



2nd March 2021

Emma Davidson MLA
Minister for Disability
Minister for Justice Health
Minister for Mental Health
Assistant Minister for Families and Community Services

Dear Minister Davidson,

NDIS Independent Assessments

We write to highlight our significant concerns regarding the proposed introduction of independent assessments and related changes to the National Disability Insurance Scheme (NDIS). These shared concerns reflect feedback from people with disabilities, advocates and others in our organisations and community.

While we acknowledge there have been issues in the implementation of the NDIS, we do not believe the proposed model of mandatory independent assessments is an adequate or preferred response to address these issues. We hold significant concerns that the proposed model is an inefficient, heavy-handed and rushed initiative. Introducing mandatory independent assessments to the NDIS has the potential to add considerable distress and trauma to the lives of people with disability and could cause further disadvantage to the most vulnerable of the current and prospective NDIS participants. We provide below a summary of our concerns regarding the decision to introduce independent assessments and their proposed model of operation.

Lack of Consultation - The National Disability Insurance Agency (NDIA) has failed to meaningfully engage with people with disabilities and their representatives and has not adequately addressed the concerns raised since the announcement of the introduction of independent assessments was made. In the first pilot of independent assessments only 28% (145 people) involved in the pilot completed the NDIA feedback survey. Of those only 35 were NDIS participants, while the remaining 110 responses received were from carers. This is an inadequate level of testing or consultation from which to rollout a policy that will affect 400,000 people.

Independent Assessments will be Mandatory – The assessment model will involve observation and use of standardised tools by an independent assessor not chosen by the individual. The full assessment process will reportedly be limited to under 4 hours, and a participant's funding will be determined primarily on the basis of this assessment. Independent assessments will be conducted repeatedly. A participant who refuses to undergo an independent assessment, without being granted an exception, will be taken to have withdrawn their access request from the NDIS.

The proposed model of mandatory independent assessments will potentially cause significant distress to all current and prospective participants, but especially to those who have already and repeatedly proved their eligibility. People with disability should not be subjected repeatedly to intrusive scrutiny and forced to crawl through hoops to prove their need. Many people with disability have also already spent years working with health



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professionals and other supports to determine and understand the impact of their disabilities, which results in a wealth of knowledge and expert opinion held by trusted professionals. The prominence to be given to single independent assessments to determine functional impact devalues the expertise of health professionals and other supports, and disregards the importance of trust and ongoing relationships in developing an understanding of support needs.

Use of Independent Assessors – While the NDIA emphasises the importance of the independence of its assessors, the extent to which assessors can be considered independent is problematic, as they are contracted by the NDIA. Other initiatives involving similarly 'independent' assessors contracted to provide assessments, such as Work Cover, provide a multitude of examples of questionable outcomes, complaints of bullying, unfair treatment and distress caused to those being assessed.

Appropriateness of Assessment – The contracted independent assessors will not be required to have specific disability knowledge or experience. The NDIA has previously listed what they stated are the most appropriate health professionals to provide best practice standardised assessments, including professionals such as audiologists, neurologists, psychiatrists and Acquired Brain Injury health professionals; none of these have been included in the list of professionals who will conduct independent assessments.

The notion that a lone independent assessor, without knowledge or experience of the disability, barriers and stigmas faced, will have the ability to effectively comprehend and exhaustively capture the diverse experiences and full impact of various disabilities – and all in under 4 hours – is deeply problematic. That the results of such an assessment will then be used to determine an individual's access to the daily supports needed to survive is alarming.

Disturbing disparities can occur between the opinions of an independent assessor and an individual's regular supports, as highlighted by the 2020 Administrative Appeals Tribunal decision in *Ray v National Disability Insurance Agency*, which demonstrated the risk involved with overly simplistic approaches to assessing disability.

Potential for Trauma -To require a person with disability to be observed by someone who is not known to or chosen by them, in order to justify their support needs, does not align with the principle of dignity of the individual. Further, to have the level of disability support needed by an individual determined solely based on this limited interaction is inherently stressful for a person with disability. The impact of the trauma and distress of such assessments must not be minimised. Adverse mental health outcomes associated with stringent functional assessments, including increased suicide risk, have been recorded in other jurisdictions, such as in the United Kingdom when changes were made to assessments for the Disability Living Allowance and Personal Independence Payment. In Australia, Centrelink and Job Access participants have also had negative experiences with outsourced functional capacity assessments.

Of greatest concern is the fact that standardised assessments performed by independent assessors without specific disability knowledge risk disadvantaging the most vulnerable: those who are isolated or have experienced trauma, people with multiple, complex and fluctuating disabilities, people with intellectual and psychosocial disabilities, CALD and Aboriginal and Torres Strait Islander peoples.



Lack of Transparency - There is a significant lack of transparency in the decision-making process. It has not been made clear when or whether an individual will be provided the full results of their assessment, meaning that an individual may be unaware of the information being used in planning and deciding their funding. There is also little recourse for individuals who do not agree with an assessment, as the NDIA states that results will not be a 'reviewable decision'.

Going Beyond the Recommendations - Despite referencing recommendations from the Productivity Commission's 2011 Inquiry and the 2019 Review of the NDIS Act (the Tune Review), the proposed scope of independent assessments goes beyond those recommendations, and the NDIA has failed to implement key protections emphasised in the Tune Review during the development and rollout of the trials. The Tune Review recommendation on assessments was very cautious and included key protections such as allowing participants to exercise more choice over which providers completed their assessment, as well as options for participants to challenge the results and seek arbitration. The Tune Review also stated that any consideration of independent assessments would require extensive consultation with participants, the disability sector, service providers and the NDIA workforce, this has not happened. The proposed changes do not align with the intent of the Tune Review, nor do they adequately reflect the kind of reform to the NDIS that is desired by people with disability and their families.

Justifications for the Changes - The NDIA has stated that these changes will resolve inconsistencies in the NDIS by introducing standardised assessments of functional capacity, addressing concerns of bias among health professionals, and reducing the impact of socio-economic inequities on access and planning processes. The introduction of independent assessments will substantially reduce choice and control for many people with disabilities, and it is questionable how much impact the assessments will have in reducing socio-economic barriers. Given that independent assessments will not provide recommendations for supports, and that prospective participants will still be required to provide evidence of their disability and its permanence, participants are still likely to face financial burden related to sourcing further assessments. Very little evidence has been offered to show why the NDIA would outsource assessments away from an individual's own trusted health professionals. While the NDIA has cited sympathy bias as a 'potential' risk, it has not produced any evidence that supports the existence or impact of such bias in NDIS supports.

The introduction of independent assessments is a concerning move away from a social model of disability to a medical model, and significantly removes control from people with disability, and their trusted supports, who are the experts in their own support needs. The decision to introduce independent assessments and the proposed model highlights the need for the NDIA to work in partnership with people with disability to co-design reforms that adequately address needs, do not negatively impact participants nor undermine trust and confidence in the NDIS. If the NDIA proceeded with the proposed mandatory independent assessments, we would expect that people with disability would face increased difficulty accessing the scheme and negative consequences due to inadequate provision of disability supports.

We urge the ACT Government to support the protection of choice and control in the NDIS, and to fight to prevent the erosion of the human rights of people with disabilities. We implore the ACT Government to take every opportunity to make the strongest



representations possible for the NDIA to pause these reforms and engage in a genuine dialogue with people with disability and their representative organisations, as a funding partner in the NDIS and the launch site for the entire scheme.

We welcome the opportunity for further consultation with you and your office.

Sincerely,

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