



NDAP REVIEW

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I Preamble

Basic Rights Queensland (formerly "Welfare Rights Centre") is a state-wide specialist Community Legal Centre (CLC), providing free advice, advocacy and legal services to people having problems with social security or disability discrimination.

We have recently conducted a project which focused on NDIS advocacy, gaps, needs and opportunities. We have identified three areas where additional support and proper resourcing would enable people to better participate in NDIS processes; these are outlined below.

2 The availability of legal advice and assistance to NDIS participants in negotiating and managing their contracts with service providers.

2.1 Overview

As part of developing a plan to submit to the NDIA, the person must nominate who they want to manage their plan. This can be:

- themselves – (self-management)
- a plan nominee (friend or relative)
- a registered plan management provider (an organisation that works for a fee)
- the NDIA – (agency management)
- all or some in combination

There are two main aspects to managing a plan:

- Service activities - including negotiating and coordinating the provision of support. This could include sourcing providers, negotiating method and timing of delivery of supports and negotiating individual requirements as part of the support management.
- Financial activities - including the organising payment to service providers, the processing of expense claims, the development of monthly statements and claiming from the NDIA.

Depending on who manages the plan a number of different contracts can arise. In particular, there will be some form of contract arising between:

- the participant and whoever is managing the plan for them;
- the people who are managing the plans on behalf of the participant and the service providers; or
- if the participant who is managing their own plan, directly between them and their service providers.

It is this last range of contracts directly between the person and their service providers that needs advocacy/legal resources, ie to

- assist people to draft their own contracts (not just be handed a contract by the service provider that may suit the needs of the service provider).
- assist people negotiate changes to contracts that might be provided to them by service providers
- assist people with problems that arise in their contracts
- develop precedents and sets of guidelines for people to draft their own contracts
- train disability advocacy organisations and Community Legal Centres about these particular contracts.

2.2 Issues

- It is unclear whether Community Legal Centres will have the capacity or that Legal Aid will step into this space.
- We have heard stories of exploitation of people by their service providers and of there not being clear boundaries around what a service provider may or may not do. A contract that is developed by the person themselves (not the service provider) could make these things clear and protect people's rights.
- A properly developed contract could flesh out practical details that might not have been included in the initial NDIS plan.

- The NDIA has a precedent contract on their website that people can use. It is generic, perhaps a base to start with. People will still need assistance/feel confident to tailor this to their specific needs.
- Adequate resourcing in this area might encourage/embolden people to manage their own plans.
- It might prevent later problems and so will be cost effective in terms of saving higher costs of sorting problems out later on.
- There might be opportunity for amount of time for this contractual assistance to be built in to the person's NDIS plan and so might be sustainable for advocacy services to take on.

2.3 This would need:

- legally trained people familiar with contract law because:
 - they might need to work out any legal jargon of contracts drafted by service providers and work to reduce the jargon
 - they can draft a nice clear contract on behalf of the person without jargon
- linkages with advocacy and direct support organisations
- to collect and develop some precedent documents and guidelines that can be circulated around – they will need to be kept updated
- a plan for getting the information out there
- a plan for how it can be sustainable

3 Targeted pre-planning education and information to enable people to understand and act on their legislative and advocacy rights.

3.1 Overview

This would involve community legal education (producing written and video information and sending workers around the State or linking with other with other organisations) to advise people about:

- how to pre-plan their NDIS plan according to the legislation. From a legal point of view, people need to link the resources they require to their goals and use the right language and frameworks (according to the legislation) in order to:
 - be able to strongly advocate for their proposed plan with the planner/Local Area Coordinator
 - have a solid basis to review and appeal.
- their ability to access an independent advocate.

3.2 Issues

- Although there are other participant readiness sessions being held across Queensland, they have necessarily been introductory in nature. As NDIS rolls out, it is timely to get practical information out (perhaps as part on any ongoing participant readiness still going on) that focuses on the legislation and rights, including access to advocacy.
- Some advocacy organisations are reportedly experiencing problems with not being able to successfully seek reviews, because at the beginning planning phase, people do not understand that the NDIS Act requires them to set their goals and then make sure that the supports they ask for are properly linked to achieving those goals.
- Practical, legislation-based pre-planning work will assist planners/Local Area Coordinators in doing a plan with the person.

3.3 This would require:

- people skilled in community education and who would be prepared to travel to the more remote areas of Queensland
- links with other organisations who are doing this participant readiness work to:
 - help them incorporate the legal/advocacy element into information about planning
 - attend their sessions to add the more legal/advocacy element if they agreeable

- make sure does not duplicate, but fills in gaps.
- links with the legal community, including legal aid and Community Legal Centres.

4 Legal back-up for the Disability Advocates and External Merit Review people in internal reviews and AAT appeals.

4.1 Overview

If a person is unhappy with a decision made by the NDIA (eg they are not eligible to access the scheme or can't get what they want in their plan), they may seek an internal review of that NDIA decision. If the NDIA confirms that original decision, they may appeal to the Administrative Appeals Tribunal (AAT). For internal review, it seems that it is expected that people will self-advocate or that the currently NDAP funded disability advocacy organisations would add this to their role.

For appeals to the AAT, additional funding has been provided for an External Merits Review Support person to assist a person through the AAT (including preparing documents and appearing in the Tribunal). Some of these External Merits Review people will be legally trained, some will not. If the person's AAT appeal is determined to be novel or complex, the person can be represented by Legal Aid.

There may be a need to provide legal back-up to disability advocacy organisations during the internal review process, or the External Merits Review person in the AAT process, especially if they are not legally trained.

4.2 Issues

- The AAT has adjusted their processes to make them more user friendly for NDIS purposes. However, advocacy organisations who have appeared in the AAT on NDIS matters note that AAT processes are still legalistic. NDIA send lawyers into the AAT on their behalf and so it is important that individual participants and their advocates be legally supported if necessary to redress any power imbalance.
- So far there have been far less reviews and appeals than was anticipated, so we can perhaps anticipate that the demand for this will not be high in the early stages of Queensland roll-out, but that numbers will increase.
- Of the AAT matters reported so far, most applicants have been represented by Legal Aid as most are novel or complex, but this may decrease as issues become less novel.
- It may be that newly employed external merits review people could be lawyers, but there are some external merits review people are not legally trained, and who would be assisted by a bit of legal back-up.
- It is possible that Legal Aid (because they will be familiar with processes by doing the novel/complex matters) will help advise External Merit review people in their AAT matters. There does not seem to be funding for them to do this, so this may be informal or not at all.

4.3 This would require

- Legally trained person with AAT experience.
- Would be useful for that person to have disability or medical background to be able to interpret expert reports.

Thank you for the opportunity to make a submission to this review.

If you require any further information, please contact:

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