

SUBMISSION

REVIEW OF THE NATIONAL DISABILITY ADVOCACY PROGRAM DISCUSSION PAPER

APRIL 2016

“Every man, every woman who has to take up the service of government, must ask themselves two questions: 'Do I love my people in order to serve them better? Am I humble and do I listen to everybody, to diverse opinions in order to choose the best path?' If you don't ask those questions, your governance will not be good.”

Pope Francis

About QAI – our values and beliefs

Queensland Advocacy Incorporated (QAI) is an independent community-based advocacy organisation that has for nearly thirty years campaigned for the rights of vulnerable people with disability in Queensland. With a focus on the fundamental needs of the most vulnerable people

in our community, QAI has a history of avant-garde advocacy for people with disability to have supports to live an inclusive life in the community.

At QAI, we believe that all human beings are equally important, unique and of intrinsic value. Everyone should be seen and valued as a whole person, first and foremost. The human condition is such that societies tend to devalue those who do not fit within their models of perfection. These groups, including people with disability, are socially marginalised. As an organisation we seek to bring about a common vision where all human beings are equally valued.

Why review and update the NDAP?

The discussion paper rightfully points towards the dearth of advocacy available to people with disability across Australia. As mentioned there are many parts of rural, regional and remote areas where there is no access to advocacy, yet the discussion paper does not acknowledge that in Queensland there are areas of Metropolitan Brisbane that have no advocacy at all and other regional areas where there is only one person doing advocacy for an entire city. This scarcity of advocacy is replicated across rural, regional and remote Queensland, yet QAI maintains that the advocacy sector of Queensland provides excellent advocacy supports and services despite the vast distances and lack of resources.

Whenever the NDAP has been reviewed it has been in an attempt to find savings. Yet this sector has always provided a wide array of supports and services to people with disability when and how they need it, and at a very minimal cost to government. It must be noted that the review conducted in 1999 was a genuine attempt at partnership and consultation, with people with disability and family members and advocates working in collaboration to obtain a general consensus on the outcomes. No such review since has matched that approach. It is very disconcerting and disappointing that advocacy organisations were not afforded the opportunity to see the finalised version of the National Disability Advocacy Framework before submitting responses to this review.

For over 30 years Queensland Parents for People with a Disability (QPPD), a Queensland organisation provided systemic advocacy about matters of individualising funding and self-determination, inclusive education, community living, deinstitutionalisation, preventing abuse, neglect, exploitation and forced co-tenancies, and nurtured the advocacy development of parents and allies. This was done with minimal staff and a lot of dedicated unpaid volunteers.

Further to this QPPD provided a wide array of advocacy development and training for parents and allies, networking opportunities and succession planning for the advocacy sector. The 1999 review made the following recommendation: "That there be a component of funding for advocacy development, training and networking."

Since this organisation has now gone, there is a void for advocacy for children with disabilities in Queensland. However, it is possible that individual advocacy organisations would expand their target groups to include children.

It is not plausible for the NDAP to deliver more valid, viable, quality advocacy supports or services in all regions across all models. Indeed to expand geographical locations would require a significant injection of funding. Certainly some advocacy organisations may be able to broaden the recipients of their supports and their targeted issues e.g.:- providing advocacy to adults as well as children, but expecting advocacy organisations to diversify across several models is fraught with conflict of interest, and a likely weakening of focus. When organisations attempt to deliver all things to all people, there is a risk of doing nothing very well at all.

The reason that the models of advocacy have remained consistent is because time and again they are proven to be the most effective and valid (with fewer conflicts of interest) means of resolving the multitude of complex issues confronting vulnerable people with disability.

It is a lack of advocacy availability that fails people – not a notion that everyone can deliver all types of advocacy. This is particularly true for large decentralised states such as Queensland.

Any notion that individual advocacy organisations can deliver a wide range of models of advocacy across a large geographical area without a significant funding increase will result in poor quality ‘checklist’ style advocacy that does not stay the distance with the issues confronting vulnerable people with disability. Furthermore this will erode the trust between people with disability and advocates and potentially expose them to further vulnerabilities, and it is likely that they would be referred to other agencies.

‘The new models of service delivery, market development, and change in opportunities for people with disability as a consequence of the roll-out, flow on to influence what elements of advocacy need to be provided within the NDAP, and what will be provided by the NDIS.’

There is a presumption in this statement that implies models will change as a foregone conclusion and therefore does not inspire confidence that this consultation is honest, open and genuine. Advocacy should not be provided by the NDIS or within the NDIS as QAI has submitted on many occasions. There is nothing to be gained and much to be lost or diminished at the very least by the conflict of interest that this arrangement poses. Any well-funded and well-resourced advocacy organisation funded under the current National Disability Advocacy Program can and does deliver advocacy and advocacy supports to any person with disability requiring the supports and services that are proposed under the ILC (‘advocacy- like activities’) such as decision support, capacity building and education and without the conflict that is likely to arise by this conflation of NDIS funded supports and services.

Advocacy should never be viewed as a fee for service by the people it purports to serve. Vulnerable people will never be able to pay for the advocacy they require in this manner, and any thought to exchange of money for advocacy presents a high level of conflict of interest. It still overlooks that many vulnerable people will not be eligible for funded NDIS supports, and therefore cannot ‘purchase’ advocacy, yet these people may not present as at high a level of risk in ordinary life as other people for whom organisations will be focussing their advocacy efforts. Advocacy may occur in the market place but should not BE part of the market place, suggesting competitive pricing structures and discounted services.

However advocacy support should be available to anyone with a disability whether they receive funded supports and services through the NDIS or not. While it may be suggested that people who do not receive funding packages through the NDIS may not experience the most serious challenges, they can be highly vulnerable because of a lack of social supports, be at risk of exploitation, and or in need for decision support and capacity building but not have any funding or means to purchase such supports.

The current NDAP system is overstretched and underfunded and therefore must focus on the most vulnerable, and the highest need. Individual advocacy organisations already provide the capacity building and decision-making supports (that is proposed for the ILC) to their vulnerable clients as part of their NDAP funded activities because dedicated advocates take a holistic approach to the advocacy support needs of the person. People who require these supports and services and who are not requiring further advocacy could be referred to well-established DSO’s

(such as Community Resource Unit - CRU) but it cannot be assumed they will have purchasing funds. Peer support is a worthy educational tool for people who are new to the experience of self-directed and self-managed supports. Queensland DSO's such as CRU, QDN and host provider (support coordination services) already offer these supports.

The vision for NDAP

The Department's vision for a reformed NDAP is one that:

- ***Integrates with and complements the services provided within the NDIS, by states and territories, and by mainstream organisations;***

This is a very concerning statement with an implication that direct support service providers could bid to provide ILC "advocacy like activities". QAI strongly opposes any opportunity or loop-hole where the direct support service sector could possibly undermine the autonomy of participants, ignoring conflict of interest by establishing a range of services that may deliberately or unintentionally influence or coerce people with disabilities. QAI strongly recommends that safeguards are established to prohibit any such prospects for this to occur by prohibiting direct support services from entering this realm.

Key Issues arising from earlier reviews, evaluations, submissions and research reports

Positive examples from the NDAP sector of successful collaboration – quoting the Consultant reports

Queensland (QLD)

*Combined Advocacy Groups Queensland (CAGQ) has a teleconference every six weeks, convened by **Queensland Advocacy Inc. (QAI)**, and an annual face-to-face meeting. QAI is the only 100% systemic advocacy agency funded by DSS. The presence of a state-wide systemic advocacy agency in QLD appears to be a key factor in the level of collaboration in that state. Examples were provided of how information and case studies from individual advocacy services are shared with QAI:*

"When and where possible QAI systems team members collaborate with members of Community Safeguards Coalition to develop a position and submission on relative issues to present to appropriate avenues."

"We use our client database to collect local statistical information for "service mapping" and our client advocacy strategy plans form a framework for "case studies" that can be used to support examples of systemic issues, barriers and milestones achieved. These de-identified case studies can be forwarded to QAI (state systemic agency) or DANA (national peak) to assist in demonstrating their systemic work."

