
Joint Standing Committee on the National Disability Insurance Scheme

Independent Assessments

October 2021

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Recommendations

Recommendation 1

9.13 The committee recommends that the Commonwealth Government implement the National Disability Insurance Scheme Reserve Fund as soon as practicably possible.

Recommendation 2

9.29 The committee recommends that the Commonwealth Government amend the *National Disability Insurance Scheme Act 2013* to include a specific commitment to and definition of co-design, following extensive consultation on what 'co-design' should be.

Recommendation 3

9.42 The committee recommends that consultations with medical and allied health professionals for the purposes of access to the National Disability Insurance Scheme and to support requests for items in NDIS plans be:

- carried out by health professionals nominated by participants and/or their nominees, where appropriate and available;
- holistic, taking into account medical reports and other contextual information as appropriate; and
- multidisciplinary, involving consultation with multiple experts who treat and have treated the person.

Recommendation 4

9.46 The committee recommends that, where consultations with medical and allied health professionals for the purposes of access to the National Disability Insurance Scheme or to support requests for items in NDIS plans cannot be carried out by appropriate professionals nominated by a participant and/or their nominee:

- The National Disability Insurance Agency implement an accreditation process for appropriate professionals to carry out consultations for those in the circumstances described above;
- The National Disability Insurance Agency ensure that these assessments are holistic and multidisciplinary; and
- The National Disability Insurance Agency implement specific, targeted strategies to ensure that particular cohorts are not disadvantaged by such a process.

Recommendation 5

9.47 The committee recommends that the Australian Government consider funding bulk-billed consultations with medical and allied health professionals for the purposes described in Recommendation 3 and Recommendation 4.

Recommendation 6

9.50 The committee recommends that all assessment tools that the National Disability Insurance Agency proposes, for the purposes of funded assessments to access the National Disability Insurance Scheme and to help inform funding decisions, should be subject to rigorous consultation with people with disability, Disability Representative Organisations, and relevant health and allied health practitioners *before* the National Disability Insurance Agency decides to implement them.

Preface

The committee initiated this inquiry following concern expressed in the community about the introduction of independent assessments. While some disagreement over policy reforms from affected individuals or interested stakeholders is an expected and constructive part of democratic decision-making, evidence to this inquiry suggested there was widespread opposition to independent assessments in their proposed form. This opposition was almost universal in evidence from state and territory governments, academics and universities, allied health professionals, allied health peak bodies, disability providers, advocacy groups and people with lived experience and their families.

The committee therefore welcomes the announcement by the new Minister for the NDIS, Senator the Honourable Linda Reynolds CSC, that the Government will not be proceeding with independent assessments in their proposed form and will be taking time to consult in a meaningful way. The committee is hopeful that the Minister will continue to listen to the sector, as well as hearing and taking action on the basis of expert advice, to ensure that future changes to the scheme centre the needs and experience of people with disability.

This report steps through the background and rationale for the proposal to introduce independent assessments, first announced by the Government in August 2020. Chapter 2 outlines the proposal's initial announcement, trialling of assessments, consultation by the Government on the proposal and the new Minister's announcement in July 2021 that independent assessments as proposed would not proceed. Chapters 3 and 4 examine the two reports relied on by the Government to support the proposal, and key elements of the Government's stated rationale for the proposal. Chapters 5 to 7 consider concerns raised in evidence to the inquiry about independent assessments. Chapter 6 highlights concerns raised by people with lived experience with disability.

The final two chapters of the report discuss the committee's observations regarding why the proposed introduction of independent assessments was met with such united opposition from people with disability and their families, along with experts and the wider disability sector, and make suggestions for next steps. On this point, the committee is particularly interested in approaches that will allow the Government and the sector to rebuild trust and work together moving forward. Crucial among these is the use of co-design and undertaking appropriate consultation on proposals to amend the scheme. The committee makes six recommendations, set out in Chapter 9, going to broader matters of financial sustainability, approaches to co-design and consultation, and bulk-billed appointments with medical and allied health professionals.

Chapter 1

Introduction

- 1.1 The Joint Standing Committee on the National Disability Insurance Scheme (the committee) was established by resolution of the House of Representatives on 4 July 2019¹ and by the Senate on 22 July 2019.² The committee is composed of five members and five senators, and is tasked with reviewing:
- (a) the implementation, performance and governance of the National Disability Insurance Scheme (NDIS);
 - (b) the administration and expenditure of the NDIS; and
 - (c) such other matters in relation to the NDIS as may be referred to it by either House of the Parliament.
- 1.2 The committee is required to report after 30 June each year on its activities and is empowered to report on other matters as it sees fit.
- 1.3 The committee is also able to inquire into specific aspects of the NDIS. On 10 December 2020, the committee decided to conduct an inquiry into independent assessments under the NDIS, with particular reference to:
- (a) the development, modelling, reasons and justifications for the introduction of independent assessments into the NDIS;
 - (b) the impact of similar policies in other jurisdictions and in the provision of other government services;
 - (c) the human and financial resources needed to effectively implement independent assessments;
 - (d) the independence, qualifications, training, expertise and quality assurance of assessors;
 - (e) the appropriateness of the assessment tools selected for use in independent assessments to determine plan funding;
 - (f) the implications of independent assessments for access to and eligibility for the NDIS;
 - (g) the implications of independent assessments for NDIS planning, including decisions related to funding reasonable and necessary supports;
 - (h) the circumstances in which a person may not be required to complete an independent assessment;
 - (i) opportunities to review or challenge the outcomes of independent assessments;
 - (j) the appropriateness of independent assessments for particular cohorts of people with disability, including Aboriginal and Torres Strait Islander

¹ *House of Representatives Votes and Proceedings*, No. 3, 4 July 2019, pp. 55–56.

² *Journals of the Senate*, No. 4, 22 July 2019, pp. 134–135.

- peoples, people from regional, rural and remote areas, and people from culturally and linguistically diverse backgrounds;
- (k) the appropriateness of independent assessments for people with particular disability types, including psychosocial disability; and
 - (l) any other related matters.

Conduct of the inquiry

- 1.4 The committee advertised the inquiry on its webpage, and invited relevant stakeholders to make a submission to the inquiry by 31 March 2021. The committee also granted multiple requests for extensions to submit to the inquiry.
- 1.5 The committee received 402 submissions, including confidential submissions. Public and name withheld submissions are listed in Appendix 5 and are available on the committee's webpage.³
- 1.6 The committee held 8 public hearings dedicated to the inquiry into independent assessments, as listed below. Some hearings included evidence that was taken wholly or partly via videoconference/teleconference, allowing for interstate witnesses and committee members to take part remotely where travel was not practicable or possible due to the COVID-19 pandemic.
 - Melbourne on 23 April 2021
 - Canberra on 27 April 2021 (Western Australian witnesses)
 - Hobart on 30 April 2021
 - Geelong on 4 May 2021
 - Canberra on 18 May 2021
 - Canberra on 20 May 2021
 - Brisbane on 29 June 2021
 - Canberra on 5 August 2021
- 1.7 Witnesses who appeared at the hearings are listed in Appendix 6.
- 1.8 Transcripts from all the committee's hearings for this inquiry, along with answers to questions on notice, are available on the committee's webpage.

Structure of the report

- 1.9 This report is divided into nine chapters. The committee has decided to focus on a number of general themes arising in evidence, rather than comprehensively outlining all matters that the committee learned during the course of the inquiry:
 - Chapter 1 (this chapter) provides information about the work of the committee during this inquiry;
 - Chapter 2 provides a background to independent assessments;

³ www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/IndependentAssessments/Submissions

- Chapter 3 outlines what the 2011 Productivity Commission report and the Tune Review said about independent assessments;
- Chapter 4 sets out the rationale provided for introducing independent assessments;
- Chapter 5 discusses concerns raised in evidence about tools and assessors;
- Chapter 6 focuses on the major concerns raised by people with lived experience of disability and their families about independent assessments;
- Chapter 7 presents some of the other key concerns raised about independent assessments;
- Chapter 8 examines research on what the committee considered some of the next steps should be; and
- Chapter 9 sets out the committee's view and recommendations.

Notes on terminology and references

- 1.10 The committee acknowledges that there are a variety of terms used to reflect the diversity of Aboriginal and Torres Strait Islander cultures and identities.⁴ In this report, the term 'Aboriginal and Torres Strait Islander peoples' is used, with respect.
- 1.11 The committee also notes that some submitters and witnesses may refer to NDIS participants and other people with disability as 'clients' of particular services. This report may use the term 'client' when quoting from a submission or a hearing transcript. Otherwise, the report uses the terms 'participant', 'person with disability' and 'people with disability', with respect.
- 1.12 The committee further notes that there are a number of terms used to refer to participants who have autism. The report uses the term 'autistic participants' and 'participants who have autism', with respect.
- 1.13 All references to Hansard transcripts are to proof versions, unless otherwise noted.

Acknowledgements

- 1.14 The committee thanks all those who contributed to the inquiry by lodging submissions, providing additional information and expressing their views via correspondence. The committee would also like to thank those who gave their time to attend the committee's public hearings. Interest from the disability sector and from people with lived experience in giving evidence at public hearings was strong, and the committee thanks the many organisations and individuals who registered their interest in appearing at a public hearing.
- 1.15 In particular, the committee acknowledges the people with disability, their families and carers who shared their experiences. The testimony of people with

⁴ Reconciliation Australia, *RAP good practice guide: Demonstrating inclusive and respectful language*, www.reconciliation.org.au/wp-content/uploads/2018/05/language-guide.pdf.

lived experience is crucial to identifying issues with the NDIS and improving the operation of the scheme.

Chapter 2

Background to independent assessments

- 2.1 This chapter provides a brief background to independent assessments, including the tools that were proposed, how the National Disability Insurance Agency (NDIA) stated it intended to use independent assessments, and consultations the NDIA carried out on matters related to independent assessments. The policy and guidelines related to independent assessments shifted and were recalibrated over the relevant period. The committee has endeavoured to record these developments.
- 2.2 The chapter also sets out the results of the independent assessment trials/pilots, and examines the recommendations from the Independent Advisory Council that were released in July 2021. The chapter concludes by examining what the Minister for the NDIS and the Disability Reform Ministers announced as of August 2021 will be the next steps forward, following the decision not to proceed with independent assessments.

Background to the NDIS

- 2.3 The NDIS is a model of funding and supports for people with disability, families and carers. It is both insurance-based and demand-driven, and replaces the previous state-based system of block funding to a 'fee-for-service', market-based approach. The scheme is based on the premise that people with disability each have different support needs and should be able to exercise choice and control in relation to their supports.
- 2.4 Since 1 July 2020, the NDIS has been available in all locations to all eligible Australian residents with a permanent disability.¹ The transition from state-funded supports to a national scheme has been guided by bilateral agreements between Commonwealth, state and territory governments.²
- 2.5 The main component of the NDIS is individualised packages of supports for eligible people with disability. As at 30 June 2021, 466 619 people with a permanent disability were receiving supports from the NDIS.³

¹ National Disability Insurance Agency, *NDIS Quarterly Report to Disability Ministers*, 31 March 2021, p. 104.

² See NDIS, *Intergovernmental Agreements*, www.ndis.gov.au/about-us/governance/intergovernmental-agreements (accessed 10 June 2021).

³ National Disability Insurance Agency, *NDIS Quarterly Report to Disability Ministers*, 30 June 2021, p. 6.

The National Disability Insurance Agency (NDIA)

2.6 The National Disability Insurance Agency (NDIA) is the independent statutory agency responsible for the governance and administration of the NDIS. Under the *National Disability Insurance Scheme Act 2013* (NDIS Act), the core functions of the NDIA include delivering the NDIS in a way that maximises choice and control for participants and promotes access to high quality supports, and managing, advising and reporting on the financial sustainability of the scheme.⁴

National Disability Insurance Scheme Act 2013

2.7 The NDIS was established under the NDIS Act. Relevantly, the Act sets out the objectives of the NDIS, which include:

- supporting the independence and social and economic participation of people with disability;
- providing reasonable and necessary supports, including early intervention supports, for NDIS participants;
- enabling people with disability to exercise choice and control in the pursuit of their goals and in the planning and delivery of their supports;
- facilitating the development of a nationally consistent approach to accessing, planning and funding of supports for people with disability; and
- promoting the provision of high quality and innovative supports.⁵

2.8 The NDIS Act further provides for how a person may become a participant in the NDIS; how plans are prepared and reviewed; how the NDIA approves funding; how an entity can become a registered provider of supports; and the processes for reviewing decisions.⁶

Role of the states and territories

2.9 The NDIS was launched through an Intergovernmental Agreement between the Commonwealth, state and territory governments in December 2012, which covered the period of launch. Relevant points in the Intergovernmental Agreement include the following:

- The Commonwealth would be responsible for all establishment, administrative and system support costs associated with delivering NDIS funded support during the launch and transition to full Scheme;⁷

⁴ *National Disability Insurance Scheme Act 2013* (NDIS Act), s 118. See also NDIS Act, Chapter 6, Parts 1, 2, 3, and 4. These provisions relate to the Chief Executive Officer of the NDIA, the NDIA's Board, the Independent Advisory Council and Actuaries.

⁵ NDIS Act, s 3. Other relevant objectives include protecting people with disability from harm, and giving effect to Australia's human rights obligations relating to people with disability.

⁶ NDIS Act, Chapters 3 and 4.

⁷ Unless otherwise agreed with the states and territories.

- The Commonwealth would fund any cost associated with higher population numbers, higher per person care and support costs;
- The Commonwealth and jurisdictions would make payments for care and support for participants into a national pool that was managed by the NDIA. The pool would have state-specific accounting to transparently show how Commonwealth and host jurisdiction funding was allocated and spent within each jurisdiction;
- Any cash underspends in a host jurisdiction and/or revenue earned by the NDIA would be retained by the NDIA and taken into account to reduce the Commonwealth's and that host jurisdiction's contribution by an equivalent amount in the following year;
- The Council of Australian Governments committed to provide continuity of support to people with disability receiving services under previous systems to ensure that they would not be disadvantaged in the transition to the NDIS; and
- The NDIA would be required to provide state-specific accounting that reported on how Commonwealth and host jurisdiction funding was allocated from within the national pool.⁸

2.10 The Intergovernmental Agreement was followed by bilateral agreements between states/territories and the Commonwealth concerning the transition to the NDIS and its operational and funding arrangements, including what percentage of funding is paid by each state and territory in capped, fixed percentage amounts.⁹

2.11 Commonwealth, state and territory disability ministers have met periodically since 2013, initially under the Council of Australian Governments (COAG) framework, then as the Disability Ministers' meetings in 2020, and, since December 2020, as the Disability Reform Ministers meetings. These meetings 'provide a forum for the Commonwealth and state and territory ministers responsible for disability policy to drive national reform in disability policy and implementation'.¹⁰

⁸ Council of Australian Governments, *Intergovernmental Agreement for the National Disability Insurance Scheme Launch*, 7 December 2012, Part 6.

⁹ NDIS, *Intergovernmental agreements*, www.ndis.gov.au/about-us/governance/intergovernmental-agreements (accessed 9 July 2021).

¹⁰ Department of Social Services, *Disability Reform Ministers' Meetings*, www.dss.gov.au/our-responsibilities/disability-and-carers/programmes-services/government-international/disability-reform-council (accessed 9 July 2021).

Background to independent assessments

- 2.12 The NDIS Act currently stipulates that the CEO of the NDIA (or their delegate) may ask a prospective participant or current participant to do either or both of the following:
- Undergo an assessment and provide to the CEO the report, in the approved form, of the person who conducts the assessment; and/or
 - Undergo, whether or not at a particular place, a medical, psychiatric, psychological or other examination, conducted by an appropriately qualified person, and provide to the CEO the report, in the approved form, of the person who conducts the examination.¹¹
- 2.13 Evidence presented to the committee indicated that the NDIA already requires some participants and prospective participants to undergo independent assessments, often with occupational therapists.¹²
- 2.14 On 28 August 2020, the Commonwealth Government announced its intent to pursue amendments to the NDIS Act so that the CEO of the NDIA (or their delegate) would be able to require a participant or prospective participant to undertake assessments for the purposes of access, planning and plan review decisions.¹³ This followed trials undertaken in 2018–19 and 2019–20. The Government proposed to implement Independent Assessments as a mandatory part of the NDIS access process from February 2021, and as a mandatory part of planning and plan review processes from mid-2021.
- 2.15 The Government stated that it would fully fund independent assessments, and that participants would be able to request a copy of their independent assessment. Participants would be able to choose the location of the assessment and whether it took place remotely or not. Assessments would take

¹¹ National Disability Insurance Scheme Act 2013, s 26(1)(b) and s 36(2)(b).

¹² For example, Occupational Therapy Australia, *Supplementary to Submission 52 – General Issues around the implementation and performance of the NDIS*, pp. 2–3.

¹³ NDIS, *Landmark reforms to deliver on the promise of Australia's NDIS*, 28 August 2020, www.ndis.gov.au/news/5207-landmark-reforms-deliver-promise-australias-ndis. This was foreshadowed on 14 November 2019, with the former Minister for the NDIS announcing the Government's intention to implement independent functional assessments funded by the NDIS. Initial discussion of the proposal indicated some confusion over whether the Government might be intending to pursue implementing this measure through non-legislative means. The committee is also aware that a draft version of a bill to implement independent assessments and other changes was leaked to the media in March 2021. See Rob Harris 'Leaked laws reveal plan to kick Australians off the \$22 billion NDIS', *The Sydney Morning Herald*, 26 March 2021, <https://www.smh.com.au/politics/federal/leaked-laws-reveal-plan-to-kick-australians-off-the-22-billion-ndis-20210325-p57dym.html> (accessed 1 September 2021). In answers to questions on notice provided on 2 September 2021, the NDIA stated that the proposed reforms, including changes relating to independent assessments, 'would have required legislative changes to implement'. See Department of Social Services and National Disability Insurance Agency, answers to questions on notice, 5 August 2021 (received 2 September 2021), p. [8].

approximately three hours, and participants would be able to choose to do the assessment across several meetings.¹⁴

- 2.16 People with disability who were entering the scheme would still be required to submit an access request form, and meet age, residency and permanency criteria to be eligible for the NDIS, before the NDIA referred them to an assessor in their area. For participants already in the scheme, the NDIA advised that 'independent assessments will form a part of our normal plan review process with participants'.¹⁵
- 2.17 In April 2021, the new Minister for the NDIS, Senator the Hon Linda Reynolds, announced that the Government would pause the rollout of Independent Assessments, pending closer consideration of the outcomes of pilot programs.¹⁶ On 9 July 2021, following a meeting with state and territory disability ministers in the Disability Reform Council, and the release of advice from the Independent Advisory Council, the Minister announced that independent assessments would not proceed.¹⁷ Further detail on the Independent Advisory Council's advice and the Minister's announcement is provided later in this chapter.

Assessment tools

- 2.18 The NDIA advised that independent assessments would involve assessors asking participants 'about your life and what matters to you, and ask to see how you approach some everyday tasks'.¹⁸ Assessors would use particular assessment tools, originally developed and used in the allied health sector, as outlined in Table 2.1.

¹⁴ NDIS, *The independent assessment process*, www.ndis.gov.au/participants/independent-assessments/independent-assessment-process (accessed 1 July 2021).

¹⁵ NDIS, *The independent assessment process*, www.ndis.gov.au/participants/independent-assessments/independent-assessment-process (accessed 1 July 2021).

¹⁶ Luke Henriques-Gomes, 'Linda Reynolds puts compulsory NDIS assessments on pause', *The Guardian*, 15 April 2021, www.theguardian.com/australia-news/2021/apr/15/linda-reynolds-puts-compulsory-ndis-assessments-on-pause (accessed 10 June 2021).

¹⁷ Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, *Disability Reform Ministers' meeting on 9 July*, Media release, 9 July 2021.

¹⁸ NDIS, *The independent assessment process*, <https://www.ndis.gov.au/participants/independent-assessments/independent-assessment-process> (accessed 1 July 2021).

Table 2.1 Overview of assessment tools

Assessment tool	Age cohort	Description
Vineland 3	Child (7–17 yrs) Adult (18+ yrs)	Standardised tool that measures adaptive behaviour. Semi-structured interview format focused on discussion and gathering in-depth information
Participation and Environment Measure for Children and Youth (PEM-CY)	Child (7–17 yrs)	Questionnaire that evaluates participation at home, school, and in the community. Used for children and youth between the ages of 5 to 17 years old, with or without disability
Pediatric Evaluation of Disability Inventory Computer Adaptive Test (PEDI-CAT)	Child (7–17 yrs)	Measures abilities in four domains: Daily Activities; Mobility; Social and Cognitive; and Responsibility. Uses a questionnaire
Lower Extremity Function Scale (LEFS)	Adult (18+ yrs)	Questionnaire measuring a person's difficulty in performing everyday tasks
Craig Hospital Inventory of Environmental Factors (CHIEF)	Adult (18+ yrs)	Questionnaire rating environmental barriers for an adult participating in particular environments (e.g. home, work, community)
World Health Organisation Disability Assessment Schedule (WHO-DAS) 2.0 36	Adult (18+ yrs)	Generic assessment instrument for health and disability. Applicable across cultures and disability types, in all adult populations. Short, simple and easy to administer

Source: NDIS, *The assessment tools in the toolkit*, www.ndis.gov.au/participants/independent-assessments/independent-assessment-toolkit/assessment-tools-toolkit; NDIS, *Selection of Assessment Tools*, September 2020, p. 5.

- 2.19 Mr Scott McNaughton, the General Manager of National Delivery at the NDIA, told the committee at the Canberra hearing on 18 May 2021 that in the current system, 'WHODAS is the fall-back or the last resort if the participant has not come with other information...'.¹⁹
- 2.20 The suite of assessment tools announced for children aged 1–6 included the following, which the NDIA announced would be complemented by information

¹⁹ Mr Scott McNaughton, General Manager, National Delivery, NDIA, *Proof Committee Hansard*, 18 May 2021, p. 29.

gathered through an interview with the child's primary caregiver and interaction with the child/caregiver:

- Ages & Stages Questionnaire (ASQ-3) **OR** Ages & Stages Questionnaire—Talking about Raising Aboriginal Kids (ASQ-TRAK)²⁰
- PEDI-CAT (Speedy) **OR** PEDI-CAT ASD (Speedy)
- Vineland-3 Comprehensive (Interview Form)
- Young Children's Participation and Environment Measure (YC-PEM) for children under 6 years
- Participation and Environment Measure—Children and Youth (PEM-CY) for children aged 5+ years²¹

Activity domains

2.21 The NDIA stated that the outcomes of independent assessments would be aligned to the six activity domains in section 24 and section 25 of the NDIS Act—that is:

- Self-care
- Mobility
- Learning
- Communication
- Social interaction
- Self-management²²

2.22 The NDIA's *Personalised Budgets* paper, released in June 2021, had six example profiles with the results of particular independent assessments categorised by these six domains.²³

Independent assessments and plan budgets

2.23 In June 2021, the NDIA released information providing further detail on how it proposed to use independent assessments to inform participants' plan budgets. At present, budgets are built 'support item by support item', with the overall

²⁰ According to a paper released by the NDIA in November 2020,: 'The ASQ-3 and the ASQ-TRAK are developmental screening tools and are currently being considered for their role in supporting access decisions for children against the developmental delay criteria in sections 9 and 25 of the NDIS Act (2013).' NDIS, *Independent Assessment: Addendum to Selection of Assessment Tools to Address Children Aged 1–6 Years*, November 2020, p. 4.

²¹ NDIS, *Independent Assessment: Addendum to Selection of Assessment Tools to Address Children Aged 1–6 Years*, November 2020, pp. 3–4.

²² NDIS, *Planning Policy for Personalised Budgets and Plan Flexibility*, November 2020, p. 12; *National Disability Insurance Scheme Act 2013*, s 24(c) and s 25(c)(i).

²³ NDIS, *Personalised Budgets: Proposal for a New NDIS Budget Model*, June 2021, pp. 30–35.

budget then compared against Typical Support Packages to ensure that it aligns with overall budgets approved for participants with similar circumstances.²⁴

- 2.24 The NDIA stated in its personalised budget paper that it proposed 'to replace this approach with Personalised Budgets which will be based on the results of a participant's independent assessment' — that is, independent assessments would be used to determine an overall budget amount for participants, with participants then deciding themselves how to spend their funds on particular supports (except for some fixed items, such as Specialist Disability Accommodation). In addition to a functional capacity assessment, the NDIA stated that it also intended to take into account 'environmental and personal factors' for participants, such as support from family and friends, to determine their budget.²⁵
- 2.25 The personalised budget model, the NDIA stated, would be created based on both independent assessments data from the second independent assessments pilot, and 400 participant profiles, created by allied health professionals and expert planners within the NDIA, 'to represent the many different groups of participants in the NDIS'.²⁶
- 2.26 In answers to questions on notice provided on 2 August 2021, the Minister and the NDIA stated that the 'approach to plan budgeting, as described in the Personalised Budgets technical paper, will not proceed' and legislative changes would not include this proposed approach.²⁷

Independent assessors

- 2.27 The NDIA announced that independent assessors would be health care professionals from a variety of backgrounds, including occupational therapists, physiotherapists, speech pathologists, clinical and registered psychologists, rehabilitation counsellors and social workers. Assessors would have a minimum of 12 months' full-time clinical experience and have direct face-to-face experience working with a variety of patients with various disabilities, support needs and backgrounds.²⁸
- 2.28 The NDIA also stated that in 90 per cent of Local Government Areas, participants would be able to choose from at least three different organisations for an in-person assessment, while participants in the remaining ten per cent of

²⁴ NDIS, *Personalised Budgets: Proposal for a New NDIS Budget Model*, June 2021, p. 5.

²⁵ NDIS, *Personalised Budgets: Proposal for a New NDIS Budget Model*, June 2021, pp. 5–6.

²⁶ NDIS, *Personalised budgets: Proposal for a New NDIS Budget Model*, June 2021, p. 6.

²⁷ Response to written questions by Senator the Hon Linda Reynolds, Minister for the National Disability Insurance Scheme, requested on 25 June 2021, received 2 August 2021, [p. 8].

²⁸ NDIS, *Independent assessors*, www.ndis.gov.au/participants/independent-assessments/independent-assessors (accessed 1 July 2021).

areas would be able to choose from at least two organisations for an in-person assessment. The organisations who won the tender process to provide independent assessments were:

- Outlook Matters Psychology, Innovative Rehab, Pain NT;
- Konekt;
- Rehab Management (Aust) Pty Ltd;
- Access Care Network Australia;
- IPAR Rehabilitation;
- Advanced Personnel Management (APM);
- HealthStrong; and
- Allied Care Group.²⁹³⁰

Consultation on independent assessments

2.29 On 25 November 2020, the NDIA released three consultation papers related to independent assessments:

- Access and Eligibility policy with independent assessments;
- Planning policy for personalised budgets and plan flexibility; and
- Supporting young children and their families early, to reach their full potential.³¹

2.30 In March 2021, the NDIA released three reports summarising feedback on the three consultation papers. The results of the feedback are outlined below.

Access and eligibility consultation

2.31 The NDIA consultation paper on access and eligibility asked for feedback on the following matters related to independent assessments:

- What will people who apply for the NDIS need to know about the independent assessments process? How would this information best be provided?

²⁹ NDIS, *Independent assessors*, www.ndis.gov.au/participants/independent-assessments/independent-assessors (accessed 1 July 2021). The committee is aware of media reports that raised concerns about the award of contracts to organisations on this list, including an organisation with links to a former NDIA CEO. See, for example, Rick Morton, 'The seven-year plot to undermine the NDIS', *The Saturday Paper*, 5 December 2020; Pat McGrath and Alison McClymont, 'As the NDIS moves to independent assessments, these companies stand to profit from the change', *ABC News*, 25 March 2021; Rebecca Gredley, 'Disability scheme contract under question', *The West Australian*, 25 March 2021.

³⁰ In answers to questions on notice provided on 2 September 2021, the NDIA stated that under the contractual arrangements for independent assessments, no 'work orders were drafted or issued under this arrangement, nor will any be. No monies have been paid to any of the panel companies'. See Department of Social Services and National Disability Insurance Agency, answers to questions on notice, 5 August 2021 (received 2 September 2021), p. [8].

³¹ See NDIS, *You said, we heard: Post-consultation reports*, www.ndis.gov.au/community/we-listened/you-said-we-heard-post-consultation-reports (accessed 10 June 2021).

- What are the traits and skills that you most want in an assessor?
- What makes this process the most accessible that it can be? For example, is it by holding the assessment in your home?
- How can independent assessments be delivered in a way that considers and promotes cultural safety and inclusion?
- What are the limited circumstances which may lead to a person not needing to complete an independent assessment?
- How should the NDIA best monitor the quality of independent assessments being delivered and ensure the process is meeting participant expectations?
- How should we provide the assessment results to the person applying for the NDIS?³²

2.32 The NDIA noted in its post-consultation report that feedback on the above points had been 'mixed', acknowledging that 'people with disability are anxious with how assessments will be carried out as well as how that information will be used to determine their access to, and ongoing eligibility for the NDIS'. Concerns raised included the skills, experience and background of assessors, including that the assessor would not know the individual, and that assessors should have knowledge of particular disability types. The report noted that many 'people expressed a strong preference for having their treating health professionals completing assessments, rather than being referred to an assessor with whom they are not familiar'.³³

2.33 Further concerns raised in the NDIA consultation process about using independent assessments in the access process included:

- The impact of independent assessments on the allied health provider market, when people with disability already face long wait times to access allied health services, particularly in rural and remote communities;
- The ability of assessors to work with different cultural groups, and the appropriateness of assessments for particular groups, including Aboriginal and Torres Strait Islanders and people from culturally and linguistically diverse backgrounds;
- The practicality of completing assessments in rural and remote communities, where there may be few allied health professionals and unreliable internet and phone reception;
- The appropriateness of independent assessments if they could create a risk to the health of a participant or cause trauma for that participant; and

³² NDIS, *You Said, We Heard: Access and Eligibility Policy with Independent Assessments*, March 2021, p. 8.

³³ NDIS, *You Said, We Heard: Access and Eligibility Policy with Independent Assessments*, March 2021, pp. 9, 14.

- What safeguards would be in place, and how people would be able to appeal an assessment or the outcome of an assessment or put in complaints about the process.³⁴
- 2.34 Feedback to the consultation recommended that regular research, monitoring and evaluation of the independent assessments process and its appropriateness be published. Further recommendations from stakeholders included the establishment of an independent assessment expert advisory group, and that assessment organisations be subject to oversight by the NDIS Quality and Safeguards Commission.³⁵
- 2.35 On the matter of appeals, the NDIA stated in its consultation paper report that 'We will not be changing the review process' and 'Independent assessment results themselves will not be directly reviewable by the AAT'. It further stated that 'Disagreeing with the results of an otherwise sound and robust independent assessment won't mean you get another assessment'.³⁶
- 2.36 The NDIA acknowledged in the paper that 'a level of suspicion exists around the reasons behind the introduction of independent assessments'. It also revealed that if 'an independent assessment indicates a significant improvement in functional capacity, a participant may be referred for an eligibility reassessment'.³⁷

Planning policy consultation

- 2.37 The consultation paper on the new planning policy for personalised budgets and plan flexibility did not explicitly address independent assessments, focusing on matters such as pre-planning support, which supports should be fixed, and how the NDIA could assure participants that their plan budgets were appropriate. However, feedback to the consultation process indicated that there were concerns about how the results of independent assessments would be used to develop budgets, and whether such use of these tools was appropriate. In particular, the NDIA recognised 'a common view that the results of an independent assessment will not accurately capture a full picture of a person's life, aspirations and support needs', leading to insufficient plan funding.³⁸

³⁴ NDIS, *You Said, We Heard: Access and Eligibility Policy with Independent Assessments*, March 2021, pp. 14–18, 20

³⁵ NDIS, *You Said, We Heard: Access and Eligibility Policy with Independent Assessments*, March 2021, p. 20.

³⁶ NDIS, *You Said, We Heard: Access and Eligibility Policy with Independent Assessments*, March 2021, p. 19.

³⁷ NDIS, *You Said, We Heard: Access and Eligibility Policy with Independent Assessments*, March 2021, pp. 25, 26.

³⁸ NDIS, *You Said, We Heard: Planning Policy for Personalised Budgets and Plan Flexibility*, March 2021, pp. 8, 9, 11–12, 20.

2.38 Despite the limited focus of the planning policy consultation questions on independent assessments, the NDIA noted that many submissions 'focused on the idea of independent assessments themselves rather than the planning policy more specifically' because of concerns submitters had about independent assessments. In particular, some submitters to the consultation expressed support for the use of independent assessments in the access process but were not supportive of or expressed confusion about how independent assessments could be used in planning. Concerns raised specifically about independent assessments reflected issues also raised in the consultation on access and eligibility.³⁹

Early childhood consultation

2.39 In the consultation paper on early childhood, the NDIA asked for feedback on how independent assessments could be used to support consistent access and planning decisions for young children. The report on the early childhood consultation noted that the NDIA had received mixed levels of support for this proposal.⁴⁰

2.40 Issues raised about independent assessments for children in the NDIA's early childhood consultation included:

- Concerns about the quality of assessments—for example, that they might be negatively influenced by external factors such as the child's socio-economic status; that the PEDI-CAT 'often produces a result of mild for children with significant functional impairment in the area of communication and social functioning'; and that assessment tools for children who are deaf or blind require the assessor to have specialist qualifications, such as in speech pathology, for the assessment to be validly applied.
- Concerns about the consistency and fairness of independent assessments—that they 'may not capture disability specific or complex needs of the child and family'; and that they may not take into account reports from and relationships with existing experts in the child's life.
- Concerns about the implementation of independent assessments, including in regional, rural and remote areas where there may already be a shortage of allied health professionals.⁴¹

³⁹ NDIS, *You Said, We Heard: Access and Eligibility Policy with Independent Assessments*, March 2021, pp. 21–22.

⁴⁰ NDIS, *You Said, We Heard: Supporting Young Children and Their Families Early, to Reach Their Full Potential*, March 2021, p. 12.

⁴¹ NDIS, *You Said, We Heard: Supporting Young Children and Their Families Early, to Reach Their Full Potential*, March 2021, pp. 12–13.

2.41 Mr Martin Hoffman, the CEO of the NDIA, stated in the introduction to the report on the early childhood consultation that changes to the Early Childhood Early Intervention program will begin 'towards the end of 2021'.⁴²

Trials/pilots carried out to date

2.42 The NDIA carried out two trials/pilots of independent assessments, as outlined in Table 2.2. The first pilot had 513 opt-in independent assessments, while the second pilot featured 3 762 assessments.⁴³

Table 2.2 Independent assessment pilots

	Date	Location	Age	Disability types
First pilot	Nov 2018– April 2019	9 metropolitan areas in NSW	People applying for the NDIS and existing participants aged 7–64	Autism Spectrum Disorder Intellectual disability Psychosocial disability
Second pilot	Nov 2019– March 2020; Oct 2020– May 2021	National	People aged minimum 7 years, including those above 65	All

Source: www.ndis.gov.au/about-us/history-ndis/independent-assessments-proposal/archived-policy-proposals; NDIS, *Independent assessments: Pilot learnings and ongoing evaluation plan*, September 2020, p. 23.

2.43 A survey about participant/supporters' experiences during the second pilot, which had 948 respondents, indicated that 90 per cent of respondents were satisfied or very satisfied with their independent assessment appointment, with 99 per cent feeling that their assessor was 'professional' and 72 per cent feeling 'that the assessor was familiar with their disability'.⁴⁴

2.44 Participants in the second pilot were reimbursed \$150 for taking part in the pilot.⁴⁵ The initial second pilot was limited to four NDIS service delivery areas

⁴² NDIS, *You Said, We Heard: Supporting Young Children and Their Families Early, to Reach Their Full Potential*, March 2021, p. 4.

⁴³ NDIS, *Independent assessment pilot*, ndis.gov.au/participants/independent-assessments/independent-assessment-pilot (accessed 6 July 2021); NDIS, *Independent assessments: Pilot learnings and ongoing evaluation plan*, September 2020, p. 10.

⁴⁴ NDIS, *Independent Assessments: Pilot Learnings and Ongoing Evaluation Plan*, September 2020, p. 15.

⁴⁵ NDIS, *For participants — The second independent assessment pilot*, ndis.gov.au/participants/independent-assessments/second-independent-assessment-pilot/participants-second-independent-assessment-pilot (accessed 6 July 2021).

in New South Wales, but was then postponed because of the COVID-19 outbreak. The pilot was expanded to cover all of Australia after it recommenced.⁴⁶

- 2.45 The NDIA reported that 46 per cent of participants/supporters in the second pilot who responded to a survey reported their overall experience of the independent assessment to be very good or excellent (see Figure 1). Of those Aboriginal and/or Torres Strait Islander participants/supporters who responded, 65 per cent rated their experience as very good to excellent, as did 47 per cent of respondents who mainly spoke a language other than English at home. The NDIA reported that almost 'all of these participants/supporters reported that their [independent assessment] was culturally appropriate'.⁴⁷
- 2.46 It should be noted that only three per cent of respondents to the survey (29) were of Aboriginal and/or Torres Strait Islander descent, and almost five per cent of respondents (46) reported that their main language spoken at home was not English. As at June 2021, 6.9 per cent of NDIS participants were Aboriginal and Torres Strait Islanders, and 9.5 per cent were from culturally and linguistically diverse backgrounds.⁴⁸ In total, there were 948 responses to the survey.⁴⁹ The NDIA indicated that this represented a 43.2 per cent response rate from those who received the survey. As of 31 May 2021, 3,759 individuals had received an independent assessments as part of the second pilot, and 2,194 of these were given the opportunity to provide feedback.⁵⁰

⁴⁶ NDIS, *Independent Assessments: Pilot Learnings and Ongoing Evaluation Plan*, September 2020, p. 10; NDIS, *Before the assessment*, www.ndis.gov.au/participants/independent-assessments/second-independent-assessment-pilot/participants-second-independent-assessment-pilot/assessment (accessed 6 July 2021).

⁴⁷ NDIS, *Interim Evaluation Report: Independent Assessment Pilot 2*, July 2021, p. vii.

⁴⁸ NDIS, *NDIS Quarterly Report to Disability Ministers*, June 2021, p. 126. Mr Damian Griffis, the Chief Executive Officer of First Peoples Disability Network, told the committee at the hearing on 18 May 2021, that he was not aware of any Aboriginal and Torres Strait Islander people being part of the trials. He argued that the 'specific needs of our people with disability require direct consultation with us, not a mainstream one-size-fits-all process' (*Proof Committee Hansard*, 18 May 2021, p. 2).

⁴⁹ NDIS, *Interim Evaluation Report: Independent Assessment Pilot 2*, July 2021, pp. 80–81.

⁵⁰ NDIS, *Interim Evaluation Report: Independent Assessment Pilot 2*, July 2021, pp. 4 and 7 and NDIS, 'Evaluation of the independent assessment pilot', <https://www.ndis.gov.au/community/research-and-evaluation/evaluation-independent-assessment-pilot> (accessed 1 September 2021).

Figure 2.1 Participant/supporter experience with their independent assessment (second pilot)

Question	Poor	Fair	Good	Very good	Excellent
Overall experience (n=900)	16%	14%	24%	25%	21%
Booking (n=921)	4%	10%	29%	31%	25%
Assessor professionalism (n=914)	3%	5%	17%	30%	45%
The way their IA was conducted (n=922)	13%	18%	24%	25%	21%

Source: NDIS, *Interim Evaluation Report: Independent Assessment Pilot 2, July 2021, p. vii.*

- 2.47 Participants and their supporters were also invited to take part in a second survey once they had received their independent assessment results, with 265 people responding to this second survey. (The interim evaluation report did not state whether the results of the assessments also included delegate decisions about access to the NDIS or plan funding; hence, it is unclear whether responses in the survey were also based on decisions or just results of assessments.) The NDIA reported that 48 per cent of people who responded to the second survey felt that their results were an excellent or very good reflection of their meeting, while 42 per cent felt that the results were an excellent or very good reflection of their functional capacity (see Figure 2.2). However, respondents indicated that they wanted reports that were more tailored to them as individuals.⁵¹
- 2.48 Many respondents in open-ended survey questions suggested that the contextual information that they gave to clarify their responses during the assessment was missing, and that reports should include information on the impact of participants' disability on their family. However, the NDIA suggested that 'negative sentiment might also stem from expectations based on the content and/or format of previous allied health reports received, and limited end-to-end understanding of...the role of [independent assessments]'.⁵²

Figure 2.2 Participant/supporter experience with the accuracy of their independent assessment reports (second pilot)

Experience	Poor	Fair	Good	Very good	Excellent
Accurate reflection of IA meeting	10%	15%	27%	31%	17%
Accurate reflection of functional capacity	17%	18%	22%	28%	14%

Source: NDIS, *Interim Evaluation Report: Independent Assessment Pilot 2, July 2021, p. 28.*

⁵¹ NDIS, *Interim Evaluation Report: Independent Assessment Pilot 2, July 2021, p. 28.*

⁵² NDIS, *Interim Evaluation Report: Independent Assessment Pilot 2, July 2021, p. 29.*

2.49 The Interim Evaluation Report for the second independent assessment pilot included the following 'considerations':

- The NDIA should continue testing functional assessments with priority cohorts;
- Assessors should determine whether an independent assessment carried out by telepresence is appropriate for those participants who require their assessments to be conducted in this way;
- The length of independent assessment meetings should not be greater than three hours;
- The NDIA should create assessment packages for participants to complete before their meetings to improve data accuracy, shorten the length of assessments, and help assessment organisations allocate the most suitable assessor to a participant;
- The NDIA should analyse assessment data, using a well-validated approach, to determine how assessment tools could be streamlined to reduce the length of meetings, while still being valid and reliable;
- The NDIA should establish standard operating procedures that would encourage assessors to use their clinical judgement on the most appropriate way to conduct each independent assessment;
- The NDIA should monitor how assessor qualifications and experience are impacting participant/supporter experience and use this data to develop minimum qualifications and experience for assessors;
- The NDIA should proactively monitor the performance of assessors and engage early in any quality issues; and
- Assessor training and materials should be developed in partnership with people with lived experience of disability, and training should emphasise practical, experientially-based learning about working with different disability types.⁵³

2.50 The NDIA in its preliminary evaluation of the second pilot indicated that the best aspects of independent assessments rated by participants/supporters included:

- The opportunity for participants to discuss their disability, raise concerns and be heard by the assessor;
- That the assessment took place in the participant/supporter's home; and
- The assessor's interpersonal skills.⁵⁴

2.51 The worst aspects of independent assessments for participants and supporters in the second pilot, according to the interim evaluation report, concerned the length of assessments and the questions themselves—that is, that the questions

⁵³ NDIS, *Interim Evaluation Report: Independent Assessment Pilot 2*, July 2021, pp. vi–xiii.

⁵⁴ NDIS, *Interim Evaluation Report: Independent Assessment Pilot 2*, July 2021, p. 18.

had insufficient detail and did not cover issues related to the participant's disability.⁵⁵

2.52 The NDIA stated that following the end of the second pilot, it would be continuing to invite participants to complete voluntary independent assessments to inform the NDIA's ongoing information gathering.⁵⁶

2.53 The NDIA on its website released an independent data validation report from the Centre for Disability Studies and the Centre for Disability Policy and Research at the University of Sydney, which confirmed the NDIA's qualitative findings from its survey. The report noted that the NDIA had acknowledged the 'likely response bias encountered through self-selection' and that data 'linkage and lack of anonymity may create some bias'.⁵⁷

2.54 In a subsequent article released after the Minister's decision not to implement independent assessments, two of the authors of the University of Sydney data validation report publicly stated that they had the following concerns:

- There 'were huge problems identified in relation to the use of assessment tools, the competency of assessors in using them, and assessor understanding of a range of experiences of disability';
- There was a clear power imbalance where participants consented to have their plans linked to their survey responses, which may have impacted their responses to the survey;
- Many of the people who responded to the initial survey had not received their reports by the time they filled in the survey; and
- The authors' own analysis was limited because of time pressures and subsequent data management issues.⁵⁸

2.55 However, the authors also noted that:

- The authors' 'overall experience of working with the NDIA evaluation team was a positive one and they were responsive to the limitations we reported around the evaluation limitations';

⁵⁵ NDIS, *Interim Evaluation Report: Independent Assessment Pilot 2*, July 2021, p 18–19.

⁵⁶ NDIS, *For participants—The second independent assessment pilot*, ndis.gov.au/participants/independent-assessments/second-independent-assessment-pilot/participants-second-independent-assessment-pilot (accessed 6 July 2021).

⁵⁷ NDIS, *The second independent assessment pilot*, ndis.gov.au/participants/independent-assessments/second-independent-assessment-pilot (accessed 6 July 2021); Mary-Ann O'Donovan, Jennifer Smith-Merry, Damian Mellifont, Erin Whittle and Eric Badu, *Assessment Evaluation: Data Evaluation Report*, Centre for Disability Studies and Centre for Disability Research and Policy, Faculty of Medicine and Health, the University of Sydney, June 2021, pp. 3, 11.

⁵⁸ Jen Smith-Merry and Mary-Ann O'Donovan, 'The NDIS is fighting a trust deficit. Its future depends on putting this right', *Croakey Health Media*, 14 July 2021, croakey.org/the-ndis-is-fighting-a-trust-deficit-its-future-depends-on-putting-this-right (accessed 16 July 2021).

- The survey results, 'as interpreted by the NDIA, were largely representative of participant views as interpreted in our own analysis'; and
- An 'open and trusting relationship with the NDIS was possible even with something as contentious as independent assessments'.⁵⁹

Independent Advisory Council's view

2.56 In July 2021, the Independent Advisory Council to the NDIS, which provides independent advice to the NDIA Board about how the NDIA is performing its functions, released formal advice concerning the proposed reforms to access and planning. The Council carried out consultation to:

- Hear from the Council and the wider disability sector about what concerns existed about the proposed reforms, including which issues needed further engagement and how this further engagement should take place; and
- Provide guidance to the NDIA Board and the Minister on what changes needed to be included in the Government's access and planning proposals, including independent assessments, ahead of the Minister's planned consultation on exposure drafts of the legislation.⁶⁰

2.57 The Council observed that because it had been requested to provide feedback before the next meeting of Commonwealth, state and territory disability ministers (9 July 2021), 'the consultation proved challenging' and 'would have been enhanced by a greater attendance and diversity of participants'.⁶¹ Feedback to the consultation suggested that focusing on independent assessments without commitments and supporting funding to address 'shortcomings of other weak foundations', including the National Disability Strategy and the Tier 2 Information, Linkages and Capacity Building program, would not address underlying sustainability challenges or meet the scheme's objectives for participants. The Council reported that a major theme of the consultation was the rebuilding of trust, noting that 'many participants feared a loss of support or that they would be "exited" from the Scheme' when the Government had described independent assessments as a process to achieve equity and support sustainability of the NDIS.⁶²

⁵⁹ Jen Smith-Merry and Mary-Ann O'Donovan, 'The NDIS is fighting a trust deficit. Its future depends on putting this right', *Croakey Health Media*, 14 July 2021, croakey.org/the-ndis-is-fighting-a-trust-deficit-its-future-depends-on-putting-this-right (accessed 16 July 2021).

⁶⁰ Independent Advisory Council to the NDIS, *Strengthening Scheme Reforms to Access and Planning*, July 2021, p. 3.

⁶¹ Independent Advisory Council to the NDIS, *Strengthening Scheme Reforms to Access and Planning*, July 2021, p. 3.

⁶² Independent Advisory Council to the NDIS, *Strengthening Scheme Reforms to Access and Planning*, July 2021, pp. 3–5.

- 2.58 The Council recommended that independent assessments 'not proceed in the current form as conducted in the pilot' and that independent assessments and the personalised budget model be co-designed with the Council and representatives of the disability sector. It also recommended that draft legislation be 'made public in highly accessible formats for a minimum of 8 weeks to provide greater transparency and enable the disability community to provide meaningful feedback'.⁶³
- 2.59 The Council also recommended that independent assessments (and the personalised budget model) not be implemented until the Council had provided advice on the draft legislation, and the Government and the disability sector had agreed to a cohesive scheme reform co-design process; and that implementation should proceed slowly and be informed by the Joint Standing Committee on the NDIS's work. Other recommendations that the Council proposed included that:
- There be provision for matching assessors to participants on the basis of their allied health speciality, as well as gender and cultural safety and cultural literacy where requested and possible;
 - Appropriate information be shared with assessors before assessments, and that the assessor and NDIA delegates be required to consider this information;
 - Participants be able to review their assessment to ensure that it is a true and accurate reflection of their meeting, before NDIA decision making occurred;
 - The NDIA implement a clear and transparent quality assurance and complaints process;
 - There be clear contractual terms for organisations engaging assessors, including assessor skills and experience, flexibility in the time allocated per assessment and a ban on key performance indicators based in any way on potential or actual participants being denied access or 'exited' from the Scheme;
 - Training of assessors and assessor organisations be co-designed and delivered with and by representatives of Disabled Persons' Organisations;
 - The NDIS Quality and Safeguards Commission establish an accreditation process of assessors, together with the NDIA, the Council, key professional groups and the disability community;
 - The Minister make provision for statutory review of independent assessments and their impact on plan budgets and outcomes; and
 - Governments negotiate a more equitable and sustainable funding base for the NDIS.⁶⁴

⁶³ Independent Advisory Council to the NDIS, *Strengthening Scheme Reforms to Access and Planning*, July 2021, p. 4.

⁶⁴ Independent Advisory Council to the NDIS, *Strengthening Scheme Reforms to Access and Planning*, July 2021, pp. 8–13.

- 2.60 The Independent Advisory Council further noted that even if the proposed changes were implemented, it could not 'claim that the changes recommended will secure support for the introduction of independent assessments'.⁶⁵

Response from the NDIA in July 2021

- 2.61 The NDIA in its interim response to the Council's report stated that it 'fully accepts the proposition that independent assessments should not proceed in the form used in the pilot', and that the Council's recommendations should be 'further designed in close consultation with the disability sector'. The NDIA further announced that:

The Agency will continue to test and refine the approach to assessment, so that it works for the wide diversity of the NDIS participant population, including through the establishment of alternate approaches which ensure a safe experience for participants with more complex circumstances. This further testing and refinement will proceed in close engagement with the sector and all key stakeholders before any final approach is committed to...

The NDIA expects to support or support in principle all of the recommendations directed to it by the Council relating to independent assessments, personalised budgets, rebuilding relationships with the disability community, and provider practice, and to note recommendations directed to governments...Operational feasibility, efficiency and resource implications will also necessarily have to be considered, as will the financial sustainability of the Scheme.⁶⁶

- 2.62 The NDIA further stated that it intended to make 'substantial changes and improvements to the independent assessment model used in the pilot'. Table 2.3 outlines the changes the NDIA proposed. The NDIA stated that these are 'a preliminary list of changes' and the NDIA would be further responding to the Council's recommendations in the coming weeks.⁶⁷

⁶⁵ Independent Advisory Council to the NDIS, *Strengthening Scheme Reforms to Access and Planning*, July 2021, p. 6.

⁶⁶ NDIA, *Interim NDIA Paper: Potential Improvements to Independent Assessments*, July 2021, pp. 2–3.

⁶⁷ NDIA, *Interim NDIA Paper: Potential Improvements to Independent Assessments*, July 2021, pp. 5–6.

Table 2.3 Proposed improvements to independent assessments

Issue	Proposed improvements
Alternate assessment approaches	<p>Tailor the approach to assessment, including the method and who conducts and supports an assessment, to protect the safety and wellbeing of those who:</p> <ul style="list-style-type: none"> - Have a history of trauma or abuse; - Are transitioning from institutional arrangements (e.g. hospitals, residential aged care, justice); - Have complex support needs; and - Require a support person for decision-making. <p>Amend the assessor panel to ensure:</p> <ul style="list-style-type: none"> - More experienced professionals undertake assessments for participants with more complex circumstances; - Access to complete assessments conducted by multi-disciplinary teams where appropriate; and - Links with service providers in remote/very remote areas, or those who specialise in working with Aboriginal and Torres Strait Islander and culturally and linguistically diverse populations <p>Define minimum standards to be able to complete an assessment including via tele-presence.</p>
Choice of assessor	<p>Introduce system 'skills tagging' to enable participants to have greater choice over who their assessor is, including professional specialty, gender and cultural characteristics</p>
Assessor experience and conduct	<p>Use Disability Representative Organisations and individuals with lived disability experience to help design, conduct and improve training for assessor organisations, and support assessors to apply their clinical judgement around how the assessment is conducted (e.g. what questions should be asked)</p>
Use of pre-existing information	<p>Allow appropriate pre-existing information from a participant's treating professional to be used with an assessment and clarify the type of information that can be considered and how it will be used</p>
Toolkit improvements	<p>Refine the current assessment tools and how they are applied, and scope the development of proprietary tools that are purpose built and validated for use in the NDIS</p>

Checks, inputs and reviews

Provide participants with a specific time period to ensure their assessment is a true and accurate reflection of their meeting, before the NDIA makes a decision based on it

Establish a clear process for complaints and reviews to resolve disagreements on assessment findings before they are used for NDIA decision making

Ongoing oversight and evaluation of assessment tools and systems

Establish appropriate governance bodies to oversee the ongoing development and implementation of the personalised budget model and independent assessment framework which will include Council members and disability representatives

Establish ongoing monitoring and evaluation of the implementation of independent assessments and the personalised budget model

Source: NDIA, Interim NDIA Paper: Potential Improvements to Independent Assessments, July 2021, pp. 7–8.

