

National Disability Insurance Agency

Consultation Paper Access and Eligibility Policy for
independent assessments

Victorian Mental Illness Awareness Council

February 2021

We thank the National Disability Insurance Agency for the opportunity to provide feedback on their proposed Access and Eligibility Policy on independent assessments.

AT A GLANCE

VMIAC does not support the introduction of mandatory independent assessments as proposed and detailed in the NDIA's Consultation on Access and Eligibility Policy on independent assessments. We call on the NDIA to fulfill its obligations to the Australian Public as expressed under the Convention on the Rights of Persons with Disabilities (CRPD) to work with disabled people, families, supporters and disability organisations to redesign a fit-for-purpose assessment process.

The Victorian Mental Illness Awareness Council (VMIAC) is the peak Victorian non-government organisation for people with lived experience of mental health or emotional issues. We provide advocacy, education, consultation and information to promote the rights of people using, or wanting to use, mental health services. VMIAC has specialist experience advocating, at an individual and systemic level, for changes to the NDIS and the National Disability Insurance Agency (NDIA). At an individual level VMIAC provides:

- Specialised information for consumers on how to apply for the NDIS
- Advice and support to gather evidence required for the NDIS
- Intensive support through the application process and planning meetings,
- Advocacy support for NDIS Reviews and Appeals.

Underpinning this work is VMIAC's NDIS Critical Reference group, which provides ongoing input and advice into VMIAC service delivery and strategic advocacy. These opportunities give VMIAC a broad understanding of the issues faced by consumers and government in implementing the original intention of the NDIS. There have been many issues with the roll out of the NDIS, particularly as it relates to psychosocial disabilities. This submission focuses on the introduction of mandatory Individual Assessments.

MANDATORY INDIVIDUAL ASSESSMENTS

VMIAC wishes to acknowledge and thank members of the VMIAC NDIS Critical Reference Group for their input into this submission.

Major concerns around the NDIA's Proposed NDIS Access and Eligibility Independent Assessment Policy include:

- A failure of the NDIA to consult people with a disability
- The impact of Independent Assessments on NDIS participants' choice and control
- The potential harm arising from subjecting NDIS Participants to a Mandatory Independent Assessment Process
- That Independent Assessments are not a fit-for-purpose mechanism to assess Access and Eligibility
- That Independent Assessments create a deterrent against accessing the NDIS, and
- These reforms reflect a broader, and concerning trend, of re-assessing participants without good cause.

We call on the National Disability Insurance Agency to:

- Ensure the safety of NDIS participants by not exposing participants to unnecessary risk if evidence exists that participation in an Independent Assessment will be harmful
- Offer Independent Assessments as optional as opposed to mandatory, whilst maintaining the option of choosing an assessor
- Cover the costs of all assessments, whether they be independent or of one's own choosing. This will ensure greater equity for people
- Make fully public the fine detail about how Independent Assessments will be used to determine the Eligibility of NDIS Participants

NOTHING ABOUT US WITHOUT US – THE FAILURE TO CONSULT PEOPLE WITH A DISABILITY

The NDIA has developed and is now introducing Independent Assessments without appropriate and transparent consultation with people with a disability, their families, supporters and the wider disability sector as to whether such a process will benefit and be suitable for people with a disability.

Such an approach is at odds with the Convention on the Rights of People with a Disability (CRPD) and the National Disability Standards(2010 -2020 which seek to embed the rights of disabled people to decision making and their active participation in the design of systems that are meant to support them (see Articles 4(3) and 33, CRPD)

CHOICE AND CONTROL

Choice and control are core principles upon which the NDIS was founded. Subjecting NDIS Participants to mandatory Independent Assessments, undertaken by contracted independent assessors who may not have disability-specific expertise, is contrary to principles of choice and control.

THE POTENTIAL FOR HARM

There are many NDIS participants with a disability caused by injury and accident who in their long journeys through Workcover and TAC Insurance Schemes have already experienced psychological injury and significant trauma through being subjected to mandatory Independent Medical Assessments. Around the world increased scrutiny is being applied to the psychosocial harm caused to people by such processes (Grant, O'Donnell et al 2014).

Additionally, there are numerous participants with a psychosocial disability who have experienced compulsory treatment and/or involuntary detention under a Mental Health Act and who know first-hand the deeply disempowering and harmful effects of being subject to institutional power. For many NDIS Participants the prospect of being forced to undertake a Mandatory Assessment in order to participate in the NDIS will be deeply triggering.

In the United Kingdom, where a similar mandatory functional assessment process was employed to reassess the eligibility status of over a million United Kingdom citizens who were receiving disability payment benefits and supports, research has been able to directly link an alarming rise in the rates of suicide and mental illness amongst disabled people to the introduction of this flawed and ill-considered policy (Barret al al, 2015).

