

2020 Review of the Disability Standards for Education 2005

Many children and adults with disability are still being denied equal access to education.

Validating results of other research, a recent survey of more than 500 families of children with disability and students with disability found one in 10 children with disability have been refused enrolment; almost 17% of children only attend school on a part time basis; and 50% of the parents surveyed believe that their children are not receiving adequate support at school.¹

These results are shocking. Further, this survey raises issues of abuse and violence at school including the use of restrictive practices such as restraint and seclusion. The current Royal Commission into the Neglect, Abuse, Violence and Neglect of People with Disability will hopefully draw attention to practices and experiences that must change.

Australian society must not let this situation continue. Education is a fundamental building block for participation in social and economic life. It is a human right.

This review of the Disability Standards for Education will consider whether the Standards are effective in achieving their objects, which are:

- to eliminate, as far as possible, discrimination against persons on the ground of disability in the area of education and training
- to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law in the area of education and training as the rest of the community
- to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

NDS contends that they are not as effective as they should be, but will argue that the problems lay more in their enforcement than with the actual Standards. Suggestions on how to strengthen the influence of the Standards are found later in the submission.

¹ Children with Young People with Disability Australia, 2019. Time for change: The state of play for inclusion of students with disability Results from the 2019 CYDA National Education Survey National Survey: www.cyda.org.au. A total of 505 people responded to this online survey.

Context

The National Disability Strategy², endorsed by Commonwealth, State and Territory governments in 2011, is a ten-year commitment to a 'unified, national approach to improving the lives of people with disability, their families and carers, and to providing leadership for a community-wide shift in attitudes'. The Strategy's purpose is to:

- establish a high level policy framework to give coherence to, and guide, government activity across mainstream and disability-specific areas of public policy;
- drive improved performance of mainstream services in delivering outcomes for people with disability;
- give visibility to disability issues and ensure they are included in the development and implementation of all public policy that impact on people with disability; and
- provide national leadership toward greater inclusion of people with disability.³

People with disability are significantly disadvantaged in both education and employment. For this reason, 'learning and skills' is one of six priority areas identified for action within the Strategy. Under this priority, two policy directions are pertinent for this review of the Disability Standards for Education:

- strengthen the capability of all education providers to deliver inclusive high-quality educational programs for people with all abilities from early childhood through adulthood; and
- ensure that government reforms and initiatives for early childhood, education, training and skill development are responsive to the needs of people with disability.⁴

The next ten-year National Disability Strategy is currently under development.

This review of the Standards is timely. The Disability Royal Commission has heard numerous stories of how education systems are failing children and adults with disability. They do not make for easy listening. These experiences are expected to be incorporated into the Interim Report of Royal Commission, scheduled for release in October. Failures of education systems are expected to feature but it not known whether the Interim Report will contain recommendations.

Interfaces between the National Disability Insurance Scheme (NDIS) and education systems have not been adequately resolved. An example is how the NDIS interfaces with early childhood learning. The Inclusion Support Subsidy is inadequate to meet the costs of including children with significant disability. For this reason, many of these children are denied the benefits of early childhood learning. Tensions also exist in how students receive NDIS-funded supports while at school. Solutions need to be negotiated.

² Commonwealth of Australia 2011, '2010–2020 National Disability Strategy', Attorney-General's Department, Canberra.

³ Ibid. p. 9.

⁴ Ibid. pp. 54-55

How could the Standards be improved?

- **A more contemporary and consistent approach**

Over recent years, the regulation of disability supports have increasingly come under the NDIS Quality and Safeguards Commission. The NDIS Practice Standards, which apply to registered providers of supports, consist of core modules with supplementary modules relating to specialist areas such as Early Childhood Intervention Supports, Behaviour Support and Restrictive Practice implementation. It might be expected that similar expectations for how people with disability are supported would apply to education and to formal disability supports. Unfortunately this is not the case.

Reviewing the Standards to ensure that they are consistent with other relevant frameworks is one way of improving collaboration across jurisdictions and service systems. It makes sense, for instance, to have the use of restrictive practices in schools approved, implemented and regulated in a similar manner as they are in disability support services.

