



## SUBMISSION

### DEPARTMENT OF SOCIAL SERVICES

# NATIONAL DISABILITY ADVOCACY FRAMEWORK

“To deny people their human rights is to challenge their very humanity.”

Nelson Mandela

“I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities.”

Nelson Mandela

“Never depend upon institutions or government to solve any problem. All social movements are founded by, guided by, motivated and seen through by the passion of individuals. ”

Margaret Mead

“The reality that the (intellectually disabled) person is a version of myself is one from which so much can be learned and gained, and yet, it is a reality which most people deny and try to escape from.”

Wolf Wolfensberger

Queensland Advocacy Incorporated is an independent, community-based systems and individual advocacy organisation and a community legal service for people with disability.

Our mission is to promote, protect and defend, through systems and individual advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

QAI does this by engaging in systems advocacy work through campaigns directed to attitudinal, law and policy change, and by supporting the development of a range of advocacy initiatives in this state and of national significance.

It is highly commendable that the Disability Reform Council has decided to fund

- decision supports
- safeguard supports
- capacity-building for participants, including support to approach and interact with disability supports and access mainstream services.

It is clear from the consultations, the submissions and public hearings that the entire sector recognises the importance of advocacy that is independent and as free from conflict of interest as possible. QAI is appreciative that the Disability Reform Council also values the importance of advocacy by seeking to fund advocacy as part of “decision supports” and “safeguards supports” and elsewhere.

However most of our submission constitutes an objection to the intention to fund advocacy under the NDIS. We believe that this will mean a significant distortion of the NDAF and will undermine the principles of advocacy and jeopardise the viability of the advocacy sector. Please see the QAI submission on NDIS Quality and Safeguards Framework with particular reference to advocacy. In all of our submissions regarding the ILC, the Quality and Safeguards and Advocacy under the NDIS, as well as our submission to the Senate Inquiries into violence, abuse and neglect against people with disability in institutional and residential settings, and the adequacy of existing residential care arrangements available for young people with severe physical, mental or intellectual disabilities in Australia, QAI have held the consistent position that it is inappropriate to fund advocacy under the NDIS and issued the urgent plea to ensure that advocacy is NOT funded under the NDIS.

QAI appreciates the opportunity to make a submission on the Review of the National Disability Advocacy Framework. Before addressing each of the questions posed by the Department, we wish to comment on the meaning and importance of advocacy in the disabilities context and the relevance of advocacy funding.

## **WHAT IS ADVOCACY?**

In reviewing the National Disability Advocacy Framework, the Department of Social Services must be fully cognisant of ‘what is advocacy?’ The meaning outlined in the discussion paper falls far short of what advocacy is according to the advocacy principles adhered to by advocates in Australia.

## Discussion Paper

Stating that advocacy means supporting people with disability to “find employment and training” inappropriately conflates the service domain with advocacy. Individual advocates may assist a person to link with employment services, or advocate to an employer or employer group, and systems advocacy will engage in the promotion of employment of workers with disabilities, but advocacy organisations are not in the business of employment service. It also fails to acknowledge the fundamental importance of ongoing advocacy support for people with disability along the continuum of their working lives..

QAI supports the separation of advocacy from all and any other forms of service provision.

The discussion paper definition of advocacy neglects the plethora of issues that also must be addressed over the life of a person or group of people with disability (ie abuse, neglect, discrimination, fundamental needs, health, housing, education, support services etc).

Defining advocacy as supporting people with disability to stand up for their rights and choices is of no real value unless we address the multiple systemic factors that marginalise and disempower people with disability so as to render their “choices” meaningless. For people with disability, there are many factors that restrict realistic opportunities to exercise proper choice in many (or indeed any) key areas of their lives.

When choice is considered in an individualistic way, it deflects attention from the broader limitations on choice experienced by vulnerable groups in our society and instead places responsibility on the individual for the “choices” they make. Where the outcome is less (often far less) than ideal, the individual is blamed; the popular neo-liberal rhetoric of choice masks the lack of real choices people within disempowered groups have over important issues affecting their lives and absolves society of responsibility for individual hardship. The rhetoric of choice disguises the reality that “choices” by vulnerable people are made within a complex social and legal order, with government policy and social and economic circumstance shaping, reinforcing and dictating individual choice.

This reduces “choice” to an exercise in disempowerment, whereby choosing is reduced to a process of deciding between a selection of inappropriate and inadequate options. There’s small choice in rotten apples.

Suggesting that advocacy supports people with disability to “have their say” is confusing the empowerment of people with disability with genuine self-advocacy and ignores the fact that the majority of people with disability at one time or another will need someone to advocate on their behalf, including groups of people with disability. Certainly QAI is supportive of individuals who have the capacity and strength to self-advocate, but one must consider that all of us at times need the assistance of another in order to advocate for us when we cannot, or where the issues are greater than our experience or knowledge. Our mission and objective is to ensure that the most vulnerable people with disability have their rights, lives and needs defended, protected and promoted.

