



Aboriginal Health Council

of South Australia Ltd.

our health, our choice, our way

Submission to the Joint Standing Committee on the NDIS Inquiry into the Independent Assessments - 2021

Please note: In this document the word 'Aboriginal' refers to both Aboriginal and Torres Strait Islander people. The word 'Indigenous' have been used where these are part of a title or direct quote.

The Aboriginal Health Council of South Australia thank the Joint Steering Committee for conducting this inquiry into the Independent Assessments. We acknowledge that the Committee have specifically queried:

"the appropriateness of independent assessments for particular cohorts of people with disability, including Aboriginal and Torres Strait Islander peoples, people from regional, rural and remote areas, and people from culturally and linguistically diverse backgrounds".

Please accept our submission in response to your invitation.

Aboriginal Health Council of South Australia (AHCSA)

Formed in 1981, the Aboriginal Health Council of South Australia (AHCSA) is the peak body of South Australian Aboriginal community-controlled health organisations (ACCHOs). AHCSA's membership consists of one metro ACCHO, ten rural/remote ACCHOs and one substance misuse service.

Our primary role is to be the 'health voice' for all Aboriginal people in South Australia. We achieve this by advocating for the community and supporting workers with appropriate Aboriginal health programs based on a holistic perspective of health. AHCSA is a membership-based peak body with a leadership, watchdog, advocacy and sector support role, and a commitment to Aboriginal self-determination.

The Board of Directors and the Secretariat collectively form AHCSA which enables culturally appropriate and targeted approaches to program and service delivery. The role of the Secretariat is to undertake work directed by the Board on which all member organisations are represented.

AHCSA constitutional objectives are:

1. Operate as the peak body for Aboriginal health in South Australia
2. Provide support to members to improve health outcomes for all Aboriginal people of South Australia, promoting and advancing the Community's commitment to physical, social and emotional wellbeing and quality of life
3. Provide support to members to build their capacity to create a strong and enduring Aboriginal Community Controlled Health Sector and contribute to improving the capacity of mainstream health services to respond appropriately to the health needs of the Aboriginal Community within South Australia
4. Provide and deliver chronic disease care services and programs
5. Contribute to the development of a well-qualified and trained Aboriginal health sector workforce

For more information about AHCSA, please visit our website: www.ahcsa.org.au



Aboriginal and Torres Strait Islander peoples – Disability Statistics

- **45%** of Aboriginal and Torres Strait Islander peoples live with disability and **one in 13** live with severe or profound disability
- **66%** of Aboriginal and Torres Strait Islander people over 55 live with disability and **17%** live with severe or profound disability.
- Aboriginal people are **twice as** likely to be living with disability than other Australians. [1]
- **Almost two-thirds (65%)** of Aboriginal and Torres Strait Islander Peoples have reported that they live with a long-term mental health condition. [2]

The National Disability Insurance Agency (NDIA), the Department of Social Services (DSS), Federal and State Governments around the country are acutely aware of the disability and mental health statistics of Australia's Aboriginal and Torres Strait Islander Peoples who have, for decades, continuously and in good faith, contributed to countless government initiatives, inquiries and Royal Commissions.

NDIS Ready

The Federal Government has provided \$5.9 million to the National Aboriginal Community Controlled Health Organisation (NACCHO) to strengthen National Disability Insurance Scheme (NDIS) services within Aboriginal and Torres Strait Islander communities. Minister Robert, on the 29th of October 2020, stated that *"the Australian Government is committed to delivering an NDIS that is ready to support the needs of Aboriginal and Torres Strait Islander participants now and long into the future"* [3]. AHCSA, as one of the NACCHO affiliates has been contracted to deliver this program within South Australia.

AHCSA has consulted with South Australian ACCHOs regarding the introduction of the Independent Assessments by the NDIA. Whilst some staff of a limited number of ACCHOs were aware of the proposed introduction of the Independent Assessments, and are lodging a submission to both the Joint Standing Committee (JSC) and the NDIA's Consultation on the Independent Assessments, others did not know about this significant modification to the NDIS. AHCSA, on behalf of its members, wishes to submit the following concerns.

