



Submission to the Joint Standing
Committee on the National Disability
Insurance Scheme - Inquiry into
Independent Assessments

March 2021



Acknowledgements

Acknowledgement of Aboriginal and Torres Strait Islander peoples

Domestic Violence Victoria acknowledges Aboriginal and Torres Strait Islander peoples as Australia's First Nations and Traditional Owners of Country. We pay respects to Elders past, present and emerging. We acknowledge that sovereignty was never ceded and recognise the right to self-determination and continuing connection to land, waters and culture.

Acknowledgement of Victims and Survivors

Domestic Violence Victoria (DV Vic) acknowledges the strength and resilience of adults, children and young people who have experienced family violence and recognise that it is essential that responses to family violence are informed by their expert knowledge and advocacy. We pay respects to those who did not survive and acknowledge friends and family members who have lost loved ones to this preventable and far-reaching issue¹.

¹ Adapted from Domestic Violence Victoria (2020). *Code of Practice: Principles and Standards for Specialist Family Violence Services for Victim-Survivors*. 2nd Edition. Melbourne: DV Vic.



About Domestic Violence Victoria (DV Vic) and Domestic Violence Resource Centre Victoria (DVRCV)

Domestic Violence Victoria (DV Vic) and the Domestic Violence Resource Centre Victoria (DVRCV) have merged to form a new peak body for specialist family violence services (SFVSs) responding to victim survivors in Victoria. The merge brings together the current peak body for Victoria’s specialist family violence services supporting victim survivors (DV Vic) and Victoria’s only specialist family violence Registered Training Organisation (DVRCV). As an independent, non-government organisation that leads, organises, advocates for, and acts on behalf of its members utilising an intersectional feminist approach, the new peak body will work towards a world beyond family and gender-based violence, where women, children and all marginalized communities are safe, thriving, and respected.

Working across family violence response and prevention, the peak body is recognised as the state-wide voice of SFVSs responding to victims-survivors and holds a central position in the Victorian family violence system and its strategic governance, providing family violence subject matter expertise to the SFVS sector, government, and other partners and stakeholders. The peak body’s work is focused on advocating for, supporting, and building: the capability of specialist family violence practice and service delivery for victims-survivors; broader sector workforce development and capability building across family violence response and prevention; and family violence policy development and analysis, law reform and research.

Language and Terminology Used

Family Violence

DV Vic recognises family violence as any behaviour that occurs in family, domestic or intimate relationships that is **physically** or **sexually** abusive; **emotionally** or **psychologically** abusive; **economically** abusive; **threatening** or **coercive**; or is in any other way **controlling that causes a person to live in fear** for their safety or wellbeing or that of another person. This definition includes violence within a broader family context, such as extended families, kinship networks and **‘family-like’ relationships which can include a paid or unpaid carer for people with disabilities**; families of choice for LGBTIQ people; and cultural kinship networks.² In relation to children, family violence is defined as behaviour by any person that causes a child to **hear or witness or otherwise be exposed** to the effects of the above behaviour.³

The **content of this submission** is guided by this definition and includes violence, abuse, neglect and exploitation of victim-survivors with disabilities that occurs within the context of family, domestic, intimate and ‘family-like’ relationships, including violence perpetrated by a carer (paid or unpaid).

² See *Family Violence Protection Act 2008* (Vic) s.5; the Royal Commission into Family Violence noted that, “the dynamics between a person with a disability and paid carers may give rise to ‘family-like’ relationship very quickly [and] where elements of a ‘family like’ relationship do exist in relation to non-related carers or co-residents, then the FVPA definition should be applied”, pp193-194

³ *ibid*

Family Violence and the Use of Language

Family violence is predominantly driven by gender-based oppression and inequality. Research to date demonstrates that the majority of perpetrators are men, and the majority of victim-survivors are women and children. As such, gender-binary language and terminology is often used in SFVS to acknowledge and communicate about this deeply entrenched social problem. At the same time, family violence impacts people across a diversity of gender identities, social and cultural contexts, and within various intimate, family and family-like relationships. Consequently, this submission uses the gender-inclusive terms ‘victim-survivor’ and ‘perpetrator’ without assigning gender-binary terms (i.e. women and men) or pronouns (i.e. she/her and he/him) to acknowledge the complex ways family violence manifests across the community⁴.

