



A New Commonwealth Individual Disability Advocacy Program

**National Legal Aid submission to the Department of
Health, Disability and Ageing consultation**

30 January 2026



Acknowledgement of Country

National Legal Aid acknowledges Traditional Owners of Country throughout Australia and recognises the continuing connection to lands, waters and communities. We pay our respects to Aboriginal and Torres Strait Islander cultures, and to Elders both past and present.



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About National Legal Aid

Who are we?

National Legal Aid represents the eight independent Legal Aid Commissions in each state and territory of Australia. These Legal Aids work collaboratively to deliver essential legal services, making sure that justice is accessible to all Australians. We strive to support those who are most in need, ensuring fair and equitable legal outcomes. Legal Aids are independent, statutory bodies established by respective state or territory enabling legislation and funded by Commonwealth and State or Territory governments to provide legal assistance to people.

What do we do?

Legal Aids are the largest providers of legal services to people with disability across Australia, including grants of aid for ongoing legal representation, duty lawyer services at courts and tribunals, legal advice, family dispute resolution conferences, community legal education, and information and referrals.⁷ Each year, we provide 1.7 million legal assistances. 25% of our clients receiving legal representation have a disability.¹ The Australian Government funds Legal Aids in each state and territory to provide specialist legal advice and representation for National Disability Insurance Scheme (**NDIS**) appeals to the Administrative Review Tribunal (**ART**) under the NDIS Appeals Program.

Why do we do it?

Our shared vision is that all people experiencing disadvantage have access to legal assistance and fair justice outcomes that contribute to safe, thriving families and communities. We are the ‘safety net’ of the legal system – there to assist families and individuals in times when they are in highest need. Our clients include people most in need of legal assistance including First Nations peoples, victim-survivors of domestic and sexual violence, and people with disabilities.

¹ National Legal Aid, Strategic Plan 2025-2030.

Executive Summary

National Legal Aid (**NLA**) welcomes the opportunity to contribute to the development of a new Commonwealth individual disability advocacy program (**IDAP**). We strongly support the program's goal of ensuring that people with disability, particularly those most at risk of harm, receive the support they need to make informed choices and uphold their rights.² A robust and well-designed IDAP is critical to advancing equity, strengthening system accountability, and ensuring that people with disability can meaningfully participate- in decisions that affect their lives.

The National Disability Advocacy Program has long played a vital role in promoting access to justice and promoting equitable outcomes for people with disability. Within this broader framework, the NDIS Appeals Program provides essential assistance to people seeking review of decisions made by the National Disability Insurance Agency (**NDIA**). Legal Aids, funded by the Australian Government, and in close collaboration with disability advocacy organisations, deliver specialist legal advice and representation for NDIS appeals before the Administrative Review Tribunal (**ART**). As the Government considers how the NDIS Appeals Program will align with the new IDAP³, it is imperative that the two programs connect seamlessly so that people with disability experience continuity of support and coordinated, consistent service delivery.

A 2025 independent evaluation⁴ of the NDIS Appeals Program (**the Evaluation**) confirmed what the sector has long observed: NDIS appeals processes are complex, daunting, and difficult to navigate without specialised support. The Evaluation found that legal assistance leads to better outcomes, improved preparedness, enhanced fairness, reduced delays, and more efficient operation of both the ART and the NDIS, including by filtering out no meritorious matters. These findings strongly reinforce the need for a -well-resourced and -well-integrated system of both advocacy and legal assistance.

Legal Aids have also observed an increasingly formal and adversarial environment in NDIS appeals, with government agencies routinely legally represented while most applicants -people with disability and their families- are not. This imbalance causes significant distress for participants, undermines fairness, and reduces efficiency. The evaluation further highlighted the growing burden of evidence gathering, with

² Department of Health, Disability and Ageing, A New Commonwealth Individual Disability Advocacy Program: Program Policy Framework, 2025.

³ Ibid, p. 3.

