

Submission on the Review of the National Disability Advocacy Framework

July 2015

Our role in relation to services and supports for people with disability

Under the NSW *Community Services (Complaints, Reviews and Monitoring) Act 1993*, the responsibilities of our office include a range of key functions targeted at improving the delivery of services to people with disability in NSW, including:

- receiving and resolving complaints about disability services, and assisting people with disability to make complaints
- reviewing the pattern and causes of complaints about disability services, and making recommendations to improve how services handle and resolve complaints
- monitoring and reviewing the delivery of disability services, and making recommendations for improvement
- inquiring into matters affecting people with disability and disability services, and reviewing the situation of people with disability in residential care
- reviewing the causes and patterns of the deaths of people with disability in residential care, and making recommendations to reduce preventable deaths
- overseeing and coordinating the Official Community Visitor scheme, and
- promoting access to advocacy support for people with disability to ensure adequate participation in decision making about the services they receive.

Since 3 December 2014, our office has also had responsibility for the disability reportable incident scheme, comprising the mandatory reporting and oversight of the handling of serious incidents – including abuse and neglect – involving people with disability in supported group accommodation.

All of our functions apply to the NDIS trial and launch sites in NSW.

The need for a strong disability advocacy framework

In our experience, individual and systemic advocacy supports play a vital role in relation to people with disability, their families, and other supporters. The availability of advocacy supports is fundamental to enabling people with disability to maximise choice and control over their supports, gain and maintain independence, and achieve genuine social and economic inclusion. Among other things, advocates play a crucial role in:

- supporting people with disability to make their own decisions
- providing key information to people with disability and their supporters, at the time that they need it, in ways that work for them
- supporting people with disability and their supporters to navigate specialist disability support and mainstream service systems
- identifying and reporting potential abuse or exploitation of people with disability
- helping and empowering people with disability to speak up about abuse, neglect or exploitation, and
- providing timely assistance to resolve emerging issues with support providers, and urgent help at times of crisis.

It is vital that there is a strong advocacy framework for the provision of timely, accessible, independent and ongoing decision-making and other support for NDIS participants and other people with disability, particularly for those without family or friends. Considering the significant changes to the way disability support is accessed and provided under the NDIS, it is essential that individual advocacy continues to be available for people with disability (and their supporters) to access as required.

Our office has consistently seen the benefit of individual advocacy for people with disability, particularly for people who do not have informal support networks, or where the person and their informal networks need support to make decisions, or to raise and resolve concerns locally and at an early point. Advocates have been effective in bringing serious individual and systemic matters to our attention on behalf of people with disability. In particular, advocates have played a critical role in alerting us to individuals with disability at substantial risk due to:

- abuse, neglect and exploitation – including physical, sexual and financial abuse; misuse of restrictive practices; and failure to act on serious health issues
- poor quality or inadequate disability or health support, and
- significant isolation from the community and supporters.

It is important to recognise that, without the involvement of advocates (and other independent persons such as Official Community Visitors) many of these matters would not have been brought to our attention.

It is also worth noting that the need for individual and systemic advocacy for people with disability extends beyond specialist disability supports. Advocates have alerted us to significant individual and systemic issues relating to mainstream services such as health, education and justice.

The National Disability Advocacy Framework and the NDIS

In our view, the current definitions, objectives, principles, outcomes and outputs of the Framework are relevant, appropriate, and well-aligned to the principles and goals of the NDIS, including supporting people with disability to participate in, and contribute to, social and economic life, and having greater choice and control over their lives.

We note that ‘key policy directions’ identified in the current framework include:

- improving the data collection for disability advocacy
- working towards outcome based reporting and evaluation of the disability advocacy sector to enhance transparency and accountability, and
- the use of evidence based data for administration and planning of disability advocacy.

We support a focus and concerted action on the above areas. It is important that there is clarity and national consistency in how the quality and outcomes of advocacy support are measured and reported.

In relation to the NDIS, there is a need to ensure that effective mechanisms for referral to advocacy support are built into, and promoted as part of, the operation of the scheme, including:

- proactive and mandatory consideration by NDIA planners of the decision-making and/or advocacy support required by participants at pre-planning, planning and review meetings, and in relation to ongoing key decisions
- requests/referral by people with disability and their families/ other supporters
- prompts or referrals by other individuals in contact with the person – such as Local Area Coordinators, Community Visitors, support providers and the independent oversight body, and
- in emergency or crisis situations, such as where a person with disability is in contact with police, or is in danger of losing a support service or accommodation.

However, it is important to recognise that advocacy support is vital for people with disability more broadly – not only participants in the NDIS. There is a need to ensure that independent advocacy support is available and accessible for people with disability who are applying for the NDIS (and navigating the application process); people with disability who have been found ineligible for the NDIS; and those who have been deemed eligible for early intervention support only.

As part of the National Disability Advocacy Framework, concerted work is needed to improve the availability of, and facilitate access to, advocacy support around Australia, including regional and remote areas. On a separate but related note, it is imperative that there is adequate provision of culturally appropriate advocacy support. We support the inclusion in the Framework's principles of advocacy that 'recognises and respects the diversity of people with disability'. However, we consider that there would be merit in considering the inclusion of more specific principles relating to culturally appropriate advocacy support (with action to facilitate access, for example, to Aboriginal advocates for Aboriginal people with disability).

Funding arrangements

We note that the COAG Disability Reform Council has agreed that decision supports, safeguard supports, and capacity-building for participants will be funded as part of the NDIS; and that systemic advocacy and legal review and representation will be funded outside the NDIS.

In relation to funding, we would emphasise that independent advocacy is also required in relation to people with disability who do not meet the eligibility criteria of the NDIS, and in respect to mainstream services (and their obligations under the UN Convention and the National Disability Strategy). In our view, there is a strong case for block-funding independent advocacy support, noting:

- the need for access to advocacy support outside of the NDIS
- the potential for individual advocacy support under the NDIS to be deemed not 'reasonable and necessary', depending on the person's presentation at the time of developing the plan, and
- the need for people with disability to access advocacy support on a regular basis, and also at times of crisis.

The launch of the NDIS provides a valuable opportunity to consider the funding, and necessary role and scope of advocacy in the new environment. In this regard, it is worth noting the model of independent advocacy and assistance provided under New

Zealand's National Health and Disability Services Advocacy Service, which provides a combined visiting, advocacy and complaints approach (outlined in Part 3 of the NZ *Health and Disability Commissioner Act 1994*). Importantly, the model – and the involvement of the Health and Disability Commissioner's office – enables independence of the advocacy supports, and removes the potential for conflict of interest on the part of the government agencies providing the funding.

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