



7 June 2016

Department of Social Services
GPO Box 9820
Canberra 2601 ACT.

To Whom It May Concern

Re: National Disability Advocacy Program Review

Victoria's Office of the Public Advocate (OPA) welcomes this opportunity to comment on the review of the National Disability Advocacy Program (NDAP).

OPA is an independent statutory body and a guardian of last resort with legislative powers under the Victorian *Guardianship and Administration Act 1986*. It is dedicated to safeguarding and promoting the rights and interests of Victorians with a cognitive impairment or mental illness, working to eliminate abuse, neglect and exploitation.

OPA provides a number of services to work towards these goals, including the provision of guardianship, investigation and advocacy services to people with cognitive impairments or mental illness. In the last financial year, OPA was involved in 1511 guardianship matters, 438 investigations and 381 advocacy matters. OPA coordinates the Community Guardianship Program, the Community Visitors Program and the Independent Third Person Program (ITP), providing support to over 900 volunteers and undertaking over five thousand Community Visitor visits and almost three thousand ITP interviews in the last financial year. OPA plays a role in community education, the provision of advice and information and undertakes research, policy development and systemic advocacy.

The scope of OPA's response to the discussion paper is limited to areas in which OPA has most expertise. These areas include models of advocacy, coordination of advocacy, interface with the NDIS and access to advocacy.

1. Models of Advocacy

How do we value and support the various models of advocacy while ensuring equitable access to individualised, fit-for-purpose advocacy, regardless of location?

OPA supports the retention of a range of advocacy models in the new disability landscape and encourages the Department of Social Services to ensure that no gaps emerge in the transition to the NDIS. These models include individual advocacy, systemic advocacy, family advocacy, citizen advocacy, self advocacy and legal advocacy. All of these models are valuable because different advocacy situations may require different types of advocacy expertise. The range of models of advocacy need to be retained to ensure that that variety of advocacy expertise remains available.

The different advocacy models complement each other as the same individual may need to access different types of advocacy over time. OPA would like to see the disability advocacy sector remain strong, focused and provided with appropriate funding.

Specialist models, such as individual advocacy or systems advocacy or any of the other models of advocacy add value because of the particular knowledge and expertise

acquired by their proponents. They can deploy this knowledge and expertise more effectively than can generalist organisations that may lose focus and become overwhelmed by having to understand and operate in widely divergent systems and areas of need.

Effective advocacy requires commitment and genuine reference to people with disability. People with disability should play a strong role in the governance and day-to-day operation of community advocacy organisations. Advocacy organisations should be resourced to play a role in systemic advocacy, based on issues emerging in their individual advocacy.

Availability of services/access

OPA is aware that in some regions people are unable to access an independent advocacy service of any kind. One of the reasons for the lack of access to advocacy is that the spread and reach of advocacy services is not uniform across the country. As such, some people with disability find that the model of advocacy they need is not available. OPA would like the NDAP to fund advocacy at a level that would enable the range of advocacy models to be funded across Australia. Advocacy services should be available to people no matter where they live.

The advocacy sector has previously discussed government proposals concerning organising generalist advocacy services around a 'hub and spokes' model. Under this model, the hub would be in one place and establish outlying services (spokes) in regional areas. OPA has concerns about this model because there are times when one person with disability will need advocacy to deal with a conflict against another person with disability. Only having one service available for that region would create a conflict of interest. Thus, there needs to be at least two services in each region.

While OPA acknowledges that in some areas of Australia, limited advocacy options are available, OPA does not agree with the discussion paper's suggested way forward: 'A better situation would be that advocacy support is available in all locations to assist individuals with disability address their specific issues and needs' if what is meant by this is a one-stop shop.

OPA is concerned that this focus on providing all types of advocacy under one roof could create a 'one-size fits all' or 'one-stop shop' approach, which will dilute the quantity and quality of the advocacy provided. Providing more opportunities for advocacy organisations to engage in consultations with other organisations increases the expertise available to meet specific needs.

