

Review of the National Disability Advocacy Framework

Introduction

The ACT Disability, Aged and Carer Advocacy Service has been providing independent individual advocacy to people with disability, frail older people and their carers in the ACT and region for some 25 years. We are an independent not for profit organization. ADACAS also provides support for people seeking External Merits Review of NDIS decisions and delivers a range of supported decision making and other community capacity building activities. ADACAS is a member of the Disability Advocacy Network of Australia as well as ACT and NSW disability advocacy networks.

Relationship to other core policy statements

ADACAS acknowledges that along with the existing National Disability Advocacy Framework (signed in 2012), there are a number of guiding documents which establish the context for the delivery of disability advocacy and disability services to people with disability in Australia. These documents provide an important context for the review of the Framework and our comments are made in light of them. They include:

- The United Nations Convention on the Rights of Persons with Disabilities
- Other human rights conventions including the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights
- The National Disability Agreement
- The National Disability Strategy
- The National Disability Insurance Act 2013 (Cwth)

In addition various programs provide funding for disability advocacy and these programs have guidelines for eligibility and service types which inform the delivery of disability advocacy around the country. Currently both the Commonwealth and most State/Territory Governments fund disability advocacy.

The key policy statement for Australians with disability is the National Disability Agreement which establishes five national priority areas. A review of these indicates that disability advocacy contributes strongly to each of the five areas. Briefly:

- Build an evidence base for disability policy and strategy – advocacy contributes to systemic issues through the experience of individual cases. Advocacy builds evidence for best practice in disability rights and services through working in partnership with people with disability to resolve their issues. Advocacy organisations, including DANA, bring the voice of advocacy clients to policy and strategy development. This is crucially important as advocacy clients are typically not members of disability peoples' organisations, do not participate actively in consultation processes or engage with the disability peaks.

Without the involvement of disability advocacy organisations, the voice of this group of people would be completely silenced in the evidence base for disability policy and strategy.

- Enhance family and carer capacity – A number of forms of advocacy, including individual and family advocacy make important contributions to enhancing family and carer capacity. Through the advocacy experience, advocacy organisations also contribute to systemic issues that impact carers. Like people with disability themselves, Carers/families need the support of an independent, partial, yet objective advocate to assist them to deal with complex issues across a wide range of domains including disability service, health, education, transport, housing and workplace issues.
- Strategies for increased choice, control and self-directed decision making – Advocacy is a core and fundamental strategy that increases choice control and self-directed decision making for individuals. Every advocacy type (as articulated in the framework) makes a core contribution to this priority area.
- Maintain innovative and flexible support models – Advocates often contribute to innovation and flexibility through finding effective solutions to intractable or complex service problems when working with clients. Advocates share learnings with other service providers, promote good practice and inform continuous improvement of service.
- Develop employment opportunities – As rights based organisations, advocacy organisations work continuously to address areas of disadvantage for people with disability, including employment. Access to employment, and workplace discrimination are key advocacy issues which independent advocates assist with when requested. Advocacy organisations continue to contribute to systemic work on disability employment including the BSWAT matter, the national disability employment framework consultation and the call for advocacy in employment settings.

The National Disability Strategy also recognises that some people need support from advocacy services to participate in decisions that affect their lives (p 16) and that advocacy safeguards people's rights and overcomes barriers that impact on their ability to participate in the community (p 40). The Strategy identifies 'support independent advocacy to protect the rights of people with disability' as an area for future action (p 41). It also recognises the need for 'ensuring SDM safeguards for those people who need them are in place, including accountability of guardianship and substitute decision-makers'. As part of the ten year national policy framework for Australians with disability, advocacy and supported decision making are identified as key areas for action.

The strong contribution that Advocacy makes to the National Disability Agreement and delivering the National Disability Strategy should be recognised and valued, both within the National Disability Advocacy Framework and elsewhere.

Clearly the major reform since the NDAF was signed is the National Disability Insurance Scheme and it is this reform which has triggered a review of the Framework at this time. A comparison of the NDI Act with the NDAF shows:

Both NDAF and the Act (See Sections 3 – 5):

- give effect to Australia’s obligations under the UNCRPD
- enshrine the equal access to rights for people with disability
- focus on the social and economic participation of people with disability
- enable choice and pursuit of their goals
- recognise that people with disability must be involved in decision making processes that affect them
- value the input of people with disability to all aspects of development, delivery and evaluation of disability and other government policies and programs

Indeed the NDI Act recognises the valuable contribution of advocacy:

“The role of advocacy in representing the interests of people with disability is to be acknowledged and respected, recognising that advocacy supports people with disability by:

- (a) promoting their independence and social and economic participation; and
- (b) promoting choice and control in the pursuit of their goals and the planning and delivery of their supports; and
- (c) maximising independent lifestyles of people with disability and their full inclusion in the mainstream community.”

