has provided outreach NDIS information services to young people in youth detention centres.
- Tasmania Legal Aid attends various events and disability expos to share information about the NDIS Appeals Program.
- LACs in Victoria, Western Australia, New South Wales, Queensland, Tasmania and Australian Capital Territory facilitate regular network meetings and/or trainings with representatives from the various disability advocacy organisations to share information, address questions and build collaborative relationships.
- Most LACs offer ad hoc legal advice to disability advocates who have specific questions about a case, but are not necessarily seeking to make a referral.

Clients and cases: Who has been supported?

The data collected and reported on by each LAC varies in terms of level of detail about client demographics and matter types and, as such, it is not possible to give a quantitative breakdown of client characteristics or information about matters. However, through a review of LACs annual workplan reports and the series of interviews, key patterns and issues emerged.

COMMON TYPES OF CASES

In general, LAC representatives reported that they saw a fairly equal mix of matters about access decisions (i.e. where a person has been deemed ineligible for the NDIS) and supports decisions (i.e. where an existing NDIS participant disagrees with a decision about the level or type of funding support in their plan).

Study participants and submission authors from health and disability sectors viewed that the nature of the decisions being appealed varied greatly depending on particular policy positions or priorities of the NDIA at any given time. For example, at the time of this study LACs expected an increase in support decisions in the coming months as new NDIS legislation on types of supports that are no longer deemed reasonable and necessary takes effect. Changes and inconsistencies in the types of matters were also perceived to reflect more ad hoc decisions.

And just out of the blue that type of support being refused, which was not justified by any change of circumstances or, you know, somebody's disability resolving or getting better, but simply a decision by the agency to be like 'we're not going to fund this anymore'. That was particularly true for psychosocial support, and we've always had a very big struggle up here around people with mental health conditions accessing NDIS. (Interview 18, LAC)

In a 2021 submission it was reported that disability advocates had experienced:

an ever-increasing need for individual advocacy services to assist with internal reviews and external appeals at the AAT. The exact cause of this increase appears to be largely related to the ... difficulties of gathering appropriate evidence and the 'changing goal posts' set by NDIA delegates following confidential changes to internal policies. (Spinal Cords Injuries Australia, Submission to Joint Standing Committee Inquiry [20])

Particular types of disability were reported to be more frequently presented in appeals about access to the NDIS, including psychosocial disability and chronic pain conditions such as rheumatoid arthritis. This reflects NDIS data reported in the Background section, that indicates psychosocial disability and 'other' category disabilities (where most chronic pain conditions would be categorised) as the least likely to be deemed eligible. Submissions from health professionals and disability-specific advocacy groups echoed this experience, with some disabilities perceived as much less well understood by the NDIA.

The common ones tend to be conditions like complex PTSD, severe or major depression and anxiety, and then a myriad of pain related conditions, things like fibromyalgia, chronic fatigue. (Interview 01, LAC)

Many LAC staff described that NDIS appeals matters require significantly more time than matters in other some areas of law. This was in reference to time in terms of the hours spent intensively working on a matter and the overall duration of the matter. This was considered a consequence of the volume of the evidence and documentation, unique nature, multi-faceted aspects of disabilities and needs, and complex personal circumstances of each person's individual matter.

Obviously, some people can have very simple claims or very confined areas of dispute, but I have barely seen any of those. Most people have matters with 400 or 500 pages of material, like complex history, complicated evidence. (Interview 18, LAC)

Indeed, the AAT itself has previously reflected that the inherent complexity of NDIS Division cases arises not just from the complexity of the underlying legislative framework, but also because of the diversity of the experiences and needs of the applicants [21].

Multiple submissions to Joint Standing Committee inquiries from stakeholders within the legal sector, including pro bono lawyers, community legal centres, and LACs highlight the complexity of the legal issues at play in ART appeals and the challenges for self-represented applicants in understanding and navigating these issues.

Further, the legislation and rules are difficult to interpret, subjective, and may involve complex questions of law. Some disputes involve questions of statutory interpretation, or the interaction between the NDIS and other sources of support (for example, Medicare and the health system). This further exacerbates the gross unfairness of forcing a participant to represent themselves against a large commercial insurance legal firm. (Australian Lawyers Alliance, Submission to Joint Standing Committee Inquiry [22])

It was also commonly reported by LAC representatives that the complexity of cases has increased over time.

I think it's fair to say that over time matters became more complex and more contentious. The NDIS appeals processes is a merits review that requires the applicant to show that they meet all the criteria either in relation to access or supports, which puts a lot of emphasis on applicants to supply information. And particularly in matters where there's lots of different supports in issue, they become really big substantial matters where there's a lot of emphasis on us to provide material and then have the agency respond. (Interview 21, LAC)

CHARACTERISTICS OF CLIENTS

It is important to note that this section is reporting on the characteristics of NDIS Appeals Program clients, which are not necessarily representative of the characteristics of the broader population of people who access, or apply to access, the NDIS. Many NDIS applicants or participants would be filtered out throughout the reviews and appeals process due to deciding not to pursue the matter for various reasons, not meeting the eligibility criteria for access to the Program, or having matters resolved relatively early in the appeals process.

I think we only sort of see the tip of the iceberg... possibly people who most need our support don't reach us. (Interview 03, LAC)

People with support networks and ability to navigate the system more likely to engage

Across all of the groups of study participants, it was considered that the process to get a matter to the ART was complicated and that the amount of documentation, time and support needed was a deterrent to many people pursuing an appeal. As such, some study participants were concerned that:

There is a little bit of channelling just because some people are better at researching. (Interview 13, Disability Advocate)

According to insights from LAC staff and disability advocates, some communities are not engaging with the Program as much as others. Even some clients themselves recognised that they had exceptional qualities or circumstances that made them more likely to be able to stick with the appeals process than other people.

We're highly educated. We're both professional people. We probably would have been able to get through it by ourselves. I think perhaps if you didn't have that same health literacy and things like that, it would be a lot more challenging imagine if we're having such challenges navigating it - how do people who don't have good social supports or come from a different socioeconomic background with different levels? What happens to them? And the more you sort of talk and meet people, you find so many people who just give up. (Interview 25, Client (parent))

Firsthand accounts from people with disability and carers in Joint Standing Committee submissions described experiences of seeking legal assistance to challenge NDIS decisions but being unable to access support. As a result, some discontinued AAT appeals and others chose not to appeal at all.

A range of professional stakeholders, including health professionals and advocacy organisations, also reported that they were aware of clients who had chosen not to progress appeals due to an inability to access sufficient legal support. Like the study participants, these submissions raised concerns that this lack of support disproportionately impacted applicants with higher support needs, more stigmatised conditions, lower levels of education, fewer financial resources, or disabilities affecting communication. People with disability also identified these equity concerns in their firsthand accounts. Some, who had successfully appealed, recognised that factors such as higher education, financial resources, or strong informal supports had enabled them to self-represent — advantages that not all applicants

would share. Others reflected on how their own circumstances, including physical and mental health decline, communication barriers, or socio-economic disadvantage, had prevented them from pursuing or continuing appeals. Together, these accounts highlight systemic barriers within the appeals process that undermine its fairness and accessibility, particularly for the most marginalised groups.

Aboriginal and Torres Strait Islander peoples missing out

Given that only about 8% of NDIS participants identify as Aboriginal and/or Torres Strait Islander, and that the principles and practices of the NDIS have been critiqued as lacking cultural competence [23, 24] it is unsurprising that LACs and disability advocates were concerned that they saw few Aboriginal and Torres Strait Islander people accessing the NDIS Appeals Program. It was considered that this reflected deeper systemic challenges and barriers to the NDIS, particularly given the high rates of disability experienced by Aboriginal and Torres Strait Islander peoples [5]. This may also reflect incongruity in cultural understandings of the concept of disability, intergenerational trauma associated with government policies and lack of cultural safety in administrative processes.

There is a whole group of people who don't know you can appeal... And I think that's particularly a gap for First Nations communities. There's a high level of disability in First Nations communities, yet the number of people who are First Nations and appeal through the ART is minute. And so, there's a whole lot of work that needs to be done in terms of outreach to communities and education and support to people who might not be receiving anything. (Interview 07, LAC)

The Northern Territory was the exception to this, where while there were similar concerns about accessibility of the Program, it was reported that most of the clients identified as being Aboriginal or Torres Strait Islander.

People in rural, regional and remote areas missing out

A fairly small proportion of NDIS participants lives outside of city and regional areas and so it is perhaps to be expected that there was a reported lack of clients from rural and remote areas. It was seen as an indication of the fact that many people in these areas are not accessing the NDIS in the first place, that they may have less awareness of the Program, and that they may have less access to services and supports to help them during an appeals process.

I'm concerned about the people in the more rural, regional, remote areas. I'm concerned it's hard to reach them. (Interview 14, LAC)

People lacking support networks and resources missing out

NDIS appeals to the Tribunal were associated with significant time demands, information processing, emotional stress, and financial costs related to gathering evidence. As such, it was suggested that individuals without a high level of education or a knowledgeable support person well-versed in the NDIS system, would likely find it challenging to navigate the appeals process and they may not find their way to the LAC.

I'm a government employee, so I know all about, you know, the type of language that gets used. But when it comes to supports for [daughter] and how to actually provide those supports it's really convoluted language. Thank goodness I'm doing this for her and she's not her doing it on her own because there's no way she would ever understand what it was that you're meant to provide or how to make a claim. (Interview 32, Client (parent))

The findings here also reinforce previous research commissioned by the Multicultural Disability Advocacy Organisation NSW, which found that people from Cultural and Linguistically Diverse backgrounds with disabilities struggled with the NDIS appeals process due to evidence requirements, lack of information in languages other than English, lack of diverse cultural understandings of disability and feelings of powerlessness [25].