Consultation on Independent Assessments

AHCSA advises that there has been no proper consultation, discussions nor are they aware of any trials with our members' communities regarding the Independent Assessments. This is considered a substantial failure of the commitments made by the NDIA within the Aboriginal and Torres Strait Islander Engagement Strategy [4] where it states the following:

"...the views of Aboriginal and Torres Strait Islander peoples with disability are central to the design, delivery and evaluation of policies and services which affect them"

"We aim to develop a collaborative planning and working model to inform practice which can meet the needs of Aboriginal and Torres Strait Islander peoples with disability, their families, carers and communities."

"The Strategy also acknowledges the importance of a flexible, community by community approach to meeting the needs of diverse Aboriginal and Torres Strait Islander communities."

"The involvement of Elders and representative organisations is necessary for strengthening trust in government efforts."



Similar statements and sentiments can be found within the National Agreement on Closing the Gap [5]:

“This Agreement also stems from the belief that when Aboriginal and Torres Strait Islander people have a genuine say in the design and delivery of services that affect them, better life outcomes are achieved. It recognises that structural change in the way Governments work with Aboriginal and Torres Strait Islander people is needed to close the gap.”

“Decision-making is shared between government and Aboriginal and Torres Strait Islander people. Shared decision-making is:

- i. by consensus, where the voices of Aboriginal and Torres Strait Islander parties hold as much weight as the governments*
- ii. transparent, where matters for decision are in terms that are easily understood by all parties and where there is enough information and time to understand the implications of the decision”*

Whilst AHCSA acknowledges the efforts of the NDIA and Governments to engage with the communities that we support, we are concerned that there is a disjointed application of the NDIA’s Aboriginal and Torres Strait Islander Engagement Strategy and the National Agreement on Closing the Gap.

For example, recently NDIA’s leadership refused a formal invitation to the SA Engagement Team to meet face to face with leadership of **FIVE remote** ACCHOs in the South West Coast area of South Australia. The reason provided by the NDIA’s leadership was that the meeting did not occur within to the NDIA’s mandated consultation period on both the Independent Assessments and the proposed changes to Early Childhood Early Intervention. The logistics of arranging such a meeting, even without the complications posed by Covid-19 restrictions, are extraordinary. Discussion with our communities regarding the actual implications of such sweeping changes is essential and must be conducted in a manner that is appropriate for our members. Internet connections are patchy and community members have advised on multiple occasions that video and tele conferencing are not appropriate communication strategies; both logistically and culturally.

This response from NDIA leadership, whether intentioned or not, demonstrates to our communities that the NDIA’s Aboriginal and Torres Strait Islander Engagement Strategy and the National Agreement on Closing the Gap only apply when they are convenient to the NDIA and, by extension, all governments who are signatories to that agreement.

Independent Assessments

It is notable that the Independent Assessment Framework document [6] makes no mention of Aboriginal and Torres Strait Islander People with disabilities. There has been no explanation as to how the NDIA expects tendered companies to be able to adequately deliver the Independent Assessments to our members’ communities in a manner that is in-person and culturally competent.

Without appropriate consultation that aligns with the NDIS Aboriginal and Torres Strait Islander Engagement Strategy and the National Agreement on Closing the Gap we submit the following comments on the Independent Assessments. Also, please be advised that due to this lack of appropriate consultation in “the proper way”, this submission cannot be considered a complete submission by our members and the communities that they support.

AHCSA’s member ACCHOs have advised, in the strongest of terms, that the introduction of the Independent Assessments is likely to cause their communities to further disengage with the NDIS and leave Aboriginal people living with disability without the support that they urgently need. The Independent Assessment process, as outlined in the NDIA’s Independent Assessment Framework and further research throughout NDIA documentation have caused our members to raise the following concerns.



1. Independent Assessors

An independent assessor will be an allied health professional and will make assessments about the person's functional capability. This allied health professional will not be known to the person with a disability and their community.

