

Independent Expert Review Program

Evaluation Report

October 2023

Research and Evaluation Branch

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This document

This report presents the evaluation findings related to National Disability Insurance Agency's (NDIA) pilot of the Independent Expert Review Program (IERP) trial. Findings cover all available data at the time of each evaluation component, including individual case and issue analysis up to 31 January 2023, survey responses for those involved in the IERP up to 31 March 2023 and costing and other relevant program metrics up to 31 July 2023.

Contributors

The NDIA's Research and Evaluation Branch delivered this evaluation. The Branch is responsible for ensuring that trustworthy and robust evidence informs NDIA policies, practices and priorities.

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Acknowledgements

The NDIA acknowledges the Traditional Owners and Custodians of this country throughout Australia and their continuing connection to the many lands, seas and communities. The NDIA pays respect to Elders past and present and extends this acknowledgement and respect to any Aboriginal and Torres Strait Islander people who may be reading this report.

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Abbreviations

AAT	Administrative Appeals Tribunal
ADR	Alternative Dispute Resolution
DRCO	Disability Representative and Carer Organisation
DSS	Department of Social Services
FTE	Full time employee
GBM	Gradient boosting machine (model)
HOC	Hearing Oversight Committee
IERAS	Independent Expert Review Advice Service
IERP	Independent Expert Review Program
IGAP	Information Gathering for Access and Policy
NDIA	National Disability Insurance Agency, or the Agency
NDIS	National Disability Insurance Scheme, or the Scheme
NHMRC	National Health and Medical Research Council
OG	Operational Guidelines
OHS	(NDIA) Operations and Housing Support
PSG	Participant Service Guarantee
REB	(NDIA) Research and Evaluation Branch
s100	NDIA internal section 100 review
SDA	Supported Disability Accommodation
SIL	Supported Independent Living
SOP	Standard Operating Procedure
TAB	(NDIA) Technical Advisory Branch

Key findings

- Participants and their representatives reported high satisfaction with the IERP, especially compared to the AAT. They said they had more opportunity to be heard, appreciated that all information was considered and the timeliness of the process. Participants or their nominees have accepted 86% of the IERP recommendations as of 31 March 2023.
- The decision-making framework independent experts have used is comparable to the AAT and as of 31 January 2023, they have recommended accepting or partially accepting 71% of participant requests. The NDIA's Technical Advisory Branch agreed that on average 89% of the recommendations received up to 31 January 2023 align with their views on appropriate participant supports for those matters.
- At 31 July 2023, the estimated average cost of an independent expert reviewing a case was \$10,757. This compares to \$29,899 on average for proceeding to an AAT hearing, although over 98% of NDIS AAT matters resolve without an AAT hearing.
- Based on other complex AAT cases, 30% of IERP cases may have progressed to an AAT hearing if the IERP was not available. Together with other potential pre-AAT resolution costs, the avoided operational costs attributable to the IERP could be \$12,035 per case. This equates to a net operational saving of the IERP of \$1,278 per case (i.e. \$10,757 - \$12,035).
- There is no evidence that the IERP has impacted the financial sustainability of the NDIS. The average change in NDIS plan value post dispute via the IERP has been slightly less than the formal AAT process for other long-standing cases with similar underlying NDIS plan values (+\$42,733 c.f. +\$55,420). However, this reflects differences in the specific supports in dispute. Due to the uniqueness of cases, it was not possible to perfectly match IERP cases with other AAT cases based on the nature of the supports in dispute.
- Participants in the IERP reported high levels of dissatisfaction with how the NDIA communicates the reasons for planning and internal review decisions, their opportunity to discuss their matter and explain their position, the objectivity of

decision making and their planning or internal review officer's understanding of the issues.

- The NDIA has implemented several internal review initiatives that align with the above concerns including clarifying phone calls and enhanced decision letters. Since implementing these, the percentage of NDIS support-related internal reviews that have progressed to external review has decreased.
- Statistical modelling shows that disputes related to supported disability accommodation, supported independent living, children and participants with complex support needs are the most likely to escalate to an external review. This reflects the complexity of these matters and suggests where additional effort to explain decisions might be necessary.

Executive Summary

ES1 Introduction

In recent years, the number of National Disability Insurance Scheme (NDIS) dispute cases escalating to the Administrative Appeals Tribunal (AAT) rose substantially from 1,600 at 30 June 2021 to 4,501 at 27 May 2022¹. To address this issue, several initiatives were introduced by the National Disability Insurance Agency (NDIA) including the Independent Expert Review Program (IERP). The IERP is an early dispute resolution mechanism to improve participants' external review experience and help clear the back log of AAT matters. The IERP model was established following consultation with the disability sector.

The Agency commenced piloting the IERP in October 2022. Phase 1 considered a small number of matters which are now complete. Phase 2 commenced in mid-December 2022 and ran until 30 June 2023. The pilot phases prioritised cases which involved a National Disability Insurance Scheme (NDIS) plan reduction of 20% or more and have been in the AAT process for at least nine months².

The IERP utilises legal and disability experts who are independent of both the participant and the NDIA. They have substantial experience with the disability sector, the NDIS and in mediation and conciliation processes. The independent expert reviews the matter and makes a non-binding recommendation about an appropriate resolution within the legislative requirements of the NDIS Act and Rules.

The matter resolves if both the participant and NDIA accept this recommendation. If either party does not accept the recommendation, the matter returns to the AAT process without loss of priority. For Phase 1 and 2, the Agency committed to accepting the independent experts' recommendations unless they were unlawful, there was a substantial or material error of fact or law or were inconsistent with the

¹ Data source: LEX reporting- NDIS Chief Council Division

² While these cases were a priority, meeting these criteria was not necessary for eligibility to participate in the IERP. The 20+% plan budget reduction criterion was formally removed from March 2023.

Agency's Operational Guidelines (OGs) and could not be reconciled as an appropriate exception.

Over the 2022-23 financial year, the introduction of NDIA initiatives, including the IERP, early assessment of new cases and accelerated review of aged cases have resolved 6,515 cases. The active caseload has reduced by 34.0% from 4,501 cases at 27 May 2022 to 2,972 at 30 July 2023 and 87% of legacy AAT matters active at June 2022 have now been resolved.

The evaluation

This evaluation's objectives were to:

1. Evaluate the acceptability, effectiveness, efficiency, and sustainability of the IERP.
2. Identify lessons for broader Agency administrative decision making and related policy around NDIS planning and appeals processes.

The evaluation focused on Phases 1 and 2 of the IERP from 4 October 2022 to 31 March 2023. Data to 31 July 2023 has been incorporated where available.

ES2 Evaluation findings

Participant experience and satisfaction with the IERP

As of 31 July 2023, 79%³ of participants accepted the invitation to have their matter heard by an independent expert. The most common reasons for non-acceptance were that the matter was about to settle or was close to the AAT hearing date.

Participants and their representatives typically reported a very positive experience with the IERP, especially compared to the AAT process. Specifically, they noted:

- the process was less legalistic and confrontational than the AAT process,
- they had more opportunity to be heard and appreciated the opportunity to talk to the independent expert,
- were confident the independent expert considered all their evidence, and

³ All invitations sent to 31 March 2023, excluding any matters that were subsequently settled or placed on hold.

- the independent expert clearly explained their recommendation.

“It was clear, simple, and timely. The information from the expert made sense. The people making decisions had an understanding of the nature of the disability and complexities instead of having no expert knowledge or experience and just using funding formulas. I felt we were heard; his treating professionals were heard, and a common-sense solution was reached.” **Participant, survey.**

Testament to the positive experience participants reported, they have accepted 86% of the independent expert recommendations. This is despite independent experts only recommending that 36% of participant requests be fully upheld. Reasons for this acceptance of recommendations included participants feeling heard and clear explanations for decisions.

We didn’t get everything we asked for, but what we got was fair, and the reasons why we didn’t get things were clear, and well explained.”

Participant, survey.

When asked how to improve the IERP, participants mostly stated:

- their preference for the IERP to review matters earlier in the dispute resolution process, noting that the protracted nature of their disputes had caused them considerable distress,
- the recommendations should be binding, and
- information explaining the IERP process could be simpler.

Participant representatives indicated some concern that the NDIA, being the respondent in the AAT matter, was managing an alternative dispute resolution process. They emphasised the need for process transparency and, noted that all parties should have an opportunity to review the collated documents prior to providing them to the independent expert.

Efficiency and effectiveness of the IERP

As of 31 March 2023, independent experts had made recommendations on 52 cases. This is considerably less than first forecast, mainly due to the success of the

NDIA's accelerated caseload and early assessment reviews. Since 1 June 2022, Agency initiatives to reduce the number of appeals to the AAT have resolved 6,232 cases and resolved 85% of the legacy AAT matters. This has positioned the IERP for more complex, long-standing matters.

The IERP has been efficient and effective in resolving these complex, long-standing AAT cases. The median time to resolve matters during Phase 2 has been 23 days compared to the more than nine months the matters have been unresolved by the AAT process. In general, the median time for the AAT process to resolve matters over the last 12-months has been 257 days.

As noted above, participants have accepted 86% of the recommendations from independent experts. Almost three-quarters of these recommendations have been fully (36%) or partially (35%) in favour of the participant respectively, while 18% recommended accepting the NDIA's original decision.

Independent experts are making recommendations with reference to the NDIS Act, especially section 34, and the NDIS Rules, but rarely explicitly reference the NDIS operational guidelines, potentially because these were either not in dispute or were consistent with legislation. Although this decision-making framework is comparable to that used by the AAT hearings, independent experts have been twice as likely to accept similar participant requests at least partially. Since July 2022, the AAT declined 56% of similar participant requests compared to 18% by independent experts. This reflects the 'decisional freedom' available within the legislation and noted in Federal Court⁴.

There is some evidence that independent experts from legal and non-legal backgrounds are reviewing the case evidence against the NDIS legislation differently. Independent experts from non-legal backgrounds have been more likely to recommend fully accepting or declining the participant's request. In contrast, independent experts from a legal background have been considerably more likely to recommend partially accepting the participant's request (46% c.f. 18%).

⁴ National Disability Insurance Agency v WRMF [2020] FCAFC 79 (12 May 2020).

The differences in decisions between independent experts and the AAT, and between independent experts from different professional backgrounds, may reflect differences in the specifics of matters reviewed. Importantly though, a review of independent experts' phase 1 recommendations by the NDIA's Technical Advisory Branch (TAB), agreed with an average of 89% of recommendations. Given TAB's role in providing technical and clinical subject matter expertise to the Agency, including the interpretation and application of the NDIS Act, Rules and Operational Guidelines, this suggests that the current pool of independent experts, irrespective of their background, are making sound recommendations within the NDIS legislation⁵.

Net cost of the IERP

The operational savings attributable to the IERP come from avoiding the need for an AAT hearing to resolve cases, noting that over 98% of (over 98%) of NDIS external reviews resolve without an AAT hearing.

Based on external and internal NDIA costs, the estimated average cost of having a case reviewed by an independent expert was \$10,757.

Although this is less than the average cost of an AAT hearing (\$29,899⁶) estimates based on other complex AAT cases suggest that up to 30% of IERP cases would have progressed to an AAT hearing. This means that the IERP saved an average of \$8,969 in avoided AAT hearing costs per case (i.e. 30% x 29,899).

The IERP could also avoid other potential pre-AAT resolution costs such as a final case conference to reach settlement and/or a directions hearing. Based on comparable cases, the IERP reduced the length of cases that did not go to hearing by two-months on average, at an average operational saving of \$3,066 (i.e. \$1,533 per month).

⁵ Although TAB agreement with IERP recommendations is high at this late stage of ADR, this is likely through the provision of additional, settled evidence/information that was not available at the time of the original decision.

⁶ Cost of the AAT hearing days only (estimated 2.5 days).

Together, this equates to the IERP avoiding \$12,035 in case resolution costs (i.e. \$8,969 + \$3,066) which equates to a net saving of \$1,278 per case (\$10,757 - \$12,035).

Importantly, and in line with the apparent sound nature of independent expert recommendations, there is no conclusive evidence that the IERP has impacted the financial sustainability of the NDIS. The average change in NDIS plan value post dispute via the IERP has been slightly less than the formal AAT process for other long-standing cases with similar underlying NDIS plan values (+\$42,733 c.f. +\$55,420). However, this reflects differences in the specific supports in dispute. Due to the uniqueness of cases, it was not possible to perfectly match IERP cases with other AAT cases based on the nature of the supports in dispute.

Learnings for broader administrative decision-making and appeals processes

Over the last two years approximately 6% and 2% of primary NDIS planning decisions become the subject of an internal review and external review respectively. Furthermore, of the decisions that became the subject of an internal review, around 20% of support-related decisions escalate to an external review. Together, these findings suggest that in many instances, the current administrative decision-making and appeals processes are making decisions that are acceptable to participants.

It is recognised, however, that there are a variety of reasons why participants may not request a decision review. This includes the stress, time and cost of challenging a decision, but may also be related to being unaware of rights and/or a perceived lack of adequate support/advocacy. For those who do pursue a review, the evaluation findings highlight considerations for ensuring these processes are participant-focused and make transparent and largely acceptable decisions. Feedback from IERP participants and their representatives indicated that actively engaging with participants throughout the decision making and appeals process is essential to resolve disputes and minimise the risk of escalation.

This includes giving participants the chance to discuss their request, provide more evidence if needed, correct inaccuracies and explain their position. It is also important that the planning and internal review processes assure participants that all

relevant evidence has been considered and give clear explanations for decisions. If a participant does not feel they have been adequately engaged or does not understand the decision, they will be more likely to request an external review.

In line with the Tune Review and subject to upcoming recommendations by the NDIS Review, providing participants a draft plan may mitigate some of these concerns. It would allow early engagement with participants on reasons for not approving some supports, an opportunity to outline the further evidence they need to justify those supports and how they can use their plan flexibly to purchase the support they need in line with current legislation.

At the internal review stage, the Agency has made several enhancements over the last 12-months. These include upfront phone calls to clarify the participant's current situation, inviting them to provide more evidence if needed and improving the quality of explanations in decision letters. These improvements align with IERP participant feedback and importantly have reduced the percentage of support-related matters escalated to external review, including where the internal review upheld the original planning decision.

Statistical modelling identified matters related to supported disability accommodation and other capital supports, supported independent living, children and participants with complex needs are more likely to proceed to external review. Giving participants more detailed explanations for decisions in these matters and offering a follow up explanation could help them understand the reasons for the decision.

At a broader level, further increasing NDIS plan flexibility and reducing the prescriptive nature of plan builds would reduce the number of potentially disputable decisions. Theoretically this would reduce the number of internal and external reviews and give participants more choice and control over their supports.

Learnings for the implementation of the IERP

Independent experts reported high levels of satisfaction with their involvement including their induction, training, the NDIA's ongoing support and process management. They reported that speaking with participants about their matter had been invaluable in forming their recommendations.

However, independent experts reported the cases they have reviewed were more complex than expected, which meant they have taken considerably longer to review than expected. They also noted the need to promote consistency between experts, suggesting the following, especially if the NDIA scales up the IERP:

- Feedback on the quality of their reports and recommendations
- Ongoing training using report exemplars and discussion on case examples.

Within the NDIA, there appears to be broad support for an independent review process as an alternative to the AAT process. However, there is concern about the extent the independent expert recommendations align with the NDIA's operational guidelines.

To date, there has been little visibility of the recommendations across the NDIA. Operational guidelines are policies to promote a consistent operational interpretation of the NDIS legislation on various matters. Consistent with the principles in *Drake*⁷, the AAT typically applies these policies unless the application would result in an unjust decision, in which case cogent reasons against the application must be shown. TAB has agreed with most recommendations from independent experts to date, which suggests they are not in tension with operational guidelines.

Notwithstanding the above, key NDIA staff who support frontline decision-making indicated they would like a feedback loop from IERP (and AAT) outcomes into operational guidelines and standard operating procedures. They reasoned this would support frontline staff make consistent decisions in line with the interpretation of the NDIS legislation made by the AAT and IERP.

ES3 Conclusions

The acceptability, efficiency, effectiveness, and sustainability of the IERP

Although, the IERP has only cleared a small percentage of the backlog of AAT cases, it has successfully provided a proof of concept for a participant-focussed ADR process that can resolve complex disputes.

⁷ *Drake v Minister for Immigration and Ethnic Affairs (No 2)* (1979) 2 ALD 634.

It is clear most IERP participants had a positive experience, especially compared to their experience with the AAT process, and accepted most of the recommendations from independent experts. This suggests that the IERP is an acceptable early resolution alternative to the AAT process for participants. There is also support from disability and legal advocates, noting the process is less legalistic and adversarial than the AAT. Independent experts undertaking the IERP reviews also endorsed the process, including the training and support provided by the NDIA.

Importantly, independent experts have to date made sound recommendations within the NDIS legislation. There is evidence that independent experts from different backgrounds are reviewing case evidence differently, and this may need to be monitored to ensure consistency. Importantly however, the NDIA's Technical advisory Branch agreed with most of their recommendations to date.

There is also no conclusive evidence that the IERP has affected the financial sustainability of the NDIS and although there may have been small operational savings, it has been largely cost neutral.

Given the high participant satisfaction and sound recommendations, an alternative dispute resolution mechanism incorporating some of the features of the IERP is worth considering as part of the Agency's ongoing dispute resolution toolkit for long-standing complex disputes.

For cases that require a formal administrative review process, findings indicate that minimising the use of external lawyers and ensuring their adherence to model litigant obligations would improve participants' experience. The findings also support giving participants the chance to discuss their matter with someone with expertise in their disability early in the process. Government should incorporate these considerations in the design of the new administrative review process that will replace the AAT.

Broader administrative decision-making and dispute resolution processes

Although only a small percentage of NDIS support-related decisions escalate to internal and then external review, the evaluation findings highlight some important

principles to embed throughout the Agency's administrative decision-making processes. The IERP trial has informed areas for ongoing improvements, in particular the effectiveness of being participant-centric and engaging in a collaborative way to determine appropriate supports and dispute resolution strategy.

Stakeholder feedback consistently indicated that actively engaging with participants throughout the decision making and appeals process is essential to minimising disputes and optimising resolution processes. Based on feedback from IERP participants and their representatives, participants want greater opportunity to discuss their needs during planning and internal review processes, assurance that planners and internal review officers have considered their needs and reviewed all their evidence and a better explanation of decisions.

The Agency has already made successful enhancements to internal reviews that align with participant and stakeholder concerns reported in this evaluation. The evaluation findings suggest ways to build on these to further improve engagement and communication with participants around administrative decisions.

At the planning stage, this could include providing participants with draft plans pending recommendations from the NDIS review. For internal reviews, participants would likely value the chance to speak with the internal review officer about their decision. Although this is part of the Participant Service Guarantee, current internal review decision letters do not flag this option. This may not be feasible in all cases given the volume of internal reviews. However, it may be valuable around matters most likely to escalate to external review, such as those related to SDA and major capital, SIL, children and participants with complex support needs.

At the external review stage, principles underpinning the IERP are already consistent with the newly introduced accelerated caseload and early assessment reviews. However, given some cases will inevitably progress to the formal AAT process, the success of the IERP suggests limiting the use of external lawyers where possible and giving participants the chance to discuss their matter with someone from the Agency with expertise in their disability early in the process.

1. Introduction

1.1 Dispute resolution in the NDIS

The National Disability Insurance Agency (NDIA) has multiple pathways available to resolve disputes with participants. Routine practice involves an Agency access delegate collating and reviewing all relevant information to determine the participant's access request⁸. If access is approved, a planning delegate works with the participant to determine their goals and the nature and extent of funded supports to include in their plan. The participant and/or their supports contribute to this process by providing the necessary evidence to support their request. If there is disagreement regarding the delegate's decision, the participant or their nominee has several dispute resolution options available to them, dependent on the nature of the issue. Dispute resolution related to planning matters is the focus of this evaluation.

1.1.1 Internal reviews

Within three months of the original planning decision, the participant or their nominee may request an internal NDIA review of the decision under section 100 of the NDIS Act. This is known as an s100 review. An NDIA officer independent from the original decision-making process undertakes the internal review⁹.

The internal review considers evidence provided by the participant and the justification for the Agency's original planning decision. Additional information may be presented for the review, including participant facts and circumstances at the time of the decision, and any subsequent changes to those circumstances. The review officer provides an opportunity to speak to the participant or their nominee to confirm information received is correct and current, assess the other supports the participant accesses and request additional information if required. If the review officer asks for more information, or the participant wants to provide more, the participant has 28 days to present the additional information. The review officer then makes a decision

⁸ This evaluation relates to planning disputes only. Disputes related to access are out of scope.

⁹ Review must be completed within 60 days of the request in accordance with the NDIA's Participant Service Guarantee (PSG)

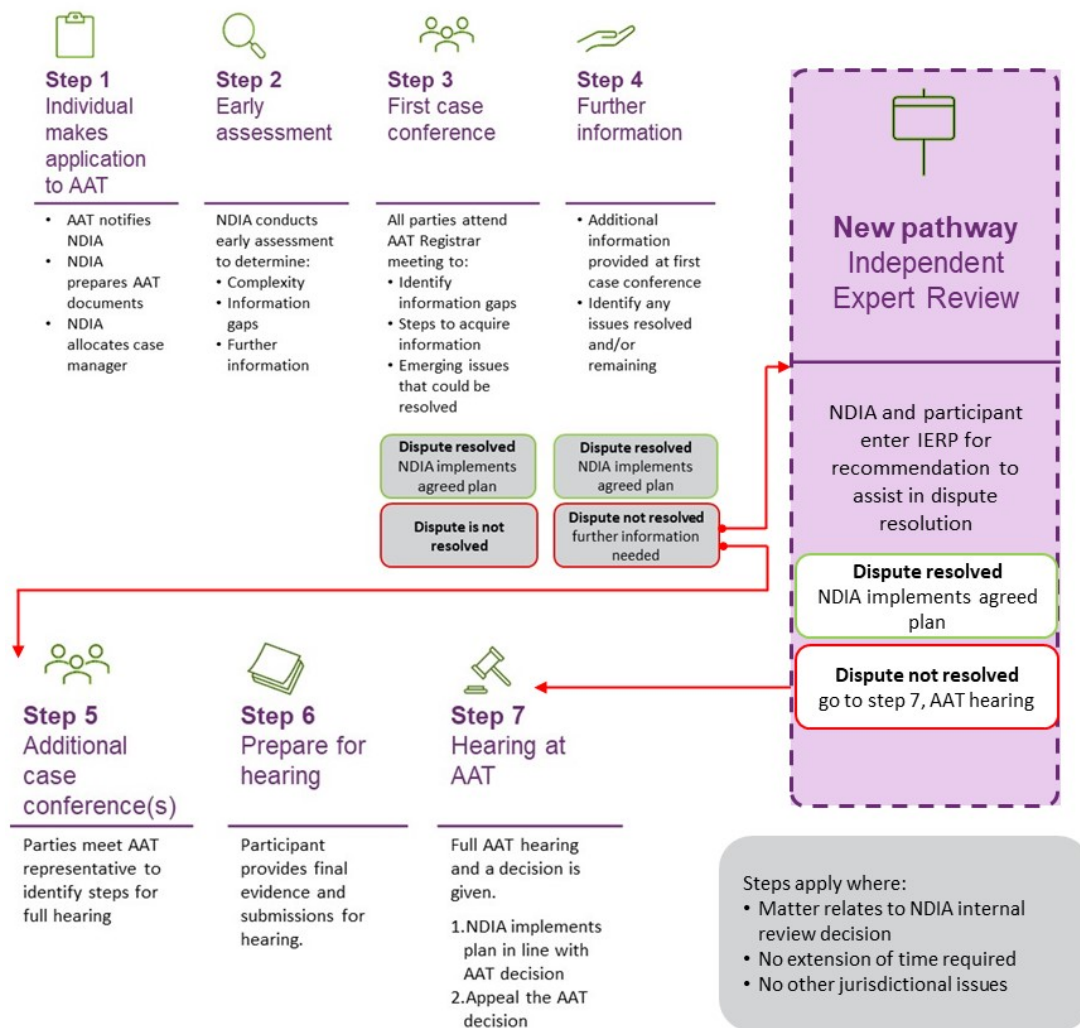
in accordance with the NDIS Act, Rules and Operational Guidelines (OGs). Participants receive a letter notifying them of the results of the review and an explanation for the decision.

