

Submission: Independent Assessment & Planning Policy and Plan Flexibility

NDS is a signatory to a statement about independent assessment that has been endorsed by a number of organisations. It is reproduced below. The broad disability sector is concerned about the Agency's proposed independent assessment process and NDS asks the Agency to take on this feedback and improve consultation, piloting (and transparency of results) with a view to ultimately revising the proposed independent assessment process.

NDS is concerned about the inequity which has emerged within the scheme. Inequity was a core finding from the Productivity Commission's 2011 inquiry into disability care and support; we do not want it to be a permanent feature of the NDIS. NDS is on the record over the past seven years as being critical of planning and planning outcomes; we do not step away from this critique. We do, however, want to ensure that better planning processes are used and not just different ones. We want better and fairer planning and funding outcomes for participants and their families and carers.

It should be noted that NDS has combined its comments on two of the consultation papers: independent assessment and planning policy and plan flexibility. We request the comments on independent assessment be considered first. What follows are comments only on what is proposed in the planning paper; they should not be read as an endorsement of independent assessment as outlined by the Agency.

Summary of key points

- Measures to identify and address the causes of inequity in participant plans need to be prioritised
- Immediately cease the rollout of compulsory assessments as currently planned
- Undertake a robust and transparent outcome evaluation of the current pilot of the new assessment process; this must be independent of the NDIA, led by experts and co-designed with people with disability, their families and the organisations that support them
- Undertake robust, independent and transparent trials of alternative approaches to improving consistency in access and planning—such as allowing a person's existing health professionals to complete assessments using the same tools
- Once the trials and evaluations are complete, engage in a meaningful co-design process with people with disability, their families and the organisations that support them to ensure a fair and consistent approach to both access to the scheme and planning and to ensure people with disability receive the support they need
- Release information about how independent assessment findings will be used to make funding decisions

- Allow participants to table other information to assist with planning and funding decisions—such as reports from therapist or other providers and information from families and friends
- Allow a participant to invite a support person of their choice to attend planning meetings (or independent assessment, if it is implemented)
- When information from an independent assessment paints a picture of support needs which is quite different from that of others, a review should be triggered (which follows a process developed with the broader sector)
- If substantially less funding is a result of a plan review (and there are not obvious reasons for that), the plan should be grandfathered, allowing it to reduce slowly through the absence of indexation
- Funding associated with life stages may not be identified by the independent assessment—such as wanting to find employment or to leave home—questions should be included in the planning discussion should trigger the need to investigate
- Planning discussions must occur prior to the development of a draft budget
- Plan length should be customised for every participant
- More information on the ‘check in’ process needs to be released
- It is important that funding for some supports is included in the fixed budget including: early intervention for children; swallowing assessments; positive behaviour support; some health-related supports; employment supports; Supported Independent Living; travel for providing therapy supports in natural settings; major pieces of assistive technology; and home and vehicle modifications
- Independent assessment should not be designed with the aim of justifying plan funding reductions
- Improve the timeliness of plan variations
- Work closely with the sector to identify how exemptions from independent assessments would be operationalised; err on the side of caution in order to minimise the risk of trauma to participants
- The gradual release of funds will dramatically increase administration for providers (particularly through the increase in the number of number service booking); the Agency must provide a way of preventing this from happening

Disability sector statement on the Australian Government’s planned reforms to the National Disability Insurance Scheme (NDIS)¹

The Australian disability sector holds significant concerns about the Federal Government’s planned changes to how people with disability will access the NDIS and, most importantly, how they will receive support.

Under the planned changes, all future NDIS participants will have to undergo a mandatory assessment in order to access the scheme. Existing participants will progressively be required to undergo the same assessment process before they receive their next NDIS plan and funds.

¹ As agreed at 23 February 2020

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These assessments will be used by the National Disability Insurance Agency to decide who will be given access to the scheme, and how much funding and support they will receive.

These changes will fundamentally alter the individualised and personalised nature of the NDIS. While we all want greater consistency, we are very concerned this increasingly automated process will not adequately consider individual need and circumstance.

This is not the NDIS we fought for.

The NDIS has had a positive impact on many people's lives. But there is also room for improvement. The scheme is complex and constantly changing. It is hard to navigate. There are problems with fairness and consistency. While it is working well for some people, others are missing out.

We want to work with the Australian Government and the NDIA to change this picture. We want to deal with problems and come up with solutions that work for participants. We want to make sure this is the world-leading scheme we believe it can and should be.

Unfortunately, we have not seen evidence that what the Government is planning will resolve current problems with the scheme. In contrast, these assessments and the new process for determining individual plans and budgets, may actually compound existing problems or even create new unintended ones.

