

24 July 2015

Department of Social Services  
PO Box 7576  
Canberra Business Centre ACT 2610

Dear Sir/Madam

**National Disability Advocacy Framework – Review**

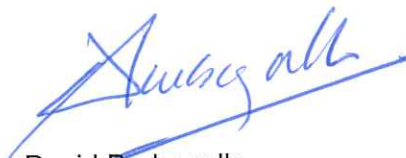
Thank-you for the opportunity to comment on the review of the National Disability Advocacy Framework. The Endeavour Foundation commends the Department of Social Services for its work in establishing a review into this framework that has a direct impact on Australians with a disability.

The Endeavour Foundation provides feedback in the attached submission. This submission is not intended to be a comprehensive review on all aspects of the National Disability Advocacy Framework. The submission focuses on key aspects of the framework that has direct relevance for the people we support.

We are happy for our submission to be published and would be pleased to continue our involvement through any community forums, consultations or conferences regarding the Issues Paper.

Thank-you for the opportunity to provide comment on the National Disability Advocacy Framework. Further enquiries should be directed to Simon Brown, Manager - Community & Advocacy Support Unit, on (07) 3896 6054

Yours faithfully,



David Barbagallo  
Chief Executive Officer  
**Endeavour Foundation**

**Endeavour Foundation**

**Submission to the Department of Social Services - National Disability Advocacy Framework**

**24 July 2015**

**Submission Title:** Submission to the Department of Social Services  
National Disability Advocacy Framework – Review

**Date:** 24 July 2015

**Author:** Simon Brown, Manager – Community & Advocacy Support Unit

**Approved by:** David Barbagallo, Chief Executive Officer  
Endeavour Foundation  
PO Box 3555  
Tingalpa DC QLD 4173  
Phone (07) 3908 7100  
Website: [www.endeavour.com.au](http://www.endeavour.com.au)  
ABN: 80 009 670 704  
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## Endeavour Foundation

Endeavour Foundation is an independent not-for-profit organisation supporting more than 3,300 people with a disability from more than 230 locations in Queensland, New South Wales, Victoria and South Australia.

We are one of Queensland's oldest charities, founded in 1951 when a group of parents joined together to provide an education for their children with a disability, unwilling to accept the limitations placed upon them by society.

Today, the Endeavour Foundation is a diverse community organisation providing person-centred support for people with a disability a part of the everyday community – through education, training and life skill development, employment, accommodation support, respite and recreation.

### Overview to Submission

The Endeavour Foundation broadly supports the National Disability Advocacy Framework (NDAF) but wishes to bring attention to particular issues and challenges faced by people with a disability who may be seeking advocacy support. In our view the current national framework:

- Requires a comprehensive definition of “*disability advocacy*”.
- Does not address that resourcing and accessibility can be uneven and gaps in service delivery can occur in particular regions.
- Should include that professional development is mandatory for funded advocacy organisations.
- Provide a mechanism for managing conflicts of interest.
- Mentions but does not establish a mechanism with service users and organisations that draws on their experiences as to how the disability advocacy frameworks actually operate.

This submission does not attempt to address all elements of the national framework. The goal of this paper is to highlight key issues as identified by the work the Endeavour Foundation engages in for the people we support. The Endeavour Foundation is happy to participate in any public forum in order to discuss the views articulated in this submission.

### Advocacy

The term “*disability advocacy*” requires greater clarification within the national framework. The Disability Reform Council has agreed that the National Disability Insurance Scheme (NDIS) would fund decision and safeguard supports as well as capacity building. These strategies can easily be applied to the work performed by advocates and healthcare professionals. For example, a support worker could routinely provide support for an individual to access greater services (community based or private provider) and promote an individual's decision to participate in a particular program. Such supports are important but do not necessarily correspond to

individual advocacy programs, which must be administered independently of service providers.

The definition also does not adequately address issues such as abuse, neglect, discrimination and problems in accessing accommodation for an individual with a disability. These are issues that can impact and be repeated on a person throughout their life. The NDAF needs to acknowledge that advocacy support is not always a one-off event and that long term supports are sometimes necessary for people with a disability.

The national framework should recognise that care coordination and case management can involve a degree of direct advocacy on behalf of a person with a disability. Alzheimer's Australia raised this issue in their submission to the Community Affairs Reference Committee's inquiry into residential care and young people with disabilities.<sup>1</sup> Alzheimer's Australia informed the Committee that their key worker program was in jeopardy as the funding for this service will be subsumed by the NDIS. In later evidence to the Committee Alzheimer's Australia stated that, *"there is not a place in the NDIS to fund that advocacy role in the same way that the key workers have been able to support people"*.<sup>2</sup>

In regards to the NDIS, advocacy is crucial in supporting and safeguarding a participant to access and navigate the scheme.<sup>3</sup> The Australian Guardianship and Administration Council (AGAC) also expressed concerns as to whether NDIA planners have the training and administrative supports necessary to adequately facilitate supported decision-making.<sup>4</sup>

*"Support with decision making is crucial if participants are to exercise choice and control within the NDIS"*.<sup>5</sup>

Under the Information, Linkages and Capacity-Building Framework (ILC), it is proposed that Local Area Coordinators (LACs) will engage in support for those individuals who are not eligible for assistance under the NDIS. Although not employed to be advocates, it is possible that LACs may be required to perform advocacy type functions, even though they are not trained or funded to do so. The ability to access independent advocacy and advice, for clients under the ILC framework, should be funded independently of the NDIS.

