



Actions Speak

Implementation of recommendations in
the Investigation into the actions of the
National Disability Insurance Agency (NDIA)
in relation to Mr C

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Acknowledgement of Country

The Office of the Commonwealth Ombudsman 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 the Elders past and present.



Why did we do this report?

Our [Investigation into the actions of the National Disability Insurance Agency \(NDIA\) in relation to Mr C](#) (Investigation Report) published in February 2020 arose from a single complaint, but considered the systemic issue faced by people in detention accessing National Disability Insurance Scheme (NDIS) supports, especially nearing their release date.

Our investigation highlighted serious issues NDIS participants may have with accessing NDIS support while in detention or after release. We made 5 recommendations to the NDIA targeted at improving priority access requests. The NDIA accepted all 5 recommendations.

In October 2022, in our [Did They Do What They Said They Would? \(Volume 2\)](#) we assessed the NDIA had implemented recommendations 3 and 5, partially implemented recommendations 2 and 4, and not implemented recommendation 1.

This report assesses the NDIA's implementation of the 3 outstanding recommendations.

How did we assess implementation?

We conducted a desktop review of the NDIA's implementation of the 3 outstanding recommendations. This involved considering management assertions and documents provided by the NDIA and publicly available information. Where our review of material provided by the NDIA led to further questions, we sought additional information.

What did we find?

We found the NDIA had implemented 2 of the 3 outstanding recommendations in full and had partially implemented 1 recommendation.



Implemented – 4 (in total)



Partially Implemented – 1






Next Steps

We are pleased to see the steps the NDIA has taken to improve priority access for potential NDIS participants in detention who may need it. We encourage the NDIA to continue improving access for this cohort and to finalise the implementation of the remaining recommendation.

We will continue to monitor the effectiveness of the NDIA's implementation of the recommendations, through complaints we receive and regular engagement with the NDIA.



Recommendations summary

<p>Recommendation 1</p> <p>The NDIA expand its operational guidance to include circumstances outlined in its internal policy documents when a prospective participant should receive priority processing of their access request.</p>	
<p>Recommendation 2</p> <p>The NDIA encourage prospective participants to provide information relevant to prioritising their access request on the Access Request Form, and during the Verbal Access Request process.</p>	
<p>Recommendation 3</p> <p>The NDIA update its training materials to include learning activities to assist new staff in the National Access Team to identify situations warranting prioritisation of an access request under its operational guidance and include content for learning about withdrawal of an access request under the NDIS Act.</p>	
<p>Recommendation 4</p> <p>The NDIA update guidance to highlight that applicants in custody nearing release may be more likely to request prioritisation, and suggest staff refer to specified operational guidance when considering access requests.</p>	
<p>Recommendation 5</p> <p>The NDIA change its Quality Control Audit Process to check an access request was appropriately prioritised and to systematically aggregate and report on data to improve the access decision-making process.</p>	

Commonwealth Ombudsman assessment

The NDIA's implementation of our recommendations



Recommendation 1

We recommend that the NDIA expand on Operational Guideline 4.11 to include the circumstances already outlined in its internal policy documents when a prospective participant should receive priority processing of their access request.

Status: Implemented



Ombudsman comments

The NDIA has replaced Operational Guideline 4.11 with a new Operational Guideline titled '[Applying to the NDIS](#)', available to NDIA staff and applicants. This new Guideline provides information about when the NDIA makes priority eligibility decisions ('[When do we make priority eligibility decisions?](#)'). The Guideline includes lists of priority access categories and timeframes in accordance with our recommendation.





Recommendation 2

We recommend that the NDIA encourage prospective participants to provide information relevant to prioritising their access request on its Access Request Form and during the Verbal Access Request process.

Status: Partially Implemented



Ombudsman comments

Assessed as partially implemented in the [Did They Do What They Said They Would? Volume 2](#) report. We advised that to assess this recommendation as implemented, the updated Access Request Form should be published on the NDIA's website, including the prioritisation schedule so a prospective participant can be prompted to provide this information for priority consideration.

The NDIA has advised how it assists applicants with providing information relevant to prioritising their access requests through Justice Liaison Officers working with applicants in justice settings, and partner supported access requests with Local Area Co-ordinators in other circumstances. However, the NDIA has not revised the Access Request Form to include the prioritisation schedule or information about when an application will be prioritised.

Applicants using this form without assistance of NDIA staff or a person with relevant knowledge, may not be aware of factors to identify to have their application prioritised and how the prioritisation process works. We consider the intent of this recommendation has not yet been fully met.





