



NDIS Consultation Paper Independent Assessments

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Western Australia's Individualised Services (WAiS)

Western Australia's Individualised Services (WAiS) is a member-based community organisation working in partnership with people, families, service providers and government agencies to promote and advance individualised, self-directed supports and services for people living with disability, including psychosocial disability.

Since our inception in 2010, we have evolved to become thought leaders in this space, providing comprehensive, intentional support with integrity, passion and authenticity at our core. By leveraging our extensive local, state, and international network, we seek to lead, influence, innovate and inform to create meaningful and lasting change, supporting people to build capacity and live their lives on their own terms.

Background and General Position

Following the review of the NDIS in 2019 by David Tune AO PSM (Tune Review), in August 2020 the Minister for the NDIS, Stuart Robert, announced that the NDIS will be implementing a system of independent assessments. These assessments will be used to determine the eligibility of people with disabilities to have access to the NDIS and also be an on-going assessment of people already in the scheme.

According to Minister Robert, the system is being put in place to 'deliver a simpler, faster and fairer approach for determining a person's eligibility right through to developing more flexible and equitable support packages.'¹

WAiS highly welcomes the intention of the NDIA's proposed processes, which is to create a way for people with disability to have a total funded support budget, that can be utilised flexibly and responsively in line with the persons vision and goals. We also highly welcome exploring ways to make the scheme equitable and sustainable.

However, a significant number of people, families, carers and organisations and advocacy groups in the disability sector across Australia, have expressed serious concerns about the proposed roll out of the mandatory independent assessment framework.²

¹ Australian Government, Ministers for the Department of Social Services, The Hon Stuart Robert MP' Media Release: Landmark reforms to deliver on the promise of Australia's National Disability Insurance Scheme (NDIS)' dated 28 August 2020 viewed at <<https://ministers.dss.gov.au/media-releases/6156>>

² Note: These organisations are referred to throughout this submission and include: Consumers of Mental Health WA (Inc); Queensland Advocacy Incorporated; Every Australian Counts; Purple Orange; Young People In Nursing Homes National Alliance; Inclusion Australia; Mental Health Australia; Victorian Mental Illness Awareness Council (VMAC); National Ethnic Disability Alliance; Queenslanders with Disability Network; People with Disability Australia; National Disability and Carer Alliance; Office of the Public Advocate (Victoria); Blind Citizens Australia; Occupational Therapy Australia; Deafblind Australia; Australian Autism Alliance; People with Disabilities Western Australia; Disability Advocacy Victoria Inc.; tasc; Disability Justice Australia Inc.; Independent Advocacy NQ; People with Disability Australia; Queensland Collective for Inclusive Education; afi (advocacy for inclusion; rightsin action; Speaking Up For You; SUFY; Brain Injury S.A; Villamanta Disability Rights Legal Service Inc; Queenslanders With Disability Network; riac: your rights, your voice; aed Legal Centre

WAI S has a number of fundamental concerns about the proposed independent assessments framework and will outline these, in turn, below.

WAI S does not support the introduction of mandatory independent assessments. We recommend that the NDIA reconsider its approach and develop an alternative framework to determine peoples' eligibility to the NDIS and on-going reasonable and necessary support needs, developed through co-design with people with disabilities, their families, carers and the disability sector.³

Not aligned with UN Convention on the Rights of Persons with Disabilities, the NDIS Act and Right to Self-Determination

One of the purposes of the NDIS Act is to 'give effect to Australia's obligations under the Convention on the Rights of Persons with Disabilities'.⁴ These obligations include:

- that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them;⁵
- respect for inherent dignity, and individual autonomy including the freedom to make one's own choices, and independence of persons.⁶

The inalienable right to self-determination for people with disabilities in the UN Convention on the Rights of Persons with Disabilities is echoed in the NDIS 'General principles guiding actions under this Act', including:⁷

- People with disability have the same right as other members of Australian society to pursue any grievance.
- People with disability should be supported to exercise choice, including in relation to taking reasonable risks, in the pursuit of their goals and the planning and delivery of their supports.
- People with disability have the same right as other members of Australian society to be able to determine their own best interests, including the right to exercise choice and control, and to engage as equal partners in decisions that will affect their lives, to the full extent of their capacity.

