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Friday 9 April 2020

Hon Kevin Andrews MP
Chair, Joint Standing Committee on the National Disability Insurance Scheme
PO Box 6100
Parliament House
Canberra ACT 2600

RE: Your Committee's Inquiry into Independent Assessments under the NDIS

Dear Mr Andrews,

Thank-you for the invitation to make a submission to the Joint Standing Committee on the National Disability Insurance Scheme (NDIS) to facilitate their inquiry into the Federal Government's and National Disability Insurance Agency's (the Agency's) proposal to introduce a new NDIS Access and Eligibility Policy incorporating Independent Assessments (IAs)

With regard to your inquiry's stated particular reference points:

a. the development, modelling, reasons and justifications for the introduction of independent assessments into the NDIS;

Physical Disability Australia (PDA) is not happy with the decision to change the NDIS access and eligibility policies before the current IA trial has been concluded. We are also unhappy with the justifications that have been given for the proposed changes. The Agency's CEO stated in his column[1] that IAs are being introduced to help the Agency make fairer and more consistent decisions with regards to the levels of support provided to participants. He said that under the current system "payments are 23 per cent higher in wealthier families for children compared with the poorest, and 13 per cent higher for adults." It is hypothesised that this was due to wealthier families of people with disability having better access to medical specialists and the reports they provide.

PDA applauds all efforts to make access to NDIS funded supports equitable and for them to be genuinely based on the reasonable and necessary needs of people with disability. However, in meetings that are not open to the public, it has been made clear to us and our partner organisations in the disability representative community that the escalating costs of the NDIS are a real source of concern to the Board of Directors, senior management team and Government Ministers. The term 'unsustainable' has been used and it is clear that stopping the ongoing escalation of costs is of the utmost importance.

PDA understands this and we believe the broader community of people with disability, their families and supporters will understand and accept this too if a commitment is made to lay the fiscal facts before them, and it is acknowledged that

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[1] https://www.ndis.gov.au/news/ceo/stay-informed-ceo#need-for-ia

IAs are a way to set evidence-based benchmarks for “reasonable and necessary” levels of support.

b. the impact of similar policies in other jurisdictions and in the provision of other government services;

PDA is unaware of any specific parallels in other jurisdictions. In doing this we note that the current Federal Government is philosophically inclined to reduce spending on ‘welfare’ generally as is evident in:

- Statements that recipients of Centrelink overpayments will be required to reimburse the government regardless of their circumstances;
- The gradual tightening of eligibility criteria for the Disability Support Pension; and
- The decision to only increase the widely-understood-to-be-inadequate *JobSeeker* allowance by only $25 per week.

c. the human and financial resources needed to effectively implement independent assessments;

PDA is not opposed to the Agency investing resources into the IA administration process as we see some merit in a universal hands-off assessment of participant’s reasonable and necessary support needs. However, we have misgivings about the allocation of the work through competitive tender processes and would rather see the work be done by existing NDIS Local Area Coordinator Partners in the Community. These organisations already have excellent relationships with many participants and some appropriately trained personnel in their employ (this point is expounded upon in ‘d’ below).

d. the independence, qualifications, training, expertise and quality assurance of assessors;

PDA has concerns regarding the independence, expertise and quality of the personnel conducting IAs. With regard to independence, we note there have been reports in the media that some of the firms that have won contracts to administer IAs to existing and would-be participants also perform other work for the Agency, have former Agency employees in their management teams, and are, in many cases, registered providers of services to NDIS participants[2]. We feel there are clear conflicts of interest in these arrangements and a different procurement process should have been used.

With regard to expertise, PDA is concerned that many of the assessors who are currently being employed by the firms noted above, will have limited experience with the broad scope of what it means to have a disability in Australia today. We do not know what latitude the firms are allowed in identifying suitable assessors nor whether or not their terms and conditions are at an appropriate level for the important work they will do.