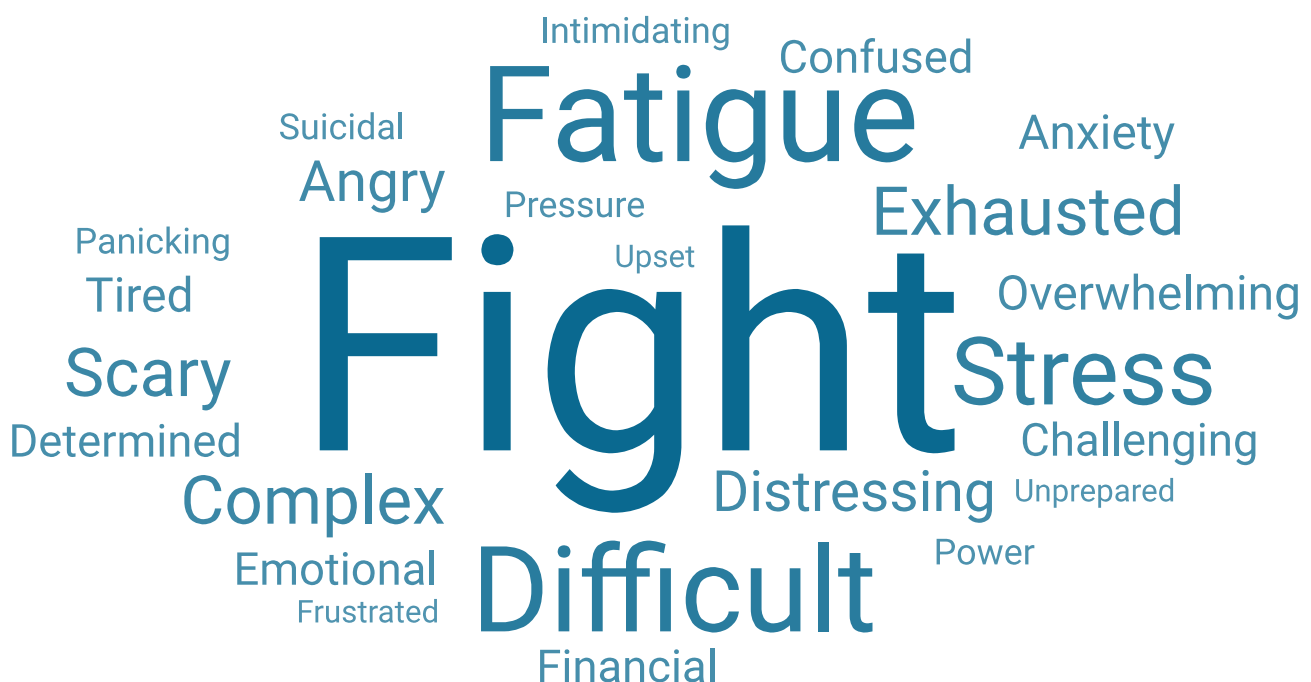
CLIENTS' FEELINGS AND EXPERIENCES

Clients of the Program described feelings of frustration and exhaustion with the appeals process and that by the time they had found their way to Legal Aid they were almost ready to give up on their appeal.

There'd been a lot of frustration, I guess, on our behalf, about what we felt was blatantly obvious to us that perhaps the system didn't understand. (Interview 25, Client (parent))

Other study participants, including lawyers and advocates, also perceived these feelings in the clients that they supported. Frequent terms used by clients to describe the appeals process are shown in [Figure 2](#).

Figure 2: Frequent terms used to describe the appeals process



In contrast, clients expressed feeling a sense of relief and hope once they had connected with legal support.

The lawyer was so special and nice. That gives you hope to keep going. It gives you strength, it gives you something to look forward. You know that you've been looked after the best way possible. (Interview 31, Client)

Further, clients felt that the outcome of their appeal was more favourable to them and that they had been able to get what they needed due to the legal support provided through the Program.

Then they capitulated. So you've got no idea how the feeling was. It was just sort of sense of relief. (Interview 27, Client)

Frequent terms used to describe feelings associated with engagement in the Program are shown in [Figure 3](#).

Figure 3: Frequent terms used to describe the NDIS Appeals Program Legal Services



The clients who took part in this study reflected on what it might have been like if they hadn't been able to access support. They consistently reported that the potential consequences of not being able to access that legal support, echoed by other legal and non-legal study participants, included: not following through with the appeal, failure to get access to the NDIS, inability to get critical supports, extreme mental distress and even suicide. Inquiry submissions by individuals who had not been able to access legal support reinforced such concerns.

I started an AAT appeal, and withdrew early, on advice of an Advocate. It was extremely daunting, and my mental health was already very fragile. I quite likely would not have survived the experience. (Parent of an NDIS Participant who did not have access to a legal representative, Submission to Joint Standing Committee [26])

While clients consistently reported that Legal Aid support was crucial, they also reflected on the importance of their own contributions to the process. They had vital knowledge, skills and determination and, in most cases, wanted to work in partnership with their lawyer.

In that first six months I produced some written documents that took a lot of work, but I was really proud of and I felt told [family member, the NDIS applicant]'s story in a human way. And that was deeply satisfying to produce those documents and write them and present them to the Tribunal. And even though they didn't have quite the weight I had hoped within the legal process, for me, bringing a human face to the whole thing is really important. (Interview 28, Client (family member))

Clients wanted to be heard, respected and to express their own voice in the process, alongside legal support. They were frustrated when they felt sidelined and underestimated in the Tribunal processes.

About halfway through the process I wrote them a mental health impact statement and I read it out during the case conference. And they said to me, 'Oh, it'd be faster if your advocate read it out for you' because I got upset. And then they were like, 'I'm sorry about that' and kept on going. (Interview 19, Client)

This was also reflected by Legal Aid lawyers who viewed empowerment of their clients as a key part of their responsibility.

There's a lot of having to work through what that looks like to make sure that we're supporting the clients themselves to give instructions and be involved in making decisions about their cases. (Interview 10, LAC)

Issues with the appeals process: Why is legal support needed?

There were multiple concerns expressed about the appeals process itself. The services of Legal Aid were considered an important mechanism for overcoming these challenges. Overall, the data suggested that the appeals process is complicated, daunting, exhausting, resource-intensive and difficult to navigate without the support of a lawyer, advocate or similarly experienced person. Available evidence suggests that the demand for the NDIS Appeals Program (across legal and advocacy service components) is higher than LACs are able to meet within current resourcing. Based on 2023 data, approximately 65% of the demand for the NDIS Appeals Program was being met [2, 26]. The findings below offer insights into why this demand exists and the potential implications of unmet needs for such support.

There was an overall view among study participants that it should not be so necessary to have legal representation in the ART process, but that it is in fact necessary in order to navigate a daunting and complex legal process. It was deemed a necessary 'equaliser' and clients considered that they simply could not get the same positive results without such legal representation.

And it's funny how when you've got [disability advocate] and then even more Legal Aid support came on, the kind of urgency increased and their [NDIA] communication increased. And it shouldn't be that way. Like, you shouldn't have to have it. It should just be how they perform all the time, regardless of who's supporting. (Interview 30, Client)

TRIBUNAL PROCESS IS LEGALISTIC

A fundamental premise of the ART is that it is not a court – that it is a less legalistic mechanism. However, this was not the experience of study participants in this evaluation. Many study participants, including LAC representatives, disability advocates and clients, experienced the ART as legalistic and suggested that the NDIA's model litigant responsibilities were not being met.

No matter what the ART says, or the NDIA says, it is adversarial. They turn up, they say nothing at case conferences or next to nothing, produce extremely legalistic statements of issues which people with disability without advocates or solicitors on board would be overwhelmed, have no idea about it. (Interview 20, Disability Advocate)

It was considered one of the key functions of the Program's lawyers to mitigate the legalistic nature of the ART and to help clients understand the differences between the ART and a court.

And so many of our clients are like, 'Oh, the judge said this.' They view the Tribunal member as a judge in the process. And that's because that's their point of reference to the process. So, no matter what the Tribunal's best efforts, it's an intimidating process. (Interview 03, LAC)

This was particularly impactful on ART applicants who'd had difficult experiences with legal and government systems in the past and felt wary of being in a court setting.

There wasn't a legal black and white. It was basically a feeling whether, you know I was capable, and you just get nervous because you can't trust the system. (Interview 27, Client)

Both professionals and clients reported that the extent to which the NDIA was represented by solicitors and barristers was surprising and often confronting. There was a perception that because the NDIA was 'lawyered up' applicants also needed legal representation and that there might be less need for such legal services if the circumstances were different.

In an ideal world no one would need an advocate, no one would need a lawyer. And I think in an ideal world, the agency wouldn't be legally represented, and they'd have case managers that could maybe front up and explain their decisions. But we're not operating in that ideal world. (Interview 03, LAC)

And then the nature of the other side is that it's very litigious. They always have a lawyer and then for every single hearing they always have a barrister. So you never like, you never go up against just another lawyer like it's someone who's skilled and qualified in court advocacy and that makes things difficult. (Interview 12, LAC)

Multiple submissions to public inquiries have similarly raised concerns about the daunting nature of the ART and the consequences of not having legal support.

The exaggerated power disparity between NDIS participants and the NDIA and their lawyers during the AAT process shows the adversarial nature of the process. The process made us feel intimidated, bullied, scared. (Parent of an NDIS Participant who did not have access to a legal representative, Submission to Joint Standing Committee [27])

The language used and the nature of hearings in particular, were seen to necessitate legal support in order that ART applicants are not disadvantaged.

To have an even playing field then certainly having a lawyer, either at all stages or certainly at that pointy end if it does get to hearing would be an ideal scenario. (Interview 23, Disability Advocate)

Despite the intentions of the Tribunal, clients reported that it was in fact a very adversarial and confronting process that they felt required legal expertise and support. In many cases this was unexpected.

At first, I just had a certain sense that surely they'll be reasonable, and once I've told the story and made it clear and they see the documentation, then it's perfectly common sense that the decision should go this way. So, I guess I didn't think about Legal Aid because I didn't realise the fierceness of the legal side of stuff and I just thought that people were going to be reasonable human beings and see it. (Interview 28, Client)

It is important to note, however, that a number of lawyers and clients who were interviewed felt that the Tribunal staff and members were, as individuals, compassionate and seemed considerate of the best interests of the applicant. In most cases, critiques were about the appeals process and Tribunal environment, not the individuals working in the Tribunal.

The Magistrate [Member] would always say, 'Well, what's there in the interim while this is going on?'. Like I could tell that he cared. (Interview 30, Client)

Further, while there was much critique of the adversarial and litigious nature of the NDIA, some interview study participants identified that in-house NDIA lawyers seemed more open to compromise and communicated with applicants in a more compassionate way than private lawyers contracted by NDIA for this work. There was a view that NDIA lawyers understood the purpose of the Tribunal and were more skilled in working with people with disability, compared to private sector lawyers.

