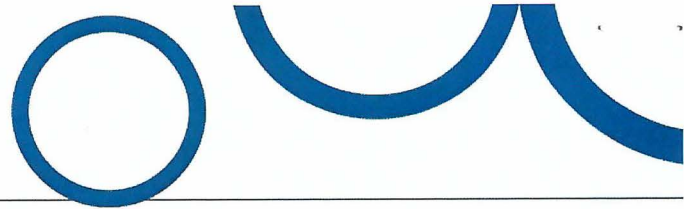




Submission to the Joint Standing Committee on the National Disability Insurance Scheme

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About Spinal Life Australia

We are Queensland's leading provider of advocacy, therapy and supports for people with spinal cord damage. Our vision is for people with spinal cord damage to live in an equitable, inclusive, integrated community, independently able to access every aspect of, and contribute to, the fabric of their region.

Initially called the Paraplegics Welfare Association, our services focused on advocacy, healthcare, and lifestyle advice, as well as personal assistance. These services expanded to include support networks for members and employment assistance, along with peer support to assist people and their families with the transition from hospital to home and the community.

In the 60 years since establishment, we have developed specialist knowledge and services and we are Queensland's leading organisation for people with spinal cord damage, post-polio and transverse myelitis.

We are led by a Board that is required by our guiding constitution to have a majority of representation from people living with spinal cord damage, and as a registered NDIS provider, our agency has been intimately involved in supporting people with disability to transition to the NDIS.

It is with this in-depth, specialised and focussed knowledge that we lodge this submission. For ease of reference, the submission is arranged according to the terms of reference of the Joint Standing Committee on the National Disability Insurance Scheme:

1. Development, modelling, reasons and justifications for the introduction of independent assessments into the NDIS

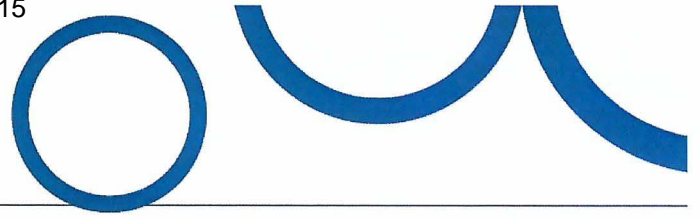
Spinal Life Australia is concerned about the minimalist engagement with registered NDIS providers, their staff and NDIS participants from the NDIS around independent assessments.

Spinal life Australia has an allied health service that was developed years ago specifically to provide services to people with spinal cord damage. The service, using years of experience and expertise from other specialised areas of the organisation, can accurately determine the types of equipment best suited to people with spinal cord damage and other physical disabilities.

Reports from our Allied Health professionals have been used many times by the NDIS to create individually tailored and reasonable financial packages of support through the NDIS, resulting in fewer requirements for unscheduled NDIS plan reviews and required to support someone with spinal cord damage.

No two situations are the same and individuals with similar level and severity of injury often have quite different support requirements. It is highly unlikely that independent assessors without years of knowledge in supporting people with spinal cord damage to live independently will provide the same level of clarity or accuracy to their assessments of the needs of NDIS participants.

From our extensive experience of supporting people with spinal cord damage to interact with the NDIS, it is clear that people with similar levels of injury may benefit from different levels of support – something that may not be accurately captured by independent assessors with limited exposure to people with spinal cord damage.



2. Impact of similar policies in other jurisdictions and in the provision of other government services

No comment

3. Human and financial resources needed to effectively implement independent assessments

Re-iterating some of the points raised in section 1 above, our organisation is concerned that the resources required to successfully implement independent assessments may not have been accurately captured by the NDIS. While it may seem to be more cost and time effective to outsource the role of assessments to independent entities, Spinal Life Australia remain concerned that the process of independent assessments will result in additional work requiring to be undertaken by Allied Health professionals, Supports Co-ordinators, Local Area Co-ordinators or staff from advocacy agencies to overcome poorly informed or poorly constructed assessments of participants needs to assistive technology and/or support.