1.1.2 External reviews

If a participant or their nominee wishes to dispute an internal review decision, there is a 28-day window to request an external review from the Administrative Appeals Tribunal (AAT). The AAT is an independent body that reviews administrative decisions made under Commonwealth law, which includes reviewable decisions made by the NDIA. Figure 1 outlines the AAT process, which involves a 'merits review' to assess the internal review decision and determine if it was the correct and preferable decision based on the evidence provided. This may include additional supports or information not part of the original or internal review decisions. The vast majority (98.75%) of external reviews do not reach an AAT hearing and instead are resolved via other pathways. The current process includes the following two new initiatives:

- Early Assessments for new matters lodged with the AAT (Step 2 of Figure 1) (commenced in June 2022). When participants lodge a matter with the AAT for review, the NDIA contacts them to better understand their circumstances and the disputed issues. At this point, a resolution is attempted before it progresses further through the AAT process.
- A voluntary process for a non-binding and confidential review by an independent expert to assist participants to resolve their matter prior to an AAT hearing, particularly for those that have been in the AAT for extended periods of time. A pilot phase of this Independent Expert Review Program (IERP) commenced in October 2022 and is described in further detail in section 1.2 below.

Figure 1: The AAT process



Source: Adapted from IERP process diagram from the Chief Counsel Division.

1.1.3 Plan variations or reassessments

In some situations, a participant can request minor variations to certain supports in their plan under section 47A of the NDIS Act¹⁰. These circumstances include the correction of small errors or updating provider details, the receipt of requested information, or when a participant requires crisis or emergency funding.

¹⁰ Introduced 1 July 2022 in accordance with *National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Act 2022*

A plan reassessment under section 48 of the NDIS Act assesses the whole plan. This can occur if there are significant changes to the participant's situation or if the plan reaches its reassessment date and requires adjustment.

1.2 The Independent Expert Review Program

1.2.1 Overview

The Agency commenced the IERP on 4 October 2022. The IERP is a free, voluntary, and confidential alternative dispute resolution (ADR) pathway to resolve matters before they reach an AAT hearing. The IERP was established following consultation with the disability sector to increase the fairness, efficiency and transparency of NDIS decision making, reduce the AAT caseload and importantly, be less adversarial and legalistic for participants.

The IERP uses experts who are independent of both the participant and the Agency. The experts all have experience with the disability sector and a demonstrated ability to interpret and apply legislation. They come from various professional backgrounds including tribunal or judicial members, lawyers, advocates, allied health workers and/or experience in neutral evaluation, mediation, or arbitration¹¹. Specialists in a particular disability area were not appointed as it was considered this could result in an independent expert taking into consideration factors outside of the information actually presented. Prior to starting in the IERP, all the panel experts received NDIA delivered training on the IERP process, NDIS Act, NDIS Rules and OGs.

The IERP initially prioritised participant cases which met the following criteria¹²:

- have been in the AAT process for at least nine months
- are the subject of a plan reduction of 20% or more.

¹¹ The full selection criteria endorsed by the Oversight Committee for the appointment of Independent Experts is provided in: NDIS Independent Expert Review Oversight Committee communique- November 2022. Available at: [Independent Expert Review Oversight Committee communique – November 2022 | NDIS](#)

¹² While these cases were a priority, meeting these criteria was not necessary for eligibility to participate in the IERP. The 20% plan reduction criterion was formally removed from March 2023.

An Oversight Committee (refer Appendix A for committee member details) monitors the IERP implementation, processes, and outcomes¹³. This includes ensuring its independence from the Agency, that the IERP incorporates disability sector perspectives into its model and is transparent on progress and outcomes. The Oversight Committee also provided an interim report on possible structural solutions to improve NDIS dispute resolution processes based on their early experiences with the IERP and broader disability sector consultations¹⁴.

1.2.2 Referrals to the IERP

The Agency initially estimated the IERP would resolve up to 1,000 referrals by 30 June 2023, but substantially revised this figure to approximately 150 due to two key factors:

1. The success of other initiatives such as accelerated caseload reviews of aged matters, and early assessment of new appeals lodged with the AAT, which have substantially reduced the backlog of AAT matters. This has resulted in the Agency reserving the IERP for highly complex matters likely to go to hearing at the AAT.
2. Short timeframes to commence the IERP resulted in difficulties in fully exploring model design options, recruitment and training staff from other branches, recruitment of appropriate independent experts, development of a legal funding program to work with participants, establishment of the Oversight Committee and stakeholder engagement in program design and processes.

1.2.3 IERP process

Figure 2 presents an overview of the IERP. In summary:

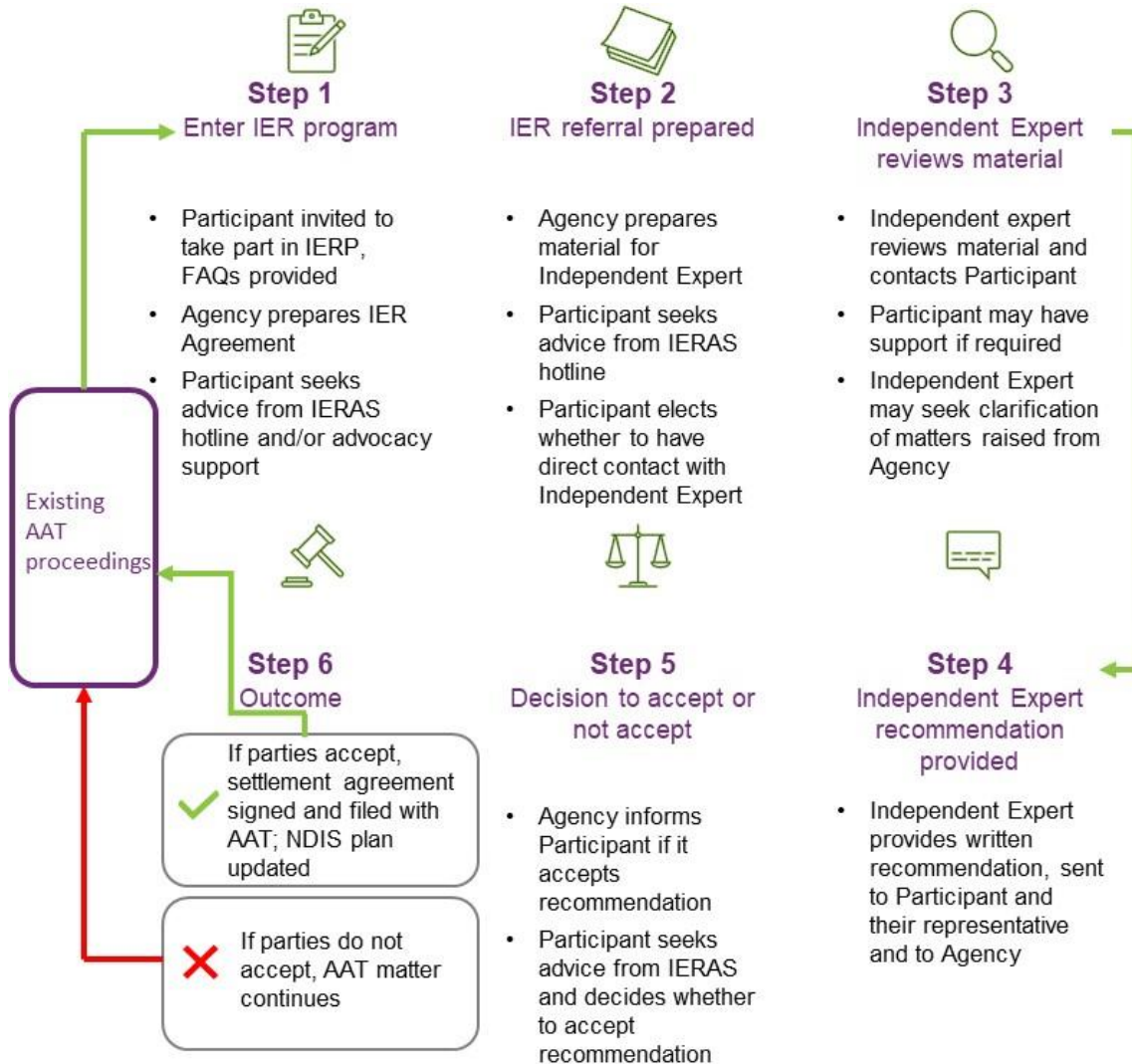
¹³ Chaired by Mr Graeme Innes AM. The Oversight Committee includes eight independent members and three government members representing the NDIA and the Department of Social Services (government members only observe meetings). Other members include representatives from the legal aid commissions, advocacy agencies and people with lived experience.

¹⁴ Interim report on long term options for dispute resolution under the National Disability Insurance Scheme (2022). Available at: [Interim Report on Long Term Options for Dispute Resolution under the National Disability Insurance Scheme | Department of Social Services, Australian Government \(dss.gov.au\)](https://www.dss.gov.au/interim-report-on-long-term-options-for-dispute-resolution-under-the-national-disability-insurance-scheme).

1. Once an eligible participant accepts an invitation to enter the program, the Agency appoints an independent expert to review the matter and prepares the referral materials **(Steps 1 and 2)**. This includes:
 - a. a summary of the matters to be considered and the Agency's position
 - b. information on the participant's plan
 - c. tribunal (T)-documents (i.e., evidence provided to the AAT relating to the internal review decision)
 - d. supplementary (S)-documents (i.e., all other evidence the participant provides the AAT and all documents obtained by the Agency relevant to issues for review, such as summons documents, expert reports and any submissions provided to the AAT)
 - e. IERP Agreement.
2. The independent expert reviews all materials and then uses their independent, professional judgement to provide a non-binding, confidential, written recommendation on the appropriate outcome of issues within the legislative framework. The independent expert may seek clarification from the participants and Agency as necessary **(Steps 3 and 4)**.
3. The participant and Agency decide whether to accept the independent expert's recommendation/s **(Step 5)**. During the IERP pilot phase, the Agency committed to accepting the independent expert's recommendation/s unless they:
 - a. were unlawful, such as where it is outside the power of the Agency to provide a support recommended or make a decision as recommended,
 - b. contained a significant or material error of fact or law, or
 - c. were inconsistent with the Agency's OGs and cannot be reconciled as an appropriate exception.
4. When both the participant and Agency accept the recommendation/s, the Agency prepares consent orders to resolve AAT proceedings and issues the participant a new plan. In circumstances where some but not all recommendations are accepted, those that have been accepted are implemented and the remaining issues in dispute proceed to the AAT. When

either party does not accept the recommendations, the matter continues to the AAT without loss of priority (**Step 6**).

Figure 2: IERP participant journey



Source: Independent Expert Review Project team, Chief Counsel Division.

1.3 Case resolution through new NDIA initiatives

There has been a substantial increase in the number of NDIS-related AAT cases in recent years, increasing from 1,600 at 30 June 2021 to 4,501 at 27 May 2022¹⁵. To address this, the NDIS Chief Council Division introduced several ADR initiatives in

¹⁵ Data provided by NDIS Chief Council Division.

the 2022-23 financial year in addition to the IERP, which together have resolved 6,515 planning and access matters and small numbers of compensation, jurisdiction, and extension of time applications.

These initiatives have reduced the active caseload from 4,501 cases at 27 May 2022 to 2,972 at 30 July 2023 (-34%) and resolved 87% of legacy AAT matters that were active at 30 June 2022.

1.4 The evaluation

1.4.1 Objectives

This evaluation's overarching objectives were to:

- Evaluate the acceptability, effectiveness, efficiency, and sustainability of the IERP.
- Identify lessons for broader Agency administrative decision making and related policy around NDIS planning and appeals processes.

In line with these objectives, the evaluation addresses the following questions:

1. To what extent is the IERP acceptable to participants and stakeholders?
2. What has been the experience of participants involved in the IERP process?
3. To what extent is the IERP an effective dispute resolution approach for NDIS matters?
4. To what extent is the IERP increasing the efficiency of dispute resolution for NDIS matters?
5. How sustainable is the IERP?
6. What can the Agency learn about broader administrative decision making and dispute resolution and related policies?

The evaluation includes individual case and issue analysis from 4 October 2022 to 31 January 2023, survey responses for those involved in the IERP up to 31 March 2023 and costing data and other relevant program metrics up to 31 July 2023.

1.4.2 Limitations

The evaluation has the following limitations:

- The IERP has been in operation for less than a year and is not at full scale or operational capacity. IERP staff have been actively engaged in program setup activities in addition to case work. This may have led to overestimates of program costs and a reduced number of resolved cases.
- The IERP pilot was largely restricted to planning matters, with very few access matters.
- Due to the timing, the evaluation could only access specific details about cases and independent expert recommendations of the IERP up to 31 January 2023. This covered 23 NDIS plan-related cases with a total of 114 matters under review. The complexity of these cases limited the pool of AAT cases over a similar period available to compare outcomes and costs.
- Due to the unique nature of IERP and AAT cases, it was difficult to identify a robust comparison group for the IERP. Estimates are therefore calculated on an average per matter basis which creates uncertainty around estimates of the IERP's impact on operational costs and the financial sustainability of the Scheme.
- The Technical and Advisory Branch (TAB) were not provided with full case details and only considered whether recommendations aligned with the NDIS Act, Rules, and OGS.

1.5 This report

The structure of the rest of this report is as follows:

- Chapter 2 Data and methods
- Chapter 3 Participant satisfaction and experience with the IERP
- Chapter 4 The effectiveness and efficiency of the IERP
- Chapter 5 Costs of the IERP
- Chapter 6 Learnings for broader administrative decision-making and appeals processes
- Chapter 7 Conclusions
- Appendices A-F – Supplemental methods
- Appendix G – Feedback from Independent Experts and NDIA stakeholders.

2. Data and methods

The following data and methods were utilised for this evaluation.

2.1 Administrative data and documents

Table 1 shows the administrative data and documents analysed for this report.

Table 1: Administrative data and documents analysed

Data and documents	Source
IERP tracking sheet (three versions, dated January 2023, March 2023, and July 2023)	IERP project team
IERP costings related to IER reviews and meetings: <ul style="list-style-type: none">• IERP costs	IERP project team
s100 data <ul style="list-style-type: none">• DSREPMA.TMP_S100_CASES• DSREPMA.TMP_S100_REQUESTS• DSREPMA.TMP_S100_TRIAGE	NDIA Enterprise Data Warehouse
LEX data related to AAT participation, activity and costings	Chief Counsel Division
Participant Demographics <ul style="list-style-type: none">• ACARRMA.R03_REG_ALL_PLANS• DSNAROM.PARTICIPANTDEMOGRAPHICS	NDIA Enterprise Data Warehouse
Plan Costs <ul style="list-style-type: none">• DSREPMA.PLANSMRYBDGT• DSREPMA.PLANDTL	NDIA Enterprise Data Warehouse

Source: Research and Evaluation Branch summary.

2.2 Stakeholder interviews

Independent experts, participant representatives and representatives from Disability Representative and Carer Organisations (DRCOs) were invited to participate in a

semi-structured telephone or Microsoft Teams interview. Interviewees gave verbal consent before the interview started. Interviews were recorded and auto transcribed using Adobe Premiere Pro with the permission of interviewees.

A total of 13 of the 17 independent experts who have reviewed IERP matters, 12 participant representatives, and nine DRCOs agreed to an interview (see Appendix B).

The Evaluation Team also interviewed seven internal NDIA IERP managers and subject matter experts to provide background on the IERP's design, implementation, and scope, and the NDIA's dispute resolution processes (see Appendix B).

2.3 Online surveys

The Evaluation Team, IERP team (Chief Counsel Division) and the IERP Hearing Oversight Committee (HOC) collaboratively developed online surveys for participants in the IERP, their representatives and independent experts. The surveys were programmed into Forms.io and links were emailed to target respondents, including two reminders one week apart. Responses received were:

- 13 (of 28) participants or their nominees who took part in the IERP (46% response rate, see Appendix C for disability categories)
- 6 (of 14) participant representatives (43% response rate)
- 13 (of 17) independent experts (76% response rate).

Appendix D presents the online surveys.

2.4 Data analysis

2.4.1 Comparison of IERP and AAT matters

IERP matters were compared with similar cases that had completed the AAT process based on the following characteristics:

- matters focused on NDIS planning as opposed to access matters
- matters completed during the same calendar period as the IERP

- matters actively in dispute for longer than nine months in the AAT¹⁶
- matters involving more than a 20% of the underlying NDIS plan budget¹⁷.

Using the criteria above, 119 AAT matters were identified as similar. This sample was reduced further by identifying similar participant characteristics, similar area/state/region, and similar support/s in dispute. This left 35 highly similar AAT matters to compare to IERP matters in review.

2.4.2 Compliance of IERP recommendations

IERP team leads and the NDIA's Technical Advisory Branch (TAB) both reviewed independent expert recommendations made during Phase 1 of the IERP to assess their compliance with section 34 of the NDIS Act, NDIS Rules, and NDIA OGs. The Evaluation Team analysed differences in opinion and the rationale.

2.4.3 Survey and interview data

The Evaluation Team thematically coded interview transcripts and free text survey responses using Microsoft Excel (see Appendix F for the code frames).

The Evaluation Team descriptively analysed categorical and ordinal survey data using Microsoft Excel. Due to the small sample size for each survey, data analysis did not include statistical tests of inference.

2.4.4 Internal (s100) review data

A Gradient Boosting Machine (GBM) model was used to identify the factors associated with a matter moving from internal NDIA review to the AAT process. The GBM model uses a machine learning algorithm to place factors in a hierarchy of relative influence on the outcome of interest; in this case, the likelihood a participant will request an external review of a decision. The relative influence of a factor is based on the number of times a model selects the factor as a contributor to the

¹⁶ This was an IERP case priority criterion, but not an eligibility requirement. The extended time in the AAT has been used to identify matters with entrenched views.

¹⁷ Although this was an initial IERP case priority criterion, it was removed from March 2023. Not all IERP cases had a 20% plan reduction.

outcome of interest and how much its selection improves the model's predictive power.

Logistic regression modelling complimented the GBM as a predictive model that estimates the probability of an event occurring via a linear combination of the external review factors. The logistic regression produces estimates of the direction and significance of the independent variable's effect on the probability that an s100 matter escalates to the AAT.

Appendix E provides a more detailed description of the GBM modelling and logistic regression.

2.5 IERP cost analysis

IERP costs were compared to the costs of resolving AAT cases via a hearing with considerations to the rate at which AAT cases go to hearing and pre-AAT resolution costs. The costs are divided into the following categories:

- **Internal costs:** This included full-time employees (FTE) in the AAT or IERP teams that worked in reviews, referrals, administration, and case management of IERP or AAT matters. This includes all superannuation and leave payments, where applicable. These costs are considered internal fixed costs to the Agency.
- **External costs:** this includes all independent expert invoices, external legal and law firm costs, initial case costs, hearing costs, hearing preparation costs, counsel costs, and medical and participant assessment costs for either IERP or AAT. These costs are considered external variable costs the Agency incurs as a result of each AAT or IERP matter.
- **Costs to the NDIS:** The cost of the supports recommended by independent experts (which was compared to similar AAT cases) as determined by the difference between the value of the NDIS plans in dispute and the next plan after resolution.

2.6 Ethical considerations

The NDIA has established a range of policies and procedures to ensure compliance with, and maintenance of, ethical standards as prescribed by National Health and Medical Research Council guidelines ('the NHMRC guidelines'). These policies recognise that participants, being people with a disability, may be a vulnerable group in accordance with these guidelines.

The approach for the IERP pilot is based upon advice provided to the NDIA from the NHMRC in 2021 in relation to how the NDIA conducts service improvement pilots. The advice was, that while independent oversight and/or review of pilots are necessary, human research ethics committee review processes are often not the optimal pathway for review of quality assurance and evaluation activities. The IERP pilot falls within the scope of a quality assurance (of a service enhancement) in accordance with the National Health and Medical Research Council (NHMRC) guidelines¹⁸. What matters in quality assurance activities is that:

- participants are afforded appropriate protections and respect
- those who undertake quality assurance adhere to relevant ethical principles and state, territory, and Commonwealth legislation
- organisations provide guidance and oversight to ensure they conduct activities ethically, including a pathway to address concerns.

Given the nature of the pilot, a committee chaired by Graeme Innes AM oversaw all aspects of the IERP. The committee is comprised of nine independent members representing the disability sector as well as three ex-officio members (two from NDIA and one from the Department of Social Services). The committee oversaw the accountability and transparency of the IERP, including quality assurance and complaint management processes to ensure feedback could be acted upon in a timely way. Participation in the pilot was voluntary.

The IERP pilot evaluation included collecting and analysing non-identifiable survey data from participants. The surveys incorporated an easy-to-understand explanation

¹⁸ Ethical Considerations in Quality Assurance and Evaluation Activities (NHMRC 2014). Available at: [Ethical considerations in quality assurance and evaluation activities | NHMRC](#)

of the survey purpose, which reinforced that it was voluntary, in no way related to participant plans or participation in the NDIS and was non-identifiable. The NDIA administers surveys through a secure survey tool which meets Commonwealth government data security standards and has accessibility functions.

The use of administrative data recorded as part of the IERP for the evaluation, including personal/ sensitive information, aligns with the permitted uses of such information under the NDIS Act and ensured the highest standards of privacy and data security in accordance with privacy legislation.

Therefore, in accordance with the NHMRC guidelines, full Human Research Ethics Committee approval was unnecessary for the IERP pilot and its evaluation.

3. Participant experience and satisfaction

This chapter presents findings related to the experience of participants and their representatives with the IERP.

Key findings

- As of 31 July 2023, 79% of participants accepted the invitation to have their AAT matter reviewed by an independent expert. The most common reason for non-acceptance was the matter was about to settle or was close to the AAT hearing date.
- As of 31 July 2023, independent experts had made recommendations on 109 cases, of which participants or their nominees had accepted in 86% of cases.
- Participants and their representatives indicated high satisfaction with the IERP. They reported they had more opportunity to be heard compared to the AAT, valued that the independent expert had considered all the information they provided and appreciated the timeliness of the process.
- Participants and their representatives were generally happy with the way the Agency managed the process, although communication could be simpler.
- DRCOs supported the IERP process, noting it as less bureaucratic, non-adversarial and more time efficient than the AAT, minimising stress, and anxiety to participants.

3.1 Participant acceptance of an independent expert reviewing their matter

A total of 222 IERP enquires were registered via the dedicated NDIA IERP inbox up to 30 June 2023. Table 2 shows 35% of these cases were referred to the IERP, 9% settled without need for the IERP and 56% were not referred. The most frequently cited reasons why matters were not referred were:

- Further information was required
- Settlement discussions and/or an offer being considered
- Conciliation or an AAT hearing scheduled
- Matter was in the process of Early Assessment
- Information was not settled
- Significantly conflicting evidence requiring forensic testing before the AAT

Of the 124 cases not referred to the IERP, 57 have since settled via other Agency initiatives and 67 remain active in the AAT, with most expected to settle prior to hearing.