Announcement that independent assessments will not proceed:**9 July 2021**

2.63 On 9 July 2021, immediately following a meeting with state and territory disability ministers, the Minister for the NDIS announced that independent assessments would not proceed, in line with the recommendation from the Independent Advisory Council. The Communique published following the meeting stated that:

- Commonwealth, state and territory ministers had 'agreed to work in partnership with those with lived disability experience on the design of a person-centred model' which will 'deliver consistency and equity of both access and planning outcomes', and is consistent with the assessment requirements in the NDIS Act;
- Ministers will 'work jointly on the development of amendments' to the NDIS legislation, including legislating the Participant Service Guarantee and recommendations from the Tune Review, with Minister Reynolds committing to making this draft legislation public prior to introducing it; and
- Ministers will undertake further work to understand actuarial modelling and 'financial matters to inform a path forward'.⁶⁸

2.64 On 22 July 2021, at a speech to the National Disability Conference, the Minister also outlined the following matters that the state and territory disability ministers had agreed to:

⁶⁸ Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, *Disability Reform Ministers' meeting on 9 July*, Media release, 9 July 2021; Disability Reform Ministers' Meeting, *Communique*, 9 July 2021.

- The trialled format of independent assessments would not proceed;
- Ministers would work in partnership with those with lived experience of disability to co-design a new person-centred model of assessment, consistent with the legislative requirements of the NDIS Act;
- A unified understanding of financial matters and pressures on the system should be built to inform the pathway forward;
- Further work would be undertaken by senior officials on the cost drivers and underpinning actuarial assumptions of the NDIS, ahead of the next Disability Reform Ministers' meeting in August; and
- Draft legislation involving amendments to the NDIS Act would be subject to public consultation.⁶⁹

2.65 As noted above, in answers to questions on notice provided on 2 August 2021, the Minister and the NDIA stated that the 'approach to plan budgeting, as described in the Personalised Budgets technical paper, will not proceed'.⁷⁰

⁶⁹ Senator the Hon Linda Reynolds CSC, 'The future of the NDIS', speech to National Disability Conference—Where to from Here?, 22 July 2021, ministers.dss.gov.au/speeches/7341 (accessed 23 July 2021). See also Department of Social Services and National Disability Insurance Agency, answers to questions on notice, 5 August 2021 (received 2 September 2021), p. [5].

⁷⁰ Response to written questions by Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, 25 June 2021 (received 2 August 2021), [p. 8].

Chapter 3

The Productivity Commission and Tune Review reports

- 3.1 Two key reports were repeatedly referred to by the NDIA to support the argument that independent assessments were necessary: the 2011 Productivity Commission report into Disability Care and Support; and the 2019 Review of the NDIS Act and the New Participant Service Guarantee (Tune Review). This chapter canvasses some of the key criticisms arising in evidence concerning the NDIA's interpretation of these reports.
- 3.2 Chapter 4 examines in further detail the main reasons that the NDIA gave for introducing independent assessments, including in the context of those two reports.

2011 Productivity Commission report

- 3.3 The Productivity Commission's 2011 report into Disability Care and Support concluded that assessment tools would be 'needed to determine the level of needs and funding for a person covered by the scheme'. It proposed a 'toolbox' of assessment tools, to be 'developed within the framework of the widely accepted International Classification of Functioning, Disability and Health'. These tools should be:
- Valid (testing what they purport to test);
 - Reliable (giving similar answers if people are re-tested, tested by another assessor, or if people with similar characteristics are assessed);
 - Rigorous; and
 - Cost-effective'.¹
- 3.4 The Commission noted that at the time of reporting, there was 'currently no ideal tool to use in the NDIS' but this should not delay implementation. The NDIA should oversee the development of such tools over the longer-term 'because the NDIS would have the best evidence for their ongoing development. The tools should also be made available at no cost to researchers wanting to develop them further'.²
- 3.5 The Commission suggested, when outlining its assessment, funding and planning process, that the assessment process should involve a 'person-centred

¹ Productivity Commission, *Disability Care and Support—Overview and Recommendations*, No. 54, 31 July 2011, pp. 16, 19.

² Productivity Commission, *Disability Care and Support—Overview and Recommendations*, No. 54, 31 July 2011, pp. 19–20.

collaborative assessment that includes self-reporting'. However, 'people making assessments would need to be independent from the client (unlike treating general practitioners)', be approved or appointed by the NDIA, and be 'properly trained in the use of the tools'. The Commission noted that "'hard" assessments would be unfair' on participants, while 'soft' assessments 'could jeopardise the scheme'.³

3.6 The Commission specifically recommended that the 'supports to which an individual would be entitled should be determined by an independent, forward-looking assessment process by the NDIA, rather than people's current service use'. Further characteristics of assessments that the Productivity Commission proposed included the following:

- Assessments would concentrate on what reasonable and necessary supports a participant would require;
- Information about a person's relevant medical conditions and specialist assessments would be made available to the assessor;
- Consideration would also be given to the informal care or natural supports available to the participant and any supports needed to assist carers in their role;
- The NDIA would review assessments to determine whether they followed appropriate protocol and were consistent with the benchmark range of assessed needs for other participants with similar circumstances;
- Individual budgets would be determined through a 'bottoms-up' approach by costing all of the support needs identified by the assessment process, after taking into consideration informal supports, and the person with disability (and/or their support network or disability support organisation) would create a personal plan and a concrete funding proposal to the NDIA that outlines the person's goals and the types of support that would be reasonable and necessary to achieve within the allocated budget (Recommendation 8.2);
- The NDIA would collect data to assess the reliability and validity of the assessment tools, with the assessment process helping to forecast the likely long-run liabilities for the scheme; and
- The NDIA should only use a tool to assess the needs of particular groups where its reliability and validity have been established for that group.⁴

3.7 The Productivity Commission argued that 'the goal of the NDIS would be to properly fund the reasonable assessed needs of people with a disability' to avoid 'the uncertainty, chronic underfunding and unmet demand that has beset past

³ Productivity Commission, *Disability Care and Support—Overview and Recommendations*, No. 54, 31 July 2011, pp. 20–21.

⁴ Productivity Commission, *Disability Care and Support—Overview and Recommendations*, No. 54, 31 July 2011, Recommendation 3.8, pp. 21, 65; and *Volume One*, pp. 72, 313, 318.

allocation systems'. It noted that under previous systems, 'the level of support [was] determined by annual government budgets that bear no consistent relationship to people's actual needs'.⁵

- 3.8 Crucially, the Productivity Commission proposed that following consultation and assessments, participants should be given a package of supports from the NDIS, and 'not a budget amount'.⁶ It also proposed that others should be involved in the process, and that the process involve existing medical reports:

...[W]hile the individual undertaking assessments would be independent, it would [be] important to involve other interested parties (a so called circle of support) in the assessment process. Ideally, these would be people who were familiar with the care and support needs of the individual, they might include family members, carers and direct support professionals. Moreover, the assessment process would draw upon existing medical reports.⁷

- 3.9 The Commission envisaged that implementation of the NDIS would involve work on and testing of assessment tools from 2011 to 2013. Of further note is the Commission's recommendation that future changes to the key features of the scheme occur 'only by explicit changes to the Act itself, be subject to the usual processes of community and Parliamentary scrutiny, and require consultation with all state and territory governments'.⁸

The Government's position on the 2011 Productivity Commission report

- 3.10 The NDIA in its submission to this inquiry pointed to the Productivity Commission's 2011 report, arguing that independent assessments and other proposed reforms to the scheme 'will mean that the NDIS will more closely resemble the model originally recommended by the Productivity Commission'. It emphasised that the report had recognised that the independence of health professionals supporting participants, who may then carry out an assessment, 'poses a risk for appropriate and equitable decision making'.⁹

- 3.11 In its supplementary submission, the NDIA argued that understanding participants' functional capacity 'was central to the original design recommendations of the Productivity Commission and is a requirement of the NDIS Act'. However, it suggested that because of the rapid rollout of the NDIS 'and the lack of an overarching functional capacity framework', there has been

⁵ Productivity Commission, *Disability Care and Support—Overview and Recommendations*, No. 54, 31 July 2011, p. 21.

⁶ Productivity Commission, *Disability Care and Support—Overview and Recommendations*, No. 54, 31 July 2011, p. 30.

⁷ Productivity Commission, *Disability Care and Support—Volume One*, No. 54, 31 July 2011, p. 327.

⁸ Productivity Commission, *Disability Care and Support—Overview and Recommendations*, p. 58; and *Volume 1*, Recommendation 9.6, p. 434.

⁹ Department of Social Services and National Disability Insurance Agency, *Submission 13*, pp. 2, 5.

'a high degree of variability in reported function' over the last four years.¹⁰ The NDIA also argued that personalised budgets (as outlined in Chapter 2) and increased plan flexibility would 'deliver on the original intent of the NDIS and help to manage escalating risks regarding scheme sustainability and equity'.¹¹

3.12 The issue of inconsistencies in access decisions and plan funding, and the financial sustainability of the Scheme are discussed further in Chapter 4.

3.13 The NDIA acknowledged that the tools that it had selected had proven reliability and validity in the contexts for which they were designed, but 'this cannot be extended with great confidence to other contexts'. It also noted that 'the validity and reliability of using assessment tools side by side to build an understanding of a person's function has not been done before', but argued that 'the alternative of ignoring certain elements of a person's functioning for NDIS decision making purposes carries greater risk'. It proposed to progressively evaluate the tools to determine their validity and reliability in the NDIS context, leading to adjustment of the toolbox over time.¹²

Criticisms of the Government's interpretation of the Productivity Commission report

3.14 Submitters provided criticism about how the NDIA had interpreted the Productivity Commission's proposals on independent assessments. These criticisms included:

- The Government was 'picking and choosing and re-marketing elements of the original Productivity Commission vision in an attempt to overcome the broader systemic organisational and scheme deficiencies';¹³
- The proposal that participants could bring informal supports (such as family members) to their assessments was a 'wholly inadequate reflection' of the Productivity Commission's suggestion of a 'circle of care';¹⁴
- The proposal did not involve the assessment process drawing on existing medical records, as proposed by the Productivity Commission;¹⁵

¹⁰ Department of Social Services and National Disability Insurance Agency, *Submission 13: Supplementary to submission 13*, p. 11.

¹¹ Department of Social Services and National Disability Insurance Agency, *Submission 13: Supplementary to submission 13*, p. 14.

¹² Department of Social Services and National Disability Insurance Agency, *Submission 13: Supplementary to submission 13*, p. 16.

¹³ Mrs Marie Johnson, *Submission 33*, p. 9.

¹⁴ For example, Mr Graham Taylor, *Submission 35*, p. 9. See also Children and Young People with Disability Australia, *Submission 156*, p. 5; the Hopkins Centre and Law Futures Centre, *Submission 204*, pp. 7–8; Contenance Foundation of Australia, *Submission 220*, p. 1.

¹⁵ For example, Mr Graham Taylor, *Submission 35*, p. 9; Victorian Council of Social Service, *Submission 153*, p. 11. See also Children and Young People with Disability Australia, *Submission 156*, p. 6;

- The proposed model of independent assessments would indeed be 'hard' on participants and thus unfair, particularly for those who were more vulnerable;¹⁶
- The NDIA was proposing to use assessment tools that had not been proven to be reliable and validated for particular groups, particularly Aboriginal and Torres Strait Islanders (see Chapter 5 for further discussion of this issue);¹⁷ and
- The reforms as proposed did not take into account participant goals and aspirations, despite the Productivity Commission explicitly stating that the assessment process 'should not disregard' participants' aspirations.¹⁸

3.15 Other submitters suggested that the Productivity Commission had specifically called for a needs assessment, rather than a functional assessment—that is, that the assessment process should 'identify the supports required to address an individual's reasonable and necessary care and support needs' (Recommendation 7.1).¹⁹ On this point, Inclusion Australia argued that:

The Productivity Commission report recognised there was no single assessment tool suitable for everyone. However, it contained information about several assessment tools that could be part of a 'toolkit', including I-CAN, I-CAP and SIS. Inclusion Australia understands these were rejected by [the NDIA] because they assess support needs rather than levels of function. This is inconsistent with research showing that measuring support needs predicts funding needs better than measuring functioning.²⁰

3.16 Further criticisms of the main reasons for introducing independent assessments that were listed in the Productivity Commission report, as set out at the start of this chapter, are outlined in Chapter 4.

Tune Review report

3.17 Previously, the Government commissioned Mr David Tune AO PSM to review the NDIS Act and determine ways in which NDIS processes could be made simpler. Mr Tune presented his report (the Tune Review report) to the Government in December 2019.

Queenslanders with Disability Network, *Submission 201*, p. 5; the Hopkins Centre and Law Futures Centre, *Submission 204*, pp. 7–8; Contenance Foundation of Australia, *Submission 220*, p. 1.

¹⁶ Advocacy for Inclusion, *Submission 94*, p. 6.

¹⁷ MJD Foundation, *Submission 97*, p. 11.

¹⁸ Productivity Commission, *Disability Care and Support—Volume One*, No. 54, 31 July 2011, p. 308; Uniting NSW ACT, *Submission 129*, p. 11; Victorian Council of Social Service, *Submission 153*, p. 13; Inclusion Australia, *Submission 225*, p. 11.

¹⁹ Occupational Therapy Australia, *Submission 159*, pp. 27–28; Ms Muriel Cummins, *Submission 278*, p. 23; Productivity Commission, *Disability Care and Support—Volume One*, No. 54, 31 July 2011, p. 69.

²⁰ Inclusion Australia, *Submission 225*, p. 17. See also Australian Physiotherapy Association, *Submission 235*, p. 11.

3.18 Chapter 4 of the 2019 Tune Review report addressed what evidence should be used and is currently used to support NDIA decision-making. The report found that standardised 'functional capacity assessments would improve the quality and consistency of NDIA decisions'. It argued that 'robust and evidence-based' functional capacity assessments would lead to the following outcomes:

- Plans would be developed and approved faster;
- Access and planning decisions would be made consistently and directed towards improving functional capacity; and
- Participants would have a reduced administrative burden because they would not need to provide further evidence of functional capacity later in their NDIS journey.²¹

3.19 The Tune Review noted that unclear requirements about what evidence participants need to support access requests and planning, including 'the loose and discretionary way an "assessment" is defined in the legislation', had led to disengagement by people with disability and a large number of 'reviews of access and funding decisions on the basis it was unclear what information was used by the NDIA to make the decision'.²²

3.20 The Tune Review suggested that feedback on the first pilot indicated that 'it is worth implementing nationally for every person with disability who would like to test their access for the NDIS or who require further evidence to support decision-making' in their plans. Further benefits that would result from introducing independent assessments nationally included mitigating the financial barriers that exist for people engaging with the NDIS, as well as a decreased likelihood that participants would need to provide further information or undergo additional assessments for plan reviews. In addition, Local Area Coordinators, it suggested, would be able to focus on linkages with community and mainstream support, goal planning and implementation.²³

3.21 However, the Review noted that such changes would 'require extensive consultation with participants, the disability sector, service providers and the NDIA workforce'. It also argued that the success of independent assessments would largely depend on:

- The willingness of prospective participants and current participants to work with NDIA-approved functional assessors; and

²¹ David Tune AO PSM, *Review of the National Disability Insurance Scheme Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee*, December 2019, pp. 59–60.

²² David Tune AO PSM, *Review of the National Disability Insurance Scheme Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee*, December 2019, pp. 60–61.

²³ David Tune AO PSM, *Review of the National Disability Insurance Scheme Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee*, December 2019, pp. 65–66.

- Those assessors providing truly independent functional capacity assessments, so they would not be perceived as agents of the NDIA or a tool designed to cut supports from participants.²⁴
- 3.22 The Tune Review further highlighted that one of the biggest risks for the success of the program would be disengagement, particularly for Aboriginal and Torres Strait Islanders, people from culturally and linguistically diverse backgrounds and people with psychosocial disability. It called for the NDIA to embed a number of key protections in the rollout of independent assessments, including that:
- Participants be able to choose which NDIA-approved provider in their area undertakes the functional capacity assessment;
 - Participants be given the right to challenge the results of the functional assessment, including the ability to undertake a second assessment or seek some form of arbitration if they are unsatisfied with the assessment, for any reason;
 - NDIA-approved providers be subject to uniform accreditation requirements designed and implemented jointly by the NDIA and appropriate disability representative organisations; and
 - The NDIA provide clear and accessible, publicly available information, including on the NDIS website, on the functional capacity assessments being used by the NDIA and the available panel of providers.²⁵
- 3.23 The Review also noted that in some circumstances, 'it may not always be possible to source an appropriate provider, or...it is more appropriate for non-NDIA approved providers to undertake the assessments'. Further, 'engagement issues need to be monitored closely and the panel of approved providers should be dynamic and evolve to ensure the new approach does not drive disengagement'. As such, the Tune Review recommended that the NDIS Act be amended to require participants or prospective participants to undergo a functional capacity assessment by an NDIA-approved provider 'but that this power be discretionary'.²⁶

The Government's position on the Tune Review

- 3.24 The NDIA in its submission argued that the Tune Review 'reinforced the importance of implementing more equitable assessments to support improved national consistency in decision-making', highlighting the Tune Review's

²⁴ David Tune AO PSM, *Review of the National Disability Insurance Scheme Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee*, December 2019, p. 66.

²⁵ David Tune AO PSM, *Review of the National Disability Insurance Scheme Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee*, December 2019, pp. 66–67.

²⁶ David Tune AO PSM, *Review of the National Disability Insurance Scheme Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee*, December 2019, p. 67.

mentions of inconsistencies and burdens for people with disability in gathering information to support access requests and planning decisions. The submission stated that the 'Government will roll out independent assessments to ensure the scheme is implemented as envisaged'.²⁷

Criticisms of the Government's position on the Tune Review

- 3.25 Media reports and evidence provided to this inquiry criticised the Government's interpretation of the Tune Review report, and the independence of the Review itself.
- 3.26 In April 2021, the *Sydney Morning Herald* suggested, on the basis of leaked emails and draft copies of the Tune Review report, that 'National Disability Insurance Agency officials inserted an entire chapter into the review of the scheme's legislation' (that is, the chapter of the report concerning independent assessments).²⁸ The *Canberra Times* also reported that early drafts 'only recommended that the National Disability Insurance Agency trial independent assessments across the country', with this later replaced by the recommendation that the NDIA have discretionary powers to require a person to undergo an assessment.²⁹
- 3.27 A spokesman for the Minister was quoted as saying that the review was conducted independently by David Tune AO PSM, and 'Mr Tune was provided with a small secretariat team to assist him in compiling the report... but this in no way undermines his independence'.³⁰
- 3.28 Criticisms arising in evidence concerning the Government's interpretation of the Tune Review included that:
- The Tune Review recommended 'discretionary powers for the NDIA to require a prospective participant or participant to undergo an assessment' — and not that independent assessments should be compulsory for all participants and prospective participants;³¹

²⁷ Department of Social Services and National Disability Insurance Agency, *Submission 13*, pp. 5–6.

²⁸ Rob Harris, 'Secret documents show department inserted chapter into NDIS review', *Sydney Morning Herald*, 6 April 2021, [smh.com.au/politics/federal/secret-documents-show-department-inserted-chapter-into-ndis-review-20210402-p57g5s.html](https://www.smh.com.au/politics/federal/secret-documents-show-department-inserted-chapter-into-ndis-review-20210402-p57g5s.html) (accessed 16 July 2021).

²⁹ Dan Jervis-Bardy, 'David Tune NDIS review "tampered" to justify independent assessments: ALP', *The Canberra Times*, 6 April 2021, [canberratimes.com.au/story/7197342/astonished-anger-over-tampered-ndis-review](https://www.canberratimes.com.au/story/7197342/astonished-anger-over-tampered-ndis-review) (accessed 16 July 2021).

³⁰ Rob Harris, 'Secret documents show department inserted chapter into NDIS review', *Sydney Morning Herald*, 6 April 2021, [smh.com.au/politics/federal/secret-documents-show-department-inserted-chapter-into-ndis-review-20210402-p57g5s.html](https://www.smh.com.au/politics/federal/secret-documents-show-department-inserted-chapter-into-ndis-review-20210402-p57g5s.html) (accessed 16 July 2021).

³¹ David Tune AO PSM, *Review of the National Disability Insurance Scheme Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee*, December 2019, p. 67. For example, Autism Advisory and Support Service, *Submission 7*, [p. 2]; Queensland Advocacy Incorporated, *Submission*

- The Tune Review proposed that 'the NDIA should not implement a closed or deliberately limited panel of providers to undertake functional capacity assessments', while the NDIA was proposing to implement a limited panel of assessors from whom people could choose;³²
- The Tune Review strongly pushed for the NDIA to carry out extensive consultation on independent assessments, while the NDIA's consultation was limited because it asked the sector to provide feedback on particular characteristics in the delivery of independent assessments, and not whether they should go ahead or not;³³
- Despite the Tune Review noting that the success of independent assessments will depend on 'assessors providing truly independent functional capacity assessments, so they are not perceived as agents of the NDIA or a tool designed to cut supports from participants', the NDIA intended to 'directly' fund assessor organisations through tender contracts;³⁴ and
- Participants would have been unable to challenge the results of functional capacity assessments, despite the Tune Review suggesting that participants be given this right or the ability to seek some form of arbitration.³⁵

Conclusion

3.29 This chapter has outlined some of the key messages concerning independent assessments in the 2011 Productivity Commission report and the Tune Review report. The following chapter builds on this material by examining the key reasons the NDIA gave for introducing independent assessments—including reasons taken from those two reports—and concerns arising in evidence about these reasons.

8, p. 3; Children and Young People with Disability Australia, *Submission 156*, p. 5; Office of the Public Advocate (Queensland), *Submission 262*, [p. 1].

³² David Tune AO PSM, *Review of the National Disability Insurance Scheme Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee*, December 2019, p. 67. For example, Marathon Health Ltd, *Submission 9*, p. 1.

³³ David Tune AO PSM, *Review of the National Disability Insurance Scheme Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee*, December 2019, p. 66. For example, IDEAS, *Submission 12*, [p. 5].

³⁴ David Tune AO PSM, *Review of the National Disability Insurance Scheme Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee*, December 2019, p. 66. For example, Spinal Life Australia, *Submission 15*, [p. 3].

³⁵ David Tune AO PSM, *Review of the National Disability Insurance Scheme Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee*, December 2019, p. 66. For example, Aboriginal Health Council of South Australia, *Submission 16*, p. 6. See Chapter 7 for further discussion of the issue of review rights.

Chapter 4

Rationale for introducing independent assessments

- 4.1 This chapter sets out the main reasons provided for introducing independent assessments. The NDIA and the Government argued that independent assessments were necessary and would lead to:
- Greater plan flexibility;
 - Improved fairness and equitability in funding decisions and reduced postcode inequality;
 - Reduced potential for 'sympathy bias'; and
 - Improved financial sustainability of the NDIS.
- 4.2 The chapter should be read alongside Chapter 3, which sets out what the Productivity Commission (2011) and what the Tune Review (2019) said about independent assessments.

Increased plan flexibility

- 4.3 The NDIA argued in its submission that independent 'assessments will... ensure participants receive a more flexible plan budget based on their functional capacity to access the services they need and help pursue their individual goals and aspirations'. In particular, independent assessments would inform an overall personalised budget, which would no longer mean the NDIA would make funding decisions about each individual support, and result in participants being 'able to use their funds more flexibly—a critically important feature of the basic design of the NDIS'. Further:

...the rollout of independent assessments is intended to ensure that the people the NDIS was intended to support are supported to become participants and go on to receive a personalised plan budget which they can then use flexibly, with more choice and control.¹

- 4.4 Mr John Walsh AM, a former Associate Commissioner of the 2011 Productivity Commission inquiry, noted that the current system, framed as it is by the 'reasonable and necessary' test, leads to decreased flexibility in plan funding allocation:

The practice of testing every support component and unit at a 'reasonable and necessary' level creates an anathema for both participants and planning staff, and inevitably constrains flexible use of plan budgets, because participants are restricted in their choice and control to items and prices in

¹ Department of Social Services and National Disability Insurance Agency, *Submission 13*, pp. 7, 18. See also Department of Social Services and National Disability Insurance Agency, *Submission 13—Supplementary submission*, p. 15.

the NDIS Support Catalogue...Lack of flexibility as a way of controlling services and cost is a natural consequence of a system without consistent and equitable resource allocation at the package level...There are countless examples of seemingly reasonable purchases (often very inexpensive assistive technology items) being declined by NDIA delegates... to be sometimes replaced by more expensive items which the participant has not chosen.²

What evidence said

4.5 Submitters to the inquiry argued that the tools and the process of independent assessments itself were inflexible and not tailored to individual circumstances.³ For example, 3D Support suggested that it was 'unclear...how Independent Assessments can be defined as more flexible, given they'll be *mandatory*. What's being abandoned here are the ideals of choice and control...'⁴ Similarly, Australian Disorders of the Corpus Callosum (Aus DoCC) argued that:

...the implementation of mandatory assessments with a stranger where a score dictates funding levels and the person has no ability to see, confirm or challenge the information gained, is the absolute opposite of what we would consider empowerment, choice and control or flexibility.⁵

4.6 Many expressed their support for increased plan funding flexibility in itself, though were not supportive of independent assessments in their form proposed.⁶ However, Every Australian Counts questioned 'why this increased flexibility has been tied to the introduction of other reforms such as compulsory assessments. It is not clear why one cannot be done without the other'.⁷ Similarly, Professor Bruce Bonyhady argued at the Melbourne hearing that:

...plan flexibility is absolutely critical, but it is not dependent on independent assessment. Those rules could be got rid of, removed, at a stroke of a pen. In fact we saw that during COVID when participants were allowed to purchase support coordination out of core supports, and clearly

² Mr John Walsh AM, *Submission 175*, p. 4.

³ For example, South Australian West Coast ACCHO Network, *Submission 11*, p. 4; Save our Sons Duchenne Foundation, *Submission 99–Attachment 2*, p. 2.

⁴ 3D Support, *Submission 50*, [p. 2], emphasis in original.

⁵ Aus DoCC, *Submission 95*, [p. 2].

⁶ For example, Every Australian Counts, *Submission 162* p. 47; Lived Experience Australia, *Submission 116*, p. 3; Allied Health Professions Australia, *Submission 158*, [p. 5]; People with Disabilities WA, *Submission 163*, p. 19; The Hopkins Centre and Law Futures Centre, *Submission 204*, p. 7; Peninsula Carer Council, *Submission 208*, p. 4; Brotherhood of St. Laurence, *Submission 211*, p. 3; Queensland Government, *Submission 222*, p. 5.

⁷ Every Australian Counts, *Submission 162* p. 47. See also, for example, Name Withheld, *Submission 234*, [p. 3]; Name Withheld, *Submission 261*, [p. 2]; Ms Muriel Cummins, *Submission 278*, p. 9.

that was so that people could actually have a chance to spend their plans more effectively.⁸

- 4.7 On this point, Mr Walsh argued that 'in the context of scheme sustainability, full flexibility of support packages for participants is critically dependent on the active presence' of independent assessments that would inform reasonable and necessary funding packages, rather than individual support items.⁹
- 4.8 Others were sceptical of the benefits of funding flexibility if this translated into less funds overall for participants' needs.¹⁰ The grandmother of a participant argued that there was 'no advantage of a flexible plan if it is underfunded'.¹¹ Similarly, one participant was concerned that increased plan flexibility would come at the cost of overall funding amounts:

*Every time I have heard the NDIA speak about 'spending flexible funding flexibly' it has been as an attempt to excuse an inadequate total amount of funding for a participant's reasonable and necessary disability supports... There is a lot of talk in the discussion papers about how people will be able to use all their non-fixed funds flexibly. While the blending of funding across the current 15 categories into simply 'flexible' and 'fixed' is a good step in the right direction, having an inadequate funding package based on level of impairment rather than level of disability support actually needed will *not* be 'fixed' by having the ability to spend what funds they receive flexibly.¹²*

- 4.9 Allied Health Professions Australia echoed these concerns, arguing that it appeared clear that a major aim for independent assessments 'and the introduction of flexible budgets, is to increase automation of the planning process to reduce the need for planners to make as many individual decisions about participant plans'.¹³
- 4.10 However, Mr Martin Hoffman, the CEO of the NDIA, identified 'three pillars' to the reforms proposed to the Scheme by the Productivity Commission:

...an overall funding package, fully flexible use of that package and the assessing of that overall funding package with consistent, independent assessment—paid for by the scheme—of capacity, support need and life

⁸ Professor Bruce Bonyhady, Executive Chair and Director, Melbourne Disability Institute, *Proof Committee Hansard*, 23 April 2021, p. 4.

⁹ Mr John Walsh AM, *Submission 175*, p. 5.

¹⁰ For example, Endeavour Special Kids with a Disability, *Submission 63*, p. 2; Ms Shirley Humphris, *Submission 66*, pp. 1, 4; Every Australian Counts, *Submission 162* p. 7; The Hopkins Centre and Law Futures Centre, *Submission 204*, p. 7.

¹¹ Ms Shirley Humphris, *Submission 66*, p. 4. See also Every Australian Counts, *Submission 162* p. 48.

¹² Name Withheld, *Submission 18—Attachment 1*, pp. 12—13, emphasis in original.

¹³ Allied Health Professions Australia, *Submission 158*, [p. 5].

circumstances. The three are inextricably linked, as a way to deliver a modern, progressive disability support service.¹⁴

Improved consistency and fairness in decision-making

4.11 The issue of inconsistent decision-making about what supports and how much to fund in participant plans is not new. The committee has previously examined this issue at length in, for example, the Final Planning Report, tabled in December 2020. The NDIA stated in its submission that inconsistent decision-making and inequity in plan budgets was a key reason for introducing independent assessments, noting that:

...almost half of current NDIS participants have been required to source their own evidence of their functional capacity, which has contributed to inconsistent decisions based on the quality of the evidence provided.

This has meant there is a lot of variability in the amount, type and quality of information people assemble. Furthermore, they have to meet the expense of this themselves...This has also meant those with greater resources (time, money, the support of family) or a better capacity to understand and navigate the complexities of assembling the information can have an advantage over those with fewer resources or who find the process challenging, confusing and frustrating.¹⁵

4.12 In answers to questions on notice, the Minister and the NDIA highlighted quarterly data for the period ending March 2021 showing that people 'with lower socio-economic status on average have lower plan budgets than those with a higher socio-economic status—which suggests those who have greater means have greater access to assessments and reports'. The response also suggested that where 'a person lives has also been shown to influence a person's ability to produce information required to support decisions about their eligibility for the NDIS and their plan funding'.¹⁶

4.13 At the Canberra hearing on 18 May 2021, the Minister for the NDIS argued that 'your postcode and your socioeconomic circumstances absolutely drive the likelihood of your outcome, and that is just not acceptable and it is not fair'.¹⁷

4.14 On 2 August 2021, the Government, in answers to questions on notice, provided the committee with extensive data on the number of participants per postcode and per electorate with the average and plan budget amounts per postcode. This

¹⁴ Mr Martin Hoffman, Chief Executive Officer, National Disability Insurance Agency, *Proof Committee Hansard*, 4 May 2021, p. 12.

¹⁵ Department of Social Services and National Disability Insurance Scheme, *Submission 13*, p. 5. See also Department of Social Services and National Disability Insurance Agency, *Submission 13—Supplementary Submission*, p. 11.

¹⁶ Response to written questions by Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, requested on 25 June 2021, received 2 August 2021, [p. 8].

¹⁷ Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, *Proof Committee Hansard*, 18 May 2021, p. 28.

information has been published on the committee's website. It indicates, for example, that the 27 NDIS participants living in the postcode of 2382, which takes in an outer regional area including the town of Boggabri in New South Wales, had an average plan budget of approximately \$22,481 as at March 2021, while the 117 participants living in the postcode of 2095 (Manly and East Manly in Sydney) had an average plan budget of \$77,340.¹⁸

- 4.15 It should be noted that a key limitation of the postcode data is that it does not include detail about the participants with higher support needs and their families who have moved from rural and remote regions to metropolitan areas to be closer to services on account of the person's disability, particularly because of a lack of services in rural and remote areas.
- 4.16 The NDIA also noted that if a participant is not able to provide evidence of functional capacity through reports that they have sourced themselves, 'the NDIA completes internationally recognised general standardised functional assessments with participants or their representatives'. This approach, it suggested, has resulted 'in inconsistencies and variability in the scope, type and quality of information provided'. The NDIA estimated that those who are able to afford assessments from medical professionals have been spending in aggregate around \$140–\$170 million a year, 'making them out of reach for many', with the results of these assessments 'being influenced by where a person lives or their ability to describe their circumstances and needs'.¹⁹ The NDIA's estimate did not include a per capita or median spend per participant who privately paid for an assessment, so it is difficult to contextualise the aggregate spend.
- 4.17 The NDIA further argued that inconsistencies in information requirements were leading to some participants being categorised as having lower functional capacity subsequent to them receiving supports from the NDIS:

...when looking at the same group of participants over 5 years, the number of participants reporting high function has decreased, while those reporting medium and low function has increased. The NDIA's view is that this is not generally reflective of participants' function decreasing, but rather indicative of the current inconsistent methodology and data collection on functionality. This reflects the importance of independent assessments, to ensure there is a consistent way to assess and understand the needs of participants.²⁰

¹⁸ Response to written questions by Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, requested on 25 June 2021, received 2 August 2021, [pp. 31, 76].

¹⁹ Department of Social Services and National Disability Insurance Scheme, *Submission 13*, pp. 6–7.

²⁰ Department of Social Services and National Disability Insurance Agency, *Submission 13—Supplementary Submission*, p. 11. See also National Disability Insurance Agency, answers to questions on notice, 4 May 2021, [pp. 33–39].

What evidence said

- 4.18 Some submitters acknowledged that independent assessments in themselves could lead to more consistency and fairness in decision-making, subject to certain qualifications.²¹ The Queensland Government, for example, suggested that if 'designed and implemented appropriately and in accordance with the Tune Review recommendation and findings', benefits from the introduction of independent assessments could include 'greater consistency in NDIS decision-making'.²² The Physical Disability Council of NSW was of the opinion that in 'terms of addressing inequities resulting in supports and funding', free assessments would be 'a major benefit for people who otherwise have to pay for specialist reports', although it did 'not support a model based exclusively on [independent assessments]'.²³
- 4.19 Others did not believe that independent assessments alone would lead to greater consistency and fairness in NDIA decisions.²⁴ Some argued that it was planners and LACs who were making inconsistent decisions despite evidence provided by participants²⁵ or that inconsistent decisions were a product of 'fundamental defects of the NDIS ICT Systems, processes and overall operating model as a consequence of the absence of an ethics framework and absence of co-design'.²⁶
- 4.20 Still others questioned whether independent assessments themselves would lead to fair and consistent outcomes as hoped.²⁷ Brain Injury SA suggested that the proposed changes had 'the potential of creating a more complex, inconsistent, and inequitable scheme, driven by a speedy roll-out and lacking sufficient time for trial and feedback', while the Coalition of Disability Advocacy Organisations was of the opinion that the proposed changes could 'further disadvantage those who are already struggling to navigate NDIS processes'. In particular, the latter questioned how an independent assessment in such a short period of time could 'effectively assess not only a person's functional capacity,

²¹ For example, Summer Foundation, *Submission 53*, p. 3.

²² Queensland Government, *Submission 222*, p. 5.

²³ Physical Disability Council of NSW, *Submission 56*, p. 9.

²⁴ For example, Queensland Advocacy Incorporated, *Submission 8*, p. 7; Name Withheld, *Submission 56*, [p. 1]; Victorian Council of Social Service, *Submission 153*, p. 25.

²⁵ For example, Name Withheld, *Submission 18—Attachment 1*, [p. 11]; Name Withheld, *Submission 135*, p. 3; Coalition of Disability Advocacy Organisations, *Submission 194*, p. 26.

²⁶ Ms Marie Johnson, *Submission 33*, p. 3.

²⁷ Rare Voices Australia, *Submission 107*, p. 2; Public Interest Advocacy Centre, *Submission 203*, p. 2; Limbs 4 Life, *Submission 207*, p. 2; Brotherhood of St. Laurence, *Submission 211*, p. 6.

but also their support needs and environmental context', especially those who had complex communication needs, and who had complex circumstances.²⁸

4.21 A further issue raised was whether consistent decision-making is even possible in the context of individual situations, or whether it should be equated with equity given the importance of providing reasonable and necessary supports to each participant, based on their own circumstances. For example, Mr Dougie Herd, the Chair of the ACT Disability Reference Group, argued:

...let me say this as a participant, as an adviser to the ACT government, as somebody who is chief executive of NDIS registered providers supporting 200 people with disability and their families and as somebody who for two years worked for the National Disability Insurance Agency to help launch the scheme 10 years ago: very simply, nobody, nobody is putting me in a box and giving me a score. I'm an individual with rights enshrined by the Parliament here as part of the United Nations Convention on the Rights of Persons with Disabilities, which was ratified by this place, again unanimously. If the National Disability Insurance Scheme now thinks that it is going to give me a score on the basis of the WHODAS 2.0, 36-question test, the National Disability Insurance Agency is wrong—completely and totally wrong.²⁹

4.22 On the question of decreased functioning over time, Associate Professor Kylie Burns from Griffith University pointed to research that suggested 'the process of accessing schemes or common law claims can be so traumatic for some people that it impacts on their health in a negative fashion'. She further noted that while there was not specific research on the impact of the independent assessment process on the functioning of people with disability, there was research indicating that poor processes can have an adverse impact on people's health.³⁰

4.23 Some submitters suggested that inconsistencies in decision-making based on independent assessments could arise because of a range of factors, including:

- the backgrounds of assessors and their expertise in particular disability types;
- whether the person with disability has an appropriate support person present;

²⁸ Brain Injury SA, *Submission 104*, p. 3; Coalition of Disability Advocacy Organisations, *Submission 194*, p. 13.

²⁹ Mr Dougie Herd, Chair, ACT Disability Reference Group, *Proof Committee Hansard*, 20 May 2021, p. 17. See also Ms Emma Davidson, Minister for Disability, Australian Capital Territory Legislative Assembly, who argued: 'So to try to put someone into a box and say, "I can tick these things off on a check-list, and I therefore know you need a budget of this amount, because you're likely to only want to do these kinds of things or access these kinds of services and supports," sounds like a very risky thing to do, given how diverse our community is.' *Proof Committee Hansard*, 20 May 2021, p. 16.

³⁰ Associate Professor Kylie Burns, Law Futures Centre and Hopkins Centre, Griffith University, *Proof Committee Hansard*, 29 June 2021, p. 11.

- what sort of activity the person undertakes during the independent assessment;
- the person's socio-economic status;
- the location of the assessment; and
- whether the assessor can communicate directly with the person (including whether an interpreter is required).³¹

4.24 Every Australian Counts acknowledged the importance of fairness, consistency and decision-making, but queried how independent assessments would achieve these goals:

People with disability and their families want the NDIS to be fair. They also want it to be consistent. But the government and the NDIA have provided no information, modelling or evidence for their claim that the introduction of compulsory assessments and accompanying changes to planning and funding will make things fairer and more consistent. In contrast the NDIA and the government have simply asserted that they will. Given the significant impact that these changes will have on the lives of people with disability, our community is gobsmacked and angry that these changes are being introduced without any evidence to demonstrate they will actually fix the problems we all want to see resolved.³²

4.25 Children and Young People with Disability Australia (CYDA) argued that independent assessments will not solve current issues about fairness in access and planning decisions because:

...the requirements of individuals to seek out and pay for diagnostic reports and other evidence (that is written appropriately) remains unchanged. If anything, the introduction of the independent assessments is just an additional step that people with disability now must take.

The proposed independent assessment process predominately requires individuals to self-report during the assessment and includes input from other stakeholders/informants in individuals' lives. This means people who have access to greater personal resources, such as a formal education, strong English and literacy skills, and strong social networks to inform and support them before and throughout the process, are more likely to understand the process and advocate for themselves appropriately—and there is a risk that these people therefore [will] receive better outcomes through the process as their needs will be more appropriately reflected. This is equally relevant to children and young people with disability, where the parent/caregiver/family's access to resources and familiarity with the service system is likely to be an advantage.³³

³¹ Spinal Cord Injuries Australia, *Submission 39*, p. 6; Government of Western Australia Department of Communities, *Submission 154*, p. 9; Limbs 4 Life, *Submission 207*, p. 11. See also Dandelion House, *Submission 213*, p. 1; Queensland Government, *Submission 222*, p. 20; Amida, *Submission 239*, [pp. 1, 2].

³² Every Australian Counts, *Submission 162*, p. 7.

³³ Children and Young People with Disability Australia, *Submission 156*, p. 15.

- 4.26 CYDA further flagged concerns that the independent assessment model relied 'on the assumption there is a benign and supportive adult or key informant in the lives of each NDIS participant/applicant', and noted that this may not be the case for children and young people in environments such as out of home care, or who do not have adults who have the capacity to support them. CYDA called for further information from the NDIA about how the process would be set up for such participants.³⁴
- 4.27 3D Support drew the committee's attention to an Administrative Appeals Tribunal (AAT) case in 2020, in which the AAT weighed evidence from a participant, Ms Jennifer Ray, from multiple health professionals to support her access request, against a three hour assessment of functional capacity carried out by an occupational therapist who was selected by the NDIA.³⁵ The AAT suggested that the NDIA relied on this assessment without obtaining 'an opinion from a paediatrician, clinical psychologist or a psychiatrist, experienced in the assessment of pervasive developmental disorders'. The AAT found that:

While a functional assessment is certainly of value for a general assessment of whether Mrs Ray met the 'disability' access requirement, this type of therapist is not appropriately qualified, as indicated by the NDIA itself in List A, to provide a precise medical diagnosis for Mrs Ray's condition(s).³⁶

Avoiding sympathy bias

- 4.28 The NDIA in its submission suggested that the potential for a health care professional who has known an individual for a period of time to overstate an individual's needs 'poses a risk for appropriate and equitable decision making'.³⁷ It highlighted the 2011 Productivity Commission report's argument that assessors should 'be independent of the person being assessed to reduce the potential for "sympathy bias"'. The Productivity Commission contended that GPs and others who had previously treated and supported a participant should not undertake assessments, drawing from experiences of Victorian Civil and Administrative Tribunal (VCAT) appeals related to Transport Accident Commission benefit decisions to argue that 'treating professionals are often placed in an invidious position when asked by their patients to make an assessment that determines the person's eligibility for benefits'.³⁸
- 4.29 Many submitters and witnesses to the inquiry questioned the idea that professionals known to a person suffer from 'sympathy bias', and suggested this had little or no research basis. Enable Plus, for example, argued that the section

³⁴ Children and Young People with Disability Australia, *Submission 156*, p. 15.

³⁵ 3D Support, *Submission 50*, [p. 2].

³⁶ Ray and National Disability Insurance Agency [2020] AATA 3452 (8 September 2020), para 47.

³⁷ Department of Social Services and National Disability Insurance Agency, *Submission 13*, p. 5.

³⁸ Productivity Commission, *Disability Care and Support—Volume 1*, August 2011, p. 327.

of the Productivity Commission's report titled 'Maintaining professional objectivity' did not have any references to peer-reviewed research, and a lone study referenced elsewhere in the report concerned 12 support workers, not registered health and allied health practitioners, with the people with disability who were assessed all being in residential care.³⁹

- 4.30 The first Independent Assessment Framework document, released by the NDIA in August 2020, argued that health professionals have the potential for 'sympathy bias' if they have an existing relationship with participants, and referred to an Australian study by Guscia et al which 'found that support measures "may significantly overestimate support needs when raters know they are being used for funding purposes"'.⁴⁰

Response from submitters

- 4.31 Submitters to the inquiry questioned the evidence base and relevance of the Guscia et al study, noting, for example, that it included 'only 29 disabled people surveyed by their support workers, not allied health professionals, with a questionnaire administered two years apart', all within the one residential facility, and that the questionnaires were not the tools that the NDIA had proposed to use.⁴¹
- 4.32 Some suggested that independent assessments would be biased towards an employer (and against participants).⁴² The Hopkins Centre & Law Futures Centre, for example, suggested that particular factors in the independent assessment process, such as short time frames, key performance indicators (KPIs), payment mechanisms and levels of assessor training and expertise could lead to bias.⁴³ Ms Marie Johnson similarly argued that:

...in the effort to avoid 'sympathy bias'—a pejorative statement lacking any evidence—the Independent Assessment introduces biases that are grossly more damaging. That is, dangerous biases driven by the considerable time pressure, KPI pressure and a 'disability agnostic' paradigm that compromises the consideration of the whole person.⁴⁴

³⁹ Enable Plus, *Submission 1*, p. 7.

⁴⁰ NDIS, *Independent Assessment Framework*, August 2020, p. 26, citing Guscia, Harries, Kirby and Nettelbeck 2006, p. 159.

⁴¹ For example, The Hopkins Centre & Law Futures Centre, *Submission 204*, p. 9; Name Withheld, *Submission 31*, [p. 5]; Mr Graham Taylor, *Submission 35*, p. 4; Ms Shirley Humphris, *Submission 66*, p. 3; VALID, *Submission 309*, pp. 21–22; ME/CFS & the NDIS Facebook Group, *Submission 332*, p. 20; Ms Philippa Duell-Piening, *Submission 335*, p. 6. See also Ms Samantha Connor, Private capacity, *Proof Committee Hansard*, 27 April 2021, p. 2.

⁴² E.g. VALID, *Submission 309*, p. 18.

⁴³ The Hopkins Centre & Law Futures Centre, *Submission 204*, p. 9.

⁴⁴ Ms Marie Johnson, *Submission 33*, p. 9.

- 4.33 Others—including allied health professionals—argued that there are already mechanisms in place to regulate sympathy bias and conflicts of interest for allied health professionals, including from their existing regulatory bodies.⁴⁵ Ms Pieta Shakes suggested that sympathy bias was a response by providers to people with disability in recognition of the challenges that many face:

As a clinician, I must comment on the suggestion that provider's reports are misguided through 'sympathy bias'... [T]he statement is...interesting as it suggests to me that there is an awareness that people with a disability face constant systemic challenges and that their providers may be inclined to want to reduce the burden of those challenges. Disability is not something that warrants sympathy or pity. If the supports for disabled people were appropriate without fight, stigma was gone, and the wider society was accessible, the many things the NDIS was to work towards—there could be no claim to 'sympathy bias'.⁴⁶

- 4.34 Some pointed to the benefits of a relationship between allied health professionals and consumers—for example, Allied Health Professions Australia highlighted 'a contrasting view, based on extensive evidence' in the health system and 'extensive research showing the importance of relationships between consumers and health professionals for good health outcomes'.⁴⁷ Mrs Michelle McGarrigle from the Corangamite Reference Group argued that:

I doubt anyone in this room would like their health and their future for the next year to five years to be decided by someone that they've just met on the street as opposed to someone that has worked with them.⁴⁸

- 4.35 One occupational therapist pointed to research indicating the potential for harmful outcomes if assessors were not known to individuals:

International studies have in fact provided evidence of the potential for harmful outcomes when disability assessment is conducted via a point-in-time standardised checklist by a mandated assessor. These harmful

⁴⁵ For example, The Rehabilitation Collective, *Submission 46*, pp. 1–2; Centre for Disability Research and Policy, the University of Sydney, *Submission 54*, [p. 3]; Advocacy for Inclusion, *Submission 94*, p. 9; Exercise and Sports Science Australia, *Submission 96*, p. 7. See also Name Withheld, *Submission 31*, [p. 1]; Ms Pieta Shakes, *Submission 127*, p. 4; Neurological Alliance Australia, *Submission 167*, p. 3; Multiple Sclerosis Australia, *Submission 168*, p. 4; Audiology Australia, *Submission 252*, pp. 4–5; Victorian Mental Illness Awareness Council, *Submission 268*, p. 7; AMPARO Advocacy Inc, *Submission 269*, p. 4; Speech Pathology Australia, *Submission 277*, p. 6; Name Withheld, *Submission 284*, [p. 5].

⁴⁶ Ms Pieta Shakes, *Submission 127*, p. 4.

⁴⁷ Allied Health Professions Australia, *Submission 158*, [pp. 6, 8]. See also Brotherhood of St Laurence, *Submission 211*, p. 8, which argued that differences in assessment results between independent professionals and those known to an individual may reflect 'a deeper understanding of the participant's needs'.

⁴⁸ Mrs Michelle McGarrigle, Member, Corangamite National Disability Insurance Scheme Reference Group, *Proof Committee Hansard*, 4 May 2021, p. 27.

outcomes include increased rates of suicide, increased mental health impacts and increased reliance on prescribed medication (Barr, 2015).⁴⁹

- 4.36 Blind Citizens Australia argued that because some participants or potential participants, such as in rural, remote and hard to reach populations, would have been able to have an assessment done by someone they knew, due to thin markets:

...all participants should be afforded the same opportunity to have a truly robust assessment completed by a professional known to them, who will have greater insight into their functional capacity across time, including day-to-day fluctuations, or even, fluctuations in a more discrete period of a single day. This will ensure that sympathy bias does not lead to unfair advantage for some participants, at the integral expense of all participants having a level playing field.⁵⁰

- 4.37 The Hopkins Centre & Law Futures Centre suggested that 'often there is a tendency to overstate the benefits of standardisation to achieve consistency and social-related values such as equity and fairness'. It called for 'processes that derive comprehensive understanding of complex needs and complex contexts with valid assessment mechanisms and clear values to generate transparent decisions'.⁵¹

- 4.38 Speech Pathology Australia emphasised that allied 'health professionals are specifically trained to use their clinical judgement, in conjunction with assessment tools, as assessment tools are not 100% reliable, even if they are standardised'. It further contended that tools are only one aspect of the assessment process, along with context, contributing factors, background history as well as the clinician's own knowledge and experience.⁵²

Response from the Government

- 4.39 Mr Martin Hoffman, the CEO of the NDIA, told the committee at the hearing in Geelong in May 2021 that the need for objective assessments is:

...not meant to be critical or negative about any given situation or any given professional, at all. It's just a recognition that, where a physician or a therapist or an allied health professional has an ongoing treating relationship, there is the potential for identification with the participant and wanting the best outcome for that. Where that involves a financial decision, the practice around the world for many decades has been to use a form of

⁴⁹ Alison Self Occupational Therapist, *Submission 61*, p. 1, citing B. Barr, D. Taylor-Robinson, D. Stuckler, R. Loopstra, A. Reeves and M. Whitehead, 'First, do no harm': Are disability assessments associated with adverse trends in mental health? A longitudinal ecological study', *J Epidemiol Community Health*, vol. 70, no. 4, 2016, pp. 339–45.

⁵⁰ Blind Citizens Australia, *Submission 38*, pp. 11–12.

⁵¹ The Hopkins Centre & Law Futures Centre, *Submission 204*, p. 8.

⁵² Speech Pathology Australia, *Submission 277*, p. 6.

independent assessment, as recognised right up front in the work of the Productivity Commission.⁵³

- 4.40 In answers to a question on notice concerning sympathy bias, the NDIA provided the committee with an annotated bibliography of ten sources that it suggested emphasised the importance of assessments being carried out by independent assessors (which did not include the Australian study by Guscia et al discussed above).⁵⁴ These sources are summarised in Table 4.1. The committee briefly considered several of these sources, their relevance and the extent to which their conclusions could be applied to the reforms proposed for the NDIS, depending on their context, size and relevance, as outlined below.⁵⁵

The literature on personalised budgets and individualised funding

- 4.41 The study the NDIA cited by Flemington et al, which was a mixed-methods review of 73 other studies of individualised funding in Western countries, involving data for a total of 14,000 people, focused on the impact of individualised funding for people with disability. The review was not concerned with sympathy bias or assessments and did not describe how assessments should be implemented. However, the authors did note that some people with disability may feel a sense of 'guilt' that they are asking for too much, taking funding away from someone else or burdening the system, and suggested that:

This burden and guilt, sometimes reported from recipients of individualised funding, could potentially be avoided if a universal, robust and equitable resource allocation system was in place, whereby every individual is assessed on the same basis, rather than subjective and informal assessment processes often described in the findings reported here.⁵⁶

- 4.42 The study by Carter Anand et al was a review of personalised budgets in government programs in the United Kingdom, the United States, the Netherlands, Canada and Australia, following the Irish Government's announcement of its intention to move to a personalised budget model for

⁵³ Mr Martin Hoffman, Chief Executive Officer, NDIA, *Proof Committee Hansard*, 4 May 2021, p. 5.

⁵⁴ National Disability Insurance Agency, answers to questions on notice, 4 May 2021 (received 18 May 2021), [pp. 40–44].

⁵⁵ Allied Health Professions Australia (AHPA), in a response to the NDIA's annotated bibliography, argued that 'None of the articles provided to the Committee by Mr Hoffman document actual examples of "sympathy bias" by any kind of professional' or 'any assessment of how common the alleged sympathy bias might be in any scheme comparable to the NDIS'. AHPA argued that 'the one country where such an approach has been examined has now abolished independent assessments, at least partly on the grounds that they do not reduce any potential bias'. Allied Health Professions Australia, *Submission 158 – Supplementary submission*, pp. 1, 6.

