

# **Northern Territory Office of the Public Guardian Submission to the Joint Standing Committee on the National Disability Insurance Scheme**

## **INDEPENDENT ASSESSMENTS INQUIRY**

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## **Introduction**

The Northern Territory Office of the Public Guardian welcomes the opportunity to provide a submission to the Joint Standing Committee's inquiry into the National Disability Insurance Scheme (NDIS) Independent Assessments.

The Office of the Public Guardian was established under the *Guardianship of Adults Act 2016*, which provides for the statutory appointment of an independent Public Guardian. The core functions of the Public Guardian are set out in section 61 of the *Guardianship of Adults Act 2016*, and include, but are not limited to:

- being a guardian for an adult when appointed by a guardianship order or acting under section 44 or 45;
- promoting access to support services for adults with impaired decision-making capacity and the guardians, families and carers of those adults;
- encouraging providers of support services to monitor and review the delivery of those services; and
- advocate for adults with impaired decision-making capacity generally, including by promoting understanding and awareness of relevant issues.

The Office of the Public Guardian teams are located in Darwin and Alice Springs and are responsible for providing guardianship services to approximately 606 adults represented by the Public Guardian. Compared to other jurisdictions, the Northern Territory has the lowest number of adults under guardianship orders, however, has the highest percentage of the population under guardianship.

Since the inception of the NDIS the Office of the Public Guardian has assisted 392 represented persons become NDIS participants (figure as at 30 June 2020) and has attended at many, if not all initial and review planning meetings. This involvement by the Office of the Public Guardian has provided significant insight into the experiences of NDIS participants and NDIS service providers in the Northern Territory.

It must be noted that as guardianship orders come into effect when a person reaches the age of 18, all experiences of the Office of the Public Guardian in relation to NDIS is with participants between 18 to 64 years of age.

## **The Northern Territory context**

While most Territorians live in regional centres, a significant number live in remote and very remote areas. For Aboriginal<sup>1</sup> people, who make up 30 percent of the Northern Territory population,<sup>2</sup>

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<sup>1</sup> The term Aboriginal is used in this document to refer to all people of Aboriginal and Torres Strait Islander descent who are living in the Northern Territory. The use of this term reflects the wishes of Aboriginal people in the Northern Territory. Department of the Attorney-General and Justice (2019). *Draft Northern Territory Aboriginal Justice Agreement 2019-2025*.

<sup>2</sup> Department of Treasury and Finance (NT), Population - Northern Territory Economy: Aboriginal Population (2018) <<https://nteconomy.nt.gov.au/population>>.

almost 77 percent live in remote or very remote areas<sup>3</sup>.

The Northern Territory's situation is unique and poses challenges for service delivery to a small population spread across vast distances. The sparse population, harsh climate and rough terrain mean health and other supports and services in many parts of the Territory are limited. The Northern Territory's transient population impacts the retention of the skilled workforce as capable individuals have many alternate options elsewhere in Australia. The high cost of living in the Northern Territory is an additional challenge for those in the low socio-economic circumstances.

The Northern Territory population is comprised of many culturally and linguistically diverse groups. Approximately 78 percent of people involved with the Office of the Public Guardian identify as Aboriginal. Many speak English as a second or third language with a significant number living in remote communities. The Office of the Public Guardian has observed a disconnect from country and culture, with a high level of represented persons that identify as Aboriginal experiencing significant difficulties in receiving appropriate support services, including health care, in remote communities.

#### ***Independent assessments and the voice of the disability sector***

The Office of the Public Guardian endorses the concerns detailed in the *Disability sector statement on the Australian Government's planned reforms to the National Disability Insurance Scheme*<sup>4</sup> and urges the NDIA to delay introduction of compulsory independent assessments until further consultation has occurred with the disability sector and the concerns of the disability sector have been addressed. The Office of the Public Guardian also endorses and echoes the *Position Statement: Independent Assessments* of the Victorian Office of the Public Advocate<sup>5</sup>.

The recommended delay and further consultation must occur for the NDIA to be true to its commitment to empower participants by including people with disability and the community to help them develop and test their processes<sup>6</sup>.

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

The Office of the Public Guardian supports improvements to the NDIS that create certainty around access pathways and equitable decision making but urges caution to such a significant change as the introduction of compulsory independent assessments without further consultation and

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<sup>3</sup> Department of Treasury and Finance (NT), Population - Northern Territory Economy: Background (2018) <<https://nteconomy.nt.gov.au/population>>.