AHCSA advises that this approach, is completely at odds with the well documented and researched understanding of best practice within Aboriginal Health; where trusting relationships need to be built and maintained for positive outcomes. This assessment approach will either result in the person disengaging from the NDIS or result in assessments that do not accurately reflect the person living with a disability's true support needs.

AHCSA also advises that this approach is not in keeping with the NDIA's Aboriginal and Torres Strait Islander Engagement Strategy where it states:

"Previous poor experiences of some Aboriginal and Torres Strait Islander people with government and mainstream services may result in those who might benefit from reasonable and necessary supports funded by the NDIS not seeking to access the Scheme."

"The NDIA recognises that when we engage and work with Aboriginal and Torres Strait Islander communities it begins with a process of establishing trust with the community. We will be judged by the manner of how we propose to do business, before the nature of the business is considered by the community."

The 2019 review of the National Disability Insurance Scheme [7] is often cited as the reason for the introduction of the independent assessments. However, Mr David Tune in that review highlighted that:

"One of the biggest risks in implementing the new functional capacity assessment process will be disengagement – that is, people with disability refusing to interact with any of the NDIA-approved providers. As with the NDIS as a system more generally, this is a particular risk for Aboriginal and Torres Strait Islanders, those from CALD backgrounds and those with psychosocial disability."

We commenced this submission with the significant disability and mental health statistics for Australia's Aboriginal and Torres Strait Islander Communities and that this risk, identified in the Tune Report, has in no way been addressed by the NDIA is deeply troubling.

Further, it must be noted that the request for tender documents around the delivery of independent assessments indicated that Telehealth will be approved for independent assessments by the NDIA for Rural and Remote communities.

"Telehealth service or other remote method to conduct an Assessment in limited circumstances where distance to a rural town or remote community would make face-to-face Assessment Services impractical"

AHCSA advises that the tender documents do not align with the National Agreement on Closing the Gap and the NDIA Aboriginal and Torres Strait Islander Strategy. Particularly, as there have been no appropriate consultations, to date, regarding the Independent Assessments.

That the list of successful applicants for the Independent Assessment contracts were published approximately one week after the consultation period closed, clearly demonstrates that the NDIA's consultation process was an exercise in bad faith.



AHCSA wishes to advise that our member ACCHOs have the technical ability within their health teams to provide functional assessment reports. However, it must be emphasised that often the barriers, particularly with access to the NDIS, include our communities' lack of access to specialist health professionals such as psychiatrists, neuropsychologists and neurologists and obtaining evidence of a lifelong disability. Without this evidence, Aboriginal people living with disabilities would not meet the criteria for an Independent Assessment as indicated in the Framework.

Our communities struggle to find any allied health professionals that can deliver NDIS and other mainstream health supports to our communities and it is felt that removing more of these professionals away from direct supports to deliver Independent Assessments will exacerbate the issues supporting our people living with serious health concerns and disabilities.

2. Assessment Tools

The Independent Selection of Assessment Tools of September 2020 [8] states:

“Further consultations were held with allied health professionals and academics working in the disability field.”

“The team also consulted with external stakeholders from disability organisations, with a reference group of the NDIS Independent Advisory Council and with academics working in disability research.”

*“...the assessment tools and Framework were presented **to academic and disability stakeholder groups to seek their feedback**. Assessment and Planning decisions will be based upon the Independent Assessments.”*

- a) AHCSA are keen to review this feedback as we need to be assured that there was appropriate representation within those stakeholder groups and academics. Further we would like to ensure that the Framework has been developed taking into consideration any feedback that was obtained.
- b) AHCSA appreciates that this academic and stakeholder feedback may be publicly available on the NDIA's website and seeks guidance on where this can be located. If not currently publicly available, AHCSA advises that our request to review feedback is in-line with our understanding of the National Agreement on Closing the Gap – Transformation element F.

