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Advocacy, Self Advocacy, Rights, Accessibility, & Community Living for People with a Disability

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To the Joint Standing Committee on NDIS
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Response to NDIA's Consultation Paper on Independent Assessments

AMIDA is a government funded advocacy organisation and we are part of AMIDA's NDIS appeals support service. We work with NDIS participants and potential participants in relation to a wide range of NDIS issues. We are responding to the inquiry of the Joint Standing Committee on the NDIS into Independent Assessments under the NDIS.

We have some very serious concerns that the proposals for Independent Assessments (IAs) are inconsistent with the *NDIS Act 2013* (Cth) (the *Act*). They are also not in keeping with the *Tune Report*, 2019. We are concerned the proposals will not alleviate the concerns identified by the NDIA. We are also concerned that the proposals will create new areas of inconsistency and inequity, the very rationale of the proposed changes.

The NDIA's consultation is on the process of implementing pre-determined content, rather than the shape of the substance of reform. This is not in keeping transparent consultancy. And it causes so much distress in the community, that the NDIA will struggle to have any good will towards whatever implementation process is adopted.

Our opinions are primarily informed by our work over several years as advocates in our roles at AMIDA. This response is an amended version of our response to the NDIA's consultation paper on Access and Eligibility. We make some general comments before dealing with specific issues raised by the NDIS' Consultation Paper, which we believe are relevant here. We will then provide some constructive suggestions towards improvement.

General Comments

The proposed design and use of IAs are contrary to the *Act*. The whole operation of the *Act* is founded on individualised and participant-directed responses of a government agency (s31). The object of 'choice and control', by the person with disability, best exemplifies this approach (s3)(1)(e)). These foundational principles are evident in many sections of the *Act*, including specifically s6 and s34.

The general nature of IAs as “tick-box collected information” lacks the ability to collect detailed and nuanced material of each individual. The compulsory nature of IAs lack choice and control.

The structure and use of IAs is not in keeping with the *Tune Report* recommendations. The proposals have gone far outside the *Tune Report* recommendations, and as such the *Tune Report* should not be used to justify the proposals. The *Tune Report* did not recommend IAs as a set of tick-box questionnaires. The *Tune Report* did not recommend the compulsory use of IAs; Recommendation 7 of the *Tune Report* specifically and relevantly used the word ‘discretionary’.

IAs will not alleviate issues of consistency and equity. AIs may well assist to achieve consistency and equity if used in conjunction with other forms of evidence. But if used as the sole source of evidence, they will still result in inconsistent and inequitable decisions across the Australian population.

IAs will create new areas of inconsistency and inequity. Significant issues will arise from inconsistency and inequity in budget planning and review rights, if the current proposals proceed without reasonable adjustment. It is worth noting that it is poor government policy to correct identified problem areas without ensuring other issues of inconsistency and inequity do not arise from the implementation of new proposals. This cannot be ignored in the current consultation process.

Budgets need individual assessment not independent assessment; budget planning should follow conversations with participants, not precede it. Budget planning will reveal inconsistencies if only IAs are used to determine budgets. Planners will lack insufficient detail of individual circumstances to be able to differentiate the needs of two or more participants with a similar functional impairment. In changing circumstances, planners need detailed and timely evidence. IAs are not designed for this level of specificity. And the proposed process does not indicate a rapid pathway for those with a change of circumstance requiring a plan review.

The lack of substantive review rights on IAs is inequitable and impinges on legal rights of citizens in a functioning democracy. IAs must be reviewable. Substantive errors must be correctable by a review process. Confidence in the whole NDIS system will fail if errors are not reviewable and correctable. One process mechanism to ensure correction is the option for second opinions, and possibly by ongoing service providers.

We consider that IAs have a role in the NDIA if utilised appropriately. IAs could provide data at a high level of abstraction to guide policy development. And they could inform the decision maker on an individual’s request for access and budget planning, provided it is in conjunction with other evidence provided by the person with disability.

Specific issues of IAs

1. **Distinction between disability –and- chronic, acute or palliative health conditions**

   In moving toward an IA model of disability, the NDIA policy is moving away from a health focus. If the policy focus is now functional, based solely on IAs, then health related conditions lose their relevance and importance.

