

# Response to Consultation Paper: Access and Eligibility Policy with independent assessment

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## 1. Introduction

### 1.1 About Blind Citizens Australia (BCA)

Blind Citizens Australia (BCA) is the national representative organisation of people who are blind or vision impaired. Our mission is to inform, connect, and empower Australians who are blind or vision impaired and the broader community.

### 1.2 About people who are blind or vision impaired

There are currently more than 453,000 people who are blind or vision impaired in Australia with estimates that this will rise to 564,000 by 2030. According to Vision Initiative, around 80% of vision loss in Australia is caused by conditions that become more common as people age.

Australians who are blind or vision impaired can live rich and active lives and make meaningful contributions to their communities: working, volunteering, raising families and engaging in sports and other recreational activities. The extent to which people are able to actively and independently participate in community life does, however, rely on facilities, services and systems that are available to the public being designed in a way that makes them inclusive of the needs of all citizens – including those who are blind or vision impaired.

## 2. Access and Eligibility Policy with independent assessments

Blind Citizens Australia (BCA) would like to make a submission responding to the Consultation Paper titled Access and Eligibility Policy with independent assessments. BCA would like to respond to the proposed changes for NDIS eligibility assessments and planning, based on consultations with our members, previous and current submissions, and advocacy work in the sector.

## 3. Submission context

This submission is based on existing legislation and frameworks, noting gaps in the fulfilment of requirements laid out in existing documentation. The pertinent acts and legislation are:

The Disability Discrimination Act 1992 (Cth) (Austl.)

National Disability Insurance Scheme 2013 (Cth) (Austl.)

United Nations Convention on the Rights of Persons with Disabilities (CRPD) 2006

The National Disability Strategy 2010-2020 (this strategy coordinates the implementation of the UNCRPD)

## 4. Consultation areas and questions

### 4.1 Learning about the NDIS

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

### Information needed by participants

The process of Independent Assessments needs to be available to all NDIS participants in a clear, transparent manner. In introducing a new process to the Access Request and Planning process, information needs to be communicated in a range of manners, including Easy Read, for all people with disabilities to be able to understand. This includes making it very explicit how the new process will work, what a participant can expect, and how a participant can best prepare for their assessment. There is a large amount of anxiety around a shift to new processes.

There needs to be transparency around the Independent Assessment itself, and the exact nature of what is involved, i.e., what questions will be asked, how functional capacity will be assessed in lieu of the lists presently being used to meet criteria etc. It is understood that new independent assessment is aligned to the International Classification of Functioning (ICF) to enable consistency. There are issues with it in terms of reliability, due to fluctuations of functional capacity not being effectively captured in an independent assessment. The NDIA has even noted itself “it is important to understand that conditions and disabilities do not behave in a linear or predictable capacity.” This makes it imperative that participants are properly briefed prior to assessments to ensure they represent their functional capacity properly, and robustly. A member who has been involved in the trial reported “[there are] days where my vision is good in the morning, [but] bad at night.”

### Provision of information

All information about applying for the NDIA, including independent assessment needs to be provided in an accessible format, in the preferred format of a participant e.g., large print hard copy, braille, electronic or audio, in direct accordance with the UNCRPD, Article 21, Freedom of expression and opinion, and access to information, namely parts a) and b).

Article 21 stipulates “States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by: a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;

b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions.”

Further, accessible format for information will support the outcomes from the NDIS Participant Service Charter, which states that the NDIA, “will make it easy to access information and be supported by the NDIS to lead your life.”

### 4.2 Accessing the NDIS

* What should we consider in removing the access tests?
* How can we clarify evidence requirements from health professionals about a person’s disability and whether or not it is, or is likely to be, permanent and life-long?
* How should we make the distinction between disability and chronic, acute or palliative health conditions clearer?

### Considerations in removing access tests

A major consideration in removing access tests are issues relating to reliability and robustness exist with this new approach. Moreover, it is apparent that the assessment mechanisms are not ideal, with the international search for an ideal assessment or assessment battery yielding no assessment to appropriately match the ICF.

Therefore, these identified weaknesses of this shift to the independent framework aligned with the ICF means it is incumbent on the NDIA to ensure participants understand how best practice is being used to respond to these limitations.

In terms of the specific impact for people who are blind or vision impaired, or people who are deafblind, it is important that the definitions are not too narrow when one considers the functional impact of different types of sensory loss. It is important that rich, multidisciplinary assessment is considered, to truly capture the spectrum of blindnesss, beyond definitions.