As of 31 July 2023, 197 IERP invitations were sent to participants, with 79% (or 156 of 197) accepting the invitation. Reasons for non-acceptance were generally due to the proximity of an AAT hearing, or the matter had progressed and was close to settling.

As of 31 July 2023, independent experts had reviewed and made recommendations on 109 cases, with the rest still under review, resolved through AAT processes or for a small number of cases, on hold.

Although the IERP terms state recommendations from independent experts are non-binding, the Agency committed to accepting independent experts' recommendations unless they did not meet the conditions outlined in Chapter 1.2.3. The Agency honoured this commitment and accepted all the independent experts' recommendations in Phase 1. In Phase 2, the Agency accepted 74% of recommendations in full and 22% in part¹⁹. Importantly, participants or their nominees accepted or partially accepted 86% of the recommendations from independent experts.

Given the valid reasons for participants not accepting the IERP invitation and the high acceptance of recommendations, these figures suggest participants have found the IERP an acceptable alternative to the AAT process.

¹⁹ As of 31 July 2023, the Agency had not accepted 4% of recommendations from independent experts.

“It was clear, simple, and timely. I wish it hadn’t taken three reviews, 18 months and my family’s mental health taking a flogging to get to the IER process. But overall once we were accepted, the process and decisions were straightforward. We didn’t get everything we asked for, but what we got was fair, and the reasons why we didn’t get things were clear, and well explained.” Participant, survey.

Table 2: IERP invitations sent and acceptance rates at 31 July 2023

IER Program	Total number
IER enquiries	222
Matters referred to IER	77 (35%)
Matters settled prior to IER	21 (9%)
Matters not proceeding to IER	124 (56%)
Invitations sent	197
Advocate initiated referral	81 (41%)
Participant/support initiated referral	44 (22%)
NDIA initiated referral	63 (32%)
Ministerial/Other initiated referral	9 (5%)
Acceptance rate	Total number
Invitations accepted	156 (79%)
Invitations not accepted	41 (21%)

Source: Division of the Chief Counsel, Independent Expert Review Program team.

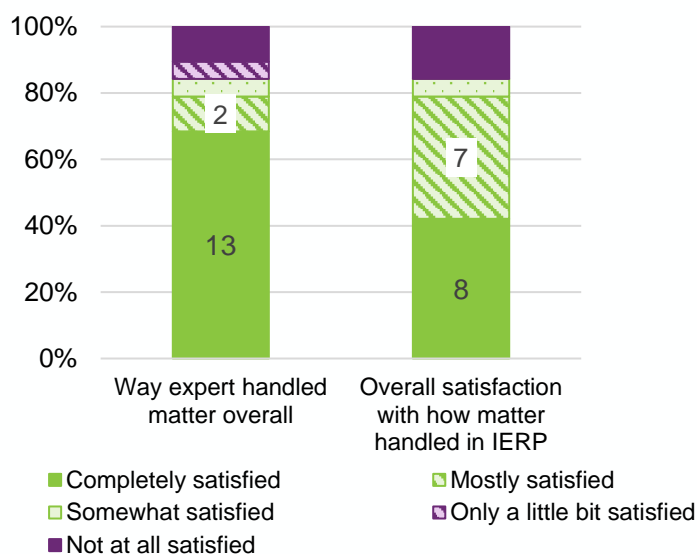
3.2 Participant and representative satisfaction with the IERP

3.2.1 Overall satisfaction

Interviews and online surveys with participants and their representatives explored their satisfaction and experience with the IERP in more detail. Only six participant representatives responded to the online survey. As they were representing participants, where applicable their responses are pooled with participant responses.

Figure 3 shows that most participants and their representatives who responded to the survey were completely or mostly satisfied with how the IERP and specifically the independent expert handled their matter (79% pooled). Satisfaction was higher for the independent expert compared to overall IERP satisfaction, suggesting the Agency could improve their part in the way the IERP engages with participants in the program.

Figure 3: Participant and representative satisfaction with the IERP



Source: Online survey of participants and their representatives (pooled responses: n =18)

The online survey asked participants and their representatives how their experience with the IERP compared to their experience with the AAT process. Most respondents (79%) reported they had a better experience with the IERP than the AAT process, with the remainder noting that the current IERP positioning meant that a substantial proportion of the AAT process was still undertaken, and/or that not all matters were suitable for the IERP. Participants reflected their generally positive sentiment for the IERP in free text responses, commenting how adversarial the AAT process was and how they perceived the IERP as more transparent, fair, and impartial.

“The whole IER process was a dream like experience following a nightmarish 12 months with the AAT. The process prior to the IER involved a belligerent NDIS who were supported by aggressive, non-model litigant lawyers... who preyed on participants. It was slow, opaque, and aggressive. The exact opposite of the IER process that was impartial, transparent, fair and a face to talk to. I cannot speak more highly about the IER process, other than I wish everyone has access to it.” **Participant survey.**

Most participants and their representatives (73%) who responded to the survey reported they had more opportunity to be heard during the IERP compared to the AAT process. When asked about the best aspects of the IERP, participants most frequently highlighted the opportunity to be heard by the independent expert. Some also appreciated that the independent expert considered all the information they had provided and the timeliness of the process.

The survey asked participants and their representatives how the IERP could be improved. Participants mostly stated:

- their preference for the IERP to review matters earlier in the dispute resolution process, noting that the protracted nature of their disputes had caused them considerable distress; and
- that the recommendations should be binding on the Agency

Participant representatives mostly noted the information about the IERP is overly complex and there have been inaccuracies in some documentation regarding participant circumstances given to independent experts.

Some representatives also voiced a perceived conflict of interest as the respondent (i.e., the Agency) in the AAT matter is administering the IERP. There was also occasional criticism about the quality of recommendations from independent experts, including a lack of adequate reasoning for not recommending supports and an inaccurate description of a participant’s situation. However, overwhelmingly participant representatives were satisfied with the recommendations made by independent experts and their transparency.

Notwithstanding the above concerns, a key objective of the IERP is to build trust between participants and the NDIA and its review processes. When asked if the IERP had helped to build trust in the NDIA's review process, 62% of participants who responded to the survey (8 of 13) indicated it had helped somewhat or a lot, although representatives were less convinced (50% or 3 of 6).

3.2.2 Participant and representative satisfaction with independent experts

As discussed above, participants and representatives were overwhelmingly satisfied with the independent experts. Figure 4 shows high levels of satisfaction with all/most aspects of the way independent experts reviewed participant matters, most notably:

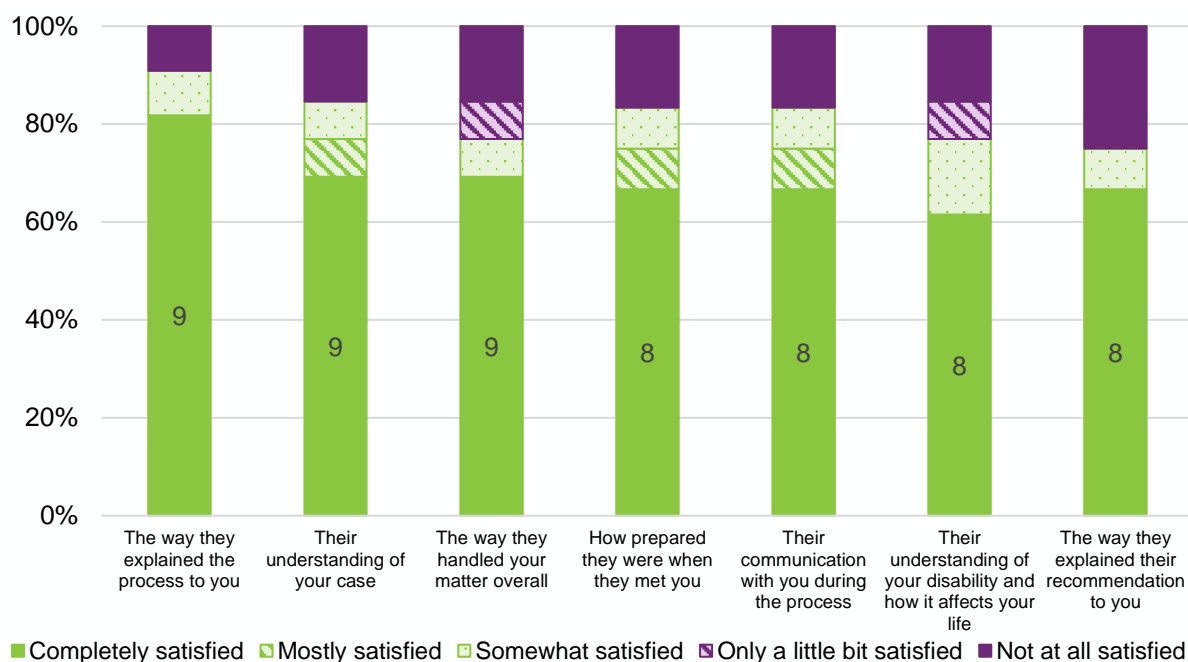
- their explanation of the process (82% completely/mostly satisfied)
- experts' understanding of the matter (77% completely or mostly satisfied)
- their preparedness when they met the participant (75% completely/mostly satisfied)
- their communication during the process. (75% completely/mostly satisfied)

Participants and representatives reported slightly lower rates of satisfaction with:

- the independent experts' understanding about the impacts of the participants' disability (61% completely/mostly satisfied)
- the way the expert explained their recommendations (61% completely/mostly satisfied).

In free text survey responses, most participants reported the IERP process and recommendations received were of high quality. There was lower participant satisfaction with the experts' understanding of the impact of their disability, which reflects that the Agency allocated matters to the 'next available expert'.

Figure 4: Participant and representative satisfaction with independent experts



Source: Online survey of participants and their representatives (pooled responses: n =18)

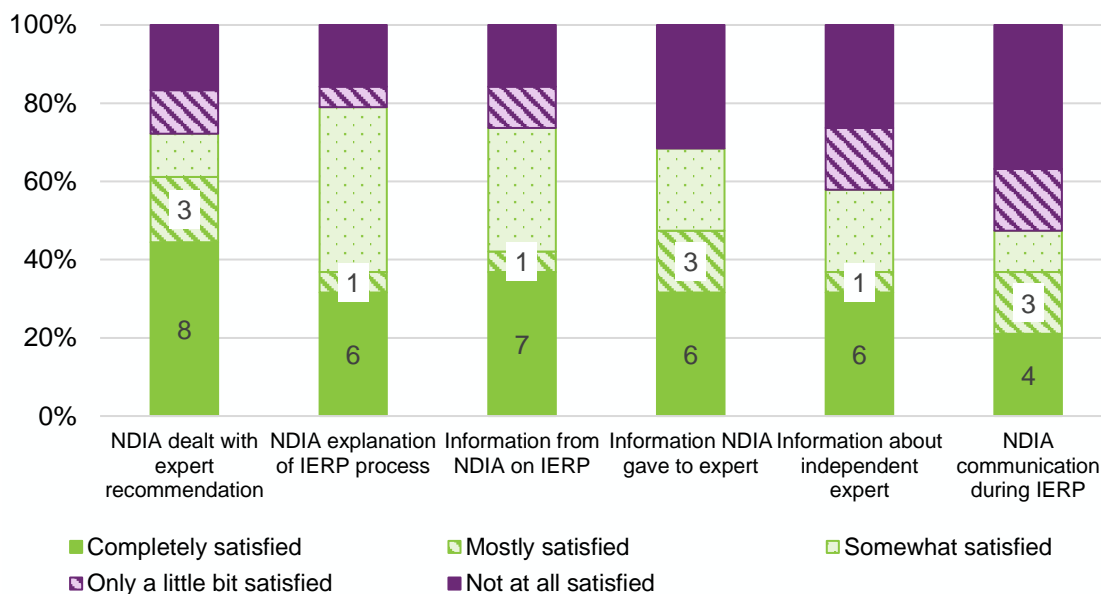
“It was clear, simple, and timely. The information from the expert made sense. The people making decisions had an understanding of the nature of the disability and complexities instead of having no expert knowledge or experience and just using funding formulas. I felt we were heard; his treating professionals were heard, and a common-sense solution was reached.”
Participant, survey.

3.2.3 Participant and representative satisfaction with the NDIA’s management of the IER process

Participants and their representatives reported lower satisfaction with the NDIA’s management of the IERP process. Figure 5 shows in general, less than half of survey respondents were mostly or completely satisfied with the NDIA’s management of the IERP process. Most notably:

- Only 37% (7 of 18) reported they were completely or mostly satisfied with the NDIA’s communication with the participant during the IERP process, the information provided about the independent expert and the explanation about the processes.
- Only 44% (8 of 18) were completely or mostly satisfied with the information provided about the IERP.
- 50% (9 of 18) were completely or mostly satisfied with the material supplied to the independent expert.

Figure 5: Participant and representative satisfaction with the NDIA’s management of the IERP



Source: Online survey of participants and their representatives (pooled responses: n =18)

Feedback to the IERP team indicated that the distinction between the AAT and IERP processes was not clear for some participants. There was also some confusion about the appropriate participant contact, as the case manager and lawyers with carriage of the day-to-day AAT proceedings were not necessarily across the IERP processes. Timing was also an issue in some instances where there were delays in AAT processes as parties were waiting for the IERP recommendations.

In free text survey responses, participants and representatives commented that clearer and more concise communication about the IERP process would have

improved their understanding about the program. Suggestions included a visual timeline of events, information in videos or simple language and details about the qualifications of independent experts. Representatives from the Independent Expert Review Advisory Service (IERAS)²⁰ echoed this sentiment, suggesting enhancements to communication materials including:

- Reducing the text heavy nature of the webpage and improving navigation.
- Making the FAQs²¹ less formal and legalistic, including using plain language and making an Easy Read option available.
- Clarifying IERP eligibility criteria, the process and expected timeframes from receipt of an invitation to having a matter resolved.
- Clearly explaining that the participant has the option to accept, partially accept or reject a recommendation and there is the option to proceed to AAT after the IERP with no loss of priority.
- Providing clear and consistent messaging that participants have access to free, independent advocacy support and legal advice.

During interviews, several participant representatives also noted the NDIA collated documents provided to the independent expert. These representatives stated a preference to receive these documents first, so that independent experts receive documents that have been viewed and agreed by all parties. Similarly, there was some concern regarding the NDIA providing a summary of issues without input from the applicant (i.e., the participant and/ their representatives).

“The Agency should not provide the expert with the NDIA summary of issues that actually presents as the NDIA argument. This is agenda-setting that is unfair, especially in the context of participants without legal representation or advocacy support.” **Representative, interview.**

²⁰ Established to support participants with information about the IERP.

²¹ Frequently Asked Questions available at:
<https://www.ndis.gov.au/media/5195/download?attachment>

Representatives from the IERAS reiterated this, stating that participants have contacted them with this concern.

Feedback we received was that the process seemed 'controlled' by the Agency, such as determining which documents were to be sent to the independent expert. While it may be logical and practical for the Agency to lead the process by collating relevant material, some participants felt the lack of opportunity to include additional material prior to their discussions with the independent expert, presented a barrier to putting their own case forward.
IERAS representative.

3.3 Disability Representative and Carer Organisation feedback

A total of eight Disability Representative and Carer Organisations (DRCOs) participated in the interview process on the IERP. Although the DRCOs who participated typically had experience with the NDIS dispute resolution processes, including NDIS internal reviews and matters before the AAT, they have had less direct experience with the IERP.

Overall, DRCO representatives supported an independent review process that is non-bureaucratic, non-adversarial and takes less time to reach a decision than the AAT.

"An independent review is so much better, because people are being psychologically damaged by the process the way it is, you know, with the adversarial battles in the AAT and the horrible plans and these reviews that just rubber stamp the original rejection, it's horrible. Having the expert made it so much easier, it was quick, straightforward, and simple." **DCRO, interview.**

The DRCO representatives commented that a strength of the IERP design is the highly credentialled independent experts who conduct themselves in a more informal

process than the AAT, minimising stress and anxiety for participants and their families.

4. The effectiveness and efficiency of the IER Program

This chapter assesses the effectiveness of the IERP as a dispute resolution mechanism in the NDIS. This includes the decision-making framework independent experts have used, a comparison of IERP recommendations to similar AAT decisions, participant and NDIA acceptance of recommendations, the extent recommendations have aligned with the NDIA's decision-making framework and the timeliness of the IERP.

Key findings

- Independent experts are making recommendations with reference to the NDIS Act, especially section 34, and the NDIS Rules, but rarely explicitly reference the NDIS operational guidelines. In general, the decision-making framework independent experts have used is comparable to the AAT.
- Independent experts have been considerably more likely to recommend accepting or partially accepting participant requests for supports than the AAT. As of 31 January 2023, independent experts had recommended accepting 36% (compared to 17% at AAT) and partially accepting 35% (compared to 17% at AAT) of participant requests.
- If the independent expert did not have a legal background, they were even more likely to accept requests (45% compared to 30% of experts with a legal background) and less likely to partially accept recommendations (18% compared to 46% of experts with a legal background).
- The NDIA has acted in good faith and accepted all IERP Phase 1 recommendations and the majority of Phase 2 to date. In line with their reported positive experience with the IERP, participants have accepted 86% of recommendations from independent experts.
- Review of independent expert recommendations by IERP program managers and the NDIA's Technical Advisory Branch (TAB) showed high levels of

agreement with independent experts. As of 31 January 2023, IERP program managers agreed that 100% of recommendations were within the legislative framework and OGs while TAB agreement was slightly lower at 89%.

- The median time for a participant to receive a recommendation from an independent expert was 19 days in Phase 1 of the IERP and 23 days in Phase 2.

4.1 The decision-making framework used by independent experts

The Agency committed to accepting the recommendations from independent experts unless they were unlawful, contained a significant or material error of fact or law or were inconsistent with the Agency's OGs and could not be reconciled as an appropriate exception.

Table 3 a-d summarises the framework independent experts used to inform their recommendations received up to 31 January 2023 of the IERP²² and compares this to the framework cited for seven comparable AAT cases resolved at hearing (see Appendix E for the approach adopted to match the cases). In summary, Table 3a shows:

- Independent experts cited section 34 of the NDIS Act to justify their recommendations in 77% of IERP matters analysed, which was comparable to AAT cases resolved at hearing (83%). The two most cited clauses of section 34 related to value for money and the need for effective and beneficial supports.
- The AAT hearing decisions cited value for money and that a support is appropriate for the NDIS to fund more often than independent expert recommendations (66% c.f. 48% and 42% c.f. 13% respectively).
- Independent expert recommendations cited section 34e that the funding of a support considers what is reasonable to expect families, carers, informal

²² Independent experts had reviewed 23 NDIS-plan related cases that met the referral criteria. These cases contained a total of 114 separate matters for review.

networks, and the community to provide more often than an AAT hearing decision (41% c.f. 29%).

Table 3b shows AAT hearing decisions made no reference to any part of the NDIS Act other than Section 34. In contrast, independent experts referenced sections 33, 24, 4, 3 and 14 of the Act in decreasing order of frequency. Table 3c summarises independent experts less frequently cited the NDIS Rules for participants than AAT hearing decisions (43% c.f. 54%). Importantly, independent experts also cited the Rules for Supported Disability Accommodation (SDA) for relevant matters. Table 3d shows independent experts only rarely cited the NDIA's OGs (7% of matters). None of the comparison AAT hearing decisions cited the NDIA's operational guidelines, presumably as they were not in issue for those matters.

Together, this suggests that while independent experts are using NDIS legislative instruments to guide their recommendations, they are rarely explicitly referring to the NDIA's OGs. It may be that the issues considered were wholly within the OGs and therefore no specific reference was required. Although OGs are not legislative instruments, they are policy documents intended to guide NDIS planners to consistently interpret the NDIS Act and NDIS Rules, which themselves are quite subjective. As such, adherence to OGs is an important measure to promote consistent decision-making in the NDIS. Consistent with the principles in *Drake*²³, the AAT typically also applies these policies unless the application would result in an unjust decision, in which case cogent reasons against the application must be shown.

The fact that in the recommendations reviewed, there was little reference to the OGs creates the perception that independent experts may not be following them. This therefore creates a perceived risk that independent expert recommendations will be inconsistent with similar decisions the NDIA makes for other participants.

²³ *Drake v Minister for Immigration and Ethnic Affairs (No 2)* (1979) 2 ALD 634.

Table 3a: Frequency NDIS Act Section 34 was cited in relation to decisions (listed by issue)

NDIS Act-Section 34	IER to 31 January 2023 Matters referenced (%) (n=114)	AAT-hearing decisions Matters referenced (%) (n=41)
34.1 (a)-goals, objectives, aspirations	35/114 (31%)	15/41 (36.6%)
34.1 (b)-social & economic participation	38/114 (33%)	19/41 (46.3%)
34.1 (c)-value for money	47/114 (41%)	27/41 (65.9%)
34.1 (d)-effective and beneficial	48/114 (42%)	21/41 (51.2%)
34.1 (e)-reasonable	47/114 (41%)	12/41 (29.3%)
34.1 (f)-Appropriate for NDIS to fund	11/114 (10%)	17/41 (41.5%)

Source: Research and Evaluation Branch analysis of final IER and AAT decisions.

Table 3b: Frequency NDIS Act Sections other than 34 were cited in relation to decisions (listed by issue)

NDIS Act Section	IER to 31 January 2023 Matters referenced (%) (n=114)	AAT-hearing decisions Matters referenced (%) (n=41)
Section 3-Objectives of the Act	9/114 (8%)	0/41 (0%)
Section 4-General Principles of the Act	10/114 (9%)	0/41 (0%)
Section 14-Assistance by funding	1/114 (1%)	0/41 (0%)
Section 24-Disability requirements	9/114 (8%)	0/41 (0%)
Section 33-Plan requirements	17/114 (15%)	0/41 (0%)

Source: Research and Evaluation Branch analysis of final IER and AAT decisions.

Table 3c: Frequency NDIS Rules were cited in relation to decisions (listed by issue)

NDIS Rules	IER to 31 January 2023 Matters referenced (%) (n=114)	AAT-hearing decisions Matters referenced (%) (n=41)
Rules for Participants	39/114 (34%)	22/41 (53.7%)
Rules for SDA	2/114 (2%)	NA

Source: Research and Evaluation Branch analysis of final IER and AAT decisions.

Table 3d: Frequency NDIS Operational Guidelines were cited in relation to decisions (listed by issue)

Operational Guidelines	IER to 31 January 2023 Matters referenced (%) (n=114)	AAT-hearing decisions Matters referenced (%) (n=41)
Supported Independent Living	2/114 (2%)	0/41 (0%)
Specialist Disability Accommodation	7/114 (6%)	0/41 (0%)
Planning	4/114 (4%)	0/41 (0%)

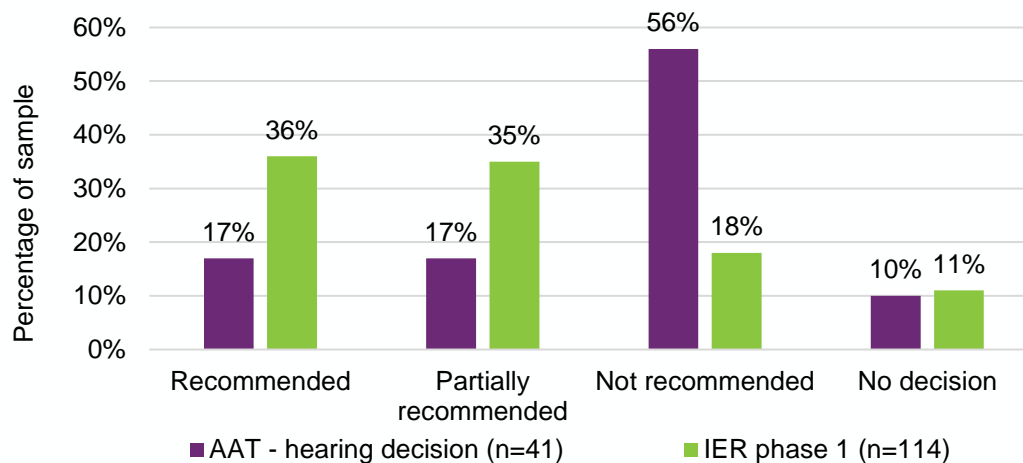
Source: Research and Evaluation Branch analysis of final IER and AAT decisions.