There's been a lot of outsourcing of that work to private law firms. So that also has a particular dynamic depending on, I guess, the lawyers involved, what their attitude is towards resolution. And so that also adds another layer that makes it quite a legalistic process for people who are trying to navigate it. (Interview 10, LAC)

EVIDENCE REQUIREMENTS ARE CHALLENGING

The amount, complexity and costs associated with gathering the evidence required in the appeals process were significant concerns noted by all study participants. It was a large part of the workload reported by Legal Aid lawyers involved with the Program and a part of the appeals process that had substantial impacts on clients, lawyers and advocates, as well as the wider health and legal sector. The most frequently reported challenges in relation to evidence are summarised below. This was one of the most extensive and recurring themes throughout the study, including in public submissions.

The AAT process is gruelling... I laid bare the intimate, challenging details of our life as a family and the NDIA disregarded our experiences and knowledge. The NDIA through their lawyers demanded further information and clarification despite having numerous reports from our diagnosing psychologist, occupational therapist, speech pathologist, and paediatrician... Due to the NDIA's demands for further clarification, we spent \$1258.96 out of depleting and already insufficient funding amount for further professional reports. (Carer of a person with disability who was unable to access legal aid to support, Submission to Joint Standing Committee [27])

Large quantity of evidence required

All participants reported that the evidence required for appeals matters was extensive, particularly in relation to very specific reports required from medical and allied health experts. There were many study participants from all stakeholder groups who felt that the evidentiary requirements from the NDIA were inconsistent and would often change during the appeals period.

It's not always great going back to people and saying, 'I need another report'. And people, my professional team are very helpful and want to support me, but it's not easy to always ask for another letter. I think my physiotherapist did about six reports like letter after letter and I don't know why. (Interview 26, Client)

...so a position that the agency would take particularly around evidence is a very prescriptive view towards evidence and requiring evidence to be in a certain kind of form or to say things in a particular way before they were being prepared to settle matters, which often led to a situation where we would have to get multiple reports from a practitioner or lots more evidence than we initially had, in order to get a settlement of the matter or to progress it to hearing. (Interview 21, LAC)

Shortages of medical and allied health professionals

It was reported in interviews that there was often a shortage of professionals available to provide the very specific, and often numerous, reports required as part of an appeal. This was also a consistent feature in public submissions, where health professionals in particular raised concerns regarding the requirements of NDIS reports and the burden this placed on them and people with disability. Some health professionals reported that they no longer provided NDIS reports due to the time burden, feeling discouraged that detailed reports were followed by repeated requests for the same information, and the financial implications of providing reports without compensation because their clients were unable to pay for the required number of reports. This reflects a more general challenge in the health system regarding access to health and medical specialists. Provision of the kinds of reports needed to satisfy NDIA evidence requirements was viewed as almost a specialisation unto itself. A key contribution of the Legal Aid lawyers was to work with health professionals to communicate the specific reporting information needed, and this was often a part of the process that lawyers and advocates collaborated on.

We've got a massive lack of practitioners. So even when you can get a practitioner that you require, like even if you manage to find them, the wait time is huge... People are waiting for two years to get a paediatric assessment. (Interview 04, LAC)

Cost of evidence

The high costs of gathering evidence were borne by either clients (through NDIS funds if already an NDIS participant or paid for personally if seeking access to NDIS), via Legal Aid (usually through disbursements), or the NDIA would appoint their own assessors to provide reports. At times health practitioners would even provide reports at their own cost when applicants couldn't afford to pay. The cost of each report was high, usually thousands of dollars and even higher depending on the level of specialisation required and the geographical isolation of the client.

But you really feel for these people being stuck in this process because they can't get this evidence that everyone is saying they need because it's several thousands of dollars to get an OT [occupational therapist] report. (Interview 06, LAC)

Part of the funding is to fund reports. And over time that's become more expensive because, well, because everything's more expensive. They're involved, they're very big reports that people have to do, they take time, they would like to be paid for them. (Interview 21, LAC)

Impact on clients

Clients reported that the extent and nature of evidence required contributed to their sense of exhaustion, frustration and severe stress and these impacts were also observed by various professionals. This included financial impacts of sourcing specialist reports (especially for those seeking NDIS access who could not use NDIS funds for any of these reports), time associated with sourcing reports and impacts on mental health for continually having to retell their story (often in the most negative ways possible in order to highlight the extent of their needs). Lived experience statements were required in most cases. People felt grateful to have the opportunity to share their experiences from their perspective, but there was a personal cost to sharing these insights, especially in hearing and conference settings with strangers.

One thing that could be construed as difficult was having to write about myself as to why I shouldn't be in a group home... I probably wrote two or three drafts of the letter. I'm trying to explain what you know, that would mean. I think, that possibly could have been the most difficult part of that, was just trying to justify it in words. (Interview 27, Client)

People with PTSD, complex PTSD or other psychosocial conditions, issues and impairments stemming from those, they don't want to emphasise their impairments. It's painful for them to do that. And to even ask them to write a statement of lived experience, which is usually what the NDIA expects... it's an extremely painful process for some. And I've had an appeal in the past where the person just couldn't do it, could not explain how her life had turned out the way it had. (Interview 20, Disability Advocate)

Challenges for people living in rural, regional and remote areas

The requirements for accessing costly, specialised evidence were considered particularly challenging for people living outside capital cities or in less-populated states or territories. This exemplifies various disadvantages that require legal and advocate support in order to facilitate a fairer process for people living in rural, regional and remote areas.

There's just not the number of health professionals that you can access in the city. And so actually getting evidence is a significant burden. Just getting through the door is a significant burden. Not to mention all of the extra things like remoteness, travel to appointments, all of those other additional hardships and costs that are built into the system means that it's a system that definitely disadvantages RRR [rural, regional and remote] clients more, even if they can find a health professional. (Interview 22, Disability Advocate)

Impacts of the Program: What difference does it make?

LEVELLING THE PLAYING FIELD

The most consistently reported impact of the Program was that it provides support necessary to ensure a fair process for people with disability. The notion of the Program 'leveling the playing field' and addressing a power imbalance was an overarching message in every interview conducted in this study. The legal support provided via the Program, for those who are eligible, was considered to help redress the power disparities experienced as a result of NDIA's legal representation and the complex nature of the process.

Clients perceived a difference in the way that they were treated and communicated with by NDIA once they had Legal Aid on board. They reported that NDIA seemed to be more responsive and to take their matter more seriously once they were represented by Legal Aid.

*Once NDIS knew I had Legal Aid on my side, all of a sudden they paid attention. It was like I'd snapped my fingers. It was like they went, 'Oh ***. Now, I'm actually going to pay attention. Because Legal Aid have taken on this person, then they must have a case. (Interview 32, Client)*

Other stakeholders supported this claim, with many concerned about what the experience might be like if a person hadn't had legal support. The provision of legal support was considered necessary in order meet the ART's stated purpose of fairness.

So it's essential to have some semblance of parity. It's by no means parity because we are limited by our people, by the funding that we get, whereas that's very inequitable compared to what the NDIA spend on defending them. I think just as a human rights issue of being able to present and prepare and present your case to the Tribunal is the hugest value. And you know, having somebody skilled to do that is going to have a much higher likelihood of success. (Interview 03, LAC)

Indeed, the perceived inequity of facing highly skilled lawyers as an unrepresented applicant was a frequently reported concern among those people with disability and carers who did not have access to legal support who made submission to various inquiries.

If a legal process is not accessible to a person with disability, how are they supposed to have a fair fight? I am currently unrepresented. I do not have an advocate or a lawyer, though I have tried. I am up against lawyers and barristers. It's not fair at all. (Individual Person With a Disability, Submission to Joint Standing Committee [28])

OUTCOMES FOR CLIENTS

Given the power dynamics and complexities of the appeals process, it was generally agreed that the outcomes for people making an appeal are better where legal support is provided. This claim was not able to be quantitatively tested, given a lack of comparative data between represented and non-represented applicants, but was a strong theme in the qualitative data. Clients described a range of supports that they had been able to access following their NDIS

appeal. These included access to therapies, equipment, accommodation and support workers. This led to improved health, safety and overall quality of life, as well as helping people with disability and their families to participate more fully in society.

I was then introduced to [name of Legal Aid lawyer] and my life changed from there. Basically, I think within three months my son was an NDIS participant. (Interview 24, Client)

In one case, access to disability supports gained with the support of the Program enabled a family member to live their final days with dignity and among family.

What we were able to achieve was quite new, big and it was there because of the collaboration with Legal Aid... having that plan, he died peacefully at home, with incredible support. (Interview 28, Client)

Most clients stated that they did not feel like they would have gotten the NDIS support they needed without the legal support from a LAC.

She [Legal Aid lawyer] was emotional and I was too. And I said, 'you've changed our lives and I couldn't have done it without you'. Well, we wouldn't have NDIS access. Simple as that. (Interview 24, Client)

As a first step, legal support was reported as helpful for people to be able to articulate the outcomes that they are seeking and what evidence might support their request.

I really think in the NDIS process, particularly a lot of the files we have now, if people were not represented, they wouldn't even have a way of communicating what it is that they're requesting. (Interview 01, LAC)

The supports provided through NDIS were viewed as potentially life changing and even life saving and therefore legal support to attain such necessary supports was vital.

It's the independence, and the freedoms given have been unbelievable. (Interview 27, Client)

And so it's just a really critical part of providing access to justice to the most disadvantaged people. And the outcomes are not only that people have support plans, you know, they're able to access what they need to live their lives in a positive way. (Interview 07, LAC)

It was perceived that appeals progressed more quickly where Legal Aid was engaged, and often this made a critical difference.

We've had a couple of participants who have ultimately been, I guess for want of better words, stuck in hospital until Legal Aid has been able to come on board and progress the matter quite quickly. (Interview 05, LAC)

Where legal support could be provided early enough, it was seen to help facilitate good outcomes for clients without having to go to hearing.

