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**From:** [REDACTED] Philip  
**Sent:** Monday, 7 November 2022 12:17 PM  
**To:** Swainson, Matthew  
**Cc:** Flowers, Daniel; [REDACTED] Lee  
**Subject:** 10 November HOC papers - AAT Case Management Guides [SEC=OFFICIAL]  
**Attachments:** Hearing Oversight Committee Brief - AAT CM Guides Project 20221110.docx; Attachment B - AAT Case Management Guides Topic List.docx; s22(1)(a)(ii) - irrelevant material  
[REDACTED] AAT CM Guide - Applied Behavioural Analysis (ABA).docx;  
s22(1)(a)(ii) - irrelevant material  
[REDACTED]

**Importance:** High

Matt,

The Brief has been updated (Dates etc.) and I have included section 3.3 re the parameters of the Guides.

Note that the Brief and Guides are virtually the same that we provided to you before the 20 October meeting.

Cathy [REDACTED] has advised that any papers need to be circulated to the HOC members by COB Monday 7 November.

These are attached and are also available at

[Operational Support - HOC 10Nov22 Meeting papers - All Documents \(sharepoint.com\)](#)

Regards

Philip [REDACTED]  
Assistant Director, Strategy and Policy  
AAT Case Management Branch  
National Disability Insurance Agency  
E [philip\[REDACTED\]@ndis.gov.au](mailto:philip[REDACTED]@ndis.gov.au)






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Hearing Oversight Committee meeting

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<b>Meeting date:</b>	10 November 2022
<b>Agenda Item:</b>	#
<b>Agenda Item:</b>	AAT Case Management Guides Project
<b>Paper Type:</b>	For Endorsement
<b>ELT Sponsor:</b>	Matthew Swainson, Chief Counsel
<b>Draft resolution:</b>	The Hearing Oversight Committee endorses the Six AAT CM Guides presented to the meeting.

## 1. Purpose

The purpose of this paper is to provide an overview of the current AAT Case Management Guides Project and seek endorsement from the Hearing Oversight Committee of the Six AAT Case Management Guides completed to date (See Attachments):

1. s22(1)(a)(ii) - irrelevant material
2. s22(1)(a)(ii) - irrelevant material
3. AAT CM Guide – Applied Behavioural Analysis,
4. s22(1)(a)(ii) - irrelevant material
5. s22(1)(a)(ii) - irrelevant material
6. s22(1)(a)(ii) - irrelevant material

- 1.1. This endorsement is being sought for the Guides that provide Case Managers and other stakeholders with guidance in formulating the position of the NDIA in managing matters before the AAT, with respect to specific supports.

## 2. Recommendation

- 2.1. To endorse the use of the AAT Case Management Guides as being the position of the NDIA regarding each of the nominated supports.

## 3. Background

- 3.1. A need was identified for a common plain English and succinct suite of guidance documents identifying the various documents for consideration in formulating an approach to managing the matter and outlining the NDIA's likely position on the provision of certain NDIS supports, based on legislation and experience.
- 3.2. A Project was established in the Quality, Strategy and Training team within the AAT Case Management Branch in August 2022. This Project was tasked with providing Case Management Guides for 30 supports topics with extensive consultation within the Branch's Executive team, Subject Matter Experts both within the Branch and the wider NDIA to ensure completeness and accuracy of the Guides.
- 3.3. The Guides are to provide only a summary of the Supports and the NDIA's likely positions to act as a type of quick reference tool to assist both internal and external stakeholders to develop a greater understanding of our case management approach.

## 4. Budget

- 4.1. The Project is utilising existing resources.

## 5. Risks

- 5.1. These Guides are designed to outline the NDIA position regarding the provision of NDIS Supports to Case Managers and other interested parties. The Guides provide for each of the covered supports sections covering description of the support, current NDIA Policy,



## Hearing Oversight Committee meeting

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NDIA posture, supporting evidence requirements, other considerations and summary/ies of previous AAT decisions that may be relevant. The Guides also include links to relevant legislation, documents, papers and orders where required.