⁵⁶ Padraic Fleming, Sinead McGilloy, Marian Hernon, Mairead Furlong, Siobhain O'Doherty, Fiona Keogh and Tim Stanton, 'Individualized funding interventions to improve health and social care outcomes for people with a disability: A mixed-methods systematic review', *Campbell Systematic Reviews*, vol. 3, 2019.

people with disabilities. This study was concerned with personalised budgets in different jurisdictions and as such, did not focus on sympathy bias or independent assessments. The study concluded that funding for personalised 'budgets should be based on an objective assessment of people's needs, with the option of individual self-assessment as part of the process'. It also made the following points:

- People with fluctuating conditions have reported problems with self-assessment;
- Difficulties may arise for people with disability in completing the assessment process, and those with intellectual disability need an advocate to help fill out forms and assess; and
- The people being assessed may have concerns that giving the 'wrong' answer could impact on the level of their personal budget.⁵⁷

4.43 Of relevance for the personalised budget model that the Commonwealth Government proposed to implement in tandem with independent assessments (see Chapter 2 of this report for further discussion of the proposed personalised budgets), the study's authors acknowledged the following limitations of a personalised budget model, although it should be noted that this study was published eleven years ago and pre-dated the NDIS:

- The evidence base for personal budgets is limited; thus, it is difficult to draw strong conclusions about the implementation, management and impact of personal budgets;
- Consideration of a personalised budget model should be prefaced with an acknowledgement that a 'one model fits all' approach is unlikely to be adequate; and
- Evidence suggests that personal budgets are not appropriate for everyone with disability.⁵⁸

Literature on independent medical evaluators in legal settings

4.44 The third article that the NDIA cited, by Schofferman, was an opinion piece with some review of the literature on how expert witnesses and independent medical evaluators should manage their objectivity and conflicts of interest in medical-legal work (e.g. trials). The article noted that conflicts of interest are 'inevitable', 'cannot be completely avoided' and 'are not inherently negative', but may 'have the potential to lead to unconscious bias'. It further argued that despite 'striving to be neutral, independent, and unbiased, there remains an unconscious

⁵⁷ Janet Carter Anand, Gavin Davidson, Geraldine Macdonald and Berni Kelly, 'The transition to personal budgets for people with disabilities: A review of practice in specified jurisdictions', Dublin: National Disability Authority, 2012.

⁵⁸ Janet Carter Anand, Gavin Davidson, Geraldine Macdonald and Berni Kelly, 'The transition to personal budgets for people with disabilities: A review of practice in specified jurisdictions', Dublin: National Disability Authority, 2012.

pressure to report results in favor of the employer'. The author suggested that the 'greatest potential for bias exists among physicians who devote the majority of their practice to performing medical-legal evaluations and who perform most or all of these evaluations for one side' in legal cases.⁵⁹

- 4.45 The article by Waldman et al described the differences between treating physicians and physicians called to give expert evidence in legal settings in Canada. The authors suggested that:

...expecting an opinion from an objective or unbiased contracted physician each time documentation regarding medical conditions is required by a third-party is overly onerous and unnecessary. Indeed, in many cases, there is merit to including valuable information from the treating physician who has first-hand information about their patient's diagnosis and the treatment plan. An independent assessor almost universally will request information from the treating physician for this reason. Physicians are professionals and in general can be relied upon to provide an honest opinion...⁶⁰

- 4.46 The article focused on issues that may arise when a treating physician also takes on the role of an expert witness, and suggested that 'under infrequent but important circumstances the bias for the patient inherent in the doctor-patient relationship will impact on the treating physician's ability to assist a decision-maker in a meaningful way'. It argued that the duty of a treating physician is to their patient, while the duty of a medical 'expert is to provide unbiased information to the decision-maker to assist the decision-maker in adjudicating a case'. It also noted that 'there is clear case law that indicates that the duty of an expert is to the decision-maker'. The authors suggested the following processes to assist in managing bias:

- Objective testing to supplement patient interviews and other subjective aspects of the assessment;
- Consideration of all available information with time for a thorough review of that information;
- A thorough explanation of the rationale for the opinion; and
- A stated consideration of the impact on bias.⁶¹

- 4.47 The article suggested that information provided by treating physicians 'can be very important in the decision-making process' and there 'is no reason to discount information provided by treating physicians'. It also noted the

⁵⁹ Jerome Schofferman, 'Opinions and testimony of expert witnesses and independent medical evaluators', *Pain Medicine*, vol. 8, no. 4, 2007, pp. 377, 380.

⁶⁰ Jeffrey Waldman, Tyler Oswald, Eric Johnson and Sarah Brown, 'Independent assessors in contrast to treating physicians as expert witnesses in Canada: Comparing duties and responsibilities', *The Journal of Forensic Psychiatry & Psychology*, vol. 31, no. 4, 2020, pp. 542–543.

⁶¹ Jeffrey Waldman, Tyler Oswald, Eric Johnson and Sarah Brown, 'Independent assessors in contrast to treating physicians as expert witnesses in Canada: Comparing duties and responsibilities', *The Journal of Forensic Psychiatry & Psychology*, vol. 31, no. 4, 2020, pp. 543, 544–545, 550.

limitations of using an independent assessor, including limited patient contact and access to medical information.⁶²

Literature on long-term care and independent assessments in the Netherlands

- 4.48 The article the NDIA cited by Bakx et al examined whether independent assessments impacted the take-up of long-term care in the Netherlands (including among the elderly). The authors noted that 'only very few individuals take up an amount of care that is close to the maximum amount they are eligible for', indicating that 'assessment rules or the assessor's interpretation may be too generous'. The article suggested that the 'limited effect of needs assessment' on the maximum amount of care used by eligible individuals 'in the Netherlands also raised questions about the effectiveness of the independent assessment in other countries'. The authors further acknowledged that independent assessments in some instances 'may effectively block some people from using care altogether', and called for further research in this area. They concluded that variations in uptake between population groups were 'associated with the patient's personal and household characteristics and his or her region of residence'.⁶³
- 4.49 Despite this conclusion, a separate study published by one of the authors of the above article that was published the previous year found 'no evidence that eligibility assessment procedures systematically favor the elderly with higher income', but acknowledged 'evidence of horizontal inequity along other dimensions than income', such as regional disparities. The study did 'not find that higher income, wealthier, or higher educated elderly are able to better navigate the needs assessments procedure'. It also found that 'poorer elderly convert a larger share of their entitlements into actual use'.⁶⁴
- 4.50 The study further noted that 'assessors could make decisions more favorable to some categories of the population', citing other research that found that bureaucrats and case workers in other settings may make decisions that are more favourable for some cohorts of applicants. It acknowledged that there 'is little empirical evidence available on what types of procedures do favor equity in access', but concluded that in the Netherlands at least, 'entrusting the needs

⁶² Jeffrey Waldman, Tyler Oswald, Eric Johnson and Sarah Brown, 'Independent assessors in contrast to treating physicians as expert witnesses in Canada: Comparing duties and responsibilities', *The Journal of Forensic Psychiatry & Psychology*, vol. 31, no. 4, 2020, p. 551.

⁶³ Pieter Bakx, Rudy Douven and Frederik T. Schut, 'Does independent needs assessment limit use of publicly financed long-term care?', *Health Policy*, vol. 125, no. 1, 2021, pp. 44–45.

⁶⁴ This study also examined long-term care in the Netherlands. See Marianne Tenand, Pieter Bakx and Eddy van Doorslaer, 'Eligibility or use? Disentangling the sources of horizontal inequity in home care receipt in the Netherlands', *Health Economics*, vol. 29, no. 10, 2020.

assessment to an independent agency...is effective in limiting socioeconomic inequity' in long term care access.⁶⁵

- 4.51 The final source that the NDIA cited in their annotated bibliography was also authored by two of the authors of the 2021 article by Bakx et al on long-term care in the Netherlands, and was published in 2016. This study examined in detail whether independent assessments may help to offset the risks of supply-side moral hazard (that is, increased demand for health care that may arise when individuals do not have to pay for it). It also discussed the reasons to delegate assessments to independent assessors in long-term care (including aged care and disability care) in the Netherlands. The authors noted that independent assessments and auditing of them are costly and time consuming. However, the main advantage of independent assessments is that they reduce 'the bias in the assessment resulting from provider preferences in recommending a certain treatment'. They found that only 'very few individuals' used 'care close to the full amount or beyond' what they were eligible for.⁶⁶
- 4.52 It should be noted that the authors of the most recent Dutch study argued that 'if independent needs assessment does not impose a binding constraint on [long-term care] use, it is highly unlikely that it reduces moral hazard'. They concluded that 'this would remove an important reason for organizing the independent needs assessment'.⁶⁷ The Netherlands has moved away from a centralised independent needs-assessment model in recent years.

⁶⁵ See Marianne Tenand, Pieter Bakx and Eddy van Doorslaer, 'Eligibility or use? Disentangling the sources of horizontal inequity in home care receipt in the Netherlands', *Health Economics*, vol. 29, no. 10, 2020.

⁶⁶ Pieter Bakx, Rudy Douven and Frederik T. Schut, *Does independent needs assessment limit supply-side moral hazard in long-term care*, CPB Netherlands Bureau for Economic Policy Analysis, CPB Discussion Paper 237, 2016, pp. 3, 7.

⁶⁷ Pieter Bakx, Rudy Douven and Frederik T. Schut, 'Does independent needs assessment limit use of publicly financed long-term care?', *Health Policy*, vol. 125, no. 1, 2021, p. 45.

Table 4.1 Summary of NDIA annotated bibliography on academic literature related to independent assessments

Author	Type of source	Year	Country	Sample size	Relevant limitations
Fleming et al	Mixed-methods systematic review	2019 (reviews studies from 1992–2006)	Europe, the USA, Canada, Australia	73 other studies of individualised funding (involving data for a total of 14,000 people)	This study concerned the impacts of individualised funding models, and was not concerned with independent assessments
Carter Anand et al	Working paper	2012	UK, USA, Canada, the Netherlands, Australia	Not relevant	This study examined how personalised budgets have been implemented by governments in various jurisdictions and made only brief mention of independent assessments
Schofferman	Personal opinion incorporating some review of the literature	2007	Not stated; context appears to be the US	Not relevant	This article concerned independent medical evaluators in medical-legal work (e.g. legal trials), not assessments for disability programs, and acknowledged that it is part-opinion piece
Waldman et al	Review article (theoretical and descriptive)	2020	Canada	Not relevant	This article concerned the role of physicians in civil and criminal proceedings compared with treating physicians, and not assessments for the purposes of government programs

American Academy of Psychiatry and the Law	Practice guidelines by a professional body for practising forensic psychiatry	Adopted 2005	US	Not relevant	A practice guideline for physicians practising forensic psychiatry. However, it briefly mentioned disability evaluations. It stated that 'sensitivity to differences between clinical and legal obligations remains important', and suggested that 'referral to another evaluator is preferable' to a dual role
Productivity Commission	Government report	2011	Australia	Not relevant	See discussion earlier in this chapter
John Walsh AM	Submission to Joint Standing Committee on the NDIS	2021	Australia	Not relevant	This submission set out arguments in favour of an independent assessments regime by the former Associate Commissioner for the 2011 Productivity Commission inquiry
Bakx et al	Cross-sectional study drawing on a nationwide administrative dataset	2021	The Netherlands	600 000 individuals eligible to receive home care in the Netherlands for 13 week periods in 2012	This study focused on whether independent assessments constrained demand for (and influenced take-up of) long-term care in the Netherlands. The majority of individuals eligible for home care were elderly
Tenand et al	Cross-sectional study combining administrative data and survey data	2020	The Netherlands	154 709 individuals	Study concerned the full non-institutionalised elderly population in the Netherlands, and examined a previous system of independent assessments which has since been superseded by new programs

Douven et al	Cross-sectional study using administrative dataset	2016	The Netherlands	592 363 individuals eligible for home care	Included both the elderly and people with disability
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Source: National Disability Insurance Agency, answers to questions on notice, 4 May 2021; Fleming, P., McGilloway, S., Herson, M. et al., 'Individualised funding interventions to improve health and social care outcomes for people with a disability: A mixed-methods systematic review', *Campbell Systematic Reviews*, 2019: 3; Janet Carter Anand, Gavin Davidson, Geraldine Macdonald and Berni Kelly, 'The transition to personal budgets for people with disabilities: A review of practice in specified jurisdictions', Dublin: National Disability Authority, 2012; Jerome Schofferman, 'Opinions and testimony of expert witnesses and independent medical evaluators', *Pain Medicine*, vol. 8, no. 4, 2007; Jeffrey Waldman, Tyler Oswald, Eric Johnson and Sarah Brown, 'Independent assessors in contrast to treating physicians as expert witnesses in Canada: Comparing duties and responsibilities', *The Journal of Forensic Psychiatry & Psychology*, vol. 31, no. 4, 2020; Pieter Bakx, Rudy Douven and Frederik T. Schut, 'Does independent needs assessment limit use of publicly financed long-term care?', *Health Policy*, vol. 125, no. 1, 2021; Marianne Tenand, Pieter Bakx and Eddy van Doorslaer, 'Eligibility or use? Disentangling the sources of horizontal inequity in home care receipt in the Netherlands', *Health Economics*, vol. 29, 2020; Pieter Bakx, Rudy Douven and Frederik T. Schut, 'Does independent needs assessment limit supply-side moral hazard in long-term care', CPB Netherlands Bureau for Economic Policy Analysis, CPB Discussion Paper 237, 2016; Pieter Bakx, Rudy Douven and Frederik T. Schut, 'Does independent needs assessment limit use of publicly financed long-term care?', *Health Policy*, vol. 125, no. 1, 2021; Mr John Walsh AM, Submission 175 to inquiry into independent assessments, Joint Standing Committee on the NDIS; Productivity Commission, *Disability Care and Support—Overview and Recommendations*, No. 54, August 2011; American Academy of Psychiatry and the Law, 'Ethical guidelines for the practice of forensic psychiatry', May 2005, <https://aapl.org/ethics.htm> (accessed 22 July 2021).

Financial sustainability

- 4.54 The current and former Federal ministers for the NDIS consistently argued that independent assessments were essential to ensure the financial sustainability of the NDIS. The Commonwealth portion of funding for the NDIS is taken from the Consolidated Revenue Fund. This cost is partially offset by payments to the Commonwealth from the DisabilityCare Australia Fund (DCAF), which is funded by a permanent increase to the Medicare Levy from 1.5 per cent to 2.0 per cent, which took effect from 1 July 2014. Estimates from the Department of Finance indicate that the Commonwealth will receive \$4 billion per annum from the DCAF from 2020–21 to 2024–25, while estimated total Commonwealth outlays on the NDIS over the same period exceed \$74 billion.¹
- 4.55 One of the general principles of the NDIS Act is that the Ministerial Council, the Minister, the Board, the CEO and any other person or body performing functions and exercising powers under the Act must have regard to 'the need to ensure the financial sustainability of the National Disability Insurance Scheme'. The NDIA is required under legislation 'to manage, and to advise and report on, the financial sustainability of the National Disability Insurance Scheme including by...identifying and managing risks and issues relevant to the financial sustainability' of the NDIS.²
- 4.56 Under the Act, the NDIA is required to include details about the financial sustainability of the NDIS in its Corporate Plans.³ The previous Corporate Plan available to the committee at the time of drafting this report (2020–2024) contained the following specific goals and examples that the NDIA stated would help to ensure 'Scheme costs remain financially sustainable':
- Utilise independent assessments and improve decision-making tools to drive the application of equitable access and consistent reasonable and necessary funding decisions;
 - Address cost escalations that are significantly higher than inflation;
 - Collaborate with state and territory governments to ensure links to broader mainstream and community systems align; and
 - Ensure the Agency operates within the scheme's insurance principles (e.g. invest early, with a focus on lifetime cost).⁴
- 4.57 In its submission, the NDIA acknowledged that public discussion about the introduction of independent assessments had featured 'regular reference to the

¹ Response to written questions by Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, requested on 25 June 2021, received 2 August 2021, [p. 2].

² *National Disability Insurance Scheme Act 2013*, s 4(17)(b) and s 118(1)(b).

³ *National Disability Insurance Scheme Act 2013*, s 177(2)(a).

⁴ NDIS, *Corporate Plan 2020–2024*, p. 30. The NDIA published a new *Corporate Plan 2021–2025* on 31 August 2021.

sustainability of the NDIS'.⁵ In its supplementary submission, it stated that independent assessments will 'form part of how the NDIA will manage the scheme within the parameters of the funding made available by all governments', and outlined further detail about the financial sustainability of the NDIS:

...[I]f recent rates of growth in average payments and new entrants are extrapolated, without mitigating actions, total overall Scheme costs could potentially be in excess of \$40 billion within three years...

Funding for the NDIS is shared between the Commonwealth and state and territory governments, with Commonwealth funding uncapped and the states capped with a 4% annual increase. On current projections, the Commonwealth's contribution will reach more than 61% by 2024–25.

Despite the recent increase in funding, the current trajectory of Scheme costs poses real risks to its long-term sustainability, with both the participant population and average participant budgets and payments increasing well above original projections.⁶

- 4.58 Multiple media sources, whether supportive of independent assessments or not, acknowledged during the course of the inquiry that the financial sustainability of the NDIS is a major concern—with one outlet, for example, calling on this committee to examine this issue in particular.⁷
- 4.59 In 2017, the Productivity Commission reviewed NDIS costs, including 'the sustainability of scheme costs...and how to manage any potential cost overruns'. The Commission stated that it 'examined costs in light of the benefits and impacts of the scheme on the lives of people with disability, and Australians more generally, using a wellbeing framework' and highlighted the importance of considering costs to the community in the context of Scheme outcomes.⁸
- 4.60 The Productivity Commission noted 'an extraordinary level of commitment to the success and sustainability of the NDIS' shared by people with disability and their families, governments, the sector and advocates. It argued that 'the ultimate cap—and test of financial sustainability—is taxpayers' continuing willingness' to pay for the NDIS. It further contended that if 'the financial sustainability of the scheme is given priority over the other objectives of market

⁵ Department of Social Services and National Disability Insurance Agency, *Submission 13*, p. 17.

⁶ Department of Social Services and National Disability Insurance Agency, *Submission 13—Supplementary to submission 13*, pp. 7–8.

⁷ For example, Editorial, 'NDIS needs to be sustainable', *The Australian*, 27 April 2021; Editorial, "Nothing about us without us": The government should include the disabled when reforming the NDIS', *The Age*, 13 July 2021, [theage.com.au/national/nothing-about-us-without-us-the-government-should-include-the-disabled-when-reforming-the-ndis-20210712-p5891e.html](https://www.theage.com.au/national/nothing-about-us-without-us-the-government-should-include-the-disabled-when-reforming-the-ndis-20210712-p5891e.html) (accessed 16 July 2021).

⁸ Productivity Commission, *National Disability Insurance Scheme (NDIS) Costs—Overview*, October 2017, pp. 5–6.

development and participant outcomes, then the scheme's objectives will not be achieved'.⁹

- 4.61 The Productivity Commission noted that the 'NDIA does not have a reserve to manage fluctuations in expenditure'. It referenced the proposed NDIS Savings Fund, which was to receive redirected savings, contributions from NDIS underspends and other sources of funding. The Productivity Commission argued that access to reserves 'allows insurance companies to make upfront investments aimed at reducing scheme costs over the longer term'. It recommended that governments commit 'to providing a pool of reserves for the National Disability Insurance Agency' to help ensure the financial sustainability of the scheme.¹⁰
- 4.62 In August 2019, state and territory treasurers wrote to the Commonwealth Treasurer, the Hon Josh Frydenberg MP, to express their concern about the transparency and financial sustainability of the NDIS. The letter noted that state and territory bilateral agreements required the establishment of an NDIS Reserve Fund in 2019–20, and raised the following concerns:
- The Commonwealth's contribution to the NDIS 'lacks transparency on how it is calculated and adjusted for actual costs over time';
 - 'The Commonwealth may seek to reduce its commitment to the NDIS and to offset its future contributions with unspent contributions'; and
 - There is a 'risk that the Reserve Fund may not be established as intended from both Commonwealth and State and Territory contributions (but instead, mainly consist of State and Territory contributions'.¹¹
- 4.63 The letter called on the Commonwealth to make the following commitments:
- A clear and consistent calculation methodology for Commonwealth NDIS contributions;
 - Greater transparency of future Budget estimates for NDIS payments, including of updated estimates and key NDIS funding parameters (which were under embargo);
 - A reconciliation of variations to NDIS payment estimates in 2018–19;
 - Additional information in monthly NDIS invoices to enable states and territories to conduct their own financial reconciliation to better understand fluctuations in scheme costs; and

⁹ Productivity Commission, *National Disability Insurance Scheme (NDIS) Costs—Overview*, October 2017, pp. 7, 8; and *National Disability Insurance Scheme (NDIS) Costs—Study Report*, p. 305.

¹⁰ Productivity Commission, *National Disability Insurance Scheme (NDIS) Costs—Overview*, October 2017, pp. 44, 45–46, 64.

¹¹ The Hon Rob Lucas MLC, Treasurer of South Australia and Chair of the Board of Treasurers, Letter to the Hon Josh Frydenberg MP, Treasurer, 29 August 2019.

- A quarterly report on the scheme's financial sustainability to the former Disability Reform Council (now Disability Reform Ministers' Meetings) with actuarial forecasts and information on provisions to the NDIA, market sector health and investment strategies, with the full annual financial sustainability report from the Scheme Actuary to be shared as a starting point.¹²

4.64 In answers to questions, the Minister and the NDIA informed the committee on 2 August 2021 that the Government had not established an NDIS Reserve Fund because it has been:

...referred to the Council of Federal Financial Relations (CFFR) as part of the broader review of existing funding arrangements between the Commonwealth and the states.

At the Disability Ministers Meeting of 24 July 2020, state and territory ministers agreed to formally submit advice on the design of the Reserve Fund to CFFR. CFFR will further consider the implementation of the Reserve Fund once states have submitted advice on the design of the Reserve Fund to CFFR, or indicated they will not be doing so.

In the meantime, current arrangements continue whereby unspent NDIS contributions from the Commonwealth and the states remain with the National Disability Insurance Agency.¹³

Concerns raised in evidence

- 4.65 Some submitters argued that the main reason for introducing independent assessments was 'cost cutting' to achieve financial sustainability.¹⁴ Many questioned whether independent assessments would be the best way to achieve financial sustainability while taking into account the other goals of the scheme.¹⁵
- 4.66 Others expressed scepticism about the NDIA's use of data to argue that there are issues with scheme sustainability.¹⁶ For example, Professor Bruce Bonyhady suggested that in the absence of the full financial sustainability reports from the NDIS actuary, which would outline the assumptions underpinning cost drivers, it is 'quite possible that the current concerns about scheme costs might be

¹² The Hon Rob Lucas MLC, Treasurer of South Australia and Chair of the Board of Treasurers, Letter to the Hon Josh Frydenberg MP, Treasurer, 29 August 2019.

¹³ Response to written questions by Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, requested on 25 June 2021, received 2 August 2021, [p. 6].

¹⁴ For example, Aus DoCC, *Submission 95*, [p. 3].

¹⁵ For example, the Australian Autism Alliance, *Submission 160*, p. 2. See also Mr Alan Langford, *Submission 176*, p. 1; Ms Muriel Cummins, *Submission 278*, p. 2.

¹⁶ For example, Victorian Council of Social Service, *Submission 153*, p. 12; Possability, *Submission 245*, pp. 2, 9; Fairer NDIS for All, *Submission 272*, p. 4.

completely misplaced'.¹⁷ The Victorian Council of Social Service argued that the NDIS 'has not been utilising the full amount of its budgeted annual expenditure inclusive of participants plans and there has in fact been a significant under expenditure'.¹⁸

- 4.67 Some submitters flagged concerns that independent assessments would impose additional costs, not just to the NDIA but to other areas as well. Ms Pieta Shakes argued that the introduction of independent assessments would require 'additional financial resources', not only through funding the organisations contracted to provide independent assessments, but also Freedom of Information request and appeals, along with additional costs for services and supports to address increased mental health needs arising from independent assessments.¹⁹
- 4.68 At the Canberra hearing on 20 May 2021, the ACT Minister for Disabilities, Emma Davidson MLA, expressed concerns about the actuarial assumptions underpinning the financial management of the NDIS:

As a key shareholder in the scheme, I've not seen detailed financial statements from the Commonwealth, and I have not had the opportunity to get a detailed understanding of the scheme costs...

I keep hearing about the costs of the scheme and that if we could only look at the detail we'd understand why the government is doing what they're doing, but, frankly, I haven't actually seen that detail, so it's pretty hard for me to speak to.²⁰

- 4.69 The Western Australian Government in its submission called for 'a balanced approach to financial sustainability that supports the best possible participant experience and outcomes, and does not unnecessarily restrict access'. It noted that 'NDIS actuarial estimates of financial sustainability are limited by virtue of a lack of long-term data required to fully inform an insurance model'. The WA Government suggested that further 'evaluation of causes other than evidence of functional capacity, driving the cost of NDIS supports, should be undertaken'. It proposed a focus on the long-term benefits of the NDIS, and argued that comprehensive data modelling and early investment 'to achieve the best long-

¹⁷ Professor Bruce Bonyhady, Executive Chair and Director, Melbourne Disability Institute, *Proof Committee Hansard*, 23 April 2021, p. 4.

¹⁸ Victorian Council of Social Service, *Submission 153*, p. 13.

¹⁹ Ms Pieta Shakes, *Submission 127*, p. 2.

²⁰ Ms Emma Davidson MLA, Minister for Disability, Assistant Minister for Seniors, Veterans, Families and Community Services, Minister for Justice Health, Minister for Mental Health, Australian Capital Territory Legislative Assembly, *Proof Committee Hansard*, 20 May 2021, pp. 13, 15.

term outcomes for people with disability and the community must remain integral to the insurance approach'.²¹

- 4.70 The Victorian Council of Social Service called for 'a range of options and pathways to [be] identified, modelled, costed and tested'. It argued that without such an analysis, 'there cannot be confidence that the selected approach is the best approach'.²² Ms Fiona Sharkie from the Australian Autism Alliance questioned:

...how can we in our collective conscience decide to put 500 000 vulnerable people with disability through a system in which we don't know whether their needs are going to be met and whether the long-term sustainability of the NDIS will be achieved?²³

- 4.71 Young People in Nursing Homes National Alliance called for the Government to focus on broader issues, not just NDIS expenditure, to realise the full benefits of the Scheme:

The judgement by the Productivity Commission in its 2011 report that the NDIS would deliver a net economic benefit to Australia was predicated on the ability of the scheme to unlock efficiencies and reduce duplication in a range of existing government programs. Redesigning the NDIS to only deliver a reduction in its own expenditure and shift costs, while ignoring calls to work with State and Territory jurisdictions and the mainstream service systems they are responsible for to realise these macro-economic benefits, is short sighted and poor economic management. Under such circumstances, the scheme cannot deliver the economic benefit envisaged.²⁴

- 4.72 Ms Catherine McAlpine from Inclusion Australia suggested that one reason average plan budgets may be increasing is because the assumptions made about disability were incorrect, and 'that actually we're now creating a workforce that starts to understand disability. And maybe disability is more complex than people even realised'.²⁵

- 4.73 The Minister for the NDIS at the Canberra hearing on 18 May 2021 gave the committee further detail on the increased costs of the NDIS:

It's a scheme that has been based in its development on a number of assumptions, particularly in relation to numbers of participants and participant costs that have not all proven to be correct. To be quite frank, it is now a scheme that is on an unsustainable growth trajectory at 12 per cent

²¹ Government of Western Australia Department of Communities, *Submission 154*, pp. 3, 5.

²² Victorian Council of Social Service, *Submission 153*, p. 28.

²³ Ms Fiona Sharkie, Co-Chair, Australian Autism Alliance, *Proof Committee Hansard*, 23 April 2021, p. 37.

²⁴ Young People in Nursing Homes National Alliance, *Submission 161*, pp. 11–12.

²⁵ Ms Catherine McAlpine, Chief Executive Officer, Inclusion Australia, *Proof Committee Hansard*, 18 May 2021, p. 43.

per annum. I know that together we've got to find a sustainable growth trajectory so the scheme itself endures for many generations to come.²⁶

4.74 The Minister and the NDIA, in answers to questions on notice provided on 2 August 2021, indicated that increased costs for the NDIS compared with earlier projections, including projections by the Productivity Commission, had occurred because of:

- Participants being allowed to remain in the scheme after reaching the age of 65;
- The inclusion of specialised school transport and personal care in schools;
- The number of children with development delay accessing the scheme;
- The provision of some disability health-related supports;
- The ability of people under 65 who are significantly and permanently disabled because of medical misadventure or general accidents to apply for the NDIS (earlier assumptions assumed that the National Injury Insurance Scheme would be fully implemented by the states);
- Differences in the mix of participants, including higher numbers of children with autism and developmental delay;
- Growth in the number of participants, which is expected to exceed the 2017 Productivity Commission estimates; and
- Higher average expenditure per participant than anticipated.²⁷

4.75 In a speech on 22 July 2021, the Minister explained that the 'costs of the NDIS are now on a trajectory far greater than was foreseen when the Scheme was designed and legislated'. The reasons for this, she stated, were increased average payments per participant and a 'greater number of people entering the Scheme than was initially projected'. She argued that contrary to the assumptions in the 2017 Productivity Commission report, which indicated that per participant costs would increase by about 2.5 per cent per annum, the 'average payment per participant has increase by 12.5 per cent per year for each of the past three years'.²⁸

4.76 The Minister in the same speech further flagged concerns that the NDIS 'is in danger of moving away from the insurance principles on which it was founded', specifically 'around providing early intervention and taking a lifetime approach to supporting participants with serious and permanent disability'. She argued

²⁶ Senator the Hon Reynolds CSC, Minister for the NDIS, *Proof Committee Hansard*, 18 May 2021, p. 21.

²⁷ Response to written questions by Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, requested on 25 June 2021, received 2 August 2021, [pp. 2–3].

²⁸ Senator the Hon Linda Reynolds CSC, 'The future of the NDIS', speech to National Disability Conference—Where to from Here?, 22 July 2021, ministers.dss.gov.au/speeches/7341 (accessed 23 July 2021).

that 'under the insurance approach, we would expect to see costs stabilise or even reduce over the longer term per participant. This hasn't been the case'.²⁹

4.77 The Minister acknowledged a lack of provision for community-based support for people with disability who are not eligible for the NDIS. She contended that:

A functioning community based support system would contribute to the sustainability of the NDIS by ensuring people with disability have improved access to community and mainstream supports as their first point of call.

It would be a tragedy for all four and a half million Australians with disability if the NDIS became their only option.

The services specifically for people with disability, through the NDIS and otherwise, are not and should not be the only focus for improving the lives of people with disability.³⁰

4.78 In answers to questions on notice provided on 2 September 2021, the NDIA stated that officials would be providing state and territory disability ministers, through the Disability Reform Ministers Meetings, with a forward work plan and interim report on the cost drivers and underpinning assumptions of the Annual Financial Sustainability Report in October 2021. A more substantive report is due in December 2021.³¹ The Minister also stated on 3 September 2021 that a task force had been established 'to do a really deep dive into sustainability issues but particularly the cost drivers, the modelling and the assumptions'.³²

4.79 This chapter has examined the key reasons presented by the Government for introducing independent assessments, as well as comments and issues raised about these reasons in evidence, and the research basis that the Government provided to the committee. The committee's views and recommendations concerning the matters raised in this chapter are outlined in Chapter 9.

²⁹ Senator the Hon Linda Reynolds CSC, 'The future of the NDIS', speech to National Disability Conference—Where to from Here?, 22 July 2021, ministers.dss.gov.au/speeches/7341 (accessed 23 July 2021).

³⁰ Senator the Hon Linda Reynolds CSC, 'The future of the NDIS', speech to National Disability Conference—Where to from Here?, 22 July 2021, ministers.dss.gov.au/speeches/7341 (accessed 23 July 2021).

³¹ Department of Social Services and National Disability Insurance Agency, answers to questions on notice, 5 August 2021 (received 2 September 2021), p. [5].

³² Senator the Hon Linda Reynolds CSC, *Proof Committee Hansard—Senate Community Affairs Estimates Committee*, 3 September 2021, p. 72.

Chapter 5

Concerns raised about tools and assessors

- 5.1 This chapter sets out some of the particular concerns raised in the evidence about the tools and assessors proposed for independent assessments. These include:
- Concerns raised by experts about the appropriateness of the tools;
 - Concerns that the tools may not be appropriate to assess impact on function due to certain disability types; and
 - Concerns that the tools may not be appropriate for use with certain cohorts of people with disability.
- 5.2 This chapter should be read alongside Chapter 6 which outlines other concerns raised about independent assessments by people with lived experience of disability and their families. These included what people who went through the trials said about their experience undergoing assessments with the tools, and general concerns that independent assessments and the tools selected would not be accurate for people with fluctuating or episodic conditions.

Appropriateness of the proposed assessment tools

- 5.3 Appendix 1 contains a table outlining key concerns raised by experts about the appropriateness of the specific tools the NDIA selected for independent assessments. These experts included peak organisational bodies for the allied health sector, and occupational therapists who provided name withheld submissions to the inquiry. It should be noted that research regularly identifies concerns about assessment tools, therapies, assistive technology and medicines, and the presence of these concerns does not necessarily mean that the tools are not fit for the purpose for which they were designed.
- 5.4 Broadly, some of the overarching concerns applying to multiple assessment tools included:
- Construct validity—that is, 'the ability of the tool to actually measure what it is intended to measure', with concerns raised about the tools being used to measure functional capacity despite some not being designed for this;¹
 - The tools had not been developed for or validated for use to help determine funding amounts;²

¹ For example, Allied Health Professions Australia, answer to a question on notice, 23 April 2021 (received 28 May 2021), [p. 1]; Name Withheld, *Submission 186*, [pp. 1–2].

² For example, Occupational Therapy Australia, answer to a question on notice, 6 May 2021 (received 21 May 2021), p. 2; Allied Health Professions Australia, answer to a question on notice, 23 April 2021 (received 28 May 2021), [p. 1].

- No evidence exists to suggest that any assessment tool is disability neutral, despite the NDIA stating in its submission that the 'suite of independent assessment tools have been selected to ensure they are disability neutral, so they can be used across all disability types';³
- The tools alone may not sufficiently document the person's disabilities, related comorbidities or risk for disability-related health needs;⁴
- The importance of assessors having appropriate skills, experience and expertise to obtain accurate results—whether in administering the tools, working with particular cohorts, understanding different disability types, or having a sufficient balance of all of the above—because interpretations made by practitioners from different disciplines may vary significantly, and that assessments carried out by allied health professionals acting outside their scope of practice would be 'clinically unsound';⁵
- The importance of assessment tools being informed by reports and other assessments from medical professionals to obtain accurate results;⁶ and
- Many of the tools chosen do not take into account what supports a person already has that may help the person score well and, without which, they may score differently.⁷

5.5 Further detail on these concerns is outlined below, with specific concerns about each of the assessment tools and their appropriateness for certain disability types and cohorts outlined later in this chapter.

Reliability and validity

5.6 Occupational Therapy Australia (OTA), in answers to question on notice, noted that the tools proposed 'have reasonably sound intrinsic measurement properties when used for the purposes for which they were specifically designed'. However, OTA argued that 'their reliability and validity is profoundly compromised when they are used for other purposes'. It further contended that:

OTA does not believe the NDIA is using the measures for the purpose for which they were intended. These tools were not designed to specifically

³ Department of Social Services and National Disability Insurance Agency, *Submission 13*, p. 15. For example, Melbourne Disability Institute, *Submission 152*, pp. 2, 6–7; Occupational Therapy Australia, *Submission 159*, [p. 36]; Name Withheld, *Submission 178*, [p. 4]; Name Withheld, *Submission 186*, [p. 2]; Ms Muriel Cummins, *Submission 278*, p. 15.

⁴ Occupational Therapy Australia, *Submission 159*, p. 18.

⁵ For example, Enable Plus, *Submission 1*, p. 15; Occupational Therapy Australia, *Submission 159*, p. 12.

⁶ For example, Name Withheld, *Submission 185*, p. 2.

⁷ Occupational Therapy Australia, *Submission 159*, p. 18.

assess functional capacity to inform funding decisions or plans, and they lack sufficient relevance, sensitivity or specificity to be used in this way.⁸

- 5.7 OTA argued that no tools except the WHODAS-2 were designed to be used in a 'disability-neutral' manner, and the tools were valid only when used with the particular cohorts for which they were designed. OTA argued that complete 'reliance on self-report tools runs a high risk of under or over-rating functional capacity', and suggested that best practice functional capacity assessment should feature the following:
- Self-report tools;
 - Observational tools;
 - Clinical reasoning and interpretation by appropriately skilled clinician; and
 - The inclusion of carer, participant and existing provider perspectives and cultural considerations.⁹
- 5.8 Enable Plus argued that 'the level where functional impairment occurs is not universally agreed upon'. It also contended that social 'desirability bias using questionnaires and structured interviews can lead to significantly higher ratings of functioning than found using objective measures'.¹⁰
- 5.9 One occupational therapist questioned how an independent assessment could determine adequate funding levels for a participant 'without taking into account all the other reports and assessments completed by the participant's multi-disciplinary team'. They argued that the NDIA would 'only be getting half of the full picture of an individual's circumstances using the assessments in the toolkit'.¹¹
- 5.10 Dr Lauren Rice from the University of Sydney, who had ten years' experience administering Vineland, told the committee that she considered Vineland to be culturally inappropriate for Aboriginal and Torres Strait Islanders, based on experiences trialling Vineland since 2018 in the Fitzroy Valley on fetal alcohol spectrum disorders:

This project has given me firsthand experience of the difficulties in administering informant report measures in remote Aboriginal communities. I have administered both interview form and parent form of the Vineland with hundreds of families in Sydney and now with over 70 families in the Fitzroy Valley. I can confirm that, while this measure works

⁸ Occupational Therapy Australia, answer to a question on notice, 6 May 2021 (received 21 May 2021), p. 1. See also Allied Health Professions Australia, answer to a question on notice, 23 April 2021 (received 28 May 2021), [p. 1]; Vision 2020 Australia, *Submission 296*, p. 11.

⁹ Occupational Therapy Australia, answer to a question on notice, 6 May 2021 (received 21 May 2021), pp. 2, 4.

¹⁰ Enable Plus, *Submission 1*, pp. 5–6, 13.

¹¹ Name Withheld, *Submission 185*, p. 2.

well in Sydney, it's completely culturally inappropriate for use in Aboriginal communities...

I've seen how the Vineland can incorrectly screen out people with a disability from accessing the scheme simply because it's not culturally appropriate. We believe that the only way to create true equity is for government to invest in the development of culturally appropriate tools for use in Aboriginal and Torres Strait Islander communities.¹²

5.11 Dr Rice admitted that her team had chosen 'to administer [Vineland] up here, knowing it doesn't work, just to prove the inappropriateness'. However, she acknowledged that her team 'chose the Vineland because it is the gold standard; it does work well in other places', over the Pedi-CAT which she described as 'psychometrically unsound'. She argued that according to an Australian study, Pedi-CAT 'doesn't measure what it's supposed to measure, and the research has shown that. I'm not quite sure why it was chosen in the first place'.¹³

5.12 Professor Bruce Bonyhady of the Melbourne Disability Institute, who was one of the key architects of the NDIS, provided the committee with detail about the outcomes of a previous NDIA trial of assessment tools:

It became clear that trying to employ a single tool—as I say, WHODAS for adults and PEDI-CAT for children—just didn't give the information that was needed to draw a link between that information and reasonable and necessary supports. Once that became clear, we just abandoned it because there was no point continuing. My key point is that those two tools remain the primary tools...and nothing will have changed between when we did the trial of the support needs assessment tool and now.¹⁴

5.13 In their initial submission to the inquiry, the Department of Social Services and the NDIA referenced academic endorsements of the initial Functional Capacity Assessment Framework paper as support for the approach and tools for independent assessments.¹⁵ Three of the academics subsequently wrote to the committee seeking to contextualise quotes used by the NDIA, arguing that they should not be viewed as an endorsement of the tools or later detailed proposals for independent assessments.¹⁶

Use of WHODAS in the trials

¹² Dr Lauren Rice, Research Fellow, University of Sydney, *Proof Committee Hansard*, 27 April 2021, p. 10.

¹³ Dr Lauren Rice, Research Fellow, University of Sydney, *Proof Committee Hansard*, 27 April 2021, pp. 10–12.

¹⁴ Professor Bruce Bonyhady, Executive Chair and Director, Melbourne Disability Institute, *Proof Committee Hansard*, 23 April 2021, p. 6.

¹⁵ DSS & NDIA joint submission, *Submission 13*, pp. 9–10.

¹⁶ Dr Ros Madden, *Response to Submission 13*, received 12 April 2021; Professor Andrew Whitehouse, *Response to Submission 13*, received 6 May 2021; Professor Valsamma Eapen, *Response to Submission 13*, received 6 May 2021.

5.14 Another occupational therapist reported that according to multiple 'reports from participants who volunteered to partake in the pilot project', the NDIA had changed the WHODAS 2.0 scoring system to a simple yes/no answer, rather than a range between 1 and 5. The occupational therapist argued that because of this, the 'WHODAS 2.0 has therefore lost its validity'.¹⁷ Similarly, Ms Roslyn Davis, an occupational therapist trained in administering the WHODAS, expressed concerns that in the trials, the WHODAS was not 'being administered or scored correctly according to the validated protocols', based on reports from participants that she had read and seen.¹⁸

Importance of assessors' skills, experience and expertise

5.15 The committee also learned that the skills, experience and expertise of assessors may influence assessment outcomes, according to experts. For example, one occupational therapist stated that in her experience, 'there is much better alignment with the instructions on how to complete the questionnaire and with the person's functional ability' if she knows the person or parent/carer and is using a questionnaire like Vineland-3 because:

I can refer back to the instructions, probe and get further information. Someone who does not know the person cannot tell if their responses are unrealistic. They do not realise how much help they give or are given, as they are so used to it. These standardised assessments by self-report or parent report can be so variable and subjective.¹⁹

5.16 Another occupational therapist provided an example of why they believed that the proposed tools would not be suitable for people with reduced cognitive capacity and would need an experienced health professional to administer them:

I asked a client who has autism and chronic fatigue syndrome how much difficulty they have with showering (a question on the WHODAS 2.0) and they said 'some difficulty'. I followed this up with the question how often do you shower? (this question is not on the assessment tool). My client stated 'I try to shower once a week but often go weeks without showering due to my fatigue'. I asked them why they said they only have some difficulty with showering and their answer was 'when I have the energy to shower I only have some difficulty'. This demonstrates that the proposed assessment tools are not suitable for individuals with reduced cognitive capacity. It also demonstrates the need for individuals to be assessed by experienced health professionals working within their scope of practice... An inexperienced health professional may not clarify the answers to the questions they ask... For example, a physiotherapist who is not trained in working with people with psychosocial disability may have taken my client's answers at face value (and scored them 'some difficulty'). This would likely result in my

¹⁷ Name Withheld, *Submission 178*, [p. 7].

¹⁸ Ms Roslyn Davis, *Submission 301*, p. 1.

¹⁹ Ms Lynne Bullen, *Submission 337*, p. 3.

client receiving inadequate funding to obtain support for assistance with showering.²⁰

- 5.17 One submitter, who appeared to be a disability support worker, gave the committee an example of the risks of asking questions without context or expertise, recounting a meeting that their client had with a Local Area Coordinator (LAC):

LAC: Do you have any trouble managing and budgeting?

CLIENT: Oh no, I'm really good with my money and don't overspend.

ME: How much of your income do you keep to spend and how much do you give to your mother.

CLIENT: Oh she gets most of it and I get to spend and budget with \$20 per fortnight

ME: Who pays the rest of your bills then?

CLIENT: Oh Mum does and if I need extra for something we go and buy it together.

Please note the original answer implied a competency that the client just did not have and would have provided an incorrect assessment about the client's ability. It was only because we had a good knowledge of the client's actual situation due to having worked closely with her and her family for over 2 years that we were able to provide that extra insight.

LAC: Do you have any trouble getting out and about in the community?

CLIENT: I get out all the time and go lots of places.

LAC: Have you any problems taking public transport?

CLIENT: I prefer not to but I can take the bus if I need to.

ME: It wasn't always like this remember?

CLIENT: Oh yes I used to be frightened to leave the house even with Mum but working with SUPPORT WORKER I've gotten good at it and am looking to maybe do a TAFE course

ME: Do you go around by yourself?

CLIENT: Oh no I'd be too frightened if Mum, CASE WORKER or COUSIN didn't come with me. I can't remember which buses to take or how to get places although I do know my way around the local shopping centre without help now...²¹

- 5.18 An occupational therapist, who had been involved in comprehensive occupational therapy functional assessments for participants in access applications and as part of ongoing treatment and plan reviews, argued that independent assessments in their proposed form omitted 'key Occupational Therapy professional and best practice components'. The OT argued that best

²⁰ Name Withheld, *Submission 320*, [pp. 1–2].

²¹ Name Withheld, *Submission 348*, [p. 1].

practice should involve liaison 'and collection of background information from caregivers, other health providers, medical reports, discussions with schools, workplaces, disability service provider services or other stakeholders with the person's explicit consent'. The OT further contended that assessments should be carried out by those with expertise in disability types and sufficient experience, suggesting that advertisements had stated new graduates were welcome to apply:

As an Occupational Therapist with over 25 years' clinical experience in psychosocial disability, I would not deem to be the best professional to comprehensively assess someone with a primary physical disability. Neither would I expect a physiotherapist or OT who specialises in physical disability, to fully understand the complexities of someone with a psychosocial disability. And yet, the independent assessments are reportedly being done by any allied health professional, regardless of whether their experience matches the person they are assessing. Despite NDIA documentation stating assessors require 12 months' clinical experience, recent SEEK advertisements for these positions have been recorded stating 'new graduates are welcome to apply'.²²

5.19 Dr Lauren Rice told the committee that even 'in Sydney, I see variation in the way that Vineland is used'. She stated that 'the interview form requires a lot of experience and expertise in understanding disability' and emphasised that the person administering it should have an understanding of the disability involved.²³

5.20 The Marninwarntikura Women's Resource Centre and the University of Sydney raised concerns that professionals' clinical expertise would not be relevant when interpreting whether the scores of independent assessments were valid or reliable:

The proposed Independent Assessment process will minimise reliance on clinical judgement as it will only rely on a total score and not a clinician's interpretation of the validity and reliability of the score. The process will also place what little clinical judgement is still present in the hands of inexperienced professionals. While the model intends to use allied health professionals, measures like the [Vineland Adaptive Behavior Scale] can only be completed by one professional per person with a disability. This means that a physiotherapist, for example, will be asked to assess not only the physical but also the cognitive, social and behavioural functions of an individual despite only being qualified to assess physical function. The physiotherapist's clinical training, experience and judgement is of little

²² Name Withheld, *Submission 349*, [pp. 1, 3].

²³ Dr Lauren Rice, Research Fellow, University of Sydney, *Proof Committee Hansard*, 27 April 2021, p. 11. See also Ms Tasha Alach, Director of Therapy and Clinical Services, Autism Association of Western Australia, *Proof Committee Hansard*, 27 April 2021, p. 34.

relevance when interpreting information about the cognitive, social and behavioural needs.²⁴

- 5.21 The Centre of Research Excellence in Disability and Health expressed concerns about the expertise of those administering assessments that were intended to be used by experts:

Many of the instruments are designed to be undertaken by clinicians specialised in the field. We are aware that participants and families who have already undertaken these assessments have indicated how underqualified many assessors were to assess functioning in areas outside their expertise (e.g., physiotherapist assessing speech). There are no quality assurance processes in place where performance of individual assessors is assessed.²⁵

- 5.22 Scope emphasised the importance of assessors understanding and having experience in particular types of disability to ensure the accuracy of the assessment and its outcomes, for the following reasons:

- Many people with intellectual disability acquiesce because of a desire to please others, the perceived importance of the person asking the questions or because of the complexity of questions; and
- People with Acquired Brain Injury may have poor insight into their disability, which may then impact how they respond to the questions.²⁶

- 5.23 One participant with autism outlined their personal experience in obtaining an assessment of the impact of their autism on their functioning:

I have been seeing an OT and psychologist for over 6 months now and they are both still trying to 'nut out' my overall functioning. I have an unusual pattern of very high and low capabilities across my skills—for this reason, my OT has not yet completed her assessment as she wants it to be as accurate as possible... There are certain aspects in my case that could easily be overlooked in a brief assessment—as a university student my language skills are quite high so people often assume I am high functioning in other areas but I'm not—for example, I still need help to shower myself. People generally make assumptions that either over- or underestimate my abilities.²⁷

Importance of a holistic assessment

- 5.24 The committee also heard that it is important that assessments are conducted in a nuanced and holistic manner. OTA raised concerns about whether those

²⁴ Marninwarntikura Women's Resource Centre and The University of Sydney, *Submission 164—Supplementary submission*, [p. 3].

²⁵ Centre of Research Excellence in Disability and Health, *Submission 197*, p. 5.

²⁶ Scope (Aust) Ltd, *Submission 214*, p. 3.

²⁷ Name withheld, *Submission 23*, [p. 1].

performing assessment would be in breach of their respective profession's code of conduct/ethics, given:

...the deliberately un-clinical nature of checklists requiring nothing more than yes/no answers, and the inability of assessors to apply their powers of clinical reasoning to the often nuanced nature of a person's disability.²⁸

- 5.25 The committee received evidence from the father of a participant with schizophrenia. The father had been a Lifeline counsellor, the participant's mother was a qualified social worker, and the participant's sister had a degree in psychology. The father shared his family's experience completing the WHODAS assessment:

We took our son through that: his mother did it, I did it and his sister did it. We did it completely independently... I have here the collated results of our assessment. The red line at the top is the aggregate family assessment of my son's disability, which is pretty high. The grey-black line at the bottom is his own personal assessment. You can see that there is a huge gap there, which is one indicator of why these tests are not appropriate. We need to delve into the reasons why.

If someone is, say, a paraplegic in a wheelchair and they want to get NDIS support, they are going to answer all the questions openly and show all their disabilities to maximise the chance of getting support. With my son, it is the opposite. For a start, he doesn't have sufficient self-awareness to answer properly. But it goes further than that: he doesn't want to open up. He doesn't want to acknowledge that he's got voices in his head or that his thinking is confused. He hides that. He has been put in hospital against his will. He is terrified of that. He is scared that, if he opens up, he'll be dumped into hospital. So you're not going to get valid responses very often from people with psychotic disorders.²⁹

- 5.26 OTA further called for the NDIA to incorporate support needs assessments as 'an essential step in the determination of participant plans and the budgets that support them' to help participants 'capacity-build, or compensate for the impairment'. It argued that by 'neglecting disability support needs, the NDIA runs the real risk of rendering the assessment process more costly in the long term'.³⁰

- 5.27 Professor Michele Foster from the Hopkins Centre at Griffith University questioned what incentives there would be for independent assessors to seek additional information, suggesting:

It says that they have the discretion to do that, but we would recommend that that needs to be much clearer, for consistency. We see how this could end up being simply a bureaucratic administrative process, and, given the

²⁸ Occupational Therapy Australia, *Submission 159*, p. 26.

²⁹ Mr Peter Kent, Private capacity, *Proof Committee Hansard*, 4 May 2021, p. 42.

³⁰ Occupational Therapy Australia, answer to a question on notice, 6 May 2021 (received 21 May 2021), p. 2.

questions around how independent assessors are funded and what key performance indicators they're going to have, that's questionable.³¹

Qualified support for independent assessment tools

5.28 However, some evidence provided qualified support for some of the tools selected, while raising concerns about how they would be used. For example, the AEIOU Foundation noted one positive aspect of two of the proposed assessment tools:

Encouragingly, consideration of social capacity is included as part of the assessment tools proposed: Pedi-CAT ASD and Vinelands scales. Further information about the weighting of scores would help allay concerns that children with autism do not risk disadvantage under the proposed system.³²

5.29 Exceptional Bonds, while outlining significant concerns about the proposed changes, provided qualified support for some aspects of the reforms:

The use of recommended standardised assessment tools such as WHODAS 2, Vineland 3, PEDICAT provides more consistency in the basis of what a functional assessment needs to include. There is currently a wide variation in the scope and quality of functional assessments that are provided for NDIS participants. Making a consistent requirement for functional assessments to include at least one of the recommended standardised assessment tools provides greater accessibility for planners in understanding a person's level of function and then make informed decisions about level of need for funded supports.³³

5.30 It should be noted that despite this limited support, the submitters mentioned above still did not support the introduction of independent assessments as proposed.

The NDIA's position

5.31 Mr Oliver Bladdek from the NDIA argued that the value of using assessment tools is that they 'are disability agnostic...[and] would be completed equally such that the agency would receive consistently evaluated and assessed information upon which we would make decisions'.³⁴

³¹ Professor Michele Foster, Executive Director, Hopkins Centre, *Proof Committee Hansard*, 29 June 2021, p. 8.

³² AEIOU Foundation, *Submission 310*, p. 5.

³³ Exceptional Bonds, *Submission 215*, pp. 2–3.

³⁴ Mr Oliver Bladdek, Deputy Chief Executive Officer, Design, Digital & Strategy, NDIA, *Proof Committee Hansard*, 18 May 2021, pp. 25–26.

5.32 The NDIA also, in answers to questions on notice, stated that function 'is not the sole basis for determining NDIS plan budgets', with other factors considered including the participant's age, disability type and existing supports.³⁵

Tools may not be appropriate for certain disability types

5.33 Despite selection of the independent assessment tools on the basis that they were 'disability neutral',³⁶ the committee heard that the tools originally proposed for independent assessments were likely to be inappropriate in particular ways for people with certain disability types, including psychosocial disability, episodic disabilities, and rare and degenerative disabilities.

Psychosocial and episodic disabilities

5.34 Specific concerns were raised in relation to some of the proposed assessment tools in the context of psychosocial disability. A number of these broad concerns were captured by the Queensland Government in its submission:

Expert Queensland clinicians have assessed the proposed tools for relevance for people with psychosocial disability and concluded that, for adults and young people over 7 years of age:

- these tools focus on activity impairments, which are not necessarily the main impairments in psychosocial disability;
- the proposed independent assessment process involving an unfamiliar tester and short assessment time, and being based on self-reporting, is not conducive to accurate assessments of people with psychosocial disability;
- these tools require a good source of collateral information from someone with working knowledge of the person; and
- these tools require very careful training and interpretation, but assessments are often undertaken by people with limited training and limited experience in psychosocial disability and the unique complexities and barriers specific to a mental health context.³⁷

5.35 Others raised concerns about tools that required a participant to self-report. The Australian Association of Psychologists argued that self-reporting can be unreliable, particularly for people with psychosocial disability, who may try to mask or even deny their disability,³⁸ and others raised concerns about self-reporting tools for people with other disabilities that affect cognitive function.³⁹

³⁵ National Disability Insurance Agency, answers to questions on notice, 18 and 24 May 2021 (received 29 June 2021), [p. 2].