4. Independence, qualifications, training, expertise and quality assurance of assessors

Independence

Spinal Life Australia is concerned about the independence of the proposed assessment process. The NDIA's funding of the assessments and control over the system is problematic, and creates a perceived, if not actual, conflict of interest. The success of the proposed system, according to the Tune Review, amongst other safeguards, is "assessors providing truly independent functional capacity assessments, so they are not perceived as agents of the NDIA."¹

The original Productivity Commission report explains, in plain language, why it is problematic for the NDIA to fund a support that needs to be independent to function properly:

"[I]t is important that advocacy should continue to be block funded. In doing so, genuine independence from the NDIS will be a critical determinant of the effectiveness of advocacy. As noted by the Disability Advocacy Network Australia (sub. 1010):

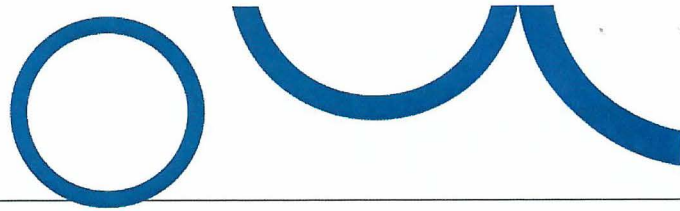
Departments struggle not to react negatively when their service administration is called into question and advocacy organisations struggle with the need to bite the hand that feeds them. (p. 15)

Thus, the NDIA should not *directly* fund advocacy."²

The proposed assessment system has the NDIA directly funding suppliers of the assessments. It is hard to see how the prospect of year-on-year contract continuation would not influence how the suppliers undertake the assessments.

¹ David Tune, December 2019, *Review of the National Disability Insurance Scheme Act 2013*, pg. 66

² Australian Government, *Productivity Commission Inquiry Report*, Volume 1, No. 54, 31 July 2011, pg. 525-5.



Furthermore, the Statement of Work for the NDIA Independent Assessment Panel outlines that the NDIA has substantial control over individual assessors. The document states that the NDIA can require the supplier to use, or not use, a specific assessor for a specific assessment. The NDIA also appears to have the power to dismiss specific assessors:

“The NDIA may at any time, for any Assessment for any Participant or Prospective Participant, request a specific Assessor to provide, or reject a specific Assessor from providing, that Assessment. A Supplier will be required to promptly advise the NDIA if they are unable to provide a specific Assessor. If the NDIA has previously rejected a specific Assessor, the Supplier must not use the Assessor to provide Assessments under the Panel.”³

The NDIA also has substantial control over the financial interests of suppliers, the tools they use and the power to direct individual assessors to undertake specific assessments. They also have the power to dismiss assessors. Although the proposed assessments are called independent, the mechanism behind them does not appear to have many of the safeguards of actual independence. According to the Tune Review, this will affect the success of the proposed system.

When this lack of independence is combined with an inability to review an independent assessment, as outlined below, there are concerns for participants access to justice and their rights to review decisions about themselves.

Quality assurance of assessors

“The NDIA expects that the likely time commitment for the provision of the required NDIA training will be up to one day per Assessor prior to commencement of Assessment Services. It is anticipated that training will be conducted through a web portal.”⁴

Spinal Life Australia employs occupational therapy graduates. The general supervision period for an occupational therapist who has not worked with people with spinal cord damage previously is an hour a week for at least 12 months. Supervision also includes multiple dual visits and further discussions before and after assessments, with ongoing dual visits when necessary.

Based on the complexity of spinal cord damage and the experience usually required to independently understand an individual’s support needs, one day of training for independent assessors seems inadequate. Either the training requirement is not substantial enough or the assessment tools are not sophisticated or nuanced enough to capture the support needs of someone with spinal cord damage.

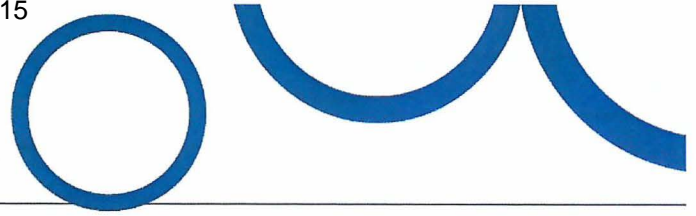
5. Appropriateness of the assessment tools selected for use in independent assessments to determine plan funding

The NDIS is suggesting the following suite of assessment tools to support the work of independent assessments. Spinal Life Australia believes that these tools, while standard may not result in positive, clear outcomes for people with spinal cord damage, and in many cases are irrelevant.