The introduction of mandatory assessments is the biggest change to the NDIS since it began. Despite the scale and cost of the changes, they have not been rigorously tested or undergone an independent evaluation. Consultation has been rushed and the questions and concerns of people with disability, their families and the organisations that support and represent them have not been addressed.

Based on the information released by the NDIA, we are concerned that a desire to cut costs is the main motivation for the hurried introduction of these reforms.

We want the NDIS to succeed. But we cannot support legislative or operational changes which we believe undermine the intent of the scheme. And may leave people with disability without the support they need.

An NDIS that serves all Australians with disability will be stronger and fairer if it:

- Upholds the rights and respects the dignity of people with disability
- Involves people with disability and their families in all stages of the assessment and decision making process
- Is free from conflict of interest and bias
- Based on the principles of natural justice including review and appeal.

Our concerns with the planned changes include (but are not limited to):

Concerns about the way assessments will be carried out:

- Assessments will be carried out by outsourced private contractors using standardised tools in as little as three hours. Assessors will not be known to the person. As a result, it will be difficult to capture individual complexity or build a comprehensive and accurate picture of people's needs and circumstances.
- Developing a complete and accurate understanding of the functional abilities of people with "invisible" or complex disabilities requires specialised skills and experience. We are not confident that the planned model takes this into account.
- People with disability from a Culturally or Linguistically Diverse (CALD) background, LGBTIQ people with disability as well as First Nations applicants and participants also require specialised expertise and cultural competence from assessors. Again, we are not confident that the proposed model adequately addresses their needs in a culturally safe way.
- The results of the assessment cannot be challenged or appealed. In fact, people will not be given a copy of the full assessment report unless they apply to see it.
- These assessments are not genuinely independent but performed by an organisation/organisations contracted by the NDIA, creating a conflict of interest.
- Requiring people with disability to work with someone unknown to them will be difficult, even damaging, to those who have a history of trauma, abuse or violence. While a small number of people will be granted an exemption, it is not clear who or how this will occur.
- Once an assessment has started, risks may become clear and trauma may occur. This may not have been obvious when the assessment started. It is not clear if or how support will then be provided.
- The process relies on additional people taking part in the assessment, such as a family member or carer. For some adults with a disability, this is not appropriate. Others may have no-one in their lives who can give accurate, reliable or independent information.
- The proposed use of telehealth facilities to undertake assessments with participants in rural and remote areas may make it difficult for some people with disability to fully participate.

Concerns with how the assessments will be used to determine participant plans and funding:

- The mandatory assessment will now be the primary tool to determine a person's NDIS budget. But how the assessment results will be used to do this has not been explained. Nor have the results of any modelling or testing been made publicly available.
- The tools chosen are designed to be used for screening or assessing functional capacity. Using the tools to then determine an appropriate level of support and allocation of funding is however untested and untried. To our knowledge, this would be one of the first times in the world the tools would be used in this way. Before such a radical reform is introduced, we believe there must be strong research and evaluation of the proposed methods. To date, there has been none.

- There will be very few circumstances where the plan and budget can be changed after the assessment is complete. NDIS planning meetings will instead focus on how to spend already allocated funds rather than examining what support people need.
- The proposal to repeat the process at different life stages and at least every five years creates additional stress and anxiety for participants and their families.

Concerns about the impact of these assessments on the availability of support for participants:

- The assessors who are contracted to do these assessments will not be able to offer other services to NDIS participants. We are concerned this will significantly reduce the number of qualified therapists available to support people with disability and their families - particularly in rural and regional areas.

We want the scheme to be consistent and fair. But we also want to make sure that people with disability get the support they need. There are too many unanswered questions and concerns for this proposal to continue in its current form. We therefore request:

1. Immediately cease the rollout of compulsory assessments as currently planned.
2. Undertake a robust and transparent outcome evaluation of the current pilot of the new assessment process. This evaluation must be independent of the NDIA, led by experts and co-designed with people with disability, their families and the organisations that support them.
3. Undertake robust, independent and transparent trials of alternative approaches to improving consistency in access and planning—such as allowing a person’s existing health professionals to complete assessments using the same tools.
4. Once the trials and evaluations are complete, engage in a meaningful co-design process with people with disability, their families and the organisations that support them to ensure a fair and consistent approach to both access to the scheme and planning and to ensure people with disability receive the support they need.

Comments on the Planning Policy and Plan Flexibility consultation paper

- **Principles**

The stated principles must be consistent with the NDIS Act. NDS identifies no inconsistencies.