³ Victorian Mental Illness Awareness Council (VMAC), 'Submission: General Issues Around Implementation and Performance of the NDIS' nd, viewed 9 February 2020 at < https://www.vmiac.org.au/wp-content/uploads/VMIAC_Joint-Standing-Committee_NDIS-General-Issues-Submission-Oct-2020-3-1-1.pdf; Queensland Advocacy Incorporated, 'Open Letter to the Minister for the NDIS, The Hon Stuart Robert MP Re: Independent Assessments in the NDIS' dated 5 October 2020 - Note: This open letter was endorsed by the following organisations and agencies: Disability Advocacy Victoria Inc.; tasc; Disability Justice Australia Inc.; Independent Advocacy NQ; People with Disability Australia; Queensland Collective for Inclusive Education; afi (advocacy for inclusion; rights in action; Speaking Up For You; SUFY; Brain Injury S.A; Villamanta Disability Rights Legal Service Inc; Queenslanders With Disability Network; riac: your rights, your voice; aed Legal Centre

⁴ National Disability Insurance Scheme Act 2013 (Cth), Section 3 'Objects of the Act'

⁵ Preamble, Convention on the Rights of People with Disabilities

⁶ Articles 3(a)-(f) of the Convention on the Rights of People with Disabilities

⁷ National Disability Insurance Scheme Act 2013 (Cth), Section 4 'General principles guiding actions under this Act'

- People with disability should be supported in all their dealings and communications with the Agency and the Commission so that their capacity to exercise choice and control is maximised in a way that is appropriate to their circumstances and cultural needs.

However, a system of independent assessment that is:

- mandated;
- with an assessor not of their real choice;
- without any recourse to review; and
- the main process that determines a person's access and NDIS budget,

denies people with disabilities their legislated and human rights to exercise self-determination or to pursue a grievance about a process that will fundamentally affect the quality of their lives.⁸

Medical Model vs Social Model

The UN Convention on the Rights of Persons with Disability fundamentally rejects the historical medical model of disability - a model that saw disability as a person's problem requiring professionals with expertise to dictate what is needed by the person. The Convention, instead states that in line with the right of people with disabilities to self-determination, so too do they have the right to be the experts in their own lives.⁹

This is echoed in the Tune Review, which stresses:

- empowering people with disabilities to have access to and navigate the NDIS, and to participate in the planning process;¹⁰
- breaking down of barriers so people connected to the supports they need;¹¹ and
- maximising informed choice and control by placing the individual at the centre of the process.¹²

⁸ See for example the submissions of other organisations in the disability sector voicing the same concerns: Queensland Advocacy Incorporated, 'Open Letter to the Minister for the NDIS, The Hon Stuart Robert MP Re: Independent Assessments in the NDIS' dated 5 October 2020 - Note: This open letter was endorsed by the following organisations and agencies: Disability Advocacy Victoria Inc.; tasc; Disability Justice Australia Inc.; Independent Advocacy NQ; People with Disability Australia; Queensland Collective for Inclusive Education; afi (advocacy for inclusion; rights in action; Speaking Up For You; SUFY; Brain Injury S.A; Villamanta Disability Rights Legal Service Inc; Queenslanders With Disability Network; riac: your rights, your voice; aed Legal Centre; Queenslanders with Disability Network, 'Independent Assessments for the NDIS – Latest News' dated 27 November 2020, viewed at < <https://qdn.org.au/hot-issues/national-disability-insurance-scheme/independentassessments/>>; People with Disability Australia, 'We are Concerned About 'Independent Assessments; for NDIS' nd, viewed at < <https://pwd.org.au/we-are-concerned-about-independent-assessments-for-the-ndis/>>