4(13) page 7

The analysis shows that there is no conflict between the NDI Act (2013) and the NDAF, indeed that they share a common purpose and vision for people with disability. While there may be some opportunity to further harmonize the language of the NDAF to mirror language used in the Act, this would not change the fundamental accord which already exists between the two.

There have been strong public calls for increased access to advocacy through social media and other mechanisms. The almost 7000 member NDIS Grassroots facebook page, often includes comments about the vital nature of advocacy and the challenges faced by those who are unable to access it. Other inquiries have also recognised the increasing role for advocacy with the introduction of the NDIS. The Victorian Ombudsman stated:

“Without a strategy to embed the role of advocacy, a market-based model appears inaccessible for a large sector people with diminished capacity to make informed decisions. It is not viable for advocacy to take a secondary position in the safeguards framework. I consider advocacy to be key in a framework for... people with disability who have no prospect of becoming empowered consumers and have no family or friends to voice their best

interest.” (Reporting and investigation of allegations of abuse in the disability sector: Phase 1 June 2015 p 90)

The Revised NDAF should explicitly recognise the core role which advocacy plays in ensuring that people with disability are able to be empowered to be active engaged NDIS participants and confident and skilled consumers in the market.

Work is ongoing to establish a range of systems and practices related to delivery of the NDIS. Clearly of relevance to the Framework is the work on quality and safeguards and the development of the information linkages and capacity building (ILC) components of the scheme. Notwithstanding the Ombudsman’s comments above, as part of both of these, there is a fundamental role for advocacy, and the revised NDAF should explicitly acknowledge the contribution of disability advocacy to safeguarding and ILC.

As a safeguard, advocacy acts across the three domains:

- Developmental – involvement in advocacy increases a person’s understanding of their rights, understanding of their needs and ability to self-advocate in the future. All forms of advocacy act as developmental safeguards.
- Preventative – there is considerable case evidence that the presence of an advocate in a person’s life acts to prevent inappropriate actions by others. Advocates commonly report that when they engage on an issue, service providers and others change their position and are more likely to act in accordance with the will, preferences and rights of the person rather than against them.
- Corrective – individual advocacy is a powerful support for people who are seeking correction after an incident or quality failure. Advocates work with individuals and their service providers to understand what went wrong and identify and implement new practices to avoid further harm. In addition advocacy enables people with disability to seek redress, either through the police, through complaints mechanisms, or legal avenues as relevant. Engagement of advocacy organisations in systemic advocacy also acts as a corrective safeguard.

Advocacy is an integral part of the information linkages and capacity building tier of the NDIS. It contributes across each of the activities identified for this tier. Crucially, advocacy in this tier will be accessible to the millions of Australians with disability who are not going to become tier 3 participants but who may need advocacy support to access mainstream services and achieve their right to social and economic participation in the community. Advocacy in this tier can act to maintain and increase independence and wellbeing. It also acts as a prevention to people needing higher levels of support (including becoming a tier 3 participant) through resolving issues which have potential to have long term negative impacts on wellbeing (such as poverty, homelessness and abuse). Advocacy is an important source of information for people with disability, made even more valuable by the independence of the advocacy information being provided. Through training provided by independent advocacy services, including self advocacy groups, human rights training and capacity building training, people with disability develop

independence and skills which contribute to their social and economic participation, and active choice and control in their lives.

Each of the forms of disability advocacy described by the NDAF, has a role to play in the NDIS. The table below shows a representation of this.

	Individual	Self/peer	Citizen	Family/parent	Legal	Group	Systemic
Safeguard developmental	✓	✓	✓	✓			
Safeguard Preventative	✓	✓	✓	✓		✓	
Safeguard Corrective	✓	✓	✓	✓	✓	✓	✓
Quality improvement	✓	✓	✓	✓	✓	✓	✓
ILC	✓	✓	✓	✓		✓	

The revised NDAF should articulate the role that advocacy plays to ensure quality, to safeguard individuals and to provide information, linkages and capacity building for all Australians with disability.