OPA routinely refers people with disability to community-based advocacy organisations. Each agency in Victoria has a clear mandate and cooperative arrangements with the other Victorian agencies. Equitable access will be enhanced through adequate funding support, referral, collaboration and the availability of secondary consultation. The utilisation of appropriate and accessible technological services, for example, Skype, can facilitate access to advocacy support when face-to-face contact is not possible.

Models in the NDIS context

Advocacy is a crucial support to enable NDIS participants to access, navigate and benefit from the NDIS. Many prospective participants have never had the opportunity to exercise choice and control over the services they wish to access. While advocacy relating to

safeguards should remain separate from the scheme, in practice, advocacy will perform a quality assurance and a safeguarding role within the scheme.

OPA understands that NDAP is not proposing to fund advocacy services relating to NDIS decision-making support and that this service will be funded by the NDIS. OPA would like to reiterate the point made in consultations held around the Information, Linkages and Capacity (ILC) framework, about the importance of individual advocacy relating to issues emerging from NDIS access and service provision being independent from NDIS service provision.

The demand for advocacy has significantly increased in the NDIS Barwon region trial site and as the NDIS rolls out across Australia the demand for advocacy will also increase. The increase in demand for advocacy will require an increase in funding to meet that increased need.

Funding models

Block funding of advocacy services is contrary to the market philosophy of the NDIS. Once the NDIS model is in operation, people with disability will be able to receive funding in their plans to purchase advocacy services. However, under the NDIS model, there will still need to be some level of block funding for advocacy services. Otherwise, OPA believes that advocacy organisations working in a regional areas will not have sufficient financial resources to maintain services. Related to this, any existing advocacy services will be unlikely to have the requisite infrastructure to expand services into new areas.

3. Improving the advocacy evidence base and coordination on systemic issues

How can we help disability advocacy organisations work with a wide range of other organisations with similar aims?

OPA's experience is that the community advocacy sector works effectively with a range of other organisations with similar aims. OPA has regular contact with, and collaborates with, community disability advocacy organisations on projects of mutual interest. Some examples are Women with Disabilities Victoria on the Voices against Violence project, and OPA's partnership with the Victorian Advocacy League for Individuals with a Disability on the OVAL supported decision-making project. OPA is also a non-voting member of the Victorian body for disability advocacy groups, Disability Advocacy Victoria.

The funding agreements of community advocacy organisations, however, do not adequately support this type of collaborative work, as the focus of agreements is on individualised outcomes. Networking is a legitimate and essential activity that should be recognised. In Victoria, the Disability Advocacy Resource Unit and the Self-Advocacy Resource Unit promote networking, collaboration and effective advocacy practice. Previously, the Commonwealth Government has funded demonstration projects to support advocacy organisations such as the Citizen Advocacy Victoria Resource Unit and more recently the Disability Advocacy Network Australia. OPA would like to see this level of resourcing and support reintroduced and maintained.

4. The interface with the NDIS and addressing conflicts of interest

What steps or organisational structures should be put in place to ensure conflicts of interest do not arise, or are minimised?

OPA's 2015 submission to the Department of Social Services on the National Disability Advocacy Framework consultation emphasised:

that the real importance of advocacy stems from its independence. Advocacy should be independent and vigorous, action focused and free from conflict of interest.¹

OPA's view is that community advocacy organisations should not engage in service delivery as it creates conflicts of interest and conflicting functions that undermine the independence of advocacy. This lack of independence has been seen in previous organisations, for example, the now defunded Disability Employment Action Centre, that was unable to combine successfully these very different kinds of activity.

OPA believes that:

- Effective advocacy requires independence, which places the organisation outside the service system so it can provide an effective critique and uncompromised advocacy support.
- Advocacy and service delivery need to remain separate to ensure that both services are not competing for the same resources and also to ensure that the advocacy organisation is not viewed as being part of the service system.
- Advocacy organisations should not provide service and advocacy to the same person.