"QAI generally hosts these conference calls and informs us when systemic issues are being undertaken – agencies provide feedback, case studies and discuss other resources to support their efforts. In addition, there is general discussion on national issues such as NDIS and state wide matters."¹

¹ National Disability Advocacy Program (NDAP) Better Collaboration E-QUAL Disability Consultants November 2014

A small number of respondents suggested that having a systemic advocacy only organisation in each state/territory with direct links to the state/territory and national level would promote the effectiveness of systemic advocacy.²

Involvement of non-NDAP funded agencies in systemic advocacy

Some respondents commented that networking, conferences and workshops are a way to share some level of information, but there appears a wide variation across states/territories as to how this works in practice. The more established networks appear to be in the larger states of Queensland, New South Wales and Victoria.

*'Disability Rights Now: Civil Society Report to the United Nations Committee on the Rights of Persons with Disabilities' was compiled by disability representative, advocacy, legal and human rights organisations. People with Disability Australia (PWDA) initiated the whole process of researching and writing the CRPD shadow report and brought together a coordinating committee comprised of PWDA, **Queensland Advocacy Incorporated** and the Australian Centre for Disability Law. These three organisations were joined on the Project Group by the Australian Disability Rights Network and Redfern Legal Centre, the Australian Federation of Disability Organisations, the Australian Human Rights Centre, Disability Advocacy Network Australia, and First Peoples Disability Network Australia.³*

1. Models of advocacy

*We know that in some parts of Australia, people with disability needing advocacy supports cannot find the supports they need even when there are a number of advocacy agencies in their area. **The model or type of advocacy supports that would suit them best is just not available.***

QAI is concerned about this type of thinking – it implies that advocacy models may need to move when people change locations or their circumstances. However it stands to reason that well-funded and well-resourced advocacy organisations that are dedicated to people with disability, have deep understanding of vulnerability and are committed to resolving issues regardless of their complexities and duration are best placed to provide the advocacy that people will need.

A Recommendation from the 2006 Evaluation Paper that was not implemented (and not mentioned in this discussion paper) was that the Australian Government in collaboration with States and Territories instigate a public awareness campaign targeted at people with disabilities, on all advocacy options available to them to uphold their rights. QAI asserts that this would alleviate some of the confusion and issue for people in obtaining advocacy in the first instance.

Therefore, one person's need for advocacy may require the involvement of other family members, while another person may need support to self-advocate, and yet another may need a legal advocate. Some cases may involve all three types of advocacy, or more.

We think the focus should be on the human rights of the person with disability and their individual needs and not on what model of advocacy is available in their local area.

² National Disability Advocacy Program (NDAP) Enhancing the collection and actioning of systemic information E-QUAL Disability Consultants September 2014

³ National Disability Advocacy Program (NDAP) Enhancing the collection and actioning of systemic information E-QUAL Disability Consultants September 2014

QAI draws your attention to the advocacy system of Queensland that has been very successful for a long time. While there is insufficient individual advocacy available in this large state, those that exist each provide a high quality of service across a large geographical area and population, with scant resources.

As mentioned previously the former organisation QPPD provided family advocacy, while developing the advocacy skills of family members. This mentoring was a highly valuable and successful means of ensuring the resilience of families supporting people with disability, and also developing the self-advocacy skills of their relatives with disability. This development can be regained by enabling systemic advocacy organisations to mentor and train self-advocates and family members. It must also be acknowledged that individual advocates actively do this by offering strategic advice to people with disability who have the capacity to self-advocate, and to family members or supporters who advocate for their loved ones with disability. This capacity building of advocates already exists and is provided by the advocacy support that all organisations currently perform. It should be noted that all models of advocacy within the NDAP operate from the social model of advocacy that operates from within a human rights framework, and therefore the focus is on the person and their individual need. This statement about the model and the geography does not have relevance to the focus on rights and needs.

Queensland advocacy organisations have very good connectivity and the Combined Advocacy Groups of Queensland is an effective conduit to share information, strategies and update on systemic issues, and a means of mutual collegial support. As QAI is a community legal service with a valued reputation with our peers, the individual advocacy organisations are confident in referring the people they support to our individual legal and non-legal services for representation in matters of criminal justice, involuntary mental health treatment, forensic orders and guardianship orders, including restrictive practices. For other legal matters all advocacy organisations are aware of the appropriate referrals to other CLC's.

This effective means of networking and collaboration is cited above in *Key Issues arising from earlier reviews, evaluations, submissions and research reports*.

Questions

1.1 *How do people with disability, their families and carers benefit when agencies are funded to provide only one or two models of support?*

People with disability are supported by advocates who know individuals very well, and are dedicated to them with faithful diligence to resolve their issues. This is particularly true of individual and citizen advocacy. Legal advocacy is vital for legal matters but rarely examines the social issues that impact on the person and contribute to the problems before escalating to legal concerns. One of the benefits of specialisation is that the models are qualitatively different, having different goals and requiring different skills pertinent to the issues that require satisfactory resolution. Advocacy organisations that focus on one model are therefore more likely to be able to deliver long-standing advocacy where required for people with ongoing and complex issues, are better able to work with people who have higher support needs in communication and capacity and or who have specific cultural or language needs.

It is more useful to examine the quality of networking, collaboration and cooperation between advocacy organisations and the community legal sector to determine the effectiveness and efficiencies that are currently present rather than to assume that specialisation or singular focus on a model of advocacy is less valid or somehow lacking.

1.2 What are the drawbacks?

For many people who have no informal supports there is a need for citizen advocacy supports. Unfortunately this model is not available in many locations but should be accessible in every location. This would require a 'community development' approach to ensure that local people are matched to local people with disability. When there is no legal advocacy in the area, there is a solution in that CLC's can be supported and trained to deliver legal services for people with disability by other experienced CLC's. Many individual advocacy organisations do in fact work with family members already to ensure advocacy support for their relatives with disability. However, systemic advocacy performed by family advocacy organisations can collaborate with other advocacy organisations. Family advocacy organisations have a natural authority and authenticity that should not be undervalued. Many individual advocacy organisations build capacity with the people that they support to enable and empower them to do self-advocacy, and can encourage them to join with like-minded peers as members of their organisations to engage in matters of common concern or interest.

It is inappropriate and limiting to homogenise or unduly restrict the models of support that are currently funded, as there is not a 'one size fits all' solution to meeting varying advocacy needs. It is more appropriate to support a robust advocacy sector, with a diverse and independent range of advocacy supports available to those who need them.

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

DSS can ensure that funding agreements for advocacy organisations enable them to collaborate in ways that ensure that self-advocacy is supported by both systems and individual advocacy, and by funding more citizen advocacy programs that will assist and empower people to make decisions and engage with advocacy groups should they wish to, around matters of concern to them. It can be a misconception that all people with disability wish to engage with other people with disability.

Funding must also have a component for advocacy development for family members and informal supporters, and for networking opportunities and partnerships between advocacy agencies particularly when considering the vast distances and decentralised population, as in Queensland. This would need to include travel for face to face meetings, and to establish better technology for video conferencing and webinars.

It is appropriate here to note the important differences between the concepts of equality and equity, which are now acknowledged in our society. While equality involves treating all people equally, equity strives for fairness by treating 'unequals unequally' – that is, acknowledging that people are not all on a level playing field and attempting to reduce the differences in opportunity that exist. 'Equity' has a more far-reaching impact upon vulnerable people – particularly people with disability – as it creates scaffolding supports to assist in translating rights, such as the right to inclusive education, into practice. While equality would simply mean provision of equal support to all students, equity enables the particular support needs of students with disabilities to be addressed, so that they may participate and excel and have the same range of opportunities as their peers. QAI therefore adopts the language of equity as the core focus, particularly in any discussion of human rights for vulnerable people.

Issue 2: Improving access to advocacy supports – key barriers include geographical distance, social isolation, communication difficulties and a lack of culturally appropriate or accessible supports.