⁹ Every Australian Counts, 'Tune Review Submissions Summary' October 2019 at pg 6; Consumers of Mental Health WA (Inc), 'Improving the NDIS Experience: Review of the National Disability Insurance Scheme (NDIS) Act and Participant Service Guarantee' dated October 2019, at page 2; Queensland Advocacy Incorporated, 'Letter to Mr David Tune AO PSM: 2019 Review of the NDIS Act and the NDIS Participant Service Guarantee' dated 31 October 2019, at page 13

¹⁰ David Tune AO PSM, 'Review of the National Disability Insurance Scheme Act 2018,' December 2019, Executive Summary

¹¹ David Tune AO PSM, 'Review of the National Disability Insurance Scheme Act 2018,' December 2019, Executive Summary

¹² David Tune AO PSM, 'Review of the National Disability Insurance Scheme Act 2018,' December 2019, at 4.17-4.18

WAI's has serious concerns that the proposed independent assessment framework goes against the recommendations of the Tune Review as well as breaches the principles and rights legislated for in the NDIS Act. Instead, the independent assessment framework further embeds the medical model into the NDIS.

WAI's is also concerned that this is being rolled out without appropriate consultation and only after one small pilot project in New South Wales^{13 14}

As *Every Australian Counts* states:¹⁵

So instead of a complete stranger from the NDIA or a contracted Local Area Coordinator determining what you need, it will be a complete stranger with an allied health background contracted by the NDIA who will determine what you need. Using a set of questions which were never designed for this purpose.

Which perhaps explains in a nutshell exactly why we are all so worried.

Mandatory nature of Independent Assessments

The NDIS act states that people have the right to choice in relation to the planning and delivery of supports.¹⁶

The mandatory nature of independent assessments does not align with peoples' legislated and human right to this choice. This is also inconsistent with the recommendations of the Tune Review which stipulated that independent assessments be a **discretionary** measure.¹⁷

The implementation of a mandatory assessment system is also likely to be deeply triggering and harmful for people with disabilities who have historically been subjected to negative, judgmental and mandatory medical assessments.¹⁸

¹³ Every Australian Counts, 'Tune Review Submissions Summary' October 2019 at pg 26; Inclusion Australia, 'Inclusion Australia Statement December 2020: NDIS Independent Assessments' December 2020 at pg 1; Queenslanders with Disability Network, 'QDN Summary of NDIS 'Independent Assessments' dated 17 November 2020, viewed at < <https://qdn.org.au/hot-issues/national-disability-insurance-scheme/independentassessments/>> People with Disability Australia, 'We are Concerned About 'Independent Assessments; for NDIS' nd, viewed at < <https://pwd.org.au/we-are-concerned-about-independent-assessments-for-the-ndis/>>

¹⁴ People with Disability Australia, 'We are Concerned About 'Independent Assessments; for NDIS' nd, viewed at < <https://pwd.org.au/we-are-concerned-about-independent-assessments-for-the-ndis/>>

¹⁵ Every Australian Counts, 'News hub: Is the end of planning in the NDIS' dated 25 November 2020, viewed at <<https://everyaustraliancounts.com.au/is-this-the-end-of-planning-in-the-ndis/>>

¹⁶ National Disability Insurance Scheme Act 2013 (Cth), Section 4 'General principles guiding actions under this Act', sections 4(4); Mental Health Australia, 'Policy Paper: National Disability Insurance Scheme Independent Assessments' dated December 2020 at pg 6

¹⁷ Queensland Advocacy Incorporated, 'Open Letter to the Minister for the NDIS, The Hon Stuart Robert MP Re: Independent Assessments in the NDIS' dated 5 October 2020

¹⁸ Victorian Mental Illness Awareness Council (VMAC), 'Submission: General Issues Around Implementation and Performance of the NDIS' nd, viewed 9 February 2020 at < https://www.vmiac.org.au/wp-content/uploads/VMIAC_Joint-Standing-Committee_NDIS-General-Issues-Submission-Oct-2020-3-1-1.pdf>

WAIIS recommends that independent assessments are offered only as a discretionary option to people who may not have access to their own network of trusted professionals.