- **Strengthening requirements for reasonable adjustments**

The Standards place obligations on education providers in three key areas:

- Consultation: about ongoing needs and requirements
- Reasonable adjustments: to ensure that the rights of students with disability to participate in education and training on the same basis as other students
- Eliminating harassment and victimization: developing strategies to prevent harassment and victimisation in the school environment

NDS recommends the Standards provide greater obligations (and clearer expectations) on education providers on these, but particularly in relation to reasonable adjustments and eliminating harassment and victimisation.

With respect to reasonable adjustments, all education and training providers should better demonstrate their readiness to accept students with disability, including by providing public access to their disability action plans for improving education outcomes.

Where exemptions to the Standards are used on the basis of unjustified hardship, the action plan should show how the organisation will remove the related barriers where possible. For example, if there are barriers in the built infrastructure of a training organisation, the long-term maintenance plan should include upgrades that remove all physical barriers for people with disability.

NDS would like to see evidence from all education and training providers of action plans that will make education fully accessible by 2025. Progress on this goal should be monitored by governments with annual reporting requirements linked to funding.

The NDIS Practice Standards require early childhood providers to demonstrate that supports are being provided in the child's natural setting. For young children this is often at school. NDS hears stories of where there has been little consultation with families to understand the intersection between school and their child's NDIS supports or where decisions around reasonable adjustments differ greatly from

school to school, from child to child and even from day to day with limited communication to the family or the NDIS provider.

Consideration of how better monitoring of reasonable adjustments can occur is needed.

- **Eliminating harassment and victimization**

The Standards are silent on the role of restrictive practices. NDS has previously recommended improving the understanding of restrictive interventions within educational settings. The need for this remains.

Sadly the use of restrictive practices in educational settings has continued since the last review of the Standards.⁵

The Disability Royal Commission Restrictive Practices issues paper noted that:

- there are fewer regulations about the use of restrictive practices in schools and other education settings compared to other sectors, with States and Territories having different laws and policies relating to restrictive practices
- in each state and territory, direct guidance on the use of restrictive practices is provided primarily through policies and guidelines
- there is a lack of laws that commit education providers, including schools, to reduce and eliminate restrictive practices in education

The NDIS Commission has identified 5 restrictive practices as requiring regulation and these definitions are increasingly being adopted by states and territories.

NDS recommends that a standard relating to the reduction and elimination of restrictive practices in education settings, based on the 5 practices described by the NDIS Commission, should be included in the Standards. This would require educational providers (and jurisdictions responsible for funding them) to monitor whether the policies and procedures of these bodies meet this Standard.

Strengthening the impact of the Standards through data, education and information, and compliance activities

The Standards provide for fundamental rights; they should not be optional. They provide a robust framework for ensuring equitable access to education for people with disability. The challenge facing governments is to ensure and enable full compliance.

NDS recognises the progress in raising awareness of the Standards and improving attitudes and expectations. This progress must be supported by more effective monitoring alongside increased and appropriately targeted funding. NDS makes the following suggestions to strengthen the impact of the Standards.

⁵ Children with Young People with Disability Australia, 2019. Time for change: The state of play for inclusion of students with disability Results from the 2019 CYDA National Education Survey National Survey: www.cyda.org.au. A total of 505 people responded to this online survey.

- **Link compliance with the Standards with access to funding**

Government funding for education and training should only go to organisations that can demonstrate their commitment to the Standards. In the case of schools, adherence to the Standards a mandatory part of the school registration process.

All education and training providers should demonstrate their readiness to accept students with disability, including by providing public access to their disability action plans for improving education outcomes. Where exemptions to the Standards are used on the basis of unjustified hardship, the action plan should show how the organisation will remove the related barriers where possible. For example, if there are barriers in the built infrastructure of a training organisation, the long-term maintenance plan should include upgrades that remove all physical barriers for people with disability.

NDS would like to see evidence from all education and training providers of action plans that will make education fully accessible by 2025. Progress on this goal should be monitored by governments with annual reporting requirements linked to funding.

- **Link the Standards with monitoring of the National Disability Strategy**

Comprehensive implementation of the Standards is required to realise the broader ambitions of the National Disability Strategy which, similar to the Standards, is the responsibility of all governments.

There needs to be a substantive re-commitment by all governments to the social and economic imperatives that underpin the National Disability Strategy. Reducing the gap between students with disability and other students is essential to improve the social and economic well-being of people with disability, their families, carers and the wider community.

