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Review of the
National Disability Advocacy Program

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Submission: Intellectual Disability Rights Service

IDRS welcomes the Review of the National Disability Advocacy Program and appreciates the opportunity to make the following submission to the review.

Should you require further information or wish to discuss any aspect of the submission please contact Janene Cootes, Executive Officer on 02 9318 0144 or janene@idrs.org.au.

About Intellectual Disability Rights Service (IDRS)

Intellectual Disability Rights Service (IDRS) is a disability advocacy organisation and community legal centre working to advance the rights of people with intellectual disability throughout NSW.

IDRS delivers including legal advocacy (legal advice and casework); self-advocacy and systemic advocacy funded through the National Disability Advocacy Program

IDRS is funded by the NSW government to provide information and legal advocacy. This includes providing urgent legal advice for people with intellectual disability who have been arrested 7 days week. The NSW Government also funds IDRS to operate the Criminal Justice Support Network.

The Criminal Justice Support Network provides advocacy for people with intellectual disability who are involved in the criminal justice system as either victims or as defendants. Through a network of over 100 trained volunteers, Criminal Justice support Network provides support persons to assist people with intellectual disability at police stations (7 days' week till 10pm), at court and in other criminal justice processes.

IDRS also provides legal assistance, advocacy and court support for parents with intellectual disability who are at risk of having their children removed from their care or who are already involved in care proceedings about their children.

IDRS facilitates 6 peer support networks for people with disability most of whom have little or no natural support in their lives with funding through the Disability Support Organisation Program.

Need for increased advocacy availability and equity

IDRS applauds the commitment of the Commonwealth Government to continue the National Disability Advocacy Program.

However, there is an urgent need for expansion of advocacy funding at the Commonwealth level. The Review of NDAP must take into account the potential loss of disability advocacy funding in some states. In NSW, for example, there is currently no commitment by the state government to maintain any funding for disability advocacy beyond June 2018. This represents a potential loss of the \$10,000,000 funding for disability advocacy and information services in NSW.

Consequently, at a time when demand for advocacy is likely to be at its greatest, it seems most likely that the availability of disability advocacy in NSW at least will diminish enormously.

Equitable access to a range of advocacy models across geographical areas

IDRS agrees that a range of advocacy models should be available to people with disability across all areas and be responsive to the needs of an individual at a particular time. IDRS sees value in an advocacy organisation being able to provide a range of advocacy responses and to have the flexibility to determine with the person which advocacy approach or combination of approaches will best resolve their issues. IDRS has been fortunate to be able to provide a mix of legal, individual and self-advocacy responses to the rights and legal issues that people bring to us and to be able to advocate systemically when patterns of individual issues emerge requiring a systemic approach.

In addition to the importance of legal advocacy for individual people with disability, IDRS also sees an important role for legal advocacy to be a resource to other advocates and the people they support by providing legal information, advice and guidance, resources, training and support. Where appropriate, IDRS'

solicitors work in partnership with advocates, families, friends and services to achieve the best rights outcomes for the person with disability.

Interface with the NDIS and addressing conflict of interest

This is a complex issue for advocacy organisations in a new environment where there is potential for the type and provider of disability support to be determined by an individual NDIS participant. It is a challenge to us all to make this potential a reality.

IDRS agrees that a number of supports that will now be funded as part of an individual's NDIS package, such as support co-ordination, and activities that may fall under the NDIS Information, Linkages and Capacity Building such as education, capacity building and decision support are supports that IDRS has provided to people with disability as part of our advocacy activities.

In the Hunter NDIS trial site, IDRS chose to actively support some isolated people with criminal justice histories and poor prior experience with services to apply for NDIS; to participate in planning; to short list, interview and select a service provider; and, for some, to support them to negotiate changes in staff and activities. These activities would now be labelled 'support co-ordination'. IDRS chose to provide this support because it was likely that the people we support would not access NDIS or have a genuine opportunity to choose their supports without this encouragement and assistance.

IDRS believes that it may be possible for advocacy organisations to develop mechanisms to avoid and manage conflict of interest should they choose to offer a limited and defined range of supports that are compatible with advocacy through the ILC or through a person's individual package.

IDRS would like to see an advocacy inspired models of decision support, capacity building and support co-ordination available as an option for people with disability to choose in the future.

Community legal centres apply strict guidelines and practices to manage conflict of interest. The NDAP review could examine these in considering this question.

Other mechanisms and practices could include having distinct pathways within the organisation with different staff teams, data bases and management providing advocacy separate to those providing supports via NDIS funded

options. It may be that separate legal structures would be required. Clear policies and intake criteria for each arm would be necessary.

However, IDRS recommends that organisations funded under NDAP should be providing advocacy as the major component of their activities rather than NDIS support being the dominant feature of the organisation.

Definition of Legal Advocacy and interplay with individual advocacy

IDRS believes that activities referred to and funded under NDAP as 'legal advocacy' should be provided by qualified solicitors through legal services. It is misleading to describe 'supporting people going through legal processes' as legal advocacy.

Advocacy which supports people with disability going through legal or justice processes is essential but this is a different role to legal advocacy. This role is more accurately considered as individual rather than legal advocacy. Many individual advocates and some citizen advocates currently provide advocacy to people with disability in legal processes through individual advocacy programs.

Advocates and the people they support require access to legal information, advice and training from specialist disability legal advocacy organizations in order to most effectively support people with disability through legal processes toward the best possible outcomes.