<sup>4</sup> *Disability sector statement on the Australian Government's planned reforms to the National Disability Insurance Scheme*, 11 March 2021. Available at: <https://everyaustraliancounts.com.au/ndis-sector-statement/>

<sup>5</sup> Office of the Public Advocate Victoria, *Position Statement: Independent Assessments*, 25 November 2020. Available at: <https://www.publicadvocate.vic.gov.au/media-centre/415-opa-position-statement-ndis-independent-assessments>

<sup>6</sup> NDIS Access and Eligibility Policy with independent assessments, November 2020, page 3.

consideration of the feedback and views of people with disability, their families and carers and representative groups.

The NDIA has cited the introduction of independent assessments as delivering on recommendations made in the *2019 Independent Review of the National Disability Insurance Scheme Act 2013* (the Tune Review). However, the recommendations of the Tune Review in relation to independent functional assessments<sup>7</sup> have only been partially adopted by the NDIA and therefore the planned reforms don't truly reflect the recommendations of the Tune Review as follows:

- participants<sup>8</sup> don't have 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
- there has not been extensive consultation with participants, the disability sector and service providers in acknowledgement that the success of independent assessments will be dependent upon:
  - the willingness of participants to work with NDIA approved assessors
  - assessors providing truly independent functional assessments so that they are not perceived as agents of the NDIA or a tool designed to cut support from participants
- a limited panel of independent assessors has been proposed from the commencement of the reform
- it is unclear how the NDIA is mitigating the risk of disengagement by particular groups of participants, including Aboriginal people, those from culturally and linguistically diverse backgrounds (CALD) and those with psychosocial disability
- the discretionary power of the NDIA in relation to the provision of functional assessments is limited to specific circumstances and thereby isn't sufficiently discretionary to accommodate other circumstances in which an independent assessment by a NDIA approved assessor may not be appropriate, including disengagement, cultural safety and location barriers.

#### **b. The human and financial resources needed to effectively implement independent assessments;**

Allied health professionals have been identified within the group of professionals to be appointed as independent assessors. This cohort of professionals is already limited in the Northern Territory and within the NDIS. There is a real risk that the use of allied health professionals with the necessary disability experience to competently undertake independent assessments will create further scarcity in the NDIS market place of these professionals and particularly those with disability expertise. There is a further risk that independent assessors could be seen as a quick and easy business option for allied health professionals, with in and out assessments and no ongoing relationship or service delivery management with participants.

The existing scarcity of allied health professionals with disability experience and expertise and the possible exacerbation of this scarcity will disadvantage participants in the Northern Territory,

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<sup>7</sup> Tune Review; David Tune AO PSM (2019) *Review of National Disability Insurance Scheme 2013*, pages 66-67.

<sup>8</sup> The term participant is used throughout this submission to refer to both prospective participants and participants.

either by extended wait times for independent assessments, suboptimal independent assessments or the inability of necessary funded allied health support being delivered to participants. The NDIA must employ mitigation strategies and initiatives to address these risks in the introduction of compulsory independent assessments. This includes workforce development strategies to attract more allied health professionals with expertise and experience working with people with disability to the NDIS workforce in the Northern Territory.

The dispersed population and limited access to remote and very remote communities due to weather and cultural considerations may impact upon the cost and timeliness of independent assessments for participants living in the Northern Territory. Assessments by phone or video conference will not be appropriate for many Aboriginal people for whom English is a second or third language and for whom this type of assessment, via electronic means and with an unfamiliar person, will be culturally unsafe. There is a high risk that these factors may lead to further disengagement of Aboriginal people with the NDIS and further disadvantage for this group that historically haven't been well supported on country by NDIS service providers.

Interpreters and cultural brokers will be required when Aboriginal people and people from CALD backgrounds are engaging with independent assessors. Interpreters and cultural brokers in the Northern Territory are limited and this may impact upon the cost and timeliness of independent assessments for Aboriginal people and people with disability from CALD backgrounds. A failure to use interpreters and cultural brokers during independent assessments is systemic racism and the assessment results are likely to be limited, inaccurate and/or inappropriate and lead to poor NDIS plans, funding and ultimately unmet needs and support for the participant.

