

NATIONAL DISABILITY ADVOCACY FRAMEWORK – PUBLIC CONSULTATIONS

Submission by Legal Aid Queensland

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Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission in response to the Department of Social Services' (the department) public consultation on the National Disability Advocacy Framework (NDAF) 2022-2025.

Legal Aid Queensland provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997 (Qld)*, LAQ is established for the purpose of 'giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way' and is required to give this 'legal assistance at a reasonable cost to the community and on an equitable basis throughout the state'. Consistent with these statutory objectives, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ's services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and based on the extensive experience of LAQ in the day-to-day application of the law in courts and tribunals. We believe that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

Lawyers in LAQ's Civil Justice Services team conduct weekly inhouse telephone advice clinics to participants and prospective participants of the National Disability Insurance Scheme. LAQ's Civil Justice Services also conduct weekly legal advice clinics in the General Division of the AAT providing advice to participants and prospective participants seeking external merits review of decisions of the National Disability Insurance Agency (NDIA). Legal representation is available to eligible applicants seeking external review of decisions of the NDIA to the Administrative Appeals Tribunal.

As requested by the department, these submissions have been prepared using the questions in the [Submission Guide](#) available on the [DSS Engage website](#) as a guide.

Response to specific questions

Does the new NDAF encompass LAQ’s vision of advocacy? If not, what changes are required?

The new NDAF contains the following definitions in relation to advocacy:

Disability advocacy	enables people with disability to participate in the decision-making processes that safeguard and advance their human rights.
Individual advocacy	a one-on-one approach, undertaken by a professional advocate, relative, friend or volunteer, to prevent or address instances of unfair treatment or abuse.
Systemic advocacy	involves working for long-term social change to ensure the collective rights and interests of people with disability are served through legislation, policies and practices.
Self advocacy	undertaken by someone with disability who speaks up and represents themselves. Support and training for self advocacy is available through community-based groups.

As an initial matter, LAQ notes that, on a practical basis, these definitions should be positioned at the start of the document. Presently, the definitions are located mid-way through the document, between an explanation of the outcomes of the framework and the responsibilities for the framework. LAQ suggests that these definitions would be more appropriately located at the start of the document.

LAQ considers that the definitions provided in respect of “individual advocacy”, “systematic advocacy” and “self advocacy” are clear and accurate.

LAQ also agrees with the approach taken in the new NDAF of breaking down the concept of advocacy into different types of advocacies.

However, LAQ considers that within the definition of “individual advocacy” clearer explanation should be provided to account for the various types of advocacies that are available and that the following types of advocacy should be expressly accounted for in the definitions section of the new NDAF:

- legal advocacy performed by solicitors
- disability advocacy by disability advocates
- advocacy provided by doctors, social workers and other allied health professionals
- advocacy carried out by parents and family members on behalf of the person with disability.

In particular, LAQ notes that is important to clearly define and distinguish legal advocacy from other forms of advocacy for a number of reasons:

- Firstly, solicitors providing advocacy services are bound by certain ethical rules when providing advocacy services, that would not apply to a professional disability advocate, or an individual advocating for themselves or a family member. For example, a professional disability advocate, or an individual advocating for themselves or a family member is able to act in a wholly partisan manner. In contrast, a solicitor has a paramount duty to the court and the administration of justice and is obliged to exercise independent forensic judgements about a client's case.¹
- Secondly, advocacy services provided by a solicitor involve the provision of legal services such as legal advice and representation. Only solicitors are permitted to engage in and provide legal services.² It is an offence for professional disability advocates who are not solicitors to engage in or provide such services.³

Further, LAQ considers that the definition provided for the term "disability advocacy" is, as currently worded, unclear and unduly limited in scope. The current definition does not explain what disability advocacy is, rather it describes one potential benefit of disability advocacy, being participation by people with disability in the decision-making processes that safeguard and advance their human rights.

LAQ does not necessarily disagree with this approach of explaining the meaning of the term 'disability advocacy' by providing examples of the benefits of disability advocacy. However, if this is the approach that the department intends to adopt, then LAQ considers that additional examples should be provided to give a more accurate picture of the scope of what disability advocacy involves. For example, the current definition does not account for the role of advocacy in safeguarding and advancing human rights outside of existing decision-making processes.

Alternatively, the department could employ the following definition of advocacy provided on the department's website, which is much broader than the definition in the new NDAF:⁴

"Advocacy for people with disability can be defined as speaking, acting or writing with minimal conflict of interest on behalf of the interests of a disadvantaged person or group, in order to promote, protect and defend the welfare of and justice for either the person or group by:

- *Acting in a partisan manner (i.e. being on their side and no one else's);*
- *Being primarily concerned with their fundamental needs;*
- *Remaining loyal and accountable to them in a way which is empathic and vigorous (whilst respecting the rights of others); and*
- *Ensuring duty of care at all times."*

¹ *Australian Solicitors Conduct Rules 2012*, rule 3 and rule 17.

