



16 February 2021

Martin Hoffman
CEO, NDIA
Submitted via website

Dear Mr Hoffman,

Response to Consultation paper: Access and eligibility policy with independent assessments

The Office of the Public Advocate (OPA) welcomes the opportunity to respond to the current consultation by the National Disability Insurance Agency (NDIA). As part of that process, OPA participated in a targeted consultation facilitated by the NDIA with colleagues from the Office of the Public Guardian in Tasmania. That consultation addressed each question contained in the *Access and eligibility policy for independent assessments* and *Planning policy for personalised budgets and plan flexibility* consultation papers.

This letter submission addresses OPA's foundation concerns in relation to the NDIS independent assessments approach, which are also contained in the enclosed *NDIS Independent assessments* position statement that OPA adopted last year.

OPA is concerned that this direction will disproportionately impact participants and prospective participants with cognitive impairment. It also stands at odds with the NDIS ethos of providing people with disability with 'choice and control'.

The further details provided through the above consultation papers and the 18 December 2020 'stay-informed' statement from the NDIS CEO do not satisfy us that our fundamental concerns with the direction being taken will be adequately addressed.

OPA acknowledges the equity issues that have been raised as a partial justification for this direction, for their connection with consistent decisions. This rationale was advanced in the 'stay-informed' statement. Having reviewed this statement and the consultation papers, we do not agree that blanket independent assessments are the appropriate solution. Any effort to address inequities based on disability, income or available resources must be addressed by providing additional information and support to the participant to increase equitable outcomes rather than stripping away participants' choice and control or authority as the expert on their own life.

We further believe, based on our long-term experience, that the envisaged independent assessments will not lead to equitable outcomes. The pursuit of a consistent, transparent and equitable way to capture information about a person's functional capacity will discriminate against people with disability, especially people with cognitive impairment and people with complex needs who depend on higher levels of 'informed' knowledge of them and their needs to achieve equitable outcomes.

Consistent reporting could be achieved by asking a person's allied health professional, specialist or psychologist to complete access forms that ask for the same information or use the same tools that an independent assessor would request. In this way, consistent, transparent and equitable information that is reliable, can be obtained from someone who knows the person, their needs and their specific circumstances. Obtaining quality assessments takes time. Independent assessments will be too short to allow this to happen. It is only when an assessor understands the needs of a person and is well informed by them and/or significant others in the person's life that a decision can be made about the most appropriate tools to be used for a functional assessment.

The Independent Assessment Framework refers to the Productivity Commission's 2011 recommendation that "those assessing functional capacity be drawn from an approved pool of allied health professionals who are independent of the person being assessed, to reduce the potential for "sympathy bias". This argument is used to suggest that independent assessors should be used instead of assessors known to a participant because of the risk that a known assessor will overstate need because it is linked to funding decisions. An opposing argument—a fear foreseen by many people with disability and their representative organisations—is that an independent assessor could understate need because of restrictions linked to funding decisions. Greater clarity on how funding decisions are made would achieve greater consistency and equity in outcomes.

Again, we respectfully suggest that this direction be reconsidered. We suggest that an alternative approach be developed, with a more consistent framework, which preserves choice and control, while also permitting access to resources for assessments by competent professionals who know the person and understand their communication and other needs. The viability and success of the NDIS really depends on informed rather than independent assessments.

The elements of an approach that could meet with more acceptance and provide reliable informed assessments would include:

- resolving and adequately supporting on a needs basis the critical role of advocacy support for participants so that they can exercise choice and control
- resolving and adequately supporting on a needs basis the critical role of supported decision making for participants so that they can exercise choice and control
- providing resources for informed assessments, within the choice and control of the participant or potential participant, on a needs basis
- recognising and respecting the role of legally-appointed guardians exercising their authority in planning and other decisions
- developing and distributing a consistent and usable functional capacity assessment framework for informed assessments, which is sensitive to a wide range of needs and circumstances.

I appreciate that the course being suggested will involve a change in direction and a reworking of current efforts. We believe this will be worthwhile as it can lead to widespread acceptance by the community, better meet the concerns outlined in the NDIS CEO statement, and result in fewer future problems as a system for informed assessments is developed and implemented.

Yours sincerely,



Dr Colleen Pearce AM
Public Advocate