- 5.2. The publishing of these Guides may increase the scrutiny that the Agency's decision-making processes are currently undergoing. This is considered of minor impact as the Guides are distilling already published information from the NDIS Guidelines on the internet, published decisions of the AAT and interpretations of the relevant legislation – the Act and Rules.

### 6. Impact

- 6.1. The provision of the AAT Case Management Guides to Case Managers and the Agency will assist with achieving the following outcomes and improvements.
- 6.1.1. Staff (especially New Starters) will have access to a 'one stop shop' re supports.
  - 6.1.2. Business units throughout the Branch and the Agency will have access to the latest NDIA policy and posture regarding the provision of supports that are covered.
  - 6.1.3. The NDIA will have transparency regarding its decisions in internal and external forums – i.e. the AAT will better understand our position when we are dealing with the Members.
  - 6.1.4. Participants and Providers will have a better understanding of how the NDIA has formulated its approach to managing the matter.
  - 6.1.5. These Guides will assist with satisfying the NDIA Participant Service Guarantee and Model Litigant obligations.

### 7. Responsibility and next steps

- 7.1. The Branch Manager, AAT Case management has overall responsibility and oversight of the Project. The Project team currently consists of the Director, Quality, Strategy and Training, Assistant Director, Strategy and Three Paralegals and is responsible for the initial drafting of the Guides, sourcing and collating feedback from users and Subject Matter Experts and managing the publishing and general administration of the Guides going forwards.
- 7.2. The Project team will continue progressing the remaining 24 Guides which are currently in various stages and the Project is expecting to have all the Guides completed by the end of the year.



Hearing Oversight Committee meeting

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**Attachments**

Attachment A: [s22\(1\)\(a\)\(ii\) - irrelevant material](#) AAT  
 CM Guide – Applied Behavioural Analysis, [s22\(1\)\(a\)\(ii\) - irrelevant material](#)

Attachment B: AAT Case Management Guides Topic List

Hearing Oversight Committee Endorsement: **Yes/No/For Discussion at next meeting/For discussion out of session.**

**Internal use only – removed for meeting**

Prepared by:	Philip <a href="#">s22(1)(a)(ii) - irrelevant material</a> / Lee	Approved by:	Matthew Swainson
Division:	AAT Case Management		Chief Counsel
Cleared by ELT	[ELT date]		

**Attachment B: AAT Case Management Guides Topic List.**

s22(1)(a)(ii) - irrelevant material

4. Applied Behavioural Analysis (ABA)

s22(1)(a)(ii) - irrelevant material



# AAT Case Management Guide

## Applied Behavioural Analysis (ABA)

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Field	Content	Reference Documents
Title	<b>Applied Behavioural Analysis (ABA)</b>	
Purpose	This document is part of a suite of guidance documents for case managers to use in formulating their approach to managing individual cases before the Administrative Appeals Tribunal (AAT).	
Scope	<p>ABA therapy refers to a non-pharmacological behavioural intervention to help children diagnosed with Autism Spectrum Disorder (ASD), intellectual disability or developmental delay to develop skills in communication, self-care and social interaction, and or reduce behaviours that are barriers to learning and participation.</p> <p>ABA is one of a number of different evidence-based approaches to support children with ASD. It is characterised by intensive interventions, delivered by trained personnel in a clinical or childcare environment.</p>	<p><a href="#">Applied Behavioural Analysis (ABA) Therapy   Disability Support Guide</a></p> <p><a href="#">Behavioural interventions   NDIS</a></p> <p><a href="#">Autism CRC early intervention report   NDIS</a></p>
Escalation to Hearing Oversight Committee (HOC)	If a matter is within the parameters of this document, the AAT CM Branch Manager may approve proceeding to hearing. Where there is substantial risk or the matter is outside the parameters of this document, the matter should be referred to HOC.	
Current National Disability Insurance Agency (NDIA) policy on the subject	<p>The NDIA will fund ABA therapy if the NDIA is satisfied it is a reasonable and necessary support. Where ABA therapy is to be funded as an early intervention support, the NDIA must also be satisfied that it is likely to reduce a participant's need for future disability supports.</p> <p>Supports for children with ASD should be evidence-based and delivered using a family-centred approach that incorporates individual planning. ABA therapy is likely to NOT be delivered with a family centred approach and more likely to be delivered in an allied health clinic or childcare/school environment.</p>	<p>Section 34(1) of the <a href="#">National Disability Insurance Scheme Act 2013</a></p> <p>Rules 3.2 and 3.3 of the <a href="#">National Disability Insurance Scheme (Supports for Participants) Rules 2013</a></p> <p><a href="#">Operational Guideline – Applying to the NDIS</a></p> <p><a href="#">Operational Guideline – Early childhood approach</a></p>