With regard to quality, PDA is unaware of how the Agency will ensure consistency in assessment results across the diverse Australians with disability population and what measures they will employ to ensure Culturally and Linguistically Diverse (CALD), Indigenous and otherwise ‘other’ people with disability are not systematically

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[2] https://www.abc.net.au/news/2021-03-25/david-bowen-raises-concerns-on-ndis-independent-assessments/13271354

disadvantaged by assessors' limited capacity to form appropriate professional rapports with them.

e. the appropriateness of the assessment tools selected for use in independent assessments to determine plan funding;

PDA has major concerns regarding the tools that have been selected for use by those administering IA's as they were not intended to be used in determining reasonable and necessary supports. They do not take into account the goals of people with disability nor the social and economic contexts that these people live in. We are also concerned that the Agency has specifically looked for assessment tools that are diagnostically neutral[3]. The perils of this approach are expounded upon in our answers to points 'f' and 'g' below.

PDA believes the tools that have been selected by the Agency are not sophisticated enough to understand the impacts of disability on a person's life nor the impact it, and society's perception of what disability means in terms of reduced opportunity to participate in and contribute to the community.

In doing this, we ask the Agency, its Board of Directors, and the Government Ministers overseeing it to reflect on the Objects of the *National Disability Insurance Scheme Act 2013*[4]:

(1) The objects of this Act are to:

- (a) in conjunction with other laws, give effect to Australia's obligations under the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006 ([2008] ATS 12); and
- (b) provide for the National Disability Insurance Scheme in Australia; and
- (c) support the independence and social and economic participation of people with disability; and
- (d) provide reasonable and necessary supports, including early intervention supports, for participants in the National Disability Insurance Scheme launch; and
- (e) enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports; and
- (f) facilitate the development of a nationally consistent approach to the access to, and the planning and funding of, supports for people with disability; and
- (g) promote the provision of high quality and innovative supports that enable people with disability to maximise independent lifestyles and full inclusion in the community; and
- (ga) protect and prevent people with disability from experiencing harm arising from poor quality or unsafe supports or services provided under the National Disability Insurance Scheme; and
- (h) raise community awareness of the issues that affect the social and economic participation of people with disability, and facilitate greater community inclusion of people with disability; and
- (i) in conjunction with other laws, give effect to certain obligations that Australia has as a party to:
  - (i) the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23); and
  - (ii) the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 5); and

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[3] https://www.ndis.gov.au/media/2683/download page 27

[4] https://www.legislation.gov.au/Details/C2020C00392

(iii) the Convention on the Rights of the Child done at New York on 20 November 1989 ([1991] ATS 4); and

(iv) the Convention on the Elimination of All Forms of Discrimination Against Women done at New York on 18 December 1979 ([1983] ATS 9); and

(v) the International Convention on the Elimination of All Forms of Racial Discrimination done at New York on 21 December 1965 ([1975] ATS 40).

(2) These objects are to be achieved by:

(a) providing the foundation for governments to work together to develop and implement the National Disability Insurance Scheme launch; and

(b) adopting an insurance-based approach, informed by actuarial analysis, to the provision and funding of supports for people with disability; and

(c) establishing a national regulatory framework for persons and entities who provide supports and services to people with disability, including certain supports and services provided outside the National Disability Insurance Scheme.

(3) In giving effect to the objects of the Act, regard is to be had to:

(a) the progressive implementation of the National Disability Insurance Scheme; and

(b) the need to ensure the financial sustainability of the National Disability Insurance Scheme; and

(c) the broad context of disability reform provided for in:

(i) the National Disability Strategy 2010-2020 as endorsed by COAG on 13 February 2011; and

(ii) the *Carer Recognition Act 2010*; and

(d) the provision of services by other agencies, Departments or organisations and the need for interaction between the provision of mainstream services and the provision of supports under the National Disability Insurance Scheme.

