

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 2/12/2021 3:54:27 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating Application - Form 15 - Rule 8.01(1)
File Number:	NSD1256/2021
File Title:	COMMISSIONER OF THE NDIS QUALITY AND SAFEGUARDS COMMISSION v AUSTRALIAN FOUNDATION FOR DISABILITY ACN 000 112 729
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 3/12/2021 12:11:37 PM AEDT

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

Form 15  
Rules 8.01(1); 8.04(1)



## Originating application

No. NSD of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

### COMMISSIONER OF THE NDIS QUALITY AND SAFEGUARDS COMMISSION

Applicant

### AUSTRALIAN FOUNDATION FOR DISABILITY (ACN 000 112 729)

Respondent

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:** Federal Court of Australia  
Law Courts Building  
184 Phillip St  
Queens Square, Sydney, NSW 2000

Date:

Signed by an officer acting with the authority of  
the District Registrar

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Filed on behalf of the Commissioner of the NDIS Quality and Safeguards  
Commission, the Applicant

Prepared by Paul Vane-Tempest  
Law firm **Ashurst**  
Tel (02) 6234 4036  
Email Paul.Vane-Tempest@ashurst.com

**Address for service**

Level 11, 12 Moore Street, Canberra, ACT, 2601



## Details of claim

On the grounds stated in the Concise Statement, the Applicant (the **Commissioner**) claims:

1. A declaration pursuant to s 21 of the Federal Court of Australia Act 1976 (Cth) (**Federal Court Act**) that the Respondent (**Afford**), being an entity that is registered as a registered NDIS provider under s 73E of the National Disability Insurance Scheme Act 2013 (Cth) (**NDIS Act**), contravened s 73J of the NDIS Act by breaching a condition to which its registration was subject under s 73F(2)(b) of the NDIS Act by failing to provide supports and services to Ms Merna Aprem in a safe and competent manner with care and skill, as required of it by s 6(c) of Part 2 of the *National Disability Insurance Scheme (NDIS Code of Conduct) Rules 2018* (Cth) (**Code of Conduct Rules**), by reason of its failure to:
  - (a) develop and implement adequate measures in Ms Aprem's Epilepsy Management Plan (**EMP**) for the management of Ms Aprem's epilepsy, including as regards bathing or showering;
  - (b) ensure that review of Ms Aprem's seizure control had taken place for the purpose of Ms Aprem's Comprehensive Health Assessment Program (**CHAP**);
  - (c) ensure that an action plan was developed and implemented to address the risks posed by Ms Aprem's epilepsy for the purpose of Ms Aprem's CHAP or at all;
  - (d) identify and implement measures to protect Ms Aprem against the risks associated with her having a seizure whilst bathing;
  - (e) ensure that Ms Aprem was adequately supervised, or adequate alternative risk management procedures were in place, whilst bathing on 23 May 2019;
  - (f) ensure that Ms Aprem's diagnoses and support needs were adequately documented in client records, including the "CIMS" system; and/or
  - (g) take adequate steps to ensure that the support workers responsible for providing supports and services to Ms Aprem on 23 May 2019 were made aware of any or all of the following:
    - i. Ms Aprem was diagnosed with epilepsy;
    - ii. Ms Aprem could experience seizures;
    - iii. the terms of Ms Aprem's EMP and/or CHAP; and/or
    - iv. measures required to address the risks posed by Ms Aprem's epilepsy whilst bathing.
2. A declaration pursuant to s 21 of the *Federal Court Act* that Afford contravened s 73V of the *NDIS Act* by failing to provide supports and services to Ms Merna Aprem in a safe and competent manner with care and skill as required of it by s 6(c) of Part 2 of the Code of Conduct Rules, by reason of its failure to:



- (a) develop and implement adequate measures in Ms Aprem's EMP for the management of Ms Aprem's epilepsy, including as regards bathing or showering;
  - (b) ensure that review of Ms Aprem's seizure control had taken place for the purpose of Ms Aprem's CHAP;
  - (c) ensure that an action plan was developed and implemented to address the risks posed by Ms Aprem's epilepsy for the purpose of Ms Aprem's CHAP or at all;
  - (d) identify and implement measures to protect Ms Aprem against the risks associated with her having a seizure whilst bathing;
  - (e) ensure that Ms Aprem was adequately supervised, or adequate alternative risk management procedures were in place, whilst bathing on 23 May 2019;
  - (f) ensure that Ms Aprem's diagnoses and support needs were adequately documented in client records, including the "CIMS" system; and/or
  - (g) take adequate steps to ensure that the support workers responsible for providing supports and services to Ms Aprem on 23 May 2019 were made aware of any or all of the following:
    - i. Ms Aprem was diagnosed with epilepsy;
    - ii. Ms Aprem could experience seizures;
    - iii. the terms of Ms Aprem's EMP and/or CHAP; and/or
    - iv. measures required to address the risks posed by Ms Aprem's epilepsy whilst bathing.
3. A declaration pursuant to s 21 of the *Federal Court Act* that Afford, being an entity that is registered as a registered NDIS provider under s 73E of the NDIS Act, contravened s 73J of the NDIS Act by breaching a condition to which its registration was subject under s 73F(2)(c) of the NDIS Act by failing to ensure that Ms Aprem could access supports in a safe environment which was appropriate to her needs as set out in cl 24 of the NDIS Practice Standards at Schedule 1, Part 5 of the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* (Cth) by reason of its failure to:
- (a) identify the risk to Ms Aprem's safety when bathing posed by the door to the bathroom adjacent to her bedroom at Woodbine being fitted with an internally lockable doorknob which could not be unlocked from the outside;
  - (b) take any or any adequate steps to mitigate that risk;
  - (c) ensure that staff could readily access all areas of the Woodbine property which were occupied by Ms Aprem, including the bathroom; and/or
  - (d) adequately supervise Ms Aprem whilst bathing on 23 May 2019.



4. An order pursuant to s 82(3) of the *Regulatory Powers (Standard Provisions) Act 2014 (Cth)* that Afford pay to the Commonwealth a pecuniary penalty in respect of each of the contraventions of the NDIS Act referred to above at prayers 1, 2 and 3.
5. An order that Afford pay the Commissioner's costs.
6. Such further or other order as the Court considers appropriate.

**Applicant's address**

The Applicant's address for service is:

Place: Level 11, 12 Moore Street  
Canberra, ACT, 2601

Email: Paul.Vane-Tempest@ashurst.com

The Applicant's address is Level 1, 121 Henry Street, Penrith, NSW, 2750.

**Service on the Respondent**

It is intended to serve this application on the Respondent.

Date: 2 December 2021

A handwritten signature in black ink, appearing to read 'Paul Vane-Tempest'.

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Paul Vane-Tempest, lawyer for the Applicant