



29 March 2021

Joint Standing Committee on the National Disability Insurance Scheme
Parliament House
Canberra ACT 2600
ndis.sen@aph.gov.au

Inquiry into independent assessments

Dear Committee Secretariat

The Office of the Public Advocate (OPA) welcomes the opportunity to respond to the committee's inquiry into independent assessments. OPA has extensive experience in supporting National Disability Insurance Scheme (NDIS) participants since it commenced operation through the support provided by our Advocate Guardians to more than 939 individuals and our other services. We have also facilitated service providers to make formal arrangements with participants. We have made numerous submissions to government and the NDIS on how to make improvements to the NDIS. We regard the proposed independent assessments as a serious threat to the original intention and proper functioning of the NDIS.

OPA previously raised our serious concerns in the enclosed *NDIS Independent assessments* position statement, published last year. No authoritative case for these changes has been made since and OPA's concerns have not lessened.

OPA is concerned that independent assessments 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'.

OPA acknowledges the equity issues that have been raised as a partial justification for this direction, for their connection with consistent decisions. Blanket independent assessments are not the appropriate solution. Any effort to address inequities based on disability, income or available resources must be addressed by providing additional support to the participant. Stripping away participants' choice and control or authority as the expert on their own life is not an acceptable solution.

Based on our long-term experience, we believe that the envisaged independent assessments cannot produce equitable outcomes. This will be the inevitable result of uninformed and therefore inaccurate pro-forma assessments. 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. These and other groups depend on accurate informed knowledge of them and their needs to achieve equitable outcomes.

Consistent reporting can be achieved through a person's allied health professional, specialist or psychologist completing forms that pursue the same information that an independent assessor might request. In this way, consistent, transparent and equitable information that is reliable, can be obtained from someone who knows the person, their communication and other needs, and their specific circumstances.

Obtaining quality assessments takes time. Independent assessments will likely be conducted in a short period of time. 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 an

informed decision can be made about the most appropriate tools to be used for a functional assessment.

The NDIS Independent Assessment Framework refers to the Productivity Commission's 2011 recommendation that raises the potential for 'sympathy bias'. This argument is used to suggest that independent assessors should be used instead of assessors known to a participant. This is thought to mitigate the risk that an assessor known to the participant will overstate need because it is linked to funding decisions. An opposing argument—a fear foreseen by OPA and many people with disability and their representative organisations—is that a so-called independent assessor could understate or misunderstand need, because of restrictions linked to funding decisions and their own lack of true independence.

Independent assessments will also introduce new risks to participants' autonomy. OPA has seen the incidence of guardianship rise since the introduction of the NDIS. OPA guardians are asked to make decisions about participants' access to services and the agreements that govern these service arrangements. The introduction of independent assessments, even if these are compulsory, may give rise to new applications for guardianship, when this was not previously seen as necessary. While guardianship is an important safeguard for the prevention of exploitation, it does entail a loss of autonomy. Guardianship should be minimised and seen only as a real last resort, and not become a procedural response to bureaucratic demands.

I suggest that an alternative approach be developed, with a more consistent framework, which preserves choice and control. This should also permit 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 and accurate assessments, rather than the proposed insufficient and compromised 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
- providing greater transparency of funding decisions by the NDIS.

OPA asks that the committee strongly recommend a change in direction away from the proposed independent assessments towards accurate informed assessments. We believe this can lead to widespread acceptance by the community, better meet the concerns that have been raised over current approaches, and result in fewer future problems.

Yours sincerely,



Dr Colleen Pearce AM
Public Advocate