- **Personalised budgets**

At the outset, NDS urges the immediate release of information about how information obtained through independent assessment would be used to make funding decisions. Functional assessment tools have not been designed as funding tools and for this reason alone, the sector is understandably demanding to know how assessment outcomes and budget setting will be linked. The absence of information on this issue is fuelling concerns about independent assessment and planning right across the sector.

This said, the process to develop a personalised budget as described in the consultation paper is flawed and will generate substantial concern among stakeholders, not least because the results of an independent assessment cannot be challenged.

The paper states:

The funding in a personalised budget will be informed by the participant's individual circumstances, such as their age and where they live, and their functional capacity, including any relevant environmental factors, such as available informal supports. The outcomes of the participant's independent assessment will inform their personalised budget.

NDS does not support the limitations implied in this statement. Any relevant information the participant wishes to put forward should be considered when developing a draft budget. This information could include: reports from service providers including specialists such as therapists, psychologists and positive behaviour practitioners; reports from schools or early childhood centres which contain relevant information (excluding curriculum support); and families and friends.

If an independent assessment is being undertaken, the participant should be allowed to invite a person of their choice to be with them; this may be a family member; friend; disability support worker; support coordinator; or treating therapist, psychologist or positive behaviour support practitioner. Many participants will need to have the assistance of someone who knows them and their support needs in order to be able to participate adequately in a planning or assessment process.

In circumstances where the picture of functional support needs generated by independent assessment is quite different from that suggested by other information, a review should be triggered automatically. The NDIA needs to consult with the sector on the design of such a process. If, after such a review, the Agency determines the previous plan budget was too large for current support needs (and there are not obvious

reasons for this) NDS believes the plan funding level should be grandfathered, allowing it to be reduced gradually through the absence of indexation, reducing the impact of sudden changes in the level of support a participant receives.

It is possible to identify life stages where a draft budget will need to include new supports (and be substantially different from those that have come before it). Leaving school and considering employment is an obvious one, as is wanting to leave the family home. In these circumstances, new supports need to be funded, additional skilled-support coordination may be required, or assistive technology needs may change. A functional assessment alone will not be sufficient to develop an adequate plan budget for many participants. Particular life stages should trigger more comprehensive plan development.

If, despite the concerns raised by the sector, the use of independent assessments proceeds and it is a primary source of information used in the setting of draft budgets, we urge the NDIA to proceed slowly and evaluate constantly. Some individuals will find independent assessment traumatic. Identifying these participants and excluding them from the process (for as long as necessary) should occur, as should acceptance and consideration of information gained from other sources.

In any event, evaluation information should be used to refine the use of independent assessments over time and how it is used when setting draft budgets. Importantly, to build trust and support with the sector, it will be important for the Agency to be transparent with this information by releasing it publicly. We would support the establishment of an advisory group to assist with this this evaluation and data release.

- **Delegate review of draft budget prior to it going to the participant**

A process that will see a draft budget developed and considered by a delegate prior to being given to the participant has angered the sector. This process is easily remedied.

A planning discussion must occur before a draft budget is finalised to ensure, at the very least, important information on support needs or goals associated with a life stage haven't been omitted. Receiving the draft plan prior to a planning meeting sends the (wrong) message that the budget is a fait accompli.

For participants and their families, this change, almost eight years after the scheme began, is too substantial and suggests the individual will no longer be central to the process. If it is implemented as proposed, a participant living in SDA or needing complex assistive technology, could be unnecessarily frightened into thinking those supports are being denied. Care needs to be taken to ensure clear information is provided to participants and families at all times, so as not to raise concerns and induce distress unnecessarily.

- **Length of plan**

Longer plans have substantial merit, with provisos. With the implementation of the NDIS, we moved from an unsatisfactory situation where the support needs of many

people receiving disability supports were not reassessed for many years, even decades, to one where sometimes unnecessary reviews are occurring annually (or even more often). Some potential problems with the proposal for longer plans are discussed later in this submission under 'Impacts on providers'.

The plan review period needs to be customised for every participant, based on aspects of their life such their age, living arrangements, informal supports, disability-type(s), life stage and 'life-changing' goals or decisions. Many participants would appreciate less frequent plan reviews than they have been having. The planner should agree with participants a plan review period, with existing triggers for a plan review retained.

The 'check in' described in the paper sounds perfunctory. Re-naming and better describing the function or activity is warranted.

- **Flexible and fixed budget categories**

A move to more flexible budgets will be welcomed by many in the sector. Too many barriers have existed for participants to use their support funding in a way that is most useful for them. Some problems will, however, need to be resolved (discussed later in this submission under 'Impact on providers').

Flexibility should not, however, be unfettered for all participants or for all time.