It is unclear how independent assessments will interface with the already established National Community Connectors Program. Community Connectors will play an important role for groups who have been identified as requiring additional support to access the NDIS including Aboriginal people, people from CALD backgrounds and people with psychosocial disability, as these groups are also at the highest risk of disengagement with the independent assessment process and the NDIS generally.

In the Northern Territory independent assessments must occur concurrently with essential market interventions to address existing thin markets and work towards overcoming the disadvantage (and unmet need and support) for participants of:

- no or very limited NDIS service providers generally in remote and very remote communities and
- no or limited specialist or 'niche' NDIS service providers in regional centres.

#### **c. The independence, qualifications, training, expertise and quality assurance of assessors;**

As detailed in the Tune Review the success of independent assessments will be dependent upon assessors providing truly independent functional assessments so that they are not perceived as agents of the NDIA or a tool designed to cut support from participants<sup>9</sup>. The feedback from disability representative groups is that there is a real fear among participants that the introduction of independent assessments is motivated by cost cutting and will lead to reduced funding for participants. In light of recent policy and operational shifts by the NDIA this fear is not

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<sup>9</sup> Tune Review; David Tune AO PSM (2019) *Review of National Disability Insurance Scheme 2013*, page 66.

unreasonable as reducing the cost of the NDIS seems to be a reality facing participants. This fear must be addressed through further consultation with participants and disability representative groups and a re-examination by the NDIA of the framework of compulsory independent assessments prior to its introduction.

The task of undertaking functional assessments within a 1 to 3 hour time frame for participants unknown to the assessor will demand a very particular skill set including exceptional communication skills and disability expertise and experience. For Aboriginal people, people from CALD backgrounds and people with psychosocial disability the required skill set of assessors will be even more complex to reflect the particular needs of these groups of people with disability. It is already the experience of many people with disability that these skill sets in many health professionals, including those identified for inclusion as independent assessors are not guaranteed. Given the importance of independent assessments to a person's access to the NDIS and subsequent funding and supports, the qualifications, training and expertise of assessors will be critical in ensuring participant's needs are accurately reflected in the independent assessments.

The work of independent assessors should be transparent and data should be publicly available in relation to key performance indicators for independent assessors including participant satisfaction levels and the number of access and planning decisions reviewed following an independent assessment by the assessor.

#### **d. The appropriateness of the assessment tools selected for use in independent assessments to determine plan funding;**

The Office of the Public Guardian supports a shift of focus from medical assessments to functional assessments to help determine a person's support needs. However, the appropriateness of the assessment tools selected for use in independent assessments is influenced by:

- the assumption that these standardized assessment tools, administered by an unfamiliar health professional to the participant and over a very limited time period accurately reflect the participant, their individual and unique circumstances and functional capacity
- the need for an independent health professional to administer the functional assessments.

Independent functional assessments should not automatically be considered as conclusive evidence of the participant's functional capacity and individual circumstances. The participant should have a right to review and respond to the content of the assessment and to provide supplementary material, or to participate in a further assessment to ensure that their individual circumstances are accurately detailed to inform critical access and planning decisions. The Independent Assessment Framework acknowledges that NDIS decisions may need to take into account supplementary information for some participants.<sup>10</sup> This should be the norm not the exception.

Similarly the independence of assessors should not automatically be considered preferable to the use of a qualified health professional known to the participant. There are many benefits to the participant and the NDIA of having a qualified health provider known to the participant undertaking functional assessments including established relationships, a greater understanding of

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<sup>10</sup> NDIS *Independent Assessment Framework*, August 2020, page 25.

the participant and their individual circumstances, greater choice, control and empowerment of the participant in the assessment process and subsequent access and planning processes.

It is unclear how these assessment tools will be used to make access and planning decisions where a participant is transitioning from the criminal justice system or an acute health setting to the community or supported accommodation. The independent assessment conducted within the criminal justice system or the acute health setting will not give an accurate reflection of the participant's functional capacity within their proposed new environment (upon release or discharge). It is important that the NDIA address this issue to ensure that essential supports are funded and organized and that release planning and discharge planning is not delayed due to the impracticality of independent assessments in these circumstances.