No Review of the Independent Assessment and Lack of Procedural Fairness

Independent assessments will be used to build the NDIS plan and budget¹⁹ but unlike many other NDIS decisions, independent assessment reports are not in themselves reviewable.²⁰ This means that independent assessment results cannot be externally reviewed by the Administrative Appeals Tribunal.²¹

A person with a disability can only request a second assessment if that person has a change to their functional capacity or circumstances, or where the independent assessment was not done according to the required framework.²² The NDIA's position regarding the quality of the independent assessment and their review process is clear:

Disagreeing with the results of an otherwise sound and robust independent assessment is not sufficient for the NDIA to fund another assessment.

It is unclear at this stage, how it will be determined if an assessment has been undertaken in alignment with or in breach of the framework, and with whom the responsibility for determining this lies. The lack of transparency and information, further fuels the concerns of many people with disabilities that their rights to transparency in NDIA decision making and redress for decisions that affect them are being eroded over time.²³

For this reason, the Tune Review has been notable for recommending:²⁴

...participants having the right to challenge the results of the functional capacity assessment [independent assessment], including the ability to undertake a second assessment or seek some form of arbitration if, for whatever reason, they are unsatisfied with the assessment.

Capacity and Capability of Independent Assessors

²⁰ NDIA, 'NDIS Internal review of a decision', viewed February 2020 < <https://www.ndis.gov.au/applying-access-ndis/how-apply/receiving-your-access-decision/internal-review-decision>>; Every Australian Counts, 'News hub: Is the end of planning in the NDIS' dated 25 November 2020, viewed at <<https://everyaustraliancounts.com.au/is-this-the-end-of-planning-in-the-ndis/>>

²¹ NDIA, 'NDIS Consultation Paper: Access and Eligibility Policy with independent assessments' dated November 2020, at 3.11

²² NDIA, 'NDIS Consultation Paper: Access and Eligibility Policy with independent assessments' dated November 2020, at 3.11

²³ ACT Human Rights Commission, 'Letter to Department of Social Services: Submission to the Review of the NDIS Act and the new NDIS Participant Service Guarantee' dated 8 November 2019, at page 5; David Tune AO PSM, 'Review of the National Disability Insurance Scheme Act 2018,' December 2019, Executive Summary; National Disability and Carer Alliance, 'Submission to the Tune Review' October 2019 at pg 8

²⁴ David Tune AO PSM, 'Review of the National Disability Insurance Scheme Act 2018,' December 2019, at 4.34

People already experience a limited availability of suitably qualified and experienced practitioners to be able to undertake assessments. This has resulted in long waiting lists, especially for people living in regional and remote areas and / or with complex needs.²⁵ For this reason the Tune Review recommended that ‘the NDIA should not implement a closed or deliberately limited panel of providers to undertake functional capacity assessments.’²⁶

Despite these recommendations, what has been proposed is a system whereby only a limited number of providers from a panel selected by the NDIA will be able to carry out independent assessments.²⁷ Furthermore, there is little assurance that the people on the panel will have the requisite training or experience to carry out the relevant independent assessment, especially for people with complex needs.²⁸

This independent assessment process also does not allow for people to use their own network of professionals/practitioners, who they have already sourced and with whom they have developed a relationship of trust and confidence, to do the independent assessments.²⁹

Conflict of Interest

The NDIA has sought to assure people that independent assessors will be ‘independent’, by way of them not being directly employed by the agency.³⁰ However, these assessors will still remain contracted directly by the NDIA, being paid by the very agency who will be utilising the assessments to determine budget outcomes for people and requiring to comply with an NDIA determined framework.³¹ This is an inherent conflict of interest by the agency.