⁴ 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.

escalating costs, inconsistent NDIA requirements, and limited availability of specialist reports placing heavy strain on participants, advocates, lawyers and program funding.

In parallel, proposed reforms to NDIS planning⁵ may significantly reshape appeals processes, underscoring the need for accessible, fair, and navigable review pathways. Legal Aids are eager to work with Government to ensure these changes result in simpler, more person-centred processes rather than additional- barriers.

However, Legal Aids cannot meet current demand within existing funding. Short-term and inadequate funding leaves many applicants unable to access legal representation, undermines workforce retention, and limits the capacity to take on complex or long-running matters. Disability advocacy organisations face similar pressures. Sustained, increased funding for both advocacy and legal assistance is essential to meet community need and to give effect to the Disability Royal Commission’s recommendations for well-funded advocacy throughout a person’s appeal.

Despite clear and ongoing demand, government funding has only been extended at baseline levels to June 2028, with supplementary funding ending on 30 June 2026. Legal assistance will remain indispensable regardless of any changes to the IDAP or NDIS planning, both to support participants and to ensure the ART and NDIA operate efficiently.

Stronger advocacy and legal assistance also support system efficiency by narrowing issues in dispute, improving evidence quality, and enabling earlier resolution. In 2023–24, Legal Aids provided over 300 legal representations and more than 2,500 legal advice services under the NDIS Appeals Program. To meet demand, an additional \$7 million per year is required in the 2026–27 Budget to expand legal assistance to approximately 5,000 advice services and 700 representation services annually, reduce the growing backlog in the ART, and ensure people with disability receive fair, timely and effective support.

⁵ Evidence to Community Affairs Legislation Committee, Parliament of Australia, Canberra, 4 December 2025, (Mr Matthew Swainson, National Disability Insurance Scheme Deputy Chief Executive Officer, Legal, Reviews, Actuarial and Data).



List of Recommendations

Recommendation 1

That the new individual disability advocacy program be designed to integrate seamlessly with the existing NDIS Appeals Program, ensuring continued close collaboration and partnership between disability advocates and Legal Aids, maintaining strong referral pathways, and supporting coordinated systemic advocacy.

Recommendation 2

That Government continue to consult with NDIS Appeals Program service providers as the design of the new individual disability advocacy program is further progressed.

Recommendation 3

That Government adequately and sustainably fund advocacy (at both pre-ART and ART stage) for people with a disability navigating their NDIS supports, including for disability advocates and legal assistance.

Recommendation 4

That Government commit to adequate and sustained funding for accessible legal assistance to ensure that people with disability can access the legal support they need to practically realise their rights and are not disadvantaged in increasingly adversarial legal proceedings.

Recommendation 5

That Government commit an additional \$7 million per annum in the 2026-27 Budget to expand the legal services component of the NDIS Appeals Program to better meet demand and support the efficient operation of the ART and NDIA.



Ensuring complementary advocacy and legal support

The National Disability Advocacy Program has been vital in ensuring access to justice and promoting equitable outcomes for people with disability. The Program meets a number of international and national objectives for people with disability and specifically has ensured that people with disability have been supported to exercise their legal rights of review of NDIA decisions, and access external review through the ART.

Complementing the broader National Disability Advocacy Program, the NDIS Appeals Program provides support to people with disabilities affected by reviewable decisions of the NDIA. The NDIS Appeals Program is underpinned by two components: disability advocacy delivered by disability advocacy organisations; and legal services (advice, task assistance and legal representation) delivered by the Legal Aids. Both play vital roles in supporting people with disability and their families, carers and supporters to seek external review of NDIA decisions through the ART and collaborate to ensure people with disability are supported and able to navigate an increasingly complex, time consuming and expensive process.