³⁶ DSS & NDIA joint submission, *Submission 13*, p. 15.

³⁷ Queensland Government, *Submission 222*, p. 42.

³⁸ See Australian Association of Psychologists Inc, *Submission 205*, pp. 5, 7.

³⁹ See Tandem Carers, *Submission 98*, p. 4; mOTivations Warragul, *Submission 273*, p. 3; Multiple Sclerosis Australia, *Submission 168*, p. 8; Prader-Willi Syndrome Australia, *Submission 259*, p. 3.

As also described earlier in this chapter, submitters further noted that other tools, such as the Vineland-3, contained questions that may be difficult for people with psychosocial disability or reduced cognitive ability to understand.⁴⁰

- 5.36 Further, any 'point-in-time' assessment tool, when not reviewed in the context of a person's day-to-day life, was also considered inappropriate to capture the full extent of psychosocial disabilities, as the episodic nature of many psychosocial disabilities meant that there was no guarantee that an assessor would see someone on a 'good' or 'bad' day:

Psychosocial disability, or mental illness, is often fluctuating, so people will have periods of relative wellness and periods where they are very 'disabled' by the symptoms of their condition. People with psychosocial disability who are relatively well at the time of the assessment may also worry that they are not 'disabled' enough on the day of the assessment to be eligible. This may also be the case for other people with disability that is not psychosocial in origin.⁴¹

- 5.37 The Department of Social Services and the NDIA had argued that the tools had been assessed in developing the framework to ensure, among other factors, that they were 'questionnaire-based, to avoid capturing a person's moment-in-time function, for example on a "good day" or with an unfamiliar assessor'.⁴² However, the Western Australian Association for Mental Health noted, in relation to the WHODAS 2.0, that this tool:

...only looks at the last 30 days of the individual's life (prior to assessment) and therefore cannot adequately capture the fluctuating and episodic nature of psychosocial disability in such a short period of time.⁴³

- 5.38 The questionnaire based approach posed further concerns for people with psychosocial disability. Recovery in Mind noted the potential for re-traumatisation of participants who are asked to repeat their experiences of disability during an assessment:

The expectation that a participant meets with a mandated assessor to complete standardised assessment tools carries a significant risk and may lead to distress and re-traumatisation. Recounting personal stories and highlighting deficits can exacerbate symptoms. Only highly skilled therapists with knowledge and training in trauma informed care should be conducting assessments for participants with psychosocial disability.⁴⁴

⁴⁰ Ms Carolyn Fitzgibbon, *Submission 108*, p. 2. See also Muscular Dystrophy *Submission 249*, p. 6.

⁴¹ Centre for Disability Research and Policy, *Submission 54*, [p. 3].

⁴² DSS & NDIA joint submission, *Submission 13*, p. 9.

⁴³ Western Australia Association for Mental Health, *Submission 10*, [p. 3].

⁴⁴ Recovery in Mind, *Submission 42*, p. 4.

5.39 In addition to particular concerns related to the proposed tools, submitters also raised concerns that the proposed assessments would cause significant distress for people with psychosocial disability, and may lead to their disengagement with the NDIS as a whole. Particular concerns were raised in relation to the assessors being people unknown to participants, noting that many people with psychosocial disabilities may have also experienced trauma as a result of experiences with the healthcare system. For example, the Queensland Government noted:

Many people with psychosocial disability have histories of mandatory treatment and involuntary hospitalisation, or experiences with assessments delivered by unknown professionals that have resulted in loss of freedom or self-determination. Given this context, independent assessments have the potential to be a highly stressful, even traumatic, experience for this cohort, who may consequently withdraw from the process. Also, people with psychosocial disability may not have a support network able to organise their independent assessment, or to liaise with an organisation to arrange this, resulting in even less access to the NDIS for this already under-represented group.⁴⁵

5.40 Suggestions for a model of assessing function that may be more appropriate for people with psychosocial disabilities included:

- Promoting choice for participants, including by introducing optional, rather than mandatory assessments, and allowing people to choose to have an assessment done by their current treating health professionals;⁴⁶
- Tailoring approaches to people with psychosocial disability, including:
 - Ensuring tools used are appropriate for assessing functional capacity of people with psychosocial disabilities;⁴⁷
 - Ensuring that people conducting assessments have specific skills and experience with psychosocial disability;⁴⁸
 - Taking a recovery-oriented and trauma-informed approach to working with people with psychosocial disability;⁴⁹ and

⁴⁵ Queensland Government, *Submission 222*, p. 41.

⁴⁶ Mental Health Australia, Community Mental Health Australia & Mental Illness Fellowship of Australia, *Submission 240*, p. 3; New South Wales Government, *Submission 275*, p. 14; Consumers of Mental Health WA Inc, *Submission 51*, p. 4.

⁴⁷ See, for example, Lived Experience Australia, *Submission 116*, p. 4.

⁴⁸ Mental Illness Fellowship Australia, *Submission 309*, p. 3; See also Australian Association of Psychologists Inc., *Submission 205*, p. 5. Queensland Government, *Submission 222*, p. 45.

⁴⁹ Mental Health Carers Australia, *Submission 328*, p. 4.

- Providing for people with psychosocial disabilities to undertake preliminary interviews with assessors, which could be followed-up with referrals to appropriately qualified practitioners for complex cases.⁵⁰

Rare and degenerative disabilities

5.41 The committee heard independent assessments would exacerbate existing problems for people with rare and degenerative disabilities in accessing the NDIS arising from the lack of understanding of the implications of rare and degenerative conditions, including that people already struggle to find health practitioners who have knowledge of and/or expertise in their conditions.⁵¹

5.42 The qualifications and experience of assessors were seen as a risk to inaccurate assessments,⁵² and the tools proposed were considered to lack the nuance required to take into account the context and complexities of rare and degenerative conditions.⁵³ Rare Voices Australia explained:

Rare diseases are often complex, progressive, multi-system disorders with highly variable presentations from person-to-person. They can also be characterised by extreme fluctuations in symptoms. They cannot be adequately responded to with time limited, standardised assessment by anyone without specialised knowledge of both the disease and the individual.⁵⁴

5.43 Similar to concerns raised in relation to episodic and psychosocial disabilities, the fluctuating nature of some rare, and especially progressive or degenerative, conditions prompted concerns about assessing a person with disability at a single point in time. For example, in relation to multiple sclerosis, MS Australia explained:

MS is often unpredictable and fluctuating, so, as outlined above, it is essential that the assessment of the individual is conducted over multiple sessions to gain an accurate understanding of the functional impacts for the individual. Assessing an individual's capacity as if it is a fixed, observable fact will not lead to accurate reporting or successful outcomes.⁵⁵

⁵⁰ Recovery in Mind, *Submission 42*, p. 4; Australian Psychological Society, *Submission 157*, p. 8.

⁵¹ Rare Voices Australia, *Submission 107*, p. 2. See also HSP Research Foundation, *Submission 6*, p. 1; Save our Sons Duchenne Foundation, *Submission 99*, p. 5; SWAN Australia, *Submission 202*, pp. 5, 15; Prader-Willi Syndrome Australia, *Submission 259*, p. 3; Cystic Fibrosis Community Care, *Submission 266*, p. 1; ME/CFS Australia, *Submission 317*, pp 3-4. Submitters also noted that these difficulties are exacerbated in regional and rural areas. See, for example, Save our Sons Duchenne, *Submission 99*, pp. 5, 24.

⁵² See, for example Multiple Sclerosis Australia, *Submission 168*, p. 7.

⁵³ Syndromes Without A Name (SWAN) Australia, *Submission 202*, p. 21.

⁵⁴ Rare Voices Australia, *Submission 107*, p. 2. See also ME/CFS Australia, *Submission 317*, pp. 25–26.

⁵⁵ Multiple Sclerosis Australia, *Submission 168*, p. 8.

5.44 Submitters suggested that the proposed model could be improved for people with rare and degenerative conditions if people with these conditions were allowed to provide information on their functional capacity provided by their existing health care team.⁵⁶ Other submitters also proposed using a specific cohort of assessors who would only undertake assessments of people with rare diseases,⁵⁷ and that the NDIA should give clearer guidance or guidelines to allied health practitioners working with people with these conditions.⁵⁸

The NDIA's position

5.45 After receiving feedback that highlighted some of these issues in an early consultation paper on the access and eligibility policy for independent assessments, the NDIA clarified that the proposed approach would use a range of assessment tools, and could take place over multiple sessions:

Depending on their age and disability, new and existing NDIS participants will undertake 3 or 4 of these tools as part of their independent assessment. Depending on how many assessments you need, your assessment will probably take around 3 hours. It can also take place over a number of days. It isn't something we want to rush.⁵⁹

5.46 During the committee's public hearing in Canberra in May 2021, the Minister for the NDIS, Senator the Hon. Linda Reynolds CSC, told the committee that she had been reflecting on concerns raised about independent assessments and highlighted that concerns had been raised particularly in relation to assessments for people with psychosocial disabilities.⁶⁰

5.47 As outlined in Chapter 2, immediately prior to the announcement that independent assessments would not proceed, the NDIA flagged 'a preliminary list of changes' to independent assessments as they were conducted in the pilots, including tailored approaches to assessments for people who have a history of trauma or abuse.⁶¹

Tools may not be appropriate for certain cohorts of people with disability

People with disability in rural or remote areas

⁵⁶ Rare Voices Australia, *Submission 107*, p. 2.

⁵⁷ Save our Sons Duchenne, *Submission 99*, p. 15.

⁵⁸ Multiple Sclerosis Australia, *Submission 168*, p. 4.

⁵⁹ NDIA, *You Said, We Heard: Access and Eligibility Policy with Independent Assessments*, March 2021, p. 25.

⁶⁰ Senator the Hon. Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, *Proof Committee Hansard*, 18 May 2021, p. 22.

⁶¹ NDIA, *Interim NDIA Paper: Potential Improvements to Independent Assessments*, July 2021, pp. 7–8.

5.48 The committee heard that there were a number of concerns with respect to the suitability of the proposed model for people living in rural or remote areas. SWAN Australia argued that some of the proposed assessment tools may be inappropriate for children in rural or remote areas:

Some of the questions in the assessments relate to things like: shopping carts, traffic lights and swimming pools which a child may never have been exposed to if they live in a rural [or remote] area. We do not feel the selected independent assessments tools are the most appropriate for people living in rural and remote areas as there will be a number of questions that will be irrelevant to this cohort of participants.⁶²

5.49 The committee also heard that increased stigma around mental health in rural and remote areas may exacerbate difficulties for people with psychosocial disabilities posed by the proposed model, including around having a stranger assess a person.⁶³

5.50 Suggestions for a model for functional assessments that would better serve the needs of people with disability living in rural and remote areas included providing extra funding for assessors to travel to rural and remote areas,⁶⁴ and looking to existing programs that have had success in delivering services in these areas. For example, Occupational Therapy Australia suggested:

The Better Access to Mental Health (BAMH) initiative is an example of a program with proven capacity to deliver equitable access to mental health professionals in rural and socioeconomically disadvantaged areas. A 2011 study found very similar rates of service use for capital cities, other metropolitan areas and rural centres. When socioeconomic disadvantage was examined, rates were around 10 percent lower in the most disadvantaged areas when compared with the least disadvantaged.⁶⁵

Aboriginal and Torres Strait Islander people with disability

5.51 In their submission, the Department of Social Services and the NDIA stated that assessors will 'have culturally safe approaches suitable for Aboriginal and Torres Strait Islander people, and take into account requirements for people from culturally and linguistically diverse backgrounds'.⁶⁶

5.52 However, submitters noted that the information that had been provided about the proposed model did not explain how assessments would be conducted in a culturally safe way.⁶⁷ Concerns about lack of cultural safety were also raised in relation to questions of whether the proposed assessment tools were

⁶² SWAN Australia, *Submission 202*, p. 24.

⁶³ Western Australia Association for Mental Health, *Submission 10*, [p. 7].

⁶⁴ New South Wales Government, *Submission 275*, p. 13.

⁶⁵ Occupational Therapy Australia, *Submission 159*, p. 14.

⁶⁶ Department of Social Services and National Disability Insurance Agency, *Submission 13*, p. 14.

⁶⁷ Victorian Aboriginal Community Controlled Health Organisation, *Submission 60*, p. 2.

appropriate for Aboriginal and Torres Strait Islander people with disability, particularly in remote communities. Dr Lauren Rice, Research Fellow, University of Sydney, explained that was particularly the case with the Vineland test, as set out earlier in this chapter.⁶⁸

- 5.53 The committee also received evidence that other proposed tools were not appropriate for use in remote Aboriginal and Torres Strait Islander communities, including because the questions used are complex and sometimes culturally inappropriate,⁶⁹ and that there were a range of reasons why informants being questioned using the tools may not provide accurate responses.⁷⁰
- 5.54 Submitters pointed to the need for any assessment tools used to assess functional capacity in this space to be culturally appropriate and psychometrically valid.⁷¹ The Marninwarntikura Women's Resource Centre and The University of Sydney further argued that assessors working with Aboriginal and Torres Strait Islander people with disabilities should also be especially skilled, not just in cultural safety, but also to understand how to consider information about a person from different and multiple sources:

People with a disability in remote Aboriginal communities are also less likely to have just one person as a primary caregiver who can complete an informant report interview, rather multiple family members care for them. So independent assessors need to be more experienced than in urban settings as they need to have the skills to gather information from multiple people who likely have little understanding of disability or disability services.⁷²

- 5.55 However, noting that there are already numerous barriers faced by Aboriginal and Torres Strait Islander people with disability in accessing the NDIS,⁷³ submitters were worried that the proposed model for independent assessments would compound these existing barriers. The committee heard that in remote communities these barriers include:

...a large number of people with chronic, complex health and mental health conditions; fewer people with a confirmed diagnosis due to the limited health services, which makes it difficult to prove the permanency of the disability; poor health, mental health and disability literacy, making it difficult to discuss these topics; English as a second or often third language; a history of negative experience with government services; higher mobility,

⁶⁸ Dr Lauren Rice, Research Fellow, University of Sydney, *Committee Hansard*, 27 April 2021, p. 10.

⁶⁹ Marninwarntikura Women's Resource Centre and The University of Sydney, *Submission 164, Supplementary submission 1*, p. 2.

⁷⁰ Marninwarntikura Women's Resource Centre and The University of Sydney, *Submission 164*, p. 6.

⁷¹ Marninwarntikura Women's Resource Centre and The University of Sydney, *Submission 164*, p. 5.

⁷² Marninwarntikura Women's Resource Centre and The University of Sydney, *Submission 164*, p. 4.

⁷³ Institute for Urban Indigenous Health, *Submission 133*, p. 4.

causing logistical challenges in connecting with people; and poor access to phone and reception, making telecare without support of community navigators impossible.⁷⁴

- 5.56 The committee notes that the review of the second pilot of independent assessments indicated overall satisfaction that questions asked were culturally appropriate. However, the small number of survey respondents from Aboriginal and Torres Strait Islander backgrounds (fewer than 30) suggests that further evidence would be required to remediate the concerns raised by submitters and witnesses who gave evidence for the inquiry.⁷⁵

People with disability from diverse cultural and linguistic backgrounds

- 5.57 The availability of accessible, free functional assessments was seen as something that, if implemented well, could mitigate existing barriers to accessing the NDIS faced by people from culturally and linguistically diverse (CALD) backgrounds and especially new migrants from refugee backgrounds.⁷⁶
- 5.58 The committee heard that people from CALD backgrounds were 7 per cent more likely to be found ineligible for NDIS,⁷⁷ and that barriers faced by people from CALD backgrounds in accessing the NDIS included lack of engagement with mainstream service providers, stigma around disability, increased isolation, and lack of access to interpreting and translation services.⁷⁸ Additional barriers in accessing and fully benefitting from the NDIS were also identified for people from refugee backgrounds and newly arrived migrants.⁷⁹
- 5.59 While recognising that some form of accessible assessment model could be helpful for CALD communities, submitters raised a number of concerns in relation to the independent assessment model as proposed, including that independent assessments would exacerbate the existing barriers faced by CALD communities in accessing and using the NDIS.⁸⁰
- 5.60 In particular, a number of submitters raised concerns about the cultural validation of the tools,⁸¹ noting concerns about the use of the various

⁷⁴ Dr Lauren Rice, Research Fellow, University of Sydney, *Proof Committee Hansard*, 27 April 2021, p. 10.

⁷⁵ See National Disability Insurance Agency Research and Evaluation Branch, *Interim Evaluation Report: Independent Assessment Pilot 2*, July 2021, p. 15.

⁷⁶ Associate Professor Georgia Paxton, Member, Refugee Health Network of Australia, *Proof Committee Hansard*, 29 June 2021, pp. 18, 20.

⁷⁷ Ethnic Communities' Council of Victoria, *Submission 209*, p. 3.

⁷⁸ Nihal Iscel, *Submission 143*, [p. 2].

⁷⁹ Refugee Health Network of Australia, *Submission 232*, p. 1.

⁸⁰ Ethnic Communities' Council of Victoria, *Submission 209*, p. 5.

⁸¹ Ethnic Communities' Council of Victoria, *Submission 209*, p. 5; Australian Psychological Society, *Submission 157*, p. 5.

questionnaires for people who have limited English and who are from diverse cultural backgrounds.⁸² As explained by AMPARO Advocacy:

The use of standardised assessment tools and approaches may not consider the cultural context, including beliefs, values, language, and literacy of the person, nor adequately adjust for previous trauma and other life experiences.⁸³

5.61 Ethnic Communities' Council of Victoria also noted that some of the assessment questions could be seen as disrespectful and confronting, for example questions about financial literacy or personal care.⁸⁴ The Migrant Resource Centre Northern Tasmania further noted that people from CALD backgrounds may be reluctant to talk about their problems.⁸⁵ Numerous submitters also stated that telehealth or virtual assessments were not appropriate for people for whom English is not their first language.⁸⁶

5.62 The NDIA indicated that participants would be able to be matched with assessors who spoke their language, or if this was not possible, that an interpreter would be provided.⁸⁷ However, the committee also heard that there are a range of complexities around using interpreters in applying the assessment tools that had not been addressed. For example, Uniting NSW ACT noted that some people from CALD backgrounds in small communities may be reluctant to speak through interpreters, including for fear that interpreters would divulge information about a person's disability and increase stigma.⁸⁸ As described by AMPARO Advocacy, people therefore needed to be given a choice of interpreter:

Access to preferred interpreters, if requested, is essential if assessments are to be accurate and comprehensive. People will not talk about highly personal information with an interpreter who is: a community member they do not trust / who is the wrong gender / who speaks the wrong dialect / who is from an opposing community or perhaps the same small community / or who is an extended family member etc...⁸⁹

⁸² AMPARO Advocacy Inc, *Submission 269*, p. 5; see also Mr Siyat Hillow Abdi, Systemic Advocate, Ethnic Disability Advocacy Centre, *Committee Hansard*, 27 April 2021, p. 26.

⁸³ AMPARO Advocacy Inc, *Submission 269*, p. 5; see also Mr Siyat Hillow Abdi, Systemic Advocate Ethnic Disability Advocacy Centre, *Committee Hansard*, 27 April 2021, p. 25.

⁸⁴ Ethnic Communities' Council of Victoria, *Submission 209*, pp. 4–5.

⁸⁵ Migrant Resource Centre Northern Tasmania, *Submission 58*, [p. 2].

⁸⁶ See, for example, Migrant Resource Centre Northern Tasmania, *Submission 58*, p. 2; Maurice Blackburn Lawyers, *Submission 199*, p. 15.

⁸⁷ Department of Social Services and National Disability Insurance Agency, *Submission 13*, p. 14.

⁸⁸ Uniting NSW ACT, *Submission 129*, p. 14.

⁸⁹ AMPARO Advocacy Inc, *Submission 269*, p. 6.

- 5.63 Further concerns about how interpreters would be used, and how people from CALD backgrounds may be reluctant to engage with the assessment process, were echoed by the NSW Government:

While the tender documents indicate that interpreters will be available, it is important to understand that many social constructs do not easily translate across cultural boundaries. For example, constructs of confidentiality are different in different cultures. In many cases, it will be a family member responding to a request for the person with disability to undergo an independent assessment.

Many people will be reluctant to engage in the independent assessment process, due to distrust of government agencies. This is likely to be exacerbated, for example, for people who have fled their home countries due to persecution by government agencies.

There is also a risk that people from CALD communities will under-report difficulties with daily tasks due to stigma. In some cultures, the concept of disability is associated with shame, guilt or punishment.⁹⁰

- 5.64 The Refugee Health Network of Australia (RHeaNA) raised further concerns about a lack of clarity in the proposed model around how the use of interpreters would be funded for independent assessments.⁹¹ Ms Donata Sackey, Member of RHeaNA, explained:

Access to accredited interpreters is fundamental to accessing any of these services—health, legal or disability services. We have excellent translating and interpreting services in Australia. I think we're one of the unique countries in the world to do this. However, there are emerging gaps in that system, in that there are issues around maintaining and engaging interpreters in a professional way. That is due to how interpreters are remunerated and how they're engaged in our system.⁹²

- 5.65 Submitters and witnesses suggested numerous ways that the proposed model could be amended to help prevent disadvantage for people from CALD backgrounds.
- 5.66 RHeaNA emphasised the need for cultural validation of assessment tools,⁹³ and allowing people undergoing an assessment to bring along an appropriate support person, such as a case worker.⁹⁴ The Ethnic Communities' Council of Victoria argued that the NDIA or persons undertaking assessments should provide information to allow families to prepare for assessments, and offer a

⁹⁰ New South Wales Government, *Submission 275*, p. 13.

⁹¹ Refugee Health Network of Australia, *Submission 232*, p. 2, and Ms Donata Sackey, Member, Refugee Health Network of Australia, *Proof Committee Hansard*, 29 June 2021, p. 18.

⁹² Ms Donata Sackey, Member, Refugee Health Network of Australia, *Proof Committee Hansard*, 29 June 2021, p. 20.

⁹³ Refugee Health Network of Australia, *Submission 232*, p. 4.

⁹⁴ Migrant Resource Centre Northern Tasmania, *Submission 58*, [p. 4].

translated copy of the assessment report to the person with a disability or their family.⁹⁵

5.67 The committee also heard that assessments should not simply rely on the outcomes of the assessment tools, but also take into account collateral information. RHeaNA highlighted the example of including diagnostic health assessments undertaken for new migrants on arrival to Australia. RHeaNA argued that these public health assessments are 'independent from the services delivered by the NDIS' and that a 'culturally appropriate refugee or migration focused assessment' offers depth which should be included in any assessment process.⁹⁶

5.68 With respect to the practitioners undertaking assessments, submitters emphasised the need for assessors working with people from CALD backgrounds to have particular skills and cultural awareness, including understanding the importance of relationship building. The Ethnic Communities' Council of Victoria highlighted that 'developing trust to disclose experience of disability requires time and skilled, culturally responsive practice'.⁹⁷ Other submitters highlighted the need for assessors to adopt trauma-informed practice,⁹⁸ and that the model should ensure adequate training and monitoring of assessors.⁹⁹ The New South Wales Government recommended measures to ensure cultural competence, as well as ensuring adequate time be set aside for assessments to accommodate use of interpreters and build rapport.¹⁰⁰

5.69 Submitters made a number of recommendations in relation to the use of interpreters when undertaking functional assessments, including:

- inclusion and funding of language services in the assessment model and tenders, including building extra time into the model for assessments to allow for use of interpreters;
- ensuring interpreters are trained in the medical and legal concepts relevant to assessments; and

⁹⁵ National Ethnic Disability Alliance, *Submission 264*, p. 6; AMPARO Advocacy Inc, *Submission 269*, p. 6.

⁹⁶ Associate Professor Georgia Paxton, Member, Refugee Health Network of Australia, *Proof Committee Hansard*, 29 June 2021, p. 20.

⁹⁷ Ethnic Communities' Council of Victoria, *Submission 209*, p. 5.

⁹⁸ Maurice Blackburn, *Submission 199*, p. 15; National Ethnic Disability Alliance, *Submission 264*, p. 15; Refugee Health Network of Australia, *Submission 232*, p. 4.

⁹⁹ Refugee Health Network of Australia, *Submission 232*, p. 4.

¹⁰⁰ New South Wales Government, *Submission 275*, p. 13.

- providing training for allied health workers or other practitioners undertaking assessments on working with interpreters.¹⁰¹

People with disability experiencing homelessness or in prison

5.70 The committee heard that homeless people with a disability and people with a disability in the criminal justice system (including people with a disability in prison) face particular difficulties in trying to access and use the NDIS, often due to overlapping complexities with their disabilities and lived experience.

5.71 However, submitters highlighted that the proposed model failed to provide information on how the application of the proposed tools would provide adequate context to ensure particular needs and circumstances of people with a disability who are homeless or in prison would be met.¹⁰² For example, the committee heard there was a lack of information provided about how assessments were intended to be implemented in a correctional setting, which raised a number of concerns. The New South Wales Government explained:

Accurate functional assessments for people with an intellectual disability require corroborative information from a third party (such as a close family member or support worker) who has directly observed the person over a significant period of time. Most often this will not be available for assessments in custody.

If a decision is taken to interview a person in custody as the basis for a functional assessment, regardless of there being no access to corroborative sources:

- many will have limited ability to accurately self-report on adaptive functioning, and many will not have the language and/or capacity to complete a functional assessment (this risk is even further heightened for children in custody who may be as young as ten years old)
- because of its inevitable constraints and removal from the community context, the custodial setting does not provide an accurate model of the independent functioning of the individual outside of that setting
- many offenders will not provide accurate information to strangers completing the assessment, or will be reluctant to proceed or cooperate without the assistance of a trusted support person. Custodial environments present additional barriers to trust and disclosure.¹⁰³

5.72 As many people with disabilities in these cohorts will also have psychosocial disabilities, similar concerns around the appropriateness of the tools were raised. For example, the committee heard that many people in the criminal

¹⁰¹ Refugee Health Network of Australia, *Submission 232*, pp. 2–3. See also Ms Donata Sackey, Member, Refugee Health Network of Australia, *Proof Committee Hansard*, 29 June 2021, p. 18, and National Ethnic Disability Alliance, *Submission 264*, p. 6.

¹⁰² Hutt St Centre, *Submission 14*, p. 2; Prisoners' Legal Service, *Submission 47*, p. 2.

¹⁰³ New South Wales Government, *Submission 275*, p. 12. See also Queensland Government, *Submission 222*, p. 36.

justice system have experienced trauma including through the justice and healthcare systems and that mandatory assessments may cause people to re-live trauma. The committee heard that people with a disability experiencing homelessness or within the criminal justice system needed to be able to engage with professionals with whom a trusting relationship could be established in order for any assessment to fully capture the person's experience of disability.¹⁰⁴ In this vein, the Hutt St Centre suggested the creation of a complex needs or homelessness specific team of assessors to support this cohort.¹⁰⁵

The NDIA's position

5.73 As noted above, before the decision was made not to proceed with independent assessments in their proposed form, the NDIA also told the committee that it intended to consult and seek further feedback on the concerns raised around how independent assessments would impact particular cohorts of participants:

We'll be talking around both the state of the scheme overall, some of those questions around results, outcomes, affordability et cetera, and the quite specific improvements that could be made to a form of independent assessment... Firstly, we want to make sure we understand well the exemptions and alternatives that might apply for particular participants. Secondly, how we handle the issues around the choice of assessor and the setting up of the assessment appointment. Thirdly: lots of issues around the actual conduct of the independent assessment, including for different cohorts of people—how it's actually done. Is it done in as respectful and empathetic way as it can be but has to be? Fourthly, how do we make the best use of pre-existing information that the participants may well have and have access to?¹⁰⁶

5.74 In July 2021, the NDIA also announced preliminary changes to independent assessments as they were conducted in the pilots, including amending the assessor panel to ensure:

- More experienced professionals undertake assessments for participants with more complex circumstances;
- Access to complete assessments conducted by multi-disciplinary teams where appropriate; and
- Links with service providers in remote/very remote areas, or those who specialise in working with Aboriginal and Torres Strait Islander and culturally and linguistically diverse populations.¹⁰⁷

¹⁰⁴ Hutt St Centre, *Submission 14*, p. 3; and Prisoners' Legal Service, *Submission 47*, p. 2.

¹⁰⁵ Hutt St Centre, *Submission 14*, p. 8.

¹⁰⁶ Mr Martin Hoffman, CEO, National Disability Insurance Agency, *Committee Hansard*, 4 May 2021, p. 13.

¹⁰⁷ NDIA, *Interim NDIA paper: Potential improvements to independent assessments*, July 2021, pp. 7–8.

5.75 Changes involving tailoring assessments for people with disability who are transitioning from institutional arrangements including in the justice sector or have complex support needs were also identified.

Chapter 6

What people with disability and their families told us

- 6.1 This chapter outlines in greater detail what people with disability and their families said about independent assessments, in addition to what has already been noted elsewhere throughout this report.
- 6.2 The chapter begins by examining what people who went through the pilot program/trials said about their experiences. It then focuses on some of the specific concerns that people with disabilities and their families raised in evidence about independent assessment – that is:
- Their fear and anxiety about the assessment process, meeting with a stranger, and how assessment results would be used in decisions;
 - That independent assessments would not be accurate for people with fluctuating or episodic conditions;
 - That independent assessments would not be transparent or subject to review; and
 - Their agreement that the NDIS needs to be financially sustainable, without using independent assessments in the model proposed.
- 6.3 The chapter is not intended to provide a comprehensive discussion of all the issues that people with disability and their families said in evidence; rather, it provides an overview of some of the common themes. It should be noted that evidence from people with disability and their families is used throughout this report, and that there is some overlap between what people with lived experience and their families said, and what experts said (as noted below). The committee encourages interested readers to view the submissions published on the committee’s website and also evidence provided in public hearings to further supplement the summary below.

What people who went through the trials said

- 6.4 The committee heard from a small number of participants and their families who went through the pilots/trials of independent assessments. Submissions from advocacy groups and peak bodies also highlighted the experiences of some people who had taken part in the trials. Examples follow.
- 6.5 One participant with physical disability caused by post-polio syndrome submitted that they had recently volunteered to take part in the pilot 'and regret to say that my worst fears were realised'. This participant had concerns that:
- The assessor had limited experience with post-polio syndrome;

- The assessor asked a question about sexual activities, which the participant found to be 'invasive, inappropriate and offensive, especially as there was no forewarning, nor was I given an option not to provide an answer';
- One part of the assessment, which took 40 minutes, 'did not apply to my circumstances and was a considerable waste of time';
- The participant considered that the tests and questionnaires that they undertook were often impairment, rather than function, focused; and
- Questions did not provide a full functional assessment of the participant's disability or allow the participant to provide context (for example, the participant stated that they have 'severe' difficulties washing their whole body, but the question asked did not allow clarification on how the participant had adapted to be able to do this).¹

6.6 Mr Jeff Smart, a participant who was a former senior Commonwealth public servant, provided a submission and also gave evidence at the Canberra hearing on 20 May 2021, about his experience in the trials. He described his independent assessment report as 'inaccurate, incomplete and irrelevant'. Specific concerns he raised included:

- The assessor was a clinical psychologist who had 'very limited' understanding of Mr Smart's disability (caused by Parkinson's Disease);
- The assessor asked Mr Smart to make a cup of tea. 'Knowing that this would not display my impairments, I also showed the assessor how I peeled and grated a vegetable. The report states that I used the peeler slowly and with intent... Though I demonstrated and made the assessor aware of... classic and easy to observe Parkinson's motor symptoms, they are not recorded in the report';
- The report stated that Mr Smart was both 'highly articulate' and that his 'communication skills are moderately low compared to others' of his age;
- The report recorded the motor skills assessment area as not applicable;
- Mr Smart could not recall any questions in the assessment that covered the benefits of early intervention for Parkinson's disease, including existing early intervention therapies from which he was benefiting;
- Mr Smart found the length of the assessment 'mentally and physically' exhausting by the three hour mark (it lasted for almost three and a half hours); and
- Some questions were irrelevant (e.g. questions asked of his wife that concerned autism symptoms).²

¹ See Name Withheld, *Submission 180*.

² Mr Jeff Smart, Private capacity, *Proof Committee Hansard*, 20 May 2021, pp. 24–25; Mr Jeff Smart, *Submission 336*.

6.7 Ms Teena Roberts told the committee at the same hearing about her seven-year-old grandson's experience in an independent assessment, which was carried out via a computer:

The first thing the assessor did was ask Thomas to read a book to them and to draw. Thomas went into total meltdown. I was there as well at the time, to look after a couple of the other kids. We calmed him down enough. Thirty minutes in, the assessor says, 'We don't need you anymore, Thomas.' Thomas is sitting there, saying, 'Did I do something wrong? Have I hurt someone? What's the problem?'

6.8 Ms Roberts stated that her daughter stopped the assessment halfway through the next stage, an interview, because of concerns about the assessor's expertise in autism and working with children, and because she felt that the interview questions were not relevant. As a result, Ms Roberts suggested, her daughter was 'not sure whether her funding's going to be cut again because she cancelled the trial halfway through'.³

6.9 The parent of a participant who took part in the pilot informed the committee that their assessor was 'professional, had a good personality, and was calm and I could have a conversation with her easily'. However:

- The assessment took four hours over Zoom. 'It was tiring and tedious, and difficult to answer questions that in the end just blurred from one into the other. I am used to Zoom calls, but not to this intensity and thought required behind every answer.'
- 'I received a call beforehand to schedule; the suggested time was 7pm ([my son] would be in bed). They did not know anything about him, including for what reason he is on the scheme. We commenced at 4pm. They thought he was female.'
- 'If the assessments occur in the same manner as my son's and with the consequences as envisaged, I believe that the risks (emotional, physical and "sudden removal" from the scheme) to the participant and their families outweigh any benefit (apart from financial) to the Commonwealth... [Y]ou would not let a junior doctor operate on a critical organ, why would you let a junior OT for example write a report that would remove someone from the NDIS?'⁴

6.10 The parents of a participant who took part in the NDIA pilot of independent assessments, while positive about some aspects of the experience, suggested that 'box ticking' is inadequate for complex issues. They felt that the 'assessor spent very little time observing our son' and argued that an 'assessor cannot possibly get a true picture of someone's ability after observing for less than 20 minutes'. Noting that they had previously engaged a speech therapist, a physiotherapist,

³ Ms Teena Roberts, Private capacity, *Proof Committee Hansard*, 20 May 2021, p. 26.

⁴ See Name Withheld, *Submission 354*.

a psychologist and an occupational therapist to make recommendations for their son, and that they had not yet received a copy of their assessment, they were of the opinion that:

...one 2.5 hour interview with an independent assessor is not sufficient to get a full understanding of a person, or give the NDIA enough information to make fair decisions related to funding.⁵

- 6.11 While the parents noted that the experience was positive, they suggested that independent assessors should have experience in the disability type of the participant they are assessing:

Our assessor was an experienced OT who shared with us that her son had a disability. Though nothing like the disability of our son, she had the understanding as a parent of communication difficulties and their effect, and we felt she could understand our son. We were happy with her independence, qualifications, training and expertise.

We feel that it's extremely important, though, that each independent assessor...have experience with the type of disability they are assessing.

Independent assessments have a much greater chance of being accepted as fair by people with disability/their families, if the assessor is experienced in the type of disability they are assessing.⁶

- 6.12 The parents suggested that because of the risk of misinterpretation, participants and/or their nominees should be able to review assessments. They argued that providing participants and/or their nominees with an independent assessment report by a particular date would improve the process:

We have...found in the past that people assessing our son's disability can misinterpret what is said to them, so it's important that people or their nominees have the opportunity to review assessment results, and challenge anything that is incorrect.

...In general, being provided with a date when a report should be received, and having that date adhered to, as well as allowing feedback, will really help people and their families feel satisfied with the assessment process, and reduce stress involved in the process.⁷

- 6.13 At the hearing in Geelong on 4 May 2021, Ms Jaimee Witcombe, a participant herself and also a parent of two participants, told the committee about her experience going through an independent assessment in the pilot, and argued that context and background information were needed to inform 'an appropriate and effective funding plan':

If you don't know what a participant has come from...from a literal and historical perspective then you cannot understand how a participant may need different kinds of supports, contingencies and funding. In this pilot

⁵ Name Withheld, *Submission 25*, [pp. 2, 3].

⁶ Name Withheld, *Submission 25*, [pp. 1–2].

⁷ Name Withheld, *Submission 25*, [p. 3].

assessment, administered by an OT who had worked for three weeks in aged care and who had no experience in disability, there...were one or two vague questions about my wellbeing, with no scope for psychosocial disabilities or complex mental illness. There was no provision to consider my own caring load and how that impacts on my wellbeing. There was certainly no comprehension of how to engage with me to ensure my wellbeing was not impacted by the process.⁸

- 6.14 Ms Witcombe explained that she had participated in the pilot program because, 'while I find the review and planning processes personally damaging, I felt a responsibility to try it and provide useful and honest feedback...and maybe become part of the solution'. However, after providing feedback within the meeting:

I was informed that all feedback was for internal purposes only and would not be provided to the NDIA. I was asked if I wanted a response to my feedback from the contracting organisation, and I replied that I did. It's been just under eight weeks since I took part in the pilot and I have received no response from my feedback. I received one email which contained raw scores of the assessment tools with no explanation or method of interpretation...

Participants are here taking time out of their lives and often using the last of their mental, physical and emotional capacity to help the NDIA and the government understand and respond to our concerns. We have offered feedback, which has been largely ignored. We take up opportunities to contribute, which turn out to be misrepresented and which misuse the goodwill and valuable time of participants. Mostly, the agency seems deliberately blind to its role in eroding public faith in the scheme.⁹

- 6.15 At the Melbourne hearing on 23 April 2021, Ms Grace McLoughlain, a participant with psychosocial disability, told the committee that she took part in the pilot project because 'I am terrified of independent assessments. I'm scared that I would not be heard, that my needs would not be met and that my funding would be cut'. As a result, 'I thought I'd do a practice run where it wouldn't impact my funding'. She stated that she found the three hour assessment 'gruelling and exhausting'. Further:

I did the assessment in a local park, which wasn't ideal. I did it in a park because it was the most confidential space I had. I had just moved into a new share house that didn't have super private spaces, and I didn't want my new housemates hearing about the nitty gritty of my mental illness. There were no alternative options like having it at the office of the independent assessor'.¹⁰

⁸ Ms Jaimee Witcome, Private capacity, *Proof Committee Hansard*, 4 May 2021, p. 37.

⁹ Ms Jaimee Witcome, Private capacity, *Proof Committee Hansard*, 4 May 2021, pp. 37–38.

¹⁰ Ms Grace McLoughlain, Private capacity, *Proof Committee Hansard*, 23 April 2021, p. 46.

6.16 However, the committee also heard that some chose not to take part in the pilots/trials for independent assessments. For example, Ms Jane Wardlaw, a disability advocate and participant, told the committee that she knew of three people who refused to be part of the independent assessments trial.¹¹

6.17 The mother of an participant with autism told the committee that her family were invited to participate but chose to decline because:

...choice, control and personal goals are not taken into account. Second, being under scrutiny to see how your disability affects you has a negative impact on the mental health of a person with a disability. Many people with disabilities already feel less because of the daily scrutiny they receive in the community. Third, we have already undergone an extensive process with qualified health professionals to be diagnosed with the disability... Fourth, we have already met the NDIS's extensive eligibility requirements, and having to be reassessed for eligibility on an ongoing basis is degrading, as your disability does not disappear over time. And fifth, we have completed several tick-a-box style assessments as part of the planning process with NDIA staff over the years, and all have not been relevant to a neurological disability, and have resulted in reduced plan funding due to this.¹²

As reported by organisations

6.18 Organisations also reported to the committee stories from participants who had been through the trials. For example, the Brotherhood of St Laurence in its submission outlined the experiences of a participant, who was also a Local Area Coordinator (LAC), who took part in an independent assessment. The participant flagged the following areas of concern:

- The participant was given 18 hours' notice to do the assessment, and had to cancel a work commitment as 'I felt like I needed to be there' and there 'was no suggestion of we could do it another day';
- The assessor began by telling the participant that this was 'her first-ever assessment';
- The assessor told the participant that she needed to see them doing something around the house, but the participant had not been aware of this prior and so was using a desktop computer;
- The assessor's supervisor suggested that the participant make a cup of coffee for the physical observation component of the assessment 'but I said they wouldn't see how I did it. They asked me to get a book from the shelf, and said that's OK, but the paperwork said 20 minutes observation';
- The assessor had no information about the participant's disability except that it was a physical disability;

¹¹ Ms Jane Wardlaw, Private capacity, *Proof Committee Hansard*, 30 April 2021, p. 29.

¹² Ms Naomi Jennings, Private capacity, *Proof Committee Hansard*, 27 April 2021, p. 52.

- Questions were asked about the previous few days 'but we have been in lockdown. Last 30 days, last 12 months are during COVID. They don't give an indication of what I can do';
 - The participant found some questions, such as about sexual function and continence, unexpected 'with no warning and no introduction';
 - 'There was no teasing out to get the right answers, and that's a big part of it. Literally got the question and nothing else'; and
 - The participant stated that 'I've always felt there was a need for consistent individual assessment for people to get access, but this is not it'.¹³
- 6.19 South West Autism Network stated in its submission that it was 'aware of at least four participants in the current Independent Assessment trial who spoke out about their negative experience, and have not been provided the feedback survey'. It suggested that there would likely be many more, 'including individuals who decided to cease the assessment part-way due to their negative experience'.¹⁴
- 6.20 South West Autism Network also flagged inaccuracies that it submitted had occurred in a report provided following an independent assessment of an autistic adult taking part in the trials, including that the report incorrectly stated that the participant did not exhibit behaviours with the potential to harm self/others. South West Autism Network suggested that one section of the report had 'been cut and pasted from another assessment'.¹⁵
- 6.21 Ms Nick Avery from South West Autism Network further told the committee of one case involving a non-verbal autistic child, in which they 'got the entire way through the independent assessment, and at no point did the independent assessor work out that that child was non-verbal'.¹⁶
- 6.22 Occupational Therapy Australia suggested that 'there have already been instances of complaints against Independent Assessors being made to [the Allied Health Practitioner Regulation Agency] as a result of assessments being conducted' in the pilots.¹⁷

What people with disability and their families said about independent assessments

- 6.23 Through submissions, evidence presented at hearings, correspondence and the words of disability advocates interviewed in the media, the committee learned

¹³ Brotherhood of St Laurence, *Submission 211*, pp. 15–16.

¹⁴ South West Autism Network (SWAN), *Submission 221*, p. 4.

¹⁵ South West Autism Network (SWAN), *Submission 221*, pp. 4–5.

¹⁶ Ms Nick Avery, Chief Executive Officer, South West Autism Network, *Proof Committee Hansard*, 27 April 2021, p. 37.

¹⁷ Occupational Therapy Australia, *Submission 159*, p. 26.

that Australia's disability communities had significant concerns about the introduction of independent assessments. While those concerns are too numerous to be noted comprehensively here, there were some common themes, as outlined below.

Fear and anxiety about going through independent assessments

6.24 The committee heard that many participants dreaded the thought of going through independent assessments. Many witnesses with lived experience of disability were in tears while giving evidence before the committee and even, in some instances, distraught, whether because they feared meeting with a stranger, they had already gone through lengthy and sometimes difficult experiences in accessing and navigating the NDIS, or they were worried that they would lose funding as a result of their assessments.

6.25 For example, Mr Simon Edwards, a participant, shared his story of being a participant who had experienced life-changing results from the NDIS after decades of limited support before the introduction of the NDIS. He told the committee that:

Yes, independent assessments will fail. This story was shared today because we're about to make similar mistakes. Literally tens of thousands of people are going to be told 'no' by independent assessors...We have learnt nothing if we bring these things in...It's imperative that we know that these nuanced supports are important.¹⁸

6.26 Mr Jeremy Le Roux, a participant with 'lived experience of mental distress' who, before COVID-19, had worked as a peer support worker in adult mental health at St Vincent's Hospital in Melbourne, told the committee that:

When a person with a lived experience of mental distress undergoes an independent assessment, they face the real prospect of retraumatisation and the possibility that they will lose access to funding and the critical supports that they need to participate in society and lead a meaningful life ...The NDIS has a responsibility to ensure the wellbeing of people accessing the scheme and its participants.¹⁹

6.27 Other participants and their family members expressed similar fears about going through a brief independent assessment and the impact of its results on their lives, saying, for example:

- 'Nothing about independent assessments is positive for a person like me. It was my ongoing relationship with all of my doctors that meant they were able to identify and act on their concerns...I'm very afraid that a doctor who doesn't know me and doesn't have highly specialised skills...will incorrectly diagnose me, after I've been through so much to determine what my disabilities are...I'm terrified that, even if I don't lose access to the NDIS, my

¹⁸ Mr Simon Edwards, Private capacity, *Proof Committee Hansard*, 30 April 2021, p. 37.

¹⁹ Mr Jeremy Le Roux, Private capacity, *Committee Hansard*, 23 April 2021, p. 46.

plan will be changed and it will not reflect my needs... The NDIS is imperfect but these changes will make it worse. We're vulnerable and we face enough hurdles as it is. Please do not hurt us.'²⁰

- 'If the independent assessments are introduced, I will be asking for an exemption, but I'm worried that the NDIA will not grant many exemptions...I feel like those of us with invisible disabilities already struggle a lot getting our needs met.'²¹
- 'My son and I are participants, and our families have been experiencing a heightened level of stress and anxiety due to the standardised testing announcements and rollout. We feel that we and our loved ones will become a number and lose our humanity.'²²
- 'My daughter has me as an advocate, so actually I'm not as concerned about the process for her as I am for others. Those who cannot self-advocate are at extreme risk.'²³
- 'The NDIS is our lifeline. We're talking about our lives. I feel threatened by these independent assessments. I'm scared about the future.'²⁴
- 'I agree there needs to be changes to the current system. For us, the current process has caused an enormous amount of stress and anxiety. [However], [u]nder this proposed model, I would see my son losing significant funding because of his answers and his inability to understand the questions correctly. The reduction of funds under this model would have enormous impact on my son's ability to continue to live independently...This new independent assessment model is taking us back 10 years to the deserving and the non-deserving...'²⁵
- 'My daughter is 35 years old with high-complex needs. The NDIS has actually been a game changer for her...She has received funding that, for years, she didn't receive...My fear of independent assessments is that my starting of that will now be lost. I have put so much time—everyone has—into getting it to work again. And, of course, not knowing how it will pan out is a huge concern, just by not knowing.'²⁶
- 'This stranger, and this three-hour block, frightens me. Having unequipped healthcare professionals complete these assessments feels like a nightmare come to life...To have a healthcare professional complete our assessments is going to be too much for some people and it is going to leave permanent

²⁰ Ms Christian O'Connell, Private capacity, *Committee Hansard*, 23 April 2021, pp. 42–43.

²¹ Ms Zoe Mithen, Private capacity, *Committee Hansard*, 23 April 2021, p. 44.

²² Ms Vida Reid, Private capacity, *Proof Committee Hansard*, 27 April 2021, p. 52.

²³ Ms Delyse Clayden, Private capacity, *Proof Committee Hansard*, 27 April 2021, p. 50.

²⁴ Ms Jane Wardlaw, Private capacity, *Proof Committee Hansard*, 30 April 2021, p. 25.

²⁵ Ms Marg Knight, Private capacity, *Proof Committee Hansard*, 4 May 2021, pp. 35–36.

²⁶ Ms Leah Katieva, Private capacity, *Proof Committee Hansard*, 4 May 2021, p. 38.

scars that never quite close. I do not want to beg but, on this issue, I urge you to listen... This is, quite frankly, in my personal opinion, a very inhumane way to treat disabled people.'²⁷

- 'As a participant, as an adviser to the ACT government, as somebody who is chief executive of NDIS registered providers supporting 200 people with disability and their families and as somebody who for two years worked for the National Disability Insurance Agency to help launch the scheme 10 years ago: very simply, nobody, nobody is putting me in a box and giving me a score.'²⁸

6.28 Mr Felix Kaesler, a single parent of three children with autism, who was also an ADF veteran, told the committee about how much the NDIS was 'life changing for all of us' and allowed him to work full-time and no longer 'live in poverty'. He stated that he was worried about the following:

- 'If we did independent assessments, [my children] would each be assessed as an individual and nobody would look at the impact of how I as a sole carer would deal with three like that.'
- 'It's really hard when someone asks you a yes/no question and says, "Can your child brush their teeth?" I say, 'Yes, they're great. On a good day they can. But on a bad day, the sensory issues around toothpaste and the taste of mint means there may be a whole meltdown over brushing their teeth.'" Like a lot of other people have said, on a good day you may not look like you have a disability.'
- 'My worry is that with independent assessments they'll come and see our family situation and go, "Wow, they're doing really well. They don't need this." All the supports get taken away. I can't work anymore. We go back into poverty. That's my fear. It's really hard. It was so hard to get on the NDIS. It took me 18 months.'²⁹

6.29 The father of a participant with Prader Willi Syndrome noted the stress that the independent assessments process could cause:

Regardless of how you develop/structure it, implementing independent assessments of people such as my son who has a syndrome that is lifelong is not necessary and increases feelings of stress and uncertainty regarding the ongoing funding support he requires...My son reacts adversely to anyone that he does not know well, particularly someone reviewing him [or] talking to/about him and this would stress him out and make any assessment worthless.³⁰

²⁷ Gi Brown, Private capacity, *Proof Committee Hansard*, 23 April 2021, pp. 18, 24.

²⁸ Mr Dougie Herd, Chair, ACT Disability Reference Group. *Proof Committee Hansard*, 20 May 2021, p. 17.

²⁹ Mr Felix Kaesler, Private capacity, *Proof Committee Hansard*, 23 April 2021, pp. 48–49.

³⁰ Name withheld, *Submission 20*, [p. 2].

- 6.30 One participant with autism observed that meeting an unfamiliar assessor who would ask personal questions may be problematic for some participants with autism:

When I meet someone new who asks personal questions sometimes I find myself unable to speak—this is a particular issue as I don't have family to advocate for me. I am not alone in this issue—other people with autism I know have the same issue which may make an assessment with a stranger inaccurate.³¹

- 6.31 Another participant suggested that independent assessors contacting participants' health professionals would reduce 'the burden on the participant', particularly where a participant is unable to represent themselves.³²
- 6.32 The father of a participant highlighted concerns about 'individual dignity', arguing that independent assessors with the technical skills but 'no knowledge of the person or his life' represented an 'intrusion' into the lives of NDIS participants.³³

Accuracy of assessments for fluctuating and rare disabilities

- 6.33 Others expressed concern that independent assessments would not be accurate, particularly for those who had fluctuating, episodic or rare disabilities. For example Ms Vida Reid told the committee:

I have MS. I have been blind in the past. I lost my sight due to my MS. I have been in a wheelchair. I've lost my speech—it comes and goes at times. My stability—that capacity—comes and goes...An independent assessor could come and see me on a good day, for example, and report their findings that I have no issues and my capacity seemed pretty good on the day they saw me and assessed me. This terrifies me and others with a fluctuating disability like mine.³⁴

- 6.34 Gi Brown argued at the Melbourne hearing that independent assessments brought 'one main word to mind: static'. They further contended that:

This new assessment sees disability as something that does not fluctuate, does not change and does not exist within a contextual environment. Some days I can get out of bed and complete my personal hygiene routine, go to university and feed myself. And some days I am paralysed in place by pain that grips every inch of my body and mind...

In my personal opinion...it's going to lock out people who really just don't fit within the tiny little box that is a constant characteristic of disability.³⁵

³¹ Name withheld, *Submission 23*, [p. 1].

³² Name withheld, *Submission 19*, [p. 2].

³³ Name withheld, *Submission 20*, [p 3].

³⁴ Ms Vida Reid, Private capacity. *Proof Committee Hansard*, 27 April 2021, p. 53.

³⁵ Gi Brown, Private capacity, *Proof Committee Hansard*, 23 April 2021, pp. 17, 24.

- 6.35 Ms Leslea Geary shared her concerns at the hearing in Canberra on 20 May 2021 that an independent assessment might take place on a day that her son, who had an intellectual disability, presented:

...with an unrealistic high-level functioning assessment and get woefully inadequate supports as a result. The assessor may find that he's alright, he's articulate, he's friendly, 'He says he's fine'. That doesn't tell us anything about his functioning in day-to-day life where he needs one-to-one support to manage most areas of his life...He might have a really bad day: he doesn't want to engage, he's feeling angry, whatever it might be... That could result in a very different outcome for both long- and short-term supports...

This has kept me awake many, many nights. The annual funding allocation and the eligibility to remain in the scheme could be decided on something akin to a flip of a coin, the luck of a day, the emotional intelligence of the assessor— who knows?

...The plans to date have been very good and very structured and very tailored, and that is the nuance of involving a whole team, not one independent assessor.³⁶

- 6.36 At the same hearing, Ms Tracy Gorman, the parent of a participant with a rare degenerative disease, shared that:

'My [daughter]...is the only person in the world with her particular variant [of a degenerative disease], making her case different from the other nine people I know of in Australia with this diagnosis. Each of those nine people will have different disabilities...making it impossible to regard all cases as the same...[H]er needs cannot be summed up in three or even five hours...Her condition is very complex and changeable, and she does not fit into a box you can tick without reasoning and other variables being considered.'³⁷

- 6.37 Chapter 5 outlines in further detail concerns raised by experts about the appropriateness of the proposed tools for rare, degenerative and episodic/fluctuating disabilities.