## AAT Case Management Guide

### Applied Behavioural Analysis (ABA)

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		<p><a href="#">ECIA National Guidelines – Best Practice in Early Childhood Intervention</a></p> <p><a href="#">Council of Australian Governments (COAG) – Principles to determine responsibilities of the NDIS and other service systems</a></p>
<p>NDIA Posture in relation to this subject</p>	<p>The NDIA is likely to fund up to 20 hours per week of ABA therapy where it is considered likely to be effective and beneficial.</p> <p>Evidence from a meta-analysis of clinical studies indicates that it is unlikely that more than 15 hours per week of ABA will be effective and beneficial.</p> <p>Where more than 20 hours of ABA is requested, the NDIA is most likely to run the matter to hearing. The matter will turn on the question of the participant’s age, and their own capacity as well as their family’s capacity to meet the time obligations of ABA therapy.</p> <p>Where a participant has commenced school and requests more than 10 hours of ABA per week, the NDIA must consider the capacity of the participant and their family to sustain both full-time schooling and intensive therapy.</p>	<p><a href="#">Operational Guideline – Creating your plan</a></p> <p><a href="#">CXZS v National Disability Insurance Agency [2021] AATA 511</a></p> <p><a href="#">Intervention Recommendations for Children with Autism in Light of a Changing Evidence Base   Report, Dr M Sandbank et al (generalised findings, specific to older children)</a></p> <p><a href="#">Autism CRC early intervention report   NDIS</a></p> <p><a href="#">The Department of Defence (USA)   Comprehensive Autism Care Demonstration Annual Report 2021</a></p> <p><a href="#">A Multisite Randomized Controlled Trial Comparing the Effects of Intervention Intensity and Intervention Style on Outcomes for Young Children With Autism - ScienceDirect</a></p>



# AAT Case Management Guide

## Applied Behavioural Analysis (ABA)

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<p>Evidence recommended to inform NDIA position in a specific matter before the Administrative Appeals Tribunal (AAT)</p>	<p>To consider funding for ABA therapy, the NDIA requires evidence of a relevant diagnosis from a paediatrician, psychiatrist, psychologist or a specialist multi-disciplinary team. The Diagnostic and Statistical Manual of Mental Disorders, fifth edition (<b>DSM-5</b>) is the NDIA's preferred diagnostic standard.</p> <p>Clinical evidence that ABA therapy satisfies the criteria in section 34(1) is also required to be provided by a psychologist, occupational therapist, paediatrician or, where a participant has received ABA therapy previously - an ABA therapist.</p> <p>Clinical evidence must address the link between ABA therapy and a participant's goals and specify how the requested number of hours of ABA therapy will be effective in assisting the participant to achieve those goals.</p> <p>Evidence from a behavioural paediatrician who has assessed the participant in person is recommended. Professor Einfeld or Dr McDowell are recommended.</p>	<p><a href="#">Australia's First National Guideline for the Assessment and Diagnosis of Autism Spectrum Disorders   Autism CRC</a></p> <p><a href="#">List A: Conditions that are likely to meet the disability requirements   NDIS</a></p> <p>Section 34(1) of the <a href="#">National Disability Insurance Scheme Act 2013</a></p> <p>Rules 3.2 and 3.3 of the <a href="#">National Disability Insurance Scheme (Supports for Participants) Rules 2013</a></p> <p><a href="#">Persons Giving Expert and Opinion Evidence Guideline   Administrative Appeals Tribunal</a></p>
<p>Other considerations</p>	<p>The NDIA must also be satisfied that ABA therapy meets the National Disability Insurance Scheme (<b>NDIS</b>) funding criteria – in particular, that it:</p> <ul style="list-style-type: none"> <li>is unlikely to cause harm to a participant or pose a risk to others; and</li> <li>is not duplicated by other funded supports.</li> </ul> <p>Consider the context and circumstances of the family and their capacity to support the delivery of 15 – 20 hours of intervention in the learning environment of the child (usually the home or school).</p> <p>Also consider:</p> <ul style="list-style-type: none"> <li>children with greater baseline cognitive skills and higher adaptive behaviour scores at baseline have better outcomes from early intensive ABA therapy; and</li> </ul>	<p>Rule 5.1 of the <a href="#">National Disability Insurance Scheme (Supports for Participants) Rules 2013</a></p> <p><a href="#">How we work out if a support meets the funding criteria   NDIS</a></p> <p><a href="#">Autism CRC early intervention report   NDIS</a></p> <p>Section 3 of the <a href="#">National Disability Insurance Scheme Act 2013</a></p>