“Improve engagement with Aboriginal and Torres Strait Islander people – Ensure when governments are undertaking significant changes to policy and programs that primarily impact on Aboriginal and Torres Strait Islander people, they engage fully and transparently. Engagements should be done in a way where Aboriginal and Torres Strait Islander people: have a leadership role in the design and conduct of engagements; know the purpose and fully understand what is being proposed; know what feedback is provided and how that is being taken account of by governments in making decisions; and are able to assess whether the engagements have been fair, transparent and open.”



3. Independent Assessments Are Not Reviewable Decisions

AHCSA is extremely concerned that Independent Assessments are not reviewable decisions. AHCSA is aware that only decisions made by the CEO of the NDIA or NDIA employees defined as “Delegates of the CEO” can make decisions that can be reviewed or taken to the Administrative Appeals Tribunal for review.

Mr Tune, in his 2019 review of the NDIS [7] clearly indicated that:

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

- a) Independent Assessments are not decisions that are completed by “Delegates of the CEO” and therefore, cannot be either reviewed or appealed via an application to the Administrative Appeals Tribunal.
- b) The NDIA states on its website that “If you don’t agree with the decisions we make **based on your independent assessment**, you can ask for an internal review of a decision”.
- c) It is AHCSA’s understanding that if a delegate has made an appropriate planning or access decision based on an Independent Assessment (regardless of quality or validity), that decision will be upheld.
- d) The reality is, therefore, that the access and planning decisions are no longer reviewable and to state that they are, without proper clarification is disingenuous (at best). Underhand tactics of this nature will, not only severely undermine the trust our members’ communities have in the NDIA, but in our opinion, damage the integrity of the NDIS in the eyes of the wider disability community.
- e) The NDIA states that the Independent Assessors will be subject to the NDIS Code of Conduct. Breaches of the NDIS Code of Conduct are difficult to regulate. To determine whether an allied health professional has breached in their professional obligations it is likely that the NDIS Quality and Safeguards Commission will, initially refer to the Australian Health Practitioner Regulation Agency. It must also be stressed that the various allied health code breaches are also difficult to regulate effectively. This statement, therefore, is unlikely to impact the quality of the assessment nor provide reassurance to applicants and participants subjected to an independent assessment.
- f) AHCSA advises that the drawn-out investigative processes involved are likely to result in further disengagement from the NDIS, increased distrust in governments and lack of support for our community members living with substantial disabilities.
- g) There is no clearly defined and culturally appropriate pathway for Aboriginal and Torres Strait Islander People with disability to resolve issues with poor quality or invalid Independent Assessments.



Summary

As stated, we have not had sufficient time for our members to review the Independent Assessment Framework and Tools. We would like to reiterate to the Joint Standing Commission on the NDIS that the hasty introduction of the Independent Assessments by the NDIA has been ill-conceived, poorly consulted, and disingenuous.

The Independent Assessment Framework and tools as envisioned in the Independent Assessments Framework will result in further disengagement and disadvantage for Aboriginal and Torres Strait Islander People living with disability. AHCSA query why the NDIA and this government feel that a participant's existing NDIS Providers are not able to provide these functional assessments.

Whilst the NDIA states on its website that the access and eligibility and planning policies are not final, it is noted that the Independent Assessment tender document was released in June 2020 and it included estimates of 2023 independent assessment figures. Further, the NDIA's website states that the Independent Assessments "**will be introduced**" in mid-2021.

The Independent Assessment Panel was announced days after the consultation period had closed, this clearly demonstrates that the NDIA's consultation process was unlikely to have any impact on either the decision to introduce the independent assessments nor the manner in which they are conducted.

AHCSA advise that in breaching the National Agreement on Closing the Gap and the commitments made in their Aboriginal and Torres Strait Islander Engagement Strategy, the NDIA have already eroded the small, but hard won, measure of trust that these strategies and agreements had gained with Aboriginal and Torres Strait Islander Communities.

The Australian Government has funded several strategies and initiatives in their efforts to ensure that Aboriginal and Torres Strait Islander Peoples living with disabilities are supported by the NDIS. AHCSA advises that the introduction of the Independent Assessments in the manner and form proposed will undermine those initiatives and further erode trust in the NDIA and other government parties involved in the Closing the Gap Partnership.

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