Currently, List A, 6 & 8 are used in classification of permanent blindness or deafblindness. For early intervention, List D, 4 is used.

List A Part 6 states:

“**Permanent blindness** in both eyes, diagnosed and assessed by an ophthalmologist as follows:

* 1. Corrected visual acuity (extent to which an object can be brought into focus) on the Snellen Scale must be less than or equal to 6/60 in both eyes; or
	2. Constriction to within 10 degrees or less of arc of central fixation in the better eye, irrespective of corrected visual acuity (i.e., visual fields are reduced to a measured arc of 10 degrees or less); or
	3. A combination of visual defects resulting in the same degree of visual impairment as that occurring in the above points. (An optometrist report is not sufficient for NDIS purposes.)”

List A, Part 8 states:

“**Deafblindness** confirmed by ophthalmologist and audiologist and assessed as resulting in permanent and severe to total impairment of visual function and hearing.”

And List D, Part 4 states:

“Conditions resulting in Sensory and/or Speech impairment

* Permanent blindness in both eyes, diagnosed and assessed by an ophthalmologist as follows:
* Corrected visual acuity (extent to which an object can be brought into focus) on the Snellen Scale must be less than or equal to 6/60 in both eyes; or
* Constriction to within 10 degrees or less of arc of central fixation in the better eye, irrespective of corrected visual acuity (i.e. visual fields are reduced to a measured arc of 10 degrees or less); or
* A combination of visual defects resulting in the same degree of visual impairment as that occurring in the above points.
* (An optometrist report is not sufficient for NDIS purposes.)
* Deafblindness confirmed by ophthalmologist and audiologist and assessed as resulting in permanent and severe to total impairment of visual function and hearing.”

On this last point, the feedback that BCA has received from members who are deafblind is that both in navigating the NDIS in general, and navigating the NDIS Independent Assessment trial, deafblindness is not understood. “Presently the pilot lists vision impairment and hearing impairment separately and in fact in my case I was listed as vision impaired with a physical disability and my deafness was not even mentioned, even though NDIA has my primary disability as deafblind.”

This difficulty with the classification of deafblindness was further exposed in navigating the current NDIA review process, with a lack of being able to follow communications due to accessibility not being accommodated for during the Administrative Appeals Tribunal (AAT) process, the submissions from relevant supporting organisations including allied health professionals being discounted, and further, the member did not have legal assistance. In the end, the member had to either sign a document that they agreed to the new plan, or proceed to court.

The member felt that the NDIA failed to directly comply with their Code of Conduct, section 3 which covers the guideline to “provide supports and services in a safe and competent manner, with care and skill”, specifically referring to a failure to understand and adequately support or address the needs of participants with deafblindness.

It is essential that the new Access and Eligibility Policy with independent assessment ensures that assessors still understand disabilities and their impacts including blindness, vision impairment and deafblindness. Further, the avenue of NDIS reviews needs to provide a place for all support documentation to be viewed and considered, with no need for legal recourse.

Evidence requirements from health professionals

In terms of clarifying evidence requirements from health professionals about a person’s disability, in making a move towards greater consistency within the NDIA in terms of funding for service provision and support, there is a discrepancy if people in rural or remote areas only have access to people who are known to them. Therefore, this places them at greater advantage of having a truly robust assessment based on functional capacity with allied health professionals having knowledge and data to support fluctuation or variation in functional capacity on a day-to-day basis, and perhaps even, variation across the day.

The Independent Assessment Framework paper acknowledges this fact, “it should be noted that there are extenuating circumstances where there will be no option but to have an assessor who knows the person they are assessing, particularly in rural, remote, and hard to reach populations. In these situations, any risk of sympathy bias is outweighed by the need to complete the assessment process and to do so in a culturally sensitive manner.” In this case, allparticipants 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.

### Distinction between disability and chronic, acute or palliative health conditions

A distinction between disability and chronic, acute, or palliative health conditions can be created through the medical information provided alongside a rounded interdisciplinary assessment being used i.e., moving beyond a mere diagnostic criterion used in medical terms, and beyond a singular Independent Assessment, to gain more nuanced information about the needs and supports for any person with disability, chronic, acute or palliative health conditions. The removal of the access lists means that is imperative that there is the ability to still gain rounded insight into the needs and supports that any person who has disability, chronic, acute or palliative health conditions might have in accessing the NDIS.

### 4.3 Undertaking an independent assessment

* What are the traits and skills that you most want in an assessor?
* What makes the process the most accessible that it can be? For example, is it by holding the assessment in your home?
* How can we ensure independent assessments are delivered in a way that considers and promotes cultural safety and inclusion?