## AAT Case Management Guide

### Applied Behavioural Analysis (ABA)

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	<ul style="list-style-type: none"> <li>younger children have better outcomes from ABA therapy.</li> </ul> <p>The NDIA must also have regard to a participant's choice and control in the pursuit of their goals and the planning and delivery of their supports.</p>	
Previous matters that may advise the NDIA position	<p>The AAT will not consider whether ABA therapy is an effective early behavioural intervention strategy for children diagnosed with ASD, but whether ABA therapy satisfies the criteria in section 34(1), which will be determined on the facts of each case.</p> <p>When considering funding for ABA therapy, the NDIA must also consider the promotion of an applicant's choice and control in the pursuit of their goals and the planning and delivery of their supports.</p> <p>It is the responsibility of the NDIA to show that ABA therapy can be substituted with other mainstream therapies and achieve the same outcomes for the applicant.</p>	<p><a href="#">FRCT v National Disability Insurance Agency [2019] AATA 1478</a></p> <p><a href="#">WKZQ v National Disability Insurance Agency [2019] AATA 1480</a></p> <p><a href="#">CXZS v National Disability Insurance Agency [2021] AATA 511</a></p>
Document admin	<p>DRAFT Version 0.6</p> <p>Quality, Strategy and Training</p>	2 November 2022
Approved	Matthew Swainson, General Counsel	
Endorsed	Hearing Oversight Committee	

**From:** [redacted] Alice  
**Sent:** Wednesday, 25 October 2023 4:37 PM  
**To:** [redacted] Misty  
**Subject:** FW: For endorsement: AAT CM guides [SEC=OFFICIAL]

Hi Misty,

Please see below.

Kind regards,

Alice [redacted]  
 Director (A/g)  
 Quality, Reporting, Strategy and Training  
 Administrative Appeals Branch  
 National Disability Insurance Agency  
 E [alice@\[redacted\]@ndis.gov.au](mailto:alice@[redacted]@ndis.gov.au)



The NDIA acknowledges the Traditional Custodians of Country throughout Australia and their continuing connection to land, sea and community. We pay our respects to them and their cultures and to Elders past, present and emerging.




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**From:** Flowers, Daniel <Daniel.Flowers@ndis.gov.au>  
**Sent:** Wednesday, October 25, 2023 2:49 PM  
**To:** [redacted] Alice <Alice@[redacted]@ndis.gov.au>  
**Subject:** FW: For endorsement: AAT CM guides [SEC=OFFICIAL]

Hi Alice,

This is the only email trail I could locate.

Thanks,

Daniel Flowers  
 Branch Manager  
 AAT Case Management

National Disability Insurance Agency

s22(1)(a)(ii) - irrelevant material

Email [daniel.flowers@ndis.gov.au](mailto:daniel.flowers@ndis.gov.au)



Delivered by the National Disability Insurance Agency

The NDIA acknowledges the Traditional Custodians of Country throughout Australia and their continuing connection to land, sea and community. We pay our respects to them and their cultures and to Elders past, present and emerging.

