Australian Parliament
Joint Standing Committee on the National Disability Insurance Scheme

Inquiry into general issues around the implementation and performance of the NDIS

Occupational Therapy Australia submission

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Introduction

Occupational Therapy Australia (OTA) welcomes the opportunity to make a submission to the Joint Standing *Committee's Inquiry into general issues around the implementation and performance of the NDIS*.

OTA is the professional association and peak representative body for occupational therapists in Australia. As of June 2020, there were more than 23,000 registered occupational therapists working across the government, non-government, private and community sectors in Australia. Occupational therapists are allied health professionals whose role is to enable their clients to participate in meaningful and productive activities.

Occupational therapists provide services such as physical and mental health therapy, vocational rehabilitation, chronic disease management, assessments for assistive technology and home modifications, and key disability supports and services. As such, many occupational therapists provide services to National Disability Insurance Scheme (NDIS) participants.

The role of occupational therapists in the NDIS

Occupational therapists work with people with a disability and their families to maximise outcomes in their life domains, including daily living, social and community participation, work, learning and relationships. Occupational therapists are highly skilled in assessing the degree to which a person's disability affects their level of function in daily tasks. Based on these assessments, occupational therapists make recommendations for, and then deliver, interventions that enhance and maintain an individual's functional capacity.

Given their expertise and area of practice, many occupational therapists deliver NDIS funded services to participants. These services include, but are not limited to, functional capacity assessments, interventions to promote participation in daily living skills and independence, minor as well as complex home modifications, prescribing assistive technology and providing positive behaviour support.

Implementation of the NDIS

Members of the Joint Standing Committee would be well aware of the problems experienced by NDIS participants, carers and service providers during the first years of the scheme's rollout.

Telephone calls and emails from providers and carers to the NDIA went unacknowledged for weeks, even months. Wait times for eligibility to be determined were too long. Wait times for initial Plan meetings were too long. Wait times for Plan reviews were too long. And, of course, these wait times left highly vulnerable people without necessary supports, exposing them to unacceptable risks.

Even with Plans in place, too often the wait for assistive technology was too long, denying participants the support they needed to achieve their goals.

OTA is pleased to report that feedback from our members indicates that engagement with the NDIA has improved over the past twelve months. OTA is certainly receiving fewer complaints about the time it takes to hear back from the NDIA.

This may be due to an NDIS website that is gradually improving, with more information online ensuring fewer inquiries need to be directed to the agency.

However, two issues are particularly topical at the moment, one of which constitutes an emerging problem with the NDIS, the other an existing problem. These two issues are the subject of this submission.

NDIS Independent Assessments

On Friday 28 August, the Minister for the NDIS, the Hon. Stuart Robert MP, announced several changes to existing arrangements.

These included the release of a new Participant Service Charter and Participant Service Improvement Plan, which set out how the NDIA will deliver on the Participant Service Guarantee. These reforms set new services standards and clearer timeframes for decision making by the NDIA.

While these reforms are welcome, and in line with the recommendations of the review of the scheme conducted by Mr David Tune AO PSM, one new reform is of considerable concern to OTA members.

This is the rollout of new Independent Assessments, which will help determine eligibility for the scheme. In his media release, the Minister said Independent Assessments will:

> *… deliver a simpler, faster and fairer approach for determining a person's eligibility right through to developing more flexible and equitable support packages.*

Very significantly, this was not a recommendation of the Tune Review.

Also significantly, the rollout of the assessments was announced before training modules for the assessments had been finalised, and without the release of all relevant data pertaining to a pilot project which informed the development of the eligibility screening tool.

Since July of this year, OTA has been a member of a working group, commissioned by the NDIA and led by Allied Health Professions Australia (AHPA), charged with developing the training modules to enable select allied health professionals to become Independent Assessors for the NDIA, thereby helping improve access to the scheme.

The work of that group had not been completed at the time of the Minister's media release.

Such were OTA's concerns about these proposed assessments, we were drafting a letter to the CEO of the NDIA about them when the Minister issued his media release. Accordingly, the letter was instead addressed to the Minister, and was sent on 31 August.