**e. The implications of independent assessments for access to and eligibility for the NDIS;**

The Office of the Public Guardian acknowledges the cost and uncertainty for participants in obtaining appropriate allied health reports to access the NDIS and supports improvements to the NDIS that create certainty around access pathways and reduce the associated financial burden for participants. However, the introduction of compulsory independent assessments is a significant change and the NDIA must further consult with and consider the feedback and views of people with disability, their families and carers and representative groups. There must be an assurance from the NDIA that independent assessments are for improved and streamlined access to the NDIS and to date this has not been clearly articulated by the NDIS or accepted by the disability sector.

The proposed NDIS access and eligibility process involves six steps<sup>11</sup> in which the independent assessment is central to informing decisions by the NDIS access delegate about the participant's eligibility to access the NDIS.<sup>12</sup> In some circumstances other information may be needed to determine if a participant is eligible for the NDIS and where appropriate this information can be provided by the participant's treating health professional. Participants will be provided with a summary of their independent assessment results and an explanation of the access decision. It will be possible to apply for a full copy of the independent assessment. The access decision is a reviewable decision but the independent assessment results are not.

This process falls short of the stated commitment of the NDIS Access and Eligibility Policy with Independent Assessments that people with disability will experience an access process which upholds the intent of the NDIS Act and associated international conventions<sup>13</sup> in the following ways:

- a compulsory independent assessment by an unfamiliar health professional, using standardized assessment tools over a 1 to 3 hour assessment period does not provide a holistic and strength-based process that recognises each individual's unique life circumstances and environmental factors
- the proposed access process does not involve the participant in decision making processes that affect them and almost distances them from the access process apart from their

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<sup>11</sup> NDIS Access and Eligibility Policy with Independent Assessments, November 2020, page 10.

<sup>12</sup> Ibid page 22.

<sup>13</sup> Ibid Page 12.



participation in the independent assessment – the need for additional information is at the discretion of the access delegate and the participant does not have a right of reply to the results of or the information contained in the independent assessment

- independent assessments are compulsory except in limited circumstances where there is a risk of safety or an assessment is deemed inaccessible or invalid which does not allow for approaches to be tailored to individual needs
- the proposed access process does not adequately acknowledge and respect the role of families, carers and other significant persons in the participant's life
- the proposed access process is not inclusive of the participant and their individual circumstances and there are not essential safeguards to ensure the participant's respect and dignity are upheld, including a right of reply to the results of or the information contained in the independent assessment.

These shortcomings, together with similar concerns expressed by people with disability and representative groups about the independent assessment process, must be addressed by the NDIA prior to the introduction of compulsory independent assessments. If they are not addressed there is a real risk of:

- disengagement by participants with the NDIS and the independent assessment process
- that people already disadvantaged or at risk of disengagement will be further disadvantaged if they don't engage with the independent assessment process and cooperate with the assessor
- incorrect and inappropriate access decisions being made by access delegates and subsequently inappropriate and inadequate planning and funding decisions
- disempowerment of participants engaged with the NDIS
- participants not receiving personalized, adequate and appropriate supports to meet their needs and live a good life within their community
- participants falling through the gap of NDIS services and mainstream services after being denied access to the NDIS
- increased number of access decisions being reviewed due to inadequate or incorrect independent assessment informing the original decision.

**f. The implications of independent assessments for NDIS planning, including decisions related to funding reasonable and necessary supports;**

The proposed planning process for personalized budgets involves eight steps in which the independent assessment is central to the NDIS delegate developing a draft plan and draft plan budget, including any additional supports required. At step four of this process the planning conversation occurs about the participant's goals and how community and mainstream supports and NDIS funds can be used to pursue these goals and meet the participant's disability-related support needs.



This process falls short of the stated commitment of the NDIS Planning Policy<sup>14</sup> that people with disability will experience a planning process which upholds the intent of the NDIS Act and associated international conventions<sup>15</sup> in the following ways:

- compulsory independent assessments, using standardized assessment tools over a 1 to 3 hour assessment period are arguably skewed in favour of the sustainability of the NDIS over the provision of personalised budgets which meet participant's individual circumstances
- the proposed planning process is significantly informed by the independent assessment, to which the participant does not have a right of reply and cannot provide any additional material to correct or modify the results of the independent assessment, and thereby doesn't recognise participants as experts in their own lives
- the reliance upon independent assessments to inform the draft plan and draft plan budget does not adequately acknowledge and respect the role of families, carers and other significant persons in the participant's life and may cause distress and uncertainty if the draft plan does not adequately reflect the participant's circumstances and the role of families, carers and other significant persons in the participant's life
- the uncertainty about what change of circumstances will trigger the need for a new independent assessment and if this will be motivated by reduced funding in plans is inconsistent with a scheme that is holistic and strength based where participants can adapt their supports to their life circumstance and environment (without fear of reduced funded supports)
- the proposed planning process is not inclusive of the participant and their individual circumstances and there are not essential safeguards to ensure the participant's respect and dignity are upheld, including a right of reply to the results of or the information contained in the independent assessment.