Between 90 and 95% of people that go through to Tribunal proceedings will finalise their matter at a settlement. It won't proceed to hearing and sometimes lawyers can assist in getting a better outcome. (Interview 12, LAC)

However, the positive impacts for clients were not just about access to NDIS supports. Study participants described the importance of the Program in providing access to justice more broadly.

There's just this huge difference it makes to have someone who's able to navigate that and communicate really clearly to someone about the process and be acting on a person's instructions in a system where no one else, whether it's the medical practitioners, whether it's the NDIA, whether it's the Tribunal, no one else is able to do that for them... it's not necessarily that people are getting the exact outcome they want. But if they're not, they're still getting this real sense of being heard and valued and understood and being able to kind of understand the system better in a way. (Interview 10, LAC)

This was also expressed in a number of public submissions that highlighted the importance of legal assistance in the Tribunal process in terms of access to justice and fairness.

Fairness is not throwing up barriers to justice. It is not subjecting a lay-person with a disability up against a qualified legal practitioner. It is not forcing them into a situation where they lose their health and function further. Self-representation slows down the process and escalates costs for the NDIS. Self-representative is contrary to the objective of fairness. (ME/CFS Australia, Submission to Joint Standing Committee [29])

CLIENTS MORE INFORMED AND PREPARED

Irrespective of whether the service offered was advice or representation, it was noted that the Program helped people understand and navigate a complicated, document-heavy process.

I think people are bamboozled by the system. (Interview 04, LAC)

As a parent we try to keep on top of everything, but obviously we can't know all the ins-and-outs of what legally you can and can't do...with the NDS it's complex and we haven't got the time or the energy to be on top of it all...So knowing we had the fight power to be on the same level as NDIS and so we couldn't be outwitted or outsmarted. (Interview 29, Client)

For people who did not go on to have representation, it was considered that the opportunity for legal advice helped them understand the gaps in their evidence and what was needed to have a chance at a successful appeal.

I think often it's the first time someone has spent the time to explain to someone why a decision is being made... I think that then empowers people to feel like they can do something about it because they go, 'OK, I see where the problem is now I can go and do this, this and this'. (Interview 15, LAC)

Clients reported feeling more confident about the steps they needed to take and their understanding of the documents and processes, where they had a lawyer to explain this to them.

I think her [Legal Aid lawyer]'s help of deciphering some of the legalese, I called it 'the language', especially once their lawyer got involved. Because it's never in plain English. I would look at an e-mail from the NDIS or from their lawyer, and I'd go, 'I'm just going to wait for [Legal Aid lawyer]. I'm probably going to do something or say something wrong and misinterpret what was said'. So that was really helpful. (Interview 32, Client)

Lawyers reported that sometimes the information and advice that they gave to clients, particularly in advice sessions, was not necessarily what the person wanted to hear. Irrespective, they considered that this allowed people to make informed decisions.

And we tell them, 'Actually, it's not worth the fight. You're not going to get it.' Yeah, we've just probably helped that person in all manner of ways that you can't really quantify. (Interview 04, LAC)

Not having such legal advice and information was viewed as a disadvantage.

People who get Legal Aid support have sound advice whereas I don't know that they do if they don't have that legal advice. (Interview 16, NDIA)

IMPACTS ON THE LEGAL AND DISABILITY SYSTEMS

The Program was deemed to not only benefit individuals, but to support the fair and efficient operation of the ART and the NDIS. In this sense the funding spent on this Program was considered value for money that had financially positive implications for government expenditure and systems.

Legal Aid lawyers are important to be there. A lot of participants – for assessment, capacity and capability and information about what's going to happen – need legal gravitas that comes from Legal Aid...The additional costs for Legal Aid as opposed to non-lawyer advocacy is bang for buck. (Interview 16, NDIA)

It was considered important in facilitating the enactment of principles of justice and the legal system more broadly and that:

whether win or lose, Legal Aid's contribution is important to ensure that the arguments are argued. (Interview 16, NDIA)

Testing important cases

Legal Aid lawyers are not only trying to achieve outcomes for each individual client that they represent. Through prioritising meritorious cases that have wide benefit, they take on cases that will test and potentially set precedents for future NDIA decisions. Applying the Program's

eligibility criterion of 'wider community benefit' in particular was seen to be effective for testing cases that could have an ongoing impact on NDIS reviews and NDIA decisions.

The other portion of it is the wider community benefit and keeping an eye out for issues and cases that are going to have a systemic impact. Some of the work that I'm most proud of was around the disability related health supports...And we got some cases where we got some decisions that really that interpreted the law in a way that was favourable to clients and made sure that they got the support that they needed. So, those sort of outcomes were incredible, and the impact that that has on other reviews. (Interview 21, LAC)

Several study participants also noted the important function of Legal Aid in taking cases to the Federal Court and thought that this could be something more frequently done in order to legally test cases at the highest level. Data from the AAT shows that only 2-3% of all NDIS Division decisions are appealed to the Courts. This is much lower than the rate of appeal for the AAT as a whole (19% of all AAT decisions) [14].

For clients, the potential that their case might influence change for other people, through precedents and advice giving for example, was a motivator to pursue their appeal.

If we can do it, then we can tell people, 'Hey, if you're having these issues, this is what you do.' That might help some other people as well. (Interview 25, Client)

Efficiencies for the ART

The NDIS appeals work undertaken by Legal Aid was deemed to support the efficient of operation of the ART in two key ways.

First, it filtered out non-meritorious cases by helping people to better understand their case, NDIS criteria, NDIA decision making, and evidence requirements. Second, it helped people have well-prepared cases, particularly by having appropriate, relevant evidence in place to help the NDIA and ART in assessing the information.

The ART and the AAT of course were set up for people to be able to represent themselves. This particular cohort of clients, unlike unfortunately other cohorts of clients in the ART, they often can't do that ...it's really critical that people get that early advice rather than stumbling around for a year and a half trying to get some supports in a plan that could be reviewed or adjusted another way 10 months earlier. And we also support, assist ART in in moving through its workload and come to more just decisions more quickly. (Interview 05, LAC)

The AAT itself previously noted the importance of legal representation to improving the Tribunal's efficiency.

We continued to experience challenges associated with the inherent complexity of cases in this Division [NDIS] in 2023–24 which resulted in them taking longer to finalise than many other case types. These ongoing challenges include a lack of authoritative jurisprudence to inform decision-making and a lack of adequate legal or skilled advocate representation for applicants. [18].

Strengths of the Program: What makes it work?

When asked to reflect on the strengths of the Program, study participants described a range of ways in which the support provided enhanced fairness, justice, efficiency and accessibility. Specific elements of the Program considered to contribute to its overall strength are described below.

SKILLS AND EXPERTISE OF LEGAL AID LAWYERS

There were many reflections that the successes are largely attributable to the skills of Legal Aid lawyers who deliver the Program. LACs were considered well placed to provide the infrastructure in which these skilled lawyers could operate. In most jurisdictions the NDIS appeals-related work sat within a civil justice related department. There were three models for the design of the roles.

In five LACs there were dedicated NDIS Appeals Program lawyers. They were specialists within the LAC who, almost exclusively, focused on this work. They did, however, work closely with colleagues in other areas and would sometimes provide advice to colleagues on NDIS-related matters and in some cases, lawyers were allocated part-time to the NDIS Appeals Program and part-time to another area of practice. The advantages of this model are that lawyers can hone specialist skills and be focal points for relationships with stakeholders such as ART, NDIA and disability advocates. It also reflects the unique nature of the work and the fact that these cases can take more time than other areas of practice.

In two LACs the NDIS Appeals Program work was shared across a specific team of lawyers who were all also practicing in other areas of civil law. The advantages of this model are that there is a level of specialisation in NDIS appeals-related practice, while having diversity in people's work and tapping into aligned knowledge and skills in areas such as social security.

In one LAC the NDIS Appeals Program work was allocated across the whole team of lawyers. The advantages of this model are that this technically difficult and emotionally exhausting work is shared across the team, that all staff build skills and knowledge in this area of practice, and that the risks associated with losing staff are mitigated by having other staff who can pick up NDIS Appeals Program cases.

All groups of study participants highlighted the unique, specialist skills required by lawyers working on the Program. Noted skillsets included:

- technical legal skills and understanding of an often-changing, complex area of law in which practitioners are unlikely to have had previous experience,
- trauma-informed practice capabilities,
- sophisticated and adaptable communication skills, and
- relationship building capacity to facilitate work with ART, NDIA, disability advocates, health and disability experts and clients.

Because often, particularly for those clients with serious psychosocial disability who often have a lot of trauma in their past, the process itself can be almost re-traumatising. So trying to balance I guess and making accommodations and practising being trauma informed in your approach to taking instructions and assisting that person knowing that if we are successful, there is support for them down the line... So that's a kind of delicate line to walk. (Interview 15, LAC)

I thought there was going to be a lot of legal jargon, you know, a lot of things I wasn't going to understand. But she [Legal Aid lawyer] was so warm, so welcoming and she just put everything in layman's terms and made it so easy. (Interview 24, Client)

Training opportunities to develop such skills were valued.

There's a focus on being trauma informed and across, across all the divisions. But I think like specifically we're talking about NDIS work. I think there's now a huge emphasis on, look, it's not just about getting results, it's about making sure clients feel seen and heard and, and understand because you can't always get results. (Interview 01, LAC)

Given the extent of documentation and evidence involved in an appeal, and the legalistic language that was often used, the ability of Legal Aid lawyers to communicate complex information in clear ways to clients was observed as a particular strength of the legal practitioners delivering the Program.

There's another lawyer who's done a really, really excellent job in communicating with a man with moderate intellectual disability that I was supporting last year. Just going out of their way to learn and then employ skills in their communication really. And the willingness to work with advocates as well with some of the lawyers is an outstanding feature of the work of that team. Because the task in many ways is to communicate really complex concepts to people and break that information down, strip it down, but retain sort of the correct level of importance and significance that the information has. (Interview 23, Disability Advocate)

IMPORTANT AND REWARDING WORK

Legal Aid lawyers who took part in interviews described being highly motivated to do this work, despite its many challenges and uncertainties. There was a sense of commitment to doing work that supports the needs of often marginalised people who might suffer without their support. It was also often described as invigorating work that challenged the lawyers to develop and hone skills and expert knowledge. Ultimately, it was described as difficult, but rewarding work.