As noted in the National Disability Advocacy Program (NDAP) Better Collaboration by E-QUAL Disability Consultants (November 2014)

- The recommendations in the collaboration paper if implemented would have been useful in removing some of the key barriers noted in this discussion paper by improving partnerships and the sharing of information in regions or states where this does not currently occur.
- The collaboration paper recognised the need for funding to access and the facilitation of existing networks and or partnerships, with improvement in the sharing of information, data, resources and training.
- These recommendations (improved partnerships etc.) should facilitate access to advocacy supports by linking regional advocacy organisations to systems advocacy organisations to provide information of local and state-wide issues.
- It should be noted that this could potentially assist with linking socially isolated individuals with specific individual advocacy organisations.

QAI recommends that Local Area Coordinators (LACs) are sourced from local areas and have a good understanding of all the supports and services available to people with disability in their regions (including advocacy and legal services). LAC's are charged with the provision of information and linkages and therefore must have this knowledge as a prerequisite as it is vital to the performance of a large component of their role. Local Area Coordinators should be the starting point for many people with disability in accessing advocacy supports and services by referral. When LAC's have a good understanding of the person's advocacy needs they can be connected to the appropriate advocacy organisation and where people require more than one type of advocacy the advocacy organisations will have already established networks of 'warm referral' including to community legal centres.

WHAT PEOPLE WITH DISABILITY HAVE TO SAY

In September 2015 QAI conducted a forum and workshop "Rights and Advocacy for ALL People with Disability". The focus was with and for people with disability to discuss advocacy and its relationship to the NDIS. QAI supported participants to attend from remote, rural and regional Queensland, and guest speakers from advocacy groups and one parent advocate showcased examples and activities across the different models and their relationship to systems advocacy. The afternoon session was spent in workshops exploring the dynamics of individual and systems advocacy, the dilemmas for advocacy in the NDIS and the threats to advocacy. A power-point resource was developed from that event and presented before DSS staff in Brisbane for International Day for Persons with Disabilities in December 2015.

On Monday 30th May, 2016 a smaller gathering was hosted for Phase 2 in an Advocacy Workshop to continue the conversation about the role of Local Area Coordinators, advocacy and the NDIS and the Review of the NDAP. The easy English version of the discussion paper was utilised and advocates and supporters facilitated the discussion to ensure that all people present could participate fully and provide feedback.

A further resource will be developed from the outcomes of the workshop. However, some of the feedback is presented now as it has relevance to this discussion paper.

People with disability and their supporters made the following statements about the role and scope of the Local Area Coordinators and their relationship to advocacy:-

Local Area Coordinators must possess the following Qualities:

- Be grounded in community/lived experience
- Be impartial
- Be knowledgeable of issues
- Know what is 'out there' – including support, advocacy and legal services.

What we want	What we don't want
Forward thinking; not prejudiced by what they know of the person,	Not sharing information, secretive, withholding; forming negative assumptions about a person's history
Pre-planner	Not articulating rights
Good information on goals and how to set up a plan	Not old ways/thinking; rude, cruel, controlling
Have the right information;	Fear about getting in trouble with NDIA
Think about all facets/areas of a person's life	Be limited by financial restrictions
Good networkers	Secretive/withholding; only talking with Service Providers
Information on rights	NDIA Corporate
Link to successful LACS in the past	Bureaucrat
Links to independent advocate	Not procedure focussed; not recognising threats to the person or personal conflicts of interest
Courageous, with integrity	Condescending, biased towards service providers; unethical, discriminatory
Have time to do plan	Lazy, say one thing – do another
Taking great care to set up foundations	Dismissive, checklists
Thoughtfully recruited	Unskilled, unprofessional
Community development – appropriate to locale – e.g. remote communities	Lack of understanding of the community culture
Challenge people with disability and families to think beyond the 'norm'. To be visionary	Closed, narrow-minded; limited to status quo or traditional support styles and delivery
Link people with positive stories	Stuck in the past; not supporting the person to direct their lives
Located in places like neighbourhood centres – geographical positioning	Not accessible to people who need their support

Rules for the Selection Criteria

- Should be completely independent from all service provision/governance to avoid conflict of interest (real or perceived)
- LACS are protected from higher management influence e.g. NDIA/NGO interference
- To be client focussed not organisational focussed and supportive of 'Client choices'
- Be based within community they are representing/working with
- Be creative in exploring options
- Educated in the area of disability – information around NDIS, mental health
- Have a good understanding of other support needs: housing, employment, accommodation, personal – not just the NDIS
- Needs excellent communication – different levels – verbal, nonverbal, Makaton, listening, understanding
- Well connected to community and aware of its resources and opportunities

- Good cross cultural understanding being aware of vulnerable groups – “one size doesn’t fit all”
- Understand the changing face of the political environment and personal issues
- Be culturally aware and competent
- Multi-skilled with basic knowledge of human rights legislation
- Person-centred relationship – should know their clients
- Have good admin skills
- Have excellent interpersonal skills – be approachable

Duties of the LAC

- Listen to people with disability and families and carers
- Provide useful, timely information to people
- Ensure conversations are two-way and not merely talking at people
- Ensure unmet needs are met
- Provide mediation where appropriate (not advocacy)
- Refer people to appropriate generic or specialist services, by knowing what is available and where
- Have a good understanding of the role of advocacy and refer people to the appropriate organisation for advocacy support for their issues including legal services
- Appropriately refer people to the right service for decision support, capacity building, or education – knowing where to refer people who need longer term support
- Undertake ongoing training
- Be suitably supervised with support to hone skills and gain experience
- Work to a code of ethics

ADVOCACY

People with disability and their supporters expressed concern about the possibility that there might be less advocacy rather than more. Here are the statements that were collected from the combination of group activities:-

1. More advocacy, not less
2. Keep own identities (indigenous and local knowledge)
3. Collective action individual advocacy organisations. Information around different types of advocacy and why they are needed. Teach advocacy in universities. Building alliances.
4. Not enough resources so: Say the word ‘advocacy’ in capacity building workshops etc. Use of technology to connect across distance – geographical challenge in Qld. Don’t want advocacy to be their own bureaucracy
5. Bust the myth that individuals can do it on their own all the time.
6. Fund advocacy development in the regions.
7. Need more formal organisations – with seen credibility.

What has and is working with advocacy services (i.e. achievements):

- Deinstitutionalisation
- More choices
- Human rights recognition
- Legislation changes to protect people with disabilities
- More inclusion into mainstream education
- Making service providers more accountable
- Improvement to Mental Health services

- Saved taxi subsidies, improved transport access
- ATSI and CALD representation, awareness (more participants)
- Improved changes to housing options
- More awareness of forced and coerced sterilisation
- Investigations into deaths in care
- Public Guardian and Public Advocate are still kept separate. Best guardianship rhetoric.
- Independence, autonomy and support for decision making
- Changes to the building code – now improved access

Some ideas to strengthen advocacy and advocacy development

- Source support and money from local businesses and services for advocacy organisations to deliver advocacy development
- Use volunteers who gain experience (social worker students, law students etc.) in placements with advocacy organisations
- Advocacy organisations provide advocacy support, advice regarding effective advocacy strategies – could be consultation fees for services

What do advocacy organisations need to have and what they must do

- Must have people that are easy to talk to and be able to relate to individuals and families
- Must know local community and networks well
- Teleconferencing facilities and type systems similar to interpreter services
- Advocacy organisations must be able to either link to others for different advocacy roles or purposes and to have a range of referral points
- Need to expand Citizen Advocacy with promotion and education of volunteer roles with mutual benefits – need for more funding to enable this
- Family and parent advocacy need funding for coordination with other advocacy organisations
- Self-advocates to have building capacity opportunities by linking with other advocacy organisations (individual or systems advocacy)
- Explaining the feedback to ensure improvement (this is systems advocacy)
- Systems – QAI working with others to get the issues to the systems
- QAI offering training to individuals but needs funding to do this
- Technology for training and communication – webinars for education of groups

Relationship between Advocacy and the LAC role

- Individuals and families need skilling in being able to speak up for what they need and want to LACs
- LACs need to understand the difference between families advocating for families and families advocating for the individual
- Vulnerable people need advocates to assist them in dealing with LACs

Questions

2.1 How do we improve access for:

- **people with disability from Aboriginal and Torres Strait Islander communities and their families.**

Aboriginal and Torres Strait Islander people with disability do not necessarily recognise the concept of disability and therefore it is important that advocacy organisations are responsive to the cultural safety and traditions of vulnerable Indigenous people with disability and their supporters. In remote or regional areas, a local Aboriginal or Torres Strait Islander liaison or advocate can connect Aboriginal people with disability with legal advocacy services, and individual advocacy organisations who can assist them with their social issues or concerns. These organisations should have a well-grounded understanding of cultural safety and awareness of the needs of Aboriginal and Torres Strait Islander people and or employ an Aboriginal or Torres Strait advocate where possible. It is important that the advocates are highly skilled in working according to the principles of advocacy and are proficient in their advocacy efforts.