   In many cases the distinction between disability and health, is difficult, if not impossible, to make. Disability and health conditions are frequently interrelated. For example, trying to separate the reasons why a person cannot walk down the street into either disability or health condition is artificial. Assigning responsibility of a functional impairment to only one of disability or health belies the reality and complexity of functional impairment. Similarly, chronic and acute categories are often the mirror of a good day and a bad day in those with permanent disabilities.

The access lists have not meant that a person is automatically accepted as a participant without any further supporting evidence. A person with a condition on List A, List B or List C has always been required to produce additional supporting evidence that they meet the access criteria. The lists are a starting point only. It is misleading to suggest that the NDIA have relied solely upon the lists to determine whether someone has met access. When a person is looking to access the NDIS, it is usually a quick process to determine the age and residence requirements. The disability requirements are more complex to understand and to get through.

The lists provide a degree of comfort to the individuals, and their families, that have a condition on the list that it is likely that they will accepted on the NDIS, provided they can produce evidence supporting the access criteria. It is difficult to understand how removing the access lists will improve the access process.

2. Optional or mandatory

IAs should be optional rather than mandatory. This is a fundamental aspect of choice and control of the *Act*. Choice is the most important aspect of the process. Choice is a fundamental aspect of democracy, a vital aspect of Australian governance. People can choose assessors in provision of non-NDIS services, and should be able to do so in the NDIS.

If IAs they are mandatory, allowing a broad range of exemptions is one way to promote safety and inclusion. Many people with psychosocial disability will struggle with mandatory IAs by unknown assessors. Recognising people’s request to be excluded is an important part of the process recognising safety and inclusion.

3. Cultural safety and inclusion

Providing choice to have an IA will promote safety and inclusion for all. All reasonable requests must be accommodated.

A key aspect for safety and inclusion, especially for those with psychosocial disabilities, is choice of assessor. A person’s own service provider should be permitted to complete the required toolkit forms if requested. This is particularly relevant to those with psychosocial disabilities.

Some examples of process to accommodate concern timing, location and length of appointments. They include asking if they would like a family member or friend present. They include choice in gender and ethnicity of the assessor. And the NDIA must be proactive in asking the person to be assessed, not only responding when asked.

4. Access to information about IAs

People applying for the NDIS should be given access as much information as possible about independent assessments. This information should include the following;

- who is doing the assessment,
- what their professional background and experience is,
- what assessment tool will be used and why this tool was chosen over others,
- whether the person will automatically get a copy of the assessment as soon as it is completed,
- exactly how the assessment will be used to inform budget planning and budget decisions and
- how the person can challenge the outcome of an independent assessment or request another independent assessment.

> People should be offered the choice in the way they want information provided about IAs. There is no single way this information is best provided. Information should be provided in the manner chosen by the person applying for the NDIS. The person should be given the opportunity to tell the NDIA how they want to receive information and the NDIA should ensure that information is provided in this manner.

Suggestions

We believe IAs have a role for providing a baseline of demographic and disability-related information that is useful for the NDIS. But this information should not form the sole basis of information and data to make decisions on access and eligibility or budget planning.

IAs should not be the sole source of evidence for either access and eligibility or budget planning purposes. IAs should not be used to limit valuable evidence of a participant that is consistent with the principles of the *Act*. IAs used in conjunction with other reports of service providers and medical professionals, will provide a more complete picture for NDIA decision makers to utilise in all decisions.

IAs should not be compulsory. As an option, IAs will allow an avenue of collection of evidence for those unable to source reports from commercial providers. But used as an option, will enable those able to provide personalised evidence from providers who know them, as a source of detailed information consistent with the principles of the *Act*.

Conclusion

The issues raised by the NDIS Consultation Paper on Eligibility and Access demonstrate a bias in NDIS consultation and policy-making. This is exemplified by the release of approved providers of IAs within days of the closing of submissions to that Consultation Paper. The proposals for implementation resemble legislative reform by stealth. The NDIS must not only consult and listen to the myriad of objections to IAs, they must be flexible and adjust policy accordingly. The NDIA should accommodate a variety of processes and use IAs as a baseline of functional impairment for eligibility and ongoing monitoring. But they should not be the sole means of eligibility, access or budget planning.

Yours sincerely,

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