### Traits and skills of an assessor

The traits and skills of an assessor include a requirement for a wide span of interdisciplinary specialist knowledge and knowledge of different disabilities.

The NDIA website indicates that the following allied health professionals are included in the list of potential accessors – occupational therapists, physiotherapists, speech pathologists, clinical and registered psychologists, rehabilitation counsellors, and social workers. The risk is a lack of specialized knowledge of the functional impact of a disability, i.e., an ophthalmologist, an optometrist, or another professional working directly with people who are blind or vision impaired. A person with specialized knowledge of vision loss will have a greater understanding of the impact of, and needs and supports for, blindness or vision impairment. A social worker or psychologist who has never had a client with blindness or vision impairment, or any in-depth training or education about vision loss, will not be able to provide an appropriate level of insight for an NDIA participant who is blind or vision impaired. This will be further complicated in the instance of comorbidities, where needs and supports required will be greater for the NDIA participant.

Members reflected this concern about an assessor not possessing specialized knowledge about blindness or vision impairment. “When they pick the Independent Assessor, they need to pick a specialist who is most relevant for a disability e.g., Orientation & Mobility (O&M) specialist for blindness. For example, an Assessor may not understand the specialist AT we use, or particularly training like O&M.” A participant reported from the trial that, “none of the qualified health care professionals involved seem to be required to have any ophthalmological qualifications.” For those who have not been involved in the trials, similar concerns were raised. “A person from a blindness agency may have more idea of how the task can be accomplished.” One participant noted that their positive experience in having an independent assessment was both because of their strong self-advocacy skills, and because they had an assessor with prior work experience with people who were blind or vision impaired.

The question has been asked repeatedly by our members, “what assurances will we be given that unqualified persons will not be attempting to make assessments on our abilities as participants who are blind or [vision impaired]?”

### Accessible assessment process

The assessment process will require accessible format production of materials e.g., information provided in a preferred format of braille, large print hard copy, audio, and / or electronically (see section 4.1, provision of information).

An additional salient point about accessibility was assessing functional capacity in unfamiliar environments, where the skills used for navigation or task completion may differ vastly from everyday skills. Trial participants reported being assessed on task completion and navigation inside their own household, which is a familiar environment, and stated that in an unfamiliar environment, they would both complete the task differently, and navigate the space using different techniques. “Assessing a person in their own surroundings does not give a true and accurate picture unless they are newly diagnosed with their disability as they are likely to be able to get around well already.”

### Cultural safety and inclusion

Cultural safety and inclusion can be provided in an Independent Assessment environment by employment of diverse assessors. This includes intersectional inclusion in employing assessors, employing people with disabilities who also identify as LGBTIQA+, First Nations people, or culturally and linguistically diverse (CALD). Further, consultation with stakeholders representing these groups about assessment processes can enable cultural safety; genuine co-design processes can embed practice which ensures cultural safety.

### 4.4 Exemptions

* What are the limited circumstances which may lead to a person not needing to complete an independent assessment?

The exemption which may lead to a person not needing to complete an independent assessment include those who are using a Public Guardian in their NDIS access.

“Under the Guardianship and Administration Act 2000 (GAA) and the Powers of Attorney Act 1998 (PAA), the Public Guardian may act as guardian or attorney for an adult with impaired capacity.

Although the function of these roles can include making decisions on behalf of the adult in relation to services funded under the NDIS, the Public Guardian promotes a supported decision-making approach and encourages adults with impaired capacity to have maximum participation and minimal limitations in decisions affecting their lives.

The Public Guardian does not determine eligibility for the NDIS but we will advocate for represented people to access the scheme or alternate supports.”

### 4.5 Quality assurance

* How can we best monitor the quality of independent assessments being delivered and ensure the process is meeting participant expectations?

The best way to monitor the quality of independent assessments is through formal auditing processes with oversight by the NDIA Quality and Safeguards Commission, operating under a revised National Disability Strategy (NDS). Formal auditing can include the presence of people with expertise in specific disability areas being present for planning meetings for the purposes of auditing assessors. Further, the auditors would be provided access to the plan developed after the assessment. This auditing process would ideally include ongoing consultation about the planning process and independent assessments with disability organisations, through both public and closed forums. Finally, NDIA participants who have received independent assessments should be given the opportunity to provide feedback, whether through focus groups, one-to-one interviews, accessible electronic surveys, or any other avenues of communication.