- Vineland Adaptive Behaviour Scales, Third Edition (Vineland-3) Domain version
- The Paediatric Evaluation of Disability Inventory - Computer Adaptive Test (PEDI-CAT)
- The Paediatric Evaluation of Disability Inventory - Computer Adaptive Test with ASD scales (PEDI-CAT ASD)

³ NDIA Independent Assessment Panel, Request for Tender, Statement of Work, pg. 15.

⁴ NDIA Independent Assessment Panel, Request for Tender, Statement of Work, pg. 12.



- World Health Organization Disability Assessment Schedule 2.0 (WHODAS 2.0) 36 item version
- Participation and Environment Measure - Children and Youth (PEM-CY)
- Young Children’s Participation and Environment Measure (YC-PEM)
- The Craig Hospital Inventory of Environmental Factors (CHIEF)
- Lower Extremity Functional Scale

6. Implications of independent assessments for access to and eligibility for the NDIS

In the three or so years of supporting people with disability to make access requests to the NDIS, Spinal Life Australia has observed some questionable decision making about eligibility assessments. We have supported many people to make repeated access requests, or to seek reviews of reviewable decisions about the Access request decision reached by the NDIS.

Spinal Life Australia does not believe that the implementation of independent assessments will remedy these issues, in fact, our organisation believes that independent assessments, using formulaic and at times irrelevant and unsuitable assessment tools will result in people who should be considered as eligible NDIS participants either not being granted access to the NDIS, or removed as and NDIS participant.

7. Implications of independent assessments for NDIS planning, including decisions related to funding reasonable and necessary supports

8. Circumstances in which a person may not be required to complete an independent assessment

“We acknowledge there may be exceptional circumstances where it may not be appropriate to request an individual to undertake an independent assessment.”⁵

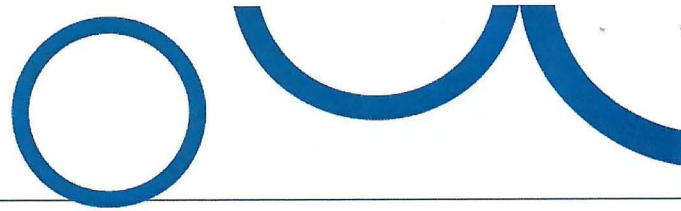
The NDIA has acknowledged that in some circumstances, independent assessments will not be appropriate. It is the position of Spinal Life Australia that participants with spinal cord damage are given the opportunity to provide additional evidence to support their assessment. This should be at the participant’s discretion and offered for every review.

9. Opportunities to review or challenge the outcomes of independent assessments

“Independent assessment results themselves will not be directly reviewable by the AAT.”⁶

⁵ National Disability Insurance Scheme, Consultation paper: Access and Eligibility Policy with independent assessments, November 2020, Version 1.0, pg. 20.

⁶ National Disability Insurance Scheme, Consultation paper: Access and Eligibility Policy with independent assessments, November 2020, Version 1.0, pg. 23.



When a participant's funding does not meet their support needs, it is critical that the participant can test the decisions that lead to that situation. Under the current system, participants request a review of a decision internally through the NDIS, before having the option to appeal the decision to the Administrative Appeals Tribunal for an external review.

It has been proposed that under the new system, the independent assessment will not be reviewable as a matter of course as it is not a decision of the NDIA. The decision of the NDIA will be, however, but under the suite of changes, funding is assigned almost entirely on the results of the independent assessment.

There will be situations where the independent assessment has been conducted not in accordance with how the tools were supposed to be used. In those situations, participants can request a new assessment.

When a participant's funding does not meet their support needs, it is hard to see how the participant will be able to effectively question that decision. Where the independent assessment has been undertaken correctly, and the planning decision is based solely on the independent assessment, an internal review will almost always yield the same result.

If the AAT is excluded from reviewing the independent assessment also, there will be very little scope for the AAT to change a decision of the NDIA based on the independent assessment.

We have seen under the current system that the NDIS has not used the AAT in the spirit in which is established and the AAT have not proved to be: to be "accessible, fair, just, economical, informal and quick."⁷ The NDIA routinely engages their own or external lawyers to represent them at the AAT. It is unfair for participants not to also be represented, but most are not. The process is currently complex, stressful and time consuming for participants questioning decisions.