People with a disability should be allowed to make decisions that affect their lives. Any framework for advocacy support should uphold this objective and not rely on the default option of the appointment of a formal guardian. This means that the framework should allow for strategies and safeguards that assess when a person has impaired capacity and then encourage the use of supports to assist the individual in self-

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<sup>1</sup> Community Affairs Reference Committee (June 2015), *Adequacy of Existing Residential Care Arrangements Available for Young People with Severe Physical, Mental or Intellectual Disabilities in Australia*, Senate Standing Committee on Community Affairs, Canberra at 74.

<sup>2</sup> Ibid.

<sup>3</sup> Australian Guardianship and Administration Council (April 2015), Submission to the Australian Government Department of Social Services. *Consultation Paper: Proposal for a National Disability Insurance Scheme Quality and Framework*. Australian Guardianship and Administration Council, Canberra at 17.

<sup>4</sup> Ibid at 11.

<sup>5</sup> Ibid.

advocating or accessing independent advice. The appointment of a statutory guardian should only be seen as the last resort.

The Australian Law Reform Commission (ALRC) recognised that there is probably no reason why individual advocates or advocacy organisations should not be appointed as a person's supporter, under the NDIS.<sup>6</sup> The NDFA should encompass an individual's right to appoint or revoke a supporter (or advocate) at any time. The issue that may require further consideration is whether funding for such roles is appropriate within an individual's support package or whether advocacy support should be provided separately by the National Disability Insurance Agency (NDIA) or government funded program (e.g. agencies funded via the National Disability Advocacy Program).

### Who Should Advocate?

It is acknowledged that some people with a disability may have problems in raising concerns about a number of matters, including service provision, abuse, neglect and financial exploitation. Family and caregivers can provide vital assistance in accessing information and supporting the person in articulating their concerns and dissatisfaction. Whilst having such networks is beneficial to the individual, it should be recognised that not all people with a disability have such supports.

The NDFA stipulates that independent advocacy support is free from conflict of interest. Whilst the Endeavour Foundation supports this goal it may be that a conflict of interest is unavoidable in some circumstances. For example, if a family member is providing informal support or a person lives in a region where there are limited advocacy services available.

The role of a carer or family member should be included in the national framework as one of the necessary supports that an individual may need in making decisions that affect their lives.

The Australian Government Productivity Commission report into *Caring for Older Australians*<sup>7</sup> identified the need for independent advocacy. The Commission did acknowledge however, that the majority of advocacy performed for older people was carried out informally and by carers or family members.

When considering Australia's obligations under the United Nations *Convention on the Rights of Persons with Disabilities*,<sup>8</sup> people with a disability need to be provided with appropriate opportunity and support in order to assist them in accessing information and making decisions. Endeavour Foundation shares the views of the Public Guardian of Queensland in that persons with impaired capacity should have access to independent advocacy supports that can safeguard the needs of the individual.<sup>9</sup>

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<sup>6</sup> Australian Law Reform Commission (2014), *Equality, Capacity and Disability in Commonwealth Laws*, Report No.124, Final Report, Canberra at 139.

<sup>7</sup> Productivity Commission (2011), *Caring for Older Australians* (Vol 2), Report No.53, Final Inquiry Report, Canberra at 165.

<sup>8</sup> *Convention on the Rights of Persons with Disabilities*, preamble (o).

<sup>9</sup> Office of the Public Guardian (Queensland) (2015), Submission to the Australian Government Department of Social Services. *Consultation Paper: Proposal for a National Disability Insurance Scheme Quality and Framework*, Office of the Public Guardian, Brisbane.

Federal and State legislation, in a number of jurisdictions, already acknowledges the role carers and family play in the lives of people they support.<sup>10</sup> As the Public Advocate in Queensland has identified, supporters can assist individuals by:

- Accessing and understanding information about the outcomes they want from their service provider, what constitutes abuse and neglect, and how to make a complaint; and
- Assisting the person to voice their dissatisfaction or complaint.<sup>11</sup>

It may be the case that a service provider can advocate for matters outside of the scope of their service delivery or the NDIS. If, for example, an organisation provides respite services then it may be possible for that agency to provide advocacy in regards to a client's transport, education or health needs. The NDFA should allow for the declaration and management of a conflict of interest in the limited circumstances where there is no other appropriate support available.

The issue of impartiality is another important feature that must be part of the national framework. For example, an independent paid advocate will often use a Social Model framework for practice. Their advocacy is ideologically based in the notion of social inclusion. This may, however, differ to the aims of a family member who is advocating for the rights and best outcome that is suited to the individual. It is possible that ideologically driven advocacy may conflict with the best outcomes for an individual, as promoted by family members or carers.