4.2 Recommendations by independent experts compared to AAT hearing decisions

Figure 6 compares the recommendations from independent experts of the IERP with a comparison sample of decisions made at AAT hearings²⁴. Noting the small sample size, independent experts have recommended in favour of the participant (i.e., accepted the participant’s request) at around twice the rate of the AAT (fully accepted 36% c.f. 17% and partially accepted 35% c.f. 17%). The AAT declined the participant’s request in 56% of the matters compared to 18% by independent experts. The rate of non-decision is comparable, most commonly occurring for matters seen as out of scope or best deferred until other matters are addressed.

²⁴ Between Jul 2022 and Jan 2023, 83% of AAT cases comparable to IERP cases were resolved by consent. However, the information available for the evaluation is insufficient to understand the extent the final settlements reflect the original support requests.

Figure 6: Comparison of IERP planning recommendations and AAT decisions



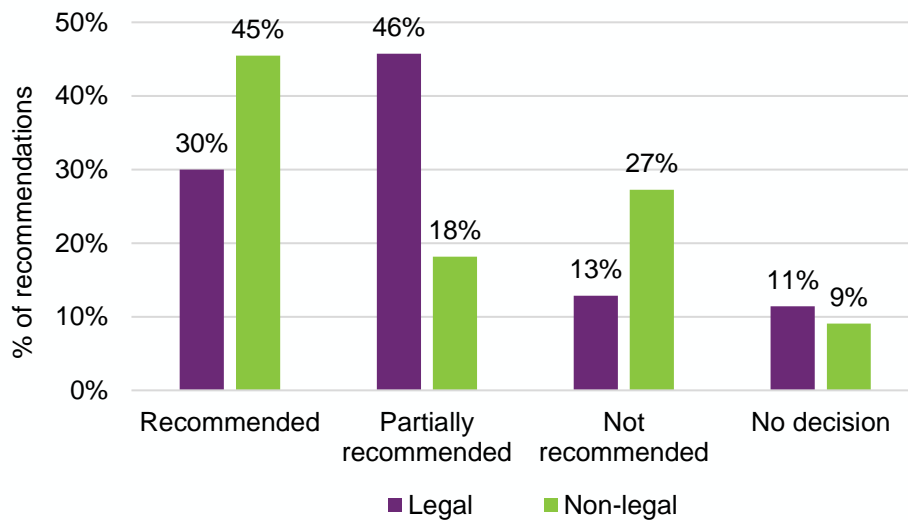
Source: Research and Evaluation Branch analysis of IERP recommendations and AAT decisions. Data includes AAT matters closed between Jul 2022 and Jan 2023 and IER matters closed between Sep 2022 and Jan 2023.

Figure 7 compares the percentage of recommendations to grant and decline the participant's request between independent experts with legal and non-legal backgrounds. Of the 17 IERP independent experts, 12 have a legal background with most either a current or retired lawyer or a barrister.

As of 31 January 2023, independent experts within the IERP with a non-legal background were more likely to recommend the participant's request compared to those with a legal background (45% c.f. 30%). Independent experts with a legal background were more likely to partially recommend the participant's request (46% c.f. 18%). Interestingly, non-legal independent experts were more likely to decline the participant's request.

This could reflect differences in the cases independent experts reviewed. However, another possible explanation is that independent experts from different backgrounds are reviewing the case evidence against the NDIS legislation differently. This supports feedback from many independent experts around their additional and ongoing training needs and that such differences should be monitored for possible inconsistencies over time.

Figure 7: Comparison of supports recommended between independent experts with legal and non-legal backgrounds



Source: Research and Evaluation Branch analysis of IERP recommendations closed between Oct 2022 and Jan 2023.

4.3 The extent recommendations align with NDIS legislation and operational guidelines

The above findings show that independent experts were more likely to recommend in favour of the participant’s request than the AAT. The evaluation did not explore the reasons. However, this does have potential cost implications for the NDIS while the Agency commits to largely accepting the independent experts’ recommendations.

As previously noted, the NDIA committed to accepting recommendations unless they were unlawful, contained a significant or material error of fact or law or were inconsistent with operational guidelines and could not be reconciled as an appropriate exception. In line with this, at 31 July 2023 the NDIA had accepted 74% of recommendations in full and 22% in part, while completely not accepting only 4%. The reasons why the Agency did not accept a recommendation have included:

- an independent expert error in the application of the NDIS Act, Rules and/or accompanying OG,
- the matter required forensic testing before the AAT, and

- another funding body being more appropriate to fund a support in consideration of the evidence before the independent expert.

This suggests that the recommendations from independent experts have aligned with the NDIS Act, Rules, and OGs. To explore this further, the evaluation requested the NDIA's IERP legal team and Technical Advisory Branch (TAB)²⁵ to separately review the recommendations made up to 31 January 2023.

The NDIA's IERP legal team manage the implementation of the IERP and provide advice on the extent the recommendations align with their pre-determined acceptance criteria.

TAB provide technical and clinical subject matter expertise for staff and the NDIA's Partners in the Community to:

1. consistently interpret and apply the NDIS Act, Rules, and OGs
2. ensure supports are evidence-based and align with best practice guidelines
3. make transparent decisions and explain their decisions to participants.

Both groups assessed whether the independent experts' recommendations aligned with the NDIS Act, Rules, and OGs and if they disagreed, provided an explanatory note. Table 4 outlines the results of their assessments. In summary:

- The IERP legal team agreed that all the recommendations from IERP independent experts aligned with the Agency's acceptance criteria.
- TAB indicated strong agreement (an average of 89% overall) that recommendations from independent experts aligned with the Agency's acceptance criteria (and that 93% should be accepted or partially accepted)

²⁵ TAB were not provided with the details of each case and only considered whether the independent experts' recommendations aligned with NDIS Act, Rules, and operational guidelines.

Table 4: Assessment of IER recommendations²⁶

Reviewer	Recommended	Partially recommended	Not recommended	No decision/ unclear
Independent experts (Phase 1)	41/114 (36%)	40/114 (35%)	21/114 (18%)	12/114 (10%)
IERP Legal Team				
Agree	41/41 (100%)	40/40 (100%)	21/21 (100%)	12/12 (100%)
Disagree	0/41 (0%)	0/40 (0%)	0/21 (0%)	0/12 (0%)
Uncertain	0/41 (0%)	0/40 (0%)	0/21 (0%)	0/12 (0%)
Technical Advisory Branch				
Agree	39/41 (95%)	37/40 (92.5%)	18/21 (85%)	10/12 (83%)
Disagree	0/41 (0%)	1/40 (2.5%)	1/21 (5%)	2/12 (17%)
Uncertain	2/41 (5%)	2/40 (5%)	2/21 (9%)	0/12 (0%)

Source: Research and Evaluation Branch analysis of independent expert recommendations as of 31 January 2023, and IERP Team and Technical Advisory Branch assessment of recommendations.

The Agency appropriately relies on the expertise and advice of TAB and the Operations and Housing Support (OHS) Branch to inform their decision making. The openness of the legislation and Agency OGs to variable interpretation demonstrates the discretionary nature of the current legislative framework, rather than a flaw in how the IERP operates.

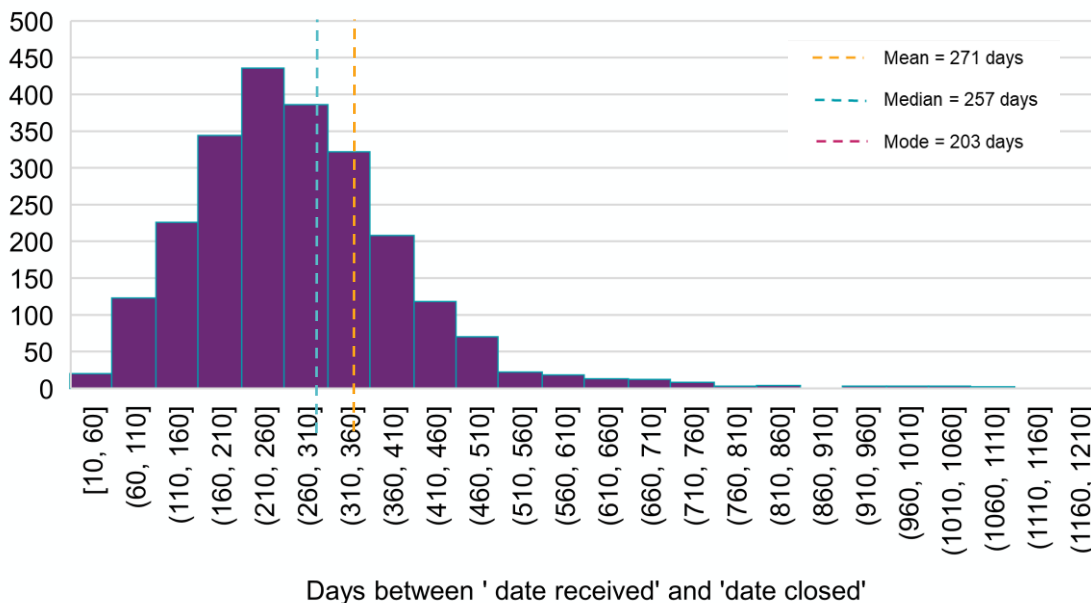
4.4 The time to resolve matters

Figure 8 shows the distribution of the number of days between when an AAT matter was filed²⁷ and when it was closed. It shows the median time to resolve AAT matters that closed between July 2022 and January 2023 was 257 days.

²⁶ The two review groups considered 23 matters, across 114 individual issues. Additional issues were removed if unanimously assigned “to be reviewed after a significant time”, if they related to Scheme access, or if the matters were subsequently withdrawn.

²⁷ N= 3,281

Figure 8: Frequency distribution of days between AAT date received and date closed.



Source: Research and Evaluation Branch analysis of final IER and AAT decisions

An objective of the IERP is to expedite the resolution of complex matters. Table 5 shows the IERP has reached a recommendation much quicker than the median AAT duration, although the IERP has clearly benefited from the evidence gathered during the AAT process.

During Phase 1 of the IERP, the median duration between a participant accepting the invitation to have an independent expert review their matter and receiving the independent expert’s recommendation(s) was 19 days. This included a median time of 9 days for independent experts to make their review. The total duration in Phase 2 of the IERP increased to a median of 23 days with independent expert reviews taking marginally longer (median = 12 days) due to greater complexity of cases compared to Phase 1. The total average time taken from issuing an IERP invitation to a participant to Agency acceptance of recommendations was 42 business days.

It is noted that the much greater overall complexity of matters addressed in the IERP resulted in longer than anticipated timeframes to complete each case. This included extended times to collate documents, identify the requested supports in dispute, list the reasonable and necessary aspects of the case, have the independent expert consider and prepare the recommendation, review the recommendation provided,

prepare the internal authorisation for Agency acceptance, provide a statement of reasons and the formal finalisation of the matter.

Table 5: Duration of IERP reviews

Event	Average	Median
Phase 1 - Time from participant acceptance of invitation to receipt of a recommendation	27 days	19 days
Phase 1 - Time from independent expert acceptance of referral to providing a recommendation	15 days	9 days
Phase 2 - Time from participant acceptance of invitation to receipt of a recommendation	33 days	23 days
Phase 2 - Time from independent expert acceptance of referral to providing a recommendation	16 days	11 days

Phase 1: N = 20 cases; Phase 2: N = 109 cases

Source: Research and Evaluation Branch analysis of final IER and AAT decisions

5. Costs of the IER Program

This chapter presents analysis of the operational costs of the IERP and the cost of the recommendations to the NDIS.

Key findings

- As of 31 July 2023, the estimated average cost of resolving cases via the IERP was \$10,757. This compares to \$29,899 to resolve a case at an AAT hearing.
- Based on other complex AAT cases, up to 30% of cases reviewed by independent experts would have likely progressed to an AAT hearing in the absence of the IERP and have avoided two months' worth of pre-AAT resolution costs (final case conference, directions hearing etc.) by participating in the IERP.
- Assuming the IERP results in a 30% reduction in hearings, and the pre-AAT resolution costs, the avoided costs attributable to the IERP are \$12,035 per case on average. This equates to a net operational saving of the IERP of \$1,278 per case.
- On average, the value of the first 39 recommendations by independent experts cost the NDIS \$42,733 (+18%). This compares to +55,240 (+23%) for other support-related cases that took longer than 9-months to resolve and where the value of the plan in dispute was similar to IERP cases.
- Given the uniqueness of all AAT and IERP cases, the difference of plan values likely relates to differences in the supports in dispute which could not be matched.

5.1 IERP operational costs per case

Table 6 presents the estimated average operational cost of an independent expert review (\$10,757 per case) based on independent expert fees, average external legal costs to assist with preparing materials for independent experts and support from NDIA staff. This figure does not include IERP design costs or costs incurred prior to

IERP referral to refine the case and gather additional evidence. These latter costs vary substantially between matters and are incurred irrespective of whether the cases enter the IERP.

Given that independent experts reviewed 156 cases between October and July 2023, the total estimated operational expenditure was \$1,678,092.

Almost half (48%) of the operational costs have been payments to independent experts. A further 12% is attributable to external law firm costs. The internal IERP costs to the NDIA are largely preparation and review by legal and referral officers, and account for the remaining 40%.

Table 6: Estimated IERP operational costs

Cost category	Cost type	IERP
Independent Expert Invoice	External	\$5,199
External law firm support for IER referral	External	\$1,300
Preparation of recommendation by IER referral officer	Internal	\$2,657
Legal review of referral/recommendation by NDIA lawyer	Internal	\$1,170
Admin support	Internal	\$431
Average cost per IER matter		\$10,757
Number of matters (4 October 2022 to 31 July 2023)		156
Total estimated operating expense		\$1,678,092

Source: REB analysis of data submission from IERP and Data & Reporting teams from Chief Counsel Division and Finance Business Partner- Government, Engagement & Legal team.

Notes:

- Data assumes that labour is hired at an APS FTE rate, working 230 days per year, where a matter requires an average of five case management days, two lawyer days to review the recommendation/s, one administrative day per matter, and external costs (independent expert and external law firm support) are average estimates from actual IERP invoices and data.

5.2 Net costs of the IERP

The cost savings attributable the IERP are from avoided AAT hearings and other pre-AAT resolution costs including directions hearings and a final case conference to reach a settlement.²⁸

5.2.1 Estimated savings due to avoided AAT hearings

Based, on activity estimates, the estimated average cost to the Agency of an AAT hearing is \$29,899 against \$10,757 for the IERP (-64%)²⁹. The net savings costs related to avoided AAT hearings depends on the number of IERP cases that would have progressed to a hearing in the absence of the IERP.

To estimate this number, we analysed the outcomes of other AAT support-related cases between July 2022 and January 2023, which was the latest date detailed case information was available for the evaluation. The unique combination of the supports in dispute and their value means that it was not possible to identify a perfect case matched comparison set of IERP and AAT cases. However, there were 119 AAT support-related cases that took longer than nine months to resolve and where the value of supports in dispute were more than 20% of the underlying plan value.

Assuming these 119 AAT cases were highly complex, we were able to identify 35 cases where the participant's age, primary disability and residential State or Territory matched with IERP cases completed as of 31 January 2023. As shown in Appendix E, these cases had a similar number of issues and somewhat similar categories of supports in dispute to Phase 1 IERP cases. Seven of these 35 AAT cases progressed to hearing.³⁰

²⁸ Given that the IERP cases were invited from a sample of complex AAT cases, any dispute resolution costs that were incurred before proceeding to hearing have been removed. This is done because it is not possible to separate the AAT and IERP costs that would have contributed to resolving the matter. Net costs are therefore calculated on an exclusive basis by identifying costs that can only be incurred by taking part in either the IERP or AAT.

²⁹ The cost of an AAT hearing comprises attendance at the hearing by both a medical expert and counsel, law firms supporting the hearing, internal NDIA lawyer support pre and at hearing and case manager support pre and at hearing.

³⁰ The remaining 28 similar AAT cases incurred an average external cost of \$20,717 per case. These costs are inclusive of all dispute resolution costs. These AAT resolution costs cannot be separated from IERP resolution costs given that cases invited to take part in the IERP came from a pool of complex AAT cases already embedded in the AAT process.

Given the Agency referred cases to the IERP based on their high complexity, we assumed that seven of the 23 IERP cases resolved as of 31 January 2023 (30%) would likely have progressed to an AAT hearing in the absence of the IERP³¹.

Therefore, the average avoided costs of AAT hearings attributable to the IERP are \$8,969 per case (i.e., 30% x \$29,899).

5.2.2 Estimating avoided pre-AAT resolution costs

Due to their highly variable nature, it was not possible to estimate the costs of other potential pre-AAT resolution costs (final case conference, directions hearing etc.) that could be incurred after nine-months for long-standing cases.

Therefore, we utilised the monthly costs of the 35 similar cases to provide an estimate. On average, the 28 of 35 cases that did not progress to a hearing took 13 months to resolve at an average monthly cost to the NDIA of \$1,533.

On average, cases referred to the IERP as of 31 January 2023 had been in progress for 11 months before referral. **Therefore, we assumed a two-month saving on average for all IERP cases, which equates to \$3,066 in avoided pre-AAT resolution costs for all IERP cases (i.e., \$1,533 x 2-months).**

5.2.3 Estimating the net cost of the IERP

The net cost of the IERP is the average cost of an independent expert review (\$10,757) less the costs of avoided AAT hearings (\$8,969) and other pre-AAT resolution costs (\$3,066). **This equates to a net operational saving attributable to the IERP of \$1,278 per case on average (i.e., \$10,757 - \$8,969 - \$3,066).**

5.3 Costs to the NDIS

This section reports the financial implications of IERP recommendations on the costs to the NDIS. It compares the participant plan value at the time of initial application to

³¹ Some of the 23 IERP cases matched to more than one of the 35 AAT cases. For all these instances, at least one match progressed to hearing. Therefore, we assumed that the comparison IERP case would have progressed to hearing in the absence of the IERP.

the AAT to the plan value implemented after the participant exited either the AAT or the IERP.

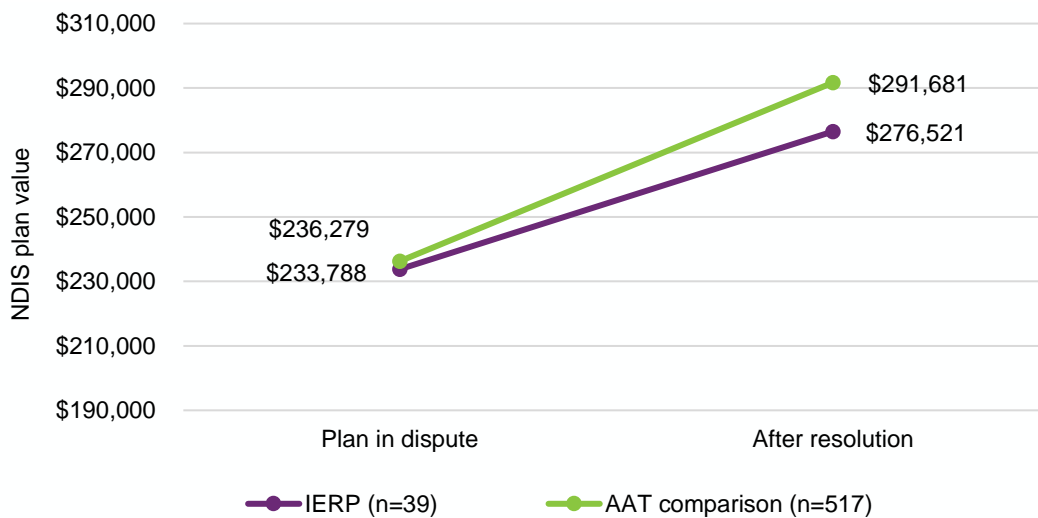
Figure 9 shows the average NDIS plan values prior to and following dispute resolution via the IERP and AAT that closed between 1 July 2022 and 31st January 2023. The estimates rely on 39 completed IERP cases with available plan budget data and 517 resolved support-related AAT cases that have a similar value plan in dispute to the IERP cases³². The AAT cases also took longer than nine months to resolve.

This comparison was used as the value of the resolution depends on the nature of supports in dispute. In contrast, the value of operational costs is more dependent on whether the resolution occurred by consent or at hearing. As described in section 5.1, the unique nature of individual cases meant it was not possible to identify support-related AAT cases with similar supports in dispute to the IERP cases.

The analysis shows that IERP participants saw their average plan value increase by \$42,733 (+18%) following resolution. This compares to \$55,420 (+23%) for AAT cases where the plan in dispute was of similar value.

³² Within 1.2 standard deviations of the average IERP case.

Figure 9: Participant plan values after participation in the IERP and AAT



Source: Research and Evaluation Branch analysis of NDIS plan data for IER and AAT participants.

Given the very small proportion of cases that go to either the AAT or IERP and that it was not possible to closely match cases based on the specific supports in dispute, it is not possible to confidently conclude that the IERP has impacted the financial sustainability of the Scheme, despite the resolutions being \$12,687 higher on average than the comparison cases. As such, it is reasonable to conclude that the IERP has been largely cost neutral to the Scheme. This aligns with the fact that the NDIA's TAB agreed with an average of 89% of the recommendations from independent experts they reviewed as part of this evaluation.

6. Learnings for broader administrative decision-making and appeals processes

This chapter presents participant and stakeholder feedback and statistical modelling on broader NDIS plan-related decision making and appeals processes.

Key findings

- The planning and internal review processes appear to be making decisions that are acceptable to most participants. Over the last two years, approximately 6% of NDIS-plans were the subject of an internal review and 2% the subject of external review. Less than 20% of support-related internal reviews escalate to an external review.
- Participants in the IERP reported high levels of dissatisfaction with their planning and internal reviews. They specifically reported high dissatisfaction with how the NDIA communicates the reasons for decisions, their opportunity to discuss their matter and explain their position, the objectivity of decision making and their planning or internal review officer's understanding of the issues.
- The NDIA instigated a range of internal review initiatives to address similar concerns from participants expressed in other forums. This includes clarifying phone calls, more consideration of new evidence and circumstances and enhanced decision letters.
- Since implementing these initiatives, the percentage of support-related internal reviews that escalate to the AAT has decreased, including where the internal review confirmed the original planning decision.
- Participants in the IERP and other external stakeholders reported the AAT process as overly legalistic, intimidating and lacking in empathy for participants. They also reported the evidence requirements as excessive, considering the evidence used during NDIS plan development and internal reviews.