Where the term ‘**victim-survivor**’ is used it refers to people with disabilities who experience family violence (adults and children), and the term ‘**perpetrator**’ is applied to **adults** who use family violence. Although we refer to ‘victim-survivors with disabilities who experience family violence’ throughout this submission as though they are ‘one homogeneous group’, we recognise that each victim survivor will have their own unique support needs and experience of family violence⁵.

Where this submission does use gender-binary terms (i.e. women and men), it does so to accurately reflect the current evidence-base which predominantly pertains to the experience of women with disabilities who experience family violence perpetrated by men within the context of intimate partner or family-like relationships. This manifestation of family violence results from the intersection of systemic gender-based discrimination against women and disability-based discrimination against people with a disability⁶.

Social Model of Disability

Historically, disability has been viewed within the context of the *medical model*, where disability is considered a tragic health condition that should be ‘fixed’ or ‘cured’ or the *charity model* where people with disability are viewed as in need of ‘help’, unable to do things for themselves⁷. For decades disability advocates have been working tirelessly to shift thinking about models of disability to a *Social Model* which views ‘disability’ as:

“the result of the interaction between people living with impairments and an environment filled with physical, attitudinal, communication and social barriers. It therefore carries the implication that the physical, attitudinal, communication and social environment must change to enable people living with impairments to participate in society on an equal basis with others.”⁸

⁴ Domestic Violence Victoria (2020). op cit. p9.

⁵ Maher, J. M., Spivakovsky, C., McCulloch, J., McGowan, J., Beavis, K., Leas, M., Cadwallader, J., Sands, T. (2018). *Women, disability and violence: Barriers to accessing justice: Final report*. Sydney: ANROWS: note that it is important to recognise and identify the ‘diverse types of violence that impact on the everyday safety and security of women with disabilities’.

⁶ Women with Disabilities Victoria (2015). *Royal Commission into Family Violence: Submission by Women with Disabilities Victoria*. p4 <https://www.wdv.org.au/documents/FV_RC_submission_Women_with_Disabilities_Victoria_2015.pdf>

⁷ ‘Shifting models of thinking’ (n.d). In Disability Advocacy Resource Unit. Retrieved from <<https://www.daru.org.au/what-is-advocacy/shifting-models-of-thinking>>.

⁸ Domestic Violence Victoria (2020). op cit. p80.

The *Social Model* recognises that disability is socially constructed and does not seek to change or deny the reality of living with a disability or impairment; rather, it is the social and physical environment that must change to enable the full and equal participation of people with disabilities.⁹ This was reflected in a key finding of recent research undertaken by ANROWS, which concluded that focus must remain on barriers to support, rather than impairment when responding to the needs of mothers and children with disabilities¹⁰. Throughout this submission, we use the term disability within the context of a *Social Model* of disability to examine the systemic, structural and attitudinal barriers that restrict equal access to and participation in systems and decision-making processes for victim-survivors of family violence with disabilities.

⁹ 'Social model of disability' (n.d). In People with Disability Australia. Retrieved from <<https://pwd.org.au/resources/disability-info/social-model-of-disability/>>

¹⁰ Australia's National Research Organisation for Women's Safety. (2020). *Violence prevention and early intervention for mothers and children with disability: Building promising practice. Key findings and future directions* (Research to policy and practice, 16/2020). Sydney: ANROWS, p1.

Introduction

DV Vic and DVRCV welcome the opportunity to contribute to the inquiry into independent assessments (IA) under the National Disability Insurance Scheme (NDIS) by the *Joint Standing Committee on the National Disability Insurance Scheme*. The content of this submission broadly addresses the terms of reference for the inquiry with a specific focus on the implications of independent assessments for victim-survivors of family violence with disability. This submission also builds on the DV Vic/DVRCV's recent submission to the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*¹¹ (the 'Royal Commission') and highlights some of the positions outlined therein.

DV Vic and DVRCV endorse the *Every Australian Counts Joint Statement* and the matters outlined in the *VCOSS Issues paper: NDIS access, eligibility and independent assessments*. We seek to build on the issues outlined in these two documents and draw attention to negative implications for victim-survivors if mandatory independent assessments are introduced as we believe the NDIA's proposed IA model presents significant risk and safety concerns for victim-survivors of family violence with disability.

Under the planned changes to the National Disability Insurance Scheme (NDIS) Access and Eligibility Policy¹², all current and future NDIS participants will have to undergo a mandatory assessment by an independent assessor rather than their own health professional, to access the scheme. The independent assessment will determine who can access to the scheme, and influence how much funding and support they will receive. This change in how people access the NDIS represents a significant shift in the current person-centred process which allows people with disabilities to work with their own trusted health professional to prepare an NDIS Access Request¹³. In this sense, the individual has 'choice' in how they access the NDIS and who they ask for assistance.