Quality of outcome from Independent Assessments

People have already raised concerns in relation to the quality of planning with the NDIA including lack of: respectful engagement;³² translation services and cultural awareness of CALD and Aboriginal

²⁵ Every Australian Counts, ‘Tune Review Submissions Summary’ October 2019 at pg 20; National Disability and Carer Alliance, ‘Submission to the Tune Review’ October 2019 at pg 22

²⁶ David Tune AO PSM, ‘Review of the National Disability Insurance Scheme Act 2018,’ December 2019, at 4.37

²⁷ NDIA, ‘NDIS: Independent Assessors’ dated 27 November 2021 viewed at <<https://www.ndis.gov.au/participants/independent-assessments/independent-assessors>>; NDIS, ‘Consultation Paper: Access and Eligibility Policy with independent assessments’ dated November 2020, at 3.11

²⁸ Blind Citizens Australia, ‘Statement Regarding the Implementation of Independent Functional Assessments for NDIS Participants’ nd viewed at <<https://www.bca.org.au/2020/09/10/statement-regarding-the-implementation-of-independent-functional-assessments-for-ndis-participants/>>

²⁹ Deafblind Australia, ‘Letter to the Hon Stuart Robert MP, Minister for the National Disability Insurance Scheme’ dated 22 September 2020

³⁰ NDIA, ‘NDIS: Independent Assessors’ viewed February 2021 at <<https://www.ndis.gov.au/participants/independent-assessments/independent-assessors>>

³¹ Queensland Advocacy Incorporated, ‘Open Letter to the Minister for the NDIS, The Hon Stuart Robert MP Re: Independent Assessments in the NDIS’ dated 5 October 2020

³² Queensland Advocacy Incorporated, ‘Letter to Mr David Tune AO PSM: 2019 Review of the NDIS Act and the NDIS Participant Service Guarantee’ dated 31 October 2019, at page 9

communities;³³ resources required for people living in remote communities; ³⁴ and appropriate training and experience of planners.³⁵ Often people with disabilities have felt excluded from their own planning processes due to the poor quality of interactions with the NDIS.³⁶

WAI is particularly concerned about the trauma that Aboriginal communities have experienced from a history of professionals and/or governments imposing what they deem is best for Aboriginal people and their communities.

These concerns arise in response to a process that is intended to be relational, individualised and person-centred. WAI is concerned that the proposed independent assessment process will only exacerbate these concerns and experiences rather than alleviate them.

Beth Mount discusses planning and the risks of professionals planning from with a medicalised approach. This was a historical practice that the sector has moved away from for people to be able to exercise more self direction, choice and control.

Please see: https://www.youtube.com/watch?v=DxDIMuWgd8o&feature=emb_logo .

Standardised assessments tools are not designed to support a holistic, individualised and tailored response, especially for people with complex support needs. In particular, they are not designed to review fundamental human needs – needs for affiliation and relationships, being in and part of the community, and having valued social roles and competencies.

Inadequacy of Time proposed to undertake an Independent Assessment

Assurances have been made by the NDIA and the Australian Government that:

- *through the NDIS, time will be spent with people with disabilities when it matters the most;*³⁷ and
- *people with disabilities will be supported to access the NDIS at the pace they are comfortable with.*³⁸

Despite this, it has been suggested that each independent assessment is to take between 3-4 hours with 20 minutes of observation.³⁹

³³ Queensland Advocacy Incorporated, 'Letter to Mr David Tune AO PSM: 2019 Review of the NDIS Act and the NDIS Participant Service Guarantee' dated 31 October 2019, at page 11; People with Disabilities Western Australia, 'Submission: NDIS Act Review and Participant Service

³⁴ Queensland Advocacy Incorporated, 'Letter to Mr David Tune AO PSM: 2019 Review of the NDIS Act and the NDIS Participant Service Guarantee' dated 31 October 2019, at page 14

³⁵ National Disability and Carer Alliance, 'Submission to the Tune Review' October 2019 at pg 17

³⁶ National Disability and Carer Alliance, 'Submission to the Tune Review' October 2019 at pg 17; WAI Individualised Services, 'NDIS Act Review 2019' at pages 2-3