As a result of that correspondence, OTA's CEO, Sam Hunter, met with a senior official at the NDIA on Tuesday, 8 September, to voice the considerable concerns of our membership.

OTA was also represented at a meeting of AHPA member associations and representatives of the NDIA on Thursday, 10 September, at which some of these concerns were addressed. The NDIA is to be commended for its willingness to engage with stakeholders since the breadth and depth of concern about the proposed Independent Assessments became apparent in early September.

On Monday, 28 September, OTA conducted an online forum to hear the concerns of members around the proposed assessments. Feedback from that forum has informed parts of this submission.

OTA appreciates the need to improve access to the scheme, and understands that this is the ultimate driver for the development of the eligibility screening model. OTA is on the record as supporting easier access to the scheme and is acutely aware that, too often, a potential participant's socio-economic status plays a big part in whether or not they make it onto the NDIS. One of the commendable features of the proposed Independent Assessments is the fact that, for the first time, eligibility screening will be free of charge – something that will address one of the real injustices of existing arrangements.

Development of the Independent Assessment model

OTA is gravely concerned that the Independent Assessment model, itself, as distinct from the training modules that will support it, seems to have been developed and put out to tender by the NDIA without a comprehensive process of consultation, as a fait accompli; certainly, OTA and AHPA were not consulted.

Given that functional assessment is a core skill of occupational therapists, this failure to engage with their professional association represents a remarkable oversight on the part of the NDIA. While the NDIA maintains that the Independent Assessments are not functional assessments, they are in effect an attempt to measure disability and, as such, occupational therapists should have been intrinsically involved in their development.

The Purpose of the Independent Assessment model

Of particular concern to multiple stakeholders, including OTA, is an apparent change to the purpose of Independent Assessments.

Originally intended only to determine eligibility for the NDIS, the proposed assessments were generally welcomed as a means of addressing socio-economic inequities around accessibility to the scheme.

Crucially, the disability sector was led to believe that Independent Assessments would in no way inform the Plan of a successful applicant for the scheme, nor the budget supporting that Plan.

It now appears this may no longer be the case.

The NDIS website, updated on 18 September, states:

> *For us, an independent assessment will capture some of the key information we need to create your NDIS plan and budget. It means we will have consistency in reports, which means we can spend more time talking to you about your goals and how to start your plan.*

It also confirms that Independent Assessments will be used to review existing Plans:

> *From mid 2021: independent assessments will be required as part of the plan review process. This is part of a new approach to planning that will mean plan reviews are based on life stages, instead of a year or two.*

Independent Assessments will certainly inform Plan budgets. Under the heading "Independent assessments and your plan", the NDIS website states:

> *Your independent assessment will make sure that you get the right funding in your plan for your functional capacity, support needs and goals.*

If NDIS Independent Assessments are going to be more than eligibility tests, as it now appears they are intended to be – informing a successful applicant's Plan and budget – they should take the form of genuine Functional Capacity Assessments and, as such, they should be conducted by fully qualified and AHPRA registered allied health professionals practicing strictly within scope of practice – in the vast majority of cases by an occupational therapist.

Clinical Considerations

It appears the role of Independent Assessor will be to conduct a suite of stipulated clinician measurement tools and a systematic observation of a participant carrying out a functional task to determine their eligibility for the scheme. The NDIA has chosen six allied health professional groups to be trained in the Independent Assessor role. They are: Occupational Therapy; Physiotherapy; Psychology; Rehabilitation Counsellors; Social Workers and Speech Pathology. Each allied health professional group, of course, has a distinct role in the NDIA and operates out of a distinctly different scope of practice.

Accordingly, the training modules are aimed at developing <u>general</u> competencies.

It is unclear, however, how the eligibility screening process will improve access to the NDIS. Rather, it involves a layer of screening that will likely exclude many potential participants from the scheme before a proper assessment has been conducted.

OTA has three major concerns that have not yet been addressed by the NDIA.

First is the use and interpretation of functional assessments by professionals not trained to functionally assess clients carrying out occupational activities and tasks.