The introduction of mandatory independent assessments fundamentally alters the individualised and personalised nature of the NDIS by taking away 'choice' and 'control' that are key principles highlighted in the *NDIS Act (2013)*¹⁴ and are features of the current access process. The right to exercise choice and control over decision-making is critically important for victim-survivors of family violence as violence and abuse perpetrated against them takes away their power and autonomy.

Research shows that people with disabilities, specifically women and girls with disabilities, experience higher rates of violence (including family violence) within a broader range of relationships (other family members, carers), and in a broader range of settings¹⁵. The high prevalence of family violence and the unique nature of risk associated with family violence experienced by people with disabilities¹⁶ needs to

¹¹ Domestic Violence Victoria (2021). *Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*. Melbourne: DV Vic. and DVRCV. <<http://dvvic.org.au/publications/submission-to-the-royal-commission-into-violence-abuse-neglect-and-exploitation-of-people-with-disability/>>

¹² <https://www.ndis.gov.au/about-us/improving-ndis/independent-assessments-access-and-eligibility>

¹³ Accessing the NDIS: Information you need to know to access the NDIS. Factsheet; Booklet 1: Understanding the NDIS <https://www.ndis.gov.au/participants>.

¹⁴ National Disability Insurance Scheme Act (2013). <<https://www.legislation.gov.au/Details/C2020C00392>>

¹⁵ Domestic Violence Victoria (2021). Op cit.

¹⁶ Backhouse, C., & Toivonen, C. (2018). *National Risk Assessment Principles for domestic and family violence: Companion resource. A summary of the evidence-base supporting the development and implementation of the National Risk Assessment Principles for domestic and family violence* (ANROWS Insights 09/2018). Sydney, NSW: ANROWS; Family Safety Victoria (2018). *Family Violence Multi-Agency Risk Assessment and Management Framework: A Shared Responsibility for Assessing and Managing Family Violence Risk*. Melbourne, VIC: State of Victoria

be better understood by services and systems that provide responses to people with disabilities (including disability services and the NDIS). As outlined in our submission to the Royal Commission, there are existing gaps and a lack of flexibility in the NDIS to respond to the needs of victim-survivor of family violence, particularly at a time of crisis¹⁷. Instead of addressing these gaps, the introduction of independent assessments will create further challenges and complexity in the system.

While the rationale provided for the introduction of independent assessments is to achieve greater consistency, we are concerned this disengaged and automated process will not take into account the individual needs and circumstances of the people seeking support. Further, elements of the proposed independent assessment process including the brief nature of assessments, unknown assessors (with no prior relationship to the person), and the absence of minimum training and skills requirements for independent assessors in relation to the nature and dynamics of family violence are likely to create additional barriers for victim-survivors of family violence in accessing NDIS packages and services. This will add to the complexity of the system, increase risks to safety and potentially result in re-traumatisation if victim-survivors are required to disclose deeply personal experiences of abuse and trauma to a stranger who may lack the knowledge and skills to respond safely and appropriately.

The following sections of the submission highlight specific issues and concerns DV Vic/DVRCV have identified for victim-survivors of family violence with disabilities if independent assessments are introduced.

Issue 1: An independent assessor who does not have an understanding of family violence will not identify family violence risk factors putting a victim-survivor at imminent risk of harm.

As noted in our submission to the Royal Commission, currently there is a lack of awareness and knowledge about family violence in the disability sector and a contemporary understanding of the nature, dynamics and impact of family violence is yet to be developed across the NDIA/NDIS¹⁸. Further, there is no minimum mandatory training, skill or knowledge requirements in relation to family violence in the disability sector. The outsourcing of assessments to private contractors with potentially no training or understanding of family violence will add to this existing gap in the system. If the assessor does not have an understanding of family violence and the required knowledge and expertise to respond safely and appropriately, and does not have a pre-existing relationship that has created rapport and familiarity with the person they are assessing, it may result in family violence and associated risk factors not being identified and the impact of trauma not being recognised and acknowledged during the assessment process.

¹⁷ Domestic Violence Victoria (2021). Op cit.

¹⁸ Domestic Violence Victoria (2021). Op cit.

