



15th October 2020

Open Letter to the Minister for the NDIS, The Hon Stuart Robert MP

Re: Independent Assessments in the NDIS

We urge you to reconsider the rollout of Independent Assessments in the National Disability Insurance Scheme ('the Scheme') and call upon the government to fulfil its commitment to delivering a scheme that enables people with disability to exercise choice and control in the planning and funding of their supports, as required by s 3(1)(e) of the *National Disability Insurance Scheme Act 2013* (Cth).

We commend the government for trying to remove financial barriers for individuals seeking access to the Scheme and we agree there is a need for greater consistency in decision-making. We also acknowledge the open letter released by Martin Hoffman, NDIA CEO on 12th October 2020. However we have serious concerns regarding the proposed mandatory requirement for Independent Assessments to supplement access requests from early 2021 and to be used during planning phases from July 2021.

We raise the following concerns:

1. The mandatory requirement for people with disability to undergo an Independent Assessment regardless of whether the person needs or wants one, goes against the very objectives and principles of the Scheme. The law requires the NDIS to enable participants to exercise *choice and control* in relation to their goals and the planning and funding of their supports.
2. The purported 'independence' of assessors is doubtful since they will essentially be paid by the National Disability Insurance Agency ('the Agency'). A conflict of interest will tarnish their assessments and will call into question issues of procedural fairness. The government is urged to learn the lessons from similar arrangements in other areas, such as the use of job capacity assessments to determine Centrelink applications and the subsequent appeals to the Administrative Appeals Tribunal ('AAT'), or the problems with Independent Medical Examiners engaged by WorkCover as discovered by the Victorian Ombudsman during their investigations.
3. The '*one-size-fits-all*' approach implied in the use of a single, standardised assessment is highly inappropriate for determining the diverse needs of people with disability who are known for their heterogeneity. For some people with disability, the need to build trust and rapport with an assessor is essential to their ability to successfully understand and complete an assessment, something which a fixed time-constraint does not permit. For others, the episodic nature of their impairment means that their 'functional capacity' is not a clearly observable fact. A uniform approach that fails to cater for the individual needs of the participant will simply not suffice. Further, the array of disability types means that many allied health professionals develop specialist knowledge in certain conditions. How will the Agency ensure the assessor has the requisite knowledge and skills to determine a person's functional capacity if choice and control over the assessment process is removed?

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QAI endorses the objectives, and promotes the principles, of the Convention on the Rights of Persons with Disabilities.

Patron: His Excellency The Honorable Paul de Jersey AC

4. The affront to a person's dignity by forcing them to endure repeated and arguably unnecessary assessments at the direction of the Agency is humiliating and resonates with the medical model of disability that years' worth of policy making and indeed the Scheme itself has sought to overcome. Removing choice and control and imposing arbitrary requirements for assessments goes against the person-centred model that the Agency was instructed to deliver.
5. The extent to which a single, standardised assessment will be culturally appropriate and meet the needs of Aboriginal and Torres Strait Islander participants and the Culturally and Linguistically Diverse (CALD) community is of considerable concern. The vulnerability of people with disability experiencing intersectional disadvantage must be understood and reflected in the delivery of the Scheme. Ensuring participants have choice and control over the assessment process is critical to achieving this. The needs of individuals with psychosocial disability must also be prioritised. The introduction of mandatory and arbitrary assessments that force a participant to re-tell their story to a stranger is likely to exacerbate symptoms and trigger individuals with histories of trauma. The ability to choose the gender of a prospective assessor is particularly vital for individuals who have experienced sexual assault, something alarmingly common among women with intellectual disability. Assurance from the Agency that 'where possible', people with disability can choose their assessor, is insufficient.
6. The concentration of decision-making power among a small selection of individuals whose livelihoods depend upon the Agency is in direct contradiction to the recommendations of the Tune Review. The Tune Review discussed the introduction of independent assessments as a *discretionary* measure available to individuals who wanted to test their eligibility for the Scheme or who required further evidence to support decision-making regarding their plans. It did not recommend the mandatory introduction of assessments to all participants regardless of whether it was necessary. Further, the Tune Review explicitly stated that participants must retain the ability to choose which provider undertakes their assessment.
7. The concealment of assessments from participants until they make a specific request via the portal is deeply problematic. The premise that agency officials will have access to personal information about individuals that the individual themselves does not have, and will seek to use this information to determine their eligibility or required level of funding, denies the individual their fundamental right of reply. Participants must have the opportunity to be informed of information that will be used against them and this includes having access to the information in a prompt and timely manner. Further evidence may be required to supplement the assessor's understanding of a participant's needs and yet the participant will be unaware of this if they do not have equal access to the assessment.
8. The Agency has stated that assessments will provide a stronger base for defending access decisions at the AAT, and yet the AAT has already made a ruling on the use of independent assessments in the case of *Ray and National Disability Insurance Agency AATA 3452*. In this case, the Tribunal found that the opinion of an assessor who had only seen the participant for a matter of hours, could not be relied upon to determine their eligibility for the Scheme over the reports of multiple health professionals who had assessed the participant over a longer period of time. Similar rulings have been made in other cases, such as *Arnel and National Disability Insurance Agency AATA 4778*.
9. The refusal of the Agency to accept reports already completed by professionals which accurately depict the participant's needs in lieu of requiring the participant to undergo an independent