Questions about the role of allied health professionals

- 6.38 Some family members of people with disability questioned why independent assessments were needed to replace existing reports from allied health professionals. For example, the grandmother of a participant argued that 'To dismiss the opinions, reports, observations and input of medical professions and allied health workers when determining the funding levels for an NDIS participant seems ludicrous'. She further contended that most participants would still need 'regular check-ups and appointments with their medical team

³⁶ Ms Leslea Geary, Private capacity, *Proof Committee Hansard*, 20 May 2021, p. 31.

³⁷ Ms Tracy Gorman, Private capacity, *Proof Committee Hansard*, 20 May 2021, p. 32.

anyway, and physios and OTs regularly feed back from the programs that they're running' with participants.³⁸

6.39 Similarly, the mother of a participant asked:

Are our health and medical professionals not competent to present this evidence in their reports? Why do we now question our allied health and medical professionals' abilities to follow strict protocols and guidelines for assessments to reflect true outcomes and observations in their assessments and expected reporting pathways?

These professionals have dedicated their lives to their professions, and now we appear to undermine their reports and assessments...³⁹

6.40 In the same vein, the mother of three participants argued that an 'independent assessor isn't going to know my children. Our therapists know our children, and they are the voices that should continue to be heard over the independent assessors'.⁴⁰ This was echoed by another mother of a participant, who argued that disregarding 'these specialists and therapists is saying that they, in all they have studied and worked for, are not the expert that one individual assessor is, which is ridiculous and condescending'.⁴¹

6.41 Another parent of a participant questioned how an independent assessor with no knowledge of her son's congenital neurological anomaly, 'utilising a standardised tick-and-flick assessment tool and a maximum three-hour interview, will understand his needs greater than the therapists that have facilitated his development..?' She also asked the committee, rhetorically, who would 'seek an alternative doctor or pharmacist every time you require medical advice because the benefits of independence and lack of knowledge of your medical conditions lead to a better outcome?'⁴²

Concerns about transparency and review rights

6.42 One participant, whose son was also a participant, expressed concerns that the independent assessment process would 'not be honest and transparent',

³⁸ Ms Heather Colvin, Private capacity, *Proof Committee Hansard*, 27 April 2021, p. 56.

³⁹ Ms Kym Pascal, Private capacity, *Proof Committee Hansard*, 27 April 2021, p. 51. This issue was not limited just to evidence provided by people with disability and their families—for example, Enable Plus contended that 'We are trained to provide objective, professional, and ethical reports, even when the information might be inconsistent with the desires of a client, parent, or school', and argued that the 'same professional practices apply to functional disability reports as they do with neuropsychological, forensic, speech and language, and other reports'. Enable Plus, *Submission 1*, pp. 9–10.

⁴⁰ Mrs Stacey Gittus, Private capacity, *Proof Committee Hansard*, 30 April 2021, p. 35.

⁴¹ Ms Tracy Gorman, Private capacity, *Proof Committee Hansard*, 20 May 2021, p. 32.

⁴² Ms Clare Waiss, Private Capacity, *Proof Committee Hansard*, 30 April 2021, p. 32.

drawing on their previous experience of an NDIA-ordered independent assessment:

NDIA ordered an Independent Assessment of my son to determine his in home support needs. We agreed, on the condition that NDIA agreed to abide by the assessor's recommendations. We had written confirmation of this agreement. NDIA chose the assessor, she came and did a very skilled and comprehensive OT assessment, and recommended a substantial number of hours per week of funded support. When we got his Plan, NDIA had funded under one tenth of the recommended level of support. Several years later the assessor saw me in a shop, and approached me. She asked if I realised that she was never paid for her assessment. She said that NDIA asked her to change her report and reduce her recommendation, she had refused, and they refused to pay her. She got fed up with chasing them and arguing about it, so she gave up.

So I am terrified of having my funding levels tied to an independent assessment. Even if it is done by someone very knowledgeable in the area of disability, even if the assessment is totally optimal, I do not trust that it will be used fairly.⁴³

- 6.43 Mr Simon Reid, the father of a participant with autism, outlined his concerns as a parent about review rights:

What if, during one of these...sessions, they get it wrong? While my wife and I are alive, we can and do advocate for our son...What if we're no longer there to fight for him, and some company, hell-bent on scalping NDIS money, decides my son is no longer eligible? What will his life look like? The thought terrifies me to my very bones.⁴⁴

- 6.44 The question of oversight of independent assessments is discussed separately in Chapter 7 of this report.

Comments about the need for a sustainable NDIS

- 6.45 Some participants and their family members emphasised their support for the sustainability of the NDIS, while outlining their concerns about independent assessments. For example:

We believe, our community believes, in this scheme. We have seen firsthand the incredible impact that it can bring, and we fought hard for it. I do not believe there is one member of our community that does not want to work with the NDIA to build a better scheme for all of us. We, as a group, are absolutely committed to working with the NDIA to build something sustainable and better...⁴⁵

- 6.46 Ms Jane Wardlaw, a disability advocate, argued at the Hobart hearing that the overall disability supports system had not been implemented as envisaged,

⁴³ Name Withheld, *Submission 345*, p. 2.

⁴⁴ Mr Simon Reid, Private capacity, *Proof Committee Hansard*, 27 April 2021, p. 54.

⁴⁵ Ms Clare Gibellini, Private capacity. *Proof Committee Hansard*, 27 April 2021, p. 49.

meaning that for many people, their only access to disability supports was through the NDIS:

...the original design of the NDIS was a three-tiered system... [T]ier 2... was to be a significant capacity building exercise which allowed better, meaningful inclusion of people accessing mainstream and community services...Unfortunately, tier 1 of the scheme, which was really only meant to be for a small, select cohort of people living with disability because the other two tiers would be working at their full steam and be more inclusive, is the only opportunity that people living with disability now have, depending on severity or not, for accessing services. So what we see is that we've got a huge demand for NDIS because it's the only way people are able to access the supports that they need...⁴⁶

The NDIA's position

6.47 Mr Martin Hoffman, the CEO of the NDIA, told the committee before independent assessments in their proposed form were cancelled that the NDIA intended to learn from the trials of independent assessments, particularly in the context of sensitive questions being asked:

...to make sure that...questions are used appropriately and are used sensitively...[W]e're looking at the ways in which, consistent with the structure of the tool, those questions are optional or may not be raised at all. That's one of the learnings and improvements we are certainly gaining from the pilot.⁴⁷

6.48 In a speech on 23 July 2021, after the announcement that independent assessments in their proposed form would not proceed, Mr Hoffman acknowledged:

...the real difficulties and challenges of our interactions with the disability sector, with many of you, over the past few months.

It has not been easy for anyone, including my staff, but particularly for participants. And for my part, that is a source of regret.

I hope also everyone involved can acknowledge the good faith and good intent of all involved, whether or not specific views and proposals are agreed with or not.

I know we continue to share the same goal—to make the Scheme the best it can be and ensure it is in place for generations to come.

The Agency fully recognises we cannot play our part in achieving this goal without working closely with the disability sector and participants...⁴⁸

⁴⁶ Ms Jane Wardlaw, *Private capacity*, *Proof Committee Hansard*, 30 April 2021, p. 24.

⁴⁷ Mr Martin Hoffman, CEO, National Disability Insurance Agency, *Proof Committee Hansard*, 4 May 2021, p. 10.

⁴⁸ Mr Martin Hoffman, *From the CEO, Speech*, 23 July 2021, [ndis.gov.au/news/6637-stay-informed-ceo-future-ndis](https://www.ndis.gov.au/news/6637-stay-informed-ceo-future-ndis) (accessed 29 July 2021).

6.49 In answers to questions provided on 2 August 2021, the Minister and the NDIA flagged that the Minister and state and territory disability ministers would be working 'in partnership with those with lived experience of disability and disability representatives to co-design a new person-centred assessment model that ensures fairness and equity'. Further, it is anticipated that this new model 'will also seek to address fairness, consistency and to minimise costs to participants'.⁴⁹

⁴⁹ Response to written questions by Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, requested on 25 June 2021, received 2 August 2021, [pp. 4, 8].

Chapter 7

Other concerns raised

7.1 This chapter provides a snapshot of some of the other key concerns raised in evidence concerning independent assessments. The chapter is not intended to provide a comprehensive overview of these 'other' issues; rather, it focuses on those that may be of most interest to the Government as it considers the path forward. These issues included:

- Review rights and oversight;
- Designing an appropriate model for Aboriginal and Torres Strait Islander peoples in remote communities;
- Assessments in remote areas;
- Thin markets;
- Concerns that independent assessments could delay NDIS access; and
- Funding flexibility.

Review rights and oversight

7.2 The overwhelming majority of submitters and witnesses considered that independent assessments should be subject to review and appeal. As noted in Chapter 2, the NDIA had stated in its consultation paper report that there would be no change to the review process, and that 'disagreeing with the results of an otherwise sound and robust independent assessment won't mean you get another assessment'.¹

7.3 Despite assurances that decisions made on the basis of an independent assessment would remain subject to review, this was seen as inadequate to ensure appropriate oversight of the assessment process. The Melbourne Disability Institute considered this approach to be a deliberate legal manoeuvre designed to avoid proper scrutiny and natural justice.² Meanwhile, Mr Matt Dunn, representing the Queensland Law Society, queried why the assessment would not be seen as an 'administrative decision', and explained:

If we think about the independent assessment as being not something that is a decision of an administrative character, it means that it's perfectly legitimate for that assessment to include irrelevant considerations and to not take account of relevant considerations. That means that any subsequent decision in terms of a plan is itself based on flawed material, in which case any [Administrative Appeals Tribunal] review or internal review of the NDIA will be based on the sufficiency or not of the independent assessment. In effect, you'll end up with the default process of reviewing independent

¹ NDIA, *You Said, We Heard: Access and Eligibility Policy with Independent Assessments*, March 2021, p. 19.

² Melbourne Disability Institute, *Submission 152*, p. 16.

assessments anyway but fighting about that through the lens of a review of an NDIA decision, which will be particularly problematic for impecunious and disadvantaged people, people from non-English speaking backgrounds, people who are not sophisticated and people who can't necessarily obtain legal assistance. If you want to be able to get to the root cause, the better thing is to have a discussion about the independent assessment at the beginning rather than that being one of a multiplicity of issues and potential failures of an NDIA decision.³

7.4 Associate Professor Kylie Burns representing the Law Futures Centre and Hopkins Centre, Griffith University, supported this view:

Our view would be that there needs to be a mechanism to review the assessment itself. Otherwise, you end up with a whole lot of time spent producing a potentially invalid plan, and you also then create a great deal of burden and distress for people to have to review their whole plan... Certainly, in accident compensation schemes, it wouldn't be unusual to have some form of internal review of medical assessments done. We would see that as a necessity. If you were to go down this road, there ought to be some ability to review the assessments themselves.⁴

7.5 Queensland Advocacy Incorporated emphasised that review and appeal rights are fundamental to affording procedural fairness to NDIS participants, and that denying procedural fairness impacts on the rights of persons with disability to have choice and control over decisions that impact their lives:

The concealment of information and shrouding of decision-making outlined in changes being proposed by the NDIA raises fundamental questions of procedural fairness. To deny the appeal rights of people with disability is to silence them from decision-making regarding their every-day lives. It removes essential checks and balances and does little to quell rising concern within the disability sector that the introduction of independent assessments has ulterior motives. That is, that they provide a mechanism for the agency to reduce costs as opposed to the outwardly benevolent intentions of removing financial barriers for participants and improving consistency in decision-making.⁵

7.6 Autism Awareness Australia argued that removing avenues for appeal would increase stress for participants and their families and 'sets up a power imbalance during the one-off assessment'.⁶ Other submitters highlighted that an effective review and appeals process would improve trust in the assessment model, and

³ Mr Matt Dunn, General Manager, Advocacy, Guidance and Governance, Queensland Law Society, *Proof Committee Hansard*, 29 June 2021, p. 11.

⁴ Associate Professor Kylie Burns, Law Futures Centre and Hopkins Centre, Griffith University, *Proof Committee Hansard*, 29 June 2021, p. 11.

⁵ Queensland Advocacy Incorporated, *Submission 8*, p. 4.

⁶ Autism Awareness Australia, *Submission 229*, p. 3. See also Australian Association of Psychologists Inc, *Submission 205*, [p. 7].

provide oversight and insight into the scheme along with suggestions for improvement. For example, the Brotherhood of St Laurence submitted:

Denying the right to review and appeal IA decision risks compromis[ing] the quality (rigour, accuracy, effectiveness) of the assessors, the assessments and related tools and processes as they are not subject to critical scrutiny by people with disability and their carers. It also removes the opportunity for policy and practice reform based on learning from frontline practice.⁷

- 7.7 Possability and the Melbourne Disability Institute highlighted the importance of review rights in light of concerns about the validity of the assessment tools.⁸ Maurice Blackburn Lawyers explained that:

...a review and appeal process is even more important under a one-size-fits-all, cookie cutter approach. Assessment will be being made by people acting under resourcing stress, who do not know the person they're assessing and may know nothing about her/his specific disability. This creates heightened risk, so an appeals process is more important than before.⁹

- 7.8 In addition to ensuring that assessments could be reviewed and appealed, the committee also heard that the decision of whether or not to exempt someone from being required to undergo an assessment needed to be subject to review.¹⁰
- 7.9 The Queensland Government highlighted the importance of providing transparent information to people who participate in independent assessments to provide support to engage in reviews:

[I]n addition to summarising the results of the assessment, the summary should include information about: how the assessor selected the tools used; how these tools are appropriate for the person's disability and circumstances; what additional information was gathered; and how this additional information was considered in the assessment outcome. People should also be entitled to receive a full copy of the assessment report. Providing this additional information would greatly increase the transparency of the assessment process, and would enable participants to have confidence the assessment was tailored to their needs.¹¹

⁷ Brotherhood of St. Laurence, *Submission 211*, p. 12. See also Melbourne Disability Institute, *Submission 152*, p. 17, which argued 'if IA [independent assessment] results are not reviewable, there will not be any mechanism for the courts to drive refinement and improvement. This is because the [Administrative Appeals Tribunal] will not be able to examine how IA has been applied to individuals who appeal their planning decisions'.

⁸ Possability, *Submission 245*, p. 7; Melbourne Disability Institute, *Submission 152*, p. 17.

⁹ Maurice Blackburn Lawyers, *Submission 199*, p. 12.

¹⁰ See, for example, Ms Sophie Wiggans, Queensland Advocacy Incorporated, *Proof Committee Hansard*, 29 June 2021, pp. 33–34; St Vincent's Hospital Melbourne—Mental Health, *Submission 313*, p. 8; Inclusion Australia, *Submission 225*, p. 23.

¹¹ Queensland Government, *Submission 222*, p. 22. See also Ms Matilda Alexander, Chief Executive Officer, and Ms Sophie Wiggans, Systems Advocate, Queensland Advocacy Incorporated, *Proof Committee Hansard*, 29 June 2021, pp. 33–34.

- 7.10 The Hopkins Centre and Law Future Centre also argued that independent assessments would make reviews of funding decisions more difficult:

The introduction of plan budgets based on IAs without further information about what supports are notionally included in that budget will impede a participant's ability to have proper reviews conducted by the Administrative Appeals Tribunal.

...IAs will mean that participants will not be fully informed of the reasons behind the funding decision and therefore will have limited evidence on which to base an appeal. Outsourcing the assessment suggests efficiency and financial objectives are an end goal.¹²

- 7.11 Mx Roen Meijers, representing the Coalition of Disability Advocacy Organisations, also emphasised that basing funding decisions on independent assessments would make review processes more difficult for most people with disabilities:

With the proposed reforms using an independent assessment to produce a flexible dollar figure, it becomes incredibly difficult or almost impossible for any person, let alone a person with a cognitive impairment or perhaps low-level, informal support or low access to formal support, to argue that that dollar figure cannot meet their needs. Even though, in the context of their life, it may well be obvious, the context of their life to date for the agency has not been considered adequate evidence to override a generated dollar figure, and we see no evidence that that will change under this process either.¹³

- 7.12 The Melbourne Disability Institute also took this position, noting that the process for taking a matter through the Administrative Appeals Tribunal (AAT) for review is already particularly difficult:

Taking an issue to the AAT requires enormous time and financial resources to obtain the necessary reports, as well as emotional and physical capacity to navigate and persist with the process while under considerable pressure. Under IA this path will still be open, but it will be a source of great inequity as it is a course of action realistically only available to those who have significant advantages.¹⁴

- 7.13 Occupational Therapy Australia (OTA) argued that there was a need for clinical oversight of independent assessments, given 'possibly clinically flawed' independent assessments:

Accordingly, OTA calls for the establishment of a permanent Committee of Clinical Oversight, genuinely independent of government and comprising representatives of the six allied health professions whose members are allowed to conduct IAs, and representatives of disability consumer groups.

¹² The Hopkins Centre and Law Futures Centre, *Submission 204*, pp. 3, 4.

¹³ Mx Roen Meijers, Spokesperson, Coalition of Disability Advocacy Organisations, *Proof Committee Hansard*, 30 April 2021, p. 8.

¹⁴ Melbourne Disability Institute, *Submission 152*, p. 17.

Consideration should be given to the Committee being chaired by the Commonwealth Chief Allied Health Officer...

Given the potential for IAs to do real harm, it is imperative the Federal Government commit to such a safety mechanism.¹⁵

7.14 The committee further heard that the impact on people and families with children with rare and degenerative conditions reduces their capacity to advocate for themselves.¹⁶ Submitters were therefore concerned about the ability of people with rare and degenerative disabilities and their families to request reviews of decisions based on flawed assessments.¹⁷

7.15 On top of existing difficulties in the internal and external review processes, advocacy groups, such as the Rights Information & Advocacy Centre and Queensland Advocacy Incorporated, raised concerns that the proposed model of independent assessments would stretch existing limited resources to provide advocacy support to submit reviews and appeal to the AAT.¹⁸

7.16 While arguing that the ability to seek review of a decision remained in relation to decisions made by the NDIA, Mr Martin Hoffman, the CEO of the NDIA, confirmed at the committee's public hearing in Geelong that the assessments themselves would not be reviewable:

What is always reviewable and appealable is a decision. *The independent assessment itself is not a decision; it is information, it is an assessment, it is data that goes into making a decision.* That decision is reviewable, is appealable, always was and remains so.¹⁹

7.17 Mr Hoffman, however, noted that the NDIA had considered feedback in relation to these concerns, acknowledging that:

...we think there are improvements that can be made to the review or checking or input to the independent assessment to ensure that it is accurate and good decisions can be [made] from it.²⁰

7.18 In answers to questions provided to the committee on 2 August 2021, the Minister for the NDIS, the Hon Linda Reynolds CSC, stated that the 'NDIA is committed to maintaining the highest ethical standards in the conduct of any quality assurance, research and evaluation projects involving participants', with

¹⁵ Occupational Therapy Australia, *Submission 159*, p. 29.

¹⁶ Aus DoCC, *Submission 95*, p. 4.

¹⁷ Save our Sons Duchenne, *Submission 99*, p. 23; Rare Voices Australia, *Submission 107*, p. 2.

¹⁸ See, Ms Rachael Thompson, Team Leader, NDIS Appeals and Advocacy, Rights Information and Advocacy Centre, *Proof Committee Hansard*, 4 May 2021, p. 19; Queensland Advocacy Incorporated, *Submission 8*, p. 8.

¹⁹ Mr Martin Hoffman, CEO, National Disability Insurance Agency, *Proof Committee Hansard*, 4 May 2021, p. 11 (emphasis added).

²⁰ Mr Martin Hoffman, CEO, National Disability Insurance Agency, *Proof Committee Hansard*, 4 May 2021, p. 11.

a particular focus on 'being sensitive to the welfare and interests of people involved'. She further outlined that 'the NDIA has established a range of policies and procedures to ensure compliance with, and maintenance of, ethical standards as prescribed by National Health and Medical Research Council guidelines'.²¹

Designing an appropriate model for Aboriginal and Torres Strait Islanders in remote communities

7.19 The role of trusting relationships and cultural safety for assessments conducted for Aboriginal and Torres Strait Islander people with a disability was emphasised as being crucial for the effectiveness of any proposed assessment model. For example, the Victorian Aboriginal Community Controlled Health Organisation explained:

Cultural safety is about providing quality service that fits within the cultural values and norms of the person accessing the service that may differ from your own and/or the dominant culture and provides the basis for the development of trust...Without that trust, the assessor will not be able to make a full assessment and assist in connecting the individual with the services that will best support them. The potential participant may also disengage for fear that the information shared could be used against them or their family.²²

7.20 Instead of adopting the proposed approach to independent assessments for Aboriginal and Torres Strait Islander people with a disability, the committee heard that any model for assessments should leverage Aboriginal Controlled Community Organisations (ACCOs) and Aboriginal Controlled Community Health Organisations (ACCHOs) to engage with current and prospective NDIS participants. The committee heard that people conducting functional assessments could be embedded within ACCHOs, and if this is not possible, at least have close links with the organisations to ensure cultural safety and trust. As explained by the Victorian Aboriginal Community Controlled Health Organisation:

This would directly benefit Aboriginal participants because ACCOs are culturally safe environments where Aboriginal people already receive services. ACCOs are trusted by their Communities to provide wrap-around health and wellbeing services to Aboriginal people—upholding cultural safety and cultural practice through service delivery... Independent Assessor placement with ACCOs would enable sharing of information and more awareness of the service offering for Aboriginal people visiting the ACCO, consequently reducing fear. Currently, Aboriginal participants do not have a choice whether to access the Scheme and get an assessment through a culturally safe avenue. Enabling Independent Assessors to co-

²¹ Response to written questions by Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, requested on 25 June 2021, received 2 August 2021, [p. 9].

²² Victorian Aboriginal Community Controlled Health Organisation, *Submission 60*, p. 4.

locate with ACCOs would provide greater choice and control for culturally safe services.²³

7.21 The committee also heard that such a model has already been piloted in relation to NDIS access and planning pathways for Aboriginal and Torres Strait Islander peoples in South East Queensland, with promising outcomes.²⁴

7.22 More broadly, submitters called for increased funding aimed at improving access to the NDIS for Aboriginal and Torres Strait Islander people with a disability:

It is well known that significant long-term investment in improving access to the Scheme is required. The NDIA need to commit to funding that goes above and beyond Remote Community Connectors (RCC) or the Evidence, Access, and Coordination of Planning (EACP) program. These initiatives have been helpful in assisting potential participants and their families navigate the complex framework of the NDIS. However additional, targeted long-term investment in holistic, community-led approaches will achieve better uptake and outcomes.²⁵

7.23 Some submitters could see potential benefits in providing access to free functional assessments to Aboriginal and Torres Strait Islander people with disability if implemented differently from the proposed independent assessment model. The committee heard that providing this access may be especially useful to allow for transparency and equity in the NDIS application process.²⁶

7.24 In the post-consultation reports for its access and eligibility policy and planning policy for personalised budgets and plan flexibility, the NDIA stated that it intended to:

Undertake further targeted consultation on specific topics, such as how to best deliver independent assessments in rural and remote, culturally and linguistically diverse and Aboriginal and Torres Strait Islander communities.²⁷

²³ Victorian Aboriginal Community Controlled Health Organisation, *Submission 60*, p. 6.

²⁴ See, Institute for Urban Indigenous Health, *Submission 133*, p. 5, in relation to the 'IUIH NDIS Pilot Project of National Significance'. The pilot established a parallel Indigenous pathway for engaging with potential NDIS participants through the engagement, eligibility testing, pre-planning, and plan build stages. The pilot was anchored in the IUIH Network of five Aboriginal Community Controlled Health Services. IUIH noted that, 'On completion in August 2020, the NDIS Pilot had engaged over 900 Indigenous participants in South East Queensland. Overwhelmingly, the experience of these participants is that they would not have accessed needed disability supports if left to the usual mainstream NDIS pathways.'

²⁵ Victorian Aboriginal Community Controlled Health Organisation, *Submission 60*, pp. 1-2.

²⁶ VACCHO, *Submission 60*, p. 1.

²⁷ NDIA, *You Said, We Heard: Access and Eligibility Policy with Independent Assessments*, March 2021, p. 4; NDIA, *You Said, We Heard: Planning Policy for Personalised Budgets and Plan Flexibility*, March 2021, p. 4.

Assessments in remote areas

7.25 Some submitters also raised concerns about the appropriateness of proposed technological solutions for conducting assessments remotely in rural and remote areas.²⁸ The committee heard that telehealth was likely to be inappropriate to adequately assess a person's functional capacity in a range of cohorts—for example, for people in remote Aboriginal and Torres Strait Islander communities, people with psychosocial or intellectual disabilities and people with disabilities affecting their hearing or vision.²⁹ The Western Australian Government's Department of Communities noted that, in general, it should not be expected that all current or prospective participants have access to good internet connections or laptops/tablets:

Any assumptions about the role of technology to facilitate independent assessments must take into account variability in digital literacy and inequities in access to equipment and services. Using video conferencing or telephone calls may be inappropriate for certain individuals, but in particular for Aboriginal or Torres Strait Islander peoples.³⁰

7.26 Additional concerns in relation to the proposed model for independent assessments in remote Aboriginal and Torres Strait Islander communities included:

- Proposals around use of technology for remote locations are likely to be inappropriate, inadequate or inaccessible in many remote Aboriginal and Torres Strait Islander communities.³¹
- People in remote communities may also live mobile lifestyles, which can mean that someone who has travelled to a remote area to conduct an assessment may have issues finding a person in their home community.³²
- Submitters also noted that the high turnover of healthcare staff in rural and remote areas means that information about a person's health and disability history can be spread across different databases, and also means that it is harder to find health professionals who know the person well enough to write reports required for NDIS access and planning.³³

7.27 As noted above, the NDIA in its post-consultation reports for its access and eligibility policy and planning policy for personalised budgets and plan flexibility stated that it planned to undertake 'further targeted consultation on

²⁸ See, for example, New South Wales Government, *Submission 275*, p. 13.

²⁹ See, for example Queensland Government, *Submission 222*, p. 44; Vision 2020 Australia, *Submission 296*, p. 28.

³⁰ Government of Western Australia Department of Communities, *Submission 154*, p. 15.

³¹ Northern Territory Office of the Public Guardian, *Submission 166*, p. [12].

³² NPY Women's Council, *Submission 270*, p. 6.

³³ Marninwarntikura Women's Resource Centre and the University of Sydney, *Submission 164*, p. 4.

specific topics, such as how to best deliver independent assessments in rural and remote...communities'.³⁴

Thin markets

7.28 Noting that the assessor workforce would primarily be allied health practitioners, many submitters also highlighted that thin markets for allied health are already problematic, especially in rural areas, and submitters were concerned that using allied health practitioners as independent assessors would place stress on these already thin markets. For example, the Northern Territory Office of the Public Guardian noted:

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...

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, either by extended wait times for independent assessments, suboptimal independent assessments or the inability of necessary funded allied health support being delivered to participants.³⁵

7.29 Workforce concerns and the issue of thin markets were not confined to rural and remote areas, with many submitters noting existing long wait lists for allied health services across the country.³⁶ For example, Deafblind West Australians reported:

Throughout Australia there are insufficient skilled, trained and experienced service providers to meet the needs of Australians with deafblindness.

No work has been undertaken by the NDIA to address the need for workforce development to upskill staff to ensure the level of quality of services required to meet the needs of people with complex disabilities such as those with deafblindness.³⁷

³⁴ NDIS, *You Said, We Heard: Access and Eligibility Policy with Independent Assessments*, March 2021, p. 4; NDIS, *You Said, We Heard: Planning Policy for Personalised Budgets and Plan Flexibility*, March 2021, p. 4.

³⁵ Northern Territory Office of the Public Guardian, *Submission 166*, pp. [3–4].

³⁶ See, for example, SWAN Australia, *Submission 202*, p. 13; Victorian Aboriginal Community Controlled Health Organisation, *Submission 60*, p. 7; Early Childhood Intervention Australia Victoria/Tasmania, *Submission 93*, p. 4; Exercise and Sports Science Australia, *Submission 96*, pp. 5–6; Australian Physiotherapy Association, *Submission 235*, p. 14.

³⁷ Deafblind West Australians, *Submission 55*, p. [13]

- 7.30 Many submitters also emphasised the need for the NDIA to do more to build the NDIS workforce overall.³⁸
- 7.31 The NDIA expected that approximately 500 to 600 assessors would be required to meet the predicted volume of a full national rollout of independent assessments.³⁹ In response to a question about the impact on the allied health workforce in rural, regional and remote areas, the NDIA stated:

As each rural, regional and remote location has its own distinctive requirements there is no single approach to providing assessors in these communities. With consideration for the low volumes, geographical spread and differing servicing models (local allied health professionals, neighbouring communities, virtual health and visits to remote locations) offered by IA Panel Suppliers, it is unlikely that the implementation of IAs will have material impact or opportunity cost on other allied health services in these areas. The NDIA will continue to consult with IA Panel Suppliers to manage any impact of IA's on allied health services that might be experienced.⁴⁰

Concerns that independent assessments could delay NDIS access

- 7.32 Independent assessments as proposed were seen to be particularly inappropriate for people with particular disability types where the need for timely and accurate decision-making about a person's functional capacity and needs was heightened. In relation to degenerative disabilities, the committee further heard that the risks of delaying access to the NDIS were especially serious, as progression of such conditions is not fixed and can quickly lead to dramatically reduced functional capacity.⁴¹ For example, the Muscular Dystrophy Foundation explained that:

The assessments are not suitable for people with progressive conditions. Under the insurance model, if the Participant has an NDIS plan early, based their diagnosis, prophylactic treatments such as stretching and hydrotherapy will contribute to muscle health and mitigate the need for more funding later.⁴²

³⁸ For example, Marathon Health, *Submission 9*, p. 2; New South Wales Government, *Submission 275*, p. 6. The committee is considering these matters as part of its current inquiry into the NDIS Workforce.

³⁹ NDIA, answers to questions on notice, 18 May 2021 (received 14 June 2021).

⁴⁰ NDIA, answers to questions on notice, 18 May 2021 (received 14 June 2021).

⁴¹ Exercise and Sports Science Australia, *Submission 96*, p. 11; Multiple Sclerosis Australia, *Submission 168*, p. 8, 9.

⁴² Muscular Dystrophy Foundation, *Submission 249*, p. 6.

7.33 Concerns about delays in access were also flagged in the NDIA's consultation on its proposed access and eligibility policy. The NDIA did not explicitly address these concerns in its post-consultation report.⁴³

Funding flexibility

7.34 The rollout of independent assessments was also linked to plans to introduce greater flexibility of plan funding.⁴⁴ Every Australian Counts expressed concerns about the NDIA releasing funding in smaller amounts, rather than in annual budgets. It argued that NDIA consultation 'papers do not provide any indication of why a change from annual budgets to monthly or quarterly budgets is necessary'. Further, Every Australian Counts questioned 'what problem the NDIA are intending to solve' by introducing monthly or quarterly budgets.⁴⁵

7.35 The Queensland Government called for care to be taken in allocating flexible funding amounts to participants who may need 'support to make appropriate choices in deciding which supports should be fixed and which supports should be paid for with their flexible budget'. The Queensland Government flagged 'the risk that, for some vulnerable participants, flexible budgets may result in choices with negative long-term impacts being made'. It further expressed the concern that the flexible budget model would create 'the risk of participants inappropriately relying on hospital and health services to provide their disability-related health supports, in order to utilise their NDIS funding to cover underfunding in other areas'.⁴⁶

7.36 In answers to questions on 2 August 2021, the Minister stated that the 'approach to plan budgeting, as described in the Personalised Budgets technical paper, will not proceed' and legislative changes would not include this proposed approach.⁴⁷

Other issues

7.37 Among the myriad of other issues raised in evidence that deserve further attention, submitters and witnesses also pointed to:

⁴³ NDIA, *You Said, We Heard: Access and Eligibility Policy with Independent Assessments*, March 2021, p. 10.

⁴⁴ See, for example, NDIA, *Personalised Budgets: Proposal for a New NDIS Budget Model—Technical Information Paper*, June 2021.

⁴⁵ Every Australian Counts, *Submission 162* p. 48. See also Inclusion Australia, *Submission 225*, p. 26.

⁴⁶ Queensland Government, *Submission 222*, pp. 8, 39, 46.

⁴⁷ Response to written questions by Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, requested on 25 June 2021, received 2 August 2021, [p. 8].

- The independence of assessors, with concerns that assessors would work in the NDIA's interests;⁴⁸
- Concerns that if opinions about a participant's functional capacity varied between professional assessors, this would likely 'erode confidence in the agency';⁴⁹
- The worry that 'independent assessors may develop compassion fatigue from hearing so many accounts' that 'they may just see current and future prospective participants as... "just another number"'⁵⁰;
- The fact that independent assessments would not provide cost savings for many people with rare and degenerative conditions, and some people with disability in general, as they would still require assessments carried out by their treating health professionals as part of their plan preparation to request funding and determine their needs;⁵¹
- Concerns that any approach based on uniformity or consistency risks overlooking the diversity of people with disability and their individual circumstances⁵²; and
- The role of goals in the proposed reforms, which would not have been discussed until the final stages of the planning process when the participant met with an NDIA delegate.⁵³

7.38 This chapter has briefly canvassed some of the other issues raised in evidence to the inquiry. The committee's views on these issues are set out separately in Chapter 9. The following chapter outlines some of the preliminary next steps that the committee considered as part of its thinking on the way forward.

⁴⁸ For example, Mr David Simpson, *Submission 24*, pp. 1–2; Enable Plus, *Submission 1*, p. 15; Darwin Community Legal Service, *Submission 329*, p. 5; Disability Advocacy NSW, *Submission 329*, p. 6.

⁴⁹ Enable Plus, *Submission 1*, p. 23.

⁵⁰ Exceptional Bonds, *Submission 215*, p. 3.

⁵¹ See, for example, SWAN Australia, *Submission 202*, p. 20; Prader-Willi Syndrome Australia Ltd, *Submission 259*, p. 2; MND Australia, *Submission 276*, p. 5.

⁵² For example, Mr Dougie Herd, Chair, ACT Disability Reference Group, *Proof Committee Hansard*, 20 May 2021, p. 17; Ms Emma Davidson, Minister for Disability, Australian Capital Territory Legislative Assembly, *Proof Committee Hansard*, 20 May 2021, p. 16.

⁵³ Ms Jacqui Pierce, Chair, Corangamite National Disability Insurance Scheme Reference Group, *Proof Committee Hansard*, 4 May 2021, p. 32.

Chapter 8

Where to from here?

- 8.1 During the course of the inquiry, the committee turned its mind not just to the issues raised in evidence and how these should be addressed, but also to other, broader solutions to many of the problems facing the NDIS. These included:
- How good policy is created and implemented, in particular the consultation and co-design process;
 - How functional assessments are carried out in other jurisdictions and in other government programs; and
 - Whether independent assessments should be carried out in their proposed form, and what alternative methods are available that would achieve similar results.
- 8.2 This chapter presents some of the committee's preliminary research and findings in each of these three areas to help inform the next steps forward. This discussion is by no means exhaustive, but the committee considers that the issues canvassed below should be taken into account before the Government considers future models to address the challenges facing the scheme. The committee's recommendations are set out in Chapter 9 of this report.
- 8.3 The chapter also outlines what other measures the Minister and the NDIA, in responses to questions on notice, stated the Government had considered implementing in addition to independent assessments to respond to current challenges (as outlined in Chapter 4).

Concerns about the policy process

- 8.4 While it is not unusual for there to be some opposition to policy reforms from affected individuals or interested stakeholders, evidence to the inquiry suggested there was widespread opposition to independent assessments in their proposed form. This opposition was almost universal in evidence from state and territory governments, academics and universities, allied health professionals, allied health peak bodies, disability providers, advocacy groups and people with lived experience and their families.
- 8.5 Some of this evidence flagged concerns about the policy development process that had been carried out for independent assessments. For example, Mr Jeff Smart, a former senior Commonwealth public servant who was an NDIS participant, told the committee at the 20 May 2021 hearing in Canberra that:

To be an example of evidence based policy, there needs to be both evidence collecting and evaluation before making announcements. It made me wonder what the purpose of the trial was.¹

- 8.6 Other concerns included whether independent assessments would solve the problems that they were intended to solve without giving rise to new problems. For example, AMIDA argued 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'.² Similarly, Professor Kylie Burns from Griffith University suggested that 'we can take the NDIA at its word, that there are many legitimate reasons' for why it proposed introducing independent assessments, but:

...we're very concerned that we have the selection of a solution—that is, independent assessments—for a problem that is, potentially, very complex. If there is to be a discussion about sustainability and costs, as researchers we would say let us understand what that problem is and then work towards finding out what the solutions are... There are multiple issues involved, but we would say that if cost of the scheme is one of those main issues, we need to understand, fully, the drivers of cost. I think it's fairly clear that independent assessments could not be the solution to cost pressures across the board.³

- 8.7 The failures identified in the policy development process for independent assessments were seen to undermine trust in the process and the overall proposals. As described by the NDIS Independent Advisory Council (Advisory Council), in advice provided to the Board of the NDIA in July 2021:

Major concerns expressed by representatives of the disability community include the contested views of the purpose of the reforms, the experience of participants, and the community's expectations of co-design and partnership.

The contested view of the purpose of the reforms heightens distrust.⁴

- 8.8 Similarly, several members of the Centre for Disability Research and Policy (which provided evidence to the inquiry) and the Centre for Disability Studies at the University of Sydney, who co-authored the data evaluation report of the second trial, noted in an article that:

¹ Mr Jeff Smart, Private capacity, *Proof Committee Hansard*, 20 May 2021, p. 25.

² AMIDA, *Submission 239*, [p. 2].

³ Associate Professor Kylie Burns, Law Futures Centre and Hopkins Centre, Griffith University, *Proof Committee Hansard*, 29 June 2021, pp. 9–10.

⁴ Independent Advisory Council to the NDIS, *Strengthening Scheme Reforms to Access and Planning*, July 2021, p. 22.

There is a severe lack of trust in the people who matter in government policy making and a disbelief that they are genuinely interested in the experiences and views of people with disability and their supporters.⁵

- 8.9 The Advisory Council devoted a full section of its report to trust and how the Government could rebuild it with the disability sector.⁶
- 8.10 Opinion and evidence reviewed by the committee varied in relation to what steps an appropriate policy process should involve, and in what order. However, the committee has significant concerns about the policy process undertaken for the proposed introduction of independent assessments. These views are outlined further in Chapter 9. Below, the committee examines what the evidence and research say about consultation and co-design, two of the key features that the committee considers should have been prioritised in the NDIA's policy development process for independent assessments.

Consultation and co-design

- 8.11 Underpinning concerns about the policy development process for independent assessments was a significant volume of evidence to the inquiry which questioned how people with disability had been involved in both co-design and the consultation process for independent assessments. For example, Ms Jane Wardlaw, a disability advocate and person with disability, outlined her concerns about consultation on independent assessments at the hearing in Hobart:

The lack of a co-design and consultation process concerns me... I feel that we have been spoken to, we've been spoken about, and I feel that we've just been tokenistically consulted. We're a smart group of people. Our lived experience matters... I feel that, if we had been meaningfully included from the outset, we would be able to build the NDIS in the way that was proposed in the early days...

I feel that we've been totally disregarded when it comes to meaningful consultation... Now there's just no interaction whatsoever. I feel that the consultation process around independent assessments this time was deplorable. It was all written up on their very clunky website... I tried to write a formal submission to the NDIA, but it was just too overwhelming...

I would suggest the CEO leave his office and come and sit in our community and listen to us...

Today's really the first opportunity where I've felt that I'm being listened to, where I might have some influence in putting a halt to this exercise.⁷

⁵ Jen Smith-Merry and Mary-Ann O'Donovan, 'The NDIS is fighting a trust deficit. Its future depends on putting this right', *Croakey Health Media*, 14 July 2021, croakey.org/the-ndis-is-fighting-a-trust-deficit-its-future-depends-on-putting-this-right (accessed 16 July 2021).

⁶ Independent Advisory Council to the NDIS, *Strengthening Scheme Reforms to Access and Planning*, July 2021, pp. 22–24.

⁷ Ms Jane Wardlaw, Private capacity, *Proof Committee Hansard*, 30 April 2021, pp. 24, 27, 28.

- 8.12 Vision Australia argued that the timing of consultation suggested that the Government was not interested in genuine co-design with people with disability and the sector:

Although people with disability and the organisations that represent them have had opportunities to contribute to submissions since the reforms were announced, they have not been afforded opportunities to contribute to design of the proposed model. Reforms to the scheme of this scope and magnitude should be based on a clear commitment to co-design, involving people with disability, their families, service providers and representative bodies. The engagement that has occurred might also be considered somewhat superficial, given that contracted independent assessment providers were announced in the same week that submissions responding to the NDIA's independent assessment consultation paper closed. This indicated a clear intention to plough ahead with the proposed model, in spite of the significant concerns raised by participants and the disability sector more broadly.⁸

- 8.13 Ms Pieta Shakes, a mental health clinician and carer of a person with disability, pointed to the perception from the sector that they had not been consulted adequately or involved in co-design, arguing that:

...the ongoing responses from many disability organisations, including the joint statement with 25 signatory organisations, highlight that the disability community has not been afforded choice, empowerment or flexibility in relation to the introduction of the independent assessments. If the implementation of significant changes within the NDIS do not even adopt a co-design process or recommended consultation process (as per the Tune Review), then it cannot be a change that empowers.⁹

- 8.14 Associate Professor Kylie Burns from the Law Futures Centre and Hopkins centre at Griffith University expressed concern that the 400 disability profiles, as outlined in the NDIA's Personalised Budgets paper,¹⁰ had involved no co-design:

Our understanding, from reading the information paper, is that the NDIA has internally developed the profiles or boxes. So, obviously, in terms of the process of co-design with people with disability and their organisations, we would have said the peak organisations for allied health, for example, who have expertise in that area, would have been essential to develop any such thing, if you were to assume that that was even an acceptable process.¹¹

⁸ Vision Australia, *Submission 106*, [p. 3].

⁹ Ms Pieta Shakes, *Submission 127*, p. 1.

¹⁰ NDIS, *Personalised Budgets: Proposal for a New NDIS Budget Model*, June 2021, p. 6.

¹¹ Associate Professor Kylie Burns, Law Futures Centre and Hopkins Centre, Griffith University, *Proof Committee Hansard*, 29 June 2021, p. 7.

- 8.15 The committee notes that, like independent assessments, the Government has stated that it will not be proceeding with the personalised budgets model as outlined in the Personalised Budgets paper.¹²
- 8.16 Ms Clare Gibellini, the mother of a participant, told the committee that she had taken part in the NDIA's consultation process but 'found the process to be superficial at best and traumatising at worst'. She called for the NDIA to 'work alongside us to develop this scheme'.¹³
- 8.17 Submitters also raised significant concerns about the appropriateness and effectiveness of the consultation undertaken for Aboriginal and Torres Strait Islander communities. For example, the South Australian West Coast ACCHO Network argued that the process went 'directly against how engagement should be done the "proper way"' and did not align with either the NDIA's own Aboriginal and Torres Strait Islander Engagement Strategy, nor the new National Agreement on Closing the Gap, 'which highlights the commitment and importance of transparency and shared decision making'.¹⁴

Principles of co-design

- 8.18 After reflecting upon this evidence, the committee also reviewed the basic principles of co-design. Co-design has increasingly been used in Australian policy development in recent years. It has been promoted as 'a promising approach to improve public policies and government services' that features 'the active involvement of a diverse range of participants in exploring, developing and testing responses to shared challenges'.¹⁵
- 8.19 The Australian Centre for Social Innovation has noted that the term 'co-design'—broadly, not just in the context of policy-development—'has become almost interchangeable with "consultation"'. However, the Australian Centre for Social Innovation argued that co-design is actually about bringing together people with lived experience and 'professionals to jointly make decisions, informed by each others' expertise'.¹⁶

¹² Response to written questions by Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, requested on 25 June 2021, received 2 August 2021, [p. 8].

¹³ Ms Clare Gibellini, Private capacity, *Proof Committee Hansard*, 27 April 2021, p. 49.

¹⁴ South Australian West Coast ACCHO Network, *Submission 11*, p. 2.

¹⁵ Emma Blomkamp, 'The promise of co-design for public policy', *Australian Journal of Public Administration*, vol. 77, no. 4, 2018, pp. 729–731.

¹⁶ The Australian Centre for Social Innovation, *Unpacking co-design*, tacsi.org.au/unpacking-co-design/ (accessed 29 July 2021).

8.20 Similarly, the WA Council of Social Services, in a toolkit especially designed to guide governments intending to use co-design, described co-design as being about:

...designing and delivering community services in a partnership—an equal and reciprocal relationship—between funders, service providers and the people using services (and often their carers, families and others in their community)... The evidence is strong about Co-Design being an effective means of ensuring the best outcomes, but for this to hold true we need to be confident that we are genuinely engaging in processes that embody the principles and behaviours that have been shown to work.¹⁷

8.21 The WA Council of Social Services further outlined what it considered to be the key principles of co-design for governments, including:

- Design with people, not just for them, with inclusion being at the outset, not later when decisions have been made;
- There should be an effective, facilitated process with freedom to speak frankly, which requires a relationship based on trust, respect, openness and transparency;
- Co-design processes should commence with the sharing of existing data on community need, population and cohort dynamics, and service evaluations, with agreement reached on service goals and outcomes before moving to design;
- The process should involve design, planning and evaluation, as well as, in some cases, implementation or delivery; and
- Co-design is an iterative process that develops over time, with participants being able to explore, make mistakes, learn from these and use the process to progressively design better services.¹⁸

The NDIA's position on co-design

8.22 The committee is aware that the NDIA released a Co-Design Framework paper in 2015.¹⁹ This paper appears to be no longer publicly available. However, the NDIA's Corporate Plan for 2015–19 set out the following eight principles to guide its approach to co-design:

- Create a shared understanding of the intent, objectives and goals of the co-design activity;

¹⁷ WA Council of Social Service, *WACOSS Co-Design Toolkit*, July 2017, wacoss.org.au/wp-content/uploads/2017/07/co-design-toolkit-combined-2-1.pdf (accessed 29 July 2021), pp. 1–2.

¹⁸ WA Council of Social Service, *WACOSS Co-Design Toolkit*, July 2017, wacoss.org.au/wp-content/uploads/2017/07/co-design-toolkit-combined-2-1.pdf (accessed 29 July 2021), pp. 3–4.

¹⁹ See Cat Sutton-Long, Kristina Skov Aagaard, Dr Zaana Howard and Vito Tassone, *Co-Design for Community Inclusion*, National Disability Services, February 2016, pp. 5, 43. The committee thanks the Parliamentary Library for locating a copy of that document.

- Take a holistic, user-centred approach, that is based on story-telling to help to illustrate the context;
 - Engage early and often;
 - Follow a structured yet flexible process;
 - Ensure there is representation of diverse stakeholder groups;
 - Make it inclusive, taking into account the physical and emotional environment and ensuring co-design methods are accessible to enable meaningful participation;
 - Manage expectations and clearly communicate constraints, allowing stakeholders to understand why some ideas are not possible; and
 - Close the loop through clear and timely follow up engagement; and share data, findings and next steps for the project.²⁰
- 8.23 At the time of drafting this report, the 2015–2019 Corporate Plan had been superseded by three subsequent corporate plans, none of which had used the term 'co-design'.²¹
- 8.24 In a speech on 23 July 2021, the CEO of the NDIA, Mr Martin Hoffman, stated that Commonwealth, state and territory Disability Ministers:
- ...have made a commitment to work in partnership with people with lived experience of disability through the Independent Advisory Council and disability representatives on the co-design of a new person-centred model.²²
- 8.25 Mr Hoffman further revealed that the NDIA was essentially 'co-designing what co-design will look like' by 'progressing work on a framework for consultation and engagement that will see us have more robust co-design principles in place with sector organisations...[and] direct engagement with the community'.²³
- 8.26 At an estimates hearing on 3 September 2021, Mr Hoffman provided further details on the NDIA's proposed co-design consultation process, flagging 'the creation of a compact... between the agency and the sector generally in terms of the way we all work together on co-design'.²⁴

²⁰ NDIA, *2015–2019 Corporate Plan*, p. 6.

²¹ Close to the tabling of this report, on 31 August 2021, the NDIA published its *2021–2025 Corporate Plan*, which included references the commitment following Disability Ministers' meeting in July 2021 that the NDIA would be engaging with people with disabilities to co-design a new person-centred model. See pp. 6, 27, 30, 34.

²² Mr Martin Hoffman, *From the CEO—Speech*, 23 July 2021, [ndis.gov.au/news/6637-stay-informed-ceo-future-ndis](https://www.ndis.gov.au/news/6637-stay-informed-ceo-future-ndis) (accessed 29 July 2021).

²³ Mr Martin Hoffman, *From the CEO—Speech*, 23 July 2021, [ndis.gov.au/news/6637-stay-informed-ceo-future-ndis](https://www.ndis.gov.au/news/6637-stay-informed-ceo-future-ndis) (accessed 29 July 2021).

²⁴ Mr Martin Hoffman, CEO, National Disability Insurance Agency, *Proof Committee Hansard—Senate Community Affairs Estimates Committee*, 3 September 2021, p. 72. Close to the tabling of this report, the NDIA published further information about this process on its website, which the committee has not had the opportunity to review in detail. See NDIS, *Working towards co-design*,

Functional assessments in other contexts

8.27 The committee examined how similar policies in other jurisdictions have been implemented and the impacts of these policies. The committee also considered examples of functional assessments conducted in the context of the provision of government services in other jurisdictions. Most submitters and witnesses outlined the negative impacts of particular assessment programs; however, some pointed to examples that they suggested could be adapted and used by the NDIA.

What the evidence suggested did not work

8.28 Evidence indicated that Personal Independence Payments (PIP) in the UK, for people with long-term physical or mental health conditions or disability, had resulted in adverse 'mental health outcomes associated with stringent functional assessments, including increased suicide risk'. Further, the PIP 'has cost the government considerably more than anticipated'.²⁵ Other evidence discussed Work Capability Assessments in the UK, highlighting research that concluded these were associated with an increase in suicide, mental health problems and increased prescribing of antidepressants.²⁶

8.29 The New South Wales Government used support needs assessments for all residents of state-operated group homes, before the introduction of the NDIS, to form the basis for building a budget. The New South Wales Government stated in its submission that:

- 'The process was not effective at predicting costs at an individual service unit level, let alone an individual client level'; and
- 'Reassessment of individuals was common and, most importantly, budget adjustments were made at the service unit level to meet the needs of individual clients'²⁷

8.30 Other examples provided to the committee of negative impacts arising from independent assessments used in public programs included the following:

- Administrative Appeals Tribunal appeals;²⁸

7 September 2021, <https://www.ndis.gov.au/community/working-towards-co-design> (accessed 8 September 2021).

²⁵ Gov.uk, *Personal Independence Payment (PIP)*, www.gov.uk/pip (accessed 29 July 2021); Advocacy for Inclusion, *Submission 94*, p. 10; Eastern Health, *Submission 100*, [p. 2]; and Name Withheld, *Submission 178*, [p. 3]. See also Mr Graham Taylor, *Submission 35*, p. 10.

²⁶ Occupational Therapy Australia, *Submission 159*, p. 11 and Australian Physiotherapy Association, *Submission 235*, p. 8, citing Barr et al. 2015.

²⁷ New South Wales Government, *Submission 275*, p. 5.

²⁸ See, for example, Name Withheld, *Submission 114*, pp. 7–8. See also Mr Kevin Danher, *Submission 149*.

- Applications for Disability Support Pensions;²⁹
- Centrelink Job Capacity Assessments;³⁰
- WorkSafe Victoria;³¹ and
- icare: Insurance and Care NSW³²

8.31 The Centre for Disability Research and Policy at the University of Sydney highlighted the importance of recognising 'the historical, perverse and very negative impact of eligibility assessments of services for people with disabilities', such as the 'historical use of IQ assessments to allow/deny a child's access to educational opportunities'. It further flagged the 'Clinical Evaluation of Language Functioning' assessment which it suggested 'misses kids who could really benefit from support' from speech pathology services. The Centre argued that:

Without a strong evaluation, auditing and feedback process, in which the NDIA genuinely listens to and adapts the scheme in relation to the implementation, experiences and concerns of the sector (rather than just [rejecting] criticism) then these problems may occur in relation to the NDIS.³³

Successful models

8.32 However, some evidence pointed to positive experiences of assessments used in government programs. The committee obtained research from the Parliamentary Library outlining the key features of medical assessments in workers' and motor vehicle compensation schemes in New Zealand, Victoria and Queensland.³⁴ This research is used below to supplement the evidence that the committee received in the inquiry. The committee has considered these models as examples only, noting that modifications would be necessary to incorporate any of these models into the NDIS. This is particularly the case given

²⁹ Advocacy for Inclusion, *Submission 94*, pp. 10–11; Name Withheld, *Submission 123*, [p. 2]; Australian Clinical Psychology Association, *Submission 150*, p. 3; People with Disabilities WA, *Submission 163*, p. 21; Name Withheld, *Submission 177*, [p. 1]; Australian Association of Psychologists Inc, *Submission 20*, [p. 6]; Name Withheld, *Submission 256*, p. 3.

³⁰ Ms Pieta Shakes, *Submission 127*, p. 2; Autism Spectrum Australia, *Submission 206*, p. 2.

³¹ Name Withheld, *Submission 67*, [p. 6]; Australian Psychological Society, *Submission 157*, p. 2. It should be noted that Recommendation 3 of the *WorkSafe 2: Follow-up Investigation into the Management of Complex Workers Compensation Claims* from the Victorian Ombudsman (December 2019) recommended that a dedicated business unit be established 'to independently review disputed decisions when requested by workers following unsuccessful conciliation. Where necessary, WorkSafe should use its existing powers to direct agents to overturn decisions which do not have a reasonable prospect of success at court (ie would not be sustainable)".

³² Mr Graham Taylor, *Submission 35*, p. 10; Mr Greg Franklin, *Submission 190*, [pp. 6–7].