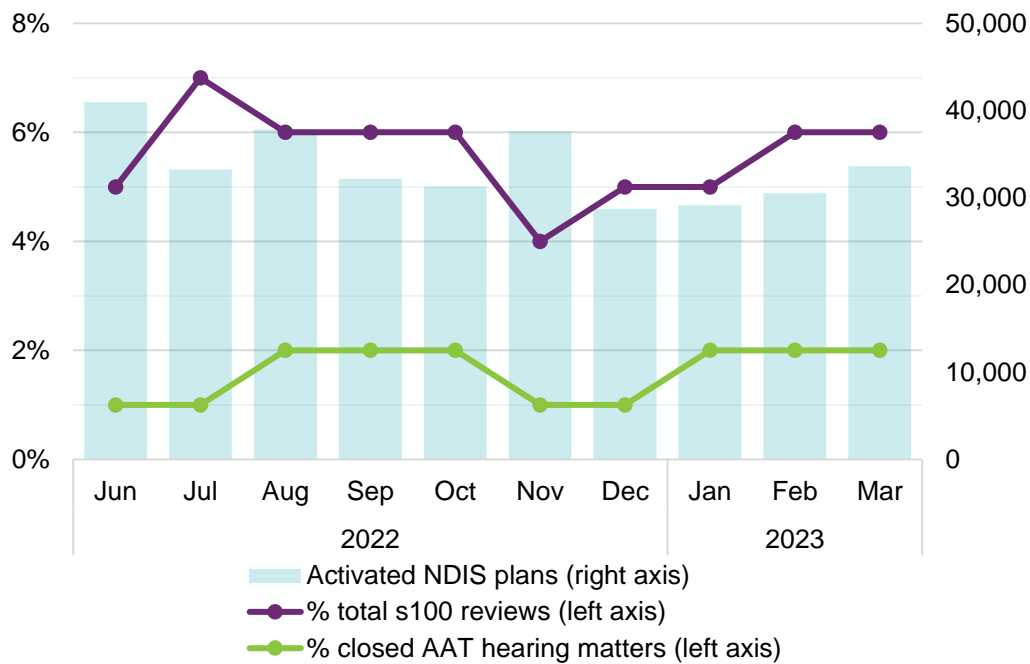
- Modelling shows internal reviews related to SDA, SIL, non-SDA capital, children and participants with complex support needs are significantly more likely to escalate to the AAT process. This reflects the complexity of these matters but also suggests where additional effort to explain decisions might reduce the risk of escalation.
- Representatives from various NDIA Branches expressed frustration that the outcomes from AAT (and IERP) cases do not feed back into NDIS operational guidelines given the subjectivity of the reasonable and necessary criteria in the NDIS Act.

6.1 The NDIS planning process

The NDIS planning process, including the collation of information, the planning meeting and development and approval of the final plan are key to the overall participant NDIS experience. The quality of this experience potentially affects the likelihood that a participant will dispute an aspect of their plan and ask for an internal review. This section outlines the planning experience of participants who subsequently participated in the IERP.

When considering the participant feedback in this section, it is important to note that only around 6% of more than 30,000 new NDIS plans each month become the subject of an internal review (Figure 10). This indicates that most participants accept their planner's and planning delegate's decisions, with only approximately 1,800 plan-related internal reviews per month. The figure below shows only around 2% of NDIS plans become the subject of an AAT hearing. Together, this indicates the current planning and internal review processes are reaching acceptable decisions for most participants.

Figure 10³³: NDIS plans versus % of plans subject to internal (s100) and external review

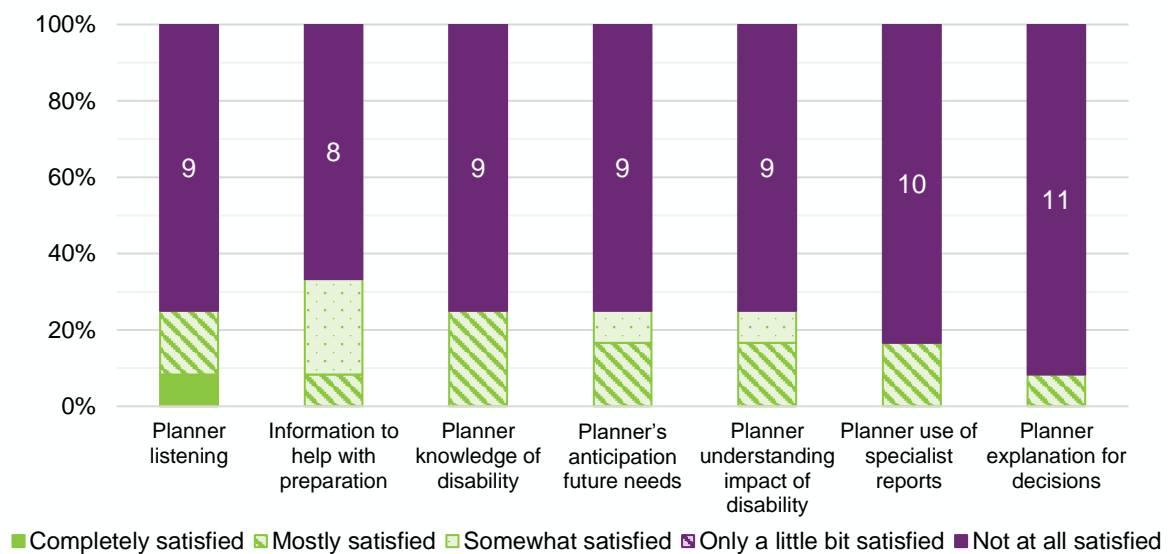


Source: Research and Evaluation Branch analysis of NDIS plan and s100 data.

The fact that IERP participants escalated one or more planning and internal reviews suggests they were unsatisfied with the NDIS planning process. Indeed, 75% of IERP participants who responded to the online evaluation survey reported being ‘Not at all satisfied’ with their last NDIS plan meeting. Figure 11 shows a high level of dissatisfaction across most aspects of their last planning meeting, especially for the planners’ explanation for the decisions they made (11 out of 12) and the extent the planner had considered the specialist reports the respondent provided (10 out of 12).

³³ Activated NDIS plans are new baseline plans/budgets accepted by newly accessed participants.

Figure 11: Participant satisfaction with aspects of their last NDIS planning meeting



Source: REB online IER Program participant survey (n=13).

During interviews and through the online survey, several independent experts surmised that participants may not have escalated issues if the Agency had provided a comprehensive explanation for not approving the supports, the type of evidence required to justify the support and, in some cases, how the participant could use their plan flexibly to purchase the desired support. Most independent experts commented that based on case files, explanations about the disputed planning decisions lacked sufficient detail and demonstrated the planner’s lack of understanding of the participant’s situation and why they requested the support.

“There exists a need to stem the flow at the planning stage. Feedback, in writing, where a support hasn’t been funded. Detailed information on the evidence required to resolve the matter.” Independent expert, survey.

Several independent experts also commented the participants whose cases they reviewed were upset that no one gave them the opportunity to provide further evidence, correct inaccuracies and explain their position. Some also suggested that giving participants a draft NDIS plan would encourage early dialogue to address any errors, refine goals and discuss support omissions with the planner.

“I know the Tune Review³⁴ recommended draft plans as a way of introducing a step where participants could raise with the planner an issue with the way their plan was built. What has been omitted in the eyes of the participant? That would be a great opportunity for some contestation much earlier on and some discussion about what additional information is needed or why something might not be reasonable and necessary.” **Independent expert, interview.**

Draft plans would also enable the planner to explain how the participant can use their supports flexibly, manage their expectations and educate them about the criteria for a support being reasonable and necessary. Supporting this, NDIS internal review data indicates that a clarifying phone call with the participant was enough to resolve 13% of plan-related disputes³⁵.

“This is a specific example: The applicant asks for 10 hours a week of domestic support, but the plan includes six hours a week of domestic support and four hours a week for assistance with activities of daily living. The participant then appeals, and the NDIA says no, six hours a week of domestic support is reasonable and necessary. So they go to the AAT when the planner or NDIA could have told the participant that they received 10 hours of assistance they can use flexibly. That’s open reasoning, communication on what the plan is for and what’s been allocated. I know that’s a lot of work at the front end, but I think it’ll save a lot of back-end disputes.” **Independent expert, interview.**

While educating participants about how they can use their plans flexibly within existing legislation will not resolve disputes for large budget items, such as SDA and high-cost assistive technology, it could reduce the risk of participants escalating some planning decisions.

³⁴Tune, D. (2019) Review of the National Disability Insurance Scheme Act 2013: Removing red tape and implementing the NDIS participant service guarantee. Refer Section 3.62 - 3.65.

³⁵ NDIS Internal Reviews and Complaints Quarterly Analytics and Insights Q2 FY22/23 (Oct – Dec 2022).

6.2 Internal (s100 reviews)

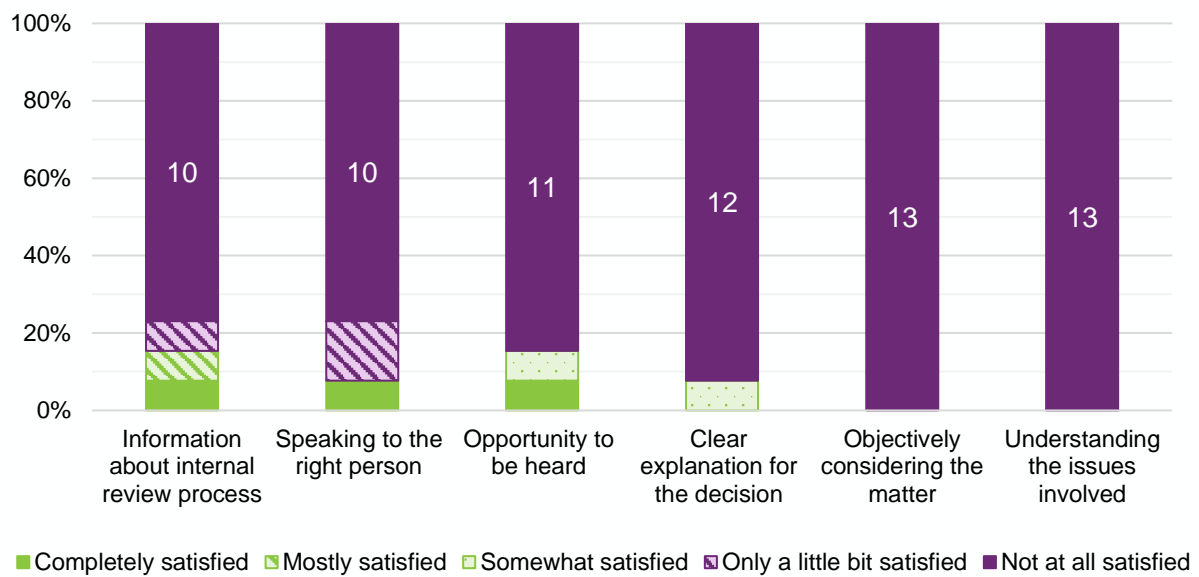
6.2.1 Participant satisfaction with the NDIA internal review process

Figure 10 in the previous section shows that only around 6% of NDIS plans are the subject of internal reviews and only 2% are then the subject of an external review. Furthermore, of the decisions that became the subject of an internal review, around 20% of support-related decisions escalate to an external review (see Figure 13 below). This suggests that most plan-related internal review decisions are acceptable to the participant.

Similar to sentiment around their planning meeting, the fact that IERP participants escalated their dispute to an external review indicates they were unsatisfied with the internal review of their matter(s) under dispute. Indeed, survey results indicate that 92% (12 of 13) of IERP participants were “Not at all satisfied” with the NDIA internal review process. The remaining respondent was “Only a little bit satisfied”. This is not surprising given they escalated their dispute to the AAT process.

Figure 12 shows universal dissatisfaction with the extent respondents felt the internal reviewer understood the issues involved and objectively considered their matter. There were also high levels of dissatisfaction with their opportunity to be heard, their opportunity to speak to the right person about their matter, and information about how the Agency would undertake their internal review.

Figure 12: Participant satisfaction with aspects of their internal review



Source: REB online IER Program participant survey (n=13).

Several participants reflected in survey responses the need for a higher level of engagement at each stage of the internal review process, including a thorough discussion and provision of a comprehensive explanation of the review decision.

“Actually talk to us for more than a couple of minutes on the phone. Actually read the comprehensive, detailed submissions I lodged. Actually read the expert reports and follow their expert advice. Actually provide reasons for decisions - none were given. It was also clear from the decision that they didn't understand my case at all and hadn't read most of the documents.”

Participant, survey.

Participant representatives, independent experts and DRCO representatives echoed this sentiment during interviews. They raised a lack of meaningful engagement with participants during internal reviews and insufficient reasoning explaining why decisions did not meet specific reasonable and necessary criteria. They stressed the importance of having a review process that considers all evidence, gives the participant an opportunity to express a view, provides clear reasoning and explanations for decisions, and is more personalised. If a participant does not feel this has been the case, they will be more likely to ask for an external review.

“The quality of first instance and review decisions that I have seen is poor to very poor. Most concerningly, they appear to ignore the evidence before the Agency and for that reason appear partial, arbitrary, and irrational and unreasonable in the extreme. The impression is that decision makers are pursuing an agenda of cost-cutting that defies the evidence and the legislative purpose and intent... it is not clear whether all decisions of this nature have been appealed or just those where there is a support person who is able to pursue the matter on behalf of the Participant.” **Independent Expert, interview.**

Participant representatives and DRCO representatives echoed this sentiment during interviews. They unanimously raised a lack of meaningful engagement with participants during internal reviews and insufficient detail explaining why decisions do not meet specific reasonable and necessary criteria. DRCO representatives commented that if a participant receives a generic letter that doesn't explain the reason in detail, there is a risk that they will believe they have not been heard and that their matter has been misunderstood. If this is the case, they will be more likely to ask for an external review.

“At the internal review stage... where there are decisions that aren't in the participants favour but the process was rigorous enough that it satisfied the participant that they had been heard, they'd been given a fair shot and for whatever good reason their support hadn't been funded...I would say, okay, that's fair enough. But if someone doesn't feel heard and are given a pro forma internal review decision, they will more often than not go to the AAT.” **DRCO representative, interview.**

6.2.2 Internal Review Team initiatives

The above criticism of the internal review process may reflect the time at which Phase 1 and 2 IERP participants had an internal review. Participants who took part in the IERP up to 31 March 2023 had an internal NDIA review of their matter between approximately October 2021 to December 2021. This coincided with an internal review backlog clearance project (commenced in June 2021) to address an extremely high backlog of internal reviews.

During the backlog clearance period, the operational guidelines the NDIA's Internal Review Team followed did not consider any change in participant circumstances. The participant situation at the time of the initial decision was the only information considered for these cases. The high volume of cases to clear also meant the Internal Review Team had limited capacity to contact participants during reviews. It is possible that these limitations resulted in participants concluding the internal review officer did not properly understand their matter or consider all their evidence.

The Internal Review Team cleared the backlog of internal reviews by December 2021, after which they have implemented several initiatives to enhance the internal review process. The sections below describe the initiatives relevant to the criticisms given by the IERP participants.

Clarification phone calls

From September 2022, the Standard Operating Procedure (SOP) for internal reviews has required clarification phone calls for matters where plans are reduced by more than 20% (since November 2022, all internal reviews require a clarifying phone call). During these calls, the internal review officer can clarify the existing evidence and invite the participant to provide additional evidence.

Additional consideration to changes in participant circumstances

Effective from 1 July 2022, the NDIA's Operational Guideline 'Reviewing our decisions' requires internal review officers to consider the participant's circumstances at the time of undertaking the internal review instead of at the time of the original decision. As a result, the participant's current circumstances and associated evidence are considered relevant to the internal review process.

Enhanced communication around internal review decisions

The Agency has enhanced the letters internal review officers send to participants outlining their decision and reasons. These letters are templated to ensure consistency, given there are almost 4,000 internal reviews per month³⁶. The

³⁶ Data provided by the Internal Reviews and Complaints Branch.

templates require internal officers to state the legislative basis for their decision supported by up to four explanatory sentences totalling approximately 100 words per relevant legislative criteria. This length aims to balance accessible communication with giving the participant enough detail to understand the decision.

The NDIA's Internal Reviews and Complaints Branch provided the Evaluation Team with a sample of decision letters where the internal review confirmed the planning delegate's original decision. The letters contain a reasonable level of detail about why funding a particular support does not meet relevant legislative criteria for reasonable and necessary support based on the evidence the participant provided. The reasons given in the sample letters were well set out and written in plain English. This reflects a recent focus by the Internal Review Team on quality checking letters to ensure clear justifications.

The sample of letters reviewed for the evaluation do not give guidance about the evidence the participant would need to provide to justify the NDIS funding the support. Further, they do not indicate who in the Agency to contact to obtain this information. Apart from the NDIS National Contact Centre, the letters direct participants to their Local Area Coordinator or Early Childhood Partner, who may have given inadequate guidance in the first place.

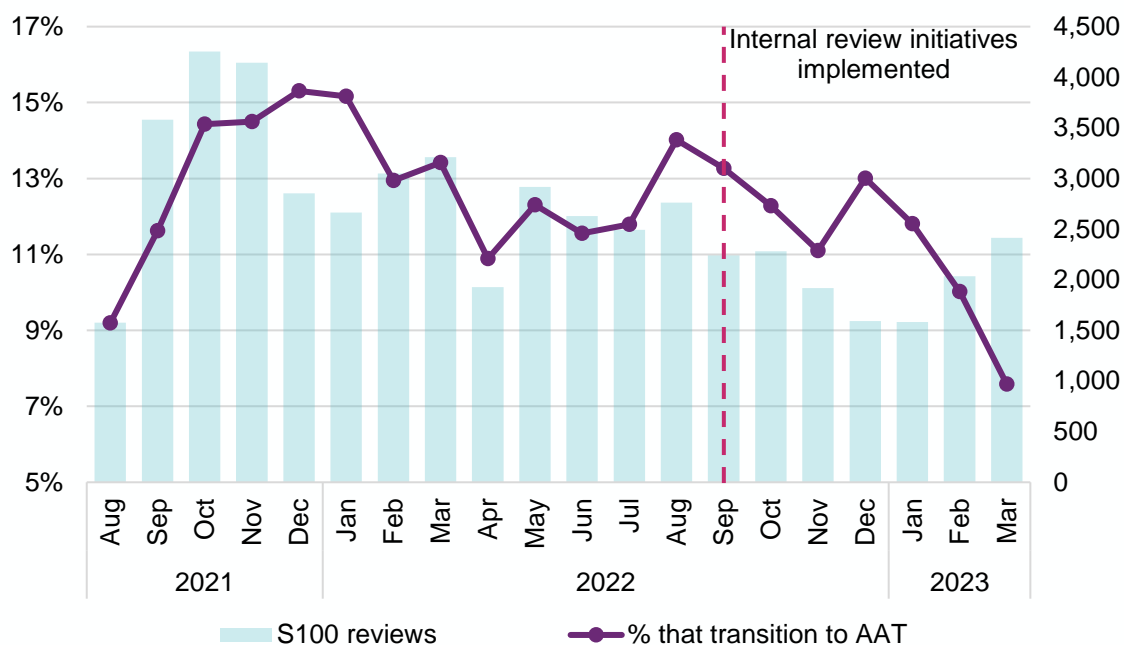
The upfront clarifying phone call could identify additional evidence requirements. However, additional guidance in the decision letters and/or giving participants the option to request an explanation could help them better understand and accept decisions. Currently, the Participant Service Guarantee (PSG) only provides participants the option of requesting a follow-up explanation for access, not planning decisions.

Impact of Internal Review Team initiatives

The above initiatives align with the criticism the evaluation has identified regarding the internal review process. Figure 13 shows that since the Agency fully implemented the internal review enhancement initiatives in quarter 4 of 2022, the percentage of NDIS plan-related internal reviews that escalate to the AAT process has decreased. This not only highlights the early success of these initiatives but also

the importance giving participants a chance to discuss their matter and clearly explaining decisions.

Figure 13: Percentage of NDIS plan-related internal reviews escalating to external review



Source: Research and Evaluation Branch analysis of internal (s100) data.

6.3 External reviews

6.3.1 Overall experience with external reviews

The online survey of IERP participants asked them to compare their experience with the AAT process. In free text responses, respondents repeatedly noted the overly aggressive approach by external lawyers representing the NDIA. They described the approach as intimidating and bullying, with little empathy and understanding for their position.

“If it wasn't for this IER process, I hate to think what we would have done, [External lawyers] were the worst to deal with... They lacked any humanity and drove me and my wife both into depression and anxiety. Remove [External lawyers] from the process. They brought an attack dog law firm approach to the parents of a disabled child, it was disgusting and a huge

waste of taxpayers' dollars, two years of appeal before the IER was finally able to get a reasonable outcome for our son.” Participant, Survey.

Two-thirds (66%) of respondents indicated the IERP gave them more of an opportunity to be heard and a better experience compared to the AAT process. For those participants who didn't report a better experience with the IERP, they indicated that the independent expert recommended against their request. This suggests that while the IERP is likely to be a better experience than the AAT for participants, satisfaction is somewhat coupled to the outcome.

6.3.2 AAT evidence requirements

Participant representatives and DRCO representatives reported the level of evidence required for the AAT is excessive. There is a substantial difference between the amount of evidence required for planning and NDIA internal reviews than for the AAT. During interviews, several disability advocates and participant representatives commented that it is incredibly onerous for participants to gather the evidence required for the AAT process.

“There's a huge mismatch in the standard of evidence required at the initial planning stage or the internal review stage compared to the tribunal stage. I'm not sure if that has to happen as you go up the hierarchy of dispute resolution, but it does strike me as odd that to get to the tribunal, you basically have to put together an entire legal case to comprehensively demonstrate to a team of lawyers that you satisfy these criteria before you'll get a support. Whereas the internal review process, I mean, things will just get funded or not funded, just on the basis of yeah, it was one paragraph here, it says support should be funded.” DRCO, interview.

Some also commented that the excessive evidentiary requirements do not appear to be serving the purpose of clarifying the situation and simplifying the decision-making process. Rather, the volume of evidence overcomplicates and extends matters to the detriment of participants.

When you read AAT decisions about the disability support pension, for instance, they tend not to be 70-page long decisions about the absolute

minutiae of a report. And that's just because the evidence isn't there. You work off the reports that you have. There is no long extended hearing where everyone's cross-examined. Whereas for NDIS-related AAT hearings, we've got clients that have five-day hearings and there's a barrister cross-examining for two days. The learning for the Agency is they should require a lower standard of evidence at the tribunal to settle matters. I think sometimes the NDIA should not be thinking in terms of what it would take to convince a tribunal member who's a QC (sic) but what would convince the average reasonable planner." **Representative, interview.**

6.3.3 Factors associated with requests for an external review

The above findings support the common perception that the AAT process is a difficult experience for participants. It is inevitable that there will continue to be disputes related to NDIA decisions that escalate to the AAT process given the somewhat subjective nature of the NDIS legislation. While there are possible enhancements to the AAT process, minimising the number of participant's requesting an external review would produce the greatest impact.