### 4.6 Communications and accessibility of information

* How should we provide the assessment results to the person applying for the NDIS?

### Provision of assessment results

It is important that assessment results are provided in a participant’s preferred format (see section 4.1, provision of information). Additionally, it is essential that results are reported in a timely manner. Under the NDIS Code of Conduct, it states a guideline that “people with disability have a right to accurate, accessible and timely information about the cost and efficacy of available supports and services.” Many BCA members who were involved in Independent Assessment trials provided feedback that they did not receive reports in a timely manner. “I did a pilot functional assessment on 27 Nov 2020 but have not heard anything back about it since despite being under the impression that I would be sent the results / report. Am I expected to chase the NDIA up about this?” Another participant who had not received their report yet stated “APM says they have provided NDIA a copy and [the NDIA] are responsible for handing over the assessment to the client and the Support Coordinator.”

### 4.7 Other feedback

### Issues participating in independent assessment trials

Members reported difficulties in participating in the independent assessment pilot trials. Issues related to the timing of the trials, with members opting out of the trials due to the length of time between registering interest and being contacted again, or due to be offered no times outside of business hours. “I do not know if this is just because of the small number of participants and it being a pilot however if it translates into the real thing it will prove difficult for those of us who have commitments during business hours to find time and we should not be required to take leave.”

## 5. Recommendations

1. NDIA participants need to be provided with transparent and explicit about the new planning process and the independent assessment itself, particularly about how functional capacity will be assessed in lieu of what is being used presently. Additionally, information needs to be provided in easy read resources.
2. All information from the NDIA, including information about independent assessments needs to be provided in accessible format, including hard copy large print, braille, electronically or audio. Communications must also be extended to the preferred means of a participant e.g., Auslan, braille, audio, print, or electronically etc.
3. It is recommended that the NDIA provide information about how limitations of the new independent assessment model, aligned with the ICF, are being overcome. For example, a single independent assessment of functional capacity may not accurately capture the reality of the impact of blindness, vision impairment or deafblindness for an individual.
4. It is essential that the new Access and Eligibility Policy with independent assessment ensures that assessors still understand disabilities and their impacts including blindness, vision impairment and deafblindness.
5. It is recommended that NDIS participants can access plan reviews whereby all support documentation is viewed and considered, and there is no need for legal recourse. Further, any plan reviews taken to the AAT must accommodate accessibility requirements for communication.
6. It is recommended that allparticipants have the same opportunity to have an 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 i.e., those living in rural or remote regions where the personal connection cannot be avoided.
7. It is recommended that the distinction between disability and chronic, acute, or palliative health conditions is created by a combination of medical assessment, alongside transdisciplinary assessment i.e., a battery of assessments rather than a single diagnostic medical criterion and singular independent assessment. This is critical with access lists being removed.
8. It is strongly recommended that there is a requirement for assessors to have a wide span of interdisciplinary specialist knowledge and knowledge of different disabilities. In the case of assessment of NDIA participants who are blind or vision impaired, it is strongly recommended that they are only assessed by assessors with specialized knowledge of blindness or vision impairment, either through work, training and / or formal education.
9. It is recommended that functional capacity tasks in an independent assessment are completed in unfamiliar environments in addition to familiar ones. This is due to the different techniques or skills that may be applied in an unfamiliar setting.
10. It is recommended that the employment of assessors is inclusive, recruiting assessors from representative intersectional groups, e.g., people with disabilities who also identify as LGBTIQA+, First Nations people, or culturally and linguistically diverse (CALD). Further, it is recommended that co-design processes are used during consultation with stakeholders representing these groups, to ensure assessment processes are culturally safe.
11. It is recommended that the NDIA considers exemption criteria for participants who do not have capacity to consent and have an appointed Public Guardian for their NDIS access.
12. It is strongly recommended that quality of independent assessments is achieved through formal auditing processes with oversight by the NDIA Quality and Safeguards Commission, operating under a revised National Disability Strategy (NDS). This formal auditing would include independent auditors with expertise in disability attending planning meetings where independent assessments are conducted, ongoing consultations through public and closed forums with disability organisations, and regular opportunities for feedback from NDIA participants, via multiple channels e.g., focus groups, one-to-one interviews, surveys etc.
13. It is strongly recommended that all feedback from independent assessments and subsequent plans be provided to participants in a timely manner, as per the guideline in the NDIA Code of Conduct for “people with disability have a right to accurate, accessible and timely information about the cost and efficacy of available supports and services.”