From: Philip <Philip@ndis.gov.au>  
Sent: Friday, January 6, 2023 10:18 AM  
To: Flowers, Daniel <Daniel.Flowers@ndis.gov.au>; Swainson, Matthew <Matthew.Swainson@ndis.gov.au>; Lee <Lee@ndis.gov.au>  
Cc: Marija <Marija@ndis.gov.au>; Emma <Emma@ndis.gov.au>; Jess <Jess@ndis.gov.au>; Simon <Simon@ndis.gov.au>  
Subject: RE: For endorsement: AAT CM guides [SEC=OFFICIAL]

Hi Matt et al,

We are currently drafting an AAT CM SOP Document Control which will address your first question below directly with Six monthly review after the creation of a AAT CM document. This SOP will cover all AAT CM documents including SOPs, Guides, Forms and templates.

We will also have a review/continuous improvement process in place through this SOP where all staff and other interested parties are able to make suggestions etc. re changes to any AAT CM document.

We are currently in first draft but it is progressing well.

Regards

Philip  
Assistant Director, Strategy and Policy  
AAT Case Management Branch  
National Disability Insurance Agency

E [philip@ndis.gov.au](mailto:philip@ndis.gov.au)



Delivered by the National Disability Insurance Agency

From: Flowers, Daniel <Daniel.Flowers@ndis.gov.au>  
Sent: Thursday, 5 January 2023 8:26 PM  
To: Swainson, Matthew <Matthew.Swainson@ndis.gov.au>; Philip <Philip@ndis.gov.au>; Lee <Lee@ndis.gov.au>  
Cc: Marija <Marija@ndis.gov.au>; Emma <Emma@ndis.gov.au>

s22(1)(a)(ii) - irrelevant material Jess <Jess@s22(1)(a)(ii) - irrelevant material@ndis.gov.au>; s22(1)(a)(ii) - irrelevant material Simon <Simon@s22(1)(a)(ii) - irrelevant material@ndis.gov.au>

**Subject:** RE: For endorsement: AAT CM guides [SEC=OFFICIAL]

Hi Matt,

Re #1 below. Yes, there will need to be a scheduled review (initially 6 monthly, Lee, please confirm) in addition to any considerations as part of the post decision SOP that is also being updated (DR&L are the lead on this).

s22(1)(a)(ii) - irrelevant material

Phil/Lee, feel free to add/correct anything above.

Thanks,

**Daniel Flowers**  
Branch Manager  
AAT Case Management  
**National Disability Insurance Agency**  
s22(1)(a)(ii) - irrelevant material  
Email [daniel.fxxxxxx@xxxx.xxx.xx](mailto:daniel.fxxxxxx@xxxx.xxx.xx)



The NDIA acknowledges the Traditional Custodians of Country throughout Australia and their continuing connection to land, sea and community. We pay our respects to them and their cultures and to Elders past, present and emerging.

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**From:** Swainson, Matthew <Matthew.Swainson@ndis.gov.au>  
**Sent:** Thursday, 5 January 2023 5:22 PM  
**To:** s22(1)(a)(ii) - irrelevant material Philip <Philip@s22(1)(a)(ii) - irrelevant material@ndis.gov.au>; s22(1)(a)(ii) - irrelevant material Lee <Lee@s22(1)(a)(ii) - irrelevant material@ndis.gov.au>  
**Cc:** Flowers, Daniel <Daniel.Flowers@ndis.gov.au>; s22(1)(a)(ii) - irrelevant material Marija <Marija@s22(1)(a)(ii) - irrelevant material@ndis.gov.au>; s22(1)(a)(ii) - irrelevant material Emma <Emma@s22(1)(a)(ii) - irrelevant material@ndis.gov.au>; s22(1)(a)(ii) - irrelevant material Jess <Jess@s22(1)(a)(ii) - irrelevant material@ndis.gov.au>; s22(1)(a)(ii) - irrelevant material Simon <Simon@s22(1)(a)(ii) - irrelevant material@ndis.gov.au>  
**Subject:** RE: For endorsement: AAT CM guides [SEC=OFFICIAL]

Hi Philip and team

Great piece of work, much appreciated.