³⁷ NDIA, 'NDIS Consultation Paper: Access and Eligibility Policy with independent assessments' dated November 2020, at 2.2

³⁸ Australian Government, 'Australian Government Response to the 2019 Review of the National Disability Insurance Scheme Act 2013 report', dated August 2020, at pg 8

³⁹ NDIA, 'NDIS Consultation Paper: Access and Eligibility Policy with independent assessments' dated November 2020, at 3.5.1;

WAIIS experience is that an independent assessor, who doesn't know nor have any previous relationship with the person, will not be able to adequately complete a holistic, individualised functional assessment. Notably, the NDIS has provided no evidence to the disability sector that this prescribed assessment time is appropriate.⁴⁰

Complex Supports

There are long standing concerns that the NDIA has inadequately supported people with complex support needs and/or complex communication access needs. In acknowledgement of this, in 2017, the NDIA created the complex support needs pathway. This was to provide a dedicated team of specialised planners with the time and experience, skills, knowledge and networks to be able to adequately plan with people with complex support needs. This included the acknowledgement that people who have complex support needs require people around them who know them well to assist them with decision making. Whilst this approach had the intention of ensuring people with complex support needs getting their needs met, this continues to be a problem in implementation due to the very nature of peoples' support needs being so complex.

The independent assessment framework is based on a uniform, prescriptive, standardised assessment tool approach.⁴¹ This is fundamentally at odds with the needs of people with complex supports in relation to any kind of assessment or planning process.⁴² This is also the same for people with people with episodic, variable, and / or fluctuating capacity – for example those with psychosocial disabilities.⁴³

Choice of Independent Assessor

Under the NDIS Act:⁴⁴

People with disability should be supported in all their dealings and communications with the Agency and the Commission so that their capacity to exercise choice and control is maximised in a way that is appropriate to their circumstances and cultural needs.

⁴⁰ Victorian Mental Illness Awareness Council (VMAC), 'Submission: General Issues Around Implementation and Performance of the NDIS', viewed 9 February 2020 at <https://www.vmiac.org.au/wp-content/uploads/VMAC_Joint-Standing-Committee_NDIS-General-Issues-Submission-Oct-2020-3-1-1.pdf>

⁴¹ Queensland Advocacy Incorporated, 'Open Letter to the Minister for the NDIS, The Hon Stuart Robert MP Re: Independent Assessments in the NDIS' dated 5 October 2020

⁴² Office of the Public Advocate (Victoria) 'Position statement: NDIS Independent Assessments - The Office of the Public Advocate stands with the disability advocacy sector in requesting that the NDIA reconsider its proposal to introduce independent assessments' dated 25 November 2020, viewed at <<https://www.publicadvocate.vic.gov.au/media-centre/415-opa-position-statement-ndis-independent-assessments>>

⁴⁴ National Disability Insurance Scheme Act 2013 (Cth), section 4(9)

However, the Tune Review recognised that many people with disabilities feel that their engagement with the NDIS has not allowed them to exercise the required choice and control, leading to lasting negative impacts on their wellbeing.⁴⁵

To address this issue, both the disability sector and the Tune Review stated that people with disabilities have the right to and must be able to choose their own NDIA provider to undertake the independent assessment.⁴⁶ As stated in the Tune Review:⁴⁷

... there are a number of key protections that need to be embedded as this approach rolls out, including:

- *participants having the right to choose which NDIA-approved provider in their area undertakes the functional capacity assessment*

WAIIS also notes the precedent of *Ray and National Disability Insurance Agency AATA 3452*, in which the Tribunal decided that the reports of a number of medical health professionals who had supported the person over time were to be relied on over an independent assessor who had only spent several hours with that same person.⁴⁸

Despite all this, what is proposed is an NDIS determined panel of independent assessors to choose from, providing at best a limited choice. However, even with this limited choice, the NDIA has indicated that only “where possible, applicants will be able to give their preferences” suggesting that in some cases people may not get their choice at all.