Key elements of effective practice in individual advocacy for Aboriginal and Torres Strait Islander peoples include:

- building partnership approaches and encouraging collaboration between advocacy services and Aboriginal and Torres Strait Islander organisations;
- developing trusting relationships;
- establishing mechanisms to involve Elders or community leaders in governance, processes and decision making;
- recognising and respecting cultural differences in approaches to doing things and using practices and funding models that accommodate the complexities of dealing with cultural differences and/or multiple and complex disadvantages;
- raising awareness of Aboriginal worldviews. 'Disability' is culture-bound⁴. Many Aboriginal and Torres Strait Islander people who have disabilities do not identify as a 'person with a disability'. Many people do not believe identification with disability is in their interest e.g. in prison, where identification can mean segregation. A recent Queensland study established that 86% of Aboriginal and Torres Strait Islander women and 79% of men who are incarcerated have a mental health disorder, including intellectual impairment, mental illness and addiction;⁵

¹ Damian Griffiths. Executive Officer First Peoples Disability Network (Australia) 2010. . First Submission to the Productivity Commission Inquiry into Disability Care and Support. 'In many ways 'disability' is a new conversation in Aboriginal and Torres Strait Islander communities'.

⁵I Heffernan, K Anderson & K Dev. 2012. *Inside Out - The Mental Health of Aboriginal and Torres Strait Islander People in Custody Report*. Queensland Forensic Mental Health Service.

- Cultural sensitivity e.g. support needs of Aboriginal and Torres Strait Islander children with disability often are not identified until later, and families are likely to be extremely uncomfortable with children being provided with specialist therapies or services from outside their communities or having to travel outside their communities to access such services;
- Capacity building of families who need assistance to support their family members with disability but who may not wish to engage with disability support service providers and who may prefer other supports. Training for and employment of other family members may be a preferred option.

Advocacy groups have a role in raising awareness of available programs eg. the NDIS, or the supports service providers can offer (and the boundaries to these supports) and promoting a better understanding of disability services within the Indigenous community itself.

DSS should fund the Aboriginal Disability Justice Campaign, which does unfunded advocacy for Aboriginal and Torres Strait Islander people within the forensic disability systems.

- ***people with disability from culturally and linguistically diverse communities and their families?***

Interpreter services must be free of charge and readily accessible. To date disproportionately few people of NES/CALD background are participating in the NDIS (about 2% in the Hunter) - this may be linked to additional barriers for this group in accessing the supports system generally.

People who have not previously accessed disability support are less likely to access the National Disability Insurance Scheme. Apart from obvious language barriers, they may be wary of government and/or belong to a culture in which openness about disability is not the norm. Some people may be frustrated by the Australian system's insensitivity to diversity, and they may have no concept or a different concept of 'disability', in which the needs of the individual are subordinate to those of the family.

Cultural sensitivity to diverse family structures and support needs should include opportunities for people with disability from CALD backgrounds to participate within the NDIS in alternative arrangements if that is their preferred option, and it is likely that this will require skilled advocacy.

Advocates who are trained to work with people from CALD backgrounds and who can liaise with appropriate advocacy models for specialist legal or systemic issues will help to ensure that people from cultural and linguistically diverse communities are supported in communities. All advocacy organisations should undertake cultural safety and awareness training to facilitate comfortable and safe conversations with people from migrant and refugee backgrounds.

- *people with disability in rural, regional and remote locations?*

Similarly, and in accord with the principles and objects of the NDIS, people with disability in rural, regional and remote areas need advocacy support to ensure they are enabled to tailor their supports especially where the outreach of available services are insufficient or unsuitable.

Regional individual advocacy organisations must be linked to systems advocacy organisations to provide information of local and state-wide issues pertinent for people in these locations. Legal matters must be referred to the appropriate Community Legal Centre or Legal Aid depending on the type of matter, or for complex matters of involuntary treatment, forensic orders or guardianship, Queensland Advocacy can provide legal representation or referral to other CLC's where appropriate.

- *people who are very socially isolated including those with communication difficulties and those in institutional care?*

This group of people must be linked with highly skilled individual and systems advocacy organisations that have experience working with people who are socially isolated and who use alternative/diverse communication methods. It is important that the advocacy organisation is funded in such a way that they are enabled to devote adequate time to work with individuals who have a lived experience of institutionalised existence, in order to hold meaningful conversations to establish a mutual understanding of their experiences and their own choices for a new way of support and lifestyle. This can include conversations with others who have provided support and care, but ultimately the person's wants and fundamental needs must always be the focus of the advocacy efforts. In this aspect, a singular focus on the most vulnerable people with disability is more conducive for the organisation to be able to perform this advocacy well.

The advocacy organisation should be within reasonable travelling distance or be funded to maintain close and ongoing relationships with anyone living in institutional settings – the emphasis must be about the quality and experience of advocacy support rather than proximity. QAI recommends that people who are socially isolated and who have no informal supporters should be matched with a citizen advocate.

Advocates must develop good working relationships where possible with Public/Adult Guardians and Community Visitors but vigorously and emphatically advocate where and when the best interests of socially isolated and vulnerable people are not protected and defended by these statutory bodies and individual staff members.

DSS should support a network of citizen advocacy particularly in areas where people have resided in long stay health facilities or other institutions and where people without active informal supporters are known to reside.

Funding formulae must have significant weighting for addressing the complex issues confronting people with disability who experience diverse challenges either by geographical location and distance, social isolation, communication difficulties, and cultural and linguistic and accessibility barriers. However, QAI asserts that this indicates the need for specialist and tailored advocacy supports.

2.2 What are the strategies or models that have worked? What are the strategies that do not work?

As mentioned earlier in this submission, the reason that the models of advocacy have remained consistent is because time and again they are proven to be the most effective and valid (with fewer conflicts of interest) means of resolving the multitude of complex issues confronting vulnerable people with disability.

- It is unreasonable to expect that any advocacy model or advocacy approach that does not have fidelity to the person/s or have commitment to the duration of their issues will provide successful outcomes for people with diverse cultural or communication needs, or who live in institutional settings.

Individual Advocacy –

- Short-term ad-hoc approaches to individual advocacy are not likely to be successful or provide satisfactory outcomes. Individual advocacy is not about merely a collection of data and reporting of issues without genuine understanding of each person's experience and sustained vigilance to resolving those issues.
- Any form of advocacy that is not person-centred, that does not have the capacity to remain faithful to the person and their issues for their duration cannot deliver valid individual outcomes.

However, individual advocacy that collaborates or partners with systemic advocacy can deliver good outcomes for group/s of people if it is well informed by relationships with people with disability, and their individual advocates.

Systems Advocacy -

- DSO's and DPO's can adequately work to deliver policy feedback and commentary but is limited to the experience and work of the organisation, and conflicts of interest can be unmanageable where priorities are directed by a membership base rather than by the significance or seriousness of issues that confront people with disability who are not connected to the organisation.

Systems advocacy models that have well established networks and connections with other advocacy organisations, DSO's, academic institutions, have legal services as part of the organisation or are connected to community legal centres and their respective peak organisation are the optimal model for a comprehensive overview of systemic issues and progressive system and law reforms.