Based on Gradient Boosting Machine (GBM) regression modelling of internal (s100) review data, the most influential factors predicting escalation to the AAT are:

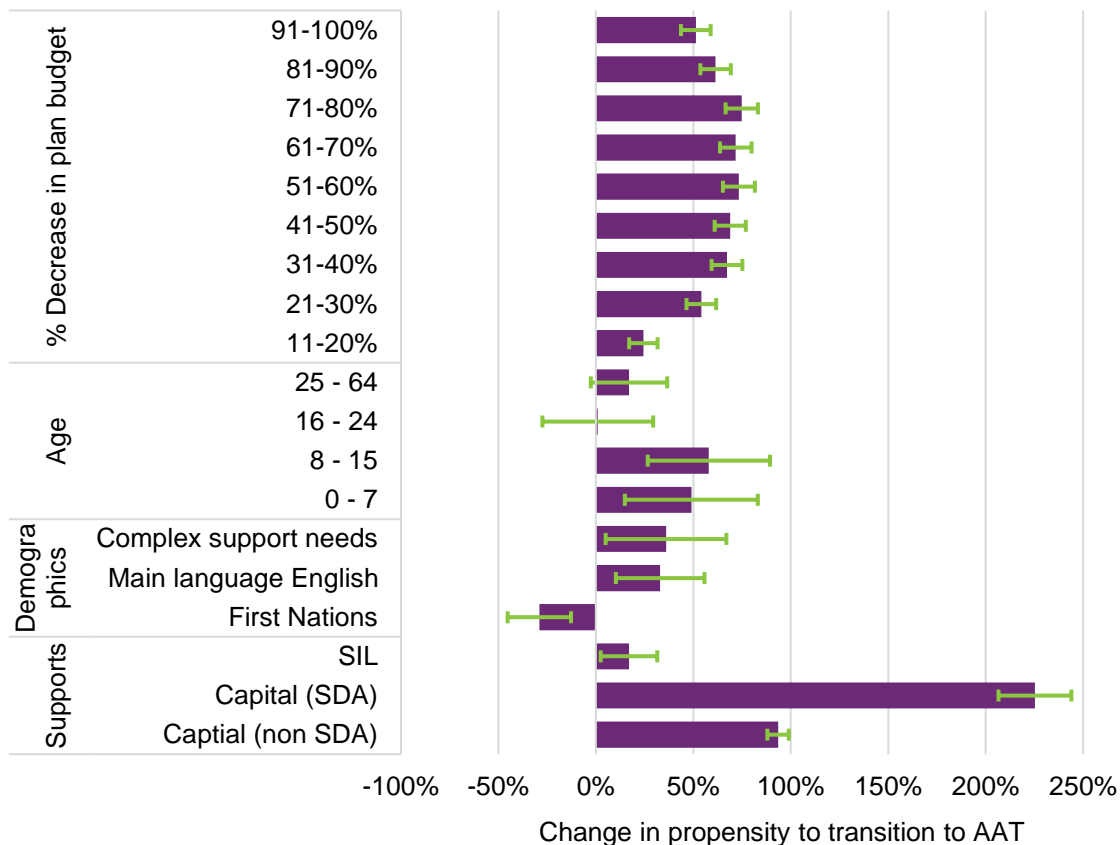
- The percentage change in the value of the participant's NDIS plan (accounts for 38% of variance for whether a participant requests an external review)
- The participants' age (accounts for 10% of variance)
- Whether the dispute involved SDA (accounts for 5% of variance)
- Whether the dispute involved SIL supports (accounts for 5% of variance).

Subsequent logistic regression provided further information on the influence of predicting factors (Figure 14). In summary, the following factors appear to significantly increase the likelihood that a participant will request an external review:

- Disputes related to SDA (+225%)
- Disputes related to non-SDA capital supports (+94%)
- The participant being aged 15 years or younger (approximately +50% compared to older participants)

- At least a 10% decrease in plan budget prior to dispute (+24-54% more likely. Note the effect of decreases above 30% and are not significantly different from decreases between 21% and 30%)
- The participant having complex support needs (+36%)
- Disputes related to SIL funding (+17%).

Figure 14: Factors predicting requests for an external review



Source: Research and Evaluation Branch analysis of s100 matter transitions to AAT.

The previous section regarding participant experiences with internal reviews highlighted that some participants would like a clearer explanation from the NDIA about the decision not to fund a requested support. Given the volume of internal reviews, it may not be feasible to offer all participants, where an internal review confirmed the original planning decision, a follow up discussion to explain the reason. However, offering this to participants with SDA, other capital or SIL disputes, with complex supports needs, where there has been at least a 20% decrease in their plan budget and to the parents/carer of younger participants, might help them better understand and accept the internal review decision.

The modelling also shows that participants whose main language at home is English are more likely to request an external review, while First Nations participants are less likely. This supports comments from some DRCO representatives and independent experts during interviews that not all participants are able to dispute a decision. The evaluation did not explore the reasons for this finding. However, the results support proposed actions in the NDIA's new First Nations and Culturally and Linguistically Diverse (CALD) strategies to increase support for First Nations and non-English speaking people to better engage with the NDIS and its processes.

6.4 Feeding resolutions into future decision-making

6.4.1 Informing future participant plans

A complex legal obligation, known as the Harman obligation³⁷, applies in the AAT³⁸. The obligation effectively means that where the Agency receives documents or information from a person who was compelled by the Tribunal to provide them, the Agency can only use those documents or information for the purpose for which they were provided. This means that information such as medical reports, are frequently unable to be used for ongoing review by the Agency in planning for supports for a participant.

After an AAT matter is finalised, the Agency may not be able to use the documents provided in the AAT, and a participant potentially faces the same issue again at their next plan review:

³⁷ The Harman obligation is also sometimes referred to as the 'implied undertaking'. It is a common law doctrine established in *Harman v Secretary of State for Home Department* [1983] 1 AC 280 which has the effect that any person, who has obtained a document or information because another person was compelled by a Court or Tribunal to provide it, cannot use that information for another purpose unless, for example, (i) it was received into evidence or (ii) the Court or Tribunal gives permission for that use or (iii) it is remitted by the Tribunal back to the Agency for review under the *Administrative Appeals Tribunal Act 1975* (Cth). The Tribunal will only release a party from the Harman obligation if there are special circumstances. A breach of the Harman obligation may constitute a criminal offence under section 63 of the *Administrative Appeals Tribunal Act 1975* (Cth) on the basis it could be the equivalent of a contempt of Court. The Harman obligation continues even after an AAT application has been finalised.

³⁸ See [Part 5](#) of the Administrative Appeals Tribunal: *General Practice Direction* given by the President under [section 18B](#) of the *Administrative Appeals Tribunal Act 1975* (Cth) on 28 February 2019

“After my plan automatically renewed, I lost half of my funding but with absolutely no justification. To add insult to injury, I had fought the NDIA through the AAT process and after almost two years fighting the NDIA and their lawyers, I was finally able to prove that I needed all the funding supports I asked for in 2019. The plan was set for 2 years and then renewed automatically in 2021, which led to me fighting once again that I needed the supports I applied for in 2019. What a waste of money, time, resources and how much stress this put me through, it took a great toll on my health... What the NDIA wasted on lawyers would have more than paid for reinstating all my supports. Instead of fighting clients with lawyers, how about paying the clients what they've already proved was reasonable and necessary?”

Participant, survey.

6.4.2 Feeding into operational guidelines

During interviews, representatives from various NDIA Branches and participant representatives recommended that the Agency uses AAT (and internal review) outcomes to update the Agency’s OGs. Given the subjectivity of the reasonable and necessary criteria in the NDIS Act, OGs intend to help planners make consistent decisions based on the NDIS legislation. The sentiment was that if the AAT interprets the legislation a certain way, or if the Agency approves a support request by consent, then this should be reflected in future decisions.

“The other thing is just making sure that guidance is as up to date as possible for decision makers about what the law is on certain things. So, we do a lot of work through the tribunal, where the tribunal says how things should be interpreted and what you can relate to specific supports and whether they would be funded, but also the way that decision makers should think about the decisions that they're making. Those things don't always then get reflected in the guidance, like the operational guidelines and internal guidance that reviewers are using to make decisions. An example of that would be tribunals have made quite a few decisions about transport and how you make decisions about the level of transport that somebody gets. But that information isn't reflected in the way the Agency makes their

*internal review decisions. So people are going to the tribunal to have the same issues heard again and again. **Representative, interview.***

7. Conclusions

7.1 Participant acceptance, satisfaction and experience of the IERP

Based on the responses from this evaluation, it is clear most participants who took part in the IERP had a positive experience. They noted it was a less legalistic and adversarial approach and reflects a trauma informed approach to dispute resolution that was effective in harm minimisation. They felt independent experts heard their position and considered their evidence and that they received a reasonable decision with a clear explanation in a timely fashion. The collaborative and empathetic environment stood in contrast to the approach participants reported experiencing during the AAT process. The fact that participants have accepted 86% of the independent expert recommendations, despite only 36% of their requests being fully upheld, highlights their acceptance of this alternative approach.

Participant representatives and DRCO advocates are also supportive of the IERP, noting the process is far less legalistic and adversarial than the AAT. They welcomed the opportunity for the participant's voice to be heard and the comprehensive review of submitted evidence. Independent experts echoed this, reporting that speaking to the participant has been particularly effective, not only to their understanding of the matter in dispute, but also to build the participant's confidence and trust in the process.

7.2 The effectiveness and efficiency of the IERP

The IERP has been an efficient way to resolve long-standing AAT cases. Despite the high level of case complexity, the median time for a participant to receive a recommendation from an independent expert in Phase 2 has been 23 days from accepting the invitation. This compares to a median of 257 days for AAT matters, although the IERP benefited from the AAT preparation to ensure the completeness and stability of the participant's evidence. The main efficiencies, therefore, have come from avoiding further case conferences and potential AAT hearings.

It is clear matters must meet several criteria to be appropriate for the IERP. Matters were not appropriate if evidence required forensic testing by cross-examination of witnesses in the AAT, such as when witnesses have a commercial conflict of interest, or there is a significant disparity in evidence, for example, different views from therapeutic specialists. This was recognised by both the independent experts and the HOC.

Although the review process itself has been efficient, the IERP has had limited impact in helping clear the backlog of AAT cases, processing considerably fewer matters than first estimated. The main reasons are the success of other initiatives particularly the early assessment of new matters and accelerated caseload review of aged matters which cleared much of the AAT backlog. This positioned the IERP for more complex matters which are fewer in number, but more time consuming to prepare and review. In addition, fewer than expected participants accepted the invitation to participate due to the late stage of their AAT process. It is important to note that as the IERP has progressed and referral criteria around the length of time the matter was required to be in the AAT process was relaxed, the number and rate of referrals increased.

Notwithstanding the limited impact the IERP had on clearing the backlog of AAT cases, the evaluation findings indicate that seeking recommendations from independent experts on complex matters can be an effective part of the Agency's dispute resolution toolkit. An independent review of the recommendations by the Agency's TAB agreed that most of the recommendations from independent experts align with the NDIS legislation and OGs. This indicates independent experts with the skills and expertise of the first 17 appointed are suitably qualified to make sound recommendations within the NDIS legislation. However, the availability of a larger pool of independent reviewers with comparable skills and expertise is likely to be a limiting factor for scaling up the program while maintaining the quality of recommendations.

There has been a difference in the propensity of the independent experts with a legal or non-legal background to recommend accepting a participant's request. Independent experts with a non-legal background have tended to recommend all or

none of the requested supports. Those from a legal background have been more likely to partially agree with the participant's request. Although TAB agreed with most of the recommendations irrespective of the independent expert's background, this suggests that independent experts from different backgrounds are reviewing the case evidence against the NDIS legislation differently. This warrants monitoring if an independent review mechanism continues, especially if scaled up.

7.3 The sustainability impacts of the IERP

The evaluation findings suggest the IERP has been able to resolve long-standing and complex AAT matters at an average net saving of \$1,278 per case. At the rate of cases in the last 4 months of the IERP³⁹, the IERP could process 204 cases per year. This would equate to a total net operational saving of \$260,712. This is an estimate only given the high variability of cases and the fact that an accurate counterfactual is not available but suggests the IERP has been largely operationally cost neutral.

In line with the NDIA TAB's high level of agreement with the recommendations from independent experts, there is no conclusive evidence that the IERP has impacted the financial sustainability of the NDIS. Although the average value of resolutions has been slightly lower than other long-standing support-related AAT disputes with similar underlying plan values, the difference reflects variation in the nature of supports in dispute. The uniqueness of individual cases meant it was not possible to compare cases based on the nature of the supports in dispute.

In summary, there is no evidence the IERP has affected the financial sustainability of the Scheme and operationally has been largely cost neutral at its recent case rate. Together with the positive experience reported by participants and their legal representatives, this suggests that an ADR mechanism with some of the IERP's features could be a sustainable part of the NDIS dispute resolution toolkit.

³⁹ Between April and July 2023, independent experts reviewed 68 cases

7.4 Enhancing administrative decision-making and dispute resolution processes

Feedback from IERP participants and their high acceptance of the recommendations from independent experts provide insights for making broader Agency administrative decision-making and appeals processes more participant centric.

7.4.1 Planning and internal reviews

Trends show that over the last two years, approximately 6% of NDIS plans become the subject of an internal review and less than 20% of these escalated to an external review (approximately 2% of active plans). This suggests the current processes and decisions are acceptable to many participants, although it is acknowledged that reasons for not disputing a decision are varied and may also be attributable to factors such as time, stress, level of support and understanding of the processes.

Notwithstanding the apparently high acceptance of planning and internal review decisions, IERP participants and other external stakeholders commented on a lack of clarity of planning and internal review decisions. They questioned whether planners and review officers adequately consider all the evidence participants provide and whether participants have adequate opportunity to discuss their request and needs. It is important to note that most IERP participants who gave feedback had their internal review (and planning meeting) related to the supports in dispute in late 2021. This was during a period where the Agency focused on clearing a backlog of internal reviews.

Trends show that over the last two years, less than 20% of participants escalated a plan-related internal review decision that was not in their favour. This indicates that most participants accept the explanation given. The findings in this report related to the reasons for disputes are high-level and come from a small and select group of participants. Many of these had their internal review (and planning meeting) related to the supports in dispute in 2021, during a period where the Agency focused on clearing a backlog of internal reviews.

Since clearing the backlog, the Agency made several enhancements to internal reviews with most implemented in the second half of 2022. These include introducing upfront clarifying phone calls with participants to consider their current situation and the strength of their evidence and improving the quality and consistency of the explanations in decision letters. These all align with the feedback captured from participants and their representatives in this evaluation. Importantly, since the enhancements were fully implemented, there has been a decreasing trend in the percentage of plan-related disputes escalating to external review. This includes disputes where the internal review confirmed the original decision.

Based on the evaluation findings, there appears to be further opportunity to build on the internal review enhancement initiatives. Most obvious is to offer participants the chance to speak with the internal review officer about their decision. Although this is part of the Participant Service Guarantee, current internal review decision letters do not flag this option. It may not be feasible to encourage verbal feedback in all cases given the large volume of internal reviews. However, it may be especially valuable around matters most likely to escalate to external review, such as those related to SDA and other major capital, SIL, children and participants with complex support needs.

Other considerations could include offering participants the opportunity to review and discuss a draft plan with their planner. The NDIS Review is considering draft plans, with the Tune Review into the NDIS first making this recommendation. At a broader level, further increasing NDIS plan flexibility could reduce the number of potentially disputable decisions in addition to giving participants more choice and control.

7.4.2 External reviews

IERP participants, representatives and DRCO representatives criticised the current AAT process as drawn out, overly legalistic and having excessive evidence requirements. Participants and representatives also noted the overly aggressive approach by external lawyers representing the NDIA. They described the approach as intimidating and bullying, with little empathy and understanding for their position.

Based on participant feedback, the IERP appears to have addressed these concerns by resolving most matters quickly and giving participants the opportunity to discuss their matter with an independent expert in a non-legal environment. Participants highly regarded the timeliness of the process and the opportunity to discuss their matter. This presumably explains why most participants reported that their independent expert understood their matter and clearly explained their recommendation. This highlights the value participants place on being able to discuss their matter in an empathetic environment.

Although, the IERP has only cleared a small percentage of the backlog of AAT cases, it has successfully provided a proof of concept for a participant-focussed ADR process that can resolve complex disputes. However, the need for considerable prior work to ensure complete and settled evidence such that matters are ready for review by an independent expert and the likely available pool of experts could limit the scalability of such a process.

Notwithstanding limits on scalability, it may be worth considering a voluntary independent dispute resolution process as part of the ongoing dispute resolution toolkit for complex matters. The principles underpinning the IERP would also enhance broader dispute resolution processes. The Agency has embedded these principles in the accelerated caseload review and early assessment review initiatives. Through the later, the Agency contacts participants when they lodge a matter with the AAT to better understand their circumstances and the disputed issues and talk about options to resolve the case quickly. If this fails to resolve the dispute, the Agency could offer participants an independent review of their case before progressing to a hearing in situations where the evidence is settled with no conflict that would require determination at the AAT.

While participants are engaged in the formal AAT process, the Agency uses multiple ADR mechanisms such as accelerated caseload and early assessment reviews. Since June 2022, accelerated caseload and early assessment reviews conducted within the Case Management Branch and supported by the Dispute Resolution and Litigation Branch have resolved 6,515 cases. This demonstrates the efficiency and

scalability of these initiatives but also the importance of giving participants the chance to discuss their matter in a non-legal environment.

Despite these attempts at resolution, some cases will need to continue in the formal AAT process. Based on the evaluation findings, minimising the use of external lawyers and ensuring their adherence to model litigant obligations would improve participants' experience of this more formal process. The findings also support giving participants the chance to discuss their matter with someone from the Agency with expertise in their disability early in the formal process.

For cases that require a formal administrative review process, findings indicate that minimising the use of external lawyers and ensuring their adherence to model litigant obligations would improve participants' experience. The findings also support giving participants the chance to discuss their matter with someone with expertise in their disability early in the process. Government should incorporate these considerations in the design of the new administrative review process that will replace the AAT.

Appendix A: Oversight Committee members

The Oversight Committee is chaired by Mr Graeme Innes AM and includes both independent and government agency members. A list of each committee member and their affiliation is provided below.

Independent members:

Alan Blackwood, Young People in Nursing Homes National Alliance

Jeff Smith, Disability Advocacy Network Australia

Miles Browne, Victoria Legal Aid

Sam De Lyall, Disability Advocacy NSW

Katharine Annear, Member with lived experience with disability and in the AAT process

Dariane McLean, Member with lived experience as a parent of a person with a disability and in the AAT process

Dr George Taleporos, Member of the Independent Advisory Council

Tricia Malowney, Independent Advocate

Government agency members:

Matthew Swainson (NDIA)

Andrew Ford (NDIA)

Peter Broadhead (DSS).

Appendix B: Stakeholders interviewed

The list below outlines the organisations represented by stakeholders interviewed as part of the evaluation. Thirteen independent experts were also interviewed. Their names are not listed to preserve their confidentiality.

NDIA internal stakeholders:

IERP team, Alternative Chief Counsel Division

Internal Review team, Internal Reviews/Complaints Branch

Higher Delegation Approvals & Mainstream Interface, Operations & Housing Support Branch

Technical Advisory Team Services, Technical Advisory Branch

Participant AAT Representatives:

Action for More Independence & Dignity in Accommodation (AMIDA)

Disability Advocacy

Gilbert & Tobin Lawyers

Kin Advocacy

Legal Aid NSW

Legal Aid Victoria

NSW Disability Advocacy

Public Interest Advocacy Centre (PIAC)

Rights Information and Advocacy Centre (RIAC)

Side by Side Advocacy

Villamanta Disability Rights Legal Service

Disability Representative and Carer Organisations:

Australian Autism Alliance

Autism Aspergers Advocacy Australia

Blind Citizens Australia

Brain Injury Australia

Carers Australia

Deaf Australia

National Ethnic Disability Alliance

Physical Disability Australia

Independent Expert Review Advisory Service (IERAS) National Legal Aid

Appendix C: Online survey respondents

Survey data summary

Table 7 below shows the distribution of disabilities recorded by participants who responded to the IERP survey. The most common disability recorded by participants was autism (17%) followed by intellectual disability, psychosocial disability, other neurological, and other sensory/speech (11%). Other demographic information include:

- None of the respondents identified as First Nations People.
- 53% (7/13) of respondents were male.
- 2 respondents identified as LGBTQI.
- 38% (5/13) of respondents were in Victoria.
- 23% (3/13) of respondents were in New South Wales.
- 15% (2/13) of respondents were in Queensland.
- 15% (2/13) of respondents were in Western Australia.
- 8% (1/15) of respondents were in South Australia.
- The average age of respondents was 29 with three respondents being under the age of 10 years.

The legal representative survey received six responses with most responses coming from participant legal advocates, followed by lawyers and one support person.

Table 7: Participant survey recorded distribution of NDIS disability.

Disability	Number of responses	% of sample
Autism	6	17%
Intellectual disability	4	11%
Psychosocial disability	4	11%
Other neurological	4	11%
Other sensory/speech	4	11%
Developmental delay	3	8%
Global developmental delay	3	8%
Other physical	2	6%
Acquired brain injury	1	3%
Cerebral palsy	1	3%
Down syndrome	1	3%
Hearing impairment or deaf	1	3%
Stroke	1	3%
Visual impairment	1	3%

Source: Research and Evaluation Branch analysis of IER participant survey data.

Notes: NDIS disability category permitted multiple responses from participants N =36, on average respondents nominated 2.8 disability types each.

Appendix D: Online surveys

Participants

Welcome to the Independent Expert Review (IER) Program survey

The Agency commenced the IER program in October 2022.

We are now seeking feedback from you about your experience with the IER program to better inform how it could be improved as it expands in 2023. The survey is about your IER program experience in particular, rather than your more general experience with the Administrative Appeals Tribunal (AAT) The survey will take you about 15 minutes to complete.

Please remember:

- You don't have to do the survey if you don't want to.
- Your answers will be collated and remain anonymous.
- Your support or funding will not be affected.

Information about how we handle your responses can be found in the [NDIS Privacy Policy](#) and the survey information statement. You can read this statement before you decide to start the survey.

Your feedback and ideas are important to us. By answering the question below, you agree that you:

- understand this information,
- are over 18 years old, and
- are willing to contribute to the survey.

Do you want to do this survey now?*

- Yes
- No, I need more information - GO TO SURVEY INFO STATEMENT (see end of this doc)

- Maybe later – Display message <YOU CAN LEAVE THIS PAGE NOW BY CLOSING YOUR BROWSER WINDOW>

1. What was the outcome of the Independent Expert’s recommendation for your matter?

All supports recommended	<input type="radio"/>
Some supports recommended	<input type="radio"/>
No supports recommended	<input type="radio"/>

2. How clear was the Independent Expert’s recommendation to you?

Very unclear	<input type="radio"/>
Somewhat unclear	<input type="radio"/>
Reasonably clear	<input type="radio"/>
Very clear	<input type="radio"/>

3. How satisfied were you with the outcome of your matter in the IER program?

Not at all satisfied	<input type="radio"/>
Only a little bit satisfied	<input type="radio"/>
Somewhat satisfied	<input type="radio"/>
Mostly satisfied	<input type="radio"/>
Completely satisfied	<input type="radio"/>

4. Overall, how was your experience with the way your matter was dealt with in the IER program?

Not at all satisfied	<input type="radio"/>
Only a little bit satisfied	<input type="radio"/>
Somewhat satisfied	<input type="radio"/>
Mostly satisfied	<input type="radio"/>
Completely satisfied	<input type="radio"/>

5. What were the worst things about your experience of the IER process?

<FREE TEXT>

6. What were the best things about your experience of the IER process?

<FREE TEXT>

7. How would you rate your satisfaction with the Independent Expert who reviewed your matter in the following areas?

	Not at all satisfied	Only a little bit satisfied	Somewhat satisfied	Mostly satisfied	Completely satisfied
Their understanding of your case	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Their understanding of your disability and how it affects your life	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
How prepared they were when they met you	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Their communication with you during the process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The way they explained the process to you	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The way they explained their recommendation to you	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	Not at all satisfied	Only a little bit satisfied	Somewhat satisfied	Mostly satisfied	Completely satisfied
The way they handled your matter overall	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

8. How satisfied were you with the way the NDIA managed the IER Program, in the following aspects?

	Not at all satisfied	Only a little bit satisfied	Somewhat satisfied	Mostly satisfied	Completely satisfied
The information they gave you about the IER program	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The way they explained how your matter would be dealt with	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The information they gave you about the independent expert who would review your matter	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The information they gave the independent expert about your matter	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Their communication with you during the process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The way they dealt with the independent expert's recommendation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

9. To what extent did the IER program give you the opportunity to be heard?

Not at all	<input type="radio"/>
Very little, it wasn't enough	<input type="radio"/>
Somewhat, but it could have been more	<input type="radio"/>

A lot

The next questions are about the internal NDIS process that you had before you went through Independent Expert Review Program

The NDIS Planning meeting

10. Thinking back to your last NDIS plan meeting, overall how satisfied were you with the process?

Not at all satisfied

Only a little bit satisfied

Somewhat satisfied

Mostly satisfied

Completely satisfied

11. How satisfied were you with the following aspects of your last NDIS plan meeting?

	Not at all satisfied	Only a little bit satisfied	Somewhat satisfied	Mostly satisfied	Completely satisfied
The information you were given to help you prepare for your plan review meeting	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The NDIS planner's knowledge of your disability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The NDIS planner's understanding of how your disability affects your life	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The NDIS planner's use of specialist reports provided	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	Not at all satisfied	Only a little bit satisfied	Somewhat satisfied	Mostly satisfied	Completely satisfied
The NDIS planner's anticipation of your future needs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The NDIS planner listening to you about your support needs during the planning meeting	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The NDIS planner giving a clear explanation for the decisions they made about your NDIS funding	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

12. How could the NDIS improve the planning process?

<FREE TEXT>

The Internal NDIS Review

Before your matter went to the Administrative Appeals Tribunal and the IER program, you had an internal NDIA review.