This work is sometimes I would call traumatising to do. But it's also some of the cases I'm proudest of in the 10 years I've been a lawyer. Yeah, there's some cases where I think I bloody took on Goliath'. (Interview 14, LAC)

It's really rewarding work and it's really wonderful when you do get to call someone up and tell them that the thing that they really need that's going to help them in their life, they're going to get it. (Interview 21, LAC)

LEARNING FROM OTHER LACS AND HAVING A NATIONAL PERSPECTIVE

The particular structure of LACs, as state and territory bodies with capacity for national collaboration and coordination, was considered important to the delivery of the Program. There were perceived benefits to having a national Program that could bring LACs together for shared learning and advocacy. The relationships between LACs, and coordination of these by National Legal Aid, were generally seen to make the Program stronger.

And that has sort of developed now that, where needed, we have been able to work with other Commissions if you know one of us has an issue arising that another state has seen or has recently run on. (Interview 06, LAC)

Opportunities for training, particularly the trauma-informed national training that had been made available to all LACs, had been valuable to the development of the multi-faceted skills needed in this work.

We have some sort of training that's arranged here ourselves, we've had the advocacy groups involved in some training too from time to time and we're also using the NLA [National Legal Aid] trauma-informed training that's been developed recently. (Interview 05, LAC)

COMPLEMENTARY ADVOCACY AND LEGAL SUPPORT FUNCTIONS

Disability advocacy organisations and LACs recognised the importance of strong relationships and clearly delineated parameters regarding legal and advocacy roles. These were considered to maximise the efficient use of resources and specialist expertise.

Legal Aid, they provide legal advice. We don't provide legal advice. We only provide information. Legal Aid work on the best interests and they advise the clients... And another major difference is Legal Aid works on a merit-based criteria in providing support to people. Advocacy does not work on merit base. We just do as the client wants. (Interview 08, Disability Advocate)

The complementary functions of advocacy and legal support were considered beneficial to clients, especially where the referral and communication channels between disability advocacy organisations and Legal Aid were clear.

It's just so draining to have to retell trauma again and again... But [when referred to Legal Aid by advocate] I think lots of the backend dialogue had already taken place between [name of Legal Aid lawyer] and [name of advocate]. It saved me having to, you know, retell again. (Interview 29, Client)

In addition to disability advocates, the contributions of Community Legal Centres were noted by a few study participants and in various submissions to public inquiries, indicating how complementary these skill sets can be.

The skill set of the CLC sector generally in working with clients that have disabilities is not to be underestimated. (Interview 22, Disability Advocate)

While they are not delivering this particular Program, some Community Legal Centres - both generalist and specialist - along with pro bono legal services, are engaged in direct client services and systemic advocacy related to access to justice for people with disability and NDIS-related matters. The strengths of various individuals and organisations providing legal support to people with disability, alongside the strengths of uniquely positioned LACs, are assets for the Program.

LEGAL AID LAWYERS SUPPORTING NETWORKS AND KNOWLEDGE FOR DISABILITY ADVOCATES

LACs in most states and territories were providing support to disability advocates to enhance their capacity to support clients. Many Legal Aid lawyers had built direct relationships with disability advocates, such that advocates could ask lawyers for advice on an ad hoc basis, so that limited legal and advocacy resources could be spread further.

I go to them as well for legal advice on some of my cases as well. When I have very complex cases and I need second opinion, I would book a meeting with one of their lawyers. They always book me in almost immediately in a timely manner and they support me to, we discuss the case and consider it together, even though there's no legal representation on that case. (Interview 08, Disability Advocate)

LACs provided resources to disability advocacy organisations to help with their understanding of the legislation and legal aspects of the appeals process, including newsletters and case law summaries. Some LACs facilitated networking groups with disability advocacy organisations where they would share information about NDIS legislation and continue developing ways of working together.

So I think that is a really useful educational process and also that they have them or junior lawyers doing case summaries and they can just read the volume of matters and see what is a relevant precedent. And then in the limited time we have, we can direct our reading accordingly.... And I think coming in, I would definitely say, because I've only been doing it now a year-ish, that upskilled me quicker... (Interview 20, Disability Advocate)

LEGAL AID'S BROADER DISABILITY WORK

Most study participants from LACs noted that their Commission was doing disability-related work beyond this Program. This was seen to strengthen the NDIS Appeals Program work and vice versa. One specific example is that Legal Aid ACT has a specific disability service, outside of the NDIS Appeals Program, and dedicated Disability Liaison Officer roles.

Overall, there was a general view that Legal Aid, across all jurisdictions, is getting better at doing disability-related work and the Program has contributed to, and benefited from, that growth in Legal Aid's capacity.

In the recent years there's been quite a focus on upskilling all of the staff across the organisation on working with people with disabilities. There's a strong recognition that a lot of our clients that engage with the criminal justice system have disabilities, for example, not just the clients in a service like ours that's specifically for people with disabilities and their families. (Interview 11, LAC)

NOTHING ELSE LIKE IT

In general, the Program was regarded as unique, filling a crucial gap. There was no identified equivalent mechanism to facilitate access to justice within the current model of the NDIS appeals process. While other valuable services provided through groups such as Community Legal Centres, advocacy organisations, and various community services were noted, there was consensus that the legal services delivered by Legal Aid through this Program were unparalleled.

I guess I can't imagine a world without us. I just don't know what they would have done without this service. I can't imagine how hard this would have been for people. Even if it's the demystifying, or a lot of our work is someone listening to them, someone listening to the difficulties that they've had and experiences and pointing them in the right direction. I think that's huge. (Interview 04, LAC)

STRUCTURE OF THE PROGRAM

There were elements of the Program's design that were deemed keys to its success. These included the availability of funding to source evidence and brief counsel. Another element considered by some to be a strength, but not universally agreed on, was that the Program is not means tested. In these instances, it was viewed as beneficial that support was available to people who might not otherwise be able to access Legal Aid services and that without merit testing the administrative processes were streamlined. Similarly, an element considered by some, but not all, as a strength was that the Program is funded separately from other LAC grants, particularly the National Access to Justice Partnership (NAJP, previously the National Legal Assistance Program), which allowed for funds to be cordoned off for this particular purpose and expended in a targeted way.

While there were various concerns about NDIS and ART process and systems, there were some positive reflections about the relationships that had been forged at different times. This had particularly been the case in the previous AAT model when Legal Aid lawyers had been able to develop direct relationships with Tribunal staff.

The relationship with the Tribunal has always been good for us.... we work well with the registrars and members. I think it's a good overall relationship. (Interview 21, LAC)

Challenges for the Program: What makes it difficult?

FUNDING

The challenge most frequently cited by all study participants was funding. This included concerns about the need for more funding in order to provide legal support to as many people as possible and, most frequently, the lack of security and consistency of the Program's funding grants. There were a number of factors, and consequences associated with funding of the Program.

Insecurity of funding

Although the Program has been operating for more than eight years, there has been no commitment over that time to recurrent funding. Funding has been granted on an agreement-by-agreement basis. In most cases these have been individual 12-month, at most three-year, agreements between the Department of Social Services and each individual LAC. Extensions to funding agreements have been granted multiple times throughout the life of the Program, but these extensions have generally been granted only weeks before the end date of the respective agreement. There have been a number of occasions when LACs have received top-up funding late in the financial year, which has made it difficult to expend much-needed funds in a timely way. This has had a number of consequences.

I've seen an increase in the money, but not in a consistent or useful way. So, they will give you a certain amount of money and then during the financial year they'll give additional amounts, usually timed, not terribly in a practical way. And then we're often in an underspend situation where we then have to apply for... the rollover of funds, each financial year. (Interview 17, LAC)

Staff retention

The most reported dire consequence of funding uncertainty was the impact this has on the ability to retain qualified staff. Nationally there are very few permanently contracted lawyers specifically funded to work on the Program, due to the uncertainty of funding each year.

The specialist and particular nature of the NDIS appeals work means that LACs invest significantly in upskilling staff. It is not an area of legal practice that has an equivalent outside of this Program, so new lawyers to the Program need time, training and mentorship to develop the relevant skills and knowledge. Because funding is not ongoing, and because it is a specialised area that people come into without having relevant experience, it was noted that:

we get staff, we train staff, we lose staff. (Interview 14, LAC)

The risks associated with losing highly skilled Legal Aid lawyers were noted by LACs and also other stakeholders.

For Legal Aid to lose that level of knowledge would be a real problem, not just for them, but for us.... I just feel like the retention and the looking after of those staff members, for us they are very precious. And for the people we work for, they are very, very important. And we want to treat them like the endangered species that they are. (Interview 20, Disability Advocate)

The risks associated with insecurity of funding pertain to loss of staff, loss of expertise and inefficiencies associated with ongoing recruitment and training of new staff.

Long-term commitment to clients

The short-term nature of funding agreements does not align with the long-term nature of many clients' cases. There were concerns about committing support to clients through extensive matters that are likely to be active in the appeals process beyond the end date of the LACs' funding agreement.

We're still facing a funding cliff for 2025 as they haven't yet told us about our funding for 2025/26 [financial year]. And I'm essentially committing to matters now that will still be alive in 2026/27 because NDIA matters take 12 to 18 months usually on average to resolve. (Interview 18, LAC)

Insufficient amount of funding

A number of challenges were considered to be consequences of an insufficient amount of funds. Given the perceived significant need for legal support to people making an NDIS appeal, it was reported that the extent of need could not be met under current funding levels.

Inability to meet demand

The demand for the Program has fluctuated over time, in terms of the numbers and types of appeals. Ultimately, it was viewed that more people could be helped with a higher amount of secure funding.

There's definitely been times where we have turned away a lot of people when we get really flooded with requests. There's just a lot of people that we can't help who I think we should be helping. (Interview 12, LAC)

In the worst cases, LACs had needed to stop accepting new cases because they simply didn't have the resources to provide more services in response to growing demand.

So the NDIS work rapidly increased, I think in 2021, with appeals. At that point we had to close our books for the very first time. It's not something we do. We had to basically close the service because we had committed to a number of matters that we couldn't do anymore of. We wouldn't have had the money to do that. (Interview 18, LAC)

Lack of resources to support work such as capacity building

The impactful work of the Program is not only about its direct support to clients, but the support, information and capacity building that lawyers facilitate with partners such as disability advocates. This has allowed the Program to have reach beyond the direct support lawyers are able to provide to clients. However, it was suggested that this was threatened by a lack of ongoing funds to support this work.