An example of where the social inclusion model is having unexpected consequences is in the current systemic advocacy initiative involving the wage packages within Australian Disability Enterprises (ADEs). In this matter advocates are lobbying for equality in wages for all workers with a disability. Whilst the overall aims of this advocacy is positive, there is a real possibility in that achieving such goals the outcome will also be that some ADEs will close and supported employees will lose their positions. If this eventuates then there is the potential that 20,000 people<sup>12</sup> will be added to the existing 500,000 individual's with a disability, who are unemployed and unable to find work in Australia. Such an example demonstrates that advocacy cannot be driven by ideology alone and that effective, beneficial advocacy must have consideration to the practical outcomes in order to provide people with disability greater opportunities on a daily basis.

### **The Quality and Resourcing of Advocacy Services**

The provision of disability advocacy services should be of a high quality. This presupposes that such services are adequately funded to ensure that advocates are well trained. As the Public Advocate in Queensland has identified, advocates may

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<sup>10</sup> *Carer Recognition Act 2010* (Cth); *Carers (Recognition) Act 2008* (Qld); *Carers Recognition Act 2012* (Vic); *Carers Recognition Act 2009* (NT); *Carers Recognition Act 2010* (NSW); *Carers Recognition Act 2005* (SA); *Carers Recognition Act 2004* (WA).

<sup>11</sup> Office of the Public Advocate (Queensland) (June 2015), Submission to the Senate Standing Committee on Community Affairs: *Violence, Abuse and Neglect against People with a Disability in Institutional and Residential Settings*, Office of the Public Advocate, Brisbane at 18.

<sup>12</sup> Department of Families, Housing, Community Services and Indigenous Affairs (July 2013), *The Future of Wage Setting in Supported Employment*, Australian Government, Canberra.

have specialist knowledge and skills that assist an individual in navigating the legal and support systems that are relevant to the disability sector.<sup>13</sup>

Specialist knowledge alone is not sufficient in ensuring an appropriate level of professional advocacy. Organisations need to be adequately resourced in order to meet client demand across urban, regional, rural and remote areas. Funding for advocacy programs, for people with a disability, is currently insufficient.<sup>14</sup> The Disability Advocacy Network of Australia has noted that advocates and advocacy organisations in NDIS trial sites have experienced an increased in requests for assistance that has not been reflected in increased funding.<sup>15</sup>

There is also a need for appropriate oversight of the support and programs offered by disability advocacy services. Evidenced based practices need to be transparent and measurable for funding purposes and to ensure that independent advocacy is afforded to people with a disability, some of whom may be the most vulnerable members of our community.

The NDFA should not only operate under relevant Commonwealth, State and Territory laws, it should promote that there needs to be a statutory right to advocacy in all Australian jurisdictions.<sup>16</sup> This must be backed by appropriately funded independent advocacy support for people with a disability and their carers.

The national framework should be reviewed within a regular time-frame. This may be particularly important as the NDIS becomes operational throughout Australia. It is possible that issues not currently covered by the existing framework may arise and a means of continuous review and improvement is necessary. As the sector develops it will be important that the framework is flexible enough to meet the challenges of the advocacy sector as well as the needs for people with a disability.

## Summary

It takes more than adequate funding and frameworks to deliver access to effective advocacy to members of the community. The NDFA needs to consider the structures and organisations that currently administer advocacy programs and how these services are accessed by those who require such support.

The national framework should also promote a consistent and coordinated approach to delivering advocacy that will negate the duplication of services and identify gaps in the system. This approach may be crucial with the national implementation of the NDIS and the increased need for advocacy support when navigating this system.

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<sup>13</sup> Office of the Public Advocate (Queensland) (June 2015), Submission to the Senate Standing Committee on Community Affairs: *Violence, Abuse and Neglect against People with a Disability in Institutional and Residential Settings*, Office of the Public Advocate, Brisbane at 19.

<sup>14</sup> Ibid.

Also Note: Community Affairs Reference Committee (June 2015), *Adequacy of Existing Residential Care Arrangements Available for Young People with Severe Physical, Mental or Intellectual Disabilities in Australia*, Senate Standing Committee on Community Affairs, Canberra at 74.

<sup>15</sup> Community Affairs Reference Committee (June 2015), *Adequacy of Existing Residential Care Arrangements Available for Young People with Severe Physical, Mental or Intellectual Disabilities in Australia*, Senate Standing Committee on Community Affairs, Canberra at 75.

<sup>16</sup> Note the legislative right to advocacy in the s.67(2) *Care Act 2014* (Eng) and s.259(1) *Mental Health (Care and Treatment) (Scotland) Act 2003*. Also note the legislative aim in s.32 *Disability Services Act 2006* (Qld).

It is the view of the Endeavour Foundation that under the NDIS, there will be an increased need for individual and systems advocacy for people with a disability. Direct advocacy will assist the individual in accessing services, capacity building, upholding human rights, dealing with complaints and promoting self-directed goals. Systems advocacy will continue to play a vital role in monitoring how legalisation, policies and practices operate and impact on people with a disability. Any increased demand for such advocacy services will need to be accompanied by an increase in resources that will allow for greater and targeted service provision.