

Submission to the Productivity Commission

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Review of NDIS Costs



Villamanta Disability
Rights Legal Service Inc.



Communication Rights
Australia



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Introduction

Communication Rights Australia ("Communication Rights") is a human rights information and advocacy organisation which works in partnership with people who have communication difficulties. People request our service when they experience discrimination, isolation or exclusion.

Communication Rights uses the United Nations Convention on the Rights of People with Disabilities ("UNCRPD"), Victorian Charter of Human Rights and Responsibilities Act ("The Charter"), disability discrimination legislation and government policies to ensure people can enjoy their rights. Their activities promote change and facilitate inclusion into community activities.

In terms of complaints and requests for advocacy from Communication Rights, the subject of access to education represents 65% of the complaints received.

The Disability Discrimination Legal Service (DDLS) is a community legal centre that specialises in disability discrimination legal matters. DDLS provides free legal advice in several areas including information, referral, advice, casework assistance, community legal education, and policy and law reform. The long term goals of the DDLS include the elimination of discrimination on the basis of disability, equal treatment before the law for people with a disability, and to generally promote equality for those with a disability. The Department of Education and Training is the single most common Respondent the subject of complaints and requests for advice and assistance, every year.

Villamanta Disability Rights Legal Service Inc. ("Villamanta") is a community legal centre that works only on disability related legal and justice matters for people who have a disability. Its priority constituency are people who have an intellectual disability and most of its legal casework is done for them. Villamanta provides free legal advice in several areas including information, referral, advice, casework assistance, community legal education, and policy & law reform. The long term goals of Villamanta are to ensure that people who have a disability have the same rights and opportunities as other people and are equally included in the community; in particular, that they know about the law and are able to use the law to secure their rights.

Due to the size of our organisations and our limited resources, we have decided to focus briefly in our submission on one area which we do not believe should drive the quality and quantity of services under the NDIS for people with disabilities, however which we believe to be a priority for government. This is the area of financial sustainability for the NDIS.

FINANCIAL SUSTAINABILITY OF THE NDIS

1. There is a confluence of interest with the disability advocacy, legal advocacy sector and the NDIA. That is the sustainability of the NDIS in order that government continues to invest and maintain what needs to be an effective, and what is a crucial, program to ensure that people with disabilities can enjoy their rights and freedoms on the same basis as others.
2. We believe that there is much work to be done, and much to be considered, in analysing how the NDIS can reduce its costs in relation to at least two areas. Those are:
 - a. What we will refer to as “early intervention”; and
 - b. Professionalism/qualification of service providers

Early Intervention

3. The term “early intervention” normally refers to providing constructive, specialised and therapeutic services as early as possible to a person in order that the symptoms of their disability are ameliorated or mitigated as much as possible, as soon as possible, in order for improved and superior outcomes later on.
4. Early intervention is commonly planned to occur in a person’s youngest years. However it is commonly held that whenever it is identified that a person with a disability needs an intervention, the earlier, the more effective the outcome.
5. Given the bipartisan support that the NDIS had when the government decided to adopt it, in our view it is important that the NDIA does not operate as many government departments do, that is as a silo. In our view, it is highly appropriate that the NDIA work across all relevant federal and state departments, and where it cannot obtain constructive collaboration, use the Commonwealth’s powers to obtain such collaboration.

Education

6. The evidence is that the Victorian experience in relation to the quality of education for students with disabilities is no different from the rest of Australia. However Victoria has been the beneficiary of some extra research projects/audits in relation to this area.
7. It is clear that the state of education for children with disabilities in Victoria and Australia is contributing to the following outcomes for people with disabilities. These include but are not limited to:
 - a. lack of education, resulting in numerous people with disabilities leaving school illiterate and innumerate, unable to undertake tertiary education;
 - b. lack of a functional communication method, ensuring that adults with communication/language disorders cannot even communicate;

- c. acquisition of psychological trauma due to unaddressed bullying, psychological mistreatment and violent practices meted out by school staff.
8. The socio-economic status of people with disabilities in Australia and their low participation rates in the workforce have all been recorded numerous times.
 9. However the difference the withholding of education, or imposing a traumatic education, on children with disabilities can make, can be the difference between requiring services from the NDIS and not - and/or the level of services that might be required.
 10. Illiteracy and innumeracy can result in people leaving school and proceeding straight onto the Disability Pension, rather than being independent contributing members of society.
 11. Withholding the equipment and training to ensure that someone with complex communication needs has a functional communication method not only ensures they cannot obtain an education, but affects every other part of their lives. The NDIS will not even be able to liaise directly with such persons without spending thousands of dollars ensuring they can communicate first.
 12. When a student with behaviours of concern is responded to with physical violence from teachers at school and the withholding of therapeutic evidence-based behavioural interventions, they can leave school suffering trauma, or having behaviours of concern that are so severe that they cannot participate safely in almost any part of life without intense evidence-based therapeutic assistance.
 13. These are just some examples of how the educational experience of students with disabilities will affect their lives, their independence and general abilities, and the nature of support they will need from the NDIS.
 14. We rely on the following recent reports:
 - a. Victorian Equal Opportunity and Human Rights Commission “Held Back” Report¹;
 - b. Victorian Auditor General’s Office “Programs for Students with Special Learning Needs”²;
 - c. Senate Community Affairs References Committee’s Inquiry Into Violence, Abuse and Neglect against People with Disabilities³;
 - d. Senate Education and Employment Committees Current levels of access and attainment for students with disability in the school system,