Self-Advocacy -

Self-advocacy in terms of the NDAP is empowerment for people with intellectual and cognitive impairment to speak up for themselves, to tell of their experiences, through personal stories, and with their supporters or advocates, to identify and articulate their needs, wants and wishes. It is a model of support that is long overdue and highly commendable.

- However, while QAI supports this model and engages in many different ways with groups of self-advocates, QAI holds concerns for the vulnerability of self-advocates who may be subject to exploitation in the absence of their supporter/advocate.

Family Advocacy -

This model of advocacy can support families to remain resilient and provides information, capacity building, education and training, expertise, peer support, and value for money when considering the small investment in supporting families to stay together and reduce relinquishment.

Citizen Advocacy -

In the era of NDIS and support for decision making, citizen advocacy provides valid relationship building for people who would otherwise be without any informal supports, and bereft of potential friendship. With volunteers who are properly trained, conflict of interest is minimised, and the benefits are immeasurable to the person with disability and to their communities, and a wise investment for DSS. QAI has made considerable points throughout this paper as to the value of this model of advocacy.

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

Collecting information from advocacy agencies on the number and type of people with disability they support, and the way they deliver that support is an important way for the Government to monitor how funding is being spent. It is vital to understand the need for advocacy supports and how much of that need is being met. DSS is working on an improved data collection system in collaboration with advocacy agencies.

The question is what to do with the data once it is collected. What is the best way to make sure the information gathered by NDAP agencies and the information collected by other organisations interested in the rights of people with disability is used to improve the lives of people with disability at a local and national level?

How do we collect information from a range of programmes and systems on a regular basis, and how do we make sure all key stakeholders discuss the findings?

Questions

3.1 What mechanisms could be used to ensure information on systemic issues gets to the right people and organisations?

Identification of systemic disability issues starts not with statistics and percentiles, but with the human element: i.e. unique and harrowing personal experiences of exploitation/abuse/neglect.

Systemic advocacy identifies similar experiences that establish a pattern of poor policy, practices or impractical legislation -

- direct and unsolicited from people with disability, family members, support workers, Public Guardians, health professionals
- information from services that provide or are closely allied to individual advocacy services, particularly legal advocacy

Solutions to individual problems may involve systemic/legal advocacy actions or measures whether in -

- discrimination,
- forensic or involuntary detention or restriction,
- contractual disputes in accommodation,
- guardianship, administration,
- criminal justice support,
- education.

However, no matter how harrowing the experience, or the potential impact for change that an individual or group of individuals' stories may be for systemic change, ethical use of such personal experiences must take precedence over the opportunity to effect change. This is particularly vital regardless of any de-identification that may be applied, when dealing with the life experiences of vulnerable people who may consent without fully realising all the potential implications.

DSS funding for individual and systems advocacy organisations in each state would assist these organisations to regularly link and discuss issues relating to regional, rural and remote communities to identify their breadth and scope.

Funding and supporting systems advocacy organisations to provide webinars and face-to-face information sessions for people with disability and families, DPO's, advocacy organisations, government departments, service providers and the NDIA would ensure consistent and quality information and education to all stakeholders.

Annual gatherings of systems and advocacy groups via DANA are a means to strengthen and consolidate the information and the advocacy for national actions and data collation. Actions and outcomes could be publicly shared by DSS on its website and social media. The collection of statistics in an online portal is something that can be useful only if DSS and the Australian government will take that information forward to the individual states with a demand for redress.

3.2 How can we help disability advocacy organisations work with a wide range of other organisations with similar aims, such as:

- **disabled people's organisations (DPOs)**
- **the Australian Human Rights Commission**
- **Ombudsman organisations**
- **aged care advocacy organisations**
- **state disability advocacy organisations**
- **peak bodies?**

Funding and support for advocacy organisations for video linkages and face to face meetings with other advocacy organisations, DPO's, AHRC, and the NDIA on specific issues and goals will enable better networking and collaboration. Continuing Legal Education events aimed at strengthening collaboration and cooperation between relevant individuals and organisations and sharing knowledge should be funded and supported.

However this is best managed by supporting a state-wide systems advocacy organisation to engage in these arenas on systemic issues.

To date Queensland Advocacy Incorporated has engaged with all of these organisations and statutory bodies either to provide systemic information, submissions, joint projects, develop research papers, or to take information and feedback to other avenues to affect change. This is effectively managed through the combined advocacy network teleconferences and annual face to face meetings, representation to state government departmental reference groups and forums, speaking and hosting forums and conferences, media releases, television, radio, newspaper reports, develop resource materials such as DVDs and publications, appearances as expert witnesses for Parliamentary inquiries (State and Commonwealth), Senate inquiries, Coronial Inquests, and Royal Commissions.

Systems advocacy is most effective when co-located with disability-oriented legal and quasi-legal services that problem-solve at the interface of human rights and:

• Community living in a home of one's own	• employment
• income support	• health
• guardianship matters	• mental health
• access to supports and services	• access to justice
• abuse, neglect and exploitation	• discrimination

Questions

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

Queensland Advocacy has stated in all submissions relating to advocacy and the NDIS that none of these functions should be funded within the NDIS as the conflict of interest is extreme and the implications of people with disability paying for advocacy supports and or services is directly incongruent to the nature and intent of the NDIS. However, given that these actions are out of our control we offer the following solutions and recommendations:-

Advocacy organisations already deliver advocacy supports and other services also funded by the National Disability Insurance Agency. QAI already provides information, linkages and capacity building, for example, by referring to other services people with disability who contact our service, offering advice and strategic support and build capacity by assisting people who can then take the matter forward themselves.

Advocacy:

- should not be funded by government departments that also fund disability service providers;
- should not accept donations from service providers;
- should routinely perform conflict checks to ensure they do not advocate for more than one party to a dispute.

Board members of disability advocacy organisations:

- should not be linked to organisations likely to be targets of the organisation's advocacy;
- should not be service providers or have an interest in service provision;
- if service providers, they should step aside when the board discusses advocacy involving their own organisation;
- should be a majority of people with disability.

The use of the term “advocacy- like’ activities is a contrived misrepresentation of language in order to distil advocacy into the ‘service sector’ that reveals the motivation for the removal of advocacy standards and homogenisation with service standards.

Systems Advocacy Organisations

Activities such as building capacity and or community education of people with disability and family members, informal supporters, support organisations, health professionals, social workers, government bureaucrats and case managers, about discrimination, stigma, stereotyping, human rights, social exclusion, inclusive communities, and advocacy are part of the core business of QAI's systems advocacy. Our organisation delivers this via a variety of events, forums, teleconferences, workshops, webinars, printed material, and small group discussions. We do this with people with disability who have lived experience and at times in collaboration with allied individual advocacy organisations,

Disability Support Organisations and Disabled Persons Organisations

It is possible that some DSOs and DPOs may have the capacity to deliver similar events on a limited range of issues that pertain to their membership. It is appropriate that Disability Support Organisations and Disabled Persons Organisations are supported to deliver some forms of capacity-building, buddy-programs or peer-support.

Where it is appropriate, these groups may provide information about a particular disability type and how the issues arising from the disability may present additional challenges. These groups may provide advice on appropriate supports and responses to those challenges and issues. This may be undertaken by providing resource materials or hosting information sessions.

Support Coordination Services and Host Provider Services (Qld model)

NDIS preparation and advice on individual funding packages has been provided and is best offered by organisations that have experience in the diversification of traditional models of support – not as service providers but as change agents. For example Community Resource Unit in Brisbane has transformed many service provider mindsets and been the seeding for many small person centred ideas that have genuine person-led and person-centred delivery and facilitation of supports. Mamre have worked with families and individuals to broaden their thinking about what is a good life and in doing so, seeded the unique host provider service as a model of support coordination and self-directed and or self-managed supports. Bespoke Lifestyles began under the auspices of Mamre but soon became a separate entity with separate governance structure and separate staff, and no relationships to direct personal supports. This eliminated the conflict that has arisen for service providers that did not take that final step and the outcomes for individual people with disability and their families is much more aligned to a good but ordinary life.

