

Subject:	former Minister's advisor says AAT operates outside the law
Date:	Fri, 27 May 2022 13:42:24 +1000
From:	Bob Buckley (A4 Convenor) <convenor@a4.org.au>
Reply-To:	convenor@a4.org.au
Organisation:	Autism Aspergers Advocacy Australia
To:	senator.katy.gallagher@aph.gov.au
CC:	xxx, pat.conaghan.mp@aph.gov.au

Dear The Hon. Senator Gallagher,

An email to The Hon. P Conaghan MP shows that former Minister Reynold's Senior Adviser Legislation and Regulation wrote "AAT rulings can include funded supports not generally considered reasonable and necessary under the Act".

I am seriously alarmed that the former Minister's (for the NDIS) staff claimed that the AAT operates outside the law.

The AAT's review process for the NDIS is meant to make the decision anew. Presumably, the AAT makes its decision under the same law as the NDIA so its decision is also required to meet the "reasonable and necessary" requirements in the *NDIS Act 2013*. If this is not the case, then the AAT is making a different decision using different rules. What are those rule? Or is the former Minister's office misrepresenting the process? It may be true that AAT members regard some things to be "reasonable and necessary" that a NDIA planner does not. The AAT and the NDIA may interpret "reasonable and necessary" differently, but the AAT's view takes precedent over that of the NDIA planner. The NDIA is not the final arbiter.

So when the advisor says "not generally considered reasonable and necessary under the Act", the term "generally" may be misleading or inappropriate. Ultimately, what matters is the AAT's legal decision.

I suspect that the former Minister's advisor is wrong. Government representatives should do better than this. In any case, please can you clear this up for me.

Bob Buckley

Convenor, Autism Aspergers Advocacy Australia (A4)

website: <https://a4.org.au/>

Autism Aspergers Advocacy Australia, known as *A4*, is the national grassroots organisation advocating for autistic people, their families, carers and associates. A4 is internet based so that Australians anywhere can participate.

Note for politicians and bureaucrats – *Autism Aspergers Advocacy Australia's* policy on unanswered questions is available at <https://a4.org.au/node/1419>.

A4 recognises and respects the traditional owners, the elders past and present of lands in Australia. Sovereignty was never ceded.

“The first step in solving any problem is recognising there is one.” Jeff Daniels as Will McEvoy in *The Newsroom*.

----- Forwarded Message -----

Subject:	Fwd: Cowper: xxx [SEC=OFFICIAL]
Date:	Wed, 25 May 2022 02:33:43 +0000
From:	xxx
To:	convenor@a4.org.au < convenor@a4.org.au >

Sent from my iPhone

Begin forwarded message:

From: "Blackmore, Jodi (P. Conaghan, MP)" <Jodi.Blackmore@aph.gov.au>
Date: 25 May 2022 at 11:08:29 am AEST

To: xxx
Subject: FW: xxx [SEC=OFFICIAL]

Hi X,

Thanks for speaking with me this morning,

Please find below the response we received from the former NDIS Minister's office regarding the funding issue. Unfortunately, as discussed, it's not as helpful as we would like it to have been.

I've contacted Kerry Burls this morning to ask for her permission to allow me to provide her contact phone number to you. She was very happy for me to pass the information on to you and said that if she is unable to help you, she will probably know someone who can. Her phone number is 0414 353 145.

Of course, I'll also follow up with Pat so we can make a time for you to meet with him again and see what we can do moving forward.

Kind regards,

Jodi

Jodi Blackmore
Electorate Officer

Phone 02 6583 8387 | Level 4, JBC Building, 41-47 Horton Street (PO Box 345) Port Macquarie NSW 2444
Phone 02 5507 9555 | Suite 33, Jetty Village Shopping Centre, 361 Harbour Drive, Coffs Harbour 2450

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From: ADDY2, Rachel
Sent: Tuesday, 17 May 2022 2:05 PM
To: Blackmore, Jodi (P. Conaghan, MP) <Jodi.Blackmore@aph.gov.au>
Subject: FW: Cowper: xxx - NDIS XXX funding Cut [SEC=OFFICIAL]
Importance: High

Hi Jodi.

Thanks for your referral below. The NDIA have provided the below advice:

AAT rulings remain in effect for the duration of that plan only. The subsequent plan is built according to reasonable and necessary criteria under the NDIS Act and Rules 2013. Therefore, the planner does not take account of AAT rulings when determining supports for a subsequent plan. AAT rulings can include funded supports not generally considered reasonable and necessary under the Act.

The current plan has been built according to reasonable and necessary criteria under section 34 of the Act, and some requested supports were declined and written justifications provided by the NDIA planner.

This plan also reflects data gathered about X's sleep disorder. The family has tabulated this information and conferred with the sleep doctor. This plan has used the sleep data to determine what overnight support will be provided by the NDIS.

The planner has emailed the support coordinator and family and acknowledged the difference in funding levels from previous plan to this one, and explained in detail why many of the requests for funding did not meet reasonable and necessary criteria. The planner has also offered to meet with the family and support coordinator next week to discuss the funded supports and their options going forward.

As per the NDIS Act, the family is able to submit a request for review under section 100 if they feel that errors have been made when determining X's supports.

Please let me know if you require anything further.

Thanks
XXX

Rachel Addy I Senior Adviser Legislation and Regulation
Office of Senator the Hon Linda Reynolds CSC
Minister for the National Disability Insurance Scheme
Minister for Government Services