We don't know if their funding's been dropped or whatever. But we rely so heavily on their [Legal Aid lawyers'] guidance because they are basically the font of knowledge. (Interview 13, Disability Advocate)

THE NATURE OF THE WORK

While the complex and rewarding nature of the work was reported as a strength, the work of Legal Aid lawyers in delivering the Program was also found to be difficult, stressful and intensive. Some lawyers reflected that it is technically difficult work that takes more time than many other areas of practice.

Especially compared to say sometimes what's relied upon in Social Security matters for showing special circumstances or something, the forensic attention to sort of word by word analysing reports, I think is something that is really difficult in this jurisdiction. (Interview 06, LAC)

The significance of the outcomes to peoples' lives and the weight of supporting people through periods of crisis and distress were challenging.

So in trying to manage your role as a lawyer, and not a psychologist or a counsellor or a crisis support service, which we're not, but often you're the only person calling this person regularly. So you become the receptacle of all problems in their life. (Interview 15, LAC)

Various mechanisms were put in place to support staff in light of this, such as external supervision with counsellors, being able to access a social worker on the LAC staff, debriefing with other staff, and various training programs.

ADVOCACY AND LEGAL SUPPORT ROLE CLARITY

While advocacy and legal support functions were generally described in positive terms – as complementary functions – it was noted by some lawyers and advocates that they sometimes need to clarify clients' confusion and expectations about the distinctions between legal and advocacy supports.

But people think that they're getting legal advice sometimes from us when they're actually not. Our job is to simply help them navigate the process and to access legal advice on a one-off basis if they need it. (Interview 20, Disability Advocate)

A few lawyers and advocates reported that they had, at times, struggled to ensure that disability advocates were not overstepping from advocacy into legal advice, either because there was a dire need for legal support that couldn't otherwise be provided, or because the lines were not clear.

Advocates unknowingly or just, you know, because we haven't defined it well or it's unclear, are essentially bridging into sort of some risky legal work in a way because no one else is there to do it. (Interview 23, Disability Advocate)

Reflections from public submissions indicate that these issues about the distinction between advocacy and legal advice even extend to the NDIA itself.

Whilst advocacy services such as ADAI provide some information and support we are not allowed to provide legal advice and representation. However, we are often treated like a quasi-legal service by both NDIA Case Managers and the NDIA's lawyers. This is beyond our scope and increasingly concerning. (Advocates for Disability Inclusion and Advocacy (ADAI) South Australia, Submission to Joint Standing Committee [30])

DATA COLLECTION AND REPORTING

A complete picture of the design, implementation and impact of the Program is difficult to ascertain given a dearth of consistent data across the life of the Program and differences in the ways that data has been collected and reported across the various state and territory LACs. This was recognised by the Royal Commission into the Abuse, Neglect and Exploitation of People with Disability which found that insufficient data made it difficult to verify the level of need and unmet need for the Program and to plan and resource services accordingly [2].

Program providers recognised reporting as an expected part of any funding agreement and that robust, relevant data could support Program improvements. However, there were various issues with reporting noted including different reporting formats in each state and territory office, reporting requirements for the Program that don't align with the other types of reporting that LACs are doing, and report formats that are neither user-friendly nor conducive to understanding the Program.

There's a lot of requirements on us as opposed to other funding programs that Legal Aid is funded for. We have a much higher reporting requirement. We're doing all these things, jumping through hoops for them, but they [the Department of Social Services] don't listen to us in terms of what would be useful and what would help them understand our program... The benefit of reporting monthly should be that we have good data that means something at least has been collected, but we don't because their reporting template asks for things that are not good metrics of what they're actually trying to measure. (Interview 11, LAC)

ELEMENTS OF PROGRAM DESIGN

There were elements of the Program's design that some study participants considered as strengths, and others considered as challenges. Some study participants considered that the lack of means testing could result in people with greater need missing out, because people who might be able to afford private lawyers were eligible.

Some study participants felt that, in order to improve consistency and security, funding for the Program should be integrated into the ongoing funding provided via the National Access to Justice Partnership administered by the Attorney General's Department.

While the model of a national program, delivered by individual state and territory LACs, was considered a strength by many, some study participants were concerned that this could mean that local contexts could be inadequately considered in program design.

There was also uncertainty about what the new ART might mean to the effectiveness of the Program, including the likelihood of more cases being heard in a state or territory other than the applicant's home state or territory. There was hopefulness that there may be improvements to efficiency and engagement, but quite a bit of caution about the reforms.

The hope will be eventually it [the ART] would operate more efficiently. But it's probably too soon to say whether there's been any change, at least in accommodation for people. (Interview 01, LAC)

I think the ART reform is a challenge as well. Before the reform it was very registry based. ...They [LAC staff] had a good relationship in the main with their registrar and they had good referral and advice clinic processes happening ..., but they're moving to a national approach. And so I think there are challenges at the moment in terms of what does that mean for organisations that are funded by state and territory and how do we ensure that there are good processes and good referral processes and good working relationships with the ART going forward? (Interview 07, LAC)

Study participants' ideas for improvements

There were several ideas put forward by study participants and in submissions about how the various strengths of the Program could be enhanced and the challenges of the appeals process addressed. Overall, the most common recommendations from study participants were in relation to funding, which was echoed by clients' hopes for the Program and for LACs to:

Expand and become bigger so you can help more people. (Interview 31, Client)

INCREASE AND GUARANTEE FUNDING

The recommendations regarding funding were essentially that there should be more funding and that it should be an ongoing, secure funding arrangement.

I would like it to have to have a set and stable amount of funding guaranteed. I'd like that funding to be more than it is, because it would mean helping more people. (Interview 09, Disability Advocate)

A higher amount of funding was advocated by most study participants, in order to support more people and provide the range of supports necessary.

I just wish they [the Legal Aid NDIS Appeals Program] had lots and lots and lots and lots more money. (Interview 28, Client)

...definitely expanding that Program to be able to assist more people because at the moment I think it's less than 10% of people that can access that level of legal representation...not enough people who are needing that level of support to challenge, to get through a very technical area of law that's designed to be beneficial law. (Interview 23, Disability Advocate)

But if we had more lawyers, we would just take on everything because I can't really think of many where you'd say 'oh, you'd be right [without representation]'. I mean, we have to make that decision, but we would love to take them all on. (Interview 03, LAC)

There were repeated calls for a model of ongoing, secure funding that would enable LACs to employ staff on permanent contracts and to plan and resource work in a more long-term, efficient, strategic and client-centred way.

I'd like to have more certainty around the level of funding... in terms of staffing, being able to have more certainty and stability in terms of managing our capacity and retaining knowledge, expertise, staff. (Interview 15, LAC)

Some LACs also questioned whether the Program would be better administered by the Attorney-General's Department rather than the Department of Social Services. These few study participants felt that because the Attorney-General's Department is the main government agency LACs tend to work with, there may be efficiencies and a more specialised level of understanding of the legal aspects of the Program.

INCREASE PROGRAM AWARENESS

There were concerns expressed about the lack of knowledge and awareness of the Program and the ways that this might lead to people in need missing out on legal support. Study participants suggested various strategies such as having the NDIA provide more clear information about the appeals process and the availability of the Program at the time that people received an internal review decision, and delivering more community outreach to groups of people who might otherwise not be aware of the Program or their rights regarding appeal, including people living rurally or remotely, and Aboriginal and Torres Strait Islander peoples.

It could be highlighted in the decision letters if it isn't already...it needs to be highlighted in various different ways and I mean there's very obvious disability communities and we do community legal education and go to the disability expos and various bits and pieces. But it just needs to be some more communication within the community about how to appeal. (Interview 03, LAC)

The NDIA, they say to you, you can go to the Administrative Appeals Tribunal, but in their correspondence there doesn't say anything about how you get legal representation. (Interview 25, Client)

Clients suggested raising awareness of, and connection with, the Program, noting earlier or before the appeals process would work best.

So, if in the beginning of the Tribunal... Legal Aid is able to contact a new Tribunal case and go 'We're here. This is what we do.' Yeah, having that information from the start... I think to be aware of and to make that connection early on with Legal Aid. (Interview 28, Client)

If I had known about it sooner I would have put our hand up immediately. It would have immediately reduced my workload and my stress. (Interview 30, Client)

Clients who weren't aware of the advice services, who had only received representation services, expressed a desire for early access to legal knowledge.

Is there like an interim offer? As in when you get some of these documents or answers from NDIS and they are in, you know another language, is there a type of offer without having to go through a really big process and end up at AAT? Is there something that a person can go, 'OK, this is what I keep getting back from NDIS. What do you recommend that I do or say when I'm putting in an appeal to get them to listen?' (Interview 32, Client)

PROVIDE LEGAL SUPPORT EARLIER

Across all groups of study participants, there was disappointment that the Program didn't have capacity to engage with clients earlier in, or even before, the formal appeals process. It was considered that the provision of early legal advice could help people make informed decisions about their matter, and lead to efficiencies for the whole process.

I think it would be ideal if we could get to people as soon as possible. So assist people from the outset of their case as much as possible. (Interview 15, LAC)

It could be really expanded to include those early resolution or early advice sessions to help the client's journey in the NDIS system. But that's more a resourcing issue, isn't it? (Interview 22, Disability Advocate)

I think it was a shame we couldn't do [Legal Aid] like a year earlier because I think it would have created so much less stress. (Interview 19, Client)

Early resolution was also encouraged. Given that many cases were reported to be resolved by the NDIA in the final hours prior to a hearing, it was perceived that this could happen earlier, and that people should not be expected to prepare for a hearing unless absolutely necessary.

In a few instances study participants suggested that the use of the Tribunal model should be minimised.