Decision making support based on advocacy principles may be delivered by organisation such as advocacy organisations, DPO's, DSO's support coordinators only where there is no direct personal support provided and where the staff have a well-developed relationship with the person so that they know them well, and are trusted by the individual. However, the trust and relationship is only valid if it is NOT a fee for service as the conflict for such a notion dispels the validity of the motivation for providing that support. For example: Support coordinators will take the time to discuss an individual's plan and how best to have those supports deliver on those goals, but not charge extra fees for conversations that help a person to make decisions.

People with disability whether they receive NDIS funding or not should not pay for these services as they should be funded by government.

Any advocacy organisation that delivers services that stray into the management of plans and supports is essentially the same as the entities mentioned above in this section. If advocacy organisations delve into this realm they must have complete separation from the advocacy entity, with separate location, management committee and incorporation or company structure or they could be subject to a lack of credibility and will be seen in the same light as other service providers doing support coordination, plan management etc. Essentially this is the same as an organisation seeding another business and will not necessarily provide funding supplements to the advocacy organisation itself.

Advocacy organisations and their related 'businesses' that provide support coordination or other 'services' must have documented procedures for managing conflicts and complaints that may also mean directing the person to ANOTHER INDEPENDENT ADVOCACY organisation if the matter cannot be resolved before escalation.

The most concerning issues arising from this conflation of advocacy and service delivery is the perception of ownership of the person, or undue influence which gives rise to the confusion that can present to people with disability about which organisation performs which function when they all begin to look the same. Matters of trust and credibility are integral to advocacy and it is important that these elements and principles are not undermined by the merging of advocacy to service provision.

This is further complicated if there is only one advocacy organisation in the vicinity and it is the provider of support coordination. There will not be a successful resolution to issues and there will be further harm to the person or their family, and therefore undermine the trust and reputation of advocacy in general.

QAI asserts that if advocacy organisations are well funded to provide the information, linkages, capacity building, and decision supports that they already do as committed and dedicated proponents of people with disability, other functions such as support coordination are best left to the agencies that have a history of change agency, have developed models of support coordination that are separate to service provision AND advocacy.

Some of the suggestions and notions in this discussion paper seem focussed on people with disability who may not have the highest level of support need and or whose support needs are not complex or unique. This indicates that there may be some misunderstanding about the kinds of advocacy that is needed for vulnerable people with disability. It has been said that lots of people 'do' advocacy – even service providers and support workers, therapists, social workers, or teachers. In some ways this may be accurate, but there is often another agenda in that advocacy. For example a teacher may advocate that a student with disability needs more resources but that is often translated into an aide so that the teacher's comfort zone and workload is lightened. A social worker may advocate that the person with disability must be housed outside a hospital, but ensure that person is placed in a nursing home even if they are not aged. A service provider may advocate that a person needs to have restrictive practices applied to keep them 'safe' when in fact it is often that the service provider is not skilled at providing the right supports for the person, and the use of restrictive practices is sought to 'ease' their workload. A great deal of work undertaken by advocates is to redress breaches of human rights done by the 'advocacy' of people in such positions.

Most advocacy organisations work with people with very significant disabilities and high levels of complex issues affecting their lives. They are often homeless, or at risk of homelessness, live in poverty and often in forced co-tenancies where they experience abuse, neglect, exploitation, rape, theft; cannot access supports or services; have untreated health issues; may be subjected to the cruel, inhuman and degrading treatment such as being drugged, imprisoned, or having their liberty and freedom of movement removed, held in bondage, solitarily confined or castrated or sterilised. This is the reality of restrictive practices, and many other people are subjected to involuntary treatment and forensic orders, guardianship impositions that strip away a person's autonomy and rights, and personhood. These are the everyday matters that advocacy organisations help to redress.

4.2 How do we avoid gaps between supports provided by the NDIS and advocacy funded by the NDAP?

It is critical that DSS ensure that there is a range of well-funded individual advocacy organisations across each state with good coverage of each geographical region. LAC's must be well informed about where to source such advocacy services.

Well established DSO's who have a history of planning, and community development can provide education, and capacity building services and supports.

It must be explicitly recognised that 'advocacy like' activities under ILC are not and do not replace or fill the need for advocacy.

DSS must recognise and acknowledge that the NDIS supports cover an important but niche set of specific disability related support needs.

However, NDAP funded advocacy addresses shortfalls in support plus all other social issues that impact upon a person's life. This is a critical difference and therefore the separation of personal direct support provision and its funding source from advocacy activities and its funding should be maintained.

It is relevant to note that while it is the intent of DSS to ensure that all people with disability have access to whatever type of advocacy or other supports they need, such as capacity building and decision support, (as mentioned throughout this submission), these functions are already delivered by many dedicated and highly skilled advocates in the advocacy sector. QAI acknowledges that not all organisations devote the required time and attention to individual people with disability who need these kinds of supports, but the majority of organisations do this as a matter of course. It is the checklist style of advocacy as mentioned in 2.2 "*What models or strategies do not work*" that is unable to deliver on these person-centred advocacy supports.

"Unpacking" the supports that advocacy organisations deliver to people with disability within the ILC component of the NDIS will open this existing support to a range of new and perhaps unskilled services, and will ultimately duplicate existing supports and increase costs to government, while diminishing potential funding sources for advocacy organisations that are the most appropriate resources for people with disability in this field.

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

Ideally Australia would have a robust national and state Human Rights Act or Charter that would give power and compliance to the international conventions and treaties to which Australia is a signatory. Short of this, it is essential that all organisations and services comply with strict code of ethics and conduct, have stringent conflict of interest policies that are monitored and a high level of transparent accountability.

We should embrace both in theory and in practice, a supported decision-making approach in Australia, so that people with disability are properly and appropriately supported to express their views, needs and preferences. Australia has already expressed in principle agreement to the supported decision-making model, by signing and ratifying the CRPD. A decade on, it is time to give practical effect to this agreement.

It is essential that direct support service providers are prohibited from providing services in the areas of decision support, capacity building, education or linkages as this is in direct conflict of interest and is potentially a means to influence and dominate the people to whom they provide direct services provision, or potential customers. Direct support service providers must also be prohibited from tendering for the positions for Local Area Coordinators for the same reasons. Any new services must be carefully examined for evidence of linkages to direct support service provision and any service providers attempting to do this either by covertly setting up new services or by obvious means should be de-registered.

Other areas requiring attention to protect human rights are:

- a National agreement on forensic disability with an end to indefinite detention discrimination and Commonwealth, State and Territory parity in criminal justice.
- Develop consistent Disability Justice Plans for government departments including:

o Attorney-General	o Police
o Justice	o Judiciary
o Corrective Services	o Forensic services

- Implement consistent Tenancy and Rooming House legislation. (see: QAI Position Paper submitted to SDA Housing and Accommodation:
http://gai.org.au/images/stories/docs/2016/A_Home_Of_Ones_Own_-_QAI_Housing_Position_Paper.pdf)

5. Understanding and improving access to justice

People with disability can be highly vulnerable to a wide range of legal problems. They are also significantly over-represented in the criminal justice system both as offenders and victims. People with disability often experience barriers to justice, which prevent them from fully participating in legal and justice system processes.

Legal advocacy supports people going through legal processes and can lead to better and faster outcomes. With the changes associated with the rollout of the NDIS, DSS is seeking feedback on what types of legal advocacy are needed and if there are gaps in the supports available to help people with disability to get access to justice.

It must be clarified that advocacy support in legal matters is distinctly different to legal advocacy, legal advice and legal representation. Unless the advice, support or representation is performed by or supervised by a lawyer with practicing certification, then it is individual non-legal advocacy.

Questions

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

Many vulnerable people with disability live with the restrictions of unnecessary **guardianship** orders – particularly about where they live and financial matters. Many of these cases are uncontested and the people concerned do not have legal representation, their voices are not heard and sometimes their supporters are ignored. Legal representation for all guardianship matters and especially for the use of **restrictive practices** must be available to them.