The critical role of disability advocates in NDIS appeals

Disability advocates provide important supports to participants and prospective participants in assisting them to engage and be aware of the process in relation to appealing decisions made by the NDIA. Advocates are critical supports for people with disability to engage in the steps required of them, such as obtaining legal assistance from Legal Aid, attending an appointment or assessment for medical evidence to be obtained, and keeping them informed of the case events and requirements throughout the active appeal.

Disability advocates also play an important role in assisting with supported decision-making so that clients feel empowered to make their own informed choices about their case. Effective advocacy requires highly skilled practitioners who can work alongside people with disability in complex, high-stress situations. This includes strong relational and interpersonal capabilities, trauma-informed practice, cultural safety, and the ability to understand and navigate local service systems. Advocates can play a crucial role in the early resolution of matters, potentially preventing the need for an appeal to the ART. Research also demonstrates the important role of non-legal services such as advocacy in

ensuring clients access legal assistance when needed.⁶ Where matters do progress to the ART, advocates are crucial in preparing clients not only for the ART hearing itself but also for legal advice appointments, ensuring clients can engage effectively with legal services.

Legal assistance in NDIS Appeals

The NDIS Appeals Program provides access to legal assistance for people who are seeking to appeal a decision made by the NDIA - for example in relation to supports they need or their eligibility for the NDIS. The Department of Health, Disability and Ageing funds Legal Aids to deliver the legal services component of the NDIS Appeals Program, including:⁷

- Regular legal advice clinics to help clients understand the law and the ART process.
- Assistance for clients to self-represent.
- Legal representation, including associated costs such as expert reports, witnesses' attendance, and counsel representation.
- Advice and representation to support appeals to the Guidance and Appeals Panel.
- Liaising with NDIS Appeals Program advocates.

To be eligible for Legal Aid representation under the NDIS Appeals Program, applicants must have an existing application with the ART appealing a review of a decision made by the NDIA. If an applicant is seeking review of a NDIS decision, appeals to the ART can be made following the NDIS' internal review process. Further review of ART decisions is available via the ART's Guidance and Appeals Panel and the Federal Court where Legal Aids frequently assist clients with advice and representation.

The 2025 evaluation of the NDIS Appeals Program undertaken by the Law and Justice Foundation of NSW (included at **Attachment A**)⁸ demonstrates the critical importance of ensuring access to specialised advocacy and legal assistance for people with disability:

*'...the appeals process is complicated, daunting, exhausting, resource intensive and difficult to navigate without the support of a lawyer, advocate or similarly experienced person.'*⁹

The Evaluation found that legal assistance for NDIS appeals resulted in better outcomes for clients, helped clients be more informed and prepared, enhanced access to justice and fairness, reduced

⁶ Sophie Clarke and Suzie Forell, 'Pathways to Justice: The Role of Non-Legal Services' (Justice Issues Paper No 1, Law and Justice Foundation of New South Wales, June 2007).

⁷ Above, N4.

⁸ Ibid.

⁹ Ibid, p.23.

delays, supported the fair and efficient operation of the ART and the NDIS (including by filtering out non-meritorious cases), and represented value for money.

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.¹⁰

The Evaluation demonstrates overwhelming evidence that access to legal support materially improves people with disability's capacity to:

- Understand and respond to complex decision-making processes – including complex legal processes.
- Navigate burdensome evidentiary and procedural requirements.
- Present their case before independent reviewers.
- Achieve correct, lawful and just outcomes.
- Key Evaluation findings include that:
- Participants can experience significant barriers relating to literacy, disability-related cognitive load, and emotional strain in challenging decisions independently.
- Appeals supported by advocates or lawyers result in more complete evidence, more accurate issue-framing, and a higher rate of internal review reversals, and that issues are often resolved earlier when legal support is available.
- People without representation are more likely to abandon appeals, accept incorrect decisions, or experience deterioration in wellbeing. This includes the families of the affected participant or prospective participant in circumstances where they are experiencing carer-burnout as a result of their support needs, plus the additional load in navigating a complex appeal process.