Eligibility Reassessments

Section 24 of the NDIS Act, states, among other things that a person meets the disability requirements if “(e) the person is likely to require support under the National Disability Insurance Scheme for the person’s lifetime.”

In contrast, it is of concern that the NDIS has indicated that “where an independent assessment indicates a significant improvement in functional capacity, a participant may be referred for an eligibility reassessment, consistent with the current provisions of the Act. The information from the independent assessment may then be used to inform an eligibility reassessment decision.”

The concerns that arise from this include:

⁴⁵David Tune AO PSM, ‘Review of the National Disability Insurance Scheme Act 2018,’ December 2019, at 2.27 and 2.28; National Disability and Carer Alliance, ‘Submission to the Tune Review’ October 2019 at pg 15

⁴⁶ David Tune AO PSM, ‘Review of the National Disability Insurance Scheme Act 2018,’ December 2019, at 2.28 and 4.34; Every Australian Counts, ‘Tune Review Submissions Summary’ October 2019 at pg 9; Purple Orange, ‘Submission to Department of Social Services about establishing a Participant Service Guarantee and review of the NDIS Act’ October 2019, at 4.3.1; Queensland Advocacy Incorporated, ‘Open Letter to the Minister for the NDIS, The Hon Stuart Robert MP Re: Independent Assessments in the NDIS’ dated 5 October 2020; Mental Health Australia, ‘Policy Paper: National Disability Insurance Scheme Independent Assessments’ dated December 2020 at pg 5

⁴⁷ David Tune AO PSM, ‘Review of the National Disability Insurance Scheme Act 2018,’ December 2019, at 2.27 and 2.28

⁴⁸ Queensland Advocacy Incorporated, ‘Open Letter to the Minister for the NDIS, The Hon Stuart Robert MP Re: Independent Assessments in the NDIS’ dated 5 October 2020

- who determines, and on what basis, that a person's improvement in functional capacity is sufficient to revoke the person's access to the NDIS
- what choice and control people themselves have with this process of eligibility reassessment
- inadequate understanding that for many people their capacity is maintained because of the supports received and the subsequent removal of these supports may result in their capacity again declining.

WAiS Position and Recommendation

As stated by the NDIA, in relation to the independent assessment system:⁴⁹

We are working towards a future NDIS that is simpler and fairer. That will empower participants to exercise greater choice and control over their lives and ensure the NDIS remains sustainable.

WAiS believes that the mandatory independent assessment framework that is being proposed is in stark contrast to this stated objective.

WAiS does not support the introduction of mandatory independent assessments as currently proposed. We recommend that the NDIA reconsider its approach and develop an alternative framework to determine peoples' eligibility to the NDIS and on-going support needs, developed through co-design with people with disabilities, their families, carers and the disability sector.⁵⁰

⁴⁹ NDIA, 'NDIS Consultation Paper: Access and Eligibility Policy with independent assessments' dated November 2020, at 2.2

⁵⁰ Victorian Mental Illness Awareness Council (VMAC), 'Submission: General Issues Around Implementation and Performance of the NDIS' nd, viewed 9 February 2020 at < https://www.vmiac.org.au/wp-content/uploads/VMIAC_Joint-Standing-Committee_NDIS-General-Issues-Submission-Oct-2020-3-1-1.pdf; Queensland Advocacy Incorporated, 'Open Letter to the Minister for the NDIS, The Hon Stuart Robert MP Re: Independent Assessments in the NDIS' dated 5 October 2020 - Note: This open letter was endorsed by the following organisations and agencies: Disability Advocacy Victoria Inc.; tasc; Disability Justice Australia Inc.; Independent Advocacy NQ; People with Disability Australia; Queensland Collective for Inclusive Education; afi (advocacy for inclusion; rights in action; Speaking Up For You; SUFY; Brain Injury S.A; Villamanta Disability Rights Legal Service Inc; Queenslanders With Disability Network; riac: your rights, your voice; aed Legal Centre