NOT FIT FOR PURPOSE: AN INADEQUATE PROCESS OF ASSESSMENT

Under the NDIA's Independent Assessment process NDIS participants will no longer be able to use assessments by people they know or trust. It is questionable efficacy to require an NDIS participant to be assessed by someone who knows nothing about him or her.

The NDIA in released tender documents stipulates a time frame for assessments carried out (1 to 4 hours in total) by an allied health practitioner. The assessor will have no prior knowledge of the individual in question or their disability history and will rely instead on undertaking their assessment by asking a series of questions drawn from a suite of functional assessment screening tools to assess functional capacity.

The individual undertaking the assessment may have no knowledge or experience of the disability that they are assessing and in fact the NDIA has said that the assessment process will be Disability Agnostic with capacity to assess any disability accurately. But the NDIS has presented no evidence that such a limited assessment process is actually fit for purpose and capable of accurately assessing or measuring a person's level of disability or disability support needs.

It is unclear how an Independent Assessment will be able to capture and measure the fluctuating and episodic nature of psychosocial disability. This is especially concerning since the Independent Assessment process that the NDIA is proposing to implement is completely untried anywhere in the world apart from a small non-representative pilot undertaken in the Hunter Valley yet to be completed.

Feedback from NDIS Participants with a psychosocial disability is that they have no trust or safety in such processes. The NDIA has not provided any evidence that its proposed process will result in a fair assessment of a person with trauma or with episodic or fluctuating needs.

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VMIAC’s Response to NDIA’s Proposed Access and Eligibility Independent Assessment Policy

Question	VMIAC’s Response	Suggestions
<p>1. What will people who apply for the NDIS need to know about the independent assessments process? How is this information is best provided?</p>	<p>VMIAC is concerned that assigning arbitrary assessors for NDIS access will reinforce the very barriers that the NDIA seeks to support people with disability to overcome.</p> <p>Psychosocial disability often carries with it a complex, trauma-based sensitivity to new people and situations, particularly within the clinical assessment space which is a well-recognised site of re-traumatisation.</p> <p>The option of choosing one’s own clinician means that the distress of having to engage a stranger in an unknown environment can be mitigated, particularly given the inherent anxiety of an application process which is highly distressing for many people.</p> <p>Independent assessments, as a mandatory practice, have been described by VMIAC representatives and members as a most damaging and defeating method of addressing and identifying people's disability needs, in part</p>	<p>Independent assessments are optional for applicants who do not wish to engage, or source, their own clinician. This is in line with disability rights and the principle of Choice and Control.</p> <p>All assessments including self-appointed ones are paid for by the NDIS. Where people use their own assessors – these costs will be covered thus ensuring greater equity for NDIS Participants disadvantaged or unable or unwilling to participate in an Independent Assessment</p> <p>Information about Independent Assessments is codesigned with NDIS participants, disability peak bodies and individual consumers. The consultation process is re-designed and equipped to co-design new</p> <p>Assessment, Access and Planning processes that are fully aligned with the</p>

	<p>due to the traumatic and damaging triggers they can pose for people living with psychosocial disability who often need extra psychosocial supports to engage with clinicians they already know, let alone strangers.</p> <p>The information provided in the consultation process is currently too limited regarding Independent Assessments. The consultation process needs to be extended in depth and breadth. For example, some of the consultation questions are based on assumptions that the responder agrees in principle with the changes, rather than giving the</p> <p>responder a chance to critically evaluate the assumptions upon which the changes are based.</p> <p>Applicants have the right to know the exact implications of an Independent Assessments and what they are agreeing to when they are partaking in one. What is it for? What are your rights? What exactly does it replace? Can you have a report re-done? Can you request a</p>	<p>needs of people living with a disability.</p> <p>Aboriginal and Torres Strait Islanders, people with multiple disabilities and people from culturally and linguistically diverse communities have a right to information that addresses their languages, circumstances and cultural contexts.</p>
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	different assessor? Are there other sources of information available to the assessor outside of the meeting? Will the Independent assessment mean that people's own clinicians are no longer important in the process?	
2. What should we consider in removing the access lists?	<p>VMIAC believes that Access lists still have a part to play in supporting the transition of people with a disability into the NDIS</p> <p>There remain considerable challenges for people with a disability, their families and supports to acquire or locate supporting evidence that provides a sufficient level of clarity to meet NDIS Access Requirements.</p> <p>Having a disability listed in Access Lists A and B reduces the unnecessary burden on Participants, their families and supporters who are often already fully stretched in trying to cope with little or no supports in place</p>	<p>The decision to remove Access lists is set aside and a new focus is placed on providing support to NDIS participants whose eligibility is under review.</p> <p>We suggest the creation of new line-item funding assigned to accessing and retrieval of supporting evidence which would also be very helpful to other NDIS participants with multiple disabilities who only have a primary disability recognised</p>
3. How can we clarify evidence requirements from	The first step in ensuring that the evidence	VMIAC supports person-centred and disability-positive approaches to