You'll see I've been working through the documents and I can see Philip has been responding to comments – thanks. I will keep working my way through, though possibly Monday now.

I have a two broader comments:

1. Confirmation about the process for keeping these updated. Do we review after an AAT decision or HOC position that changes the posture. Also where we have identified model litigant issues with our approach.

s22(1)(a)(ii) - irrelevant material

Ideally I would like a continuous improvement loop that connects to model litigant/participant experience – is this the vehicle?

Matt

From: [redacted] Philip <Philip [redacted]@ndis.gov.au>  
Sent: Thursday, 22 December 2022 3:26 PM  
To: Swainson, Matthew <Matthew.Swainson@ndis.gov.au>; [redacted] Lee <Lee [redacted]@ndis.gov.au>  
Cc: Flowers, Daniel <Daniel.Flowers@ndis.gov.au>; [redacted] Marija <Marija [redacted]@ndis.gov.au>; [redacted] Emma <Emma [redacted]@ndis.gov.au>  
Subject: RE: For endorsement: AAT CM guides [SEC=OFFICIAL]

Hi Matthew,

The link to the folder where the policy document and all of the Guides is [Operational Support - Final Drafts \(23 Nov 22\) w MLO and PSC amendments - All Documents \(sharepoint.com\)](#)

Hope you have/had a great Christmas!

### Regards

Philip [redacted]  
Assistant Director, Strategy and Policy  
AAT Case Management Branch  
National Disability Insurance Agency  
E philip [redacted]@ndis.gov.au



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From: Swainson, Matthew <Matthew.Swainson@ndis.gov.au>  
Sent: Wednesday, 21 December 2022 5:47 PM  
To: [redacted] Lee <Lee [redacted]@ndis.gov.au>  
Cc: Flowers, Daniel <Daniel.Flowers@ndis.gov.au>; [redacted] Marija <Marija [redacted]@ndis.gov.au>; [redacted] Philip <Philip [redacted]@ndis.gov.au>; [redacted] Emma <Emma [redacted]@ndis.gov.au>  
Subject: RE: For endorsement: AAT CM guides [SEC=OFFICIAL]

Thanks Lee

Could you send the link.

Last day for me today, I will see if I can review,

s22(1)(a)(ii) - irrelevant material

Matt

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From: [redacted] Lee <Lee [redacted]@ndis.gov.au>  
Sent: Tuesday, 20 December 2022 4:37 PM  
To: Swainson, Matthew <Matthew.Swainson@ndis.gov.au>  
Cc: Flowers, Daniel <Daniel.Flowers@ndis.gov.au>; [redacted] Marija <Marija [redacted]@ndis.gov.au>; [redacted]

Philip <Philip [REDACTED]@ndis.gov.au>

Subject: For endorsement: AAT CM guides [SEC=OFFICIAL:Sensitive]

Matt,

Noting your recent endorsement of the Dispute Resolution policy, we would now like to proceed with publishing the Case Management Guides to Case Managers AND the DR&L team. Please advise your endorsement to proceed. You can access the final versions of the 29 Guides in the following Sharepoint folder: Operational\_Support - Documents\Quality Strategy & Training\AAT CM Guide Project\Final Drafts (23 Nov 22) w MLO and PSC amendments. The versions attached have incorporated your feedback from previous rounds, as well as Daniel's and the CM Directors.

If endorsed, we will publish in early January, with a brief info session to explain purpose etc. And then we will draw up a revisions schedule

Happy to discuss  
Cheers

Lee [REDACTED]

Director

AAT Case Management Branch

National Disability Insurance Agency

[REDACTED]

Email [lee \[REDACTED\]@ndis.gov.au](mailto:lee [REDACTED]@ndis.gov.au)