Collaboration and coordination

It is critical that the new IDAP supports Legal Aids and disability advocates to continue to have strong and collaborative relationships. As noted by the Evaluation,

¹⁰ Ibid, p. 2.

“Collaborative activities with disability advocates are important to strengthening the overall capacity of the disability and legal sectors to support access to justice.”¹¹

Effective collaboration and coordination ensures people with disability appealing NDIA decisions are able to efficiently access the support they need – for example by ensuring efficient referral processes and consistent, timely and accurate advice. Recognising the challenges for many people with disability in navigating complex systems alone, Legal Aids and advocacy organisations work to maintain multiple access pathways, including proactive outreach, referrals from trusted connectors, and visibility at key decision points. This shared responsibility ensures people are not abandoned between services due to program boundaries or administrative barriers.

Examples of current activities that support effective collaboration and coordination include:

- Facilitating communities of practice, working groups and other mechanisms that bring together disability advocates and legal staff working on NDIS appeals across each state or territory. These activities enable sharing of knowledge, identification of systemic issues, and coordinated engagement in systemic advocacy.
- Maintaining liaison and referral pathways to ensure clients can access appropriate support at the right time.
- Legal Aids providing training and resources to disability advocates to support their understanding of, for example, changes to legislation and significant cases. This includes mentoring, providing legal advice and task assistance to support advocates to help clients self-represent, organizing training on NDIS appeals and ART processes, provision of case summaries, and facilitating regular Disability Advocates meetings.
- Working effectively to provide legal representation to eligible clients with the support of disability advocates as appropriate for each case. The support provided by Legal Aids to disability advocates would be enhanced by adequate and appropriate funding being provided for both disability advocacy and legal advice and representation service programs.
- Legal Aids accessing training provided by disability advocates and people with disability to support the legal sector’s understanding of advocacy and disability.¹²

¹¹ Ibid, p. 53.

¹² Ibid.

- Legal Aids and disability advocates establishment and maintenance of relationships whereby cross-referrals can be easily made to best support participants and prospective participants.

Considerations for IDAP design and implementation

The design of the IDAP must be grounded in the lived experience of people with disability navigating complex systems. A person-centred approach is essential to ensuring both advocacy and legal services work together seamlessly from the perspective of people accessing these supports, and the new IDAP must appropriately connect with the NDIS Appeals Program, with strong referral pathways, and coordinated systemic advocacy. A key consideration for the new IDAP is ensuring that the matters proceeding to the ART have clear pathways to access legal representation. Funding under both the IDAP and NDIS Appeals Program needs to be considered holistically to ensure timely and co-ordinated support with a focus on both early resolution and effective representation in matters that do not resolve.

The new IDAP must recognise that people with disability often face several overlapping challenges and that many people who need help from a disability advocate may not be aware of the supports available or how to access them. Advocacy should be provided separately to other types of supports or services and should reach people living in closed or segregated settings. It is essential that advocacy organisations maintain a local, trusted presence within communities, as locally embedded organisations are better positioned to reach people who don't know advocacy support exists, particularly those in closed or segregated settings or rural and remote areas. Advocates with deep knowledge of local service systems, community networks, and regional contexts can respond more effectively and build the trust necessary for people with disability to seek support.

We are keen to work closely with Government and the wider sector to ensure that the new IDAP and the NDIS Appeals Program are complementary, connected and that any transitional periods:

- Minimise impacts for people with disability seeking to access to these supports;
- Do not exacerbate backlogs and wait times in the ART; and
- Do not unintentionally increase the volume of applications for NDIS appeals, through limiting access to timely advice.

Recommendation 1

That the new individual disability advocacy program is designed to integrate seamlessly with the existing NDIS Appeals Program, ensuring continued close collaboration and partnership between



disability advocates and Legal Aid Commissions, maintaining strong referral pathways, and supporting coordinated systemic advocacy.