³³ Centre for Disability Research and Policy, The University of Sydney, *Submission 54*, [pp. 3–4].

³⁴ This information was current as at July 2021. See Appendix 2.

the importance of goals to the NDIS, compared to the focus on injury or impairment in other compensation schemes.

Victorian Transport Accident Commission

8.33 Speech Pathology Australia suggested that the Transport Accident Commission in Victoria could be viewed:

...as an alternate assessment process as it not only aligns with the values of the International Classification of Functioning, Disability and Health (ICF), but also allows the person to work with the accredited practitioner of their choice towards improved functional outcomes. Reviews are conducted by an experienced clinical panel to ensure appropriate progress and compensation as necessary.

This would be a much more preferred method of operating for our members, who have concerns about the emotional burden on families...as well as the mental health impacts on people with disability having to tell their story to strangers, as opposed to being able to complete the assessment process with their trusted current providers, who could then be reviewed as needed by a panel.³⁵

8.34 Similarly, the Australian Rehabilitation and Assistive Technology Association also called for the NDIA to 'model their approach from other well-established existing state-based injury insurers', including the Transport Accident Commission in Victoria, arguing that:

- These schemes have worked closely with scheme participants and allied health professionals, and drawn from existing evidence, to recommend a range of assessment tools that may be used to consider a person's goals and support needs; and
- These agencies also allow flexibility for open-ended discussion and decision-making about which published measures are appropriate to use and which are not.³⁶

8.35 Persons injured in a transport accident who have made a claim for impairment benefits with the Transport Accident Commission because of a permanent impairment are required to undergo an independent impairment assessment by specially trained medical practitioners. Approved independent medical examiners also carry out independent medical examinations.³⁷ Independent medical assessments can be carried out by medical practitioners, and psychologists, dentists, occupational therapists, optometrists, physiotherapists,

³⁵ Speech Pathology Australia, *Submission 277*, p. 8.

³⁶ Australian Rehabilitation & Assistive Technology Association (ARATA), *Submission 267*, p. 6.

³⁷ Transport Accident Commission, *Medical assessments and examinations*, <https://www.tac.vic.gov.au/providers/type/psychiatrists/treating-a-client/medical-assessments-and-examinations> (accessed 29 July 2021).

chiropractors, osteopaths or podiatrists, provided these are registered with the Commission.³⁸

Disability Support for Older Australians program

8.36 Speech Pathology Australia highlighted another alternative assessment process used in the Commonwealth Government's Disability Support for Older Australians (DSOA) program. This program, it submitted:

...was designed by the Centre for Disability Studies using the I-CAN assessment, based on the World Health Organisation's ICF framework, and is more inclusive of the person with disability and their support networks.³⁹

8.37 A fact sheet available online about recent changes to DSOA indicated that the University of Sydney's Centre for Disability Studies will undertake these independent assessments, using a customised I-CAN Assessment, with further information to be made available in 2021.⁴⁰ The program does not yet appear to have been rolled out.

National Injury Insurance Scheme Queensland

8.38 Where a functional capacity assessment is needed, Associate Professor Kylie Burns from Griffith University called for 'it to be a multidisciplinary process and it should also be an iterative and dynamic process'. She gave the National Injury Insurance Scheme, Queensland (NIISQ), as an example, telling the committee that:

The scheme certainly doesn't operate in a way that looks anything like what's being proposed for the NDIS. It has a much more multidisciplinary approach... It involves an internal planner building a package. There may well be some functional assessments involved but not in the manner in which has been proposed here.⁴¹

8.39 The NIISQ website states that to apply to enter the NIISQ, participants need to have a 'qualified medical specialist complete the medical certificate attached to the Application Form—Interim Participation'. A further Functional Independence Measure assessment for brain injuries and burns may be required, and must be undertaken by a credentialed assessor. Once participants are accepted, they are assigned a Support Planner who becomes their main point of contact. This Support Planner may make contact with the participant or their treating team while the participant is in hospital to discuss the NIISQ's services and the support that it provides; coordinate, approve and pay for injury-related services (such as equipment, home modifications, rehabilitation or attendant

³⁸ Parliamentary Library, *Workers Compensation Schemes—Independent Assessments*, July 2021, p. 8.

³⁹ Speech Pathology Australia, *Submission 277*, p. 8.

⁴⁰ Department of Health, *Disability Support for Older Australians Program*, December 2020, p. 4.

⁴¹ Associate Professor Kylie Burns, Law Futures Centre and Hopkins Centre, Griffith University, *Proof Committee Hansard*, 29 June 2021, pp. 1, 5.

care) needed for when the participant returns home; and assist the participant to develop their support plan to help them live at home and participate in their community.⁴²

8.40 Once a participant is accepted into the NIISQ, the NIISQ Agency undertakes an assessment that must involve consultation with the participant about the following matters:

- the treatment, care and support the participant considers necessary and reasonable as a result of the participant's injury;
- the participant's abilities and limitations; and
- the participant's individual goals.⁴³

8.41 The NIISQ Agency can also consult with other persons as it considers appropriate. Assessments are carried out within one year of the last assessment. Following the first assessment, the Agency must make a support plan that sets out the relevant treatment, care or support the NIISQ Agency considers to be necessary and reasonable, how this will be funded and any dates for further assessments.⁴⁴

8.42 Inclusion Australia also suggested that some schemes in other jurisdictions have moved from functional assessments to transdisciplinary assessment teams assessing individuals:

When the Productivity Commission suggested the use of independent assessments, the idea at the time was based on the use of functional assessments by no fault accident compensation schemes. In the decade since this suggestion, injury compensation schemes themselves are now moving to transdisciplinary assessment teams because of challenges with functional assessments.⁴⁵

8.43 The Royal Australian and New Zealand College of Psychiatrists similarly proposed 'a multi-disciplinary meeting' instead of independent assessments, arguing that this 'would encourage a more holistic approach, involving a variety of allied, medical and support staff as well as family and carers', with professionals then remunerated for their attendance.⁴⁶

⁴² NIISQ, *How to apply*, niis.qld.gov.au/about-the-scheme/how-to-apply (accessed 29 July 2021); NIISQ, *Accessing the Scheme*, niis.qld.gov.au/participants/accessing-the-scheme/ (accessed 29 July 2021).

⁴³ Parliamentary Library, *Workers Compensation Schemes—Independent Assessments*, July 2021, p. 5.

⁴⁴ Parliamentary Library, *Workers Compensation Schemes—Independent Assessments*, July 2021, p. 5.

⁴⁵ Inclusion Australia, *Submission 225*, p. 11.

⁴⁶ Royal Australian and New Zealand College of Psychiatrists, *Submission 65—Supplementary submission*, pp. 3–4.

WorkCover Queensland

- 8.44 Mr Matt Dunn from the Queensland Law Society also highlighted the Queensland Government's workers compensation scheme (WorkCover Queensland), which he described as 'largely more self-directed in terms of the individual making the choices about how they want to be supported and the types of providers'. He described it as 'by no means perfect. It has its rusty edges and its problems, as every model does, but it's proved to be quite a compelling model'.⁴⁷
- 8.45 The Queensland Government's WorkSafe website indicates assessments for the degree of permanent impairment for applicants are undertaken by specially trained doctors. If the applicant disagrees with this assessment, they can appeal it at the Medical Assessment Tribunal or ask the insurer to consider a review by a different doctor, who can be nominated by the applicant (from the list of specifically trained doctors).⁴⁸
- 8.46 When lodging applications, applicants must include a medical certificate from a doctor, nurse or dentist who treated their injury, with their entitlement to compensation beginning on the day when this assessment occurs. An insurer at any time may require an applicant to be personally examined by a registered person at a place reasonably convenient for the applicant, including an assessment of the degree of permanent impairment. If applicants do not agree with the degree of permanent impairment assessment and require a fresh assessment, they must respond to a notice of assessment within 20 days.⁴⁹

Workers compensation schemes in New Zealand

- 8.47 At the hearing in Brisbane, Mr Matt Dunn from the Queensland Law Society informed the committee that the current 'NDIA model probably looks a little bit closer to the New Zealand accident compensation commission model, and the Productivity Commission was quite smitten with that particular approach'.⁵⁰
- 8.48 The New Zealand Accident Compensation Corporation (ACC) requires that where a person lodges a claim themselves, they must provide the ACC with a certificate and undergo an assessment by a registered health professional who

⁴⁷ Mr Matt Dunn, General Manager, Advocacy, Guidance and Governance, Queensland Law Society, *Proof Committee Hansard*, 29 June 2021, p. 5.

⁴⁸ WorkSafe Queensland, *Assessment for the degree of permanent impairment*, <https://www.worksafe.qld.gov.au/service-providers/legal-professionals/plaintiff-lawyer-resources/assessment-for-the-degree-of-permanent-impairment> (accessed 29 July 2021).

⁴⁹ Parliamentary Library, *Workers Compensation Schemes—Independent Assessments*, July 2021, pp. 2–3.

⁵⁰ Mr Matt Dunn, General Manager, Advocacy, Guidance and Governance, Queensland Law Society, *Proof Committee Hansard*, 29 June 2021, p. 6.

the ACC specifies. Treatment providers are also able to lodge a claim on the person's behalf.⁵¹

- 8.49 Assessors are contracted medical practitioners who have at least general registration with the Medical Council of New Zealand and a minimum of three years' post-registration clinical experience, along with a current Annual Practising Certificate. ACC consults with the applicant to choose a contracted assessor who is qualified to assess their injury. Where possible, the applicant is able to choose which appropriate assessor they would prefer to carry out their assessment. In instances where the person suffers injuries requiring both a physical assessment and a mental and behavioural assessment, and if there is no assessor available and qualified to conduct both assessment types, ACC arranges for two separate independent assessments to be carried out.⁵²
- 8.50 At any time, a person is able to arrange for an additional independent assessment at their own cost. If this assessment has any points of difference, ACC investigates further. Persons are not entitled to have more than one reassessment within 12 months, and are not required to undergo more than one reassessment within 5 years, unless there are reasonable grounds that indicate impairment may have decreased since the last assessment. Assessment tools are taken from *The American Medical Association's Guides to the Evaluation of Permanent Impairment 4th Edition*, with impairment assessors for behavioural and mental impairments being required to be psychiatrists, or to have experience in completing general assessments for physical injury for ACC with knowledge of psychology and the diagnostic system in psychiatry/psychology. These assessors are also required to undergo additional ACC training.⁵³

Veterans' compensation schemes

- 8.51 The committee also considered how the Department of Veteran's Affairs (DVA) uses information from a claimant's treating medical practitioner to assess impairments for schemes that provide support and compensation for veterans and their dependants.⁵⁴
- 8.52 For most compensation and benefits provided to veterans and their families, the Government needs to accept liability for an injury, illness or death before a claim can be granted. Liability involves linking the veterans' condition to their

⁵¹ Parliamentary Library, *Workers Compensation Schemes—Independent Assessments*, July 2021, p. 11.

⁵² Parliamentary Library, *Workers Compensation Schemes—Independent Assessments*, July 2021, pp. 11–12.

⁵³ Parliamentary Library, *Workers Compensation Schemes—Independent Assessments*, July 2021, pp. 12–13.

⁵⁴ The three main Acts that provide for support and compensation for veterans and their dependants are the *Veterans' Entitlements Act 1986*, the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*, and the *Military Rehabilitation and Compensation Act 2004*.

military service. Claimants must make a case that their condition is linked to their service and this case is assessed by a DVA claims assessor. DVA claims assessors typically do not have medical training but can request a review of medical records by DVA's medical advisers.⁵⁵

- 8.53 The medical diagnosis of a claimed condition is based on a claimant's medical records provided by their GP or specialist. The claim form for the *Military Rehabilitation and Compensation Act 2004* scheme notes that DVA will pay the medical practitioner for the service.
- 8.54 Where medical records are not provided or are considered insufficient to establish a diagnosis, assessors can ask a claimant to have an appointment with an external medical assessor (paid for by DVA); however, reports from treating specialists are preferred.⁵⁶
- 8.55 The Productivity Commission (PC) examined the process for establishing liability in its 2019 report, *A Better Way to Support Veterans*.⁵⁷ When examining the process for establishing liability, the PC heard evidence which raised concerns about the use of external medical assessors. The PC found that external assessors 'should only be called upon when strictly necessary and staff should be provided with clear guidance to that effect'.⁵⁸
- 8.56 Once liability for the condition has been accepted, DVA also needs to determine the type and level of benefit, usually through assessment of impairment and the pain and suffering caused by the condition. The PC noted that each Act has its own guide to assess rates of impairment, and that the use of different guides 'makes comparisons across the Acts more difficult, increases the complexity of assessing claims, and increases the difficulty of offsetting between the Acts'.⁵⁹ External assessors can also be used to assess the level of a claimant's impairment.⁶⁰
- 8.57 For most claims, the onset or worsening of a condition is also based on information provided by treating medical practitioners or through a discussion with the claimant. Similarly, claims for the Invalidity Service Pension include information from the claimant's treating medical practitioner. DVA pays medical practitioners for filling out the paperwork based on a fee schedule. The

⁵⁵ Parliamentary Library, *DVA Assessments of Impairments*, July 2021, pp. 2–3.

⁵⁶ See Productivity Commission, *A Better Way to Support Veterans*, July 2019, Volume 1, p. 422.

⁵⁷ Productivity Commission, *A Better Way to Support Veterans*, July 2019.

⁵⁸ Productivity Commission, *A Better Way to Support Veterans*, July 2019, Volume 1, p. 424.

⁵⁹ Productivity Commission, *A Better Way to Support Veterans*, July 2019, Volume 2, p. 644. See, generally, Chapter 14 of that report for a summary of the differences in impairment assessments across the three schemes.

⁶⁰ Parliamentary Library, *DVA Assessments of Impairments*, July 2021, p. 3.

treating doctor also needs to fill out a work test questionnaire detailing the impact of the person's impairments on their work capacity.⁶¹

Medicare Benefits Schedule item

8.58 The committee learned that many submitters and witnesses were in favour of the Government fully funding consultations with healthcare professionals for the purposes of evidence for access and planning requests. In particular, some called for a new bulk-billed Medicare Benefits Schedule item to address equity issues that may lead some participants and prospective participants able to afford medical reports while others are unable to do so (see Appendix 3 for further detail).⁶² As one participant stated:

...as someone who was diagnosed late at 27 and on a low income, I understand the financial barriers of first gaining a diagnosis (for which there are neither Medicare or NDIS rebates available) and the additional hurdle of gaining enough paperwork to provide as evidence for accessing NDIS.⁶³

8.59 In light of this evidence, the committee commissioned the Parliamentary Budget Office (PBO) to investigate the cost of a new Medicare Benefits Schedule item to provide funded assessments for NDIS access and planning purposes. The item would allow participants and prospective participants to be fully bulk-billed for an assessment by a health professional of their choice. The committee was particularly interested to learn how much such an item would cost compared with the costs of a contracted panel of independent assessors (\$339 million over three years).⁶⁴

8.60 The committee asked the PBO how much a new, bulk-billed Medicare Benefits Schedule (MBS) item would cost for assessments for three different cohorts:

- A one-off assessment for all potential entrants to the NDIS;
- Assessments for all NDIS participants to inform planning decisions (adults on average every three years, to take into account both those with stable conditions and those with fluctuating or degenerative conditions; and children under 18 once a year); and
- All NDIS participants with a psychosocial disability, every three years. The committee selected this cohort in particular, before the Government's announcement that independent assessments would not proceed in their proposed form, given concerns raised about the stress and anxiety that may

⁶¹ Parliamentary Library, *DVA Assessments of Impairments*, July 2021, p. 5.

⁶² For example, Hutt St Centre, *Submission 14*, p. 7; Royal Australian and New Zealand College of Psychiatrists, *Submission 64—Supplementary submission*, p. 3.

⁶³ Name Withheld, *Submission 23*, p. 1.

⁶⁴ National Disability Insurance Agency, answers to questions on notice, 4 May 2021 (received 18 May 2021), [p. 2].

arise for people with psychosocial disability who would have been required to meet with an unfamiliar assessor.

- 8.61 The committee understands that at present, any proposed MBS items are subject to multiple reviews before they are implemented, a process which can take several years and is subject to considerable quality assurance processes. The Medicare Benefits Schedule (MBS) was recently the subject of a review by the MBS Review Taskforce over five years, concluding in 2020. The Taskforce recommended that a new Medicare Advisory Committee 'expedite the addition of new items' and 'draw on a broad range of clinical, health economic and consumer expertise to inform its decisions'.⁶⁵ Whether the Government accepts this recommendation or continues using the existing systems in place to review proposed MBS items, the committee was confident that the consultation, oversight and quality assurance processes involved in proposing a new MBS item for assessments would be rigorous, and as such, decided to investigate this option.
- 8.62 The Parliamentary Budget Office's response to the committee's request is set out in Appendix 4 of this report, including the full assumptions underlying the PBO's costing. The costing, when using the PBO's baseline projection, indicated that:
- A one-off bulk-billed assessment for potential entrants to the NDIS, between the 2021–22 and 2024–2025 financial years, would cost between \$80.5 million and \$450.8 million;
 - Regular assessments for all NDIS participants for planning purposes, during the same period, would cost between \$1.63 billion and \$2.04 billion; and
 - Regular assessments for participants with psychosocial disability, during the same period, would cost between \$127.5 million and \$150.6 million.⁶⁶
- 8.63 The schedule fees were set at \$320 per session in the first year, and were based on similar MBS health assessment items, including autism, psychological and other physical assessments. Assessments in the costing were assumed to vary from two to eight sessions, with each session lasting at least an hour.⁶⁷

⁶⁵ Medicare Benefits Schedule Review Taskforce, *An MBS for the 21st Century: Recommendations, Learnings and Ideas for the Future—Final Report 2020*, December 2020, p. 5.

⁶⁶ Parliamentary Budget Office, *Make Functional Assessments a Medicare Benefits Schedule Item*, August 2021, p. 3.

⁶⁷ Parliamentary Budget Office, *Make Functional Assessments a Medicare Benefits Schedule Item*, August 2021, pp. 4–5.

Other proposals from the Government

8.64 In answers to questions on notice concerning other options that the Government had considered to help ensure the financial sustainability of the scheme, the Minister responded that changes considered include:

- Improved training and guidance for decision-makers;
- Greater awareness by decision-makers of comparable decisions being made by their fellow decision-makers; and
- Internal escalation of decisions that on the face of it would depart significantly from similar decisions.⁶⁸

8.65 The Minister stated that other changes already implemented or currently underway include:

- Systemic changes to the way in which decisions about supported independent living support are made, meaning a move away from a quote-based system to a maximum price the NDIA is willing to pay for a 'fully loaded' cost of delivering an hour of support in a supported independent living setting;
- Better targeted early intervention to address the needs of children with developmental delay, thereby potentially reducing the extent to which they would need to become long-term NDIS participants;
- Improved fraud detection and minimised payment errors;
- Work to ensure price controls are appropriate and aligned to adjacent sectors; and
- Work on the National Disability Strategy to improve the accessibility of government services and raise awareness of these services throughout the community.⁶⁹

8.66 At the hearing on 5 August 2021, the Minister further clarified that assessments in some form will proceed, but that 'independent assessments are dead'.⁷⁰

8.67 The committee's full views on the proposals outlined throughout this chapter and its recommendations to the Government about next steps are outlined in the following chapter.

⁶⁸ Response to written questions by Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, requested on 25 June 2021, received 2 August 2021, [p. 5].

⁶⁹ Response to written questions by Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, requested on 25 June 2021, received 2 August 2021, [p. 5].

⁷⁰ Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, *Proof Committee Hansard*, 5 August 2021, p. 7.

Chapter 9

Committee view and recommendations

9.1 The committee welcomes the announcement by the new Minister for the NDIS, Senator the Hon Linda Reynolds CSC, that the Government will not be proceeding with independent assessments in their proposed form, and will be taking time to consult in a meaningful way. In particular, the committee wishes to acknowledge the Minister's receptiveness to feedback from the sector. Her decision following consultation to abandon independent assessments as proposed indicated that she did not merely listen to the sector, but also heard and took action on the basis of expert advice. The committee expects that the Minister will continue to consult in this manner.

Preliminary comments

9.2 The committee notes the Productivity Commission's recommendation in its 2011 report that future changes to the key features of the scheme occur 'only by explicit changes to the Act itself, be subject to the usual processes of community and Parliamentary scrutiny, and require consultation with all state and territory governments'.¹

9.3 The committee also notes that the Tune Review argued that the introduction of independent assessments would 'require extensive consultation with participants, the disability sector, service providers and the NDIA workforce', and that the success of independent assessments would largely depend on:

- The willingness of prospective participants and participants to work with NDIA-approved functional assessors; and
- Those assessors providing truly independent functional capacity assessments, so they would not be perceived as agents of the NDIA or a tool designed to cut supports from participants.²

9.4 Looking at the recommendations of these two key inquiries in the context of evidence presented to the committee indicates that the NDIA did not follow what was recommended, despite frequently referring to both reports in its reasons for introducing independent assessments. For example, the Tune Review considered that independent functional assessments could be an option for people with disabilities 'who would like to test their access for the NDIS or

¹ Productivity Commission, *Disability Care and Support—Overview and Recommendations*, p. 58; and *Volume 1*, 2011, Recommendation 9.6, p. 434.

² David Tune AO PSM, *Review of the National Disability Insurance Scheme Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee*, December 2019, p. 66.

who require further evidence to support decision-making' in their plans.³ In considering the broader question of best practice approaches to policy development, the failure to follow these recommendations, particularly in relation to the consultation process, is especially concerning.

- 9.5 As both of those inquiries identified, genuine consultation and co-design were key steps to ensuring that people with disability and their families were open to independent assessments being introduced, in an appropriate form. While the committee is not suggesting that the sector would have welcomed independent assessments if co-design and genuine consultation had taken place (indeed, the end result of such a hypothetical process should have resulted in a very changed model to what the Government proposed, given the concerns raised about the reliability and validity of the tools), any future major changes to the scheme should involve both of these processes. As such, the committee strongly encourages the Government to adopt appropriate co-design processes and welcomes the recent announcement from the Chief Executive Officer that the NDIA will be focusing on a new co-design process. The committee has more to say on this matter below.
- 9.6 The committee commends the new Minister's recent efforts to consult with state and territory ministers and her commitment to continue doing so through the Disability Reform Ministers' meetings. The committee further welcomes the Minister's announcement that proposed amendments to the *National Disability Insurance Scheme Act 2013* would be released publicly and subject to consultation.⁴ These approaches are in line with what both the Productivity Commission and the Tune Review proposed should occur before major changes to the NDIS are implemented. The committee will have more to say about proposed amendments in future inquiries; for now, the committee acknowledges these first positive steps taken by the Minister, which will help to put any proposed reforms on a solid foundation moving forward. However, the committee reminds the Government of the importance of listening to people with disability and placing equal importance on their views alongside best practice and feedback from experts. Further, evidence-based best practice should never be used to discount the lived experience or views of people with disability.

³ David Tune AO PSM, *Review of the National Disability Insurance Scheme Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee*, December 2019, p. 65.

⁴ The committee notes that evidence received by the Senate Community Affairs Legislation Committee in relation to the recently introduced National Disability Insurance Scheme Amendment (Improving Supports for At Risk Participants) Bill 2021 indicates that such consultation did not take place in relation to the amendments proposed in this bill. See, for example, Ms Natalie Wade, Expert Adviser, Australian Federation of Disability Organisations, *Proof Senate Community Affairs Legislation Committee Hansard*, 2 August 2021, p. 2.

The financial sustainability of the NDIS

9.7 The committee notes that a key reason given by the Government for introducing independent assessments as proposed was to address the financial sustainability of the NDIS. If the NDIS is on an unsustainable financial trajectory, there appear to be five possible solutions:

- (1) Reduce the number of participants in the NDIS;
- (2) Reduce the types of supports available;
- (3) Reduce the dollar figure of supports available;
- (4) Source additional Commonwealth funding; or
- (5) Renegotiate bilateral agreements with the states and territories

9.8 This committee does not take the position that access or ongoing eligibility for a world-first scheme, which has brought life-changing transformation to hundreds of thousands of participants and their families, should ever be denied to people with disability who meet the criteria for accessing the scheme under the Act. The committee also does not agree that overall plan funding should be reduced so long as those plans have been determined to be reasonable and necessary. After seeing the progress and positive benefits achieved under the scheme, it is crucial to avoid returning to a system that would leave people with disability without the supports that they need. This is not a controversial position; support for the NDIS is bipartisan, spread across ideological divides and shared across Australian society, because the benefits the NDIS brings to Australia as a whole are substantial and meaningful.

9.9 The focus of this inquiry was not the financial sustainability of the NDIS, and as such, the committee received only limited evidence on alternatives to independent assessments that could put the scheme on a better financial trajectory. However, the committee did ask the Minister and the NDIA, in questions on notice, to respond to the following:

- What other options, besides independent assessments, did the Government consider to help ensure the financial sustainability of the scheme?
- Has the Government established an NDIS Reserve Fund, as indicated in Commonwealth/state/territory bilateral agreements that underpin the establishment of the scheme?
- Please provide the relevant actuarial data, risk assessment profiles and short and long-term modelling that led the Government to conclude that the NDIS is on an unsustainable growth trajectory, and all other relevant information that indicates that the cost of the scheme will differ from the Productivity Commission's original projections.
- Please provide in full (not summary form) all Financial Sustainability Reports since 2015.

9.10 Eight days after these questions were sent to the Minister, the NDIA publicly released a substantive interim update to its Annual Financial Sustainability

Report Summary.⁵ On the matter of its request for full Annual Financial Sustainability Reports, the committee notes the Minister's advice that previous reports were 'prepared solely for consideration by the Board'.⁶ While the committee looks forward to the NDIA Board releasing the 2021 report in full when it is available later in the year, the committee remains concerned that the Government has to date not provided the more detailed information contained in previous reports.⁷ Without this information, it is difficult for the committee to analyse key information contained in these reports.

- 9.11 The Government's answers to the other questions posed to the Minister have been canvassed elsewhere in this report, and the committee thanks the Minister for her commitment to transparency, evidenced by the comprehensive responses to many questions the committee has put to her. The committee also thanks the NDIA for the time that it has taken to respond to the committee's recent requests for detailed data. The committee also welcomes the announcement by the Disability Reform Ministers Council that 'further work will be undertaken... to understand cost drivers and underpinning assumptions in the Annual Financial Sustainability Report (AFSR)... informed by data and modelling underpinning historical and future AFSRs' and that representatives of people with disability should be actively engaged in this work.⁸ The committee nevertheless notes that full actuarial data and long-term modelling about the financial sustainability of the scheme were not provided to the committee during this inquiry.
- 9.12 The committee further wishes to focus on an area of particular concern arising from the Minister and the NDIA's response to the question on the NDIS Reserve Fund. The committee is surprised and concerned that the NDIS Reserve Fund does not yet exist, particularly in light of the Government's commitment to establish the Fund in multiple bilateral agreements that are already several years old. The Productivity Commission in its 2011 report explicitly emphasised the importance of a reserve to act as a buffer against the unpredictability of 'claims and their costs' and to avoid a 'situation in which the Australian Government would need to inject additional funds from general revenue when there were

⁵ See NDIA, 'NDIS Financial Sustainability Report Release', *Media release*, 3 July 2021.

⁶ Response to written questions by Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, requested on 25 June 2021, received 2 August 2021, [p. 7].

⁷ The NDIA released the Annual Financial Sustainability Report shortly before the tabling of this report. The committee was unable to incorporate consideration of the document into this report. See <https://www.ndis.gov.au/news/6931-ndia-board-releases-annual-financial-sustainability-report> (accessed 15 October 2021).

⁸ Disability Reform Ministers' Meeting, *Communique*, 13 August 2021.

higher than expected claim costs in any given period'.⁹ The Productivity Commission's 2017 report further emphasised the importance of establishing a reserve fund which could help cover long-term costs of the Scheme.¹⁰ The committee recognises that the Government may have reasons for not implementing the NDIS Reserve Fund, but if these reasons exist they have not been shared with the committee. The committee therefore considers that the Commonwealth Government should commit to implementing the Fund as soon as practicably possible.

Recommendation 1

9.13 The committee recommends that the Commonwealth Government implement the National Disability Insurance Scheme Reserve Fund as soon as practicably possible.

9.14 The committee takes the view that no discussion that even suggests the removal of people's access to the NDIS, or reducing participant numbers or supports, should take place until sufficient Tier 2 supports are in place—that is, community supports for people with disability who are not eligible for the NDIS. However, beyond this point, without access to more complete data, it is difficult for the committee to propose solutions to the long-term financial problems that the Government has flagged are an issue. The committee hopes that more data will be released with the next Financial Sustainability Report, enabling the committee to consider these broader questions in its next General Issues report.

Appropriateness of proposed tools

9.15 On the question of the appropriateness of the specific assessment tools proposed for independent assessments, the committee makes the following points. Any allied health tool that the Government intends to make compulsory for NDIS participants should be subject to rigorous reliability and validity testing *before* a decision is made that those tools will be implemented. This should occur, as a matter of best practice, by:

- Consulting widely with external experts—that is, allied health professionals, peak bodies, practitioners and academics outside the NDIA;
- Conducting rigorous literature reviews, not 'pick-and-choose' literature reviews, and adhering to best practice according to accepted consensus on what the literature says; and

⁹ Productivity Commission, *Disability Care and Support—Volume One*, No. 54, 31 July 2011, Recommendation 14.1, pp. 85, 449.

¹⁰ Productivity Commission, *National Disability Insurance Scheme (NDIS) Costs—Overview*, October 2017, pp. 44, 45–46, 64.

- Carrying out trials that do not merely evaluate participants' views but also are designed appropriately, with experts, to determine whether the tools proposed are reliable and valid for the purposes for which they are *intended*.
- 9.16 On this final point, the committee wonders whether the NDIA tested the reliability and validity of tools between family members with similar disabilities (for example, siblings and twins) and examined whether the results of these assessments of different family members aligned. The committee has flagged in previous reports inconsistencies in plan funding between family members who have the same disability. The Final Evaluation Report of the Second Independent Assessment Pilot does not appear to indicate that this occurred.
- 9.17 Whether the NDIA did this or not is largely irrelevant if, in fact, as the allied health sector warned in hundreds of submissions to the inquiry, the tools were not designed for the purposes for which the Government proposed they be used. Particularly worrying is the evidence indicating that the Pedi-CAT is not psychometrically sound—that is, that it does not measure what it was intended to measure, even in settings unrelated to independent assessments. Of further concern is the assertion that the NDIA had examined the WHODAS and the Pedi-CAT in the early years of the scheme and determined that they did not 'give the information that was needed to draw a link between that information and reasonable and necessary supports'.¹¹ The committee acknowledges the possibility that this previous finding was based on an unclear link between assessment results and individual, line-by-line supports—not an overall 'reasonable and necessary' funding package, as was proposed in the Personalised Budgets Paper.
- 9.18 The committee affirms the Productivity Commission's statement in its 2011 report that tools should be valid, reliable, rigorous and cost-effective, and the NDIA should only use a tool to assess the needs of particular groups where its reliability and validity have been established for that group.¹² The concerns outlined in evidence by experts indicated that some of the selected tools were never designed for functional assessments; no evidence exists that any of the tools, individually or combined, are 'disability neutral'; the tools should not be implemented without sufficient assessor expertise and accompanying, contextual data; the tools were never validated to assist in making decisions on funding amounts; and some tools have never been validated for use with people with particular disability types.
- 9.19 Of particular note were concerns about the reliability and validity of the tools for episodic, fluctuating and degenerative disabilities, and the absence of

¹¹ Professor Bruce Bonyhady, Executive Chair and Director, Melbourne Disability Institute, *Proof Committee Hansard*, 23 April 2021, p. 6.

¹² Productivity Commission, *Disability Care and Support—Overview and Recommendations*, No. 54, 31 July 2011, Recommendation 3.8, pp. 21, 65; and *Volume One*, pp. 72, 313, 318.

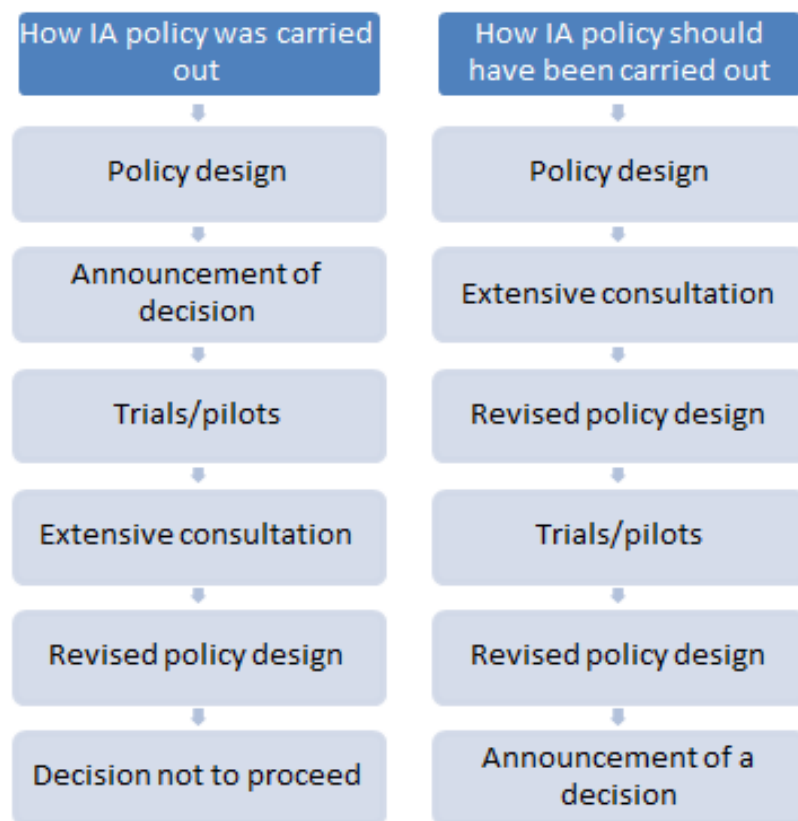
information about how assessors would take into account the circumstances of those whose results would indicate high functioning because of their existing NDIS supports, without which their functioning would likely decrease. This highlighted the importance of both assessor expertise and contextual information—a point that the committee considers in further detail below.

- 9.20 The evidence and the research that the committee examined during the course of this inquiry attested to the need for any assessments of eligibility or capacity relevant to a participant's funding to be holistic and take into account a range of evidence. The committee acknowledges that the NDIA had stated that participants could still provide reports from medical professionals to supplement their assessments; however, it is clear that this should not be an *optional* part of any proposed assessment model but rather, wherever possible, a standard inclusion—without which assessments would not be reliable or valid.
- 9.21 A key rationale for introducing independent assessments was to ensure more consistent decision-making, thereby reducing inequities in the scheme. In the form proposed, however, it is evident that reliable and valid results of the proposed tools still depend on contextual and supplementary information in expert reports, the ability of participants to understand questions and provide appropriate responses, and the presence of a supportive family member or supporter to undertake the Vineland test. As a result, those with limited insight, impaired cognitive ability and limited support networks would still be disadvantaged. The committee has more to say on this issue, and on the importance of recognising the individual circumstances of people with disability, later in this chapter.

Policy development, consultation and co-design

- 9.22 If some of the tools were never designed for functional assessments, the committee questions why their selection occurred in the absence of widespread consultation with external experts and a broad, open consultation process involving practitioners. Good policy processes should ensure that extensive consultation, trials and pilots iron out the flaws in a policy proposal, but in this instance the committee notes that the policy process appears to have taken place in reverse to how it should have occurred. Figure 9.1 sets out how, in hindsight, the committee considers the policy process, from design to roll-out, of independent assessments should have been implemented. The committee acknowledges that it does not have full insight into internal workings in NDIA branches, including any closed consultation processes with external experts.

Figure 9.1 Stages of the independent assessments policy process



9.23 The March 2018 Quarterly Report indicated that the NDIA was working with stakeholders to verify and validate assessment tools before conducting the initial pilot program.¹³ However, evidence from experts and organisational peak bodies hinted that this process was limited. Indeed, some academic experts wrote to the committee specifically to flag that, while they had been asked to advise on the NDIA's Functional Capacity Assessment Framework, they did not support the NDIA's tools paper or further policy decisions. One highlighted that an assessment 'must combine quantifiable information obtained using scientific standards with the expert knowledge of people living with disability and the families and professionals who know them', while the other argued that the independent assessments framework should be tailored 'to the characteristics of each individual'.¹⁴

9.24 Crucially, the committee considers that extensive consultation should have come much earlier in the NDIA's policy development, and calls on the NDIA to commit to more extensive consultation in future policy initiatives to ensure that funds are not expended on policies that experts and people with disability contend are not sound or evidence-based. The committee considers that such

¹³ NDIS, *COAG Disability Reform Council Quarterly Report*, March 2018, p. 61.

¹⁴ For example, Response to *Submission 13: DSS & NDIA joint submission* from Dr Ros Madden AM, [p. 2]; Response to *Submission 13: DSS & NDIA joint submission* from Professor Andrew Whitehouse, [p. 1].

extensive consultation, including with people with disability and allied health practitioners, should be carried out by the NDIA before future policy decisions are announced.

- 9.25 The committee acknowledges that the NDIA has 'a range of policies and procedures to ensure compliance with, and maintenance of, ethical standards as prescribed by National Health and Medical Research Council guidelines'.¹⁵ However, the committee considers that the independent assessments trials and pilots should have been subject to an independent ethics assessment. The committee encourages the Government, in its commitment to transparency and consultation, to implement this option should it carry out further trials and pilots of future policy initiatives.

Co-design

- 9.26 Media reports in March 2021 suggested that the Government was considering removing all references to 'co-design', though it was unclear from these reports in what context.¹⁶ The committee notes that the three NDIS Corporate Plans before the recently released 2021–2025 Plan did not use the term 'co-design'. Further, these Corporate Plans, including the most recent plan, have not referenced the previous NDIS Co-Design Framework paper from 2015, which appears to no longer be available on the NDIS website.
- 9.27 In light of this, the committee welcomes the CEO's announcement in July 2021 that the NDIA would be 'co-designing' a new model of co-design. This news is particularly heartening given concerns the committee had about the NDIA's commitment to co-design, especially, as noted above, because people with disability appear to have been consulted *after* decisions were made concerning them in the policy development process.
- 9.28 Co-design should be a fundamental feature of any major changes to the NDIS. The committee points the NDIA to its preliminary research outlined in Chapter 8 on the basic principles of co-design, and looks forward to hearing more about what the 'co-design of co-design' will involve. To ensure that this principle is enshrined in the basic foundations of the NDIS and never disappears again, the committee considers that the NDIS Act should be amended to include a specific

¹⁵ Response to written questions by Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, requested on 25 June 2021, received 2 August 2021, [p. 9].

¹⁶ Rob Harris, 'Leaked laws reveal plan to kick Australians off the \$22 billion NDIS', *Sydney Morning Herald*, 26 March 2021, [smh.com.au/federal/leaked-laws-reveal-plan-to-kick-australians-off-the-22-billion-ndis-20210325-p57dym.html](https://www.smh.com.au/federal/leaked-laws-reveal-plan-to-kick-australians-off-the-22-billion-ndis-20210325-p57dym.html) (accessed 16 July 2021). See also Bill Shorten MP, 'The Morrison Government's secret plan to cut the NDIS', <https://www.billshorten.com.au/campaigns/secret-liberal-ndis-bill/> (accessed 1 September 2021).

commitment to and definition of co-design, once this consultation process has ended.¹⁷

Recommendation 2

9.29 The committee recommends that the Commonwealth Government amend the *National Disability Insurance Scheme Act 2013* to include a specific commitment to and definition of co-design, following extensive consultation on what 'co-design' should be.

Learning from other schemes

9.30 The committee points the Government and the NDIA to its discussion on how other schemes are using independent assessments as a starting point for what has been implemented effectively. Features from these other schemes that the committee highlights include assessment review rights, extensive training and experience requirements for assessors and, in the case of veterans, the ability of a claimant to choose their own professional to provide medical records concerning their condition, paid for by the Department of Veterans Affairs. In the latter case, reports from treating specialists are preferred even where medical records are not provided or not considered sufficient for a diagnosis. Indeed, the Productivity Commission in a 2019 report on supporting veterans recommended that external assessors 'should only be called upon when strictly necessary and staff should be provided with clear guidance to that effect'.¹⁸

The future of assessments

9.31 The committee is heartened to learn, through answers to questions on notice provided by the Minister and the NDIA in early August, that the NDIA has been looking to improve equitable outcomes arising from its decision-making processes.¹⁹ The committee commends the NDIA for taking this long-overdue action, and recognises that building of the NDIS has taken place concurrent with the scheme commencing and continuing to operate, leading to a number of challenges that are still being worked through. However, the committee also emphasises that consistency does not necessarily mean equity, and that people

¹⁷ The committee is also aware of leaked draft amendments to the *National Disability Insurance Scheme Act 2013* published on a website in March 2021 that proposed to include a reference to co-design in the Act. See, Bill Shorten MP, 'The Morrison Government's secret plan to cut the NDIS', <https://www.billshorten.com.au/campaigns/secret-liberal-ndis-bill/> (accessed 1 September 2021).

¹⁸ Productivity Commission, *A Better Way to Support Veterans*, July 2019, volume 1, p. 424.

¹⁹ While emphasising the importance of consistency in decision making *processes*, the committee notes that the NDIS is an individualised scheme founded on principles of the social model of disability. In this context, implementation of consistent processes will not always lead to people with similar disabilities seeing the same outcomes, by virtue of the scheme being about individuals in their unique contexts.

with disability continue to need supports that reflect their individual circumstances.

- 9.32 The committee also acknowledges the Minister's commitment to developing a new person-centred approach with state and territory ministers, in consultation with people with disability.
- 9.33 The committee notes that research provided by the NDIA suggests that some people with disability may feel a sense of 'guilt' that they are asking for too much, taking funding away from someone else or burdening the system.²⁰ In addition, it should be recognised that some people with disability may have been traumatised by their experiences interacting with service systems and other health professionals in the past. It is clear to the committee that, for people with this background, assessments by a stranger have the potential to cause considerable harm. Further, in many cases, for those with rare and degenerative diseases and episodic disabilities, the only appropriate person who would fulfil the requirements outlined above would be one of their own treating professionals, given the shortage of allied health professionals with experience in certain disability types.
- 9.34 At the hearing on 5 August 2021, the Minister informed the committee that the Disability Reform Ministers Meeting in July had agreed that, while independent assessments are dead', ministers 'also agreed we do need some form of assessment'.²¹
- 9.35 Under the NDIS Act as it currently stands, the CEO of the NDIA (or their delegate) may ask a prospective participant or current participant to do either or both of the following:
- Undergo an assessment and provide to the CEO the report, in the approved form, of the person who conducts the assessment;
 - Undergo, whether or not at a particular place, a medical, psychiatric, psychological or other examination, conducted by an appropriately qualified person, and provide to the CEO the report, in the approved form, of the person who conducts the examination.²²
- 9.36 Indeed, evidence indicated that the NDIA has required some participants and prospective participants to undergo independent assessments for years, often with occupational therapists. The committee recently discovered, through

²⁰ Padraic Fleming, Sinead McGilloway, Marian Hernon, Mairead Furlong, Siobhain O'Doherty, Fiona Keogh and Tim Stanton, 'Individualized funding interventions to improve health and social care outcomes for people with a disability: A mixed-methods systematic review', *Campbell Systematic Reviews*, vol. 3, 2019.

²¹ Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, *Proof Committee Hansard*, 5 August 2021, p. 7.

²² National Disability Insurance Scheme Act 2013, s 26(1)(b) and s 36(2)(b).

evidence presented to its inquiry into General issues around the implementation and performance of the NDIS, that the sector was not aware that this was happening for planning purposes:

It now transpires that long before the controversy around Independent Assessments, the National Disability Insurance Agency (NDIA) was utilising clinically flawed assessment tools to determine participant plan budgets and, because of the agency's culture of secrecy, allied health professionals were unable to alert the agency to this problem.²³

- 9.37 It appears that in practice, this requirement has often, though not always, been applied in circumstances where the participant or prospective participant does not have the money to obtain their own specialist reports to support access or funding requests, or does not have an existing network of health and allied health practitioners. The committee expects that this would be particularly the case for people from low socio-economic backgrounds, people who are homeless, people who are leaving criminal justice settings, people who have very few informal supports, people from culturally and linguistically diverse backgrounds and people in rural and remote areas. As a result, many of the people who need the NDIS the most may have been denied access to the scheme. Further, those from the most disadvantaged cohorts who were granted access may have ended up, on average, with fewer supports and less funding than those able to obtain assessments from their own health professionals—and not had the resources or the knowledge to appeal decisions based on these independent assessments.

Bulk-billed consultations with nominated professionals

- 9.38 The NDIA has acknowledged that inconsistent planning and access decisions are an issue affecting equity. The mechanism proposed to address the problem of a system that worked better for those able to provide specialist reports was to require *all* prospective and current participants to undergo independent assessments similar to what the Agency has required of some individuals for years. The committee, for reasons outlined at length throughout this report, does not agree with this approach, but it is clear that the current system as it stands cannot continue—not so long as inconsistent assessments remain unfair for some of the most disadvantaged people, and not so long as these people are unable to afford consultations with professionals who would take the time to understand their disabilities and provide a holistic assessment. Further, any approach involving any form of assessment should recognise the individual circumstances of people with disability, and not equate equity with consistency, nor consistency in decision-making processes with fair outcomes. As such, the committee considers that the Government should consider providing people with disability access to bulk-billed consultations with specialists and allied

²³ Occupational Therapy Australia, *Supplementary to Submission 52—General Issues around the implementation and performance of the NDIS*, pp. 2–3.

health professionals for the purposes of NDIS access and plan requests. The committee proposes that these consultations be funded under a new Medicare Benefits Schedule item. The committee takes this position in light of the considerable evidence outlining the equity issues that may exist for participants and prospective participants unable to afford the cost of consultations and reports to support their access and planning requests (see Appendix 3 for further detail about this evidence).

- 9.39 Here the committee outlines several options for the Government to consider, should the Government proceed with bulk-billed consultations in some form. The committee is not seeking to pre-empt any co-design process between the NDIA, the disability sector and the allied health sector that may consider what form any future assessments and reports should take as part of these bulk-billed consultations. However, in the first instance, the committee takes the view that to ensure valid and reliable results, all assessments should be:
- Holistic, taking into account medical reports and other contextual information as appropriate; and
 - Multidisciplinary, involving consultation with multiple experts who treat and have treated the person.
- 9.40 The evidence strongly supports the need for practitioners who provide evidence to support access and planning applications to have sufficient expertise in disability types in order to be able to apply their own clinical judgement. However, in addition to this evidence, there is the matter of the individual rights and dignity of people with disability. Just like veterans, who are able to use their own professionals under veterans' compensation schemes, people with disability have the right to dignity, and they should not be punished for having a broad network of professionals to support their applications for the NDIS and for inclusions in their plans. People with disability are not passive players in their own NDIS journeys; many have spent years (often with their families) building up support networks with key professionals to ensure that they are able to obtain reasonable and necessary supports.
- 9.41 All medical practitioners are expected to act in the interests of their patients. The evidence suggests that this may in fact lead to better health outcomes, and not necessarily transfer into sympathy bias as alleged.²⁴ Further, professional bodies have existing procedures in place to remind practitioners of their obligations, including strict codes. While the committee notes the argument of 'sympathy bias' put forward by the NDIA, the committee found no evidence suggesting that any sympathy bias would affect the judgement of medical professionals known to individuals for the purposes of NDIS reports, given the existing codes

²⁴ See also the discussion in Chapter 4 in relation to the evidence provided by the NDIA to support concerns regarding the influence of sympathy bias, and, in particular, the discussion of the limitations of the research cited.

of conduct and ethical guidelines that registered practitioners are expected to adhere to. The committee expects as a matter of course that medical and allied health professionals will continue to adhere to these guidelines.

Recommendation 3

9.42 The committee recommends that consultations with medical and allied health professionals for the purposes of access to the National Disability Insurance Scheme and to support requests for items in NDIS plans be:

- **carried out by health professionals nominated by participants and/or their nominees, where appropriate and available;**
- **holistic, taking into account medical reports and other contextual information as appropriate; and**
- **multidisciplinary, involving consultation with multiple experts who treat and have treated the person.**

Bulk-billed consultations with a professional who is a stranger

9.43 The committee recognises that not all people with disability have access to a medical professional with whom they have an existing relationship, particularly those who are disadvantaged or have complex support needs through a history of involvement with other service systems (e.g. out-of-home care and the justice system). In such instances, the committee proposes that the NDIA implement an accreditation system for health professionals who could be called upon to provide evidence to support a person's application for access to the scheme and for planning purposes. The committee further proposes that the NDIA proactively reach out to allied health professionals and specialists around the country to ensure that there is a broad range of professionals who could come together to provide holistic evidence for those who do not have existing networks of health professionals for planning purposes. The NDIA should provide training and incentives for these health professionals, and the NDIA should develop specific, targeted strategies to ensure that particular cohorts are not disadvantaged in the process.

9.44 The NDIA should consult extensively on these strategies, the proposed accreditation system, options for people with disability to seek reviews or alternative reports, and any further relevant points that would ensure people with disability without existing supports are equipped to receive the assessments and the supports that they need.

9.45 Further, any proposals that would be expected to impact the allied health workforce should be accompanied by comprehensive modelling outlining the impacts, along with proposed mitigation to ensure that allied health services remain available to people with disability.

Recommendation 4

9.46 The committee recommends that, where consultations with medical and allied health professionals for the purposes of access to the National Disability Insurance Scheme or to support requests for items in NDIS plans cannot be carried out by appropriate professionals nominated by a participant and/or their nominee:

- **The National Disability Insurance Agency implement an accreditation process for appropriate professionals to carry out consultations for those in the circumstances described above;**
- **The National Disability Insurance Agency ensure that these assessments are holistic and multidisciplinary; and**
- **The National Disability Insurance Agency implement specific, targeted strategies to ensure that particular cohorts are not disadvantaged by such a process.**

Recommendation 5

9.47 The committee recommends that the Australian Government consider funding bulk-billed consultations with medical and allied health professionals for the purposes described in Recommendation 3 and Recommendation 4.

Assessment tools

9.48 As discussed above, the committee considers that any new proposed forms of assessment should be developed through extensive and genuine co-design processes, which include people with disabilities, the disability sector and the allied health sector, to ensure that the experience is consistent with the intent of the assessment, and is safe and appropriate for the person undergoing assessment. Assessments tools should be accompanied by rigorous evaluation processes that include people with disabilities to ensure fitness-for-purpose, accessibility and safety.

9.49 Further, all assessment tools the NDIA proposes should be subject to rigorous consultation with the allied health sector. None should stand alone; rather, they should supplement reports by treating professionals and be part of a holistic, multidisciplinary process, as the committee has recommended above. Rigorous and genuine consultation and co-design also should also be carried out, as a matter of priority, with people with disability and Disability Representative Organisations, with their views reflected in any decisions made.²⁵

²⁵ For a discussion of what co-design should look like, see Chapter 8.

Recommendation 6

9.50 The committee recommends that all assessment tools that the National Disability Insurance Agency proposes, for the purposes of funded assessments to access the National Disability Insurance Scheme and to help inform funding decisions, should be subject to rigorous consultation with people with disability, Disability Representative Organisations, and relevant health and allied health practitioners *before* the National Disability Insurance Agency decides to implement them.

Concluding remarks

9.51 This report does not mark the end of the committee's oversight of the Government's independent assessment proposal or the broader questions concerning the financial sustainability of the scheme. The committee will continue monitoring these issues through its ongoing General Issues inquiry. The committee may also initiate new, separate inquiries into the Government's management of the NDIS.

9.52 The committee will be keeping an eye in particular on the NDIA's planned co-design consultation process, the forthcoming amendments to the NDIS Act, and any further proposals the Government puts forward to address the challenges facing the scheme, including its financial sustainability and the person-centred approach flagged by the Minister.

9.53 This committee plays a key role in hearing from participants and their families who sometimes do not feel comfortable raising their concerns directly with the NDIA because of the worry that their plans will be affected, or because of previous negative experiences engaging with the Agency. This includes those who gave confidential submissions to the inquiry that the committee has chosen not to publish. The committee reiterates the advice of the Independent Advisory Council and encourages the NDIA to turn its mind to how it can rebuild trust with people with disability and the disability sector so that they feel comfortable reporting their concerns directly to the NDIA.

9.54 However, the committee also took a significant amount of expert advice from the allied health sector, which largely came away from the NDIA's independent assessment consultation process feeling sidelined and ignored. The NDIA should consider what processes it needs to put in place to ensure that it properly consults with and takes into account the advice of experts outside the NDIA, including, crucially, practitioners. The committee will leave it to the NDIA to decide how to ensure this takes place in the future.

9.55 As noted in the preliminary comments to this chapter, the committee welcomes the Minister's advice that the government has committed to extensive consultation and co-design to develop a new person-centred assessment process. The committee also takes this opportunity to reiterate that changes to key features of the NDIS should only be approached through undertaking a

development process that centres consultation and co-design on people with lived experience of disability, their families and the networks of practitioners, carers, and others providing them support. In the current context, it is crucial that this consultation includes the wider disability sector, including the allied health sector. Such an approach is consistent with the findings and recommendations in the Tune Review and the Productivity Commission reports.

- 9.56 The committee is confident that a genuine commitment by the Government to such an approach will go a considerable way to ensuring that future changes to the scheme are appropriately designed and implemented, and will therefore ensure that the NDIS can continue to serve the needs of people with disability and assist them to reach their goals.