While we have been reassured that it is an eligibility screening process, the NDIA until recently used terminology pertaining to functional assessment, a practice that misled all stakeholders. Functional assessments as occupational therapists know them, require a distinct skill set that is core to occupational therapy practice. They cease to be a reliable or valid means of assessment if used by other professional groups in the diminished way currently proposed by the NDIA.

Observation of a participant carrying out a task cannot be reliably interpreted as a valid method for determining functional capacity unless the Independent Assessor is a qualified occupational therapist using specific professional reasoning, detailed task analysis, risk management and assessment tools.

Second, how useful, reliable and valid are the proposed tools in determining eligibility?

And third, how effective is the Independent Assessment for individuals?

There are two possible outcomes which give rise to concern.

The first is that the assessments will be perfunctory, with the focus on throughput rather than clinical decision making. By all means, facilitate the process of determining eligibility for the scheme, but not by means of a flawed tool.

As one OTA member remarked after the Minister's announcement:

> *How can a complex functional assessment be completed appropriately, and in enough depth, to inform plan funding, in 1 to 4 hours with only a minimum of 20 minutes of observation (as per tender documentation)?*

The concerns of a highly experienced occupational therapist around the credibility of a one-off Independent Assessment can be found at appendix one.

The other possibility of concern is that the proposed assessments will in fact prove a barrier to accessing the NDIS.

The eligibility screen involves standard procedures being carried out in an objective and impersonal way, which is likely to prove daunting for many applicants. OTA is concerned that an individual applying for access to the NDIS will find the proposed eligibility screen very onerous and time consuming. There seems to be little focus on getting to know the person and identifying their needs.

In particular, cognitive and psychosocial issues are poorly addressed in the battery of tools being proposed; this is of considerable concern, given the great difficulty clients with mental health issues have had accessing the scheme to date.

Several OTA members have questioned the appropriateness of independent assessment of those clients with rare or complex disabilities, and those with psychosocial disability.

Significantly, Mental Health Australia, of which OTA is a member association, has expressed concern that the measurement tools proposed are not appropriate for psychosocial assessment.

Consumer groups in the mental health space have also been advocating on this issue. They are concerned about the mandatory nature of the proposed assessments, and the fact that highly vulnerable people will be assessed by complete strangers rather than the health professional they have come to know and trust. And, of course, how can the often episodic and fluctuating nature of mental illness be assessed in the context of a one-off engagement, lasting one to four hours, and with as little as 20 minutes of clinical observation?

While the legislation governing the NDIS requires the ultimate decision regarding a person's eligibility for the scheme to be an NDIA delegate, OTA is concerned that these delegates will not have even the training of the Independent Assessor. So, as the process is currently envisaged, an allied health professional will be expected to conduct an assessment using the generalist tools developed, but not drawing on their years of clinical experience or their powers of clinical reasoning – in effect ticking boxes. That person will then forward the raw data to an NDIA delegate who may or may not be a clinician – the NDIA does not intend sharing that detail, nor even the percentage of NDIA delegates who are clinicians. The NDIA delegate, who may have no clinical background and who has had no particular training, will then decide whether the client is eligible for the scheme, basing their decision on data collected (from tools not designed for this use), and without knowing or seeing the client.

Is that ideal? Is that in the spirit of a scheme which is supposed to represent world's best practice in disability support and which the Productivity Commission estimates will ultimately cost about $22 billion a year?

Functional Capacity Assessment Framework

On Monday, 7 September, the NDIA released its *Assessment of Functional Capacity for NDIS – Development and Framework*, usually referred to as its Functional Capacity Assessment Framework. This clinical tool is intended to support the Independent Assessor Panel.

OTA met with representatives of the NDIA to discuss our concerns regarding the Functional Capacity Assessment Framework. This is because it not a functional assessment tool. It is at best a screening tool. And if it were a functional assessment, it would fall strictly within an occupational therapist's scope of practice, not a generalist's. Having said that, it remains a clinically flawed tool, something we will continue to draw to the attention of the NDIA.

While the NDIA may persist with the tool, and we will continue to advocate for improvements to it, OTA made clear our view that the tool required renaming.