If family violence and risk factors are not identified, it could put a victim-survivor at imminent risk of harm and is likely to lead to an inaccurate assessment and plan that does not consider the specific support and safety needs of a victim-survivor. Further, the lack of understanding of the nature and dynamics of family violence experienced by victim-survivors with disabilities may place a victim-survivor at more risk if the assessor is not able to assess whether the carer/family member is the perpetrator.

Issue 2: Perpetrator participating in the assessment process.

The current independent assessment design allows family members or carers to participate in the assessment process. Given the prevalence of family violence among people with disabilities, the family member and/or carer may be a perpetrator and consequently, there must be safeguards in place to identify whether this is the case. Whilst family members/carers may be present during current NDIS assessment processes, the existing relationship between a person with a disability and their health professional creates a rapport and connection where family violence and perpetrator pattern or behaviour is more likely to be recognised, identified or already known. DV Vic and DVRCV are concerned that where assessments are completed by a stranger with potentially no minimum level of knowledge and skills in the nature and dynamics of family violence, there is increased risk that family members and/or carers who are perpetrators of family violence will participate in the independent assessment process.

The presence of the perpetrator during the assessment presents a significant risk to a victim-survivor and causes additional challenges as victim-survivors could mask or downplay their needs in the presence of the perpetrator, or their responses to questions may not be indicative of their support needs. Any loophole in the system resulting in a perpetrator potentially being able to participate in the assessment process will result in reinforcing violent and abusive behaviour and structures of power and control. This presents a great risk to victim-survivors as the system that is designed to support them ends up reinforcing the same power structures it aimed to challenge.

Issue 3: Being assessed by a stranger and having to retell their story can be re-traumatising for victim-survivors.

Requiring people with disability to be assessed by someone unknown to them is problematic and potentially traumatising to those who have a history of trauma, abuse or violence. This presents a significant challenge as victim-survivors might understandably feel hesitant to share personal details of trauma with a stranger and the process is likely to create additional stress and anxiety for victim-survivors seeking support and result in re-traumatisation. Further, if a victim-survivor does disclose experiences of family violence to an assessor and they do not get an appropriate and safe response, it is likely to deter them from seeking help and safety in future as it may result in them not trusting the 'system' and feeling anxious to seek support again¹⁹.

¹⁹ State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parl Paper No. 132 (2014–16)

GPs, specialists and allied health professionals play an important role in the lives of many people with disability. The time primary practitioners spend with people with disability leads to a mutual relationship of trust, rapport and understanding of their specific needs and often results in a GP or health practitioner being the first person a victim-survivor discloses their experience of family violence to²⁰. Assessments undertaken by independent assessors, who do not have a deep knowledge of participants, will not be able to capture individual complexity of experience of family violence or build a comprehensive and accurate picture of victim-survivors' needs and circumstances. Further, it is highly unlikely that a victim-survivor will disclose family violence to someone they do not know or trust and this may result in risk and/or safety concerns not being identified and responded to.

Issue 4: The mandatory one-off assessment will now be the primary tool to determine a person's NDIS plan and budget.

Under the proposed model, the mandatory assessment will be the primary tool to determine a person's NDIS budget. We are concerned that basing an important decision that will determine an individual's NDIS funding for five years on a one-off assessment meeting is too risky especially when there are limited circumstances where the plan and budget can be changed after the assessment is complete.

A brief one-off assessment conducted by someone unknown to the person with a disability is particularly problematic for victim-survivors of family violence for several reasons including:

- Victim-survivors of family violence who are experiencing the impact of trauma may be unable to communicate their needs in a single session and be disempowered by this approach²¹.
- The victim-survivor may still feel unsafe, be fearful of the perpetrator or still be experiencing violence and abuse from the perpetrator (e.g. coercive control, ongoing threats of surveillance or harm) which will impact on the victim-survivor's ability to communicate safely in a one-off session.
- A victim-survivor's risk and needs can change quickly and constantly, and a single assessment will not be responsive to their changing support and safety needs.

²⁰ Australian Institute of Health and Welfare. *Family, domestic and sexual violence in Australia 2018*. Cat. no. FDV 2. Canberra: AIHW; 2018; National Plan: The health sector through doctors, nurses and specialist staff are often an early point of contact for women who have experienced sexual assault or domestic violence p8 https://www.dss.gov.au/sites/default/files/documents/08_2014/national_plan1.pdf

²¹ Blue Knot Foundation. (n.d.). *Trauma-informed care and practice when working with domestic and family violence* <<https://www.blueknot.org.au/Training-Services/Calendar-of-Events/Public-TICP-Domestic-Family-Violence-Services>>.

