

6 July 2020



The Hon Stuart Robert MP
Minister for National Disability Insurance Scheme, Minister for Government Services
Parliament House
CANBERRA ACT 2600

By email: stuart.robert.mp@aph.gov.au

Dear Minister

Open letter from disability sector on the publication of NDIS settlement outcomes

We write in relation to the Joint Standing Committee on the NDIS' Planning Interim Report of December 2019, and the Australian Government's response of February 2020.

One of the recommendations made by the Committee, Recommendation 6, was that the National Disability Insurance Agency (**the Agency**) should publish settlement outcomes relating to external review by the Administrative Appeals Tribunal (**AAT**), in de-identified form.

This recommendation was made in the context where 97% of appeals going to the AAT are settled, with the details of those settlements remaining private.

The Committee unanimously stated that it 'strongly' supported this recommendation as a means of increasing transparency and accountability for participants and planners.

This recommendation is also consistent with the calls from the Tune Review for greater transparency in the Agency's decision-making, and the need to empower participants.

We were disappointed to see the Government's response, which noted the recommendation and raised concerns, including:

- the 'burden' on resources imposed by this recommendation;
- privacy issues that would arise, even if published in a de-identified form; and
- the misconception that the particular terms of an agreement reached between the Agency and an applicant could be generalised to other applicants with a similar disability.

We believe these concerns are not well-founded and should not be barriers to the implementation of the Committee's recommendation.

Addressing the Government's concerns

First, we do not accept that the publication of settlement outcomes would constitute a significant or unreasonable burden on resources. Entry of information into a database should be done as a matter of business-as-usual file closure procedures: it does not require gathering any additional information.

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While setting up a publicly available database would require some resources, we are not aware of any attempt by the NDIA to cost this and do not believe it would outweigh the efficiency gained from the publication of such information, as discussed below.

Second, privacy concerns can be resolved by a combination of de-identification and, if necessary, consent from individuals to have de-identified facts concerning the outcome of their case included in the settlement register.

We note that the purpose of the register is to benefit system users. Those users should be given the opportunity to decide for themselves whether to have information relating to them included in the register.

Third, the publication of settlement outcomes provides useful information to both planners and participants to understand the types of supports that are available under the Scheme and the range of outcomes that have been reached. It does not encourage individuals to assume that the terms of an agreement reached between the Agency and an individual could be generalised to other individuals with a similar disability.

This is the same approach taken by the Australian Human Rights Commission to their Conciliation Register, where the Commission publishes information about discrimination conciliations in a de-identified manner. There is no suggestion that outcomes in the Commission's register could be generalised to other individuals.

This concern also overlooks the fact that systems users, advocates and legal advisors must currently rely on the limited number of AAT decisions that have been published, their personal experience and anecdotal evidence. Clearly having a register of outcomes will provide a much more accurate basis for decision-making.

Finally, the Agency's reluctance to publish settlement outcomes seems to suggest an aversion to producing information that it considers may encourage participants to seek higher levels of funding. Any such view must be resisted. Participants are entitled to seek the support they require; it is the role of the Agency to approve (including at settlement) only those that fall within the boundaries of its legislative framework.

Benefits of publishing this information

As the Committee said in making the recommendation, the publication of this information increases transparency and accountability for participants and planners. The current experience of the disability community is that support packages between people in similar situations vary considerably depending on the determination and endurance of the participants and their carers to press for what they consider is an appropriate level of funding, socio-economic and cultural background of participants, the location of the participant (especially whether the participant is located in a regional or metropolitan area), and the level of advocacy support received.

Decisions made by planners at the start of the process should be consistent with the Agency's understanding of what the NDIS funds. The publication of this information will ensure planners have that information to hand.

It also allows a greater degree of public accountability in ensuring the Agency makes planning decisions consistently with matters it has settled.

It allows participants to understand the types of supports that are funded, and assists participants to decide what types of supports they could seek. A survey conducted by the recent

Tune Review found that, out of 985 respondents, only 41% of people had planners who 'clearly explain[ed] how the planning process would work and the sorts of things that might be included in [their] plan'.¹

Over time, having a register of outcomes will reduce the number of appeals to the AAT, as planners make decisions which are more aligned with the Agency's understanding of its powers. Participants will also better understand the types and amount of supports they can get, leading to a more efficient and streamlined appeals system.

We, the undersigned, believe this recommendation, adopted unanimously by the Committee, is necessary, straightforward to implement, and would improve the administration of the NDIS.

We look forward to hearing from you and working together on implementing this recommendation.

This open letter is copied to the Minister for Families and Social Services, the Shadow Minister for the NDIS, the Shadow Minister for Families and Social Services, members of the Joint Standing Committee on the NDIS and other interested members of Parliament.

Yours sincerely

Public Interest Advocacy Centre
 ADACAS (ACT Disability Aged Carer Advocacy Service) Advocacy
 AED Legal
 Australian Centre for Disability Law
 Australian Federation of Disability Organisations
 Blind Citizens Australia
 Consumer Action Law Centre
 Disability Advocacy Network Australia
 Disability Advocacy NSW
 Disability Discrimination Legal Service
 Disability Justice Australia Inc.
 Every Australian Counts
 Family Advocacy
 Grampians disAbility Advocacy
 Independent Advocacy SA Inc
 Intellectual Disability Rights Service
 Leadership Plus
 Multicultural Disability Advocacy Association of NSW
 National Disability Services
 People with Disability Australia
 Physical Disability Council of NSW
 Queensland Advocacy Incorporated
 Rights Information & Advocacy Centre Inc
 Spinal Cord Injuries Australia
 Summer Foundation
 Tenants Victoria
 Villamanta Disability Rights Legal Service Inc.

¹ David Tune, *Removing Red Tape and Implementing the NDIS Participant Service Guarantee: Review of the National Disability Insurance Scheme Act 2013* (Report, December 2019) 192.

Contact:

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Public Interest Advocacy Centre

Cc: Senator the Hon Anne Ruston, Minister for Families and Social Services
The Hon Bill Shorten MP, Shadow Minister for the NDIS
The Hon Linda Burney MP, Shadow Minister for Families and Social Services
The Hon Kevin Andrews MP, Chair of the Joint Standing Committee on the NDIS
Senator Carol Brown, Deputy Chair of the Joint Standing Committee on the NDIS
Senator Wendy Askew
Senator Anthony Chisholm
Ms Libby Coker MP
Senator Hollie Hughes
Dr Fiona Martin MP
Ms Alicia Payne MP
Senator Jordon Steele-John
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Mr Andrew Wilkie MP
Ms Rebekha Sharkie MP
Senator Stirling Griff
Senator Rex Patrick
Senator Jacqui Lambie



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Australian Federation of
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