13. Overall, how satisfied were you with the way your matter was dealt with at the internal NDIA review?

Not at all satisfied	<input type="radio"/>
Only a little bit satisfied	<input type="radio"/>
Somewhat satisfied	<input type="radio"/>
Mostly satisfied	<input type="radio"/>
Completely satisfied	<input type="radio"/>

14. How satisfied were you with the way the NDIA managed the internal review of your matter in the following aspects?

	Not at all satisfied	Only a little bit satisfied	Somewhat satisfied	Mostly satisfied	Completely satisfied
The information the NDIA gave you about the internal review process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Speaking to the right person about your matter	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your opportunity to be heard on your matter at the NDIA internal review	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The NDIA understanding the issues involved in your matter	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The NDIA objectively considering your matter	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	Not at all satisfied	Only a little bit satisfied	Somewhat satisfied	Mostly satisfied	Completely satisfied
The NDIA giving a clear explanation for the decision made on your matter	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

15. How could the NDIA improve the internal review process?

<FREE TEXT>

The next questions are about the Administrative Appeals Tribunal (AAT) and the Independent Expert Review Program

16. How much experience have you had with the Administrative Appeals Tribunal (AAT)?

None at all	<input type="radio"/>
Some experience with the process	<input type="radio"/>
Have been through an AAT hearing	<input type="radio"/>

If “None at all” or “Some experience with the process” GO TO Q18

If “Have been through an AAT hearing” GO TO Q17

17. Did you have more or less opportunity to be heard in the IER process compared to the AAT process?

Less	<input type="radio"/>
About the same	<input type="radio"/>
More	<input type="radio"/>

18. To what extent did the IER program help build your trust in the NDIA’s review process?

Not at all	<input type="radio"/>
Very little	<input type="radio"/>
Somewhat	<input type="radio"/>
A lot	<input type="radio"/>

If “None at all” or “Some experience with the process” AT Q16 GO TO Q20

19. How did your experience with the IER process compare to your experience with the AAT process?

Worse	<input type="radio"/>
About the same	<input type="radio"/>
Better	<input type="radio"/>

20. During your AAT proceedings and the IER program, did you change the supports requested?

Yes

No

IF 'NO' GO TO Q22

21. Please provide an explanation for the change

<FREE TEXT>

If "None at all" AT Q16 GO TO Q24

22. Have you previously appealed an Agency decision at the AAT?

Yes

No

23. What was the outcome of the previous AAT matter?

<FREE TEXT>

24. How could the NDIA improve the IER process?

<FREE TEXT>

Demographics

25. What disability or disabilities do you have? (Select all that apply).

- Acquired brain injury
- Autism
- Cerebral palsy
- Developmental delay
- Down syndrome
- Global developmental delay
- Hearing impairment or deaf
- Intellectual disability
- Multiple sclerosis
- Psychosocial disability
- Spinal cord injury
- Stroke
- Visual impairment
- Other neurological
- Other physical
- Other sensory/speech
- Other <please specify>

26. What is your postcode?

— — — —

27. Do you identify as Aboriginal and/or Torres Strait Islander?

No	<input type="radio"/>
Aboriginal	<input type="radio"/>
Torres Strait Islander	<input type="radio"/>
Aboriginal and Torres Strait Islander	<input type="radio"/>
Prefer not to say	<input type="radio"/>

IF ANSWER NO OR PREFER NOT TO SAY, GO TO Q28. OTHERWISE SKIP TO Q29

28. Which country were you born in?

Australia	<input type="radio"/>
Other <please specify>	<input type="radio"/>
Prefer not to answer	<input type="radio"/>

29. What is the main language you speak at home?

English	<input type="radio"/>
Other <please specify>	<input type="radio"/>
Prefer not to answer	<input type="radio"/>

IF SELECT ENGLISH, SKIP TO Q25

30. How well do you speak and understand English?

Very well	<input type="radio"/>
Well	<input type="radio"/>
Not well	<input type="radio"/>
Not at all	<input type="radio"/>

31. What is your gender?

Woman	<input type="radio"/>
Man	<input type="radio"/>
Transgender or gender diverse	<input type="radio"/>
I would prefer not to say	<input type="radio"/>

Another Option

<FREETEXT>

32. Do you identify as LGBTQI+?

Yes	<input type="radio"/>
No	<input type="radio"/>
I would prefer not to say	<input type="radio"/>

Another Option

<FREE TEXT>

33. How old are you?

____YEARS

Thank you for completing this survey on your IER program experience. Your feedback and ideas are important to us.

Your input will help us to understand how to improve the IER program.

To submit your responses, please click on the 'submit' button below.

Participant representatives

Welcome to the Independent Expert Review (IER) Program survey.

The Agency commenced the IER program in October 2022.

We are now seeking feedback from you about your experience with the IER program to better inform how it could be improved as it expands in 2023.

The survey will take you about 15 minutes to complete.

Please remember that:

- You don't have to do the survey if you don't want to.
- Your answers will be collated and remain anonymous.

Information about how we handle your responses can be found in the [NDIS Privacy Policy](#) and the survey information statement. You can read this statement before you decide to start the survey.

Your feedback and ideas are important to us. By answering the question below, you agree that you

- understand this information,
- are over 18 years old, and
- are willing to contribute to the survey.

Do you want to do this survey now?

- Yes
- No, I need more information - GO TO SURVEY INFO STATEMENT (see end of this doc)
- Maybe later – Display message <YOU CAN LEAVE THIS PAGE NOW BY CLOSING YOUR BROWSER WINDOW>

Q1. What is your role in representing the Participant?

Support person	<input type="radio"/>
Advocate	<input type="radio"/>
Lawyer	<input type="radio"/>
Other	<input type="radio"/>

If “Other” display message “Please specify” with <FREE TEXT> 100-character limit

Q2. How actively involved were you in the Participant’s matter in the IER?

None	<input type="radio"/>
Limited	<input type="radio"/>
Moderately	<input type="radio"/>
Frequent – I acted on behalf of the participant	<input type="radio"/>

IF SELECT FREQUENT SKIP TO Q4

Q3. How actively involved were you in the Participant’s matter in the AAT proceedings?

None	<input type="radio"/>
Limited	<input type="radio"/>
Moderately	<input type="radio"/>
Frequent – I acted on behalf of the participant	<input type="radio"/>

Q4. What was the outcome of the Independent Expert’s recommendation for the Participant’s matter?

All supports recommended	<input type="radio"/>
Some supports recommended	<input type="radio"/>
No supports recommended	<input type="radio"/>

Q5. How clear was the Independent Expert's recommendation?

Very unclear	<input type="radio"/>
Somewhat unclear	<input type="radio"/>
Reasonably clear	<input type="radio"/>
Very clear	<input type="radio"/>

Q6. How satisfied were you with the outcome of the Participant's matter in the IER program?

Not at all satisfied	<input type="radio"/>
Only a little bit satisfied	<input type="radio"/>
Somewhat satisfied	<input type="radio"/>
Mostly satisfied	<input type="radio"/>
Completely satisfied	<input type="radio"/>

Q7. Overall, how was your experience with the way the Participant's matter was dealt with in the IER program?

Very poor	<input type="radio"/>
Poor	<input type="radio"/>
It was OK	<input type="radio"/>
Good	<input type="radio"/>
Very good	<input type="radio"/>

Q8. What were the worst things about your experience of the IER process?

<FREE TEXT>

Q9. What were the best things about your experience of the IER process?

<FREE TEXT>

Q10. How would you rate your satisfaction with the Independent Expert who reviewed the Participant’s matter in the following areas

	Not at all satisfied	Only a little bit satisfied	Somewhat satisfied	Mostly satisfied	Completely satisfied
Their understanding of the Participant’s matter	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Their understanding of the Participant’s disability and how it affects their life	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
How prepared they were when they met you and the participant	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Their communication with you during the process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The way they explained the process to you	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The way they explained their recommendation to you	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The way they handled the matter overall	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Q11. How satisfied were you with the way the NDIA managed the IER Program, in the following aspects?

	Not at all satisfied	Only a little bit satisfied	Somewhat satisfied	Mostly satisfied	Completely satisfied
The way they explained how the participant's matter would be dealt with	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The information they gave you about the independent expert would review the matter	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The information they gave the independent expert about the matter	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Their communication with you during the process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The way they dealt with the independent expert's recommendation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Q12. Were you representing the NDIS Participant prior to the IER program?

Yes	<input type="radio"/>
No	<input type="radio"/>

If "Yes" GO TO Q13

If "No" GO TO Q14

Q13. How did your experience with the IER program compare to your experience with the AAT process in relation to the Participant's matter?

Worse	<input type="radio"/>
About the same	<input type="radio"/>
Better	<input type="radio"/>

Q14. To what extent did the IER program give the Participant and yourself the opportunity to be heard?

Not at all	<input type="radio"/>
Very little, it wasn't enough	<input type="radio"/>
Somewhat but it could have been more	<input type="radio"/>
A lot	<input type="radio"/>

Q15. Did the Participant or yourself have more or less opportunity to be heard in the IER process compared to the AAT process?

Less	<input type="radio"/>
About the same	<input type="radio"/>
More	<input type="radio"/>

Q16. To what extent did the IER program assist to build your trust in the NDIA's review process?

Not at all	<input type="radio"/>
Very little	<input type="radio"/>
Somewhat	<input type="radio"/>
A lot	<input type="radio"/>

Q17. Why did you select this rating?

< FREE TEXT >

Q18. How could the NDIA improve the IER process?

<FREE TEXT>

Thank you for completing this survey on your experience with the IER program. Your feedback and ideas are important to us.

Your input will help us to understand how to improve the IER program.

To submit your responses, please click on the 'submit' button below.

Independent experts

Welcome to the Independent Expert Review (IER) Program survey.

The Agency commenced the IER program in October 2022.

We are now seeking to obtain some feedback from you about your experience as an Independent Expert with the IER program to better inform how it could be improved as it expands in 2023.

The survey will take you about 15 minutes to complete.

Please remember that:

- You don't have to do the survey if you don't want to.
- Your answers will be collated and remain anonymous.

Information about how we handle your responses can be found in the [NDIS Privacy Policy](#) and the survey information statement. You can read this statement before you decide to start the survey.

Your feedback and ideas are important to us. By answering the question below, you agree that you

- understand this information,
- are over 18 years old, and
- are willing to contribute to the survey.

Do you want to do this survey now?

- Yes
- No, I need more information - GO TO SURVEY INFO STATEMENT (see end of this doc)
- Maybe later – Display message <YOU CAN LEAVE THIS PAGE NOW BY CLOSING YOUR BROWSER WINDOW>

Q1. How useful was the induction training in explaining your role in the IER Program?

Not useful	<input type="radio"/>
Useful	<input type="radio"/>
Very useful	<input type="radio"/>

Q2. How could the NDIA improve the induction training?

<FREE TEXT>

Q3. How satisfied are you with the IER Program in the following areas?

	Not at all satisfied	Only a little bit satisfied	Somewhat satisfied	Mostly satisfied	Completely satisfied
The material referred to you to make a recommendation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The process for sending you the material via GovTeams	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The framework for your role in making a recommendation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The types of matters referred to you for review	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The payment structure for your services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	Not at all satisfied	Only a little bit satisfied	Somewhat satisfied	Mostly satisfied	Completely satisfied
The way the NDIA managed the Program	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The NDIA's follow-up with you at the conclusion of an IER process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

ONLY ASK Q4 IF SELECT NOT AT ALL SATISFIED OR ONLY A LITTLE BIT SATISFIED AT 3.1

Q4. What would improve the materials you were given to make a recommendation?

<FREE TEXT>

ONLY ASK Q5 IF SELECT NOT AT ALL SATISFIED OR ONLY A LITTLE BIT SATISFIED AT 3.2

Q5. What would improve the process for sending materials to you?

<FREE TEXT>

ONLY ASK Q6 IF SELECT NOT AT ALL SATISFIED OR ONLY A LITTLE BIT SATISFIED AT 3.3

Q6. What would improve the framework for your role in making a recommendation?

<FREE TEXT>

ONLY ASK Q7 IF SELECT NOT AT ALL SATISFIED OR ONLY A LITTLE BIT SATISFIED AT 3.4

Q7. What could be improved about the referral of matters for you to review?

<FREE TEXT>

ONLY ASK Q8 IF SELECT NOT AT ALL SATISFIED OR ONLY A LITTLE BIT SATISFIED AT 3.6

Q8. How could the NDIA improve the way it manages the IER Program?

<FREE TEXT>

ONLY ASK Q9 IF SELECT NOT AT ALL SATISFIED OR ONLY A LITTLE BIT SATISFIED AT 3.7

Q9. How could the NDIA improve the way it follows up with you at the conclusion of the IER process?

<FREE TEXT>

**Q10. Have you contacted any of the following while conducting your reviews?
Select all that apply**

Participant	<input type="checkbox"/>
Participant's representative	<input type="checkbox"/>
NDIA	<input type="checkbox"/>
Others who provided reports	<input type="checkbox"/>
Other	<input type="checkbox"/>

ONLY ASK Q11 IF SELECT OTHER AT Q10

Q11. Why did you contact these other people?

<FREE TEXT>

ONLY SHOW OPTIONS BELOW BASED ON RESPNSES TO Q9

Q12. What has been your experience of the responsiveness of the following to any question you had during your reviews?

	Very poor	Poor	Ok	Good	Very good
10.1. The NDIA	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
10.2. The Participant	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
10.3. The Participant's representative	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

ONLY ASK Q13 IF SELECT PARTICIPANT OR PARTICIPANT'S REPRESENTATIVE AT Q12

Q13. How useful was your contact with the participant or their representative?

Not at all useful	<input type="radio"/>
Somewhat useful	<input type="radio"/>
Very useful	<input type="radio"/>

ONLY ASK Q14 IF SELECT NDIA AT Q12

Q14. How useful was your contact with the NDIA?

Not at all useful	<input type="radio"/>
Somewhat useful	<input type="radio"/>
Very useful	<input type="radio"/>

Q15. In any of your matters, did the Participant or their representative request not to be contacted?

Yes	<input type="radio"/>
No	<input type="radio"/>

IF "YES" GO TO Q16

IF "NO" GO TO Q17

Q16. Would you have considered it useful to contact the Participant or their representative?

Yes

No

Q17. In any of your matters, did the Participant or their representative provide submissions?

Yes

No

IF "YES" GO TO Q19

IF "NO" GO TO Q18

Q18. Would you have considered it useful to receive submissions?

Yes

No

Q19. To what extent is the IER program giving Participants the opportunity to be heard?

Not at all	<input type="radio"/>
Very little, it isn't enough	<input type="radio"/>
Somewhat, but it could be more	<input type="radio"/>
A lot	<input type="radio"/>

Q20. How could the NDIA provide more opportunity for Participants to be heard? How could the Agency improve this rating?

<FREE TEXT>

Q21. Please provide any advice or feedback you have regarding NDIA administrative decision making

<FREE TEXT>

Q22. Please provide any feedback or comments you have on challenging policy issues you have encountered in your role as a IER program Independent Expert

<FREE TEXT>

Thank you for completing this survey on your experience as an Independent Expert in the IER program. Your feedback and ideas are important to us.

Your input will help us to improve the IER program.

To submit your responses, please click on the 'submit' button below.

Survey Information Statement

The following survey information statement accompanied the participant, representative and independent expert surveys.

This page explains more about the survey so you can decide if you want to take part.

What is this survey about?

The Agency commenced the IER Program in October 2022 and is seeking feedback to better inform how it could be improved as it expands in 2023.

Your feedback will help us better understand your experience and improve our processes.

What does participating in this survey involve?

You will fill in a short online survey or you can ask someone to fill it in for you.

For most questions, you will be asked to select an answer, or answers, from a list of options. Choose the answer(s) that best reflects your experience.

You can also write about your personal experience in your own words.

The survey will take about 10 minutes to complete.

How do I complete the survey?

You can complete the survey on your computer, smartphone, or tablet. The survey is screen-reader friendly.

If you need help completing the survey, you can ask someone you trust, like a family member, friend, or support worker, cultural elder, to help you.

Do I have to complete the survey?

No. You do not have to complete the survey, however, your feedback is important to us.

You can stop the survey at any time by closing the browser.

If you complete 50% or more of the survey, we will include your completed survey responses.

What you have to say is important and we hope you choose to participate.

What will NDIA do with the results?

We will use the overall survey results to improve the IER program.

We will share the results of the survey as part of our ongoing engagement with the disability community to improve dispute resolution processes. We will not publish individual responses, only the overall results of the survey. If we use any individual quotes from the survey responses, these will be anonymous.

What do I get for completing the survey?

You will not receive any payment for completing the survey. However, your answers will help us better understand your experience and improve our process.

How will the NDIA keep my information and answers safe and private?

Your personal details will not be linked to the survey data.

The de-identified information will be securely stored and destroyed in accordance with the requirements of the [Archives Act 1983 \(Cth\)](#).

Any information you share with us will be managed in line with relevant Australian privacy laws. Information about the collection, use, disclosure and storage of personal information by the NDIA is available in our [privacy policy](#).

Who can I contact about this survey?

To verify this survey you can call the NDIA directly on 1800 800 110.

If you have concerns about your involvement in this survey, you can email the Independent Expert Review Project Team IndependentExpertReview@ndis.gov.au

If you wish to make a complaint about the survey, you can visit the NDIA [Feedback and complaints](#) website.

Appendix E: Detailed statistical methods

Comparison of the IERP with the AAT

Development of the AAT comparison group

Table 8 below describes the three-step process to select appropriate AAT cases to compare to the IERP cases and lists the distribution of AAT matters by outcome. In summary:

- The Evaluation Team was provided with outcomes and dates of 3,281 AAT support-related cases that were resolved between July 2022 and January 2023.
- From this AAT case data, 119 cases met the IERP referral criteria (active in AAT for longer than nine months and where the supports in dispute equate to at least 20% of the plan budget).
- Next, 35 of these 119 cases were manually matched to the 23 NDIS plan related IERP cases that had concluded by 31 January 2023. Matching was based on participant/applicant characteristics (approximate age, primary disability, and Australian state of residence) and the type and number of supports in dispute.

Table 8: Selection process for AAT cases to compare to IERP cases

AAT Outcome	Step 1: AAT matters	Step 2: AAT matters	Step 3: AAT matters
Resolved by Consent	2,643 (80.6%)	99 (83.2%)	28 (80%)
Withdrawn	507 (15.5%)	9 (7.6%)	0 (0%)
Dismissed	82 (2.5%)	4 (3.4%)	0 (0%)
Hearing Decision (Affirmed, Varied, Set Aside)	41 (1.3%)	7 (5.8%)	7 (20%)
Other (EOT not opposed, No Jurisdiction)	8 (0.2%)	0 (0%)	0 (0%)
Total	3,281	119	35

Source: Research and Evaluation Branch analysis of final IER and AAT decisions.

Notes: Cases presenting from July 2022 to January 2023.

Complexity of IERP and comparison AAT cases

As of 31 January 2023, independent experts had reviewed 23 NDIS-support related cases. These cases contained an average of 5.2 issues per case. This compared to an average of 5.9 matters per comparison case resolved at AAT hearing and 8.7 matters per AAT case resolved by consent (Table 9).

Table 9: The number of matters for each IERP and comparison AAT case

Sample	Number of NDIS-plan related cases	Number of issues	Average number of issues per case	Range of number of recorded issues
IERP (as of Jan 2023)	23	120*	5.2	1-22
AAT-hearing decisions	7	41	5.9	2-14
AAT-resolved by consent	28	244	8.7	3-18
AAT-total	35	285	8.3	2-18

Source: Research and Evaluation Branch analysis of final IER and AAT decisions

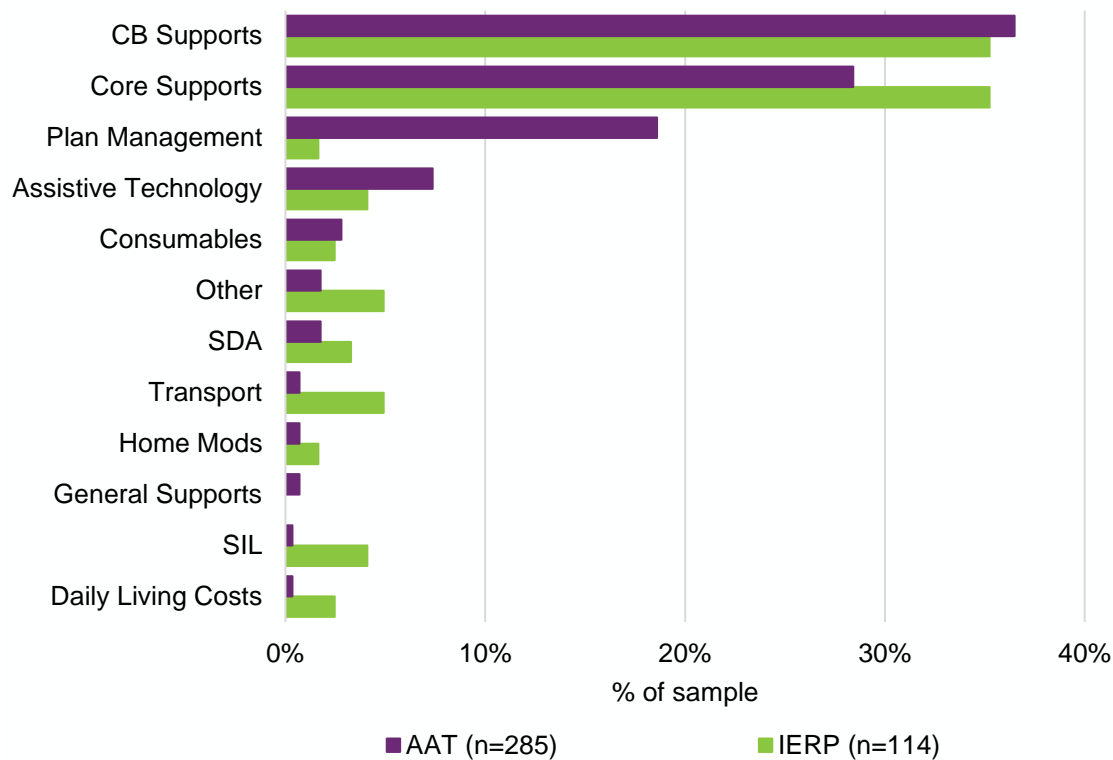
Note: Issues reviewed by the independent expert reduced to N=114 as some were withdrawn or categorised as “to be reviewed after a significant time”

Between Jul 2022 and Jan 2023, 83% of AAT cases comparable to IERP cases were resolved by consent. However, the information available for the evaluation is insufficient to understand the extent the final settlements reflect the original support requests. Therefore, the evaluation did not compare AAT cases resolved by settlement to the IERP cases.