(Emphasis added)

The tools identify incapacity with regard to their current activities. This is a static interpretation of participation that pays no attention to the gaps people with disability need to bridge to grasp opportunity and this is why we think there should be a major rethink about what procedure should be undertaken to assess access to the NDIS and level of support that should be provided to each participant.

f. the implications of independent assessments for access to and eligibility for the NDIS; and

g. the implications of independent assessments for NDIS planning, including decisions related to funding reasonable and necessary supports;

As PDA understands it, the results of IA’s will have a pivotal role in determining access to the NDIS and the quantum of funds going into participants’ supports. The Agency has advised PDA that information pertaining to disability types will be included in draft budget calculations, but we have been given no details as to how this will be done.

We have particular concerns with regard to how amputees, and people with Multiple Sclerosis (MS) and other progressive degenerative impairments will fare under the IA informed processes.

Amputees, we fear, may be offered small support budgets as a result of their impairments having limited functional impact in a global sense. These participants may have no problems with communication and self-care, they may have secure employment and good social connections with their community and so their IA results may prompt Agency planner delegates to form the conclusion that a modest budget will meet their reasonable and necessary needs. This judgement, however, fails to take into account the fact that prosthetic limbs, the specialists that create and fit them, and the therapy needed to build the capacity to use them are quite expensive. We fear that amputees in the situation where they would prefer a prosthetic leg ,for example, to a wheelchair may be unable to convince a planner to give them a budget to procure this and miss out on the opportunity to walk again.

Similarly, in the disease's early stages, a person with MS may have no significant functional impairment and, under the new policy, these people may be denied participant status at that point. This judgement fails to take into account the well-understood aetiology of various forms of MS and it might deny people in this situation early interventional therapy that might benefit them significantly. This does a disservice to these would-be participants and the NDIS both, as without the therapy, significant disability impacts and associated support costs may be incurred in the years to come.

h. the circumstances in which a person may not be required to complete an independent assessment;

PDA envisages a range of circumstances in which IAs would be futile and, if conducted, would stand in the way of people with certain progressive conditions receiving NDIS supports in a timely manner. We feel those who cannot understand the assessment process, are non-communicative, and who have clearly identifiable intense support needs that are justified by medical reports from relevant specialist health practitioners should be exempted from the need to undergo an independent assessment.

We learnt in a recent meeting with Agency employees that it is proposed a diagnosis of Motor Neurone Disease would trigger an exemption from the general IA process because the disease progresses promptly, with escalating serious functional impairments leading to a person's death within a relatively short timeframe. PDA recommends other disabilities be granted similar exemptions where the prognosis is clear and functional impact is, regrettably, assured.

We also believe that participants such as these should be given long term packages of support that forgo the need for regular reviews. PDA is aware that the families of participants with profound and significant disabilities are anxious about the prospect of having to 'prove' their loved ones have ongoing needs to a changing panoply of NDIS gate-keepers on a regular basis.

i. opportunities to review or challenge the outcomes of independent assessments;

As PDA understands it, participants who are not happy with the results of their IA will have no statutory right to request a review of the assessment, nor a second assessment. We also understand that if these IAs result in draft and later approved plans with less than needed support budgets, disgruntled participants will need to request an internal review of the planner delegate's decision and a possible appeal to the Administrative Appeals Tribunal if they want a different outcome.

This is less than ideal as these appeals processes are stressful and time-consuming. PDA hopes that there are significant opportunities for participants to contribute extra information to planners as the draft budgets are discussed and that Agency delegate planners have latitude to overrule the output of whatever automated process develops draft support budgets if it is clear the IAs have not adequately captured the functional impacts of participants' disabilities.

j. the appropriateness of independent assessments for particular cohorts of people with disability, including Aboriginal and Torres Strait Islander peoples, people from regional, rural and remote areas, and people from culturally and linguistically diverse backgrounds;

The overall appropriateness of IAs for particular cohorts of people with disability is, of course, dependent on the cultural competencies of assessors and the degree to which the tools (and assessors use of them) can capture contextual information. PDA believes the Agency needs to ensure the firms they subcontract the work to recruit Allied Health practitioners who are skilled at interacting with people from culturally and linguistically diverse (CALD) backgrounds and have broad understanding of what it means to have a disability in indigenous, regional, rural and remote communities.