NDS believes capacity building supports for many participants should be fixed. Examples include: early intervention therapy for young children; swallowing assessments for those who need them; positive behaviour support (for the development of plans and for the training/support of those who implement them); some health-related supports; and, importantly, employment supports.

Supported Independent Living funding should be a fixed support which restricts this high-risk support to being delivered by registered providers which are subject to the NDIS Commission quality assurance framework (which includes workers needing a worker clearance). This should be a minimum requirement for the delivery of SIL supports.

In some circumstances, funding for therapy travel should be fixed in order to support early intervention supports being provided in natural settings.

Particularly in the case of employment supports, quick plan reviews should be able to be triggered in circumstances where a participant is increasing (or decreasing) the amount of support they require (such as increasing their hours of work).

Capital support funding for major pieces of assistive technology and home or vehicle modifications should also be fixed.

How greater flexibility in core funding is used should be monitored, with an adequate audit system in place. Despite new guidelines on plan management being released last

year, plan managers often report to NDS their concerns about the invoices they are requested to pay. They are concerned that some NDIS funds are used to pay for things that are not 'reasonable or necessary'. The inappropriate use of plans to fund holidays, claimed under short term accommodation, is one of the most commonly raised concerns and one amongst a number which should be addressed.

Increased plan flexibility has risks. These need to be managed through a review of accountability processes. More flexibility will need to be tempered by a focus on more accountability.

- **Participant goals**

Prior to the beginning of the scheme there was considerable debate in the sector, including among people with disability, about whether goal-setting should come before budget setting or vice versa. This paper is, in effect, re-visiting that debate. For the past eight years or so goal-setting has been prioritised, with a strengthening belief that the NDIS funds participants to achieve their goals. While this is not stated in the Act, it is what people have come to believe. It is possible this connection is likely to have contributed to some of the inequity in planning which is now evident.

Severing this direct connection and re-positioning it as one where the NDIS provides funding for reasonable and necessary supports which participants can use to pursue their goals is going to be difficult. Acceptance will grow only if the experiences of participants and families demonstrates that this change is not an attempt to obfuscate a broader agenda of cutting participant budgets.

- **Plan variations**

Organising a plan variation should be quick and simple, which is not how it generally works at present. The description of plan variations is, at this time, suitable but aspirational. NDS contends that the Agency should be required to meet tight timeframes for making this adjustment, timelines which should be included in the Participant Service Guarantee.

- **Exemptions**

The ability to grant exemptions from independent assessments, should they be introduced (please see the Disability Sector Statement at the start of this submission), is critically important. The NDIA must work with stakeholders in devising a decision-making tool to be used for determining when an exemption is warranted.

While not an exhaustive list, NDS considers that exemptions are needed for some participants: with psychosocial disability; with autism; with rare disabilities or syndromes; who are from Aboriginal and Torres Strait Islander communities; who are from culturally and linguistically diverse communities; have conditions for which support needs fluctuate over time; have conditions for which their support needs are easily identified; or have conditions which are expected to dramatically reduce or limit their life expectancy.

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Using independent assessment for participants with these conditions or circumstances will sometimes be traumatic, will not accurately reflect their support needs and/or will subject them to unnecessary processes.

- **Impacts on providers**

Since July 2020, a growing number of plans are listed with SIL being plan managed (previously it was only Agency managed). An increasing number of providers now have outstanding invoices which add up to substantial debt (SIL is a high-cost support). As mentioned earlier in this submission NDS urges the Agency to require SIL to be a fixed support, Agency managed and to be delivered by registered providers only.

The NDIS is already administratively complex and burdensome; it is expensive for providers to operate within it. NDS understands many participants want longer plans, requiring the Agency to find a way of managing the release of funds.

The suggested monthly or quarterly release of funding will greatly increase the administrative burden for providers—as a service booking can only be made when there are sufficient funds available. A monthly or quarterly release of funds will greatly increase the number of service bookings that need to be created. NDS therefore requests that the Agency urgently find a way that does not increase the administration required of providers.

The COVID-19 lockdown resulted in many participants not being able to engage in social or community activities and in-home support needed to increase. The negotiations between participants and providers about the need to release funds from service bookings (in order to change support arrangements) were sometimes difficult and time-consuming. Greater plan flexibility is likely to generate similar problems. A mechanism to resolve disputes is therefore needed to address these issues in the longer term.

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National Disability Services is the peak industry body for non-government disability services. It represents service providers across Australia in their work to deliver high-quality supports and life opportunities for people with disability. Its Australia-wide membership includes about 1100 non-government organisations which support people with all forms of disability. Its members collectively provide the full range of disability services—from accommodation support, respite and therapy to community access and employment. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.