Improved reporting on the National Disability Strategy is expected to be introduced. Ideally, this will include annual progress reports to parliaments that promote accountability across government. Improving education access and outcomes for people with disability must be a part of this reporting.

- **Use data to make informed funding decisions that support the Standards**

The nationally consistent data collection provides better data on the number of students with disability in schools, where they are located and the adjustments they receive. This data can be used to reinforce the obligations that schools (and their funders) have under the Standards, and identify both improvements in supports for students with disability and gaps.

Greater transparency on funding for students with disability is needed, along with information about how it is being used and the outcomes being achieved.

Given the information that is readily available on the experiences of exclusion of children with disability and their families from the broader school community, funding to support students in the classroom must be supplemented with non-individualised funding to create more accepting school environments. We need to raise disability awareness in the broader education community.

- **Benchmark what inclusive education looks like**

Improved data and reporting should be used to provide benchmarks on inclusive and accessible education provision. These should be used to further develop the 'evidence bank' on how to implement the Standards as well as to promote and publicise progress.

The 'my school' website should be required to publish progress on all schools' disability action plans against agreed benchmarks.

- **Build on the ambitions that will flow from improved supports as a result of the NDIS**

It is important to note that the NDIS does not provide individualised funding for all people with disability (only those that have significant disability and meet the eligibility requirements) and is not responsible for providing mainstream education services. Indeed, the sustainability and effectiveness of the NDIS rely on education services to do their part to achieve improved life outcomes. Implementation of the Standards is core to this.

It is also important to recognise that the NDIS will increase demand for accessible education services. Many children and adults with disability will have improved access to much-needed individual and early intervention support, including access to aids and equipment. This will enable them to work towards much more ambitious life goals. With basic support needs met, families and individuals will have higher expectations of the education system. NDS is confident that most of the education system will welcome this challenge as they will no longer be overwhelmed by the support needs of students and can instead focus on education outcomes.

NDS would also like to draw attention to the opportunity to develop joint planning approaches between schools and the NDIS. This could take advantage of expertise from a range of disciplines, early intervention opportunities and help develop natural and sustainable ongoing support networks. Similarly there will also be new opportunities to improve planning for transition from school to work through effective collaborations.

NDS urges the education sector to seize the opportunities provided by the NDIS and meet the challenges to provide fully inclusive education services consistent with the Standards. It is timely to dedicate the next decade to fully accessible education.

- **Resolve interface problems between the NDIS and education systems**

Governments have agreed a document that outlines the 'Principles to Determine the Responsibilities of the NDIS and other Service Systems'⁶. It provides information on how the interfaces between the NDIS and mainstream services will be managed.

This document includes sections on early childhood development, school education and higher education and Vocational Education and Training.

⁶ <https://www.coag.gov.au/sites/default/files/communique/NDIS-Principles-to-Determine-Responsibilities-NDIS-and-Other-Service.pdf>, viewed on 25 September 2020

At full implementation of the NDIS, it is apparent that there are interface issues that still need to be resolved (a couple of these are mentioned earlier in this paper). It is timely that this principles document is reviewed and decisions made about how ambiguity about responsibilities are managed.

- **Build on improved awareness and knowledge about disability and rights**

Disability is more visible in our communities, and in our media, than ever before. We need to use this higher profile to build a commitment to remove some of the barriers that still limit the opportunities available to people with disability and their ambitions.

NDS urges more attention be given to the following:

- more intensive training for all teachers at undergraduate and postgraduate levels in disability and inclusion
- greater professional development being available for teachers and aides that work with students with disability whether in special schools or mainstream settings (important to overcome a culture of low expectations)
- availability of specialist support and advice for schools from multi-disciplinary teams including on how to use positive behavior strategies to reduce challenging behaviours
- improved understanding of the need to aim to eliminate the use of restrictive interventions
- engagement with people with disability and disability service providers to improve the disability awareness of the education sector

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National Disability Services is the peak industry body for non-government disability services. It represents service providers across Australia in their work to deliver high-quality supports and life opportunities for people with disability. Its Australia-wide membership includes about 1200 non-government organisations which support people with all forms of disability. Its members collectively provide the full range of disability services—from accommodation support, respite and therapy to community access and employment. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.