

Frequently Asked Questions

Frequently Asked Questions about the Independent Expert Review

What is the Independent Expert Review? How does it impact your Administrative Appeals Tribunal application?

If you have a current Administrative Appeals Tribunal (**AAT**) application, you may be invited to take part in an Independent Expert Review (**IER**). This means an Independent Expert will review your case and recommend an appropriate outcome to you and the National Disability Insurance Agency (**NDIA**). You have the choice to accept what is recommended to you or continue with your AAT proceedings.

Is the Independent Expert Review voluntary and free?

Yes, the Independent Expert Review is voluntary and free.

You do not have to agree to take part in the IER. If you do not want to take part, your application will continue through current AAT processes.

Who are the Independent Experts?

The Independent Experts have the relevant experience, skills and training to review these matters and give a recommendation to you and the NDIA. The experts are independent from the NDIA.

The Independent Expert may have:

- professional experience as a tribunal member, judicial member, lawyer, advocate, allied health worker, or in neutral evaluation, mediation or arbitration
- contemporary involvement with the disability sector through lived experience or other personal or professional experience

How is the Independent Expert Review conducted?

You can choose the way the IER will be carried out. For example, you may request that the Independent Expert:

- make a recommendation by reviewing the material before the AAT, but without meeting with you or the Agency
- meet with you (and your representative or advocate if you chose to be represented) to talk about your AAT application
- if the Independent Expert thinks it may help to resolve the issue, and if you agree, invite you and the Agency to meet and talk about your application.

The Independent Expert may talk to the NDIA about any matters that you have discussed with them.

You may withdraw your consent to take part in the IER at any time.

What documents will the Independent Expert be provided with?

To take part in the IER, you will need to ask us to give information about you and your application to the AAT to the Independent Expert.

By taking part in the IER, you understand and consent to the NDIA giving the Independent Expert any information and relevant documents that we have about your application. This includes the AAT T-Documents and/or any other documents filed by you or the NDIA.

The Independent Expert will also be given information about the legislative framework and relevant NDIA Operational Guidelines.

You will be given a copy of the documents provided by the NDIA to the Independent Expert.

What if a third party's personal information is included in the relevant documents?

If the relevant documents contain a third party's personal information (for example, the personal information of another participant), the third party will need to give written consent to release that information to the Independent Expert. If this is the case, we will provide you with a consent form to give to the third party asking they give their written consent to the release of documents in the AAT proceedings.

What happens if I don't consent to the NDIA providing information to the Independent Expert?

If you do not agree to give us permission to provide information to the Independent Expert, you will not be able to take part in the Independent Expert Review.

Can I withdraw my consent for the NDIA to give information to the Independent Expert?

Yes. You can withdraw your consent at any time. By doing this, you are not able to continue to take part in the IER.

What happens to information given to the Independent Expert at the end of the IER?

At the end of the IER, or when you withdraw your consent to the Independent Expert having your information or withdraw from the IER, the Independent Expert will:

- return to the NDIA all documents containing information about the matter; and
- destroy any personal notes taken for the purpose of the IER or alternatively, if any personal notes are retained, keep them in a safe place and de-identify them to the extent possible.

Can further documents be provided to the Independent Expert?

If you find extra documents or information that has not been handed to the Independent Expert, you are able to provide those documents or information to them.

This may extend the IER timeframe.

Can the Independent Expert ask you and/or the NDIA for further information?

Yes. If the Independent Expert thinks extra documents or information would be useful to help in supporting your application, the Independent Expert may ask you or the NDIA to provide them.

You will have the opportunity to gather the further information, and we may provide funding to support you in doing this.

The sourcing of further information may extend the IER timeframe.

Does the Independent Expert consider legislation, rules, operational guidelines and/or case law?

Yes. When considering your application, the Independent Expert will be applying the legislative criteria under the *National Disability Insurance Scheme Act 2013* (NDIS Act), any relevant Rules and any relevant Operational Guidelines. The Independent Expert may also consider case law or other information related to your application.

Importantly, the Independent Expert will consider the facts and circumstances of your individual case. You and the NDIA will be given a copy of the documents provided to the Independent Expert.

How long will Independent Expert Review take?

It usually takes 2 weeks to provide information to the Independent Expert. It also takes 2 weeks for the Independent Expert to provide their recommendation.

However, the exact timeframe depends on how many documents and how much information is being looked at by the Independent Expert. This also depends on whether further information is provided or requested.

Can you withdraw from the Independent Expert Review?

Yes. You can withdraw from the IER at any time.

What happens to your AAT appeal while you participate in the Independent Expert Review?

If you agree to take part in the IER, your application remains with the AAT at all times.

You won't lose your place in the queue in the AAT by any action we take during the IER process. If appropriate and if you agree, we can request the AAT to suspend your application to allow time for the IER to be undertaken.

What happens after the Independent Expert considers your application?

The Independent Expert will provide a written non-binding recommendation on the appropriate outcome of your application. Non-binding means you can choose not to accept the recommendation and it will not be used by the NDIA or AAT.

You can accept (in full or in part) or refuse the Independent Expert recommendation.

The Agency will:

- accept all Independent Expert recommendations unless it has significant reasons for not doing so such as where the NDIA considers there has been an error of fact or law
- provide written reasons if they decide not to accept the recommendation.

If you and the NDIA both accept the Independent Expert recommendation (in full or in part), then we will prepare documents to carry this out as outlined below under 'if an agreement is reached, how will it be implemented?'

If you do not accept the Independent Expert recommendation, your application will continue through existing AAT processes.

If you do not accept the Independent Expert recommendation, but then decide later you wish to accept it, the options outlined below under 'if an agreement is reached, how will it be implemented?' will apply.

What is a full agreement?

A full agreement is when you and the NDIA accept the Independent Expert's recommendation completely.

What is a part agreement?

A part agreement is when you and the NDIA only accept part of the Independent Expert's recommendation. For example, if you and the NDIA agree to some parts, but not others, of the Independent Expert's recommendation.

If an agreement is reached, how will it be implemented?

If you and the NDIA both accept the Independent Expert's recommendation (in full or in part) it can be carried out by a request to the AAT for agreed orders to be made. This will mean that the AAT proceedings are ended with consent, to show the accepted part of the recommendation.

Alternatively, you can withdraw your application, and a new decision made by the NDIA will show the agreement.

What happens if an agreement (part or full) cannot be reached by you and the NDIA?

If you or the NDIA do not accept the Independent Expert's recommendation, your application will continue in the AAT without any loss of priority.

This means, your application will continue through current AAT processes.

If the NDIA does not accept the recommendation

If the NDIA does not accept the Independent Expert's recommendation, it will give you written reasons why within 10 business days.

Can the Independent Expert's recommendation and NDIA reasons be provided to the AAT?

The Independent Expert's recommendation, and the NDIA reasons, can only be given to the AAT as evidence in your proceedings if you request this. We will not oppose your request.

Is the IER confidential?

Yes. The Independent Expert's recommendation and NDIA reasons can only be given to the AAT as evidence in your application at your request.

If you provide the Independent Expert's recommendation and NDIA reasons to the AAT as evidence in your application, it may be referred to by the AAT including in any published decision.

Will the recommendation be published?

If you give consent, the Independent Expert's recommendation and NDIA reasons and information about your application may be published in an anonymous and summarised format.