It is essential that the most vulnerable people with disability receive appropriate support and advocacy. Without advocacy, many face grave difficulties asserting and realising their rights. There is a significant shortage of legal advocacy available for the most vulnerable people with disabilities in many areas. By way of example, we note that of the approximately **800 reviews** of the application of Restrictive Practices heard annually, QAI's individual **Human Rights Legal Service (HRLS)** is funded for only 1 full time solicitor and only has the capacity to provide individual legal advocacy for approximately 15 of these hearings. We hold grave concerns about the conditions under which the remainder of people with disability subjected to Restrictive Practices live. We also actively work to bring about systems change for all people with disability subjected to Restrictive Practices through our systems advocacy work. However, this is an under-funded area and there is a need for both systems and individual advocacy services for the most vulnerable people with disability in our society to be appropriately funded. The South Australian Public Advocate has noted that many of the Restrictive Practices are likely to be a breach of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In Queensland, people are represented on Involuntary Treatment Order reviews in about 2% of matters. In NSW, for comparison, they are represented in 77% of hearings. (Source NSW Mental Health Review Tribunal Annual Report 2015 page 24.

Queensland's Mental Health Review Tribunal (MHRT) received over 13,000 matters last financial year.

- ~ 80% related to patients detained in Queensland's psychiatric facilities, subject to Involuntary Treatment orders pursuant to the Mental Health Act 2000.
- Legal Representatives / Advocates appear for parties in only 2% of the MHRT hearings – these lawyers were almost exclusively representing the Attorney General (i.e. patients were essentially not represented before the MRHT);
- Less than 2% of the Involuntary Treatment Orders (ITOs) dealt with in the MRHT last year were revoked (8165 Involuntary Treatment Orders were reviewed by Tribunal 7981 Involuntary Treatment Orders were confirmed at hearing, 162 Involuntary Treatment Orders were revoked at hearing.
A 25% reduction in revocations (Involuntary Treatment Orders)

QAI was identified as the preferred location for this legal service at the Disability Legal Assistance Forum meetings convened by the Queensland Legal Assistance Forum Coordinating Committee and the **Mental Health Legal Service (MHLS)** was established.

All people subject to any **forensic orders** MUST have access to legal representation. Any other community member is afforded legal representation when charged with a crime and people who have impaired capacity or are deemed unfit for trial must have equitable opportunity and representation by skilled and experienced legal counsel. HRLS and MHLS perform this legal advocacy within QAI. There is the potential for people to be indefinitely detained within the forensics system and furthermore access to “Limited Community Treatment” is often not granted despite being a condition of the treatment plan. Both services are funded by the Legal Practitioners Interest Trust Account Fund administered by Department of Justice and the Attorney General.

Other people with disability need legal representation for **disability discrimination** particularly in the areas of **employment** and **education**.

Parents with intellectual disability are discriminated against and have their children removed – sometimes without valid reason and or because of a lack of support or parenting training. Yet the placements to which the children/babies are sent are often provided with more than adequate funded supports and services. Parents who have intellectual impairment should be linked to advocacy or legal representation at any stage where **Child Protection Services** are likely to intervene.

5.2 What barriers prevent people with disability from accessing justice?

People with disability need legal advocates that will take the time required to help build capacity to enable instruction and basic understanding of their rights, responsibilities and the legal issues around their matters in the **criminal justice system** and in civil matters so that they may exercise their legal capacity if possible.

People with disability are significantly over-represented within the Australian criminal justice system in all capacities – as victims, witnesses, suspects and offenders. In the face of this over-representation, and coupled with some of the special needs people with disability may have in a criminal justice system that can be hostile to them, it is essential that safeguards are put in place to ensure they are appropriately supported by skilled advocates.

- QAI’s **Justice Support Program (JSP)** supports people with disability in the criminal justice system, and works in tandem with expert legal advocates for people who have more difficult and complex Mental Health Review Tribunal, Mental Health Court and Queensland Civil and Administrative Tribunal matters. Some people who access the JSP have matters that are represented by the legal teams of both MHLS and HRLS.
- QAI’s JSP service is markedly different to the IDRS support service. The IDRS program provides service to people with intellectual disability only, whereas the clients of QAI’s JSP service are primarily people with mental illness, cognitive impairment and acquired brain injuries, as well as intellectual disability and some JSP clients have dual diagnoses.
- JSP clients present with more complex needs and in circumstances which were beyond the capacity of volunteer support workers. The JSP service model had to be modified accordingly. In order to provide support to QAI’s clients with more complex needs and complicated circumstances, JSP undertakes individual advocacy and support to resolve underlying social issues associated with the client’s legal issues.

It should be noted that since this service was established in its current model the majority of people have not re-entered the criminal justice system with **only three individuals in over 5 years having reoffended**.

Statistics

Since 2009 - 2010 JSP has assisted 405 clients (81 of them more than once), opened 178 cases and provided non-legal advice and minor assistance 313 times. This service is predominately one full time advocate. Each assistance, no matter how minor, has been the safeguarding action that has prevented the risk of re-offence.

With this in mind a qualitative study would be an advantage to identify the savings to community and to government brought about by advocacy. More importantly, the cost savings to individual lives of vulnerable people with disability and their families is priceless and therefore the small investment in advocacy goes far beyond the estimation of any fiscal policy or budget planning.

NDAP – Annual Performance Analysis Report (2013-2014):

The Analysis report notes a total of 255 people with legal matters were referred to agencies but were not provided with support during 2013-14. (96 people were referred to other services, a number of referrals were not actioned as the person with disability disengaged during the process or did not follow up as required). As per **question 4.2 address service gaps between NDIS and NDAP funded advocacy** – it is clear that a national approach to advocacy support for people to exercise their legal rights in the criminal justice and legal system must be addressed to ensure that people do not disengage as victims of crime, litigants or as offenders.

Other areas requiring legal review

The dominance of a substituted, rather than supported, **decision-making model** is a significant barrier. People with disability should be given appropriate support directed towards enabling them to express their views and preferences.

The negative stereotyping of people with disability and mental illness as violent and unpredictable can operate as a further barrier to accessing justice for people with disability. The use of **anachronistic language in the laws**, such as ‘insanity’, is inappropriate and supports the continuation of negative stereotyping and contributes to the indefinite detention of people with disability.

There are particular areas of legal reform required in Queensland that relate specifically to people with disability. By **Section 216 of the Criminal Code** (*Criminal Code Act 1899*, Qld) it can be considered an offence to have sex with an “intellectually impaired person” (229F). The definition of capacity to consent (348) is at the core of the implicit restriction of human rights embedded in the Queensland Criminal Code.

Whilst section 216 was designed to protect vulnerable people with disability from sexual abuse, the unintended repercussion is to render many naturally occurring sexual and intimate relationships for many Queenslanders with disability illegal.

QAI asserts that the legislation in Queensland in regard to the use of **Restrictive Practices** has moved beyond the protective measure for which it was intended. Indeed the proponent of the first Bill expressed remorse at the direction that the legislation has taken – the Act was intended to protect people with disability from the unlawful use of practices that had constituted abuse. After three redrafts it has become an enabler for service providers offering immunity from prosecution on the basis of timeliness of administrative decisions, doubled the term of a short-term approval and while reporting mechanisms are a new requirement, there is no measure for qualitative or quantitative monitoring to ensure that the uses of these practices are reduced or eliminated, and no means to direct a service provider to mandated training or for the review or cessation of their services.

The National Disability Advocacy Program (NDAP) “Enhancing the collection and actioning of systemic information” report by E-QUAL Disability Consultants (September 2014) noted the following:-

- connectivity between individual and systemic advocacy was considered critical;
- Many respondents felt that identification and prioritisation of systemic issues must include views of state and or territory funded disability advocacy agencies, relevant peak bodies for people with disabilities as well as data from state and or territory government and statutory bodies.

QAI draws attention to the methods used by this organisation to fulfil the recommendations made in the consultation reports, by the many systemic actions, collaborations, projects, networks, campaigns that are enabled by the relationship our organisation instigates, facilitates, participates and hosts.