The shortcomings of the planning process, together with similar concerns expressed by people with disability and representative groups about the independent assessment process, must be addressed by the NDIA prior to the introduction of compulsory independent assessments. If they are not addressed there is a real risk of:

- disengagement by participants with the NDIS and the independent assessment process
- incorrect and inappropriate planning decisions being made by NDIA delegates
- disempowerment of participants, their families and carers engaged with the NDIS
- uncertainty for families and carers of their role in the independent assessment process and how they can input to the independent assessment where a participant may not be forthcoming or provide inaccurate information about their support needs
- increased distress and uncertainty for participants, their families and carers in receipt of draft plans and draft plan budgets that do not adequately or appropriately meet the support needs of the participant
- participants not receiving adequate and appropriate supports to meet their needs and live a good life within their community

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<sup>14</sup> NDIS, *Planning Policy for Personalised Budgets and Plan Flexibility*, November 2020, page 10.

<sup>15</sup> Ibid, page 10.

- increased number of planning decisions being reviewed due to inadequate or incorrect independent assessment informing the original decision
- the exacerbation of long delays for reviews already being experienced putting further strain on this system and participants, families and carers.

**g. The circumstances in which a person may not be required to complete an independent assessment;**

The discretionary power of the NDIA to require the provision of an independent assessment is limited to specific circumstances where there is a risk of safety or an assessment is deemed inaccessible or invalid.<sup>16</sup> This discretionary power is not sufficient to accommodate other circumstances in which an independent assessment by a NDIA approved assessor may not be appropriate, including disengagement by the participant, cultural safety and location barriers. The Office of the Public Guardian recommends that the discretionary power of the NDIA delegate be broadened to include these circumstances and other unforeseen circumstances which would result in the person not accessing the NDIS but for the ability of the NDIA delegate to dispense with the requirement of an independent assessment.

It is concerning that a delegate's decision to not grant an exemption is not a reviewable decision and that where a participant chooses not to complete an independent assessment the NDIA will consider that the participant has withdrawn their NDIS access request. The delegate's decision to grant or refuse an exemption may mean that the person with disability doesn't engage with the NDIS and doesn't receive essential supports. The importance of the delegate's decision demands that it be reviewable and/or that the person with disability has an opportunity to present further information in support of their request to not undertake an independent assessment.

**h. Opportunities to review or challenge the outcomes of independent assessments;**

The NDIA have recognised that for some people a suite of assessments may not be sufficient or sensitive enough to tease out all the issues, identify subtleties, and examine the impacts of the individual factors to lead to a clear decision.<sup>17</sup> Despite this recognition there is no opportunity for participants to review or challenge the outcomes of independent assessments and to draw the attention of the NDIA delegate to deficiencies or inaccuracies in the independent assessments that may lead the delegate to identify that the assessments have not been sufficient or sensitive enough in the participant's circumstances.

Independent assessments will be central to informing NDIS access decisions and planning decisions, including the development of a draft plan and draft plan budget. As recommended in the Tune Review, it is an essential safeguard that prospective participants and participants are provided with a full copy of the independent assessment and that they are afforded the opportunity to challenge the results of the independent assessment, including the ability to

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<sup>16</sup> NDIS Access and Eligibility Policy with Independent Assessments, November 2020, page 20.

<sup>17</sup> NDIS Independent Assessment Framework, August 2020, page 25.

undertake a second assessment or seek some form of arbitration if, for whatever reason they are unsatisfied with the assessment.<sup>18</sup>

The safeguard for independent assessments should not be a review process which is already evidenced as costly, timely and often delays necessary and immediate supports. Additionally, it is insufficient that the access and planning decisions are reviewable and not the independent assessments upon which these decisions are based.

**i. 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 bearing of independent assessments for participant's funding and support, and ultimately their quality of life, means that they must be appropriate for all cohorts of people with disability or for the process to be sufficiently modifiable or discretionary to meet the needs of different cohorts of people with disability.