Topic areas addressed in IERP and comparison AAT cases

Figure 15 compares the types of supports in dispute in the IERP compared to the AAT. AAT included notably more plan management issues while IERP more commonly related to core supports and SIL.

Figure 15: The types of issues addressed as part of AAT decisions.



Source: Research and Evaluation Branch analysis of the IERP and AAT matters, Chief Council Division analysis of supplied AAT and IER decisions.

Notes: Core supports does not include consumables or transport.

Internal review escalation to AAT analysis and inference

Inference specification and methods

This section describes the analysis of potential variables within s100 matters that predict an escalation to the AAT. The analysis uses two statistical techniques: a logistic regression and a gradient boosting model (GBM) regression.

The logistic regression is a predictive model that estimates the probability of an event occurring whereas the GBM is a machine learning algorithm that identifies the relative influence of predictors compared to one another. GBM uses a decision tree structure and is an ensemble technique where multiple trees are built sequentially, and each tree attempts to correct the mistakes made by the previous tree. Both logit

and GBM methods were incorporated into this analysis because the GBM captures the slight non-linearities and interaction amongst the variables not possible in logistic regression. Logistic regression can determine the directionality and significance of variables that the GBM cannot determine.

The final reduced form equation used in both the GBM and logistic regression had a binary variable indicating whether an escalation to the AAT from the internal review occurred. The following covariates were included in the form:

- Was the dispute over core supports? (yes/no)
- Was the dispute over capacity building supports? (yes/no)
- Was the dispute over non-SDA capital? (yes/no)
- Was the dispute over SDA capital? (yes/no)
- Participant's age (in age brackets 0-7 yrs; 8-15 yrs; 16-24 yrs; 25-64 yrs; 65+ yrs)
- Participant's CALD status (yes/no/not stated)
- Participant's gender (male/female/not stated/other)
- Participant's First Nations People status (yes/no/not stated)
- Does the participant speak English at home (yes/no)
- ABS Socio-Economic Indexes for Areas (SEIFA) assigned to participant post codes (in deciles). This included:
 - The Index of Economic Resources (IER)
 - The Index of Education and Occupation (IEO)
 - The Index of Relative Socio-economic Disadvantage (IRSD)
- Did the plan involve a plan management agency? (yes/no)
- Did the participant have complex support needs? (yes/no)
- Was the participant receiving 24x7 support? (yes/no)
- Was the participant in medium term accommodation? (yes/no)
- Was the participant in an Individualised Living Option (ILO)? (yes/no)
- Was the participant in Supported Independent Living (SIL) stream? (yes/no)
- NDIS plan value before during and after dispute (annualised dollar value)

- % change in plan before versus during dispute (in deciles)

Interpretation of Gradient Boosting Model

Gradient Boosting Models (GBM) are a type of machine learning method that solves estimates iteratively. It relies on the intuition that the best possible next model, when combined with previous models, minimises the overall prediction error. The outcome (escalation to AAT) for each case in the data depends on how much changing the specification impacts the overall prediction error. That is:

- If a small change in the prediction for a case causes a large drop in error, then the next outcome of the case is a high value. Changing this prediction decreases the error.
- If a small change in the prediction for a case causes no change in error, then the next outcome of the case is zero. Changing this prediction does not decrease the error.

The outcomes for each case are set based on the gradient of the error with respect to the prediction. Each new model takes a step in the direction that minimizes prediction error. Overall, the model iteratively evaluates the error of every formulation and combination of the variables selected. The results show the relative importance of each variable and are presented as a percentage of variation that accounts for the outcome e.g., variable X accounts for X% of the variation to the outcome. Being a deterministic model, the GBM does not calculate the directionality of the variable and instead focuses on its ability to reduce error in outcomes i.e., explain variation in decision making.

Interpretation of Logistic Regression

A logistic regression is a probabilistic model often used for classification and predictive analytics. The logistic regression estimates the probability of an event occurring. As such the dependent variable is bounded between 0 and 1. In logistic regression, a logit transformation is applied on the probability of success divided by the probability of failure. This is also commonly known as the log odds.

Exponentiation of the logistic regression estimates was undertaken to transform the factor results into an odds ratio (OR). The OR represents the odds that an outcome will occur given a particular event, compared to the odds of the outcome occurring in the absence of that event. If the OR is greater than 1, then the factor is associated with an increased likelihood of that outcome occurring. Conversely, if the OR is less than 1, then the event is associated with a decreased likelihood of that outcome occurring. The OR was used to show the probability estimates on a figure as an increased or decreased probability of the outcome occurring.

Appendix F: Qualitative coding frames

The sections below present the final coding frames for qualitative interview and survey responses from each stakeholder group.

Participant representatives

DCRO familiarity with NDIS and disability sector

1. Low – under five years' experience
2. Moderate – 5-10 years' experience
3. High – more than 10 years' experience.

AAT process

4. Types of AAT matters, many are complex or unprecedented
5. Negative aspects of the AAT process including arduous, time consuming and adversarial nature of process
6. General AAT process
7. Barriers to accessing AAT including financial and time limitations, psychological and emotional toll on participants and families involved and limitations of legal experience.

Planning process

8. Perceived negative aspects of planning process including unfair decisions, lack of planner training, communication style
9. Communication of planning decisions
10. Improvements that could be made to the planning process
11. Negative aspects of information gathering requests from planners
12. Previous AAT decisions could be fed back to improve planning stage
13. Factors leading to an internal review during planning stages.

S100 reviews

14. Explanation of the internal review process
15. Processes and experiences of communication during s100 review processes

16. Perceived negative aspects of planning process leading to s100, including unfair decisions, lack of planner training, communication style
17. Factors contributing to S100 reviews escalating to AAT
18. Possible improvements to internal reviews
19. Barriers to participants' engagement in the review process.

IERP / ADR

- 20. Benefits of the IERP
- 21. Desirable qualities of the independent experts
- 22. Essential and proposed features of the IER process
- 23. Negative aspects of the IERP.

Satisfaction with IERP

- 24. Low
- 25. Medium
- 26. High.

Should the IERP continue?

- 27. Yes
- 28. No
- 29. Impartial or yes, but with improvements.

General comments about the NDIA

- 30. Improvements needed including adopting a precedent model so participants can benefit from previous AAT decisions, culture of Agency, improvements to ensure CALD groups are better able to dispute decisions
- 31. Barriers to NDIS access
- 32. Challenges around navigating the NDIS.
- 33. Access to advocacy services and the role of advocates
- 34. Role of providers.

Independent experts

Familiarity working with NDIS

1. Low familiarity
2. Moderate familiarity
3. High familiarity.

Experience in disability sector

4. Low experience
5. Moderate experience
6. High experience.

Satisfaction with the IERP

7. Low satisfaction
8. Moderate satisfaction
9. High satisfaction.

Current dispute resolution process issues

10. Participant not being heard through lack of engagement
11. Language use too complex for participants to understand
12. Too much administration required and duplication of content in documents
13. Financial pressure on the Scheme
14. Inconsistency makes some cohorts more or less likely to object to plan decisions.

Challenges faced by independent experts

15. Protracted process due to scheduling issues or independent expert taking longer than expected to submit recommendations
16. Quality of independent experts lacking in legal experience
17. Independent experts wanting to consult with each other or seeking mentorship
18. Concerns around correct process - independence when independent experts want to discuss cases externally, no capacity to test evidence, procedural fairness.

Recommendations for improving IERP

19. Mediation between Agency, independent expert, advocate and participant a good idea
20. Mediation between Agency, independent expert, advocate and participant not a good idea
21. Feedback loop where results of cases are shared with independent experts for transparency and continuous learning.

Guidelines and the NDIS provided to independent experts

22. Not specific or too complicated, allowing for inconsistent interpretation and difficult to apply
23. Guidelines were specific enough and appropriate
24. Concerns around clinicians' interpretation of legislation
25. Concerns around balancing Scheme sustainability and financial impact
26. Examples of previous cases were helpful
27. Independent expert made decision outside of guidelines with reasoning
28. Guidance materials were inconsistent.

Issues at planning stages

29. Poor consistency over time of participant's life
30. Limited explanation around decisions provided to participants
31. Limited opportunity for participants to be heard due to limited engagement
32. Lack of understanding among planners for participants with deteriorating conditions.

Internal review (S100) issues

33. Process too brief resulting in poor decisions made
34. Limited explanation around decisions provided to participants
35. Financial motivation behind decisions due to financial pressures on the Scheme
36. Limited opportunity for participants to be heard due to limited engagement
37. Pressure on reviewers due to volume of cases

38. Limited training and qualifications of reviewers
39. Poor decisions made that are illogical or inconsistent with the evidence provided
40. Participants feel internal reviewer is not impartial
41. Participant lacks trust in the review process
42. Evidence reviewed by reviewer is low in quality and could be more nuanced or updated.

DRCOs

DCRO familiarity with NDIS and disability sector

1. Low – under five years' experience
2. Moderate – 5-10 years' experience
3. High – more than 10 years' experience.

AAT process

4. Types of AAT matters, many are complex or unprecedented
5. Negative aspects of the AAT process including arduous, time consuming and adversarial nature of process
6. General AAT process NOS
7. Barriers to accessing AAT including financial and time limitations, psychological and emotional toll on participants and families involved and limitations of legal experience.

Planning process

8. Perceived negative aspects of planning process including unfair decisions, lack of planner training, communication style
9. Communication of planning decisions
10. Improvements that could be made to the planning process
11. Negative aspects of information gathering requests from planners
12. Previous AAT decisions could improve planning stage
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General comments about the NDIA

- 30. Improvements needed including participants benefiting from previous AAT decisions, culture of Agency, improvements to ensure CALD groups are able to access the Scheme
- 31. Barriers to NDIS access
- 32. Challenges around navigating the NDIS
- 33. Access to advocacy services and the role of advocates
- 34. Role of providers.

Appendix G: Feedback from Independent Experts and NDIA stakeholders

Appendix G presents findings related to the experience of independent experts and IERP managers with the IERP's implementation.

Key findings

- Independent experts reported high levels of satisfaction with their training and induction, the referrals they have received, the Agency's management of the program and the support they have received from IERP managers.
- However, the referrals have been more complex than independent experts anticipated which has led to reviews taking longer than expected.
- IERP managers commented the process was more legalistic than first conceptualised which has contributed to the lower-than-expected number of cases reviewed.
- Independent experts wanted ongoing training, using actual cases and exemplars and a quality assurance process to ensure consistency in the interpretation of legislation between experts.
- Representatives from NDIS business areas were supportive of a less adversarial process than the AAT, although raised concern about whether the recommendations align with current operational guidelines and the lack of a feedback loop from the IERP (and AAT) back into operational guidelines.
- Independent experts found engagement with the participant valuable, both in understanding the nuances of the matter and in providing the participant an opportunity to be heard, which built trust and confidence in the process.

Independent expert satisfaction and experience

This section uses information from the independent expert survey and interviews. The Evaluation Team invited all 17 independent experts who had reviewed matters as of 31 January 2023 to participate in an interview and complete the survey. In total, 13 experts responded to the survey and 12 participated in an interview.

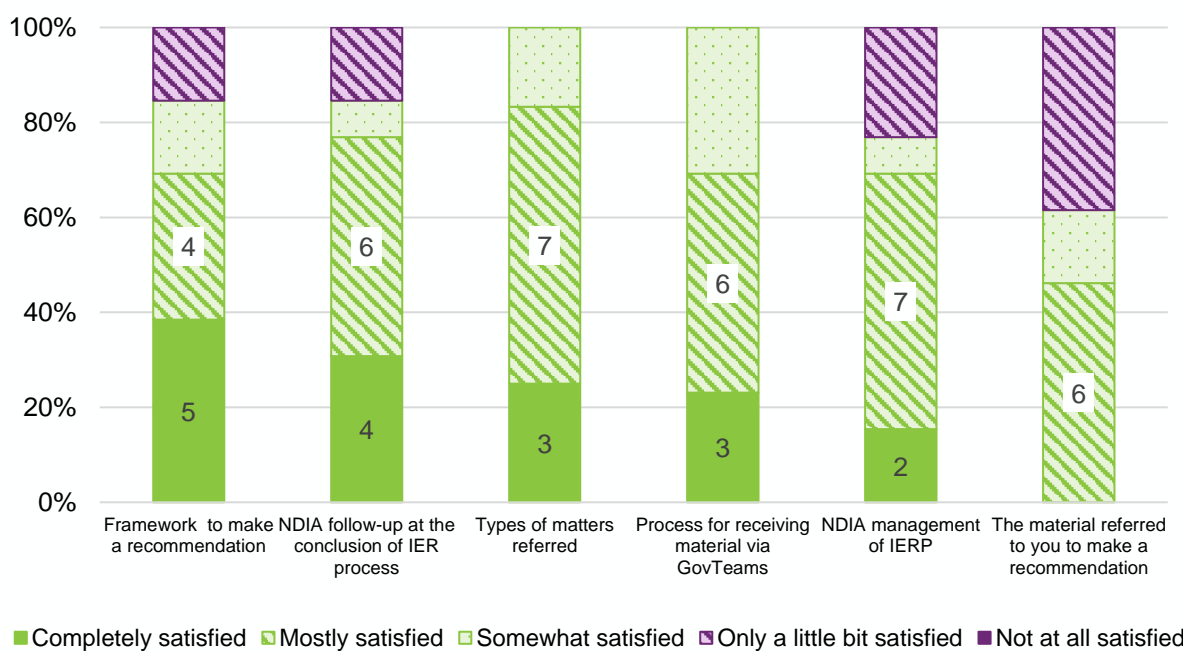
Overall satisfaction

Figure 16 shows the independent experts who responded to the survey were satisfied with most aspects of the IERP, especially:

- The framework to make a recommendation
- The NDIA’s follow up with them at the conclusion of the IER process
- The types of matters the Agency asked them to review
- The process for receiving material via GovTeams.

Independent experts reported lower satisfaction with the papers/documents referred to them to make a recommendation and the way the NDIA managed the program.

Figure 16: Independent expert satisfaction with aspects of the IERP



Source: Online survey of independent experts (n=13)

The following sections discuss independent expert’s satisfaction and experience with different aspects of the IERP in more detail.

Training and induction

Initial training and induction

In the survey, independent experts overwhelmingly reported the NDIA induction training as either “Very useful” or “Useful” (92%), a sentiment they reinforced during interviews.

“The Agency has ensured that reviewers are trained and have resources to do their role.” Independent expert, interview.

Although independent experts were generally positive about the training and induction, several indicated they would benefit from additional examples in their training. These examples include actual cases, case law and/or an annotated exemplar. This was commonly requested by independent experts with a non-legal background as they would help to interpret legislation and improve the consistency of recommendations.

“They sent through some de-identified reports and recommendations that some people did at the trial stage. I found them very useful largely to see how people had structured the report. Some were different and that was useful. But also, there were some key phrases in there that I found very helpful and I sort of copied all of them into a useful phrase reference. It included the links to parts of the legislation which was a good shortcut to see the phrasing linking as clearly as it was. So, I feel that's particularly helpful.” Independent expert, interview.

Some independent experts with a legal background indicated that the training and induction should also include guidance on legal principles and standards such as procedural fairness.

“I'm aware of one reviewer who called up a doctor they knew to get some advice. And I thought- You can't do that. You're charged with making a recommendation and the rules of procedural fairness apply to you. If you want to go and talk to a friend and that friend gives you a view and you don't put it to either the Agency or the party, you're breaching procedural fairness. We are charged with making a fair decision and fairness connotes that all

parties should be privy to any new information.” **Independent expert interview.**

During interviews, independent experts suggested the following other enhancements to the training and induction:

- **Practical skills:**
 - Navigating the NDIA on-line system and how to access documents.
 - An outline of a preferred report format, templates that include standard information, for example, section 34 of the Act and the associated references, and standard email formats to invite the participant and/or representative to meet.

- **Process standards:**
 - A framework to follow with their first few cases that gives guidance on what order to consider information as they worked through the case material.
 - Procedures for interacting with participants and their families, including the process when a participant reports factual errors in the information, wants extended amounts of contact and/or when contact is made after a recommendation has been provided.

- **Decision making:**
 - Information on how the Agency makes and reviews decisions internally.
 - Guidance on interpreting legislation in complex cases.

Ongoing training and quality assurance

Independent experts stressed the importance of maintaining consistency in the quality of recommendations both over time and between each expert, particularly if the Agency scales up the IERP. In addition to ongoing training, several independent experts proposed a quality assurance process. This may include having complex matters addressed by multi-expert panels, with these recommendations then available for use as guidance. Several experts commented that receiving feedback on their recommendations would be useful,

although they recognised this may compromise their independence and participant consent⁴⁰. There was also a suggestion to highlight certain cases as exemplars to give further guidance on interpreting relevant legislation and operational guidelines.

“The major challenge is achieving comparability of outcomes in a context of multiple independent reviewers and decision-makers. This aspect of the program does not seem to have been attended to and is certainly not within the IER process. We are each meant to grapple alone with similar matters and make similar judgements about what is reasonable/necessary privately and solely. I have never been involved in a multi-reviewer process which does not have comparability mechanisms such as exemplars of best practice; opportunities for expert mentoring/advice; some sort of collaborative/group check-in process so that standards of decision-making are consistent.” **Independent Expert, interview.**

It is noted that the IERP team intentionally limited training and feedback to independent experts to ensure independence, minimise the perception of agenda setting, test the boundaries of the model and to safeguard participant privacy. Furthermore, it is recognised that additional training has been introduced to address frequently occurring issues, such as SDA and conflicts in evidence.

Referrals and materials

Referrals

Most independent experts reported in the online survey being completely or mostly satisfied (83%) with the types of matters referred to them for review. This was largely reinforced during interviews. However, the complexity of the cases and the nature of the IERP process raised issues for some experts, who indicated not all matters were necessarily appropriate for the IERP and may need to be tested for evidentiary reasons.

⁴⁰ Participant consent to share information with the independent expert ends on submission of the recommendation.

“There was one that I thought I could make some recommendations, but there was conflicting evidence, and I wasn't undertaking an inquisitorial process. I had no capacity to cross-examine where there was conflicting evidence. And I said some of these things better go to the tribunal.”

Independent Expert, interview.

Originally, the Agency did not earmark the IERP to only deal with highly complex cases. However, due to the success of other initiatives in resolving the backlog of less complex AAT matters, such as Early Assessment Teams, the decision was made for the IERP to focus on highly complex matters.

Case materials

In the survey, more than half of the experts (54%) reported they were only somewhat, or a little bit satisfied with the papers/documents received to review matters. During interviews independent experts almost unanimously commented that the volume of documents sent to them was far greater than they expected and there was substantial duplication in the information contained. The documentation included all submissions and evidence accumulated during the minimum nine months the matters have been in the AAT process.

While independent experts recognised the importance of ensuring they receive all information related to the case, most suggested that chronological ordering, indexing, page numbering and bundling of specialist report evidence would make it easier for them to navigate the plethora of information and improve the efficiency of their reviews.

Participant and legal representative contact

Independent experts generally met with the participant and/or their legal representative as part of their review. This served to provide contextual information related to the participant's current level of supports and needs. Most independent experts spoke positively about this contact as part of the review process, noting it is an opportunity to engage with the participant and give them some confidence in the process.

“The rules say that you can get information from the family, the carers, the participants about how they experience the outcomes of those supports, of those interventions. So I got some more information that supported me to make a decision around effective and beneficial for one of the supports...Hearing directly from the participant about some of the impacts that the support has had on them, I feel like listening to them in that process... was potentially quite healing for the participants in terms of a relationship with the scheme that will need to support them or they perceive will need to support them into the future.” **Independent expert, interview.**

Although there were clear benefits associated with direct participant contact, some independent experts noted there was a balance between being empathetic and ensuring they did not become a source of emotional support for the participant.

Program management by the NDIA

Based on survey responses, the majority (69%) of independent experts were completely or mostly satisfied with the NDIA’s management of the IERP. Several noted the Agency appears to have given a lot of consideration on how best to provide experts with support.

“The agency has put a lot of effort into supporting reviewers. I found the Agency to be very personable, responsive and helpful. Generally, I think that part of their role has been great. Absolutely.” **Independent expert, interview.**

During interviews, independent experts described the Agency staff managing the IERP as professional in all exchanges. However, most did comment that the timeliness of receiving referrals and associated materials could improve. Some also requested four to six weeks to complete a review due to the complexity of matters, compared to the current two-week turnaround timeframe.

Survey results also indicated that most independent experts (77%) were completely or mostly satisfied with the NDIA follow-up at the conclusion of the review process. However, during interviews, some independent experts said they would like feedback on the quality and outcome of their recommendations. While participant

confidentiality may not allow disclosure of whether the participant and Agency accepted recommendations, the experts would still value feedback on their reasoning, presentation of information, level of detail and suggestions for improvement.

Satisfaction with the IERP within the NDIA

Representatives from within the NDIA had mixed views about IERP, although those interviewed from outside of the IERP team acknowledged they have had little visibility of the program or recommendations.

IERP Managers

NDIA stakeholders said recruitment of case managers during the initial stages of the IERP was difficult, which may have been the result of short recruitment time frames. Law firms were engaged to support with compiling and indexing the large volumes of case documents. One stakeholder reported the engagement of law firms, combined with the lack of legal experience of case managers, slowed down the commencement of the program. The additional demand on case managers was also exacerbated by the pressure placed on them to address all feedback from advocacy and stakeholder groups. Staff members did not however, have sufficient capacity to address the larger than expected volume of feedback.

Those interviewed unanimously noted that the participant experience in the IERP was far more positive compared to the AAT as it is less legalistic, with an emphasis on giving participants a chance to explain their situation.

“I can say that I've actually listened to what they're saying, and really consider that in the same way that you would consider a report because, for me, you can only get so much from reports and when you actually speak to a person you get so much more context and you understand.” **IERP management, interview.**

Stakeholders observed that recommendations tended to be better set out with clearer reasoning when independent experts held legal qualifications, which is not

surprising given their training. It was acknowledged that while most independent experts in the program held legal qualifications, this was not a requirement.

Broader NDIA feedback

During interviews, representatives from various NDIA business areas were supportive of introducing a process that improved the participant experience. They supported introducing independence into this process only if the independent experts have a comprehensive understanding of the NDIS legislation, NDIA processes and the specific disability relevant to the case they are reviewing.

However, concerns were raised about the alignment of the independent experts' recommendations with the NDIA's OGs. They were concerned that if independent expert recommendations did not adhere to the NDIS operational guidelines, there would be a source of inconsistency in the Agency's decision-making processes.

Those interviewed were also concerned that there was no feedback loop from the independent experts' recommendations (and AAT outcomes) into operational guidelines to avoid future disputes about similar matters and create clarity for planners.

"If we have recommendations from independent experts and settlements from the AAT that are lawful and factual but they're not feeding back. We should be considering, if this is what the law says, we should change the operational guidelines and what we [the NDIS] fund." **NDIS stakeholder, interview.**