Hon Kevin Andrews MP
Chair

Senator Carol Brown
Deputy Chair

Appendix 1

Key concerns raised by experts about specific tools

Table 1.1 Key concerns raised by experts about particular assessment tools

Tool	Age cohort	Concerns
Vineland 3	Children aged 7–17 Adults (18+)	<ul style="list-style-type: none"> - Intended to measure adaptive behaviour, not functional capacity, and is used for diagnosis and treatment planning - Designed and validated for people with specific disabilities (e.g. intellectual and developmental disabilities and autism), not other disability types, including psychosocial disability and degenerative conditions - Results may be variable depending on the day administered and fluctuating functionality - Insufficient empirical evidence supports Vineland's use with people with psychosocial disability and psychotic disorders - Because Vineland-3 is a semi-structured interview, the skills and experience of the professionals administering the scale and interpreting responses could be potential sources of variability - Requires a support person to speak about individuals' functional impairments, not the individual themselves, which may be inappropriate or cause distress (e.g. in family violence situations, or in circumstances where people may not have close support people) - A thorough Vineland assessment may often take as long as ten hours, and much longer if a person has complex needs - Not appropriate for use in remote Aboriginal communities because of complexity of wording for people for whom English is a second language, and because some

		<p>concepts may be culturally inappropriate (e.g. questions about a child taking their shoes off before entering the house or whether they wash fruit before eating it)</p> <ul style="list-style-type: none"> - Contains questions that may be difficult for someone with low literacy, English as a second language or unfamiliarity with overseas terms to understand - Questions about employment are not suitable for adults who developed their disability in adulthood (e.g. if they held a job 20 years ago, they would score as having no issues with employment) - The generated report compares the adult to their age equivalent (e.g. to a two year old child) and so may be perceived as belittling - Some may consider the nature of the questions to be confronting
Participation and Environment Measure for Children and Youth (PEM-CY)	Children aged 7–17	<ul style="list-style-type: none"> - Very limited research exists on the psychometric properties of this tool - Does not measure specific impacts of disability directly, such as incontinence, but can be utilised to measure it indirectly, depending on the assessor's knowledge, skills and experience
Pediatric Evaluation of Disability Inventory Computer Adaptive Test (PEDI-CAT)	Children aged 7–17	<ul style="list-style-type: none"> - Developed specifically for young people with an autism diagnosis - Questions exist about its reliability and validity - May be 'psychometrically unsound', with research suggesting that it does not measure what it is supposed to measure

Lower Extremity Function Scale (LEFS)	Adults (18+)	<ul style="list-style-type: none"> - Originally designed to assess lower limb function of people with lower-extremity musculoskeletal dysfunction - Used as a clinical tool for monitoring progress in rehabilitation - Not designed to be completed by or be administered to a proxy (if, for example, the person has an intellectual disability and is unable to self-report answers themselves) - Asks questions based on people's capacity today (e.g. 'Today, do you or would you have any difficulty at all with...'), which may not take into account the positive impacts of existing supports or fluctuating, episodic or degenerative disability
Craig Hospital Inventory of Environmental Factors (CHIEF)	Adults (18+)	<ul style="list-style-type: none"> - Intended to measure environmental factors, not functional capacity - Insufficient empirical evidence supports its use with people with psychosocial disability - May not effectively record information about how, for example, vision impacts functional capacity - Asks individuals to self-rate the impact of their disability over 12 months, with some individuals not being able to accurately recall the impact of their disability over extended timeframes (e.g. those with acquired brain injuries and short-term memory issues) - Not designed to be completed by a proxy - May be discrepancies in scoring between individuals scoring themselves and carers/support people scoring on their behalf - Some inter-rater reliability statistics are lower than what is considered acceptable— that is, two different assessors may rate the same applicant differently
World Health Organisation Disability Assessment	Adults (18+)	<ul style="list-style-type: none"> - Can be used across all disability cohorts, but is not a functional capacity assessment - Designed as a pre- and post-test to measure the effectiveness of interventions - Concerns exist about its length

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- Designed for answers based on the past 30 days, which may not capture episodic, fluctuating or degenerative disabilities and may be difficult for some people with intellectual disabilities
- Not appropriate for use in remote Aboriginal communities
- May not deliver a clear picture of a young person in residential aged care because questions will not accurately uncover the person's situation (e.g. they may not be able to make a cup of coffee because they do not have accessible facilities to do so)
- Research indicates that people self-rate their functioning higher than their clinicians do—e.g., some research suggests that the WHODAS-2.0 has classified the functioning of psychiatric patients as significantly less impaired than experienced clinicians do, and that the WHODAS correctly classified the functioning of psychiatric patients in only 44% of cases
- Unsuitable as a stand-alone assessment tool for people with significant psychosocial disability, with many items not being relevant for assessing psychosocial disability, and some domains that would be relevant for psychosocial disability not being sufficiently assessed
- Does not comprehensively assess functional capacity to engage in self-care activities (e.g. to wash, get dressed etc.)
- Does not address a person's capacity for work and study, if the person is not already engaged in these activities
- Has limitations for use with people with deafblindness (e.g. most questions use flashcards to remind the respondent of key information), and does not capture the extra time that activities may take for a person with disability and deafblindness in particular (e.g. it may take the person hours to do the vacuuming)
- Scores do not indicate, for example, whether difficulties are because of particular disabilities, and do not include further details on why a person may have difficulty completing a task and what help they need to do it

- Does not record whether the person has existing supports in place that help them to complete a task
- Without using input from family, carers, support workers and other health professionals, risks underestimating the full impact of a person's disability on their day-to-day life—for example, if the person lacks insight or is unaware that they are only able to complete activities with significant support from others
- No established thresholds exist for interpreting the global or domain-specific scores related to the criterion of clinically significant impairment
- Contains potentially sensitive questions, e.g. about difficulties with sexual activity
- Wording of some questions may cause distress (e.g. 'how much of a problem does your family have because of your health problems?')
- Scores between clinicians who know the person and those who did not previously know the person may vary widely, because of additional clarifying information the former may be able to ask on the basis of their existing knowledge

Source: Enable Plus, Submission 1, pp. 18–23, 26; Council for Intellectual Disability, Submission 43, p. 2; Physical Disability Council of NSW, Submission 56, p. 19; Eastern Health—Mental Health, Submission 100, [p. 3]; Ms Carolyn Fitzgibbon, Submission 108, [pp. 1–3, 6, 7]; Uniting NSW ACT, Submission 129, p. 9; Australian Clinical Psychology Association, Submission 150, p. 4; Occupational Therapy Australia, Submission 159, pp. 17, 18, 36, 38; Marninwarntikura Women's Resource Centre and The University of Sydney, Submission 164, pp. 5–6 and Supplementary to submission 158, [pp. 1–2]; Name Withheld, Submission 185, p. 2; Name Withheld, Submission 186, [p. 2]; Autism Spectrum Australia, Submission 206, p. 7; South West Autism Network (SWAN), Submission 221, p. 3; Name Withheld, Submission 256, p. 5; MOTivations Warragul, Submission 273, p. 3; Ms Muriel Cummins, Submission 278, pp. 16, 27, 29, 36, 38; Name Withheld, Submission 288, p. 2; St Vincent's Hospital Melbourne—Mental Health, Submission 313, p. 9; ME/CFS Australia, Submission 317, pp. 29, 30; Name Withheld, Submission 320, [p. 1]; ME/CFS & the NDIS Facebook Group, Submission 332, pp. 11, 13; Ms Tania Nicholls, NDIS Program Lead, St Vincent's Mental Health, St Vincent's Hospital Melbourne, Proof Committee Hansard, 23 April 2021, p. 51; Mr Patrick McGee, National Manager, Policy, Advocacy and Research, Australian Federation of Disability Organisations, Proof Committee Hansard, 18 May 2021, p. 13; Continence Foundation of Australia, Submission 220, p. 4; Scope (Aust) Ltd, Submission 214, pp. 4–8; Dr Lauren Rice, Research Fellow, University of Sydney, Proof Committee Hansard, 27 April 2021, pp. 11, 12; Uniting NSW ACT, Submission 129, p. 8; Centre of Research Excellence in Disability and Health, Submission 197, p. 5; Brain Injury SA, Submission 104, p. 10; Name Withheld, Submission 178, [p. 4]; Vision 2020 Australia, Submission 296, p. 16; Western Australia Association for Mental Health, Submission 10, [p. 3]; Spinal Life Australia, Submission 15, [p. 7]; Deafblind West Australians, Submission 55, [pp. 19–20]; Ms Jenny Spiers, Submission 110, [p. 3]; National Mental Health Consumer and Carer Forum, Submission 130, p. 8; Young People in Nursing Homes National Alliance, Submission 161, p. 16; Exceptional Bonds, Submission 215, p. 4; Mental Health Australia, Community Mental Health Australia & Mental Illness Fellowship of Australia, Submission 240, pp. 4, 5; Muscular Dystrophy Foundation Australia, Muscular Dystrophy NSW, Muscular Dystrophy Qld, Muscular Dystrophy WA, Muscular Dystrophy Tasmania and Capital Region Muscular Dystrophy, Submission 249, p. 6; Valid, Submission 309, p. 25; Able Australia et al., Submission 318, [pp. 16–17]; Occupational Therapy Australia, answer to a question on notice, 6 May 2021 (received 21 May 2021), p. 2.

Appendix 2

Research from the Parliamentary Library on assessments in other contexts

Workers Compensation Schemes - Independent Assessments

Thank you for your question relating to a comparison of independent assessment models, received on 19 July 2021 by email.

Following testimony heard by the Joint Standing Committee for the National Disability Insurance Scheme, you have requested information on the New Zealand, Victorian and Queensland workers/motor vehicle compensation schemes.

Specifically, you have requested information on medical assessments, including:

- (1) what types of medical assessments are required to be undertaken
- (2) who is authorised to perform medical assessments under the relevant scheme
- (3) at what stage of the process are medical assessments undertaken
- (4) how often is a person required to be assessed and
- (5) what assessment tools are used.

You requested this information by COB Friday 23 July 2021. You have also requested information on DVA supports which my colleague has provided to you in a separate advice.¹

Caveat

We have provided an overview of the process for conducting independent assessments for workers/motor vehicle compensation scheme in the jurisdictions you have requested (Queensland, Victoria and New Zealand). Please let us know if you require further information or information on other jurisdictions.

Detailed response

Queensland

WorkCover Queensland

Section 5 of the [Workers' Compensation and Rehabilitation Act 2003](#) (WCRA) establishes a workers' compensation scheme for Queensland.

Chapter 8 of the WCRA provides for the establishment of WorkCover Queensland, whose primary function is to provide accident insurance. Chapter 8 of the WCRA prescribes that WorkCover is the exclusive provider of accident insurance, excluding arrangements for self-insurers, and Chapter 2 of the WCRA details employers' obligations, including the employers' obligation to insure.

¹ Note: the information contained in this document was current as at July 2021.

All worker's compensation claims made in Queensland first need to be lodged as a statutory (no-fault) claim under Chapter 3 of the *WCRA*, where compensation is paid regardless of who was at fault for causing the injury.²

Types of compensation paid by WorkCover Queensland include:

- weekly benefits for lost wages
- medical expenses
- rehabilitation expenses
- hospital expenses
- travelling expenses
- lump sum compensation for permanent impairment
- death benefits.³

Independent medical examinations

When are independent medical examinations required?

Section 132 of the *WCRA* provides that in lodging their application for compensation, an applicant must include a medical certificate from a doctor who treated their injury or in the case of minor injuries or oral injuries, a nurse practitioner or dentist. The applicant's entitlement to compensation arises on the day in which this assessment takes place.⁴

Section 135 of the *WCRA* provides that an insurer may at any time require a claimant or a worker to submit to a personal examination by a registered person at a place reasonably convenient for the claimant or worker. If a claimant or a worker fails or refuses to attend such an examination then any entitlement they have to compensation is suspended.⁵ Section 132A also allows a worker to request a permanent impairment assessment to determine if their injury has resulted in permanent impairment where they have not made a claim for compensation under section 132 of the *WCRA*.

Section 197 of the *WCRA* also states that an insurer may decide, or a worker who has made an application under section 132 may ask the insurer, to have the worker's injury assessed to decide if the worker's injury has resulted in a degree of permanent impairment. The degree of permanent impairment assessment will be issued to the worker in the form of a Notice of Assessment (NOA), once all injuries are assessed.⁶ Where an assessment has been reviewed then any new degree of impairment assessment replaces the previous assessment. There is no review process for these assessments.

² Queensland Government, '[Claims & insurance](#)', WorkSafe Queensland, n.d.

³ WorkCover Queensland, '[Accident insurance policy guide](#)', n.d., p. 6.

⁴ [Workers' Compensation and Rehabilitation Act 2003](#) (*WCRA*), subsection 141.

⁵ *WCRA*, subsection 135(3).

⁶ Queensland Government, '[Assessment for the Degree of Permanent Impairment](#)', WorkSafe Queensland, n.d.

Where the injury has not been assessed by a Medical Assessment Tribunal (MAT), the worker must respond to the NOA within 20 business days if they do not agree with the degree of permanent impairment assessment and require a fresh assessment.⁷

Who can conduct independent medical examinations?

Subsection 179(2) of the *WCRA* provides that an insurer must the degree of permanent impairment assessment:

- for industrial deafness—by an audiologist; or
- for a psychiatric or psychological injury—by a medical assessment tribunal; or
- for another injury—by a doctor.

What assessment tools are used?

Subsection 179(3) of the *WCRA* provides degree of permanent impairment must be assessed in accordance with the Guide to the Evaluation of Permanent Impairment (GEPI) to decide the degree of permanent impairment assessment for the injury, and a report complying with the GEPI must be given to the insurer. For psychiatric injuries, the assessment must be conducted by the General Medical Assessment Tribunal (GMAT).

The role of Medical Assessment Tribunals

For physical injuries, if the worker disagrees with the original assessment by a GEPI trained doctor (doctor), they can request referral to the MAT or ask the insurer to consider a medical review by a different doctor. The medical review process is a new step in the assessment process. WorkCover is required to decide within 10 business days of receiving the NOA response whether to have the injury re-assessed by a different doctor or refer it to the relevant MAT.

Chapter 11 of the *WCRA* provides for MATs which are administered by Workers' Compensation Regulatory Services (WCRS).⁸ The MAT consists of a panel of three or five doctors who specialise in different types of injuries (for example, cardiac, orthopaedic, neurology).⁹ The tribunal doctors make a decision using the information provided by the worker and their insurer, as well as from the medical examination and interview from the tribunal hearing.¹⁰ A written tribunal decision will be provided after the hearing. It will include the information considered by the tribunal doctors and their reasons for making the decision.

⁷ Ibid.

⁸ Queensland Government, '[Medical Assessment Tribunals](#)', WorkSafe Queensland, n.d.

⁹ A list of the different MATs is available here: Queensland Government, '[List of injuries and illnesses by Medical Assessment Tribunal](#)', WorkSafe Queensland, n.d.

¹⁰ Queensland Government, '[Medical Assessment Tribunal - referral guidelines](#)', WorkSafe Queensland, 19 April 2021.

National Injury Insurance Scheme Queensland

The National Injury Insurance Scheme Queensland (NIISQ) was established on 1 July 2016 and provides necessary and reasonable lifetime treatment, care and support to people who sustain eligible serious personal injuries in motor vehicle accidents on Queensland roads; regardless of who was at fault.¹¹

Eligible serious personal injuries include:

- permanent spinal cord injuries
- traumatic brain injuries
- multiple or high-level limb amputations
- permanent injury to the brachial plexus
- severe burns
- permanent blindness caused by trauma.¹²

The National Injury Insurance Agency, Queensland (NIISQ Agency) administers NIISQ in accordance with the [National Injury Insurance Scheme \(Queensland\) Act 2016](#) and funds the necessary and reasonable treatment, care and support participants need. The types of treatment care and support covered include medical and pharmaceutical treatment, dental treatment, respite care, attendant care and support services, aids and appliances, prostheses and home and transport modifications.

Independent medical examinations under the NIISQ

Eligibility to receive treatment under the NIISQ Scheme

To receive treatment, care and support under the NIISQ, a person must apply to become a participant in the scheme. In applying a person must have a qualified medical specialist complete a medical certificate in relation to their injuries and must include, among other things, the following details about their injury:

- details of the serious personal injury
- information demonstrating how the serious personal injury meets the eligibility criteria for the injury
- details of hospitalisation or other medical treatment the injured person has undergone for the serious personal injury, including the name and address of the hospital or medical provider that provided the medical treatment
- details of any other medical condition, or injury, suffered by the injured person before or after the motor accident that may affect the person's eligibility to participate in the scheme.¹³

All adult participants deemed eligible for NIISQ, are accepted as an interim participant. This means that NIISQ will fund necessary and reasonable treatment,

¹¹ National Injury Insurance Scheme Queensland (NIISQ), '[National Injury Insurance Scheme Queensland: Overview and Eligibility](#)', Information sheet, last updated December 2020.

¹² Ibid. The eligibility criteria for serious personal injuries are set out at Part 2 of the [National Injury Insurance Scheme \(Queensland\) Regulation 2016](#).

¹³ [National Injury Insurance Scheme \(Queensland\) Regulation 2016](#), paragraphs 13(1)(e)-(g).

care and support services for up to two years. Towards the end of the two years, the NIISQ Agency will reassess the person's eligibility and make a decision about whether they qualify as a lifetime participant. If eligible, NIISQ will fund their necessary and reasonable treatment, care and support services for the rest of their life.

Assessments under the NIISQ Scheme

Once a person is accepted as a participant in the NIISQ, the NIISQ Agency will undertake an assessment of the participant's needs for treatment care and support as a result of their injury. In undertaking the assessment, the NIISQ must consult with the participant about the following matters:

- the treatment, care and support the participant considers necessary and reasonable as a result of the participant's injury
- the participant's abilities and limitations
- the participant's individual goals.

In assessing a person's needs under the NIISQ, the NIISQ Agency must have regard to the benefit of the person, the appropriateness of service, the appropriateness of the provider of the service and its cost-effectiveness.¹⁴

The NIISQ Agency also consult with any other person that it considers appropriate. Section 23 of the [National Injury Insurance Scheme \(Queensland\) Regulation 2016](#) provides that an assessment must be carried out as soon as practicable after a participant is accepted into the scheme and if an assessment has previously been carried out for that participant, then within one year after the last assessment was carried out.

After carrying out the first assessment of a participant, the NIISQ Agency must make a support plan that sets out, among other things, the relevant treatment, care or support the NIISQ Agency considers are necessary and reasonable, how this will be funded and any dates for further assessments.¹⁵

Internal reviews of decisions made by the NIISQ Agency

Under Chapter 6 of the *National Injury Insurance Scheme (Queensland) Act 2016*, a person may apply for an internal review of a decision made by the NIISQ Agency. Where a person has requested that a matter be internally reviewed and their request involves a medical matter,¹⁶ they may ask the NIISQ Agency to refer the matter to a medical tribunal. The NIISQ Agency must then refer the matter to a medical tribunal which has the power to make a personal examination of the injured person to whom

¹⁴ Sections 17 – 20 of the [National Injury Insurance Scheme \(Queensland\) Regulation 2016](#) set out the matters the NIISQ Agency must consider in weighing up these factors.

¹⁵ See section 26 of the [National Injury Insurance Scheme \(Queensland\) Act 2016](#) for a list of matters required to be set out in the participant's support plan.

¹⁶ See subsection 112(1) of the [National Injury Insurance Scheme \(Queensland\) Act 2016](#) of what matters constitute a medical matter.

the referral relates at any time; or arrange for the examination to be made by a doctor nominated by the tribunal.¹⁷

Victoria

In Victoria, persons injured in a workplace accident or in a transport accident may seek compensation through the [Workplace Injury, Rehabilitation and Compensation Act 2013](#), the [Accident Compensation Act 1985](#) or the [Transport Accident Act 1986](#). Each Act establishes a no-fault compensation scheme under which a person can receive compensation and also allows a person to sue at common law for economic loss and non-economic loss where they have sustained a 'serious injury'. For the purposes of this advice, we have focused on independent assessments required to be conducted in assessing a claim for compensation under the no-fault schemes.

Victorian Workers' Compensation Scheme

The Victorian WorkCover Authority (VWA) is responsible for administering and underwriting the Victorian Workers' Compensation Scheme.¹⁸ The VWA currently has five authorised Workers' Compensation Agents who perform most of the functions associated with managing claims. The legislative basis for the Workers' Compensation Scheme is the [Accident Compensation Act 1985](#), the [Workplace Injury Rehabilitation and Compensation Act 2013](#) (WIRCA) and the [Workplace Injury Rehabilitation and Compensation Regulations 2014](#).¹⁹

The Workers' Compensation scheme is a 'no fault' work related injury compensation scheme. This means that a worker's entitlement to compensation is not a question of who was responsible for the injury but is determined by whether the injury was employment related, according to the provisions of the WIRCA.²⁰

Employers must register for WorkCover Insurance if they employ workers who work in Victoria and their annual remuneration is more than \$7,500 or is expected to be more than \$7,500 or they employ apprentices or trainees.

Each year the Victorian Government sets what is called the average insurance premium rate. This is the percentage of Victorian employers' total remuneration needed to meet the cost of claims for the year. The average premium rate for 2019/20 is 1.272%.

WorkSafe annually gazettes the industry and industry claim cost rates for each industry classification. These are used in the determination of an employer's premium based on the classification of their individual workplaces.

¹⁷ [National Injury Insurance Scheme \(Queensland\) Act 2016](#), subsection 115(1).

¹⁸ Victorian WorkCover Authority, '[Claims Manual: 1.1 Overview of the Scheme](#)', WorkSafe Victoria, updated 2019.

¹⁹ Claims made prior to 1 July 2014 are dealt with under the [Accident Compensation Act 1985](#) and claims made post 1 July 2014 are dealt with under the [Workplace Injury Rehabilitation and Compensation Act 2013](#) (WIRCA).

²⁰ Victorian Department of Education and Training, [Human Resources: Workers' Compensation and Return to Work](#), last updated 26 May 2021.

Independent medical examinations under the VWA

When are independent medical examinations required?

Subsection 27(1) of the *WIRCA* provides that the VMA or a self-insurer may require a worker who has made a claim for compensation to submit at reasonable intervals to an examination by an independent medical examiner provided and paid for by the VMA or self-insurer. If a worker refuses to undergo an independent examination, then any claim or proceeding is suspended until the examination takes place.²¹

Who can conduct independent medical examinations?

According to the WorkSafe Victoria Claims Manual the following persons can conduct an independent medical examination under the legislation:

- registered [medical practitioner](#)
- registered [dentist](#)
- registered physiotherapist
- registered [chiropractor](#)
- registered osteopath
- registered psychologist
- registered [pain management specialist](#).²²

Independent medical examiners must be assessed and approved by the VMA and are required to sign a WorkSafe IME Agreement setting out the standards for the services they are to provide. The VMA requires all reports prepared by independent medical examiners to meet standards relating to format, content, accuracy, consistency, and absence of bias.²³ Further information on how reports are to be prepared is available on the [WorkSafe Victoria website](#).²⁴

At what stage of the process are medical assessments undertaken?

Section 55 of the *WIRCA* states that an independent medical assessment of the degree of impairment resulting from an injury must be made after the injury has stabilised and based on the worker's current impairment as at the date of the assessment, including any changes in the signs and symptoms following any medical or surgical treatment undergone by the worker in respect of the injury.

How often is a person required to be assessed?

²¹ *WIRCA*, subsection 27(2).

²² Subsection 27(5) of the *WIRCA* defines an independent medical examiner to mean a medical practitioner, a registered dentist, a registered physiotherapist, a registered chiropractor, a registered osteopath, or a registered psychologist approved by the VMA. A registered pain management specialist would need to be a medical practitioner for the purposes of subsection 27(5) of the *WIRCA*.

²³ Victorian WorkCover Authority, '[Guide for independent medical examination reports](#)', WorkSafe Victoria, updated 22 January 2020.

²⁴ *Ibid.*

As noted above, subsection 27(1) of the WIRCA provides that the VMA or a self-insurer may require a worker who has made a claim for compensation to submit at reasonable intervals to an examination by an independent medical examiner provided and paid for by the VMA or self-insurer. Much will depend on the seriousness of the person's injury. Assessments are intended to provide a guide to the injured person's recovery process and to identify whether there will be residual physical deficit arising from the injury.

What assessment tools are used?

Section 54 of the WIRCA specifies that impairment must be assessed in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment (fourth edition), as modified by the WIRCA (the AMA Guides) or in accordance with methods proscribed by the Minister. The impairment must also be assessed in accordance with operational guidelines (if any) as to the use of those Guides or methods issued by the Minister.²⁵

The Minister may also approve a training course covering the application of any guides or methods issued about how impairment is to be assessed and require that only medical practitioners who have undertaken such training courses can provide an assessment.²⁶

The Serious Injury Manual prepared by the Judicial College of Victoria provides:

The AMA Guides set out diagnostic and evaluative criteria and an associated degree of impairment which is expressed as a percentage. The Guides also specify how multiple impairments are combined to produce a total, whole person impairment value. In applying the Guides, medical panels and practitioners must use the values and ranges set out in the Guides, rather than their professional judgment at large (*HJ Heinz Company Limited v Kotzman* [2009] VSC 311, [24]-[28]).²⁷

Victorian Transport Compensation Scheme

Under the [Transport Accident Act 1986](#) (TAA), a person is entitled to receive compensation if he/she sustained an injury or died as a result of a transport accident. The Transport Accident Commission (TAC) does not consider who was at fault in the transport accident when determining whether a person is eligible for compensation under the TAA.

The TAC will pay compensation to a person injured, or to the dependants of a person who dies as a result of a transport accident that occurs:

- in Victoria (regardless of whether the vehicle involved is registered in Victoria or interstate), or

²⁵ This is subject to section 53 of the WIRCA which covers situations where there are multiple injuries.

²⁶ WIRCA, paragraph 54(1)(b).

²⁷ Judicial College of Victoria, '[Serious Injury Manual: 9 - Assessment of physical injuries \(AMA Guides\)](#)', n.d.

- interstate and which involved a Victorian registered vehicle and the person injured is:
 - a Victorian resident, or
 - an occupant of a Victorian registered vehicle.²⁸

Independent medical examinations under the TAC Scheme

When are independent medical examinations required?

Under subsection 71(1) of the *TAA* the TAC may require a person who was injured as a result of a transport accident and makes a claim for, or receives compensation or damages under the *TAA*, to submit from time to time for examination by one or more medical service providers nominated by the TAC. If a worker refuses to undergo an independent examination, then any claim or proceeding is suspended until the examination takes place.²⁹

Who can conduct independent medical examinations?

Subsection 71(3) of the *TAA* defines medical service provider who can conduct independent medical assessments to mean a:

- medical practitioner
- registered psychologist
- registered dentist
- registered occupational therapist
- registered optometrist
- registered physiotherapist
- registered chiropractor
- registered osteopath or
- registered podiatrist.

At what stage of the process are medical assessments undertaken?

Under the *TAA*, where a person who is not a minor is injured in a transport accident, the TAC must determine the degree of impairment when the injury stabilises or 3 years after the accident (or after the injury first manifests), whichever occurs first.³⁰ In the case of a minor, the TAC must assess the injury when the person turns 18 if the injury has stabilised, or, if the injury has not stabilised before the person turns 18, when the injury stabilises or when the person attains the age of 21, whichever occurs first.³¹

²⁸ Transport Accident Commission (TAC), ' [Eligibility for Benefits](#)', TAC website, n.d.

²⁹ [Transport Accident Act 1986](#) (*TAA*), subsection 71(2).

³⁰ *TAA*, paragraph 46A(1)(a).

³¹ *TAA*, paragraph 46A(1)(b).

Under subsection 46A(8) of the *TAA*, if the TAC is required to assess the degree of impairment of a person whose injury has not stabilised:

- unless the contrary intention appears in this section, the degree of impairment to be assessed is the degree of current impairment as at the date of the determination of the assessment; and
- any reference to permanent impairment in the A.M.A Guides is to be read as a reference to current impairment.

How often is a person required to be assessed?

As discussed above, the TAC may require a person who was injured as a result of a transport accident and makes a claim for, or receives compensation or damages under the *TAA*, to submit from time to time for examination by one or more medical service providers nominated by the TAC.

What assessment tools are used?

Subsection 46A(2) of the *TAA* specifies that impairment must be assessed in accordance with the AMA Guides, as modified by the *TAA*, or in accordance with methods proscribed by the Minister. The impairment must also be assessed in accordance with operational guidelines (if any) as to the use of those Guides or methods issued by the Minister.

The Minister may also approve a training course covering the application of any guides or methods issued and require that only medical practitioners who have undertaken such training courses can provide an assessment.³²

New Zealand Accident Compensation Scheme

*History of the scheme*³³

The legislation underpinning the Accident Compensation Corporation (ACC) scheme is the [Accident Compensation Act 2001](#). However, the 2001 date in the legislation is somewhat misleading as New Zealand has had a similar no-fault scheme since at least 1972, following the recommendations of a 1967 Royal Commission ('the Woodhouse Report').

The Woodhouse Report recommended a no-fault accident compensation programme that should:

- cover all motor vehicle injuries
- cover all injuries to employees, whether they happened at work or not
- introduce a flat levy rate that employers pay to fund the cost of all injuries to their employees
- introduce a levy for self-employed people to pay for their injuries at work and outside of work

³² *TAA*, paragraph 46(2)(b).

³³ This advice has previously been prepared by David Markham in the Law & Bills Digest Section.

- remove the right to sue for any type of injury.³⁴

The original (1972) scheme passed through Parliament with an undisputed vote. The scheme was expanded in 1973 to cover people not covered by the 1972 scheme – such as students, people not in paid employment, and visitors to New Zealand. The supplementary scheme covering these people was funded by the Government.

In short there were three strands to the scheme relating to, and funded by:

- the employed, funded by levies paid by employers including self-employers
- people injured in motor vehicle accidents, funded by levies paid by motor vehicles owners
- everyone else, funded by the Government.

One primary aspect of a no-fault scheme is that there does not have to be a finding of negligence; the fact of the injury is sufficient to establish a claim. However, the corollary of this is that persons injured in accidents cannot sue through the civil courts process. Rather they are compensated through this no-fault scheme.

The scheme covers personal injuries, some of which are:

- death,
- physical injuries, including injuries suffered over time
- mental injuries as the result of a physical injury
- other mental injuries suffered in certain circumstances (for example, victim of crime or work-related mental injuries such as post-traumatic stress disorder)³⁵
- damage to prosthetics which replace part of the human body
- treatment injuries (medical misadventure).

A person who is injured claims compensation through the [Accident Compensation Corporation](#) (ACC) after consulting a medical professional.

The New Zealand Immigration website says that if the claim is accepted:

ACC may pay a proportion of medical costs, provide assistance with home help, special aids or equipment, transport, modifications to your house or car, education, training, therapy and support.

A person who cannot work because of injury can also be paid up to 80% of their income as compensation. However, an employer pays compensation for the first week a person is off work. A claimant can also be paid lump sum compensation for a permanent impairment.

How the scheme is funded

As noted above, the scheme is funded by levies, mainly on employers and motor vehicle owners, as well as government appropriations and any earnings the ACC itself makes from its invested funds. In fact the last-named, ACC's investments, is

³⁴ A detailed history of the ACC scheme is set out here: Accident Compensation Commission, '[Our history](#)', ACC website.

³⁵ PTSD is not specifically set out in the Act, but is used in this advice as an example of a work related mental injury.

the primary income source of the scheme. How levies are set is a [complex process](#), but ultimately the levies are decided by Cabinet and are published in subordinate legislation (regulations).

The most recent regulation in relation to employers is the [Accident Compensation \(Work Account Levies\) Regulations 2019](#). Levies vary according to industry (and risk profile) but are generally only one or two per cent (or less) of salaries paid. There are higher figures for high risk activities such as some professional sports.

The levy for most cars on the road is \$46.04 per annum. Motorcycle levies are considerably higher (\$297.91 or \$397.18 depending on engine size).³⁶

The ACC's [financial condition report](#) for 2020 has noted that the scheme is in some financial difficulty, reporting a \$4.8 billion deficit in 2019/20. There seems to be an implicit admission that the last setting of the levies was based on incorrect assumptions. It might be expected that these will increase in future.

Independent medical assessments under the ACC Scheme

When are independent medical examinations required?

Both the person who has suffered the injury and the relevant treatment provider who they visit to treat their injury can make a claim on the person's behalf.³⁷ Section 55 of the Accident Compensation Act provides that where a person has chosen to lodge the claim themselves they must, among other things, give the ACC a certificate by a registered health professional that deals with the matters, and contains the information, that the ACC requires, and undergo a medical assessment by a registered health professional specified by the ACC, at the ACC's expense. Section 72 of the Accident Compensation Act also requires a claimant to undergo assessment by a registered health professional specified by the ACC, at the ACC's expense, upon receiving an entitlement under the Act.

Who can conduct independent medical examinations?

The [ACC Impairment Assessment Services Operation Guidelines](#) state that the ACC 'purchases Impairment Assessment services from appropriately contracted and qualified medical practitioners'.³⁸

To be an ACC-approved Impairment Assessor the Assessor must be a Medical Practitioner who has at least general registration with the Medical Council of New Zealand (MCNZ) and three years' post-registration clinical experience.³⁹ They must hold a current Annual Practising Certificate. ACC relies on the MCNZ to assess the competence of a Medical Practitioner to hold a vocational Annual Practising Certificate.

³⁶ [Accident Compensation \(Motor Vehicle Account Levies\) Regulations 2019](#), Schedule 2

³⁷ [Accident Compensation Act 2001](#), sections 48 and 49.

³⁸ Accident Compensation Corporation (ACC), '[ACC Impairment Assessment Services Operation Guidelines](#)', December 2020, p. 5.

³⁹ *Ibid.*, p. 7.

At what stage of the process are medical assessments undertaken?

Upon making a claim, a person must undergo an impairment assessment to determine the level of impairment.⁴⁰ ACC will consult with the person to choose a contracted impairment assessor who is qualified to assess their injury type and where possible, the person can elect which appropriate impairment assessor they would prefer to complete their impairment assessment.⁴¹

ACC may need to arrange two separate independent assessments by two appropriately qualified assessors when both of the following apply:

- a person suffers injuries that mean they need a physical assessment and a mental and behavioural assessment
- if there is no assessor available and qualified to conduct both assessment types.

If ACC discovers that new information about a Client was available at the date of an Assessment or Reassessment but wasn't made available to the Assessor at the time they conducted and rated the impairment of the Client, ACC can arrange an additional assessment to include the new information so that it can be considered. A person can arrange for an additional independent assessment at any time at their own cost. If there are any points of difference because of this assessment, ACC will investigate further.

A person may also be eligible for a reassessment where:

- the impairment may have increased since the date of their independent assessment
- the impairment may have decreased since the date of their independent assessment (where the person is in receipt of an independent assessment).⁴²

A person is not entitled to have more than one reassessment in any 12-month period and is not required to undergo more than one reassessment in any 5-year period.⁴³

ACC may request for a reassessment for a person when:

- there are reasonable grounds to believe the impairment may have decreased since the last assessment; and/or
- it has been five years or more since the last reassessment.⁴⁴

How often is a person required to be assessed?

Under sections 55 and 72 of the *Accident Compensation Act*, a claimant is required to undertake a medical assessment when reasonably required to do so by the ACC.

⁴⁰ Ibid., p. 10.

⁴¹ Ibid., p. 11.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

What assessment tools are used?

The [ACC Impairment Assessment Services Operation Guidelines](#) provides that all impairment assessments must be carried out using an Assessment Tool.⁴⁵

The Assessment Tool refers to:

- *The ACC User Handbook for the AMA 'Guides to the Evaluation of Permanent Impairment' 4th Edition (ACC Handbook); and*
- *The American Medical Association's Guides to the Evaluation of Permanent Impairment 4th Edition (AMA4) (AMA Guides).*⁴⁶

Assessors must have completed ACC approved training in applying the ACC User Handbook and the AMA Guides:

The training involves understanding the Impairment Assessment system in New Zealand, practice in using the AMA Guides and the Handbook, assessment methods, calculating impairment, and report formatting. Training is followed by a period of mentorship and collegial oversight from an experienced assessor, and a proportion of all assessment reports are Peer Reviewed by an experienced assessor to ensure compliance and quality.⁴⁷

To complete Chapter 14 assessments for behavioural and mental impairment, the impairment assessor must either be a psychiatrist, or be experienced in completing general assessments for physical injury for ACC and have knowledge of psychology and the diagnostic system in psychiatry/psychology (as per the *Diagnostic Statistical Manual of Mental Disorders (DSM)*).⁴⁸

The impairment assessor must also have satisfactorily completed ACC's training courses on using Chapter 14 (assessments for behavioural and mental impairment) of the AMA Guides and the ACC Handbook.

Comment

The important difference between injured workers who received payments of workers' compensation and applicants under the NDIS is that generally a person with an injury will improve either over time or with appropriate treatment such as surgery, physiotherapy or some other form of rehabilitation. These are often for the short to medium term. That is the reason, for instance, that the Queensland workers' compensation scheme allows for payments of lost weekly earnings to be made for a maximum of five years.⁴⁹

For those persons who apply for assistance under the NDIS, payments are intended to support the independence and social and economic participation of people with **disability**—rather than injury.⁵⁰

⁴⁵ Ibid., p. 7.

⁴⁶ Ibid., p. 8.

⁴⁷ Ibid.

⁴⁸ Ibid., p. 9.

⁴⁹ WCRA, section 159.

⁵⁰ [National Disability Insurance Scheme Act 2013](#), paragraph 3(1)(c); subsection 17A(3)..

According to subsection 24(1) of the NDIS Act a person meets the *disability requirements* if:

- (a) the person has a disability that is attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments or to one or more impairments attributable to a psychiatric condition; and
- (b) the impairment or impairments are, or are likely to be, permanent; and
- (c) the impairment or impairments result in substantially reduced functional capacity to undertake, or psychosocial functioning in undertaking, one or more of the following activities:
 - (i) communication
 - (ii) social interaction
 - (iii) learning
 - (iv) mobility
 - (v) self-care
 - (vi) self-management; and
- (d) the impairment or impairments affect the person's capacity for social or economic participation.

Feedback

Please contact the author if you would like further information or explanation.

DVA assessments of impairments

On 19 July 2021, you asked:

- (1) Can you please tell me a bit about NZ and Victorian accident/workers compensation schemes – and maybe Queensland? The witness suggested that the NDIS model is more like VIC/NZ models (we just want to know the basics, particularly in relation to medical assessments used for entry to the schemes and for ongoing supports, does the applicant use their own doctor or do they have to go to a nominated Dr for assessment, is this at the initial stage or at internal review stage, how often do they have to get assessed, what assessment tools are used, etc)
- (2) Can you please tell me a bit about entry to DVA supports. (Similar to the above, i.e. does the applicant collect their own Dr certificates and take them to DVA? Do they have to pay for those Dr assessments? (a little complicated I guess if covered by Defence Health insurance). We are aware that there are also statutory requirements that must be met (caused by military service etc).

You needed this information by 23 July 2021.

Overview of veterans' compensation schemes

There are three main Acts that provide for support and compensation for veterans and their dependants:

- *Veterans' Entitlements Act 1986* (VEA), which primarily provides benefits and entitlements for those who undertook wartime service, operational service, peacekeeping service and hazardous military service before 1 July 2004,

and/or peacetime military service from 7 December 1972 up to 30 June 1994⁵¹

- the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA) which provides coverage for illness, injury or death arising from military service undertaken from 3 January 1949 to 30 June 2004; and for certain periods of operational service between 7 April 1994 and 30 June 2004⁵² and
- the *Military Rehabilitation and Compensation Act 2004* (MRCA), which provides coverage for illness, injury or death arising from military service undertaken from 1 July 2004.⁵³

Some VEA benefits, such as income support payments, are not tied to periods of service but rather the type of service (for example, whether it involved service during wartime in an area where there was danger from hostile enemy forces). Other benefits, such as compensation payments and benefits, are tied to periods of service—eligibility under one or more of the three statutes will be determined by the period of service and the timing of the event giving rise to compensation (such as an injury or death).

DVA assessments for compensation

For most compensation and benefits provided to veterans and their families under the VEA, the DRCA and the MRCA, the government needs to accept liability for an injury, illness or death before a claim can be granted. Liability involves linking the veterans' condition to their military service. Claimants must make a case that their condition is linked to their service and this case is assessed by a DVA claims assessor.

The Productivity Commission (PC) examined the process for establishing liability in its 2019 report, [A Better Way to Support Veterans](#). The PC found that the DVA claims assessor must make three findings to establish a link between a condition and service:

- (1) That the veteran has valid military service prior to the date of clinical onset or worsening.
- (2) That there is a valid medical diagnosis for the claimed condition.
- (3) That the onset or worsening of the claimed condition was caused by their military service.

Under the VEA and the MRCA, a predetermined list of causal factors for each condition (called Statements of Principles or SoPs) are used in most cases to link a medical condition to service. DRCA claims are assessed on a

⁵¹ Department of Veterans' Affairs (DVA), '[The VEA](#)', DVA website, last updated 10 January 2020.

⁵² DVA, '[The DRCA](#)', DVA website, last updated 10 January 2020.

⁵³ DVA, '[The MRCA](#)', DVA website, last updated 10 January 2020.

condition-by-condition basis with no formal requirement to satisfy the SoPs.⁵⁴

Service records

Claimants can usually provide their own service records to DVA or DVA can access records from the Department of Defence.

Medical diagnosis

The medical diagnosis of a claimed condition is based on a claimant's medical records provided by their GP or specialist. The claim form for MRCA compensation includes a section to be filled in by a medical practitioner setting out the diagnosis, basis of the diagnosis, and date of onset of the injury or disease. The claim form notes that 'DVA will pay you [the medical practitioner] for this service according to the relevant fee levels for the service'.

External medical assessments

The PC noted that DVA claims assessors typically do not have any medical training but can request a review of medical records by DVA's medical advisers (typically contractors).⁵⁵

The PC also stated that where medical records are not provided, or they are considered insufficient to establish a diagnosis, the assessors can ask a claimant to have an appointment with an external medical assessor (paid for by DVA).⁵⁶ DVA's guidelines do state that reports from treating specialists are preferred.⁵⁷ External assessors can also be used to assess the level of a claimant's impairment once liability for a condition has been accepted.

The PC heard evidence which raised concerns over DVA's use of external medical assessors:

A number of participants, including the Defence Force Welfare Association (sub. 118), Legacy Australia (sub. 100), David Melandri (sub. 61) and the Vietnam Veterans' Federation of Australia (sub. 34) raised many of the same concerns. For example, Slater + Gordon suggested that DVA is using external medical assessors 'when the delegate is dissatisfied with the treating doctor's response', in order to "'doctor shop" to seek the best outcome for DVA, and not for the very people they are supposed to be assisting'. Slater + Gordon also drew parallels to the life insurance industry, where the fees paid to some of the same external medical assessor firms have been alleged to create a conflict of interest, where the assessors 'are incentivised to make findings which are agreeable to the interests of the insurance company' (sub. 68, pp. 58–59).⁵⁸

⁵⁴ Productivity Commission (PC), [A Better Way to Support Veterans](#), vol. 1, PC, Canberra, 2019, p. 350.

⁵⁵ Ibid., p. 352

⁵⁶ Ibid.

⁵⁷ Ibid., p. 422.

⁵⁸ Ibid., p. 423.

The PC report made a finding that external assessors ‘should only be called upon when strictly necessary and staff should be provided with clear guidance to that effect’.⁵⁹

Clinical onset or worsening of a condition

For some conditions, a claimant’s Defence medical record, or incident reports, will indicate when an incident occurred that led to the condition or when the condition began to worsen. The PC noted that only around 2.4 per cent of claims under the MRCA between 1 July 2004 to 30 June 2017 were linked to an incident report (and an even smaller percentage for conditions claimed in relation to operational service). For most claims, the onset or worsening of a condition is based on information provided by treating medical practitioners or through a discussion with the claimant. The PC noted:

The retrospective assessment of clinical onset or worsening is allowed because the veteran support system has less restrictive requirements for supporting evidence than civilian workers’ compensation schemes This is one of the ‘beneficial’ aspects of the veteran support system ..., which is legislated to deal with the long time lag between relevant service and claims.⁶⁰

Linking conditions with service

Two standards of evidence are used to test the claim that a condition is linked to a veteran’s service: the ‘balance of probabilities’ and the ‘reasonable hypothesis’. The reasonable hypothesis standard has a long history dating back to the repatriation legislation introduced in the aftermath of the First World War—it is considered more beneficial to veterans. The PC summarised the two standards:

The **balance of probabilities** is the standard used in civil law (including civilian workers’ compensation systems) where the weight of evidence must be in favour of the claim being true before the claim can be accepted. In other words, the balance of probabilities test is satisfied if the administrative decision-maker is convinced that the probability that a claim is correct is greater than fifty per cent. The balance of probabilities standard is also known as the ‘reasonable satisfaction’ test, as assessors must be reasonably satisfied of a claim’s merit.

The **reasonable hypothesis** standard is a more beneficial standard of proof from the point of view of the veteran. This standard evolved out of the much more onerous criminal standard, which is satisfied only if a decision-maker is convinced ‘beyond a reasonable doubt’ that all the elements in a body of evidence are true. In the veteran support system, the reverse of the criminal standard was introduced, where the onus was on DVA to prove beyond a reasonable doubt that the contended link in a claim was not true, although the claimant must at least raise a ‘reasonable hypothesis’ of a link.⁶¹

⁵⁹ Ibid., p. 424.

⁶⁰ Ibid., p. 352.

⁶¹ Ibid., pp. 353–354.

The balance of probabilities standard is used to assess claims under the VEA and MRCA in relation to peacetime service, and for claims under the DRCA. 'Findings of fact' under the three legislative schemes are also assessed under the balance of probabilities standard. Claims under the VEA and MRCA arising from operational service are assessed under the reasonable hypothesis standard.

Impairment ratings

Once liability has been established, the type and level of benefit needs to be determined. This is usually through an assessment of the claimant's level of impairment, and the pain and suffering caused by their condition. The different veterans' compensation schemes offer different levels of compensation and within the schemes there may be different levels of compensation based on the kind of military service the condition is related to (i.e. peacetime or operational). The guides used to assess impairments also differ between the three schemes.

Chapter 14 of the PC's report offers a useful summary of the differences in impairment assessments between the three schemes.⁶²

Interaction with superannuation

Veterans may be eligible for invalidity pensions through military or other superannuation schemes, as well as for compensation through one of the veterans' schemes administered by DVA. This creates duplication in terms of medical assessments and inconsistencies in terms of the compensation assessments conducted by different agencies.

The PC report noted the Commonwealth Superannuation Corporation (CSC), DVA and Defence had piloted the use of single medical assessments. The CSC now uses medical assessments undertaken by Defence to make invalidity assessments. The PC recommended greater integration of DVA and CSC processes and information sharing.⁶³

Claims for Invalidity Service Pension

[Invalidity Service Pension](#) is a payment for those with qualifying service (generally, war service or operational service) who have a permanent incapacity to work and meet a means test. The person's permanent incapacity to work does not need to be related to their service so liability does not necessarily need to be established. The payment is similar to the social security Disability Support Pension (same rate and means test) but eligibility criteria and the assessment process is different.

Claimants who are permanently blind, or in receipt of certain levels of disability compensation payments under the VEA or MRCA can be automatically considered to have a permanent incapacity to work.

⁶² Ibid., from p. 633.

⁶³ Ibid., p. 618.

The [claim form](#) for Invalidity Service Pension includes a section for a claimant's treating medical practitioner (GP or specialist) to fill out detailing the person's medical diagnosis and any relevant specialist reports. DVA pays medical practitioners for filling out the form based on a fee schedule. The treating doctor also needs to fill out a [work test questionnaire](#) detailing the impact of the person's impairments on their work capacity.

Levels of impairment are assessed against the [Guide to the Assessment of Rates of Veterans' Pensions](#) (the guide is a legislative instrument under the VEA).

Feedback

Please contact the author if you would like further information or explanation.

Appendix 3

Examples of evidence indicating the need for bulk-billed consultations

Source	Quote
<p>Ms Karryn Goode, CEO, Rights Information & Advocacy Centre, <i>Proof Committee Hansard, 4 May 2021, p. 21</i></p>	<p>'We often talk about the cost of medical reports. Not all of our participants but the majority are on some form of government subsidy or payment. An average cost could be between \$1,000 and \$2,000 for a report. For somebody who's on a disability support pension, that is out of the question and would impact on their plan.'</p>
<p>Coalition of Disability Advocacy Organisations, <i>Submission 194, p. 8</i></p>	<p>"The same individuals who have not been able to source evidence for an access request under current arrangements will experience the same issue under the proposed process including:</p> <ul style="list-style-type: none"> • Individuals with no treating doctor, and minimal or out-dated medical history; • Individuals who have relied solely on the closest bulk billing clinic for urgent issues, and their records are spread across multiple clinics, none of which relate to the underlying disability • Individuals who are, or have been homeless, escaping from domestic violence, in prison or other custodial detention • Individuals who experience other forms of intersectional disadvantage, such as lower socioeconomic status <p>In these circumstances it is hard to meet the evidentiary requirements set out by the NDIA, including requiring the treating health professional who provides evidence of the disability to have treated the person for a significant period of time (e.g., at least 6 months). For example, people in rural and remote areas may only have access to visiting treating health professionals who travel to their region every few months and already have long waitlists...We have supported many people with disability who have had to pay to access information which provides evidence of their diagnosis and treatment. This includes obtaining reports from specialists,</p>

	<p>having reports supplemented to provide additional evidence, and payment for accessing private records under the Privacy Act. Additionally, people located in rural and regional areas have had to travel to metro areas to attend both public and private appointments. This comes with the added cost of transport and accommodation. These are upfront costs that will not be alleviated by the introduction of mandatory Independent Assessments. Cost will continue to be a barrier for many people who are yet to test their eligibility, and a reason why many people have not even considered attempting access to the scheme.'</p>
<p>Royal Australian and NZ College of Psychiatrists, <i>Submission 65— Supplementary submission, pp. 3–4</i></p>	<p>'The creation of Medicare Benefit Schedule-style items for health and medical professionals could be a better way to create equitable access for people with disability seeking to access the NDIS and allow people with disability more choice in decisions which impact their NDIS journey. Alternatively, a multidisciplinary meeting could be undertaken instead of independent assessments. This would encourage a more holistic approach, involving a variety of allied, medical and support staff as well as family and carers to support the person with disability in presenting their case for consideration as the functional capacity and supports required. Professionals could then be remunerated for their attendance and input. This would be beneficial to people with disability and their families as those in attendance would be allied health and medical professionals who are familiar with their history, strengths and functioning.'</p>
<p>Australian Medical Association, <i>Submission 200, p. 2</i></p>	<p>'The AMA recommends instead better engagement with general practice through clarifying appropriate MBS items for completing application forms. The NDIS could develop continuing professional development (CPD) training for GPs to accompany this. Mechanisms to ensure GPs have oversight of the care their patients are receiving through the NDIS would also improve the overall level of care received. GPs report that their patients who are participants in the NDIS expect their GPs to know what care they are receiving.'</p>
<p>Mrs Claire Hewat, Allied Health Professions Australia, <i>Proof Committee Hansard, 23 April 2021, p. 28</i></p>	<p>'The suggestion is that independent assessments will introduce equity into the system, because currently people who can afford to pay for potentially quite expensive assessments now are getting an advantage and that this will actually change that. But we contend that this will actually simply move the inequity somewhere else, that simply bringing in independent assessments is not going to change the inequity because people who can afford to get a lot of assessments are still going to get them. It is not unreasonable for a person with disability to seek the best advice and the best assessment that they can get. It's just that, at the moment, those</p>

	who can afford to do it can get a lot and those who can't afford to do it will get very little and will have to wait in long queues in the public system.'
Ms Jaimee Witcombe, <i>Proof Committee Hansard</i> , 4 May 2021, p. 36	'As the sole carer of two children with disabilities and medical conditions, the toll on my health, wellbeing and quality of life in the context of my own disabilities has been substantial... I also have a psychosocial disability, for which I am unable to afford the formal diagnosis that would enhance my funding and supports. The local public waiting lists were closed last time I called with my referral.'
Ms Luana Martin, <i>Proof Committee Hansard</i> , 30 April 2021, p. 22	'I want my child to succeed in life. I want him to make a difference in this world. For him to be able to do that with a disability, to thrive and fit into a society that is not set up for him, he needs to get as much support as he can. I believe in my child. So for me, if that stranger comes on a day when things are going great and makes judgments accordingly, then my child is not going to get the funding that his therapists have recommended, and it is going to be on my shoulders. Financially I cannot afford to get it elsewhere, but also he is going to miss out on things that could make a real difference to his chances in life to grow up to be an amazing person in society.'
Ms Mary Sayers, Children and Young People with Disability Australia, <i>Proof Committee Hansard</i> , 23 April 2021, p. 19	'When we heard that the Tune review was implementing assessments, we didn't know what type of assessments they were. We thought, "Great, that means people who can't afford to get the diagnostic assessments might get access to the scheme." But people still have to pay all the money to get all the diagnostic assessments and then they have to go through an independent assessment. So it's not actually introducing the equity into the scheme that, when we first read the Tune review, we thought it might. As the previous speaker said, people will still have to spend thousands and thousands of dollars getting psychological assessments to prove diagnosis. So the very fix that these independent assessments are trying to do to make the scheme more equitable are not going to work because many people already have barriers to accessing the health system...'
Ms Jacqui Pierce, Chair, Corangamite NDIS Reference Group, <i>Proof Committee Hansard</i> , 4 May 2021, pp. 28, 30	'I'm not saying I agree with the current proposal around independent assessments for access, but one of the biggest challenges that I find people face is them trying to self-fund. If you've got a plan you're not self-funding those assessments anymore, generally. You're paying for a lot of those assessments out of your NDIS plan. You're getting your OT to come in and do another full functional assessment of you. You're getting your speech pathology to do a mealtime assistance review. The NDIS is paying for those out of your plan. But if you're a new person trying to get into the scheme you trying to produce those reports is where the high cost comes in and many vulnerable, disadvantaged people cannot afford those. So I think there's a whole different question

	there about how the NDIS potentially funds independent assessments to really ascertain and assist with access to the scheme to make that a fairer process, because at the moment it's a completely uneven playing field... I think that what we could do for people who are attempting to access the scheme is, if they've got a current treating therapy team, we could pay that team for their time to write a report, rather than the person having to self-fund that.'
Ms Catherine McAlpine, CEO, Inclusion Australia, <i>Proof Committee Hansard</i> , 18 May 2021, pp. 51–52	'Also, we said from the beginning that this was about cost, not about equity. If you were really trying to resolve equity, there would be two things you would do. Basically, you would make reports free for people, and you can do that through a Medicare item or through vouchers for people or through free independent assessments.'
Hutt St Centre, <i>Submission 14</i> , p. 7	'Recommendation 1: Functional assessment/ occupational therapy assessments are incorporated into the Medicare schedule and are bulk billed so that they are accessed when a person needs them to supply additional evidence of their disability, not as a mandatory process for determining access.'
Ms Shauna Gaebler, CEO, Consumers of Mental Health WA, <i>Proof Committee Hansard</i> , 27 April 2021, p. 44	'In the past, some NGOs have provided support for people to access NDIS. This has dwindled and many people have to do it alone. This can be particularly difficult, in feedback we've received, for people from Aboriginal and CALD backgrounds and for people who rely on bulk-billing support to gather their evidence.'