## The Definition of Advocacy adopted by Advocates

Action for Advocacy Development uses the following definition, which is based on the work of Dr Wolf Wolfensberger. Advocacy groups in Australia discussed this definition during a National Advocacy Workshop in Sydney in June 1994. Most of these elements were agreed to and are the principles by which QAI conducts its work:

Advocacy is speaking, acting and writing, with minimal conflict of interest, on behalf of the sincerely perceived interests of a disadvantaged person or group to promote, protect and defend their welfare and justice by

- being on their side and no-one else's
- being primarily concerned with their fundamental needs
- remaining loyal and accountable to them in a way which is emphatic and vigorous and which is, or is likely to be, costly to the advocate or advocacy group

## The National Disability Advocacy Framework

The current National Disability Advocacy Framework defines advocacy services provided under the framework as:-

- (a) Disability advocacy enables people with disability to participate in the decision making processes that safeguard and advance their human rights.
- (b) Individual advocacy supports people with disability to exercise their rights, through either one-to-one support, or by supporting people to advocate for themselves individually, through a third party or on a group basis.
- (c) Systemic advocacy seeks to introduce and influence longer term changes to ensure the rights of people with disability are attained and upheld to positively affect the quality of their lives.

QAI agrees that the definition of advocacy used in the National Disability Advocacy Framework is far more appropriate and accurate than that described in the discussion paper.

## **THE MUTUAL ANTAGONISMS OF FUNDING ADVOCACY UNDER THE NDIS**

QAI is appreciative that the Council of Australian Governments' Disability Reform Council agreed that the NDIS would fund:-

- decision supports
- safeguard supports
- capacity-building for participants, including support to approach and interact with disability supports and access mainstream services.

However, it is disconcerting that the agreement to fund advocacy under the NDIS as part of decisions supports and safeguards was made without consultations with advocates and advocacy organisations. The National Disability Advocacy Program itself is to be reviewed, yet our organisation still is yet to be consulted on this matter.

QAI strongly and emphatically objects to the funding of advocacy under the NDIS for a range of reasons. It is also incongruent with the 2011 Productivity Commission Inquiry which recommended advocacy be funded and provided outside the NDIS. We believe the Productivity Commission Inquiry Report intended that ALL advocacy should be funded outside the NDIS. QAI asserts that advocacy would be more appropriately funded from the Australian Department of the Attorney-General.

### **Quality and Safeguards and ILC**

The recent consultations on the Quality and Safeguards Framework (Q&S) and the NDIS Information, Linkages and Capacity-Building Framework (ILC) certainly indicated the universal acknowledgement of the need for advocacy. However, those acknowledgements also recognised the need for the advocacy to be independent, have minimal conflict of interest, and to be available to all people with disability.

*From the QAI submission to the ILC Framework - People with disability often receive both support and accommodation from the same organisation. These arrangements may be cost-efficient for the organisation but present major conflicts of interest and add an extra layer of exposure to people with disability. They are vulnerable to eviction both for breaches of the tenancy agreement and when there is a dispute over support provision. The advent of the NDIS will not immediately address this conflict, although it must do so as soon as possible. Advocacy seeks to ensure that people with disability are not threatened and will advance the agenda for service providers to divest themselves of much of the control and ownership over a person's life.*

Again QAI reiterates that funding advocacy for people with disability from the same source as that which provides funding for their disability support needs, is another discord that further enmeshes the lives of people with disability with structures that tend to own rather than enable or empower them.

This review is being conducted with a view to altering the principles to fit with the predetermined decision to fund advocacy from within the NDIS and therefore this is likely to compromise the very principles of advocacy.

### **What funding advocacy under the NDIS will exclude by default**

#### **1. Issues confronting people with disability**

Funding advocacy under the NDIS creates at least a very narrow perception of advocacy actions focussed on NDIS supports, services, funding, etc. This negates the other issues that impact negatively on a person's life such as the serious issues of abuse, neglect, discrimination, fundamental needs, health, housing, education, transport, etc.

#### **2. The majority of people with disability excluded from the NDIS**

Furthermore and most importantly this implies that people with disability will access or purchase advocacy with a percentage of their funded supports. This is an alarming and highly contentious decision that ignores the many people who will not be eligible for NDIS funded supports. This is particularly exclusive of people with disability in a range of detention centres (prisons, and forensic detention) who are highly vulnerable, conceivably have the most to benefit from NDIS but are prohibited from its opportunities. All people with disability who are ineligible for NDIS funded supports will require vigorous advocacy particularly in areas of abuse, neglect, and fundamental needs, and this funding arrangement further marginalises and discounts them.