assessment raises questions regarding the Agency's motivation. The implied distrust of information supplied by treating professionals is troubling. There is concern within the disability community that independent assessments will be used to reverse hard-fought access decisions and reduce funding for essential supports. The undue harm that this will cause, and is already causing, participants and their families cannot be overstated. The time, resources and energy required to pursue already protracted appeals processes can be as devastating as harm caused by an absence of reasonable and necessary support. Given the AAT's judgments on the use of independent assessments, it is likely that the introduction of mandatory independent assessments will lead to a surge in reviews and appeals, something which the tribunal and advocacy sector is insufficiently funded to cope with.

10. The financial barrier supposedly removed by the imposition of independent assessments is only relevant to individuals requiring evidence to seek access to the Scheme. Once the participant has met access, funding for functional assessments is typically included in their plan and so this justification cannot be applied to independent assessments required at the planning phase. If economics are to be an incentive, how can the Agency justify spending money on unnecessary assessments for participants who either already have appropriate evidence or whose functional status is stable? Will there be arduous limitations placed on how many times an individual can obtain an independent assessment to test their eligibility for the Scheme?
11. The lack of meaningful and constructive consultation with the disability community regarding the roll-out of independent assessments is alarming. Under the Convention on the Rights of Persons with Disabilities, people with disability must '...have the opportunity to be actively involved in decision-making processes about policies...concerning them'. Further, the pilot studies relied upon do not reflect the true intended application of independent assessments in the Scheme. For example, participation in the pilot studies was voluntary and therefore more likely to lead to higher satisfaction rates. The economic incentives for assessors to deny applicants access to the Scheme was also not applicable given the short-term nature of the studies. Further consultation with the disability community and research into the proposed use of independent assessments is therefore urgently needed.
12. The allied health community and indeed entire disability sector has spent time, energy and resources up-skilling and producing resources to aid report writing so that evidence can be tailored to the needs of the Scheme. Whilst there is room for continued learning, investment in further education of allied health professionals and Agency staff would achieve greater consistency in decision-making whilst retaining the individual's right to choose their own therapist.

We therefore call upon the Hon Stuart Robert MP to enact the following:

1. The immediate cessation of the plan to implement independent assessments from early 2021.
2. Further consultation with people with disability and their communities to ascertain feedback on the potential *option* of independent assessments for individuals who require assistance to test their eligibility for the Scheme or who require assistance to obtain evidence. The proposal must ensure choice and control remains with people with disability and should prioritise the judicious use of government resources. The proposals must also acknowledge the specific needs of participants with psychosocial disability.



3. Consultation with the Aboriginal and Torres Strait Islander community and the CALD community to seek advice on how proposed changes can respectfully and safely meet the cultural needs of all people with disability.
4. Investment in further training of allied health professionals and Agency staff to improve the quality of evidence and the Agency's ability to interpret assessments to increase consistency in decision-making.

Yours Faithfully,



Michelle O'Flynn
Director