Appendix 4

Parliamentary Budget Office costing request

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Parliamentary
Budget Office

Policy costing

Make functional assessments a Medicare Benefits Schedule item	
Person/party requesting the costing:	Joint Standing Committee on the National Disability Insurance Scheme
Date costing completed:	6 August 2021
Expiry date of the costing:	Release of the next economic and fiscal outlook report.
Status at time of request:	Submitted outside the caretaker period
	<input checked="" type="checkbox"/> Confidential <input type="checkbox"/> Not confidential
<p>Summary of proposal:</p> <p>The proposal would fund a new bulk-billed Medicare Benefits Schedule (MBS) item to perform National Disability Insurance Scheme (NDIS) functional assessments for current and prospective participants with the following options.</p> <ul style="list-style-type: none"> • Option 1: All potential entrants to the NDIS would be eligible to receive a one-off assessment. • Option 2: All NDIS participants would receive regular assessments (adults every three years and children under 18 every year) to inform planning decisions. • Option 3: All NDIS participants with a psychological disability would receive regular assessments every three years. <p>The assessments would be undertaken by health care professionals from a range of areas including general practitioners, consultation physicians, occupational therapists, clinical and registered psychologists, physiotherapists, speech pathologists and other allied health providers. Individuals would be able to select their own health care professional to undertake the assessment. Participants would also be able to choose a suitable place for their assessment, including at home, in a consultation room or by video conference.</p> <p>The proposal would have effect from 1 July 2022.</p>	

Costing overview

All options would be expected to decrease the fiscal and underlying cash balances over the 2021-22 Budget forward estimates period. The impacts are predominantly driven by increases in administered expenses. The Parliamentary Budget Office (PBO) estimated the financial impacts under each option as a range, providing a lower and upper bound to Australian Government expenses. The PBO choose to present a range of estimates because of the high level of uncertainty regarding increased demand for NDIS assessments in response to the proposal.

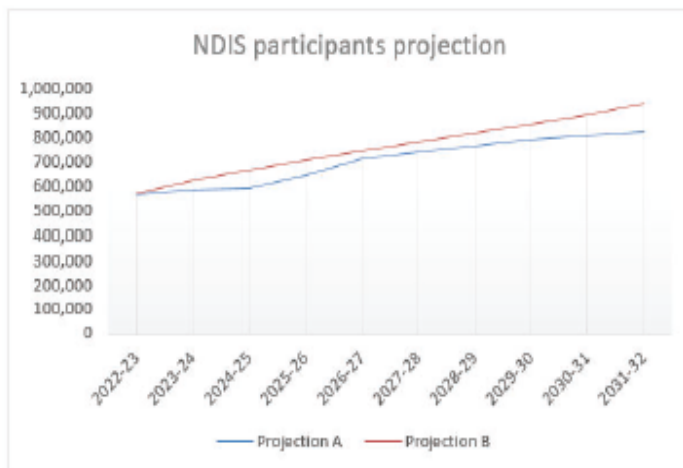
In addition, there is a high degree of uncertainty regarding the baseline number of NDIS participants in future years. Given the importance of the NDIS to the overall fiscal position, in this costing, the PBO has used two NDIS participant projections over the medium term.

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- **Projection A:** A PBO baseline projection in line with the budget forward estimates provided by the Department of Social Services for the forward years. Until 2026-27, the number of participants would approach the level projected in the Scheme Actuary's *Annual Financial Sustainability Report July 2021* published by the National Disability Insurance Agency (NDIA), with participant growth then converging to population growth by 2032-33.
- **Projection B:** The Scheme Actuary's baseline projection from the *Annual Financial Sustainability Report* for the forward estimates period and the medium-term.

Figure 1: Comparison between baseline Projection A and B



The proposal would be expected to have an ongoing impact that extends beyond the 2021-22 Budget forward estimates period. A breakdown of the financial implications based on the PBO participants baseline projection from 2021-22 to 2031-32 is provided at [Attachment A](#). A breakdown of the financial implications based on the Actuary's participants baseline projection from 2021-22 to 2031-32 is provided at [Attachment B](#).

Sensitivity and uncertainty

In addition to the uncertainty around the baseline number of participants in the Scheme over the medium term, there is very high uncertainty around the take-up rate of NDIS assessments as a result of the proposal and the broader effects from the proposed bulk-billed NDIS assessments. The analysis should be considered as indicative only and is subject to caveats, assumptions and sensitivities.

Government announcement

The Australian Government has awarded tender contracts totalling \$339 million over three years to eight companies to carry out independent functional assessments. However, as the Minister for the NDIS has subsequently announced that the independent assessment requirement would not proceed, the PBO did not include this measure in the budget baseline in costing this proposal.

Data limitations

The estimates in this costing are largely based on publicly available information including NDIS project participants and related MBS health diagnosis arrangements. More detailed information on the nature and source of NDIS medical reports was requested from the NDIA, however, the NDIA business system does not capture the nature or source of medical reports in a structured manner. These reports would be attached to a participants record, and referred to in free text comments if required.

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For that reason, NDIA are unable to count the number of reports for any given time period. For the full response provided by the NDIA, please refer to [Attachment C](#).

Behavioural response

The estimates for all options are particularly sensitive to the number of potential additional applicants opting in to utilise the proposed assessment. The estimates are also sensitive to the assumed number of applicants using existing MBS health assessment services who switch to this new assessment service in response to the proposal. The estimates of the proposal are also sensitive to the assumptions about the take-up of the bulk-billing item by health assessment providers. The PBO considered the broader effects of the proposal, including the flow-on impacts to the NDIS and the public health system, however they have not been included in this costing, as these effects are highly uncertain.

Table 1: Make functional assessments a Medicare Benefits Schedule item – PBO baseline projection – Financial implications (\$m)^(a)

	2021–22	2022–23	2023–24	2024–25	Total to 2024–25
Option 1 – lower bound: One-off assessment for potential entrants to the NDIS					
Fiscal balance	-0.5	-46.0	-24.0	-10.0	-80.5
Underlying cash balance	-0.5	-46.0	-24.0	-10.0	-80.5
Option 1 – upper bound: One-off assessment for potential entrants to the NDIS					
Fiscal balance	-0.5	-169.1	-149.1	-132.1	-450.8
Underlying cash balance	-0.5	-169.1	-149.1	-132.1	-450.8
Option 2 – lower bound: Regular assessments for all NDIS participants					
Fiscal balance	-0.5	-755.4	-437.2	-434.2	-1,627.3
Underlying cash balance	-0.5	-755.4	-437.2	-434.2	-1,627.3
Option 2 – upper bound: Regular assessments for all NDIS participants					
Fiscal balance	-0.5	-925.5	-561.3	-556.3	-2,043.6
Underlying cash balance	-0.5	-925.5	-561.3	-556.3	-2,043.6
Option 3 – lower bound: Regular assessments for participants with a psychological disability					
Fiscal balance	-0.5	-59.0	-34.0	-34.0	-127.5
Underlying cash balance	-0.5	-59.0	-34.0	-34.0	-127.5
Option 3 – upper bound: Regular assessments for participants with a psychological disability					
Fiscal balance	-0.5	-69.1	-41.0	-40.0	-150.6
Underlying cash balance	-0.5	-69.1	-41.0	-40.0	-150.6

(a) A positive number represents an increase in the relevant budget balance; a negative number represents a decrease.

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Table 2: Make functional assessments a Medicare Benefits Schedule item – Actuary’s baseline projection – Financial implications (\$m)^(a)

	2021–22	2022–23	2023–24	2024–25	Total to 2024–25
Option 1 – lower bound: One-off assessment for potential entrants to the NDIS					
Fiscal balance	-0.5	-94.0	-81.0	-69.0	-244.5
Underlying cash balance	-0.5	-94.0	-81.0	-69.0	-244.5
Option 1 – upper bound: One-off assessment for potential entrants to the NDIS					
Fiscal balance	-0.5	-170.1	-158.1	-148.1	-476.8
Underlying cash balance	-0.5	-170.1	-158.1	-148.1	-476.8
Option 2 – lower bound: Regular assessments for all NDIS participants					
Fiscal balance	-0.5	-770.4	-530.3	-561.3	-1,862.5
Underlying cash balance	-0.5	-770.4	-530.3	-561.3	-1,862.5
Option 2 – upper bound: Regular assessments for all NDIS participants					
Fiscal balance	-0.5	-940.5	-688.4	-709.4	-2,338.8
Underlying cash balance	-0.5	-940.5	-688.4	-709.4	-2,338.8
Option 3 – lower bound: Regular assessments for participants with a psychological disability					
Fiscal balance	-0.5	-61.0	-41.0	-43.0	-145.5
Underlying cash balance	-0.5	-61.0	-41.0	-43.0	-145.5
Option 3 – upper bound: Regular assessments for participants with a psychological disability					
Fiscal balance	-0.5	-71.1	-50.0	-50.0	-171.6
Underlying cash balance	-0.5	-71.1	-50.0	-50.0	-171.6

(a) A positive number represents an increase in the relevant budget balance; a negative number represents a decrease.

Key assumptions

The PBO has made the following assumptions in costing this proposal.

- The utilisation of proposed assessment services would be representative of additional applicants.
- All participants would opt into the new MBS item for undertaking NDIS assessments.
 - After consulting with the NDIA and Department of Health, the number of current applicants utilising MBS health assessment services to access the NDIS is unavailable, but is believed to be a small proportion of applicants utilising MBS services to undertake disability assessment more generally.
- The proportion of NDIS participants by disability types would grow to be consistent with the proportion of disability in line with the proportion of disability types published by the National Disability Insurance Agency.
- The permitted health professionals are Medicare approved and would bulk-bill the assessments.

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- The scheduled price of the new MBS item is very similar to that currently charged by NDIS private providers, indicating that professionals could be expected to provide the same service at the bulk billed price.
- The scheduled price of the new MBS item would be set at \$320 per session in the first year and grow in line with the wage cost index as per the current MBS indexation arrangement.
 - The schedule fee of this new MBS item was based on similar MBS health assessment items including autism, intellectual, psychological and other physical assessments, with consideration of the cost of home visits and extra charges by health professionals.
 - Each session of this new MBS item would be at least one hour.
 - The assessment for different disability types would vary from eight sessions (eg autism) to two sessions (eg physical disabilities). The final cost of each NDIS participant's assessment would depend on the complexity of assessment and the number of disabilities of the participant.
 - The assessment would not include the costs of intervention, parent psychological education, investigation and assessment, and management of comorbidities.
- For the lower bound, the projected number of NDIS participants uses published data by the NDIA.
- For the upper bound, a strong behavioural response was assumed by potential participants, due to the bulk-billing of the assessments. We assume a large number of new potential entrants seeking assessments and many of these subsequently being granted access to the NDIS. Any additional cost to the NDIS under the proposal from new potential entrants was not included in this costing due to uncertainty.
- All current NDIS participants would complete their first assessment within a 12-month period.
- The fiscal and underlying cash balance impacts for MBS expenses would be equal, due to the high prevalence of instant electronic rebate transfers at the point at which eligible services are rendered.

Methodology

Administered costs were estimated by multiplying the estimated price of each NDIS assessment by the projected number of services under each option.

- The price of each NDIS assessment by types of disability was derived based on MBS health assessment services and NDIS approved disability assessment services, with consideration of complexity of disabilities, provider profit and other costs.
- For projection A: The number of NDIS participants for the PBO baseline projection was estimated using the 2021-22 Budget forward estimates numbers provided by the Department of Social Services. Beyond 2025-26, the PBO projected annual growth in participants would converge to population growth by 2032-33.
- For projection B: The Scheme Actuary's baseline projection was provided by the latest *Annual Financial Sustainability Report*, published by the NDIA in July 2021.
- The number of additional NDIS assessment applicants resulting from the free assessment service was derived from the reports published by the Australian Bureau of Statistics and the Australian Institute of Health and Welfare.

The ongoing departmental impact was calculated by multiplying the number of additional MBS transactions administered by Services Australia. Departmental implementation costs were based on similar budget measures.

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Financial implications were rounded consistent with the PBO's rounding rules as outlined on the PBO Costing and budget information webpage.¹

Data sources

Economic parameters and population projections were provided by the Department of Finance and Treasury as at the *Budget 2021-22*.

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¹ https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Budget_Office/Costings_and_budget_information

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Attachment A – Make functional assessments a Medicare Benefits Schedule item – PBO baseline participant number projection – financial implications

Table A1: Make functional assessments a Medicare Benefits Schedule item – Option 1 – lower bound: One-off assessment for potential entrants to the NDIS – Fiscal and underlying cash balances (\$m)^(a)

	2021–22	2022–23	2023–24	2024–25	2025–26	2026–27	2027–28	2028–29	2029–30	2030–31	2031–32	Total to 2024–25	Total to 2031–32
Expenses – lower bound													
Administered expenses	-	-46	-24	-10	-73	-96	-42	-38	-33	-29	-23	-80	-414
Departmental expenses	-0.5	..	..	..	..	-0.1	..	..	..	..	..	-0.5	-0.6
Total	-0.5	-46.0	-24.0	-10.0	-73.0	-96.1	-42.0	-38.0	-33.0	-29.0	-23.0	-80.5	-414.6

- (a) A positive number for the fiscal balance indicates an increase in revenue or a decrease in expenses or net capital investment in accrual terms. A negative number for the fiscal balance indicates a decrease in revenue or an increase in expenses or net capital investment in accrual terms. A positive number for the underlying cash balance indicates an increase in receipts or a decrease in payments or net capital investment in cash terms. A negative number for the underlying cash balance indicates a decrease in receipts or an increase in payments or net capital investment in cash terms.
- Not zero but rounded to zero.
 - Indicates nil.

Table A2: Make functional assessments a Medicare Benefits Schedule item – Option 1 – upper bound: One-off assessment for potential entrants to the NDIS – Fiscal and underlying cash balances (\$m)^(a)

	2021–22	2022–23	2023–24	2024–25	2025–26	2026–27	2027–28	2028–29	2029–30	2030–31	2031–32	Total to 2024–25	Total to 2031–32
Expenses – upper bound													
Administered expenses	-	-169	-149	-132	-136	-143	-141	-143	-145	-148	-153	-450	-1,461
Departmental expenses	-0.5	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.8	-1.5
Total	-0.5	-169.1	-149.1	-132.1	-136.1	-143.1	-141.1	-145.1	-145.1	-148.1	-153.1	-450.8	-1,462.5

- (a) A positive number for the fiscal balance indicates an increase in revenue or a decrease in expenses or net capital investment in accrual terms. A negative number for the fiscal balance indicates a decrease in revenue or an increase in expenses or net capital investment in accrual terms. A positive number for the underlying cash balance indicates an increase in receipts or a decrease in payments or net capital investment in cash terms. A negative number for the underlying cash balance indicates a decrease in receipts or an increase in payments or net capital investment in cash terms.
- Indicates nil.

Table A3: Make functional assessments a Medicare Benefits Schedule item – Option 2 – lower bound: Regular assessments for all NDIS participants – Fiscal and underlying cash balances (\$m)^(a)

	2021–22	2022–23	2023–24	2024–25	2025–26	2026–27	2027–28	2028–29	2029–30	2030–31	2031–32	Total to 2024–25	Total to 2031–32
Expenses – lower bound													
Administered expenses	-	-755	-437	-434	-896	-621	-595	-1,113	-640	-659	-1,230	-1,626	-7,380
Departmental expenses	-0.5	-0.4	-0.2	-0.2	-0.5	-0.3	-0.3	-0.6	-0.3	-0.3	-0.6	-1.3	-4.2
Total	-0.5	-755.4	-437.2	-434.2	-896.5	-621.3	-595.3	-1,113.6	-640.3	-659.3	1,230.6	-1,627.3	-7,384.2

- (a) A positive number for the fiscal balance indicates an increase in revenue or a decrease in expenses or net capital investment in accrual terms. A negative number for the fiscal balance indicates a decrease in revenue or an increase in expenses or net capital investment in accrual terms. A positive number for the underlying cash balance indicates an increase in receipts or a decrease in payments or net capital investment in cash terms. A negative number for the underlying cash balance indicates a decrease in receipts or an increase in payments or net capital investment in cash terms.
- Indicates nil.

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Table A4: Make functional assessments a Medicare Benefits Schedule item – Option 2 – upper bound: Regular assessments for all NDIS participants – Fiscal and underlying cash balances (\$m)^(a)

	2021–22	2022–23	2023–24	2024–25	2025–26	2026–27	2027–28	2028–29	2029–30	2030–31	2031–32	Total to 2024–25	Total to 2031–32
Expenses – upper bound													
Administered expenses	-	-925	-561	-556	-1,033	-667	-694	-1,259	-751	-778	-1,384	-2,042	-8,608
Departmental expenses	-0.5	-0.5	-0.3	-0.3	-0.5	-0.3	-0.4	-0.6	-0.4	-0.4	-0.7	-1.6	-4.9
Total	-0.5	-925.5	-561.3	-556.3	1,033.5	-667.3	-694.4	-1,259.6	-751.4	-778.4	1,384.7	-2,043.6	-8,612.9

- (b) A positive number for the fiscal balance indicates an increase in revenue or a decrease in expenses or net capital investment in accrual terms. A negative number for the fiscal balance indicates a decrease in revenue or an increase in expenses or net capital investment in accrual terms. A positive number for the underlying cash balance indicates an increase in receipts or a decrease in payments or net capital investment in cash terms. A negative number for the underlying cash balance indicates a decrease in receipts or an increase in payments or net capital investment in cash terms.
- Indicates nil.

Table A5: Make functional assessments a Medicare Benefits Schedule item – Option 3 – lower bound: Regular assessments for participants with a psychological disability – Fiscal and underlying cash balances (\$m)^(a)

	2021–22	2022–23	2023–24	2024–25	2025–26	2026–27	2027–28	2028–29	2029–30	2030–31	2031–32	Total to 2024–25	Total to 2031–32
Expenses – lower bound													
Administered expenses	-	-59	-34	-34	-70	-48	-46	-86	-50	-51	-96	-127	-574
Departmental expenses	-0.5	..	..	..	..	..	..	-0.1	..	..	-0.1	-0.5	-0.7
Total	-0.5	-59.0	-34.0	-34.0	-70.0	-48.0	-46.0	-86.1	-50.0	-51.0	-96.1	-127.5	-574.7

- (b) A positive number for the fiscal balance indicates an increase in revenue or a decrease in expenses or net capital investment in accrual terms. A negative number for the fiscal balance indicates a decrease in revenue or an increase in expenses or net capital investment in accrual terms. A positive number for the underlying cash balance indicates an increase in receipts or a decrease in payments or net capital investment in cash terms. A negative number for the underlying cash balance indicates a decrease in receipts or an increase in payments or net capital investment in cash terms.
- .. Not zero but rounded to zero.
 - Indicates nil.

Table A6: Make functional assessments a Medicare Benefits Schedule item – Option 3 – upper bound: Regular assessments for participants with a psychological disability – Fiscal and underlying cash balances (\$m)^(a)

	2021–22	2022–23	2023–24	2024–25	2025–26	2026–27	2027–28	2028–29	2029–30	2030–31	2031–32	Total to 2024–25	Total to 2031–32
Expenses – upper bound													
Administered expenses	-	-69	-41	-40	-76	-48	-50	-94	-54	-56	-103	-150	-631
Departmental expenses	-0.5	-0.1	..	..	-0.1	..	..	-0.1	..	..	-0.1	-0.6	-0.9
Total	-0.5	-69.1	-41.0	-40.0	-76.1	-48.0	-50.0	-94.1	-54.0	-56.0	-103.1	-150.6	-631.9

- (b) A positive number for the fiscal balance indicates an increase in revenue or a decrease in expenses or net capital investment in accrual terms. A negative number for the fiscal balance indicates a decrease in revenue or an increase in expenses or net capital investment in accrual terms. A positive number for the underlying cash balance indicates an increase in receipts or a decrease in payments or net capital investment in cash terms. A negative number for the underlying cash balance indicates a decrease in receipts or an increase in payments or net capital investment in cash terms.
- .. Not zero but rounded to zero.
 - Indicates nil.

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Attachment B – Make functional assessments a Medicare Benefits Schedule item – Actuary's baseline participant number projection – financial implications

Table B1: Make functional assessments a Medicare Benefits Schedule item – Option 1 – lower bound: One-off assessment for potential entrants to the NDIS – Fiscal and underlying cash balances (\$m)^(a)

	2021–22	2022–23	2023–24	2024–25	2025–26	2026–27	2027–28	2028–29	2029–30	2030–31	2031–32	Total to 2024–25	Total to 2031–32
Expenses – lower bound													
Administered expenses	-	-94	-81	-69	-68	-66	-63	-68	-68	-74	-84	-244	-735
Departmental expenses	-0.5	-	-	-	-	-	-	-	-	-	-	-0.5	-0.5
Total	-0.5	-94.0	-81.0	-69.0	-68.0	-66.0	-63.0	-68.0	-68.0	-74.0	-84.0	-244.5	-735.5

- (a) A positive number for the fiscal balance indicates an increase in revenue or a decrease in expenses or net capital investment in accrual terms. A negative number for the fiscal balance indicates a decrease in revenue or an increase in expenses or net capital investment in accrual terms. A positive number for the underlying cash balance indicates an increase in receipts or a decrease in payments or net capital investment in cash terms. A negative number for the underlying cash balance indicates a decrease in receipts or an increase in payments or net capital investment in cash terms.
- Not zero but rounded to zero.
 - Indicates nil.

Table B2: Make functional assessments a Medicare Benefits Schedule item – Option 1 – upper bound: One-off assessment for potential entrants to the NDIS – Fiscal and underlying cash balances (\$m)^(a)

	2021–22	2022–23	2023–24	2024–25	2025–26	2026–27	2027–28	2028–29	2029–30	2030–31	2031–32	Total to 2024–25	Total to 2031–32
Expenses – upper bound													
Administered expenses	-	-170	-158	-148	-149	-149	-148	-153	-156	-164	-174	-476	-1571
Departmental expenses	-0.5	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.8	-1.5
Total	-0.5	-170.1	-158.1	-148.1	-149.1	-149.1	-148.1	-155.1	-156.1	-164.1	-174.1	-476.8	-1,572.5

- (a) A positive number for the fiscal balance indicates an increase in revenue or a decrease in expenses or net capital investment in accrual terms. A negative number for the fiscal balance indicates a decrease in revenue or an increase in expenses or net capital investment in accrual terms. A positive number for the underlying cash balance indicates an increase in receipts or a decrease in payments or net capital investment in cash terms. A negative number for the underlying cash balance indicates a decrease in receipts or an increase in payments or net capital investment in cash terms.
- Indicates nil.

Table B3: Make functional assessments a Medicare Benefits Schedule item – Option 2 – lower bound: Regular assessments for all NDIS participants – Fiscal and underlying cash balances (\$m)^(a)

	2021–22	2022–23	2023–24	2024–25	2025–26	2026–27	2027–28	2028–29	2029–30	2030–31	2031–32	Total to 2024–25	Total to 2031–32
Expenses – lower bound													
Administered expenses	-	-770	-530	-561	-1,024	-608	-648	-1,268	-740	-791	-1,531	-1,861	-8,471
Departmental expenses	-0.5	-0.4	-0.3	-0.3	-0.5	-0.3	-0.3	-0.6	-0.3	-0.4	-0.7	-1.5	-4.6
Total	-0.5	-770.4	-530.3	-561.3	-1,024.5	-608.3	-648.3	-1,268.6	-740.3	-791.4	-1,531.7	-1,862.5	-8,475.6

- (a) A positive number for the fiscal balance indicates an increase in revenue or a decrease in expenses or net capital investment in accrual terms. A negative number for the fiscal balance indicates a decrease in revenue or an increase in expenses or net capital investment in accrual terms. A positive number for the underlying cash balance indicates an increase in receipts or a decrease in payments or net capital investment in cash terms. A negative number for the underlying cash balance indicates a decrease in receipts or an increase in payments or net capital investment in cash terms.
- Indicates nil.

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Table B4: Make functional assessments a Medicare Benefits Schedule item – Option 2 – upper bound: Regular assessments for all NDIS participants – Fiscal and underlying cash balances (\$m)^(a)

	2021–22	2022–23	2023–24	2024–25	2025–26	2026–27	2027–28	2028–29	2029–30	2030–31	2031–32	Total to 2024–25	Total to 2031–32
Expenses – upper bound													
Administered expenses	-	-940	-688	-709	-1,173	-757	-796	-1,423	-896	-954	-1,706	-2,337	-10,042
Departmental expenses	-0.5	-0.5	-0.4	-0.4	-0.6	-0.4	-0.4	-0.7	-0.4	-0.4	-0.8	-1.8	-5.5
Total	-0.5	-940.5	-688.4	-709.4	-1,173.6	-757.4	-796.4	-1,423.7	-896.4	-954.4	-1,706.8	-2,338.8	-10,047.5

(a) A positive number for the fiscal balance indicates an increase in revenue or a decrease in expenses or net capital investment in accrual terms. A negative number for the fiscal balance indicates a decrease in revenue or an increase in expenses or net capital investment in accrual terms. A positive number for the underlying cash balance indicates an increase in receipts or a decrease in payments or net capital investment in cash terms. A negative number for the underlying cash balance indicates a decrease in receipts or an increase in payments or net capital investment in cash terms.

- Indicates nil.

Table B5: Make functional assessments a Medicare Benefits Schedule item – Option 3 – lower bound: Regular assessments for participants with a psychological disability – Fiscal and underlying cash balances (\$m)^(a)

	2021–22	2022–23	2023–24	2024–25	2025–26	2026–27	2027–28	2028–29	2029–30	2030–31	2031–32	Total to 2024–25	Total to 2031–32
Expenses – lower bound													
Administered expenses	-	-61	-41	-43	-78	-45	-48	-93	-53	-57	-109	-144	-628
Departmental expenses	-0.5	..	..	..	-0.1	..	..	-0.1	..	..	-0.1	-0.5	-0.8
Total	-0.5	-61.0	-41.0	-43.0	-78.1	-45.0	-48.0	-93.1	-53.0	-57.0	-109.1	-145.5	-628.8

(a) A positive number for the fiscal balance indicates an increase in revenue or a decrease in expenses or net capital investment in accrual terms. A negative number for the fiscal balance indicates a decrease in revenue or an increase in expenses or net capital investment in accrual terms. A positive number for the underlying cash balance indicates an increase in receipts or a decrease in payments or net capital investment in cash terms. A negative number for the underlying cash balance indicates a decrease in receipts or an increase in payments or net capital investment in cash terms.

- .. Not zero but rounded to zero.
- Indicates nil.

Table B6: Make functional assessments a Medicare Benefits Schedule item – Option 3 – upper bound: Regular assessments for participants with a psychological disability – Fiscal and underlying cash balances (\$m)^(a)

	2021–22	2022–23	2023–24	2024–25	2025–26	2026–27	2027–28	2028–29	2029–30	2030–31	2031–32	Total to 2024–25	Total to 2031–32
Expenses – upper bound													
Administered expenses	-	-71	-50	-50	-86	-53	-55	-101	-61	-64	-117	-171	-708
Departmental expenses	-0.5	-0.1	..	..	-0.1	..	..	-0.1	..	..	-0.1	-0.6	-0.9
Total	-0.5	-71.1	-50.0	-50.0	-86.1	-53.0	-55.0	-101.1	-61.0	-64.0	-117.1	-171.6	-708.9

(a) A positive number for the fiscal balance indicates an increase in revenue or a decrease in expenses or net capital investment in accrual terms. A negative number for the fiscal balance indicates a decrease in revenue or an increase in expenses or net capital investment in accrual terms. A positive number for the underlying cash balance indicates an increase in receipts or a decrease in payments or net capital investment in cash terms. A negative number for the underlying cash balance indicates a decrease in receipts or an increase in payments or net capital investment in cash terms.

- .. Not zero but rounded to zero.
- Indicates nil.

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Attachment C – Make functional assessments a Medicare Benefits Schedule item – National Disability Insurance Agency (NDIA) data limitations

The NDIA business system does not capture the nature or source of medical reports in a structured manner. These reports would be attached to a participants record, and referred to in free text comments if required. For that reason we are unable to count the number of reports for any given time period.

When access is met however, the NDIA's business system does capture the reason (the section of the Act under which requirements are met). Almost 59,000 access requests received between 1 July 2019 and the 30 June 2020 met access under s24 of the Act (met disability requirements). 43,700 of these were from "New" Participants (not recorded as having been part of an existing state or commonwealth program). It is relatively safe to assume that some form of report like evidence would have been required by the delegate in order for them to make a determination in the majority of these "New" cases at the very least.

This is not to be read as meaning only these cases would have included such evidence. It is also highly likely that many of the applications that did not result in access being met would have included some form of written evidence as part of their application, however, the figures provided above are specifically for participants who have gained access to the Scheme.

Response provided by the NDIA to the Parliamentary Budget Office 30 July 2021.

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Appendix 5

Submissions and Additional Information

Submissions

- 1 Enable Plus
- 2 Our Voice SA
- 3 Bodyfit Physio
- 4 Commonwealth Ombudsman
- 5 Waverley Helpmates
- 6 HSP Research Foundation
- 7 Autism Advisory and Support Service
- 8 Queensland Advocacy Incorporated
- 9 Marathon Health Ltd
- 10 Western Australia Association for Mental Health
- 11 South Australian West Coast ACCHO Network
- 12 IDEAS
- 13 DSS & NDIA joint submission
 - 13.1 Supplementary to submission 13
 - Response to submission 13 by Dr Ros Madden
 - Letter from the NDIA
 - Response to submission 13 by Professor Andrew Whitehouse
 - Response to submission 13 by Professor Valsamma Eapen
- 14 Hutt St Centre
- 15 Spinal Life Australia
- 16 Aboriginal Health Council of South Australia
- 17 Autism Family Support Association
- 18 *Name Withheld*
 - 18.1 Supplementary to submission 18
 - Attachment 1
- 19 *Name Withheld*
- 20 *Name Withheld*
- 21 *Name Withheld*
- 22 *Name Withheld*
- 23 *Name Withheld*
- 24 Mr David Simpson
- 25 *Name Withheld*
- 26 David Cunningham
- 27 *Name Withheld*
- 28 Mr Michael Lang
- 29 *Name Withheld*
- 30 Ms Jennifer Knight

- 30.1 Supplementary to submission 30
- Attachment 1
- 31 *Name Withheld*
 - 31.1 Supplementary to submission 31
- 32 Ms Karen Kline
- 33 Mrs Marie Johnson
 - 33.1 Supplementary to submission 33
- 34 *Name Withheld*
- 35 Mr Graham Taylor
- 36 *Name Withheld*
- 37 *Name Withheld*
- 38 Blind Citizens Australia
- 39 Spinal Cord Injuries Australia
- 40 The Shepherd Centre
- 41 Specialist Disability Accommodation (SDA) Alliance Ltd.
- 42 Recovery In Mind
- 43 Council for Intellectual Disability
- 44 Osteopathy Australia
- 45 Disability Council NSW
- 46 The Rehabilitation Collective
- 47 Prisoners' Legal Service
- 48 Illawarra Disability Alliance
- 49 Association for Children with Disability in Vic and Tas
- 50 3D Support
- 51 Consumers of Mental Health WA Inc
- 52 Australian Lawyers Alliance
- 53 Summer Foundation
- 54 Centre for Disability Research and Policy, The University of Sydney
- 55 Deafblind West Australians
 - Attachment 1
 - Attachment 2
- 56 Physical Disability Council of NSW
- 57 Victorian Office of the Public Advocate
 - Attachment 1
- 58 Migrant Resource Centre Northern Tasmania
- 59 Coalition for Appropriate Supported Accommodation
- 60 Victorian Aboriginal Community Controlled Health Organisation
- 61 Alison Self Occupational Therapist
- 62 Anglicare Australia
- 63 Endeavour Special Kids With A Disability
- 64 Royal Australian and New Zealand College of Ophthalmologists

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- 65 Royal Australian and New Zealand College of Psychiatrists
- 65.1 Supplementary to submission 65
- 66 Mrs Shirley Humphris
- 66.1 Supplementary to submission 66
- 67 *Name Withheld*
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- 88 *Name Withheld*
- 89 *Name Withheld*
- 90 *Name Withheld*
- 91 *Name Withheld*
- Attachment 1
- 92 NSW Carers Advisory Council
- 93 Early Childhood Intervention Australia Victoria/Tasmania
- 94 Advocacy for Inclusion
- 95 Aus DoCC
- 96 Exercise and Sports Science Australia
- 97 MJD Foundation
- 98 Tandem Carers
- 99 Save our Sons Duchenne Foundation
- Attachment 1
 - Attachment 2
 - Attachment 3
- 100 Eastern Health - Mental Health

- 101 Women With Disabilities Australia
- 102 Aussie Deaf Kids
- 103 MHCC ACT
- 104 Brain Injury SA
- 105 Mental Health Carers NSW Inc
- 106 Vision Australia
- 107 Rare Voices Australia
- 108 Ms Carolyn Fitzgibbon
- 109 *Name Withheld*
- 110 Mrs Jenny Spiers
- 111 Mrs Kim chi Tran
- 112 Ms Merinda Young
- 113 Ms Julie Hicks
- 114 *Name Withheld*
- 115 *Name Withheld*
- 116 Lived Experience Australia
- 117 *Name Withheld*
- 118 *Name Withheld*
- 119 *Name Withheld*
- 120 *Name Withheld*
- 121 *Name Withheld*
- 122 *Name Withheld*
- 123 *Name Withheld*
- 124 *Name Withheld*
- 125 *Name Withheld*
- 126 Mrs Samantha Powell
- 127 Ms Pieta Shakes
- 128 Mr Scott Harry
- 129 Uniting NSW ACT
- 130 National Mental Health Consumer and Carer Forum
- 131 Hearing Matters Australia Inc
- 132 Achieve Australia
- 133 Institute for Urban Indigenous Health
- 134 *Name Withheld*
- 135 *Name Withheld*
- 136 *Name Withheld*
- 137 *Name Withheld*
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- 141 *Name Withheld*
- 142 Dr Debra Blackmore
- 143 Nihal Iscel

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- 144 Corangamite NDIS Reference Group
145 *Name Withheld*
146 *Name Withheld*
147 *Name Withheld*
148 *Name Withheld*
149 Mr Kevin Danher
150 Australian Clinical Psychology Association
151 Mindful, Dept. Psychiatry, University of Melbourne
152 Melbourne Disability Institute
153 Victorian Council of Social Service
154 Government of Western Australia Department of Communities
155 Carers Australia
156 Children and Young People with Disability Australia
 • 156.1 Supplementary to submission 156
157 Australian Psychological Society
158 Allied Health Professions Australia
 • 158.1 Supplementary to submission 158
159 Occupational Therapy Australia
160 Australian Autism Alliance
161 Young People In Nursing Homes National Alliance
162 Every Australian Counts
163 People With Disabilities WA
164 Marninwarntikura Women's Resource Centre and The University of Sydney
 • 164.1 Supplementary to submission 164
165 Autism Association of Western Australia
166 Northern Territory Office of the Public Guardian
167 Neurological Alliance Australia
168 Multiple Sclerosis Australia
169 Mr Peter Mansour-Nahra
170 Ms Alisa Coleman
171 Mr Andrew Fairbairn
172 Mr Paul Mulligan
173 Ms Kate Moore
174 Ms Gina Wilson-Burns
175 Mr John Walsh AM
176 Mr Alan Langford
177 *Name Withheld*
178 *Name Withheld*
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- 188 *Name Withheld*
- 189 *Name Withheld*
- 190 Mr Greg Franklin
- 191 Ms Sarah Sutton
- 192 *Name Withheld*
- 193 Jane Wardlaw, Disability Advocate
- 194 Coalition of Disability Advocacy Organisations
- 195 Domestic Violence Victoria and Domestic Violence Resource Centre Victoria
- 196 National Legal Aid
- Attachment 1
 - Attachment 2
- 197 Centre of Research Excellence in Disability and Health
- 198 Family Advocacy
- 199 Maurice Blackburn Lawyers
- 200 Australian Medical Association
- 201 Queenslanders with Disability Network
- 201.1 Supplementary to submission 201
- 202 Syndromes Without A Name (SWAN) Australia
- 203 Public Interest Advocacy Centre
- 204 The Hopkins Centre and Law Futures Centre
- 205 Australian Association of Psychologists Inc
- 206 Autism Spectrum Australia
- 207 Limbs 4 Life
- 208 Peninsula Carer Council
- 209 Ethnic Communities' Council of Victoria
- 210 Australian Federation of Disability Organisations
- 211 Brotherhood of St. Laurence
- 212 Dementia Australia
- 213 Dandelion House
- 214 Scope (Aust) Ltd
- 215 Exceptional Bonds
- 216 Carers NSW
- 217 AQA Victoria Ltd
- 218 Parkinson's Victoria
- 219 St Agnes Care & Lifestyle
- 220 Contenance Foundation of Australia
- 221 South West Autism Network (SWAN)
- 222 Queensland Government

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- 223 Ms Joanna Hall
- 224 First Peoples Disability Network
- 225 Inclusion Australia
- 226 Northern Territory Government
- 227 Yellow Ladybugs
- 228 Mental Health Victoria
- 229 Autism Awareness Australia
- 230 Centre for Policy Development
- 231 Synapse Australia
- 232 Refugee Health Network of Australia
- 233 *Name Withheld*
- 234 *Name Withheld*
- 235 Australian Physiotherapy Association
- 236 Mrs Narissa Niesler
- 237 *Name Withheld*
- 238 ADACAS
- 239 AMIDA
- 240 Mental Health Australia, Community Mental Health Australia & Mental Illness Fellowship of Australia
- 241 Muddy Puddles
- 242 Ability Surf
- 243 Dietitians Australia
- 244 Rehabilitation Counselling Association of Australasia
- 245 Possability
- 246 ACT Minister for Disability
- 247 Queensland Law Society
- 248 Office of the Public Advocate (South Australia)
- 249 Muscular Dystrophy Foundation Australia, Muscular Dystrophy NSW, Muscular Dystrophy Qld, Muscular Dystrophy WA, Muscular Dystrophy Tasmania and Capital Region Muscular Dystrophy
- 250 JFA Purple Orange
- 251 Noah's Ark
- 252 Audiology Australia
- 253 Mental Health Council of Tasmania
- 254 Baptist Care SA
- 255 Australian Orthotic Prosthetic Association
- 256 *Name Withheld*
- 257 *Name Withheld*
- 258 Ms Penelope Rumble
- 259 Prader-Willi Syndrome Australia
- 260 *Name Withheld*
- 261 *Name Withheld*
- 262 Office of the Public Advocate (Queensland)

- 263 Autism Queensland
- 264 National Ethnic Disability Alliance
- 265 Physical Disability Australia
- 266 Cystic Fibrosis Community Care
- 267 Australian Rehabilitation & Assistive Technology Association (ARATA)
- 268 Victorian Mental Illness Awareness Council (VMIAC)
- 269 AMPARO Advocacy Inc
- 270 NPY Women's Council
- 271 Australian National Audit Office
- 272 Fairer NDIS For All
- 273 mOTivations Warragul
- 274 Gippsland Disability Advocacy
- 275 New South Wales Government
- 276 MND Australia
- 277 Speech Pathology Australia
- 278 Ms Muriel Cummins
- 279 Mrs Anne Cherny
- 280 Jane Scott
- 281 *Name Withheld*
- 282 *Name Withheld*
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- 291 *Name Withheld*
- 292 *Name Withheld*
- 293 *Name Withheld*
- 294 *Name Withheld*
- 295 The Autistic Realm Australia Inc
- 296 Vision 2020 Australia
- 297 Marymead
- 298 Despina Filippaki
- 299 Autism Aspergers Advocacy Australia
- 300 Mr Dougie Herd
- 301 Ms Roslyn Davis
- 302 Dr George Taleporos
- 303 Evelyn Bugel
- 304 Supportive Families and Friends Association
- 305 Sarah Davies

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- 306 Myositis Association Australia
- 307 Valued Lives
- Attachment 1
 - Attachment 2
- 308 Mental Illness Fellowship
- 309 VALID
- 310 AEIOU Foundation
- 311 Cairnmillar Institute
- 312 National Aboriginal Community Controlled Health Organisation (NACCHO)
- 313 St Vincent's Hospital Melbourne - Mental Health
- 314 Marisa Crowe and Bernadette O'Connor
- 315 Talie .
- 316 Neville Horner
- 317 ME/CFS Australia
- 318 Able Australia et al.
- 319 *Name Withheld*
- 320 *Name Withheld*
- 321 *Name Withheld*
- 322 *Name Withheld*
- 323 *Name Withheld*
- 324 *Name Withheld*
- 325 People with Disability Australia
- Attachment 1
- 326 SACARE
- 327 Therapy Works CQ
- 328 Mental Health Carers Australia
- 329 Darwin Community Legal Service
- 330 Disability Advocacy NSW
- 331 Robert Wellman
- 332 ME/CFS & the NDIS Facebook Group
- 333 Sam Petersen
- 334 Jo Fokkes
- 335 Philippa Duell-Piening
- 336 Jeff Smart
- 337 Lynne Bullen
- 338 Julia Burlison
- 339 Ariel J
- 340 Nardy House Inc
- 341 ERMHA
- 342 Jade Strongman
- 343 *Name Withheld*
- 344 *Name Withheld*
- 345 *Name Withheld*

- 346 *Name Withheld*
- 347 *Name Withheld*
- 348 *Name Withheld*
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 - Attachment 1
 - Attachment 2
- 351 *Name Withheld*
- 352 *Name Withheld*
- 353 *Name Withheld*
- 354 *Name Withheld*
- 355 *Name Withheld*
- 356 *Name Withheld*
- 357 *Name Withheld*
- 358 Save Our NDIS
- 359 GUARD Collaborative Australia
- 360 Pat Sutton
- 361 *Name Withheld*
- 362 *Name Withheld*
- 363 *Name Withheld*
- 364 *Name Withheld*
- 365 *Name Withheld*
- 366 *Name Withheld*
- 367 *Name Withheld*
- 368 Rhett Ellis
- 369 Eastern Health (Allied Health)
- 370 David Kelly
- 371 *Name Withheld*
- 372 *Name Withheld*
- 373 Adam Johnstone
- 374 *Name Withheld*
- 375 Anne Achten
- 376 Carrington Health

Additional Information

- 1 Additional information from Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, received 16 June 2021
- 2 Inclusion Australia - Opening statements, Hearing 27 April 2021. Received 5 May 2021
- 3 Response to written questions by Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, requested on 25 June 2021, received on 2 August 2021

Answer to Question on Notice

- 1 National Disability Insurance Agency, answers to questions on notice, 4 May 2021 (received 18 May 2021)
- 2 Professor Bonyhady AM, answers to questions on notice, 6 May 2021 (received 21 May 2021)
- 3 Occupational Therapy Australia, answer to a question on notice, 6 May 2021 (received 21 May 2021)
- 4 Australian Autism Alliance, answers to questions on notice, 6 May 2021 (received 27 May 2021)
- 5 National Disability Insurance Agency, answer to a question on notice, 4 May 2021 (received 26 May 2021)
- 6 Autism Association of Western Australia, answer to a question on notice, 27 April 2021 (received 25 May 2021)
- 7 Allied Health Professions Australia, answer to a question on notice, 23 April 2021 (received 28 May 2021)
- 8 Young People in Nursing Homes National Alliance, answers to questions on notice, 23 April 2021 (received 3 June 2021)
- 9 Australian Psychological Society, answers to questions on notice, 23 April 2021 (received 9 June 2021)
- 10 National Disability Insurance Agency, answers to questions on notice, 18 and 24 May 2021 (received 14 June 2021).
- 11 National Disability Insurance Agency, answer to questions on notice, 18 May 2021 (received 17 June 2021).
- 12 National Disability Insurance Agency, answers to questions on notice, 18 and 24 May 2021 (received 29 June 2021)
- 13 National Disability Insurance Agency, answers to questions on notice, 18 and 24 May 2021 (received 29 June 2021)
- 14 Queensland Law Society, answers to questions on notice, 29 June 2021 (received 15 July 2021)
- 15 Department of Social Services and National Disability Insurance Agency, answers to questions on notice, 5 August 2021 (received 2 September 2021)

Appendix 6

Public Hearings

Friday, 23 April 2021

186 Exhibition Street
Rydges Hotel, Phantom Room
Melbourne

Melbourne Disability Institute

- Professor Bruce Bonyhady

Australian Psychological Society

- Dr Tony McHugh, Senior Policy Officer

Children and Young People with Disability Australia

- Ms Mary Sayers, Chief Executive Officer
- Gi Brown, Private capacity

Allied Health Professionals Australia

- Mrs Claire Hewat, Chief Executive Officer

Occupational Therapy Australia

- Mrs Leanne Healey, Board Member
- Ms Muriel Cummins, Member

Young People in Nursing Homes National Alliance

- Dr Bronwyn Morkham, National Director

Australian Autism Alliance

- Mr Paul Micallef, Co-Chair
- Ms Fiona Sharkie, Co-Chair

Statements from people with lived experience of disability

- Ms Ebony Rees, Private capacity
- Mr Felix Kaesler, Private capacity
- Ms Grace McLoughlan, Private capacity
- Mr Jeremy Le Roux, Private capacity
- Ms Kristin O'Connell, Private capacity
- Ms Tania Nicholls, Private capacity
- Ms Zoe Mithen, Private capacity
- Ms Karen Dimmock, Private capacity

Tuesday, 27 April 2021

Western Australia (hosted in Canberra via videoconference/teleconference)

People With Disabilities WA

- Mr Brendan Cullinan, Executive Director
- Ms Lisa Burnette, Chair

Ms Samantha Connor, Private capacity

Marninwarntikura Women's Resource Centre and The University of Sydney

- Dr Lauren Rice, Research Fellow

Western Australia Association for Mental Health

- Ms Chelsea McKinney, Manager - Advocacy and Sector Development
- Mrs Tabetha McCallum, Project Manager - NDIS Quality and Safeguards Sector Readiness Project

Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women's Council (Aboriginal Corporation)

- Mrs Margaret Smith, Vice-Chairperson and Director
- Ms Kim McRae, Tjungu Team Manager

Ethnic Disability Advocacy Centre

- Ms Christine Grace, Manager, Advocacy Services
- Mr Siyat Abdi, Systemic Advocate

Autism Association of Western Australia

- Mrs Tasha Alach, Director: Therapy & Clinical Services
- Dr Lauren Taylor, Clinical Psychologist

South West Autism Network

- Ms Nick Avery, Chief Executive Officer

Development Disability WA

- Mrs Mary Butterworth, Chief Executive Officer
- Ms Anne Livingston, Support Coordination Manager
- Ms Leticia Grant, Advocacy Manager

Consumers of Mental Health WA Inc

- Ms Shauna Gaebler, Chief Executive Officer

Statements from people with lived experience of disability

- Ms Claire Gibellini, Private capacity
- Ms Delyse Clayden, Private capacity
- Ms Heather Colvin, Private capacity
- Ms Naomi Jennings, Private capacity
- Ms Kym Pascal, Private capacity
- Mr Simon Reid, Private capacity
- Ms Vida Reid, Private capacity

Friday, 30 April 2021

Hobart Function and Conference Centre
1 Elizabeth Street Pier
Hobart

Coalition of Disability Advocacy Organisations

- Mx Roen Meijers, Disability Specialist

Migrant Resource Centre Northern Tasmania

- Mr Mark Deverell, Programs and Services Manager

Autism Tasmania

- Ms Donna Blanchard, Chief Executive Officer

Carers Tasmania

- Mr David Brennan, Chief Executive Officer

Carers Tasmania Ltd

- Ms Luana Martin, Informal Carer

Ms Jane Wardlaw, Disability Advocate

Statements from people with lived experience of disability

- Mrs Clare Waiss, Private capacity
- Mr Mark Ward, Private capacity
- Mrs Ros Ward, Private capacity
- Mr Simon Edwards, Private capacity
- Mr David Farrell, Private capacity
- Mrs Stacey Gittus, Private capacity

Tuesday, 4 May 2021

Broadside Room

Rydges

Corner Myers and Gheringhap Street

Geelong

National Disability Insurance Agency

- Mr Martin Hoffman, CEO
- Mr Oliver Bladec, Deputy CEO, Design, Digital & Strategy
- Mr Scott McNaughton, General Manager, National Delivery

Rights Information Advocacy Centre

- Ms Karryn Goode, CEO
- Ms Rachael Thompson, Team Leader - NDIS Appeals/Advocacy

Corangamite NDIS Reference Group

- Ms Jacqui Pearce, Chair
- Mrs Michelle McGarrigle
- Mrs Linda Blaik

Statements from people with lived experience of disability

- Ms Bianca Brant, Private capacity
- Ms Leah Katieva, Private capacity
- Ms Bronwyn Harding, Private capacity
- Ms Shirley Humphris, Private capacity
- Ms Marj Knight, Private capacity
- Ms Jaimee Witcombe, Private capacity

Tuesday, 18 May 2021

Committee Room 2S3

Parliament House, Canberra

First Peoples Disability Network

- Mr Damian Griffis, Chief Executive Officer

Australian Federation of Disability Organisations

- Mr Ross Joyce, Chief Executive Officer
- Mr Patrick McGee, National Manager - Systemic Advocacy, Insight & Research

Department of Social Services

- Mr Peter Broadhead, Group Manager, Participant and Performance
- Ms Catherine Rule, Deputy Secretary, Disability and Carers

National Disability Insurance Agency

- Mr Martin Hoffman, Chief Executive Officer
- Mr Oliver Bladek, Deputy CEO, Design, Digital & Strategy
- Mr Scott McNaughton, General Manager, National Delivery

Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme

Inclusion Australia

- Ms Catherine McAlpine, Chief Executive Officer

Mr John Walsh AM, Private capacity

Thursday, 20 May 2021

Main Committee Room

Parliament House, Canberra

Advocacy for Inclusion

- Ms Stacy Rheese

Mental Health Community Coalition ACT

- Ms Bec Cody

Aged and Carer Advocacy Services (ADACAS)

- Ms Wendy Prowse
- Ms Lauren O'Brian (via videoconference)

Carers ACT

- Ms Kamla Brisbane

Minister Emma Davidson MLA, Minister for Disability, Minister for Justice Health, Minister for Mental Health, Assistant Minister for Families and Community Service

Community Services Directorate

- Ms Christine Murray
- Ms Ellen Dunne

Disability Reference Group

- Mr Dougie Herd

Statements from people with lived experience of disability

- Ms Leslea Geary, Private capacity
- Ms Tracy Gorman, Private capacity
- Mrs Marsham, Private capacity
- Ms Molly Marsham, Private capacity
- Ms Teena Roberts, Private capacity
- Mr Jeffrey Smart, Private capacity
- Ms Simone Stevens, Private capacity

Tuesday, 29 June 2021

Royal on the Park
152 Alice Street
Brisbane

The Hopkins Centre and Law Futures Centre

- Associate Professor Kylie Burns
- Professor Michele Foster
- Professor Susan Harris Rimmer

Queensland Law Society

- Mr Matt Dunn, QLS General Manager
- Ms Brooke Thompson, QLS Policy Solicitor
- Ms Karen Williams, Deputy Chair - QLS Health and Disability Law Committee
- Mr Henry MacPhillamy, Member - QLS Diverse Abilities Network

ME/CFS Australia

- Mr Geoffrey Hallmann, Chair

Refugee Health Network of Australia

- Ms Donata Sackey
- Dr Georgia Paxton

Mental Illness Fellowship Australia

- Mr Tony Stevenson, CEO

Queensland Advocacy Incorporated

- Ms Matilda Alexander, CEO
- Ms Emma Phillips, Principal Solicitor
- Ms Sophie Wiggins, Systems Advocate

Thursday, 5 August 2021

Committee Room 2S3

Parliament House

Canberra via videoconference

Senator the Hon Linda Reynolds CSC, Minister for the National Disability Insurance Scheme

Department of Social Services

- Ms Catherine Rule, Deputy Secretary, Disability and Carers
- Mr Peter Broadhead, Group Manager, Participants and Performance

National Disability Insurance Agency

- Mr Martin Hoffman, Chief Executive Officer
- Dr Lisa Studdert, Deputy Chief Executive Officer, Markets, Government and Engagement
- Mr Oliver Bladdek, Deputy Chief Executive Officer, Design, Digital and Strategy