¹ <http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/reports/item/184-held-back-the-experiences-of-students-with-disabilities-in-victorian-schools-sep-2012>

² <http://www.audit.vic.gov.au/publications/20120829-Special-Learning-Need/20120829-Special-Learning-Need.pdf>

³ http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report

and the impact on students and families associated with inadequate levels of support ⁴;

- e. Department Of Education and Training “Review of the Program for Students with Disabilities”.⁵

15. It could be inferred from the reports relating to this area in the last five years, and those before them, that Australian departments of education have little will to, or intention of, modifying the manner in which they provide education to students with disabilities.
16. In our submission it would be in the best interest of the NDIA to begin liaising with the Federal Department of Education and Training (“DET”) to urgently investigate ways in which the DET can use its funding relationships with its state counterparts to require them to address the manner in which education is provided to students with disabilities across Australia.
17. If specific and measurable requirements are imposed on the States in this area, in our submission far fewer students with disabilities will be leaving schools needing significant assistance from the NDIS.
18. If such educational improvements are maintained, in 15-20 years the NDIS should experience a significant drop in expenditure simply due to an increase in the independence of many people with disabilities who have begun to access their education and reaped the rewards.

Professionalism/Qualification of Service Providers

19. The NDIA endorsed Professional Registration Groups give guidance to people who self manage their funds as to the type of professionals that exist in Australia and may be appropriate service providers.
20. There is no Professional Registration Group that includes Board-Certified Behaviour Analysts.
21. Currently in Australia, there is no regulation whatsoever on who can call themselves a “Behaviour Analyst”, “Behaviouralist” or “Behaviour Therapist”.

⁴http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/students_with_disability/Report

⁵<http://www.education.vic.gov.au/Documents/about/department/PSD-Review-Report.pdf>

22. The effective mitigation of behaviours of concern for children and adults with disabilities is a crucial issue for the independence of some people with disabilities. Adults receiving NDIS services who demonstrate moderate to severe behaviours of concern will often require ongoing intensive levels of support in order:
- a. for Occupational Health & Safety requirements to be met in relation to the safety of staff;
 - b. to “contain” such people when they are in the community to protect those in the community;
 - c. to ensure those people with disabilities do not abscond.
23. Ongoing behaviours of concern prevent those who exhibit them from accessing learning environments, employment, accessing the community, and participation in leisure and recreational activities.
24. Any venturing into these areas without the mitigation of those behaviours requires multiple staff. Any violent behaviours can create costs linked with the physical and mental injury of staff.
25. The research tells us that behaviours of concern can be effectively addressed. Attached is “*Evidence of Effectiveness ABA As Treatment for Autism*”. Therefore there are few acceptable reasons as to why an adult should be displaying ongoing behaviours of concern, or maintaining them.
26. However since the Commonwealth Government provided substantial packages for early intervention in the treatment of Autism Spectrum Disorder a number of years ago, numerous organisations and individuals who adopt the nomenclatures above in paragraph 21 have begun advertising themselves as being able to deal with complex behavioural needs, despite the lack of qualification to do so. This is not allowed in countries, for example, such as the United States.
27. While the domestic and international research on the efficacy of Applied Behaviour Analysis (“ABA”) is united in relation to it being the only established evidence-based treatment for Autism Spectrum Disorder⁶⁷, ABA in Australia is unregulated. Any individual can pronounce themselves as able to provide ABA services to people with disabilities.

⁶ “A Review of the Research To Identify the Most Effective Models of Practice in Early Intervention for Children with Autism Spectrum Disorders” Prior and Roberts 2006

⁷ In the USA, interventions for ASD that are based on the principles of ABA are now endorsed as medically and educationally necessary, and are largely covered by health insurance in most states

28. There are indeed international qualifications/credentials for those that can provide ABA services, such credentials being those obtained by Board-Certified Behaviour Analysts who to become certified:
- a. require a Masters degree in a related field (i.e. Education, Teaching, Psychology);
 - b. must undertake 1500 hours supervised practice under a BCBA;
 - c. must pass a rigorous four hour exam;
 - d. must complete 32 hours of approved continuing education per cycle (every two years).
29. Compare this with “Behaviour Analysts” in Australia who can call themselves such and practice in this area without any relevant qualification in ABA.
30. Given the link between behaviours of concern, restrictive practices (restraint and seclusion), and trauma, it should be evident that it is crucial that people with behaviours of concern need access to qualified individuals, and the NDIS should be leading the way in recognising the importance of this.
31. It is difficult to understand at this time why Board-Certified Behaviour Analysts are not recognised by the NDIS. This could be seen to be discriminatory to those with behaviours of concern, in that people with other disabilities are able to access credentialed practitioners in their areas through the NDIS (for example Speech Pathologists, Occupational Therapists and so on), but the only practitioners qualified in ABA are not included in the Provider Toolkit.
32. However in terms of costs sustainability, the benefits to the NDIS of using credentialed practitioners are that service provision is actually effective, and the behaviours of concern that result in the limitations mentioned above in paragraph23 are mitigated. As a result, NDIS costs decrease.

Summary

33. We believe that the examples that we have provided above, while brief, give sound rationale to at least two areas where preventative and evidence-based approaches to the provision of service to people with disabilities can result in significant cost savings through the NDIS, and of course more importantly, achieving some of the goals that guide the NDIS.
34. To improve the lives of people with disabilities in the areas of work, leisure, recreation, education and socio-economy is clearly the *raison d’être* of the entire Scheme. However we recognise that if the NDIA is able to reduce costs at the same time as achieving these goals, then surely that is the best outcome for all Australians.