² See, e.g, s 24 of the *Legal Profession Act 2007* (Qld) and equivalent legislation in other jurisdictions.

³ See, e.g, s 24 of the *Legal Profession Act 2007* (Qld) and equivalent legislation in other jurisdictions.

⁴ <https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/for-people-with-disability/national-disability-advocacy-program-ndap>

LAQ considers that a more descriptive definition should be provided, and which will be easier to understand than the definition currently used in the new NDAF.

LAQ's general comment is that for the NDAF to be user friendly:

- the NDAF must be clear and the language used must promote understanding
- all definitions used in the NDAF should be reviewed for comprehension and ease of understanding.

Are the principles of the NDAF appropriate for guiding the delivery of advocacy for people with disability in a changing disability environment, including in the context of the NDIS? If not, what changes are required?

The principles of the new NDAF are stated to be:

- Presumption of Rights and Capacity;
- Access to Supports;
- Participation and Inclusion;
- Justice;
- Person-Centred Approach;
- Aboriginal and Torres Strait Islander People with Disability;
- Respect for Intersectionality and Diversity;
- Safeguards.

LAQ considers that these principles are generally appropriate for guiding the delivery of advocacy for people with disability in a changing disability environment.

In the context of the NDIS, LAQ considers that it is particularly important that the delivery of advocacy has regard to the principle of 'justice', which is currently stated to be about ensuring that 'disability advocacy is inclusive of legal advice and representation where it is required to assist people with disability to exercise their rights'.

LAQ has two key pieces of feedback about this principle.

Firstly, LAQ notes that as currently conceived, the principle of 'justice' envisages that the delivery of advocacy for people with disability includes legal advice and representation. LAQ agrees that when dealing with advocacy as a general high-level concept, it is important to account for both legal and non-legal advocacy.

However, for the reasons explained above, when doing so it is equally important to clearly define and distinguish between the advocacy services provided by solicitors through legal advice and representation and the advocacy carried out by a professional advocate or an individual advocating for themselves or a family member. As currently phrased, the principle of 'justice' does not make this distinction clear,

Further, LAQ is concerned that a reference to 'justice' in and of itself is not sufficient and considers that the concept of justice within the NDAF should also have regard to 'access to' justice. It is not enough for the new NDAF to merely 'include' legal advice and representation as a principle. LAQ suggests that the principles of

the NDAF should expressly commit to improving and ensuring access to legal advice and representation for people with disability.

Are the outcomes of the NDAF clear and achievable? Should different ones be included? If so, what should be included?

LAQ considers that the outcomes of the new NDAF are clear in that the intended goal of each outcome is apparent from the face of the document.

However, many of the stated outcomes are phrased in such a way that it would be very difficult to assess whether that outcome has been achieved or is achievable either because:

- measurement of the outcome will necessarily be subjective due to the nature of the outcome, or
- the outcome is an aspirational statement.

Without a way to tangibly assess the outcomes, it is difficult to assess how effective the new NDAF has been at creating real world change.

Accordingly, LAQ considers that the outcomes section of the new NDAF should also include an explanation as to how the relative success of the proposed outcomes will be measured.

Are the responsibilities, reform and policy directions of the NDAF relevant or should different ones be included?

The responsibilities, reform and policy directions set out in new NDAF appear to be relevant.

However, beyond a general commitment in the NDAF regarding sharing responsibility for disability advocacy in their jurisdictions and working together to achieve an effective network of disability advocacy across Australia, it is not clear from the new NDAF how responsibility will actually be divided up between the Commonwealth, State and Territory governments.

LAQ considers that a clearer division of responsibility between the different levels of government and an explanation as to how the different levels of government will 'work together' would improve accountability for the implementation of the framework and the achievement of the outcomes.

Does the NDAF identify what is needed in the current and future disability environment? If not, what changes are required?

The new NDAF does not clearly identify what is needed in the current and future disability environment. The NDAF does not include a clear explanation of the existing disability environment.

LAQ considers that an explanation of how disability advocacy and legal advocacy currently operate in Australia and how they are currently funded would be relevant in this regard. This explanation should also include how current levels of disability advocacy and legal advocacy support access to justice for people with disability.

Concluding remarks

Subject to the comments made above, LAQ agrees with and supports the NDAF's underlying proposition – being that disability advocacy and legal advocacy are important ways to enable and support people with disability to protect and uphold their rights.

Thank you again for the opportunity to make a submission in response to the Department of Social Services' public consultation on the National Disability Advocacy Framework 2022-2025.