Issue 5: Developing a complete and accurate understanding of the functional abilities of people with complex disabilities requires specialised skills, experience and support from a trusted specialist familiar with their condition.

Developing an accurate understanding of the functional abilities of people with “non-permanent” or complex disabilities requires specialised skills and experience. The proposed independent assessment model does not take this into account. Consequently, there is significant concern across the disability sector that independent assessors may not possess the requisite knowledge and experience to effectively engage with people with complex or “invisible” disabilities such as psychosocial disability²². Even though the assessment tools are standardised across disability types, it is necessary that assessors have an understanding of the intersection between those tools and the common impacts on functioning which they are being asked to consider.

People with psychosocial disability already experience significant barriers to accessing the NDIS and “over one-third of people with psychosocial disability who apply for the NDIS have their application rejected”²³. This has serious implications for victim-survivors of family violence as feedback from DV Vic members indicates that they provide support to many victim-survivors of family violence with undiagnosed psychosocial disability. Given the fact that psychosocial disability can be episodic and often goes unidentified as a disability, if assessors do not have the level of knowledge and experience to identify the needs of victim-survivors with these ‘chronic episodic’ types of disability, the introduction of independent assessments will reinforce and potentially exacerbate this barrier to accessing the NDIS.

Assessments carried out by people without prior knowledge of the victim-survivor and a specialist knowledge of disability may also impact on victim-survivors of family violence with an acquired brain injury (ABI). Recent research found that around 40% of women victim-survivors presenting at Victorian hospitals over a 10-year period had sustained a brain injury as a result of the family violence perpetrated against them²⁴. Further, the research acknowledged that ABIs are often not diagnosed in victim-survivors of family violence who attend hospital, leading to the conclusion that the occurrence is much higher than what is reflected in reported data. Therefore, it is crucial that victim-survivors with ABIs are assessed by professionals with the relevant knowledge and expertise to ensure that their support needs are identified.

²² Wapling, R. (2020, February). *Issues paper: NDIS access, eligibility and independent assessments*. Victorian Council of Social Service. <https://www.vcoss.org.au/policylibrary/2021/02/ndis-access/#_ftn10>

²³ *ibid*

²⁴ Brain Injury Australia (2018). *The prevalence of acquired brain injury among victims and perpetrators of family violence*. New South Wales

Recommendations

Independent assessments raise significant issues and concerns for victim-survivors of family violence with disabilities, as the introduction of independent assessments may result in family violence not being disclosed and identified, and impact on a victim-survivors ability to access support and safety. DV Vic/DVRCV endorse the position taken by VCOSS that independent assessments will present another barrier for people with disability instead of improving access and we believe that it will also present additional risk and safety concerns for victim-survivors of family violence.

While DV Vic/DVRCV advocates for access to the NDIS to be consistent and equitable, we also want to ensure that adequate safeguards are in place to ensure that victim-survivors of family violence can safely engage in processes that comprehensively assess and respond to their support and safety needs. Building on the concerns raised by VCOSS and disability advocacy organisations, we make the following recommendations to the Joint Standing Committee on the NDIS:

Recommendation 1

Cease the rollout of mandatory independent assessments as currently planned and consider alternative victim-survivor centred approaches to improving consistency in NDIS access and planning that recognise family violence risk and safety as a key guiding principle.

Recommendation 2

In considering and developing alternative solutions to independent assessments, engage in a meaningful co-design process with people with disability (including those with lived experience of family violence), their families and the organisations that support them to ensure people with disability receive the support they need.

Recommendation 3

Ensure NDIS assessment processes are designed with adequate safeguards to ensure that victim-survivors of family violence can safely engage in these processes (i.e. procedures that prevent a perpetrator from being present during an assessment; reduce the potential for re-traumatisation; development of referral pathways to specialist family violence services if family violence is identified).

Recommendation 4

Ensure professionals undertaking NDIS assessments complete mandatory training in identifying and responding to family violence which includes when to seek secondary consultations and make referrals to specialist family violence services.

Recommendation 5

Adequately address the significant risk that victim-survivors of family violence experience by giving prominence to family violence risk and safety in *NDIS Planning Operational Guidelines*²⁵.

Recommendation 6

²⁵ Domestic Violence Victoria (2021). Op cit.



Provide targeted and tailored responses to victim-survivors of family violence to ensure that their safety and support needs are consistently and comprehensively assessed.