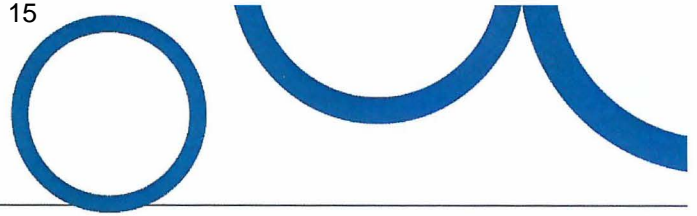
Removing the ability of participants to review their independent assessment will make an already difficult process even more unfair. The proposed system should not further limit participant's ability to access justice.

10. 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

11. Appropriateness of independent assessments for people with particular disability types, including psychosocial disability

This submission provides feedback on the concerns held by Spinal Life Australia about application of independent assessments for people living with Spinal Cord Damage. This cohort of people we support generally live with minor, if any psychosocial disability. Our concerns on the validity of tools used, mechanisms and processes associated with the implementation of independent assessments

⁷ <https://www.aat.gov.au/> accessed 20/01/2021.



would be exponentially greater for people living with psychosocial and/or intellectual disability. More work is required to be done by the NDIS in engaging NDIS participants with psychosocial disability and their support agencies, carers and advocates before progressing with implementation of independent assessments.

12. Other related matters

Spinal Life Australia is also concerned that participants will seek to protect their dignity and privacy when speaking with a new and unfamiliar person. This is a natural human response and not specific to people with a disability.

The World Health Organization Disability Assessment Schedule 2.0 (WHODAS 2.0) 36 item version, included in the suite of possible independent assessment tools, includes a question on difficulties in sexual activity in the past 30 days. This question is relatively mild in terms of the level of disclosure of personal and intimate information these processes require. This does not, however, reduce the amount of trust required to disclose the information. If a person without disability would have difficulty disclosing this information to say, a General Practitioner they've never met before, it is unreasonable to expect a person with a disability to disclose this information to someone they haven't met before.

Furthermore, the one-way disclosure of information will further hamper trust between the participant and assessor, reducing trusting dialogue and the likelihood that the participant will disclose enough information to allow an accurate picture of their disability and impairment. Assessors will be prevented from discussing anything with participants:

“Assessors must not provide Participants or Prospective Participants with copies of the Assessment Reports or discuss results or outcomes with Participants or Prospective Participants in any way. Assessors should direct all questions or concerns, about the Assessment Report from Prospective Participants or Participants, to the NDIA.”⁸

As the Tune Review highlighted, this kind of lack of transparency erodes trust in the NDIS:

“[P]articipants feel there is a lack of transparency in decision-making and that this is driving a lack of trust and confidence in NDIA processes, even if the NDIA's decisions were legitimate.”⁹

Expecting participants to fully disclose sensitive information to an assessor they do not know, who is under an obligation to disclose nothing about the process they are administering, will immediately reduce the effectiveness of the assessment process and erode long-term trust in the NDIS.

12. Recommendations

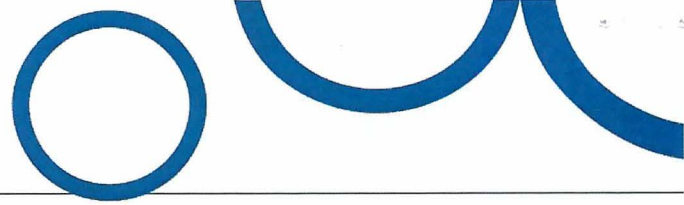
The NDIA has not consulted extensively on this issue and the lack of transparency is causing major concerns for our members. Members have also raised alarm that functional assessments funded by the NDIA and undertaken by providers chosen by the NDIA are being labelled independent, when in fact they are created by an agency that will be selected and funded by the NDIS, totally the opposite of the “choice and control” principles on which the NDIS is founded..

Spinal Life Australia recommends:

- Immediately pausing the implementation of independent assessments.

⁸ NDIA Independent Assessment Panel, Request for Tender, Statement of Work, pg. 24.

⁹ David Tune, December 2019, Review of the National Disability Insurance Scheme Act 2013, pg. 49.



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- Conducting robust research by an independent body to ensure that independent assessments are fit for purpose.
 - Consulting extensively with people with disability, the disability sector and service providers, as recommended by the Tune Review.
 - Improving the format of functional assessments often requested by the NDIS to improve the ease of translating these functional assessments into plans for NDIS participants.
 - Increased training for Local Area Co-ordinators, Supports Co-ordinators and NDIS planners to improve the translation of discussions and evidence and supporting documentation produced at plan implementation and/or review meetings into well structured, adequate NDIS plans for participants.
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