We would have liked to see, similar to Social Security, a more informal tier of the Tribunal for resolving small disputes for people. (Interview 21, LAC)

It shouldn't be a legal process, but there can be a series of review mechanisms that don't involve the Administrative Appeals Tribunal... you need to take it out of a legal framework. (Interview 18, LAC)

DRAW ON NATIONAL AND LOCAL STRENGTHS

Several study participants from LACs noted the importance of ensuring consistency in terms of reporting, administration, monitoring and service provision across all jurisdictions nationally, while not losing the benefits of a model that has the flexibility to be tailored to the unique needs of different contexts. One respondent described:

...the uniqueness of Legal Aid Commissions in that there are eight Legal Aid Commissions who are their own statutory standalone organisations, and delivering a national program in that context is a challenge in many ways. (Interview 07, LAC)

Some LAC study participants reflected on service models being implemented in other states and territories and the lessons that they might apply in their own service model. Examples where lessons from different LACs were considered useful were the development of various approaches to advice clinics and different options for staffing structures as each LAC navigates challenges of staff retention.

Something internally for us to also look at is a more hybridised workforce for both staff wellbeing and doing different types of law, so giving them more diverse training. (Interview 03, LAC)

IMPROVE THE OVERALL APPEALS PROCESS

Many study participants described ways that the NDIS appeals process could be improved to support better outcomes for people with disability and enhance the efficiency of Tribunal. While not specific recommendations about the Program per se, these were suggestions that would ease demand for the Program and make the experience of the appeals process better for everyone involved.

Less legalistic and more efficient

Most significantly, people called for a less 'legalistic' process that was not intimidating or antagonistic for any of the stakeholders (professionals and applicants). One proposed way to achieve this was by reducing the use of private lawyers and the NDIA being represented by specialised in-house lawyers highly skilled in working with people with disability.

NDIA are trying to impress those high standards on contracted lawyers, trying to synchronise lessons, information and resources with the contracted lawyers, wanting to bring more consistency. Ultimately though, in-house lawyers is where we want to be. (Interview 16, NDIA)

Other suggestions related to more streamlined and efficient processes throughout, including less back and forth between the NDIA and applicants in requests for evidence, with clear and consistent guidance about requirements. Numerous clients suggested ways that the NDIA could improve communications with clients. Some ideas included providing examples of the kinds of questions they might be asked ahead of a hearing or case conference and being able to observe a hearing beforehand.

That's something that could be looked at in terms of the scheme overall, being more efficiently managed, like less requests for an extension of time, less uncertainty over instructions. (Interview 01, LAC)

I'd like them to have their ducks in a row more and then to be able to be able to go, 'Right, here's the list of questions that we've got' ... it would be really nice if they contacted you between case conferences and go, 'thanks for your evidence. And unfortunately, we still need this bit covered' so you can get it before the hearing and so you can move on to the next bit. (interview 19, client)

I was a bit floored by it all, even though I had been told what to expect.... I would have really liked to have had a bit more understanding of the hearing.... maybe a little bit more understanding of the questioning type. (Interview 26, Client)

Study participants also saw opportunities for financial efficiency gains, through improved efficiency of the process.

I feel like the amount of government money that is being spent for this process is ridiculous. we're just using NDIS money to help pay for all of this and it's like, if they just said yes three years ago they would have saved themselves \$100,000. (Interview 32, Client)

Integrated support

All clients emphasised the need for non-legal support to be embedded within the appeal process. One client regarded non-legal support as:

...an ethical moral responsibility. You're about to take someone through, an ordinary person who doesn't live in this world of legal stuff all the time, down this rabbit hole, into this world. You need a lamp, and you need someone who's going to hold your hand and just check in and know how to ask certain questions. Practical things like, are you sleeping? You know, how are you coping? (Interview 28, Client)

Clients suggested a range of ways the system could embed existing non-legal support into the appeals process including having health professionals and support people attend hearings and Tribunals and including contact details for mental health and disability support services with NDIS Appeals Program communication materials. The need for a combination and choice of using formal and informal supports was highlighted.

I was so fatigued that I could have done with some support, maybe not necessarily from Legal Aid... I think it would be helpful if you're going to a hearing to have a support person. (Interview 26, Client)

At one of the case conferences, my friend was with me. She wasn't supporting me, but she was just there, and they made her leave because they said I wasn't allowed to have anyone else in the room.... I had my support worker with me, but it's different. I'd rather have my friends. (Interview 19, Client)

SYSTEMIC ADVOCACY

There was a shared view that a strength of the Program, at its best, was the capacity to test important cases that could influence future NDIA decision making. However, it was perceived that in actuality, this level of consistency in decision making was rarely achieved, despite previous Tribunal outcomes. Systemic advocacy and taking cases to the Federal Court were suggested as important options for setting precedents and improving consistency and efficiency.

I'd love to get more matters to the Federal Court and to the High Court to get higher binding decisions, because we have a lot of Tribunal decisions now, but very few that are binding about certain aspects of the legislation... we don't run as much systematic advocacy at a higher level as I would like, to really develop a body of case law. (Interview 12, LAC)

Where to from here?



Recommendations

The rich evidence collated during this evaluation suggests a range of strategies and steps that could improve the experience and administration of the NDIS appeals process generally and sustain and strengthen the NDIS Appeals Program Legal Services specifically.

SYSTEMS CHANGE

Create a more accessible and navigable appeals process

Though it was beyond the scope of this evaluation to assess the broader appeals and Tribunal processes, these are factors that significantly impact the need for, and operation of, the Program. Ultimately, an appeals process in which the model litigant obligations of the NDIA are consistently upheld would benefit people navigating the NDIS system, the administration of the NDIS, and have efficiency gains for the legal system. Such an appeals process would, overall, be less legalistic, more efficient, less intimidating, less complicated and facilitate the gathering of clear, attainable evidence. An appeals process without perceived or actual disadvantages for self-representing would reflect a fairer, more accessible system.

Legal Aid Commissions are well placed to work proactively with the NDIA, ART, disability advocates, the wider legal sector, and people with disability to improve how NDIS applications and appeals are handled - going beyond direct delivery of this Program. Ultimately, transparent and consistent NDIA decision making at all stages - including NDIS application, plan review, internal review and appeal – may reduce the number of appeals to the Tribunal. It is also crucial that the decisions resulting from appeals are used to inform future NDIA decisions.

The findings from this evaluation demonstrate, however, that the need for this Program is not going to reduce in the foreseeable future. There is an ongoing need for the Program because the complexity of NDIS legislation, people's experiences of disability and structural inequalities, and accountabilities for the efficient use of limited NDIS funds necessitate legal support.

Continue the Program

The need for the Program and its demonstrated strengths and impacts suggest strongly that the NDIS Appeals Program Legal Services should continue. It fulfills a vital function in supporting access to justice and also contributing to the Tribunal's recognised need for legal representation to support improved efficiency [18]. There is currently no equivalent service or mechanism to fill this need. It is vital to retain the staff, relationships, resources, expertise and sector-wide capabilities that have been built over eight years.

Adequately and securely resource the Program

The need for legal support during the appeals process is not subsiding and it will continue to be a difficult process to navigate without assistance. As such, the Program is pivotal to the administration of a fair and effective NDIS, and equitable access to justice.

A funding model which reflects the ongoing need for the Program is needed. This evaluation and evidence from prior sector-wide reviews [31, 32] indicate secure multi-year funding is essential to allow legal services to commit to complex, long-running matters, retain experienced staff and collaborate effectively with advocacy and disability support partners. Ongoing funding agreements would help maximise the provision of consistent, efficient and high-quality services. Many of the following suggestions hinge on the sustainability and adequacy of funding.

REFINE PROGRAM DESIGN AND DELIVERY

Permanent staffing

The findings of this evaluation indicate that positive impacts of the Program are largely attributable to the skills of the LAC staff who deliver it. Resourcing LACs to attract and retain such an appropriately skilled workforce is a foundation for ongoing Program improvement and impact.

Where ongoing funding can be secured, the first priority for LACs should be to provide permanent employment opportunities to staff. This is crucial for the recruitment and retention of skilled, specialist staff. While funding is not the only barrier to staff retention, given the difficult nature of the work and the barriers for LACs in less populated states and territories, funding permanent employment opportunities is key to LACs' abilities to attract, train and retain the workforce needed for this specialist area of legal practice.

In some LACs this would mean permanent contracts for designated Program staff and in others, permanent staff who work across the Program and other areas. The evidence from this evaluation highlights the need for a staffing structure that balances the importance of specialisation, with the recognition of the challenging nature of the work and benefits for organisation-wide skill in disability-related practice.

Training and development

Each LAC should continue to prioritise and be resourced to build fundamental, non-legal skills. There has been a demonstrated commitment among LACs to building skills in areas such as trauma-informed and person-centred practice. The national trauma-informed training course 'With You' was reported as a well-utilised resource and provides an example of the type of nationalised training that might be useful. Opportunities to draw on existing assets of disability-specialist training organisations should also be explored for training in areas such as communications and accessibility.

Cultural competence, not only for dedicated Program staff, but for all LACs and stakeholders who have a role in supporting people with disability, is important. Ensuring that the overall Program design and delivery mechanisms reflect cultural competence is required alongside ensuring a skilled workforce. This will require collaboration with Aboriginal and Torres Strait Islander individuals and groups with relevant expertise, as well as representatives from various culturally and linguistically diverse communities.

There is a clear message from this evaluation that the area of NDIS appeals is a unique technical area of legal practice and the policy and legislation landscape of the NDIS changes frequently. As such, ongoing information sharing and professional development among lawyers practicing in this space is valuable. A community of practice-type forum and platforms for sharing information about cases, changes to legislation and resources across all LACs could consolidate knowledge and skills gained within individual states and territories. This could also provide a space for shared professional development, training opportunities, and professional network building.

Identify and reach those who are missing out

Findings suggest that the advice and representation services provided to clients are appropriate and meet the needs of those who access these services. Ongoing development to ensure that all people who need NDIS appeals legal support can access the Program is warranted.

Tailored and targeted efforts are needed to engage groups who are missing. A nationally consistent approach that incorporates flexibility for LACs to adapt elements of the Program to the particular needs of their communities is of utmost importance.

There are limitations to the influence that LACs can have over this, given that many of the inequalities stem from structural barriers to applying for the NDIS in the first place, let alone reaching the point of appeal. However, there are actions that LACs can take.

Each LAC should be resourced to proactively reach out to groups and communities where there are identified needs and gaps in Program participation. This should be context-specific and rely on LAC's consultation with key partners including people with disability themselves, disability service providers, disability advocacy services and other relevant community partners.

