



National Disability Insurance Scheme - Independent Assessments

Submission to the Joint Standing Committee on the National Disability Insurance Scheme

30 March 2021

Seniors and Disability Rights Service, Darwin Community Legal Service

Darwin Community Legal Service (DCLS) is a free, confidential service based in the Northern Territory. We assist disadvantaged members of the community to protect their legal rights. We work towards a community where everyone has access to legal advice and support. We seek to challenge unjust laws and procedures and ensure that people are aware of their legal rights.

The **Seniors and Disability Rights Service (SDRS)** operates within DCLS as an advocacy service for seniors and people with disabilities who want to know about their rights and how to protect them.

Summary

DCLS believes independent assessments have the potential to be a good tool for people trying to access the NDIS - removing the barrier of having to organise and pay for assessments will make NDIS access requests more accessible and fairer for some. However, we strongly believe the current roll-out of independent assessments needs to be ceased immediately. Sector wide concerns need to be addressed to ensure the NDIS grows to be fairer maintaining the rights of people with disabilities at the core of the Scheme. We believe the independent assessment changes as proposed are under-researched, under-trialled, and under-justified, and do not recognise people with disability as the experts on their own needs.

The independent assessments pilots have been minimal; thorough testing and independent evaluation has not occurred. In our view there is inadequate evidence showing the benefits or properly demonstrating the functional application of independent assessments. Before implementing the biggest change to the NDIS since its inception we would like to see genuine independent evaluation and consultation. We hope this Senate consultation process can prompt reflection on the changes proposed - ensuring equality and support for people with disability continues.

We are looking at this roll out through the lens of the Northern Territory (NT). Previous strategies used by the NDIA have acknowledged **agility** and **flexibility** to be inherent to service delivery in the Northern Territory, due to our unique diversity and geography. We submit the independent assessment process contradicts this understanding and is likely to increase service disadvantage in the NT. The NDIA needs to recognise the NT is significantly different from most places in Australia; and be agile and flexible in its approach. In the NT we have a far higher percentage of Aboriginal and Torres Strait Islander (ATSI) and Culturally and Linguistically Diverse (CALD) NDIS participants than anywhere else in the country. We also face the tyranny of distance and a thin disability service provider market. The NT has high professional worker turnover and low numbers of available health professionals which currently substantially delays service access. As presented, we feel the independent assessments process will bottleneck access avenues for people and create a significant administrative load leading to increased disadvantage.

Further, we are concerned about using independent assessments for people who have established relationships with appropriate health professionals. By forcing current and prospective participants through the independent assessment channels you are diminishing a person's choice, control, dignity, privacy, and this

will undoubtedly result in disengagement with the NDIS; particularly as there are limited options to appeal this new process. People's existing relationships with their health professionals are often the product of years of support and trust building. We would submit ATSI, CALD, LBGTQIA+, and psychosocial participants, especially those with historical reasons for distrust of government, will be alienated and dismayed by this process.

Overall, in the Northern Territory, we feel the proposed changes threaten adequate service access to our vulnerable community members. The realities of delivering support to people with disability in the Northern Territory are undermined by changes for national uniformity. We expect to see a reduction in service access, service quality, and overall engagement if these changes are imposed in the NT as presented.

Use in Planning

The estimation of how much time an independent assessment is to take varies between the NDIA website (up to 3 hours) and the tender documents (20-minute minimum interaction or observation session, 2.5-3 hours for the full independent assessment including observation, assessment, and report writing). As implied by the independent assessment tender endorsing a "20 minute" minimum interaction or observation session the exposure to a participant will be limited. Additionally, the inability to depart from formal question-based assessment as stipulated in the tools will not create a supportive environment for all. This raises questions as to the quality of the information which is being conveyed from these assessments to the **unchangeable** funded support **budgets**. We are worried assessors will not be allotted enough time (funding) per client and will fail to accurately gauge a person's functional capacity - leading to inadequate support budgets being created. We feel independent assessments will be extremely stressful for participants given the importance the NDIA is placing on them and the seemingly brief engagement by an assessor.