5.3 What models of legal advocacy are most effective?

The models available are:-

- private practice,
- Legal Aid
- Community Legal Centres.
 - specialist
 - generalist

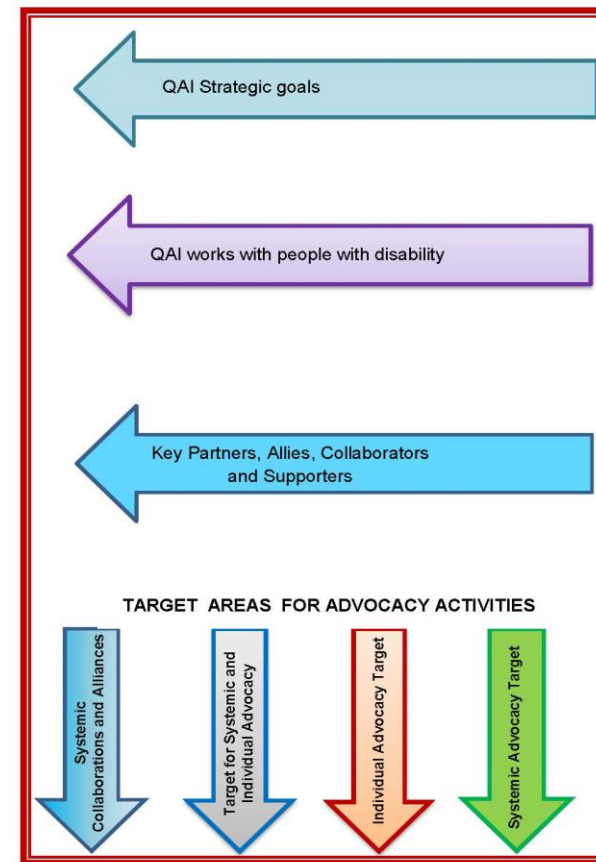
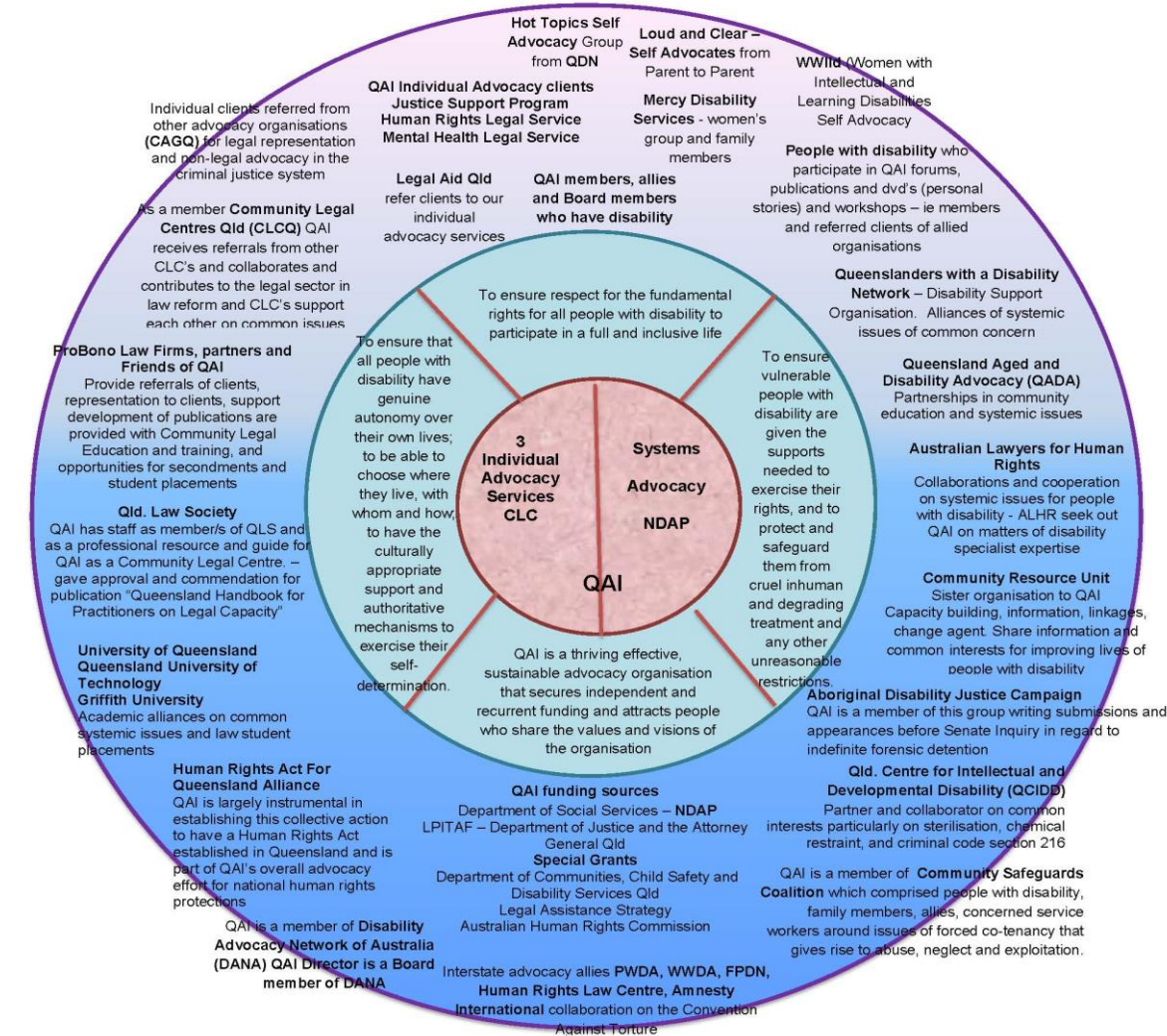
Community Legal Centres are best placed to know and understand people with disability and frequently enlist pro bono partnerships for extremely complex issues. Community Legal Centres often engage in collaborative partnerships with disability systems and individual advocacy organisations to gain further contextual knowledge and collaboration as well as through their state peak bodies.

Community Legal Centres are however, threatened with funding cuts while simultaneously carrying the expectation of increasingly higher demand for legal services. Therefore it is imperative that they are supported by a wide range of advocacy organisations that can assist them in understanding the legal needs of people with disability. It is highly efficient and effective for advocacy organisations to network and cooperate with community legal centres and for advocacy organisations to have referral points to CLCs.

The benefits of CLCs that specialise in a particular area of disability representation is that expertise can be built upon; people with disability know where they can be best represented; family members, advocates, the Statutory bodies, service providers, government departments and Tribunals know where to refer people for representation and where if necessary they need to liaise, and a specialist CLC can then provide training and information to other CLCs as part of the community legal education projects, as QAI continues to do every year.

It is highly advantageous for a disability specialist CLC to reside within the state-wide systems advocacy organisation.

QAI provides specialist legal and non-legal individual advocacy alongside our systems advocacy as outlined below. The diagram which follows indicates just some of the many ways Queensland Advocacy engages and collaborates to deliver its services and systems advocacy across the spectrum of issues and opportunities for people with disability.



Statutory Bodies Office of the Public Advocate Systemic collaboration on many issues – QAI is a source of research material for OPA	Anti-Discrimination Commission Sharing common systemic issues, ideas and information, collaborations	Australian Human Rights Commission QAI provides systemic feedback and AHRC provided funding opportunities for representation to UN CAT and UN CRPD
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Mental Health Commission QAI provides expert evidence and systemic feedback Shared systemic issues	Office of the Public Guardian Often the recipient of our individual and systemic advocacy efforts, but also at times finding some common ground	The Public Trustee of Qld. Often the recipient of our individual and systemic advocacy efforts, but also at times finding some common ground
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Mental Health Court	Mental Health Review Tribunal	Qld. Civil and Administrative Tribunal
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Senate and Parliamentary Committee Inquiries

STATE GOVERNMENT DEPARTMENTS

Disability Services

Department of Health

Office of the Chief Psychiatrist

Department of Housing and Public Works

Department of Justice and the Attorney General

Office of the State Coroner

Qld. Police Service