

From: Presidents Chambers <Presidents.Chambers@art.gov.au>
To: bobbadvocate@gmail.com <bobbadvocate@gmail.com>
Subject: RE: ART NDIS Division operations - Attn: Justice Kyrou and Mr Michael Hawkins
[SEC=OFFICIAL]
Date: Wed, 19 Mar 2025 23:46:59 +0000

OFFICIAL

Dear Mr Buckley,

Thank you for your email to the President and Principal Registrar.

Your email has been noted and sent to the Jurisdictional Area Leader and List Leader for the NDIS jurisdictional area for their consideration.

Kind regards

Wendy Collins
Counsel
Administrative Review Tribunal

E presidents.chambers@art.gov.au
www.art.gov.au



From: Bob B-advocate <bobbadvocate@gmail.com>
Sent: Wednesday, March 19, 2025 12:05 PM
To: Reviews <reviews@art.gov.au>
Subject: ART NDIS Division operations - Attn: Justice Kyrou and Mr Michael Hawkins

EXTERNAL EMAIL

"Do not click any links or open any attachments unless you trust the sender, are expecting this email and know the content is safe."

Dear Justice Kyrou and Mr Michael Hawkins

I write about some of the operations of the NDIS Division of the new Administrative Review Tribunal (ART).

I am a volunteer advocate and have now helped over 60 NDIS participants in their requests for the AAT and ART to review the statements of participant supports (SOPS) in their NDIS Plans. These have mostly been reviews of plans for young autistic NDIS participants.

I appreciate that Members of the new ART appear to be aiming to progress reviews of supports for young autistic children quicker than the previous AAT process. This is an improvement, though it would be better if these issues could be resolved much more quickly,

or even better were not being heard through the ART. In relation to children with disability, the old legal maxim "Justice delayed is justice denied" is especially relevant.

Notably, the majority of recent matters in the former AAT NDIS division concluded that the NDIS's decision should not stand and indicated changes were required. See the outcomes reported for [1 July 2023 to 30 June 2024](#) and [1 July 2024 to 13 October 2024](#) where the Tribunal changed 75% and 70% respectively of decisions being reviewed. This indicates that the NDIA was not effectively assessing whether the merits of cases going to the AAT; in this way, the NDIA is not a model litigant. In particular, the NDIA is not learning from its experience over decisions for young autistic children seeking the inclusion of EIBI/ABA supports in their SOPS. We are keen to see what outcomes the NDIA's division of the new ART delivers.

I note the Respondent's numerous successful application to the Tribunal for an Independent Medical Examiner (IME). I suggest there are major problems with the approach Members and the Respondent are taking over such issues.

1. The Respondent is at times requesting that the Tribunal order an IME report without telling the Applicant or without letting the Applicant put their position on the issue.
2. The Tribunal has not asked the Respondent to justify wanting an IME's evidence/report. Apparently, the Tribunal accepts the *implication* that evidence from the Applicant's treating clinician is unreliable or unprofessional so an IME report is required. But the Respondent provides zero basis for such an implication and the Tribunal seem to simply accept that any and every clinician that an Applicant chooses as their treating clinician is unreliable. This indicates the Tribunal devalues evidence from treating clinicians whenever the Respondent requests an IME.
3. Bringing an IME into a matter sets up a *contest of experts* which typically requires the Tribunal to judge which "expert" is right. The High Court ruled in [Bushell v Repatriation Commission \[1992\] HCA 47; \(1992\) 175 CLR 408; \(1992\) 29 ALD 1 \(7 October 1992\)](#) that

It would be an exceptional case in which it would be right for the A.A.T., forming its own view of competing medical theories, to hold an hypothesis of connection favouring entitlement to be unreasonable, when the hypothesis is supported by "a responsible medical practitioner, speaking within the ambit of his expertise".

Basically, the Tribunal should avoid holding a contest of experts or "forming its own view of competing medical theories"; it should first ask itself in such matters about the competence and professionalism of an Applicant's treating clinician(s). The AAT repeatedly ignored this advice from the High Court; will the ART continue to ignore this esteemed advice? *Only* if a treating clinician were found to be speaking from *outside* "the ambit of [their] expertise", should should the Tribunal support/allow the Respondent to introduce an IME.

DVA responded to this HCA advice by [setting up an expert clinical panel so clinical decisions were made by clinicians](#), thereby relieving Tribunal Members of the burden and unreasonable expectation of complex *clinical* decision-making. The NDIS needs a similar process for complex clinical decisions.

4. The Respondent brings IMEs into the review process quite late. They consequent delay to the review process reduces early investment/intervention so is detrimental for a young autistic child.

The Tribunal threatens Applicants in *every* Direction notice that it issues saying

The Tribunal can dismiss an application if an Applicant fails within a reasonable time to comply with a direction made by the Tribunal.

but no such threat is made to the Respondent who is *usually* late in response to directions from the Tribunal.

There were numerous issues with the AAT process. I hope these will not continue in the ART.

1. In its latter days, the AAT let the Respondent create new SOPS that cut the Applicant's supports. This increased pressure on Applicants to accept an inadequate offer or endure long periods without essential supports while matters were decided. Typically, the Tribunal failed/refused to protect the Applicant in such instances
2. The Tribunal did not protect Applicants after decisions from the Respondent doing an early SOPS (NDIS Plan) review. The Respondent often holds the Tribunal's decision in contempt; they often override a Tribunal decision at their first opportunity and the Tribunal refuses to address such issues.
3. While the AAT decisions were meant to be made "standing in the shoes of the original decision maker", Member's decisions were often made with effect from the date the Member made their decision, not the date of the original decision that was under review.
4. the Respondent was not a model litigant and the Tribunal treated then as if they were.
5. The AAT issued every subpoena the Respondent requested and few if any that an Applicant requested. Many of the subpoenas were excessive and unjustified.
6. AAT Members often simply ignored issues raised and evidence presented by an Applicant.

I hope the ART will perform better in all these areas.

Recently I had a Registrar tell me in a NDIS-related Directions Hearing that the Respondent is a model litigant. This was after asking whether we needed more time to review the Statement of Issues received from the Respondent less than an hour before the hearing.

The NDIS is not a model litigant, as this timing which is typical, demonstrates. I find such claims to be aggravating (I'm neuro-divergent so my dislike of such misrepresentations like this is triggering for me); I suggest the Tribunal should accommodate my "difference" by avoiding such misrepresenting or treating the NDIA as a model litigant in ART processes and proceedings.

Please feel free to contact me (email or mobile 0418 677 288) if you would like any more information or explanation of the matters raised above.

Bob Buckley
Volunteer Autism Advocate

Bob recognises and respects the traditional owners, elders past, present and emerging, of Ngunnawal and Ngambri country, the lands on which he lives and works. Sovereignty was never ceded.

The Administrative Review Tribunal replaced the Administrative Appeals Tribunal (AAT) and Immigration Assessment Authority (IAA) on 14 October 2024. All reviews not finalised prior to this date have been automatically transferred to the new Tribunal. If you are an applicant or another party to a review, you do not need to do anything. For more information visit www.art.gov.au.

The Tribunal acknowledges the traditional owners and custodians of country throughout Australia and acknowledges their continuing connection to land, waters and community. We pay our respects to the people, the cultures and elders past and present.

IMPORTANT:

This message and any attachments may contain confidential or legally privileged information. If the message was sent to you by mistake, please delete all copies and notify the Tribunal by return email. Any review, retransmission, dissemination or other use of this information by persons or entities other than the intended recipient is prohibited and may attract criminal penalties.