

Issues Summary:

Access and Eligibility Policy with Independent Assessments

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Access and Eligibility Policy with Independent Assessments

Background

Independent Assessments will come into effect in the middle of 2021 for all applicants over 7 years of age. Access lists will no longer be used (except in some cases in WA).

Stated objectives of changes

The NDIA is seeking to have a “more consistent and fairer” approach to determining NDIS eligibility. Independent Assessments will “better understand an individual’s functional capacity and environment, to support objective and fair access and funding decisions” (NDIS, Nov 2020).

Process

The NDIA has held an open tender to appoint a panel of organisations to undertake the Independent Assessments. The [successful tenderers](#) were announced in February 2021. These organisations will employ qualified health care professionals to be assessors.

Independent Assessments are mandatory, but participants will be able to choose which assessor they use. Assessments will be free for participants and fully funded by the NDIA. They will occur at ‘important points’ of life (when things change) and up to five years apart.

Independent Assessors will use an agreed suite of tools for the assessment. Assessments will take three hours on average to complete (NDIS, Nov 2020). Other supporting information, including reports from the person’s health providers, may also be requested for consideration.

The access decision remains a reviewable decision and the applicant can request an internal review and then appeal the decision at the Administrative Appeals Tribunal (AAT). Independent assessment results themselves will not be directly reviewable by the AAT, only whether the assessment process was incorrectly followed.

Disagreeing with the results of an independent assessment is not sufficient for the NDIA to fund another assessment. Applicants can only seek a review where the assessment was not consistent with the Independent Assessment Framework, or if the applicant has had a significant change to their functional capacity or circumstances (NDIS, Nov 2020).

A complaints process will be available for applicants who are dissatisfied with an Independent Assessment, their assessor or the assessor organisation.

Feedback from families and participants

In preparation for this submission, we sought input from families and NDIS participants to inform our position. An online survey was circulated receiving 87 responses and two focus groups were conducted with six participants. Their feedback provided valuable insights into their experiences and concerns. The full survey and a summary of the key themes of the feedback are attached to this paper (Attachments A and B).

Issues of concern

Limited ability to appeal assessments

Independent Assessments are a high-risk process for participants. Assessments are the sole determining input to setting plan budgets for most participants, so there is a risk that if they are wrong they cannot be fixed.

Despite the importance of the Independent Assessment and the inadequacies of the process (which we detail later in this paper), participants will have limited ability to appeal assessment determinations. If an assessment leads to the reasonable and necessary needs of a participant not being met, there is no avenue for redress unless there was a process failure in the application of the assessment. As the NDIA states, Independent Assessment results themselves will not be directly reviewable by the AAT because they are not the decision of the NDIA (NDIS, Nov 2020).

Complaints about the outcome of the process will not be covered by the Participant Service Guarantee and therefore won't be able to be investigated by the Commonwealth Ombudsman.

The inability to readily access a review of outcomes of Independent Assessments is inequitable and unjust. It is also a direct contradiction of the Tune Review, which states that key protections need to be embedded in the NDIS Act including:

"[B]. participants having the right to challenge the results of the functional capacity assessment, including the ability to undertake a second assessment or seek some form of arbitration if, for whatever reason, they are unsatisfied with the assessment..." (Tune, 2019, p. 66).

Fewer assessments

Assessments occur at long intervals (up to five years apart) or only when there are significant changes in a person's condition or environment. So, there is a risk the assessments will not reflect current needs. This further heightens the high-risk nature for the participant of each assessment round, particularly for people with poorly understood, fluctuating or episodic disability or unstable natural supports.

It is unclear how significant a change in needs is required to trigger a new Independent Assessment. We believe the barrier should not be set too high, so that they are generally available if the participant believes the change in circumstances warrants a fresh assessment, as is largely the case now.

Emergency plan reviews

It is unclear whether there is the scope for an expedited new Independent Assessment and Plan Review in an emergency, where a participant experiences a sudden change in circumstances and additional supports are needed to keep them and others safe. This has been an ongoing issue for participants and providers and will not be addressed by the proposed Participant Service Charter or Guarantee. Under the current Participant Service Charter, from July 2021, once the new Independent Assessment has completed it is estimated it will take 77 days to get a plan reviewed (NDIS, Sep 2020)—and there is no indication of how long it will take to get a new independent assessment. This is too long a period of time to wait when highly vulnerable people and often their families are in crisis.

The change to flexible budgets may assist to cover some costs but only if the allocated funds are available. With a change to monthly or quarterly funding allocation this would be unlikely and depending on the emergency supports required, funds could run out quickly.

In the past, reputable providers have taken action to provide the required additional supports prior to receiving plan reviews, rather than place the participant and others at risk. This has left providers financially vulnerable and often out of pocket, as it is difficult and time consuming to get the NDIS to provide retrospective payments for this work.

Consideration of participants' experience

Participants' experience of the Independent Assessment process is not well understood.

The decision to implement Independent Assessments has occurred based on two pilots (one interrupted by COVID-19), with limited feedback provided about satisfaction with the assessment appointment rather than on whether the assessments led to reasonable and necessary needs being met.

While a stronger evidence base is required before implementation, there also needs to be better communications and engagement with participants and their representatives. A survey of participants and families undertaken for this submission (Attachment A), found very low awareness and understanding of Independent Assessments and proposed changes to planning process.