Improving data collection will help LACs identify the characteristics of those who are accessing the Program and those who are missing out. If, as the qualitative evidence from this evaluation suggests, the people missing out are those who also experience barriers and discrimination related to language, limited support networks, culture, education, physical health, mental health and geographical isolation, then targeted outreach and engagement needs to be tailored accordingly.

It is imperative that resources and funding are provided to cover the increased demand and pressure on LACs that would stem from greater Program awareness and improved referral and accessibility mechanisms.

Connect with people early in the appeals process

This evaluation identified the need for more opportunities for people to learn about and access the Program, with clients repeatedly suggesting benefits of engagement earlier in the appeals process. All people who receive notification of an internal NDIS review decision should be provided not only information about the steps for an appeal to the ART, but clear and accessible information about the NDIS Appeals Program Legal Services specifically. At the point of deciding whether to appeal, people need to know what legal services may be available to them if they proceed. This information must be provided in a way that is accessible according to each person's needs. This is a joint responsibility of NDIA and LACs to ensure that people get the information at the right time and to have input and oversight of the format of resources and information on the Program.

Referral pathways

It is important that there are multiple options for connecting with the Program, given the diversity in clients' (and potential clients') circumstances. This is, again, partly a resourcing issue and dependent on the capacity of LACs to respond to referrals and take on new clients. Despite resource limitations, there are some principles and practices that have been shown to work well that should be continued and/or expanded.

Mechanisms set up in many LACs whereby the ART can book people directly into an advice clinic appointment should be part of standard practice across all jurisdictions. This is important for ensuring that people find their way easily to legal support, rather than relying on people to navigate their own way through a complicated system. This has become particularly important given that the ART is a more nationalised model than the former AAT, and people may be involved with a Tribunal registry outside their home state or territory. This is a joint responsibility of the ART and LACs.

Referrals should continue to be made via disability advocates, including where the person may be seeking to apply for legal representation or where the disability advocate will be continuing to support the person but needs some additional legal-specific advice. There should also be the ability for people to self-refer, or to be referred by an organisation such as a disability service provider or government agency, with appropriate consents.

Access to advice

Access to legal advice should be available to all NDIS appeals applicants. The benefits of offering legal advice, irrespective of merit, are substantial. This includes benefit to the applicants in understanding the appeals process, making informed decisions about appealing and applying for legal representation and being better equipped to collate the evidence needed for their matter. Providing legal advice also benefits LACs in being able to identify those people who only want, or need, advice (including those who may self-represent, or be supported by a disability advocate) and those who have significant need for and meet merit requirements for legal representation. There are benefits to the ART and NDIA where appeal applicants are better informed and prepared, in terms of efficiency of the process.

It is important to note, however, that providing advice is not always a straightforward or quick interaction. Lawyers providing advice need to carefully consider the extent to which they will engage with a person's documentation and evidence prior to and during the advice session, and whether the benefits of providing multiple advice sessions warrant the use of limited staff resources. These are decisions for LACs to make according to context and resource availability.

PARTNERSHIPS

The many collaborators and parties involved in the NDIS Appeals Program necessitates ongoing relationship building and information sharing, which has been a strength of the Program to date. LACs are well placed to facilitate such connections. This is not additional to the work, it is the work and as such requires adequate resourcing. Below are some lessons for the most common partnerships involved with the Program. Relationship-building and collaboration should also extend to other government agencies, community-sector organisations and legal assistance organisations such as Community Legal Centres, where there are opportunities to share resources and expertise to enhance the provision of direct client services and joint systemic advocacy.

Disability advocates

Given that advocacy and legal support are two complementary but distinct components of the appeals supports, the relationships between LACs and disability advocacy organisations are critical to the success of the Program. Collaborative activities with disability advocates are important to strengthening the overall capacity of the disability and legal sectors to support access to justice. The nature of this work will vary depending on the context, recognising states and territories have anywhere from one to twelve disability advocate organisations funded through the NDIS Appeals Program. These types of collaborations should be considered as key outputs of the Program, in addition to core activities of advice and representation. While relationship-building work is likely most effective within each specific state or territory, some activities related to development and sharing of resources and training could potentially be national. Below are examples of good practice elements that emerged during this evaluation.

- Facilitating communities of practice, working groups or similar mechanisms that bring together disability advocates and legal staff working on NDIS appeals across each state or territory.
- Providing training and resources to disability advocates to support their understanding of, for example, changes to legislation and significant cases.
- Accessing training provided by disability advocates and people with disability to support the legal sector's understanding of advocacy and disability.

Tribunal and agency partners

There is a shared interest among all partners, including LACs, NDIA, ART and the Department of Social Services, for a well-functioning and effectively targeted NDIS, and a fair, accessible and efficient appeals process. A collaborative and communicative approach among these partners is key to systemic reform.

- **Tribunal:** Regular mechanisms for LACs to connect and share information with the ART based in their state or territory would support coordination and efficiency. A regular mechanism for information sharing and communication between LACs and the ART at a national level, with a potential coordination role for National Legal Aid, would be beneficial. This is particularly important with a more nationalised, centralised Tribunal model.
- **NDIA:** There are opportunities for shared learning and coordination across NDIA and the LACs. Transparency and clarity in the ways that the NDIA uses the decisions made by the Tribunal, or in alternative dispute resolution, is needed to minimise the replication of the types of appeals being made to the ART. Also, improvements are needed to the early provision of information about the legal support available to potential appeal applicants. While these are responsibilities that sit largely with the NDIA, information sharing and collaborative resource development and planning between NDIA and LACs should be pursued.
- **The Department of Social Services:** Consistent approaches to communication and reporting between LACs and the Department of Social Services should be applied nationally. Localised, direct relationships with relevant staff in the Department of Social Services state and territory offices are valuable, and direct communication and discussion at this level is vital. This should be framed by a nationally coordinated approach.

People with disability

Mechanisms for collaborative program design with people with disability should be embedded in each jurisdiction. This may present an opportunity for a nationally coordinated approach across the LACs in terms of principles and mechanisms for collaborative service design and delivery. There are several well-regarded and experienced organisations led by people with disability who could partner in such work. Stemming from the recommendations in this report, some key activities that require guidance from people with disability with relevant expertise include:

- Strategies to identify and engage with people not currently accessing the Program.
- Designing Program information resources to ensure clear, accessible information in diverse formats.
- Training and professional development in areas such as accessible communication and cultural competence.

DATA COLLECTION AND USE

The impacts of the Program have been appraised in this evaluation via the collation and triangulation of a variety of quantitative and qualitative data sources. However, there are substantial limitations to the extent to which the complete picture of the Program's implementation and impacts of the Program can be assessed due to the lack of consistent national data.

Though the Program is national, reporting occurs between each individual state or territory LAC and their respective Department of Social Services representative. Each LAC is collecting and reporting different data in different formats. Even within a given LAC, changes to how data has been reported over time make it challenging to gain a full picture of the Program even within a single jurisdiction.

There is a lost opportunity to demonstrate and quantify the full impact of the Program, and to enact evidence-informed planning. As such, a shared data collection and analysis process across all states and territories would be beneficial, particularly given that National Legal Aid has a centralised function to potentially coordinate such work. Data that could be collected and analysed across the different LACs include:

For advice and representation

- Number of advice services AND number of advice clients
- Number of clients who receive advice only AND advice with representation AND representation only
- Requests for support (whether met or unmet)
- Types of matters (NDIS access, NDIS supports and others)
- Client demographics (age, Aboriginal and/or Torres Strait Islander status, gender)
- Indicative time spent (based on representative sample of services across different types of matters)

For representation only

- Duration of appeal
- Whether the matter went to a hearing
- Outcomes sought
- Outcomes attained
- Whether or not disability advocacy services were involved
- Disbursement amounts and types.

Conclusions

The findings from this evaluation indicate that the NDIS Appeals Program Legal Services is critical to achieving the aspirations for an appeals process that is user-focused, efficient, accessible, independent and fair. It is key to the administration of an effective NDIS that is able to provide relevant and necessary supports to people with disability who have legitimate and lifechanging needs for such supports. For many reasons, the process of appealing an NDIA decision is complicated, lengthy and, for many people, unmanageable without support. The services of skilled, specialist legal professionals, in tandem with the persistence and knowledge of people with disabilities, and various government and non-government partners can facilitate access to the appeals process despite the many challenges. Sustained and adequate investment in the NDIS Appeals Program Legal Services offers opportunities for a more streamlined and efficient appeals process and would reflect a commitment to access to justice for people with disability.

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Appendices

Table S1: Inquiries conducted by the Joint Standing Committee on the National Disability Insurance Scheme from which public submissions were reviewed

Inquiry Name	Submissions Close(d)	Number of submissions	Number of documents retrieved
General Issues - Annual Report No. 2 of the 47th Parliament	30 June 2025	67	78
NDIS participant experience in rural, regional and remote Australia	23 February 2024	102	112
Capability and Culture of the NDIA	16 December 2022	189	220
Current Scheme Implementation and Forecasting for the NDIS	28 February 2022	93	109
General Issues inquiry for the 46th Parliament	26 March 2022	106	130
NDIS Workforce	10 August 2021	58	90
NDIS Quality and Safeguards Commission	31 July 2020	75	97
Independent Assessments	31 March 2021	376	407
NDIS Planning	6 September 2019	157	169
Supported independent living	6 September 2019	51	52
General issues around the implementation and performance of the NDIS (45th Parliament)	28 March 2019	100	109
NDIS ICT Systems	14 September 2018	31	31
Assistive Technology	14 September 2018	73	70*
Market Readiness	22 February 2018	102	120
The provision of hearing services under the National Disability Insurance Scheme (NDIS)	30 January 2017	55	78
Transitional arrangements for the NDIS	10 August 2017	82	91

Inquiry Name	Submissions Close(d)	Number of submissions	Number of documents retrieved
Provision of services under the NDIS Early Childhood Early Intervention Approach	10 August 2017	76	72*
The provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition	27 February 2017	130	157
Accommodation for people with disabilities and the NDIS	4 March 2016	56	67
Annual report (44th Parliament)	6 April 2016	59	59

* The number of files is lower than the number of submissions because of confidential submissions.

Figure S1: Inclusion and exclusion of submissions in each stage of the submission review process