Professional concerns

OTA holds grave concerns about the future of those smaller occupational therapy practices which have been involved in assessment processes to date and might lose that work as a result of the proposed reforms. What we do not want, but what has already been foreshadowed by the NDIA in its tender documentation, and even in the title of the model – Independent Assessor Panel – is a panel of approved providers as, all too often, these comprise a few large, impersonal, multinational companies. And all too often, such arrangements – while bureaucratically convenient – result in the termination of longstanding and hugely beneficial clinical relationships between highly experienced clinicians working in small practices with often very complex clients.

The victims of this discernible trend in public policy are twofold. First there are those service providers who, while perfectly competent and conscientious, don't make the cut and, as a result, are denied access to a reliable source of work. Second, there are the consumers who, while being promised unprecedented choice in an age of consumer driven care, are actually seeing their choice limited by public policy that is quite deliberately anti-competitive. Excluding qualified practitioners from whole fields of practice makes a mockery of all the rhetoric around consumer choice.

To date the fondness for panels of approved providers has been most evident at the state and territory level, with workers' compensation and transport accident commissions encouraging, and often requiring, injured Australians to engage the services of a relatively small number of allied health professionals. Increasingly, these service providers are the paid employees of large, multi-disciplinary companies, some of them based overseas. Very few panelists work in small practices. Almost none are sole providers.

This matter has been raised explicitly by OTA in correspondence with the Minister.

An alternative model

OTA suggests an alternative model. This would involve a preliminary interview carried out by Independent Assessors to identify clients' concerns, needs and goals. An Independent Assessor with appropriate training could carry out these preliminary interviews, gathering information and referring the client on for an appropriate assessment by clinicians working within their scope of practice.

When functional assessment of a person's occupational performance is deemed necessary, OTA would strongly recommend referral specifically to an occupational therapist. Occupational therapists are uniquely qualified to conduct assessments to determine a client's ability to effectively and safely carry out activities and tasks they want and need to do, and to determine their ability to participate in productive occupations, and social and community activities. This model would provide a road map for improving the outcomes of clients with a disability, which is core to the intent and spirit of the NDIS.

Appeals processes

Concern has been raised about the fate of those people excluded from the NDIS as a result of an adverse Independent Assessment outcome.

The most recent postings on the NDIA website state that decisions arising from Independent Assessments will be able to be appealed, but the site's FAQs page, designed to inform consumers in an easy-to-read fashion, lack detail around any appeals process. Unless there is some sort of financial support for those wishing to appeal a decision, either through the NDIA's own internal processes or through the Administrative Appeals Tribunal, we will end up where we currently are – in a situation where those with independent means, and the capacity to engage advocates and lawyers, will likely fare much better than those without independent means. That, of course, is fundamentally unfair.

Significantly, OTA is advised that in the state of Victoria, the Transport Accident Commission and WorkSafe Victoria do provide financial support to prospective clients seeking to appeal adverse eligibility findings.

Other concerns

Members of OTA have raised the possibility that this failure to consult comprehensively constitutes a breach of the spirit of the United Nations Convention on the Rights of the Person with Disabilities (UNCRPD), to which Australia is a signatory.

Concessions made by the NDIA

OTA is pleased to advise members of the Joint Standing Committee that following meetings between the NDIA and senior representatives of OTA and AHPA, at which many of the issues raised above were addressed, the NDIA has made several important concessions.

In correspondence to AHPA dated 29 September, the NDIA committed to further engagement with AHPA and its member associations "on key aspects of independent assessments in the coming months …" This is a welcome, if overdue, commitment to consultation with those allied health professionals best placed to advise on the very complex issue of assessing disability. Moreover, the letter appears to confirm advice received less formally from the NDIA that Independent Assessments are no longer "set in concrete" and can continue to be refined after their introduction.

OTA is also pleased to report that, in line with undertakings made during meetings in early September, the correspondence from the NDIA confirms that the Independent Functional Capacity Framework has been renamed the Independent Assessment Framework.

