



Guidelines for the Conduct of Hearings in the NDIS Division

1. Introduction

- 1.1 These guidelines aim to achieve a consistent approach to the conduct of hearings in the NDIS Division. They should be read together with the [Review of NDIS Decisions Practice Direction](#) (the Practice Direction).
- 1.2 A consistent approach means all participants should know what to expect at a hearing and Contact Officers, Conference Registrars and Hearing Attendants can advise parties with some confidence what they can expect. Applicants and advocates are likely to be more prepared and more comfortable, and the process should run more smoothly as a result.
- 1.3 These guidelines are just that: it will be for the presiding member to decide, guided by the circumstances of each case, how the hearing should be conducted so as to achieve the objective of a mechanism of review that is fair, just, economical, informal and quick.
- 1.4 Members should be familiar with the procedures in the Practice Direction, including what parties are expected to do in preparation for, and at, a hearing. The Tribunal's fact sheet [What Happens at a Hearing?](#) is sent to the parties when an application is listed for a hearing. It tells parties generally what to expect and how to prepare for the hearing but does not cover the more detailed aspects described below.

2. Guiding principle

- 2.1 Tribunal proceedings must be conducted with as little formality and technicality as possible in the circumstances of the case (*Administrative Appeals Tribunal Act 1975*, s 33(1)). However, informal should never mean casual. The outcome of proceedings is of great importance to applicants and the hearing demands an appropriate level of formality.

3. General hearing protocols

- 3.1 When everyone is ready to proceed, the Hearing Attendant should tell the parties she or he is going to get the member(s). This should be sufficient to alert the parties that the hearing is about to start. It should not be necessary to knock as the member(s) enter the hearing room.

- 3.2 For hearings conducted in person in AAT registries, members should enter from the secure corridor as usual. A range of venues will be used for hearings in person in other locations. Members will need to consider the most suitable way to enter the hearing room in these cases.
- 3.3 Parties and others should not be required to stand when the member(s) enter the hearing room. Members should not bow, and nor should the parties.
- 3.4 Ordinarily, there should be no need for the Hearing Attendant or the member to announce that the AAT is in session, or to formally announce the names of the parties or the file number but some hearings might demand that level of formality. Otherwise, it should be sufficient for the presiding member to mark the start of the hearing by greeting the parties and introducing herself or himself.
- 3.5 Parties should not be required to stand when addressing the Tribunal or otherwise speaking during the hearing. Legal representatives should be encouraged not to stand.
- 3.6 In many hearings, there should be no need for an applicant to give evidence from the witness box. However, there may be cases where this would be appropriate.
- 3.7 Ordinarily, the Hearing Attendant should not make any formal announcements at the conclusion of a hearing. Parties and others should not be expected to stand when the member leaves the hearing room.

4. Oaths and affirmations

- 4.1 Unless the credibility of a person giving evidence is in issue, there should ordinarily be no need to take evidence formally on oath or affirmation.

5. Language

- 5.1 Technical, uncommon or unduly legal language should be avoided wherever possible. Consistent with this approach, the Practice Direction requires the respondent to lodge a *summary of their position* rather than a *Statement of Facts, Issues and Contentions*. The words *evidence* and *questions* are considered appropriate substitutes for *evidence in chief* and *cross examination*.
- 5.2 First names are not used in any other Division in the Tribunal and under no circumstances should they be used in NDIS Division hearings.

6. Oral decisions and reasons

- 6.1 Wherever possible, members should give decisions and reasons orally at the hearing. Depending on the case, it may be appropriate to adjourn for a time after hearing the evidence and return to give a decision and reasons. In some cases, the hearing may develop in such a way that reasons are discussed with parties as the hearing proceeds, leaving only the formal decision at the end of the hearing.

- 6.2 After giving oral reasons, either party may make a request for the reasons in writing. Regardless of whether such a request is made or is likely to be made, members should consider whether to order the transcript of the oral reasons and prepare a written decision to help build up the body of published decisions,
- 6.3 Reserving a decision might be appropriate in cases when issues fundamental to the nature of the NDIS have been considered for the first time or where an earlier decision of a Tribunal may require reconsideration. However those factors should not lead to written reasons becoming the rule in the Division.