A significant unresolved issue regarding NDIS and advocacy is the extent to which, if at all, independent advocacy will be funded through an individualized approach in NDIS packages. Some indication that advocacy activities will be funded in the NDIS has been provided by Disability Ministers:

“Advocacy

The Council agreed that the NDIS will fund decision support, safeguard supports and capacity building for participants, including support to approach and interact with disability supports and access mainstream services.

The Council agreed that systemic advocacy and legal review and representation will be funded outside of the NDIS. A review of key policy directions and principles in the National Disability Advocacy Framework, in light of the NDIS, will be informed by targeted consultations from April to July 2015, with a final report to the Disability Reform Council by December 2015.”

(Disability Reform Council Communique April 2015)

However the communique does not make it clear the extent to which these activities will occur in the ILC tier and/or in individualized funding. The Commonwealth has made a clear commitment to continuing to fund advocacy outside of the NDIS. However, existing Commonwealth advocacy funding represents only a proportion of advocacy funding across the country and demand for advocacy routinely outstrips supply. The States and Territories have variously declared their intention to continue to fund disability advocacy (or not) which has led to considerable uncertainty in the advocacy sector, but more importantly increased anxiety and

uncertainty for the many Australians with disability who use the advocacy services now under threat.

While the NDAF is not the best mechanism in which to articulate how disability advocacy funding will be provided, it is an appropriate vehicle to articulate the principles which should apply to the funding of disability advocacy. Work needs to be done on the adequate funding of, and funding mechanisms for, advocacy. Some of the following principles are already in the NDAF however they bear re-stating in the specific context of advocacy funding:

Funding for disability advocacy:

- must be independent of all service provision
- must be free from conflict of interest, actual, perceived or inherent
- must enable advocacy to be freely available to people who need it
- must ensure timely access to advocacy for urgent or time-sensitive matters

In the light of these principles a possible model for advocacy funding emerges.

Block funded advocacy outside of the NDIS must be available for a person of any age who experiences inequality or fewer freedoms than other Australians in accordance with the UNCRPD and must include individual, systemic advocacy and legal advocacy. This is reasonably a responsibility of both the Australian and State/territory governments. Advocacy related to any NDIS service issues should be funded through this mechanism to avoid any conflicts of interest.

NDIS ILC tier could fund advocacy for people who do not have packages that relate to improving wellbeing and minimising reliance on formal disability supports, recognising that one aim of the advocacy is to ensure the person can continue to be independent in the community. This should include funding for all types of independent advocacy. It could also fund self-advocacy support groups, human rights training, family advocacy support groups and other education and capacity building activities undertaken by independent advocacy organisations.

NDIS tier 3 packages could fund specific advocacy required for connection to disability and mainstream services, safeguarding and support for decision making, including independent, individual advocacy and citizen advocacy. There are many issues to be resolved, including how advocacy is included in the pricing structure, how estimates of advocacy hours are arrived at and who is able to register to provide independent advocacy.

Clearly, further work is required to fully describe the funding mechanisms and quantum of funding required for advocacy in the NDIS environment. ADACAS is keen to work with the Department and other stakeholders to progress this work.

The revised NDAF could usefully articulate the sources of funding for independent advocacy, including both NDIS and non – NDIS sources.

In relation to the specific questions posed in the NDAF discussion paper, ADACAS endorses the comments provided by the Disability Advocacy Network of Australia and Advocacy Tasmania.

Review of the NDAF has been cited in a number of places as a key step in resolving outstanding issues related to advocacy and the NDIS, including the development of ILC and quality and safeguards. Given the importance of this review process, ADACAS urges the Department to enable consultation on a revised draft of the Framework. The current process provides for input at this current point and then no further engagement with stakeholders until the new Framework has been endorsed by COAG. Such a process is not consistent with the co-design approach which has featured strongly in disability reform over the past few years, and is out of step with community expectation around engagement. The addition of a second consultation phase, which invites comment on the proposed draft Framework, will enable stakeholders to provide valuable additional input, both to improve the draft, and also to provide Ministers with an indication of support for the proposed Framework. While a public consultation phase would be ideal, should that be unachievable, providing a second opportunity to comment to those who have participated in this first phase of consultation may be a suitable compromise.

Thank you for the opportunity to participate in consultation on the National Disability Advocacy Framework. We would be pleased to continue to contribute to this important piece of work. Please contact me at manager@adacas.org.au or (02) 62425060 if I can be of further assistance.

Kind regards

Fiona May
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