

# NSW DISABILITY NETWORK FORUM

## Submission into the Review of the National Disability Advocacy Program

21 June 2016

## About the NSW Disability Network Forum

Initiated in June 2011, the NSW Disability Network Forum (DNF) comprises non-government, non-provider peak representative, advocacy and information groups whose primary aim is to promote the interests of people with disability. The aim of the NSW Disability Network Forum is to build capacity within and across all organisations and groups so that the interests of people with disability are advanced through policy and systemic advocacy. The Council of Social Service of NSW (NCOSS) provides secretariat support to the DNF.

### NSW Disability Network Forum Member Organisations:

Aboriginal Disability Network NSW	Multicultural Disability Advocacy Association of NSW
Association of Blind Citizens of NSW	Being Mental Health and Wellbeing Consumer Advisory Group
Synapse (Brain Injury Association NSW)	NSW Council for Intellectual Disability
Deaf Australia NSW	NSW Disability Advocacy Network
Deaf Society of NSW	People with Disability Australia
DeafBlind Association NSW	Physical Disability Council of NSW
Deafness Council (NSW)	Positive Life NSW
Information on Disability and Education Awareness Services (IDEAS) NSW	Self Advocacy Sydney
Institute For Family Advocacy	Side By Side Advocacy Incorporated
Intellectual Disability Rights Service	Council of Social Service of NSW

## Summary of recommendations

1. That the Australian Government:
  - increase funding under the NDAP in recognition of the increased demand for advocacy in the NDIS environment and the redirection of state advocacy funding to non-advocacy activities; and
  - ensure current levels of funding for advocacy in NSW are not reduced in the transition to the NDIS, and are also able to respond to unmet need.
2. That the allocation of NDAP funds occurs via a select tender process open to organisations experienced at delivering disability advocacy.
3. That organisations allocated NDAP funds are independent of service provision.
4. That NDAP contracts be drafted flexibly, enabling organisations to be responsive to need, rather than being constrained by particular 'deliverables'.
5. That systemic information sharing and collaborative action be listed in an organisation's Key Performance Indicators.
6. That the NDAP fund a peak advocacy body to undertake functions such as highlighting opportunities for systemic change and working towards this change, recording emerging trends

and linking into and commissioning research on best practice that will benefit people with disability.

7. That gaps in the services provided by NDAP and the NDIS be identified via collaboration between Governments, advocacy organisations and people with disability.
8. That the NDAP fund legal advocacy at levels that ensure the rights of people with disability are upheld in all areas of their lives including with reference to support at police stations and courts, decisions about access to the NDIS and where they are at risk of and/or have been victims of abuse and neglect.

## **Introduction**

The DNF welcomes the opportunity to provide input into the review of the National Disability Advocacy Program (NDAP). We would like to see the NDAP facilitating a strong and independent advocacy sector, which is able to be responsive to individuals' needs while also addressing systemic issues.

This submission:

- highlights the importance of expanding the NDAP; in the context of the need for advocacy increasing as individuals experience enhanced choice and control under the NDIS, while current NSW advocacy funding will be directed to non-advocacy activities;
- emphasises that advocacy organisations should be funded under NDAP to provide flexible responsive service, with systemic information sharing and collaboration listed as Key Performance Indicators;
- argues that a collaborative approach should be taken to identifying gaps in supports provided by the NDIS and NDAP; and
- identifies important aspects of legal review - support at police stations and courts, continuation of support to appeal NDIS access decisions and legal assistance to victims of abuse and neglect.

## **Increased role and importance of the NDAP in the current policy environment**

The review of NDAP needs to be considered in the context of uncertainty of advocacy funding, which is particularly pertinent in NSW.

The NSW Government has committed to handing over 100% of the funds it currently directs to disability to the Commonwealth National Disability Insurance Agency (NDIA) by 2018. This includes the approximately \$10 million p.a. to services that provide disability advocacy, information and representation. As this money is likely to be directed to NDIS participants' individual supports rather than advocacy services, people with disability in NSW will experience an immediate gap in their access to advocacy and information.

The introduction of the NDIS will be accompanied by an increased need for advocacy. As people with disability experience greater choice and control and deeper interaction with mainstream services, they are likely to experience barriers which highlight systemic issues to be addressed. Advocacy is also critical to the success of components of the NDIS, particularly the Quality and Safeguarding Framework, which is still in development.

As the DNF noted in its submission to the National Disability Advocacy Framework last year,<sup>1</sup> the Senate Standing Committee on Community Affairs (Committee) recommended that all people with disability under 65 in residential care, or at risk of entering residential care be assigned an advocate to help them explore alternative options.<sup>2</sup> Of late, we have also seen advocates call the Federal Government to account for its failure to commit to a royal commission into the violence, abuse and neglect against people with disability in institutional and residential settings (as also recommended by the Committee).<sup>3</sup> In the Committee's report into the abuse of people with disability in institutional and residential care, States and Territories were urged not to reduce advocacy funding with the rollout of the NDIS.<sup>4</sup>

The above demonstrates the importance of additional resources being invested in the NDAP if advocacy is to meet the increased demand, continue to safeguard people with disability and provide an early warning system to Governments. A division of current funds among more organisations will not address the issue of increasing unmet demand for advocacy services.