*According to the Australian Bureau of Statistics (ABS), 17.9% of Queenslanders, or just less than 1 in every 5 people, have a disability. Over 150,000 Queenslanders have a severe disability and require help or assistance with self-care, mobility or communication needs. There are 8 disability advocacy services in Queensland, and approximately 3 Full Time Employed systemic disability advocacy positions in the State of Queensland funded by the Commonwealth. That works out to about 5 individual advocates and one systems advocate for every 50,000 Queenslanders with a severe disability.*

*The 2006 Report on the National Disability Advocacy Program for DFSCIA by Social Options asserted that existing advocacy services do not provide adequate coverage for the disability sector, noted that there are large geographic areas of Australia without advocacy services, and that 'there are insufficient advocacy services for those most vulnerable, including people with reduced mental capacity and those with communication difficulties'. (From the QAI Position paper – "Advocacy and the NDIS" attached.)*

There are about 4,230,000 people with disability in Australia and it is estimated only 400,000 will receive individual packages under the NDIS.

## **ILC Framework**

This leads to the notion that under the ILC, Local Area Coordinators (LACs) will perform advocacy for those people ineligible for funded supports. It is not envisaged that LACs will be advocates yet QAI is concerned that there will be an over-reliance on the role of LAC's to perform the kind of relationship building required and for which there will not be sufficient funding, time or capacity. We consider that there are significant limitations associated with the ILC Framework's vision of the likely role and impact of LACs. Even within the ILC, we do not consider it possible for the LAC role to be as all-encompassing as that proposed by the NDIA. Accordingly, we consider that some of the information and referrals are best provided through individual advocacy organisations, as LACs will not have the same experience or skills. Please refer to the QAI submission on the ILC Framework for further discussion on this point.

The funding of decision supports through advocacy is essential and therefore should be as free from conflicts of interests as possible and can be provided through individual advocacy agencies – not other service provider types.

Funding this vital role and other advocacy efforts within the NDIS gives rise to potential conflicts of interest and conceivably jeopardises the continued funding of advocacy organisations should their actions conflict with the interests of the NDIA.

QAI supports the separation of advocacy from all and any other forms of service provision.

### **Response to specific questions raised in the Review of the National Disability Advocacy Framework**

As noted earlier, QAI objects to the decision to fund advocacy from the NDIS pool of resources.

#### **1. Do you believe the current Framework encompasses your vision of advocacy in the NDIS environment? If not, what changes are required?**

The current Framework certainly supports the QAI vision of advocacy within the context of the NDIS as it provides clear guidance and principles aligned with advocacy that is partisan, free from conflict of interest, works to advance the human rights and lives of people with disability, promotes the inclusion of all people with disability while recognising the diversity within the cohort of people with disability, and acknowledges the continuous improvement in law, policy and practice reform to enable this to occur.

QAI stresses that the definition or description of advocacy outlined in the Department of Social Service Discussion paper is completely inadequate and inaccurate. Unfortunately what is described in the discussion paper will confuse advocacy for service provision, provide misinformation to any person or group wishing to comment on the paper, and perhaps mislead people with disabilities and their families regarding the kinds of activities which are not advocacy.

#### **2. Are the principles of the Framework appropriate for guiding the delivery of advocacy for people with disability in a changing disability environment, including in the context of the NDIS? If not, what changes are required?**

QAI endorses the current NDAF principles as they encompass our vision of advocacy even within the NDIS context, provided that they are not diluted or diminished in order to fit the illogical model of service provision under the NDIS.

The NDAF fulfils the aim of the NDIS in supporting autonomy and control for people with disability, yet does not seek to subsume the promotion and protection of rights of people with disability into the world of service provision.

#### **3. Are the outcomes of the Framework still relevant or should different ones be included? If so, what should be included?**

The outcomes of the Framework are an articulation of the aims and efforts of advocacy organisations for all people with disability including people who will not be funded under the NDIS.

**4. Are the outputs of the Framework still relevant or should different outputs be included?**

While individual advocates already provide support for decision making for people that would otherwise have no other informal supports such as family or friends, the outputs of the Framework should include this important role.

**5. Does the Framework identify what is needed in the current and future disability environment? If not, what changes are required?**

It is not the role or scope of the National Disability Advocacy Framework to identify what is needed in the current or future disability environment. The role and purpose of the Framework is to guide advocacy and inform the sector about the structure of advocacy and how it pertains to people with disability whether within or out of the NDIS context.

If the NDIS provides funding to advocacy there will be a need to articulate in the Framework the areas of advocacy support that funded advocacy agencies are likely to perform.

There is no means to predict who will need advocacy in the areas of abuse, neglect or support needs to transition from prison or indefinite forensic detention. There is no way to predict how many students will need advocacy to fight discrimination, or how many people will seek advocacy for safe and accessible transport.