The high proportion of Aboriginal people involved with the Office of the Public Guardian provides some insight into the experiences and challenges of Aboriginal people with disability. Overwhelmingly, Aboriginal people request that any initiatives that impact them and their communities must be undertaken in consultation with Aboriginal people, Aboriginal people with disability and family, carers and representative groups.

The Office of the Public Guardian notes the NDIA Aboriginal and Torres Strait Islander Engagement Strategy and the NDIA Rural and Remote Strategy but questions their success and/or implementation. The Office of the Public Guardian continues to witness a number of challenges that impact the engagement of Aboriginal people with disability with the NDIS including poor cultural awareness and assumptions that impact the NDIS/participant interactions and outcomes, especially with regard to an Aboriginal person's connection to country, culture and family and the desire to remain in place on country or return to country. These challenges are exacerbated in remote communities where supports are limited and are often provided by service providers not familiar with the community, the people or culture and/or provides an outreach service for the community but are not situated in the community. The introduction of compulsory independent assessments is likely to further exacerbate these challenges for Aboriginal people with disability, especially those living in remote communities, resulting in further disadvantage and disparity based on remoteness and culture.

In the Northern Territory the ability of assessors to undertake independent assessments of people with disability (predominantly Aboriginal people with disability) living in remote communities will be impacted by weather conditions, access into and out of the community and cultural considerations. With the NDIA's limited discretionary power in relation to independent assessments it is uncertain if these factors will exempt the participant from undertaking an independent assessment before their access and/or planning decisions can proceed and any necessary support and funding provided. The Office of the Public Guardian recommends that

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<sup>18</sup> Tune Review; David Tune AO PSM (2019) *Review of National Disability Insurance Scheme 2013*, page 66.

the discretionary power of the NDIA delegate be broadened to include that these factors will allow the delegate to dispense with the requirement of an independent assessment.

The suggested flexibility of conducting independent assessments by phone or video conference are likely to be inappropriate, inadequate or inaccessible for many Aboriginal people with disability living in remote communities for whom English is a second or third language and where internet and phone communication is limited or non-existent.

**j. The appropriateness of independent assessments for people with particular disability types, including psychosocial disability; and**

The Tune Review identified disengagement as being one of the biggest risks in implementing independent assessments and that this is a particular risk for Aboriginal people, those from CALD backgrounds and those with psychosocial disability. The Office of the Public Guardian questions whether the recommended mitigation strategies to reduce this risk<sup>19</sup> have been adequately addressed by the NDIA. The discretionary power of the NDIA in relation to the provision of independent assessments is limited and does not capture the scope of discretionary power recommended in the Tune Review, including discretion where it is not possible to source an appropriate provider for a whole variety of reasons or where the individual circumstances of the participant mean it is more appropriate for a non NDIA approved provider to undertake the assessment.

A discretionary power in relation to the use of non NDIA approved providers is particularly relevant to people with psychosocial disability where trusting and familiar relationships are key to the outcome of any assessment. For people with psychosocial disability the proposed independent assessment process is likely to result in poor outcomes for the participant if the assessor is not sufficiently skilled to recognise the type of day the participant is having and whether their presentation will give an accurate reflection of their functional capacity and their required supports.

**k. Any other related matters.**

Utilisation rates

It will be critical that independent assessments and plan funding are not influenced by utilisation rates of the participant. All NDIS plans must be built around the participant's needs and this individual need (and the collective need of multiple participants) should drive market development and growth. The NDIA must continue to lead this market development and market intervention through funding and targeted initiatives to provide real choice and control for participants and to improve utilisation rates for participant plans.

Support coordinators, substitute decision makers and advocates

The introduction of compulsory independent assessments is a significant change for participants accessing the NDIS. Its implications on access and planning decisions demand additional safeguards for participants to assist them to exercise their rights during the independent assessment process and the subsequent access and planning processes. For people who are at risk of disengagement from the independent assessment process and/or the NDIS and people who are at risk of disadvantage from the introduction of independent assessments, including Aboriginal

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<sup>19</sup> Tune Review; David Tune AO PSM (2019) *Review of National Disability Insurance Scheme 2013*, page 67.

people with disability, people with disability from CALD backgrounds, people with psychosocial disability and people with impaired decision-making capacity, these additional safeguards may include funded advocacy and funded support coordination<sup>20</sup>. The NDIA should clearly articulate a commitment to this funding and the role and importance of substitute decision makers, support coordinators and advocates in the independent assessment, access and planning processes.