The letter of 29 September maintains that the introduction of Independent Assessments does not signal a change to the decision making framework. It states:

> *This new approach is proposing to use a consistent set of tools with a defined workforce to remove the costs to participants and provide a consistent way of measuring the functional impact of a person's disability/disabilities on their life.*

OTA remains concerned that the tools proposed, and quite possibly the workforce proposed, are unsuited to the task of measuring the functional impact of disability. In line with OTA's proposed alternative model, an Independent Assessment should be followed by a proper functional assessment of the client by clinicians working strictly within their scope of practice. No potential

participant should be excluded from the NDIS without this second, comprehensive and clinically credible functional assessment.

Summary
The proposed Independent Assessment model is in fact a screening device, and its suite of tools is unsuited to a functional assessment. That's fine, as long as it serves merely as a basic test of a person's eligibility for the NDIS. Now, however, we learn that this incorrectly labelled "assessment" will, to some extent, inform the participant's plan; we are advised it will certainly inform funding of the plan.

That is clinically unsound.

OTA is concerned that while a number of these issues were elevated to the NDIA during our involvement in AHPA Working Group developing the training modules for the model, not all of these matters have been addressed, let alone satisfactorily resolved.

OTA also fears for the future of longstanding and hugely beneficial clinical relationships between experienced occupational therapists working in smaller practices and often highly complex and vulnerable clients.

OTA recommends that no potential participant be excluded from the NDIS on the strength of an Independent Assessment alone. In all circumstances, an Independent Assessment should be followed up with a comprehensive and clinically credible functional assessment carried out by an allied health professional acting strictly within scope of practice.

And there should be financial support for those wishing to appeal an adverse decision arising from an Independent Assessment, either through the NDIA's own internal processes or through the Administrative Appeals Tribunal. This will help ensure that one's eligibility for the NDIS is determined by clinical considerations, not one's socio-economic status.

NDIS Support Coordinators

The NDIA has recently commenced a review of its support coordination service model. OTA commends the agency for doing this and has lodged a written submission as part of the review process.

OTA's call for feedback on this issue elicited a considerable response from members, much of it detailed and impassioned. For this reason, OTA has decided to draw the attention of Committee members to the issue.

On the NDIS website, under the heading "How can a Support Coordinator help me?", it states:

> *A Support Coordinator will support you to understand and implement the funded supports in your plan and link you to community, mainstream and other government services. A Support*

Coordinator will focus on supporting you to build skills and direct your life as well as connect you to providers.

Your Support Coordinator will assist you to negotiate with providers about what they will offer you and how much it will cost out of your plan. Support coordinators will ensure service agreements and service bookings are completed. They will help build your ability to exercise choice and control, to coordinate supports and access your local community.

They can also assist you in planning ahead to prepare for your plan review.

Support coordinators will assist you to 'optimise' your plan ensuring that you are getting the most out of your funded supports.

In line with this position description, OTA believes the support coordination role should be to work with the participant to engage the supports that are necessary to achieve their goals, while respecting the participant's right to choice and control. It requires someone who can guide, without being overly prescriptive. And at no time should the support coordinator presume to dictate the clinical approach taken by appropriately qualified service providers.

While there is sometimes a need for Support Coordinators, it is incongruous that the budget for them can be greater than the therapeutic capacity building budget.

There is also a lack of accountability around the Support Coordinator's budget, and this constitutes a double standard. As one OTA member noted:

Support Coordinators will bill for all communication, yet if a therapist bills a participant for contacting suppliers to organise trials, or for communicating with the Support Coordinator, the Support Coordinator will often tell a participant not to pay and that they are being 'ripped off'.

There is serious concern among OTA members about directives or service requests coming from support coordinators. A member wrote:

Many support coordinators will 'instruct' or 'tell' a therapist what the participant needs … rather than enabling the occupational therapist to complete an unbiased, objective assessment of goals, function and need. Occupational therapists are often castigated if they do not do what the coordinator has stated.

This is clearly an unacceptable practice, given that occupational therapists working in the NDIS have university qualifications in their area of expertise and are duly registered by, and answerable to, the Australian Health Practitioner Regulation Agency (AHPRA). In contrast, as the NDIA's discussion paper itself notes, "Support coordinators do not generally have to hold any particular qualification to undertake their role and there are no specific measures or outcomes expected to demonstrate a

quality service" (NDIS, Discussion Paper, Support Coordination, External consultation, August 2020, page12).