What policies and strategies do we need to protect the rights of people with disability?

As indicated above, OPA believes that the rights of people with disability are best protected when advocacy is independent and free of conflicts of interest. All people with disability have a right to independent advocacy, when required, to support them to protect and promote their equal rights in all areas of their lives.

Advocacy services not related to the NDIS must continue to be funded adequately. For example, access to advocacy for people with disability to negotiate the legal system is vital for those who may often have no other supports. Independent advocacy to ensure safeguards are in place to protect people with disability from exploitation, abuse and neglect should also be funded under NDAP. This will support Australia to meet its obligations under Article 16 of the United Nations Convention on the Rights of Persons with Disabilities and the National Disability Strategy's policy commitment to ensure that people with disability are safe from abuse, exploitation and neglect.

A robust, independent complaints system that is external to advocacy organisations and the NDIS is another key protection that must be maintained. This protection is particularly important for redress in situations of conflict of interest, which could arise in the NDIS context.

¹ Office of the Public Advocate (2015). *Review of National Disability Advocacy Framework: Submission to the Department of Social Services*, Melbourne: The Office of the Public Advocate, p.6.

Individual advocacy is a crucial support to enable participants to access and navigate the NDIS. It provides a safeguard for participants in relation to the quality of available services and protection from abuse, exploitation and neglect. OPA supports the Productivity Commission's recommendation that the Australian Government continues to fund independent advocacy outside the NDIA, as a crucial NDIS safeguard. Funding should remain separate from the scheme and be funded under the NDAP.

5. Understanding and improving access to justice

What forms of legal review and representation do people with disability need most?

OPA has developed considerable expertise in understanding what forms of legal review and representation people with cognitive impairments and mental illness need most when engaging with the justice system.

OPA manages the Independent Third Person Program (ITP) that supports people of any age with a cognitive impairment or mental illness in a police interview. The ITP aims to ensure that the person being interviewed understands their rights and can communicate sufficiently to be interviewed. Volunteers are available at all times to support offenders, victims and witnesses.

OPA is concerned about the number of people who are 'repeat presenters' in the ITP Program. OPA's records indicate that one-third of people who access the program are repeat presenters. These findings tie in with broader research, which shows that people with cognitive impairments and mental illness can be vulnerable to having repeat contact with crime.

There is a need to provide an early intervention strategy targeted at people with disability who are at risk of having such repeat contact with the criminal justice system. OPA has outlined how such a funded advocacy and referral service might operate to eliminate or at least reduce this group's contact with the criminal justice system in its report, *Breaking the Cycle*.²

What models of legal advocacy are most effective?

There are various ways of imagining legal advocacy for people with disability. Historically legal advocacy has become specialised around particular areas of law. For example: AED Legal Service specialises in employment, training and education law; the Disability Discrimination Legal Service in discrimination law; Villamanta Disability Rights Advocacy Service in human rights and disability service systems; and Victoria Legal Aid in criminal law. Not all these services are funded by the NDAP. Many of these services also provide secondary consultation to other advocacy and legal services to support people with disability.

The historical situation in Victoria grew organically in response to the needs of people with disability. Those needs remain and it is important that there are services to meet those needs. There is a gap in the ability of poor and middle-income people with disability to access civil litigation services because it is so expensive. Further, the ability to pursue their legitimate civil law rights may be thwarted because people may not have the requisite

² Office of the Public Advocate (2012). *Breaking the Cycle: Using Advocacy-Based Referrals to Assist People with Disabilities in the Criminal Justice System*. Melbourne: Office of the Public Advocate.

cognitive capacity to instruct a lawyer and need a litigation guardian. It can be very difficult to obtain one. The legal services we currently have are under-resourced to actually perform the role needed of them. Some face closure or a reduction in their services. If services reduce to a low level, the benefit to people with disability becomes marginal.

Thank you for this opportunity to raise these issues. I am happy to provide any further information if required.

Yours sincerely



Colleen Pearce
Public Advocate