We question why assessment reporting by a participant's existing health professionals are not preferable. In *Ray and National Disability Insurance Agency [2020] AATA 3452* the findings of an independent assessor were rejected in favour of "**more reliable**" evidence from the specialist who had seen the participant on "50 to 60 occasions, including out of the comfort and familiarity of her home environment, whereas [the independent assessor] had only seen Mrs Ray once for a period of three hours in her home environment." This poses problems especially for participants with 'invisible' or complex disabilities, that may not be understood in a single assessment. An NDIS participant and Darwin resident voiced this concern to us; *"My current allied health professionals have a true pictures of my needs, why can't that be used? As an existing participant I feel scared that I won't get the necessary supports; I present as high functioning, how would a panellist know what my supports would need to be? I am also worried that they may not have experience with people with a hearing impairment."*

DCLS is concerned about the proposal for independent assessment results being used to automate a support budget. These automated budgets are said to be fixed and not negotiable. Several issues arise from the nature of independent assessments which, in our submission, would result in inaccuracies, inequality and alienate vulnerable people. The independent assessments are made up from tools which have not been designed or previously used to inform a budget. The NDIA has not been transparent in explaining how an independent assessment will inform a fixed and non-negotiable budget. We submit that inviting participants for a 'planning discussion' where their budget has already been decided and there is no insight to how the budget has been created is insulting.

We recommend existing relationships be utilised to inform plan budget creation. If an independent assessment is completed, we suggest complete results should be easily accessible for the participant and all methods of communicating results should be made available - participants should receive the full assessment report regardless of the access decision. Participants should also receive their independent assessment results prior to their pre-planning discussions so they can prepare for that conversation.

In the Northern Territory

The Northern Territory's remote communities are notably difficult to support particularly when a national approach is devised which treats unequal service areas the same. The NDIA's own Rural and Remote Strategy states that: 'service delivery in rural and remote areas of Australia requires **agile, responsive, innovative, and flexible** solutions that are tailored to address community challenges and take account of cultural differences.'¹ As currently proposed independent assessments appear by their nature rigid and inflexible to the realities of remote. It is often touted remote/disadvantaged communities are the ones who would benefit as they are less likely to be able to afford evidence collection – but we feel this sentiment conveniently ignores the underserved reality of rural and remote. Realistically the proposed process would bottleneck evidence creation to select Independent Assessor companies. We expect to see significantly increased wait times and reduced service delivery to these already disadvantaged communities. In practice, we submit Independent Assessments will delay and impede service delivery for these groups without accepting alternative evidence to inform budgets and access – a “**flexible**” approach.

We would also advocate the need for exemptions to be granted where an Independent Assessment cannot work in a culturally safe manner. The NT is diverse, with more than 25% of population identifying as ATSI, and 31% of people not born in Australia.² These numbers are reflected in NDIS participation, and in the NT 74.6% of NDIS participants are from CALD or ATSI backgrounds.³ This is a large group likely to not speak English as their first language and have specific cultural needs. The current roll out of the Independent Assessments was based on a pilot which did not focus on a diverse group of people with cultural communication requirements. We urge the NDIS to postpone the roll-out until sound trials are completed in the Northern Territory. This includes confirming culturally safe alternative assessment tools for everyone. Untested rollout here could be very damaging to the developing relationship between the NDIS and participants – especially CALD and Aboriginal and Torres Strait Islander participants. Disengagement with the NDIS is a real concern for us and something we find very troubling.

Vulnerable People

In our organisation's collective experience trusting relationships are required to effectively support people to engage and benefit from services. It can take a long time to build trust especially for Aboriginal and Torres Strait Islander people, CALD, LGBTQIA+ people and those who live with psychosocial disabilities. These groups carry the experience of past prejudices and inequality and these experiences continue today. It is our submission requiring Independent Assessments will result in many participants disengaging - creating inaccurate results to inform plan budgets and reduce access opportunities.

¹ National Disability Insurance Agency Rural and Remote Strategy 2016-2019, page 19.

² ABS Census 2016.

³ COAG Disability Reform Council Quarterly Report February 2021.

The implementation and development of independent assessments are already eroding trust in the NDIS. We hear from participants saying they are terrified of the upcoming changes and do not feel heard or respected. It does not inspire trust that people with disability are not being heard as the experts on their own lives. We also reject Minister Roberts' statement that the resistance, fear, and anxiety in the community is due to the spread of misinformation rather than genuine concern.⁴ Further, the NDIA's purported consultation was in our view disingenuous as it was not consulting on the merit of independent assessments but rather how they will use them – presenting questions as if the changes were a foregone conclusion - where is choice and control?