Lack of natural supports

There appears to be an assumption from the NDIA that all NDIS participants have the capacity to self-report and self-advocate or that they have natural supports who are able to do so for them. This is too often not the case. Many NDIS participants with profound intellectual disability have lived most of their lives in supported accommodation. Sadly, many participants have lost contact with their family and often, unless there is an active guardian in place or sufficient access to independent advocacy services, service providers through duty of care are required to act as advocates. This is not the preferred role of service providers, and highlights the need for more funding for independent advocacy services.

Independence

Independence of the assessment process from the participant has been achieved, but there is a lack of independence from the funder.

The Tune Review notes that the success of program will depend on the willingness of participants to work with the assessors and those “assessors providing truly independent functional capacity assessments, so that they are not perceived as agents of the NDIA or a tool designed to cut supports from participants” (Tune, 2019, p. 66).

When the NDIA controls all aspects of functional assessments, including the operating framework, selecting the panel of providers and overseeing the management of the contract, it will be difficult to achieve the public perception that the assessments are truly independent. This risks undermining public confidence in the scheme.

Issues of concern with Independent Assessment Framework

Inadequate tools and methodology for assessment of all disabilities

The suite of tools proposed through the Independent Assessment Framework provide sound reliability and validity across populations, however they are likely to be limited in their effectiveness to provide holistic decision-making assessments for support for all people supported through the NDIS.

The current proposal for Independent Assessment can be expected to meet the needs of a small cohort of people with disability who have self-advocacy skills, insight into their own support requirements and the cognitive ability to maintain attendance to the assessment process, however it does not account for the people with more complex or changing support needs.

Communication and understanding are key factors in any decision-making process, however the only tool suggested within the framework that assesses communication ability is within the Vineland. The questions in Vineland are designed to capture a presence or absence of particular expressive or receptive skills rather than the subtle nuances that this may require to enable effective communication for the individual.

There are gaps between assessments, and the methods by which each assessment measures required intervention. For example, LEFS measures lower limb, but the upper-limb assessment of the same background isn't included, presumably because there is an upper limb function section in the Vineland (as “gross/fine motor control”). Each assessment has a different lens to it. The Vineland/WHODAS are measuring from a medical/physical model, and while the CHIEF looks at environmental factors, there are elements that are only captured in Vineland that CHIEF doesn't cover – lending to a medical model view of those matters.

The assessments identify cognitive impairments, but do not capture the complexities where a person has more than one domain of cognitive impairment. The interactions of these impairments often have as much impact as the impairments themselves.

Furthermore, we are concerned about a 'one size fits all' approach and lack of personalisation, which was a key vision of the NDIS. Participants may fall through the gaps with areas of their needs not covered in four assessments. This is particularly likely for people with less known or common disabilities, dual-diagnosis or disabilities with changing symptoms.

The concept of dedifferentiation ('one size fits all') has been prevalent in the research agenda into disability and is categorised by the "dismantling of special arrangements for vulnerable groups, dissolution of categories and growing individualism" (Sandvin, J. & Soder, 1996, p. 117). Through an analysis of peer-reviewed literature, it has been demonstrated that through dedifferentiation, the population of people with intellectual disability are disadvantaged by standardised planning processes which rely on self-expressed needs and the omission of supported decision-making frameworks and policy (Bigby, 2020).

As such, there is a risk that the Independent Assessment process will contravene the Disability Discrimination Act (1992), most specifically in relation to indirect disability discrimination.

Inappropriate use of assessment tools

The assessment tools are designed for diagnostic purposes, not as a benchmark for funding decisions. Most of the evidence-based assessments proposed are used to identify areas where an intervention may be needed or to track the progress of a participant. They are a snapshot in time and provide information on current gaps. They do not include the participant's history, reflect the current level of support and do not include any vision of what their life could look like.

In short, the tools were never intended for use to determine long term funding as is proposed by the NDIS.

Issues of proxy reporting vs self-reporting

Further complexities for people with more significant levels of disability are raised around the data integrity, reliability and validity of the tools where a proxy respondent (family or other guardian) will be required due to the complex nature of a person's support needs. It is unclear whether the measures proposed are designed solely for self-report and impartial observation or if a family member can provide expert proxy reports on behalf of the individual and the validity of a proxy report. In addition to this, there are considerable populations who may not have family contact at all or frequently enough to provide accurate data. In this instance, who is proposed to provide the proxy responses without bias? It is recognised that service providers may have conflicts of interest, but this role often falls to providers as there is insufficient funding for the provision of independent advocacy.

An additional complexity around the method of data collection is the notion of acquiescence for people with disability. This can be categorised as 'yea-saying' typically but can be more broadly applied to people with intellectual disability as the concept of

suggestibility (Finlay & Lyons, 2002). It is unclear from the framework suggested how this risk will be mitigated to ensure data integrity and ultimately scheme integrity.

Risk of assessor bias and lack of choice

The Independent Assessment Framework suggests that allied health experts will be recruited to undertake the assessment processes and will receive training to enable this. What remains unclear is whether assessors have disability-specific expertise and if they have any previous knowledge of the disability they are assessing? Their previous experience in disability sector may bias them to the expression of other disabilities.

There is also a concern that individual specialist allied health professionals may have a bias associated with their discipline or their experience in the disability sector (which might not be relevant to other disabilities).

With the widespread evidence of a national shortage of allied health professionals, there is also concern over how the Independent Assessment Panel will be resourced with suitably qualified individuals. In rural, regional and remote areas, there are concerns about whether there will be a real choice of provider of Independent Assessments, leading to inequities in choice and control for participants.

For further information about this paper, contact engagement@possability.com.au.

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