Recommendation 2

That Government continue to consult with NDIS Appeals Program service providers as the design of the new individual disability advocacy program is further progressed.

Current challenges in NDIS appeals matters

Legal Aids have observed a more formal and increasingly adversarial environment in NDIS appeal matters, with government agencies legally represented in the context of most applicants being self-represented. This occurs in circumstances where the NDIA often adopts unclear, shifting and ambiguous positions during the appeals process. The NDIS Appeals Program is only funded to provide legal representation to a small number of people, with baseline funding for Legal Aids of approximately \$5m per annum. In contrast, recent reports note that in 2024-25, the NDIA paid \$60.7m to external law firms to represent it at the ART, representing a 60% increase from the previous year.¹³ This presents a significant power imbalance.

The increasingly adversarial nature of NDIS appeals matters, combined with complex, and ambiguous positions of the NDIA, has caused distress for applicants, who are people with disabilities and their families seeking access to the NDIS to get support, or access to particular supports they require. This highlights the important role of both disability advocates and legal assistance in providing complementary support for people with disability navigating the system.

The Evaluation also found there are significant concerns in relation to the amount, complexity and costs associated with gathering the evidence required in the NDIS appeals process, which is having a substantial impact on clients, lawyers, advocates and the wider sector. In particular¹⁴:

- The evidence required for appeals matters was extensive, particularly in relation to very specific reports required from medical and allied health experts (and in addition, there was often a shortage of professionals available to provide these reports).
- The evidentiary requirements from the NDIA were inconsistent and would often change during the appeals period.
- Health professionals hold concerns regarding the requirements of NDIS reports and the burden this placed on them and people with disability (including repeated requests for the same information and financial implication of having to provide these without compensation), and therefore some will no longer provide NDIS reports.
- The costs for gathering evidence and arranging witnesses to attend hearings are increasing.

¹³ Kate Lyons, 'They've engaged a barrister!' Parents of high-needs children say Labor is waging lawfare over disability support', *The Guardian*, 24 September 2025.

¹⁴ Above N4, pp. 26-28.



- These challenges are particularly difficult for people living in rural, regional and remote areas.

The costs associated with gathering evidence is significantly impacting the funding available under the NDIS Appeals Program and limiting the legal assistance that is able to be provided to people who need this support. This impacts both legal services and advocacy services, reducing the capacity of both to support clients effectively.

Ensuring adequate and sustained funding for advocacy and legal assistance

We support continued and increased funding for the new IDAP to ensure it adequately resources the critical work currently undertaken under the National Disability Advocacy Program. Adequate and sustained funding for both advocacy and legal support is critical to ensuring efficiency and justice in the broader NDIS system and will:

- Assist disability advocacy organisations and Legal Aids meet the demand for these services.
- Facilitate and improve the timely and equitable provision of advocacy and legal services to people with disability.
- Ensure people with disability are able to access knowledge and gain insight and understanding of the NDIS system.
- Support people with disability to self-advocate and where eligible receive legal representation in the ART.
- Deliver costs savings and operational efficiencies for both the ART and NDIS through the provision of timely and competent advocacy and legal services.
- Enhance systemic learnings and policy development through policy submissions and contributions from both Disability Advocacy organisations and Legal Aids.
- Align with the broader objectives and obligations of the Australian Government to promote access to justice and reduce the burden on courts and tribunals.

Demand for legal help significantly exceeds capacity within existing funding

The funding agreement for the NDIS Appeals Program is due to expire on 30 June 2026. We understand this has been extended for a further two years until June 2028 with a view to assessing the need for the NDIS Appeals Program alongside this review of the IDAP. Legal Aids are not able to meet demand for the NDIS Appeals Program within the current funding provided. 2023 data shows that just 65% of the demand for the NDIS Appeals Program was being met. A commitment limited to two years of baseline funding will continue to create operational challenges in terms of meeting demand, managing rising costs associated with medical and other reports, in taking on clients with matters that are likely to be ongoing for an extended period of time, and in retaining highly skilled staff.