Such a state of affairs clearly undermines one of the scheme's five fundamental objectives, as stated in the *National Disability Insurance Scheme Act 2013*: **promoting the provision of high quality and innovative supports to people with disability.**

Moreover, this can have a decisive effect on the viability of businesses trying to operate within the NDIS. Significantly, the discussion paper's section on Conflict of Interest elicited numerous comments from OTA members, notably around the capacity for Support Coordinators to "play favourites" and deny work to providers whom they consider "difficult".

As a result of this attitude, some Support Coordinators have disrupted longstanding and highly beneficial clinical relationships, or disengaged participants from promising therapeutic relationships upon their appointment.

OTA members report that support coordinators often fail to discuss goals and funding budgets with participants. This results in an inordinate number of therapists having to operate within an unrealistically small budget, a state of affairs that cannot, under most circumstances, be expected to deliver an outcome.

OTA is concerned that there is a lack of training for support coordinators and too few stated expectations to guide the performance of the role.

What and where are the outcome measures for support coordinators? The apparent absence of KPIs encourages 'case management' style services, which ensures that the support coordination role continues to be 'required' when perhaps it is not.

Finally, while there may be a limited advocacy role in support coordination, it is imperative that this not be confused with a right to be directive towards those providing clinical supports. Support coordinators should not lobby, let alone seek to dictate to, appropriately qualified clinicians.

OTA's submission to the NDIA's review of the support coordination role was not relentlessly critical. It noted the positive role that Support Coordinators should, and sometimes, do play. And it included a list of recommendations that could add value to the role.

Conclusion

OTA thanks members of the Joint Standing Committee for this opportunity to raise two matters of great concern to our members working in the NDIS, their clients, and their carers.

We would be pleased to appear before the Committee to expand on the observations made in this submission, were Committee members to deem this useful.

Appendix 1: The concerns of an experienced occupational therapist around the proposed NDIS Independent Assessments

I am an OT with more than 30 years of experience, the last 4 of which have been primarily working with NDIS participants.

In the NDIS IA framework it states:

> *"For a person with disability, functional capacity is one of the key factors in determining eligibility for the NDIS. Functional capacity is the ability to be involved in different areas of life like home, school, work and the community and to carry out tasks and actions. It takes into account other factors in a person's environment that may impact day to day life."*

Listed above are many areas of everyday life that need to be assessed before the disabled person can be admitted into the program. This is correct and is what I have been involved in assessing in situ with my clients. Asking them to tell me their abilities and problems with functional tasks is no match for actually seeing them doing these tasks. "I can make my own lunch" is different to seeing them choose ingredients, use a knife or clean up the kitchen. Very often the skills that they think are required to 'make lunch' are incidental to the multi-faceted activity that making lunch is.

To assess NDIS participants, I have used all my experience as a trained OT who has worked in psychiatry, child psychiatry, aged care, general rehabilitation, acquired brain injury rehab, pain management and community prevention programs. Getting to know each client and their situation including their supports, environment, goals, abilities and challenges is a complex and interesting process that requires thought, time and often discussion with significant others including family members, carers, physiotherapists, social workers and psychologists who have been working with the client.

If I have not included all of the above list of assessments and discussions, I will have an incomplete picture of my client. This is important because many of my clients are unable to fully describe their situation due to their brain injury, their lack of confidence generally and in particular with health professionals, difficulty with the English language, memory problems, lack of insight and/or other issues bound up with being disabled.

To work through many of these issues the therapeutic relationship needs to be gradually nurtured. If a disabled person is able to let me know during the assessment or in words the difficulties they face often with intimate personal details, I know that they are beginning to trust me and from there, I will be able to gain a better assessment.

To date, there have not been any clients I have been asked to assess who have not shown other functional abilities or disabilities in my later sessions with them. In short, it takes time to assess people properly and I don't believe that a 3 hour assessment is appropriate for this work, especially if it is done by an inexperienced therapist.