#### **Recommendation 1**

That the Australian Government:

- increase funding under the NDAP in recognition of the increased demand for advocacy in the NDIS environment and the redirection of state advocacy funding to non-advocacy activities; and
- ensure current levels of funding for advocacy in NSW are not reduced in the transition to the NDIS, and are also able to respond to unmet need.

The DNF recommends a select tender process open to organisations experienced at delivering advocacy is the appropriate way for NDAP funds to be allocated. In light of the loss of funding in NSW, it is particularly important that the organisations not currently receiving NDAP funding are able to tender for it. Organisations not currently receiving funding under the NDAP are most vulnerable from the loss of NSW funding. While acknowledging that some of these organisations may receive funding under the Information, Linkages and Capacity Building (ILC) stream of the NDIS, providing the opportunity to access alternative funding source is most likely to prevent specific expertise, such as self advocacy and systemic advocacy, from being lost in transition to the NDIS.

When allocating NDAP funds, it is crucial that advocacy be independent of service provision. Independent advocates ensure that people with disability can receive impartial assistance to navigate their supports and hold service providers to account.

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<sup>1</sup> NSW Disability Network Forum (2015), [Submission to National Disability Advocacy Framework](#).

<sup>2</sup> Australian Senate, (2015) *Adequacy of existing residential care arrangements available for young people with severe physical, mental or intellectual disabilities in Australia*, Senate Printing Unit, Canberra, p. 104.

<sup>3</sup> Australian Senate, (2015) [Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability](#).

<sup>4</sup> Ibid, recommendation 15.

**Recommendation 2**

That the allocation of NDAP funds occurs via a select tender process open to organisations experienced at delivering advocacy.

**Recommendation 3**

That organisations allocated NDAP funds for advocacy are independent of service provision.

**Modes of advocacy under the NDAP should be flexible and promote information sharing**

The DNF agrees with the comments in the discussion paper that each person's advocacy should be tailored to their individual needs. Many of our member have expertise in a particular model of advocacy, and have gained a reputation for delivering specialised and localised support. Advocacy centred on the person could be facilitated by drafting NDAP contracts flexibly, enabling organisations to reach outcomes by being responsive to need, rather than being constrained by particular 'deliverables'. Flexible funding recognises:

- the interplay between individual and systemic advocacy, whereby systemic issues emerge from the cumulation of individual obstacles, and in turn inform future responses to individuals; and
  - the fact that an individual in crisis may simultaneously require more than one form of advocacy.
- Some organisations may need to collaborate to ensure people with disability benefit from a breadth and depth of expertise.

The focus on outcomes in the NDIS and ILC further suggests the focus should be on assisting the person, not providing a particular model of advocacy.

**Recommendation 4**

That NDAP contracts be drafted flexibly, enabling organisations to reach outcomes by being responsive to need, rather than being constrained by particular 'deliverables'.

Flexible funding would facilitate organisations participating in systemic information sharing forums, identifying and closing gaps and working together to address issues, as identified in Question 3 of the discussion paper. These forums already operate; for example the NSW Ombudsman coordinates the Community Living Forum, which informs organisations about the devolution of Large Residential Centres. These forums are also a space for speciality organisations to input into generally focused work so specific communities, such as Aboriginal and Torres Strait Islander (Aboriginal) and culturally and linguistically diverse (CALD) people, are not left out.

With a reduction in funding, organisations are becoming increasingly unlikely to attend a range of fora. This means the needs of specific and/or isolated communities are not known or responded to in appropriate ways. Consequently these communities are rendered more vulnerable to lower quality outcomes from disability reform and are more susceptible to disadvantage in a range of everyday areas.

Listing systemic information sharing and collaborative action in an organisation's Key Performance Indicators would encourage these activities to be prioritised, avoiding negative systemic outcomes.

### ***Recommendation 5***

That systemic information sharing and collaborative action be listed in an organisation's Key Performance Indicators.

The DNF also supports the funding of a peak advocacy body to highlight opportunities for systemic change and working towards this change, record emerging trends and link into and commission research on best practice that will benefit people with disability.

### ***Recommendation 6***

That the NDAP fund a peak advocacy body to undertake functions such as highlighting opportunities for systemic change and working towards this change, recording emerging trends and linking into and commissioning research on best practice that will benefit people with disability.