<p>health professionals about a person's disability and whether or not it is, or is likely to be, permanent and life long?</p>	<p>requirements are clear is to give people the option to choose their own assessor. The element of trust or familiarity is the variable which can give a consumer the voice to share what is the true picture of their disability.</p> <p>The expertise of the person with lived experience, as well as the information provided by clinicians, should suffice as evidence. This is in line with best practice standards outside of the NDIS.</p> <p>The Tune Review does not recommend any significant changes to the definition of "reasonable and necessary" in the NDIS Act, which would be required to legally support the proposed reforms.</p>	<p>supports, which includes choice of clinicians, supports and assessors.</p> <p>The individual circumstances and contexts of a person's disability are vital in determining whether a disability is likely to be permanent and lifelong. The best person to make such determinations are professionals who are knowledgeable and familiar with the individual.</p> <p>In a recent AAT landmark decision <i>Ray v National Disability Insurance Agency</i>, the tribunal determined that the observations of Applicant's treating professional were more reliable than those provided by an Independent Assessor who has seen Mrs. Ray once.</p>
<p>4. How should we make the distinction between disability and chronic, acute or palliative health conditions clearer?</p>		
<p>5. What are the traits and skills that you</p>	<p>The importance of building a therapeutic</p>	<p>Every person will identify different traits and skills</p>

<p>most want in an assessor?</p>	<p>relationship between clinicians and people seeking their services is recognised in all evidenced-based, best practice relating to mental health and psychosocial disability.</p> <p>Trust is fundamental in clinical services, yet for most people living with psychosocial disability, clinical spaces are extremely challenging for trust to build. This is in part because of the power dynamic and due to past and current systemic abuse towards people with mental illness and psychosocial disability.</p> <p>Traits sought include: A person-centred approach, trauma informed practice, active listening, empathy, transparency, appreciation of difference, and a commitment to obtaining the best possible outcome for the consumer.</p> <p>It commonly takes consumers months or even years to find a clinician who is a good match to work with. The skills and traits sought in an assessor are based fundamentally on trust, which cannot be manufactured in a single assessment.</p>	<p>as important. Therefore, consumers can nominate an assessor / clinician of their own choosing, whom they trust and can share their disability-related information and experiences with.</p> <p>Consumers can choose to have an independent assessment if they wish to, where it does not put them at a disadvantage in terms of not having a choice of clinician who has skills or traits that they deem necessary.</p>
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	<p>Assigning an independent assessor can be potentially very harmful not just to the working relationship and assessment itself but to the person undergoing the assessment.</p>	
<p>6. What makes this process the most accessible that it can be? For example, is it by holding the assessment in your home?</p>	<p>An assessment process that fails to take into the specific needs and capacities of people with a disability should not be employed.</p> <p>Concerns continue to be raised about the suitability of the NDIA's mandatory Independent assessment process for people with a psychosocial disability</p> <p>People who due to their psychosocial disability or trauma are unable to participate in an Independent Assessment should not be penalised or excluded from an opportunity to have their support needs assessed</p> <p>Attention needs to be made to ensure that assessment process is safe for individuals</p> <p>VMIAC rejects the contentious notion of health professional bias</p>	<p>Alternative arrangements for people who are unable to participate in an Individual Assessment need to be made available.</p> <p>This should include the option for an assessment to be conducted by a health professional chosen by a participant</p> <p>Determination of the suitability of an Independent Assessment needs to be informed by the views of a participants treating health professionals. This determination should be informed by the suitability of the Independent Assessment process and its risks to the safety and well-being of NDIS participants</p>

	<p>promoted as a justification for the use of Independent Assessments</p> <p>VMIAC highlights the substantial disadvantage people with a psychosocial disability are exposed to through their forced participation against their wishes in Mandatory Independent Assessments</p>	
<p>7. How can we ensure independent assessments are delivered in a way that considers and promotes cultural safety and inclusion?</p>		
<p>8. What are the limited circumstances which may lead to a person not needing to complete an independent assessment?</p>		
<p>9. How can we best monitor the quality of independent assessments being delivered and</p>		

<p>ensure the process is meeting participant expectations?</p>		
<p>10. How should we provide the assessment results to the person applying for the NDIS?</p>	<p>Participants and applicants need to be able to nominate how they are contacted with results, and this must be adhered to. Receiving assessment results can be extremely distressing and anxiety triggering, so a form of agency and control of how the information arrives is important. This is in line with choice and control in the lives of people with disability.</p> <p>Currently, this is not an option- the NDIA determine the means through which they will make contact, as well as decide when this will take place.</p>	<p>The applicant/participant can choose between different mediums- for example phone, email, post.</p> <p>The applicant / participant can nominate when to be contacted in order to have some control over how the information arrives.</p>