We expect independent assessments will force some participants or potential participant to disengage from the NDIS. There needs to be careful consideration, clarification and in our view a broader and more flexible approach to providing an exemption to needing an independent assessment. The decision not to provide an exemption should be considered a **reviewable decision** as for some people this would effectively be a decision ending the NDIS pathways for current and prospective participants.

Underserviced Reality

It appears the time allocated towards discerning the impact of a participant's disability is in the discretion and experience of the Independent Assessor. In the Northern Territory we experience a limited supply of professionals, vast spread of customers, and great cultural and linguistic diversity. This means we expect significant pressures to be placed on our Independent Assessors. In our view rollout of Independent Assessments in the NT will be burdened with delays and/or diminished-quality reporting; further disadvantaging an already disadvantaged region. Recently, we have noticed very long wait-times for first plans (four months in some cases). The NT has a significantly lower rate of plans being finalised within the 70 days stipulated by the Participant Service Guarantee than other states and territories.⁵ We are concerned Independent Assessments will add to this problem.

The NT is already underserviced. We have lengthy waitlists for allied health services, both in the public and private systems. Currently, the public health OT team has a waitlist of six months for a first session – many private OT providers we see are either not taking adult clients or have a 12-14 week waitlist. Allied health services are already overwhelmed, and functional assessments form only part of this heavy workload. We are unsure how the NDIA will find professionals to complete the likely high volume of Independent Assessments without significant wait times. Practically, this furthers the risk the assessor a person with disability ends up with may not be best suited to their needs. As a Darwin NDIS participant expressed to us *"The independent assessors may be allied health professionals, but they are not specifically disability trained. This is a bit like asking a TAFE lecturer to teach a primary school teacher's class. They are both teachers, but their level of understanding is so different."*

There are existing places like medical clinics, NGOs, Aboriginal Community Controlled Health Organisations in remote communities that treat and understand the community. With adequate training and education sessions, we suggest these places could be an evidence creation hub for people wishing to access the NDIS.

⁴ <https://www.abc.net.au/news/2021-03-18/ndis-architect-bruce-bonyhady-slams-independent-assessments/13256160>

⁵ 75% rather than percentages between 82% and 99% reported in other states. NDIS Quarterly Report to Disability Ministers, 30 September 2020, page 534

Instead of implementing an entirely new process in remote communities, we submit relationships with the existing services in these underserved areas should be strengthened and developed further.

Exemptions, the erosion of appeal rights and perceived conflict

DCLS is concerned the sweeping changes proposed to core processes of the NDIS will effectively reduce avenues for independent oversight of the NDIA's operation. Currently if a participant does not agree with the outcome of an access or planning decision, they can launch an internal independent appeal to the NDIA with the option of a further external appeal to the independent Administrative Appeals Tribunal (AAT). In proposing independent assessments, the NDIA has made clear that while this assessment will fully inform an access decision and a participant's plan, this assessment cannot be appealed in a similar way. Additionally, being denied an exemption to requiring an independent assessment is not an appealable decision - meaning that vulnerable (prospective) participants have no independent means to challenge NDIA decisions. This reduced independent oversight is especially troubling especially considering the infancy of the scheme and the added value the AAT has provided in interpreting the NDIS Act.

Further, when we consider businesses who have received the independent assessment contract in the NT several potential conflicts have surfaced. Of the five successful independent assessor companies for the NT one (presented as separate) is owned by one of the other companies and one is currently a LAC partner in the metropolitan Darwin NT – this limits choice and creates a conflict of interest in our view. In addition to this we wonder how a contract with the NDIA with specific KPI's to be met does not create a conflict to their independence and control over quality.

Recommendations

In summary we feel the concerns we have raised should cause alarm and prompt re-examination of the merit and impact of independent assessments.

DCLS suggests:

- The roll-out of independent assessments be ceased immediately until their merit and processes are properly understood and proven through genuine trials and consultation.
- People with disability be at the centre of any changes to the NDIS; and changes should be co-designed with the community and representatives.
- Changes to the Scheme be regionally specific and culturally safe.
- Any change to the scheme should safeguard people's right to appeal decisions made by the NDIA.