## **Improving access to advocacy supports**

The following strategies can assist to ensure that the vulnerable groups of people with disability have equal access to advocacy supports:

- It is particularly important that organisations working with people with disability from Aboriginal and CALD backgrounds have the trust of the community. To enhance this trust, the NDAP should fund Aboriginal and CALD controlled organisations, such as the First Peoples Disability Network and the Multicultural Disability Advocacy Association. Funding levels should recognise that organisations working with these communities may need to provide more intensive 'case management' style support than generalist services.
- To ensure choice, control and inclusiveness, all organisations funded under the NDAP should be required to demonstrate strategies for working cross-culturally in their areas. This may include partnerships, cultural competency training or other functions.
- In terms of reaching people in rural and remote areas, the NDAP needs to recognise the additional costs of providing services in these areas. Funding levels need to allow for quality service provision within these environments so that additional operational costs do not detract from the quality provided.
- Targeted outreach will be required to engage with people who are socially or geographically isolated. This outreach should be adequately resourced. For example, the concepts of choice, control and rights may have to be introduced at an appropriate pace to people who have lived in institutions for long periods.
- Resources should be provided to ensure that communication needs in all circumstance can be met. This may require the provision of materials in plain English or interpreting support. This can involve intensive resourcing; for example, people who are deafblind and communicate using "Hand Over Sign" need the assistance of three people.

To reach these vulnerable groups, face to face connections are far more effective than online platforms.

## **A collaborative approach to identifying service gaps**

The DNF believes that gaps in the services provided by the NDAP and the NDIS are best identified via collaboration between Governments, advocacy organisations and people with disability.

Service gaps should be identified based on the unmet needs of people with disability. The DNF suggests that to assist in identifying gaps, the NDIA and the Department of Social Services should conduct an advocacy needs analysis. People with disability should be consulted about their unmet needs and funded organisations should be asked to identify gaps in their area of work. Collating this information could create a more full picture of perceived service gaps, which could be combined with other sources of information about emerging need, for example NDIS participant's plans.

#### **Recommendation 7**

That gaps in the services provided by NDAP and the NDIS be identified via collaboration between Governments, advocacy organisations and people with disability.

## **Legal advocacy and review**

Legal advocacy and review is important to people with disability, whom the NSW Law and Justice Foundation found were more likely to experience both more complex legal needs, and a greater number of them.<sup>5</sup> The importance of NDAP funding legal advocacy is magnified in light of recent cuts to Legal Aid around Australia.<sup>6</sup> Legal Aid is a major source of funding for community legal centres, including the Australian Centre for Disability Law. If funding does not align with need, the rights of people with disability will continue to be undermined. This means they will continue to be over-represented in groups experiencing disadvantage which is unacceptable. The DNF highlights three important examples of legal advocacy and review.

### **Support at Court and police stations**

It is well known that people with intellectual disability are over-represented in the criminal justice system. A major barrier to accessing justice is lack of understanding of legal processes. To overcome this barrier, people with intellectual disability benefit from advocacy support in legal processes such as police interviews, courts and meeting court imposed conditions.

An example of a court based advocacy service in NSW is the Criminal Justice Support Network run by the Intellectual Disability Rights Service (IDRS). This service supports 500 people per year in police stations and court proceedings, assisting them to avoid custodial sentences that are unlikely to have deterrent or rehabilitative effects. Such court support programs should be appropriately funded by the NDAP.

### **Appealing NDIS access decisions**

It is important that people with disability be assisted to appeal decisions about access to the NDIS, as this is part of fully exercising their rights. The NDAP currently funds one organisation in each NDIS trial site to assist with the external merits review.<sup>7</sup> The needs analysis noted above should explore

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<sup>5</sup> Coumarelos, C and Wei, Z (2009), "[The legal needs of people with different types of chronic illness or disability](#)", Justice issues paper 11, Law and Justice Foundation of NSW, Sydney.

<sup>6</sup> See Timms, P (2016) "[Legal Aid Matters: Lack of government funding 'destroying lives', Law Council says](#)"

<sup>7</sup> National Disability Insurance Agency, *Operational Guideline – Review of Decisions – Representing the National Disability Insurance Agency at the Administrative Appeals Tribunal*, at [17].

whether resources will be adequate once the NDIS has been fully implemented.

The DNF argues that it is important that this service continue. As access to the NDIS will have a major impact on the life of a person with disability, advocacy support in the appeal is both just and cost effective.

### **Support to people with disability who have been abused**

People with disability who have been victims of abuse and neglect are extremely vulnerable. As highlighted earlier in this submission, they may not be aware of their rights, and will need assistance to exercise them. Victims of abuse should be a priority for NDAP funded legal assistance. Such assistance is an important component of a suite of advocacy options for abuse victims recommended by the Senate Committee; having the potential to deliver compensation and a formal recognition of wrongdoing.

#### ***Recommendation 8***

That the NDAP fund legal advocacy at levels that ensure the rights of people with disability are upheld in all areas of their lives including with reference to support at police stations and courts, decisions about access to the NDIS and where they are at risk of and/or have been victims of abuse and neglect.