We do not know if CALD, indigenous or other demographic expertise is an essential selection criteria for firms that win tenders to undertake IAs in these communities. If it is not, we recommend it be made so.

If the NDIA is unable to find firms with the recommended expertise, then it may need to consider directly employing a pool of expert allied health professionals with as a means to ensure inclusivity. This, of course, will mean the assessments are not 'independent' *per se*, but we believe the 'independence' of the assessors is less important than their capacity to interact with participants in culturally appropriate ways.

The NDIA should also ensure that the Allied Health professionals who carry out IAs also have access to the funds required to use interpreters where (would-be) participants prefer to use languages other than English (including Auslan).

k. the appropriateness of independent assessments for people with particular disability types, including psychosocial disability;

As noted above in our response to point 'h', PDA is of the opinion that there are many NDIS participants who should be exempted from the need to undertake IA's as part of their induction into the NDIS and as part of their plan review processes.

PDA would like the Agency to retain a list of severe and profound impairments and acknowledge participants with these conditions are unable engage in a meaningful way with assessors because they lack the ability communicate and/or their prognosis is grim.

l. any other related matters

In our response to point 'e', we emphasised some elements of the NDIS Act that we feel the government has lost sight of in its quest to generally reduce costs and Australians' dependency on tax-payer funded social welfare systems, and we hope the Joint Parliamentary Committee on the NDIS understands that PDA sees this as having an undue influence on NDIS (yet-to-be proposed) legislative amendments, policy, procedure and benefits.

PDA has no objection to the implementation of an out-sourced eligibility assessment process with regard to assessing whether or not an Australian with disability should become a participant nor its limited use in determining the quantum of supports participants receive. However, the current proposed IA process does not do this with reference to participants' particular disabilities nor their intended ways of life. It instead adopts a cookie-cutter approach where functional capacity with regard to certain facets of people's existing levels of society participation is preferenced to people with disability's lived experience, contexts and aspirations.

We also note that the NDIS was supposed to be established on 'insurance principles' and that everyone understands that insurance is something you pay for. Through our taxes, we are all paying NDIS insurance premiums, an like insurance customers generally, we understand and accept that, in the long-run, the minimum price for insurance is equal to the benefits paid plus the cost of administration and the cost of measures to reduce future benefit needs.

In our submission to an earlier Productivity Commission inquiry into NDIS Costs[5], we recommended the Government consider introducing a NDIS levy to fund the Scheme. We noted that the NDIS is widely supported by the Australian population and, as with the Medicare levy, they wouldn't mind paying a levy that ensures people with disability get the reasonable and necessary supports they need to live an ordinary life.

We recommend the Government reconsider extra funding sources for the NDIS as an alternative to systems that, from our perspective, seem more focused on reducing costs than to providing fair and equitable access to the NDIS.

We hope this submission assists your inquiry.

Yours Sincerely,

Reid

Liz Reid
President and Director (NT)
Physical Disability Australia

Burchill

Simon Burchill
Manager
Physical Disability Australia

About Us

Physical Disability Australia (PDA) is a national peak membership-based representative organisation run by people with physical disability for people with physical disability. PDA was founded 21 years ago and we have over 1,000 members from all Australian States and Territories. Our purpose is to:

- Remove barriers through systematic advocacy to all levels of government to enable every Australian living with a physical disability opportunities to realise their full potential;
- Proactively embrace and promote difference and diversity for an inclusive society; and
- Actively promote of the rights, responsibilities, issues and participation of Australians with physical disability.

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[5] https://www.pc.gov.au/__data/assets/pdf_file/0008/215279/sub0038-ndis-costs.pdf