Most importantly, the current amount allocated means that most applicants are unable to access legal representation for NDIS appeals, which places them at significant disadvantage and is resulting in

barriers to access justice. As noted, the approximately \$5 million baseline funding allocated to Legal Aids for the NDIS Appeals Program per annum is in stark comparison to reported NDIA expenditure of approximately \$60.7 million to external law firms in 2024-25 to represent it at the ART.

While it is appropriate to consider how the NDIS Appeals Program can best complement the new IDAP, and how the NDIS Appeals Program will operate in the context of broader changes being considered to the NDIS planning framework, there is significant existing unmet need for legal assistance for NDIS appeals. Legal assistance will continue to be required on an ongoing basis, regardless of foreshadowed changes. We also anticipate that changes to NDIS planning will, at least initially, likely result in an increased need for legal assistance as NDIS participants seek advice to understand how the changes affect their interaction with the Scheme and their individual circumstances.

Legal assistance is critical to efficiency within the legal system

Ensuring legal assistance is available for NDIS Appeals is also a crucial element of the overall functioning of the ART and applicants' experiences of the dispute resolution process. Access to specialist advice and legal representation narrows the issues in dispute, increases options for early resolution, ensures decision-makers and applicants have the evidence they need, provides an equal playing field when matters go to hearing and reduces the significant distress people experience trying to navigate the adversarial process.

The ART often relies upon Legal Aids to support participants or prospective participants with particularly complex appeals. These appeals may involve complex or unsettled areas of law requiring ventilation and judicial consideration, difficult or distressing subject matter, and/or challenging behaviours of an Applicant. It is not uncommon for a representative of the ART to ask Legal Aid to consider being appointed as a litigation supporter in circumstances where there are concerns matter cannot proceed in a fair or effective manner. An example of this is a referral of an Applicant who was recently diagnosed with dementia to a Legal Aid Commission with a request of being appointed as a litigation supporter to enable the efficient, fair and appropriate progress of the appeal.

The ART received 95% more applications in the NDIS jurisdictional area in 2024-25 than in 2023-24, with 7,935 lodgements¹⁵, and government has committed \$69.0 million over two years from 2025-26 to

¹⁵ Administrative Review Tribunal Annual Report 2024-25. Available at: <https://www.transparency.gov.au/publications/attorney-general-s/administrative-review-tribunal/administrative-review-tribunal-annual-report-2024-25/chapter-3%3A-performance/jurisdictional-area-caseloads>

continue addressing the significant backlog in the ART.¹⁶ In this context, ensuring legal assistance is available for NDIS Appeals is an important and cost-effective measure to support the efficient operation of the legal system, for example by filtering out non-meritorious cases and by supporting more complete evidence, accurate issue framing and earlier resolution of legal issues.

Additional funding requirement

In 2023-2024 Legal Aids provided legal representation to over 300 people and over 2,500 legal advice services as part of the NDIS Appeals Program. To better meet demand, additional funding of \$7 million per annum is required in the 2026-27 Budget to expand the NDIS Appeals Program to provide a total of approximately 5,000 advice services and 700 legal representation services per annum.

Recommendation 3

That the Government adequately and sustainably fund advocacy (at both pre-ART and ART stage) for people with a disability navigating their NDIS supports, including advocacy and legal assistance.

Recommendation 4

That the Government commit to adequate and sustained funding for accessible legal assistance to ensure that people with disability can access the legal support they need to practically realise their rights and are not disadvantaged in increasingly adversarial legal proceedings.

Recommendation 5

That Government commit an additional \$7 million per annum in the 2026-27 Budget to expand the legal services component of the NDIS Appeals Program to better meet demand and support the efficient operation of the ART and NDIA.

¹⁶ Mid-Year Economic and Fiscal Outlook 2025-26. Available at: <https://budget.gov.au/content/myefo/index.htm>