Access to Justice

As evidenced in the 2009 paper of the Law and Justice Foundation of NSW '*The legal needs of people with different types of chronic illness or disability. Justice issues paper 11*', people with disability experience a greater number and greater complexity of legal problems, and are less likely to have their matter resolved even when they obtain legal assistance.

IDRS solicitors provide legal assistance to people with intellectual disability across a wide range of issues including victim of crime, victim's compensation, consumer complaints, debt, fines, criminal charges, custody advice, complaints about services, apprehended violence orders, employment, guardianship and financial management issues, tenancy, harassment, abuse and discrimination.

37% of requests to IDRS for legal advice come directly from a person with intellectual disability while a further 37% are initiated by a family member or friend. The remaining 26% are contacts initiated by a disability or other community worker or a disability advocate.

Barriers to justice are too numerous to canvas in this submission. Only a few are raised here.

Many of the issues that people with intellectual disability bring to IDRS legal advocacy are unlikely to be effectively addressed by other mainstream legal services. Someone with intellectual disability will have difficulty providing the information or documents that a solicitor needs to initiate action and will need assistance to understand and follow up what a solicitor needs. A much more proactive role is required of the solicitor. A solicitor may not communicate in a way that the person can understand or that enhances the person's capacity to provide instructions. Hence, attempts to seek mainstream legal assistance will often stall and fail and the solicitor or the person with disability may give up.

Frequently issues have reached crisis stage before effective legal assistance is provided.

Case study

A man with intellectual disability, soon to leave prison was assisted by corrections staff to contact IDRS about \$20,000 in fines which he had accumulated resulting mainly from travelling on trains without a ticket. The man was unable to read, did not know what to do and did not have anyone to assist him get legal assistance until he was in prison. IDRS was able to assist him to successfully apply for a waiver of those fines.

Increasing pressure on Legal Aid resources has meant that, in our experience, Legal Aid's capacity to provide adequate legal assistance in a way that is accessible and effective for people with disability is diminished. In NSW, for example, Legal Aid representation is not available for applicants in Apprehended Personal Violence Order Applications (APVO) offers. Harassment, abuse and neighbour disputes are common and destructive experiences for many people with disability but they are unlikely to be able to pursue legal remedies without legal assistance.

Increasing pressure on mainstream legal resources means that solicitors are unable to spend the additional time necessary to achieve a good outcome for a person with intellectual, or other cognitive disability. Inevitably working effectively for a legal client with cognitive disability requires more time and this is not recognized in grants of legal aid to private practitioners. The extra time and work required to obtain evidence to seek appropriate orders taking

account of a person's disability may not occur. Disability support workers and legal practitioners may not work together to find solutions.

Case study

IDRS was contacted by the guardian of a young man with significant intellectual disability who was in prison. We will call him Mark. Mark had lived in a 24-hour care group home and had developed a friendship with a next door neighbour. He did not understand or accept when the neighbour decided not to stop spending time with him and kept approaching her to the point where she successfully applied for an apprehended violence order which ordered that Mark could not go within 50 metres of her or approach her or harass her. It was beyond Mark's capacity to understand or comply with the order and he was soon arrested for breach of AVO and minor assault. The magistrate denied bail and Mark went to prison where he was at great risk due to his significant disability. When IDRS met him, he had been in prison for 3 months on remand. Prison staff said he needed assistance with self-care and was at significant risk in prison. Nothing was happening to get him out of prison. IDRS was able to advocate for an alternate group home placement so that Mark no longer lived near the neighbour and successfully applied for bail and a diversionary order resulting in his charges being dismissed.

People with disability are more vulnerable to exploitation, abuse and victimisation. They may be unaware that their rights have been breached. They may have no-one to tell. They may not know how to seek redress or the complexity of seeking redress may defeat them. Too often police fail to pursue matters.

Disability legal advocacy has an important role to play in working in partnership with the disability advocacy and disability service sectors to provide effective expert assistance to people with disability to overcome barriers to accessing justice. Disability legal advocacy also has an important role to play in building capacity of mainstream legal services to make adjustments to the way they work to provide more effective legal assistance to people with disability.

Removal of children of parents with intellectual and other disabilities, sometimes from the maternity ward and without the opportunity for support, is a further area where IDRS believes the barriers to justice for parents with disability are

extremely disproportionate.

Importance of support persons in legal processes

NSW advocacy funding has enabled IDRS to develop a network of trained volunteers to support persons for people with intellectual disability in most areas of NSW in criminal justice processes. The support persons provide practical support in complex environments, police stations and courts, which are difficult to understand and navigate and where the risks are high. The volunteers are supported by a team of staff provide some support and follow up advocacy for the users of this service. The Criminal Justice Support Network supports over 500 individual people each year in criminal justice proceedings as victims or defendants.

IDRS is building a similar network to support parents with intellectual disability in court proceedings when their children have been removed. These volunteers support the work of IDRS' parent advocate and other individual advocates working with parents with disability.

IDRS believes this model of justice support provides an important and effective adjunct to legal assistance and disability advocacy to reduce the practical systemic barriers that people with disability, particularly those with cognitive disabilities, face due to the complexity of all justice processes.

It is unclear how this type of support to access justice can be provided in the new environment once NDIS is rolled and state advocacy funding is no longer available. In considering access to justice IDRS asks that the review consider this model of support for access to justice.

Thank you for the opportunity to make this submission.