## **I. Conclusion and recommendations**

The Office of the Public Guardian supports improvements to the NDIS that create certainty around access pathways and equitable decision making but urges caution to such a significant change as the introduction of compulsory independent assessments without further consultation and consideration of the feedback and views of people with disability, their families and carers and representative groups. There must be an assurance from the NDIA that independent assessments are for improved and streamlined access to the NDIS. To date this has not been clearly articulated by the NDIS or accepted by the disability sector.

The Office of the Public Guardian makes the following key recommendations in relation to the introduction of independent assessments:

1. The NDIA delay introduction of compulsory independent assessments to further consult with and consider the feedback and views of people with disability, their families and carers and representative groups.
2. The NDIA should fully adopt the recommendations of the Tune Review so that:
  - a. participants have the right to challenge the results of the independent 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
  - b. engagement continues with participants, the disability and service providers so that:
    - there is willingness of participants to work with NDIA approved assessors
    - assessors provide truly independent assessments and are not perceived as agents of the NDIA or a tool designed to cut support from participants
  - c. there is not a limited panel of approved assessors and instead the NDIA monitors engagement issues and ensures the panel of approved assessors is dynamic and evolves to ensure the new approach does not drive disengagement
  - d. the discretionary power of the NDIA in relation to the provision of independent assessments is expanded to include circumstances where it is more appropriate for non-NDIA approved providers to undertake the assessments, including where there is risk of or actual disengagement of the participant or where the ability of the participant to engage with the independent assessment process is impacted by cultural considerations or location and access barriers.
3. Workforce strategies and initiatives must be implemented by the NDIA to attract more allied health professionals to the NDIS workforce in the Northern Territory and address

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<sup>20</sup> For further submissions of the Office of the Public Guardian in relation to support coordination see [https://publicguardian.nt.gov.au/sites/default/files/submission\\_to\\_the\\_national\\_disability\\_insurance\\_agency\\_on\\_support\\_coordination.pdf](https://publicguardian.nt.gov.au/sites/default/files/submission_to_the_national_disability_insurance_agency_on_support_coordination.pdf)

the likely risk of further scarcity of these professionals with the introduction of independent assessments.

4. Interpreters and cultural brokers will be an essential element of independent assessments for Aboriginal people with disability and people with disability from CALD backgrounds. These professionals are limited in the Northern Territory and the NDIA must implement strategies to ensure workforce growth of these professionals so that independent assessments for Aboriginal people with disability and people with disability from CALD backgrounds are accurate and appropriate.
5. The NDIA should clearly articulate how independent assessments will interface with the National Community Connectors Program, especially for Aboriginal people with disability, people with disability from CALD backgrounds and people with psychosocial disability who are at the highest risk of disengagement with the independent assessment process and the NDIS generally.
6. In the Northern Territory independent assessments must occur concurrently with essential market interventions to address existing thin markets and work towards overcoming the disadvantage (and unmet need and support) for participants of:
  - no or very limited NDIS service providers generally in remote and very remote communities and
  - no or limited specialist or 'niche' NDIS service providers in regional centres.
7. The NDIA should clearly articulate how independent assessments will inform access and planning decisions when the participant is transitioning from the criminal justice system or an acute health setting to the community or supported accommodation.
8. The NDIA should reconsider the Independent Assessment Framework and access and planning processes to address the concerns raised by the disability sector and to ensure the framework and processes empower participants, their families and carers and deliver individualised and person-centred outcomes for participants.
9. A delegate's decision to not grant an exemption in relation to the provision of an independent assessment should be a reviewable decision.
10. The NDIA should undertake further consultation with Aboriginal people with disability, their families and carers and representative groups in relation to the appropriateness of independent assessments for Aboriginal people with disability and to implement strategies to address disengagement levels of Aboriginal people with disability with the NDIS.
11. Additional safeguards should be considered for participants to exercise their rights during the independent assessment process, including funded support coordination and advocacy. The NDIA should clearly articulate a commitment to these safeguards and funding and the role and importance of substitute decision makers, support coordinators and advocates during the independent assessment, access and planning processes.