Recommendation 3

We recommend that the NDIA update its training materials to:

- a) include learning activities to assist new staff in the National Access Team to identify situations which warrant prioritisation of an access request under Operational Guideline 4.11
- b) include content and a learning activity about the withdrawal of an access request under s 26 (3) of the NDIS Act.

Status: Implemented



Ombudsman comments

We assessed this recommendation as implemented in our [Did They Do What They Said They Would? Volume 2](#) report. We found the NDIA's Access Induction materials and Learner Workbook Modules included the recommended content.





Recommendation 4

We recommend that the NDIA update the 'access' section of the Practice Guide— Participants with Justice Interface to:

- a) highlight that prospective participants who have lodged an access request and who are nearing their release date from custody may be more likely to require prioritisation
- b) suggest that staff refer to Operational Guideline 4.11 when considering access requests from incarcerated prospective participants

Status: Implemented



Ombudsman comments

The specific guidance referred to in recommendation 4 has since been superseded by the NDIA's updated Operational Guideline '[Justice system](#)'. This updated guidance states that applicants in custody close to their release date may be able to have their application prioritised, and refers to the '[Applying to the NDIS](#)' Operational Guideline, which includes the updated information about priority requests from implementing recommendation 1.

In addition, the NDIA provided us with internal guidance, the 'CSN Justice Liaison Team Work Instruction 2 – Request prioritisation or escalation of access and plan reassessment requests', which guides staff on making priority access requests for applicants in detention, including suggesting they refer to the '[When do we make priority eligibility decisions?](#)' section of the '[Applying to the NDIS](#)' Operational Guideline.





Recommendation 5

The NDIA make changes to its Quality Control Audit process to:

- a) include a check that an access request was appropriately prioritised in accordance with the Work Practice—Access Overview and Operational Guideline 4.11
- b) systematically aggregate and report on data, to be considered by the agency's leadership to identify areas of risk in the access decision-making process.

Status: Implemented



Ombudsman comments

We assessed this recommendation as implemented in our [Did They Do What They Said They Would? Volume 2](#) report. We found the NDIA amended its Quality Control Audit process to include the relevant check and amended its data reports to identify areas of risk.





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Via email: [REDACTED]

Dear Mr Anderson

Thank you for your letter dated 5 August 2024 regarding the 'Actions Speak' draft report, which reflects the National Disability Insurance Agency's (NDIA) progress to implement recommendations in the Office of the Commonwealth Ombudsman's 2020 investigation of Mr C's access to the National Disability Insurance Scheme (NDIS).

The NDIA welcomes the opportunity to review the report identify any errors of fact or omission and provide a formal response to be included in the report.

Errors or omissions

The NDIA did not identify any errors of fact or omission in your Office's draft report.

Formal response

The NDIA welcomes the Ombudsman's assessment that, in addition to Recommendations 3 and 5, the NDIA has now fully implemented Recommendations 1 and 4 of the 2020 report.

With respect to Recommendation 2, the NDIA agrees it is important to prioritise access and planning processes for people in detention to ensure they have the disability related supports they need in place before they exit the justice system.

The NDIA is aware that people within this cohort may find it difficult to navigate the access process without support and may not be aware they can seek to have their request/s prioritised. In March 2020, in response to your Office's first report, the NDIA introduced Justice Liaison Officers (JLO) across all states and territories of Australia. JLOs provide a single point of contact for mainstream justice agencies, actively support potential participants in justice settings to understand and engage in the access and planning processes, and ensure the NDIA prioritises their access and planning decisions where appropriate.



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Insurance Agency

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The current Access Request Form (ARF) is a detailed document of 28 pages, designed to capture information about a person's personal, situational and physical support needs. When required, JLOs are available to support potential participants to complete the access process and ensure their request is prioritised. The NDIA considers that, in many instances, this is the most appropriate way to ensure people exiting the justice system have appropriate supports in place, as it does not rely on applicants to ask the NDIA to prioritise their request.

However, the NDIA acknowledges that some people in justice settings may navigate these processes independently and recognises the importance of ensuring current and potential participants can access information and support in a range of ways. In turn, as part of future reviews of publications, the NDIA will ensure materials related to access and planning include information about priority cohorts.

The NDIA remains committed to prioritising access requests and planning decisions for existing and potential participants whose circumstances warrant it. The NDIA welcomes feedback where this does not occur.

The NDIA continuously seeks to improve its processes and looks forward to ongoing engagement with and feedback from your Office.

Yours sincerely



Rebecca Falkingham
Chief Executive Officer
National Disability Insurance Agency

19 August 2024

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