

Submission to the Draft National Disability Advocacy Framework 2022-2025 Consultation

July 2022

Introduction

NDS welcomes the opportunity to comment on the draft National Disability Advocacy Framework 2022-2025 (the NDAF).

NDS applauds the Federal Government's commitment to continuing to review how advocacy funding and services are delivered across Australia. We support the Productivity Commission's recommendation for advocacy support to be funded separately from the NDIS and the agreement, as reflected in the NDAF, that the responsibility for independent advocacy should be shared by all jurisdictions.

While the NDAF commits Commonwealth and state and territory governments to *"Ensuring the funding of disability advocacy is transparent, equitable and accountable, and geographical coverage and services gaps are identified and addressed"*, it also notes *"how each advocacy program is developed, funded and managed is the decision and subsequent responsibility of the funding government."*

In our view, this creates concerns related to adequacy of funding, access to, and consistency of advocacy service models for people with disability.

With the progress of the Royal Commission into the Abuse, Violence, Neglect and Exploitation of People with Disability, NDS contends that one action governments can take now to strengthen safeguards for people with disability, without waiting for the findings and recommendations of the Royal Commission, would be to ensure that sound and ongoing funding arrangements for advocacy services are secured now and into the future.

About NDS

National Disability Services is the peak industry body for non-government disability services. Our purpose is to promote and advance services for people with disability. Our Australia-wide membership includes approximately 1050 non-government organisations, which support people with all forms of disability.

Background and policy setting

NDS's extensive work with the disability sector highlights the need for highly competent, well-informed, and widely available disability advocacy services. For disability services, mainstream services, and the individuals who access these services, the transition to the National Disability Insurance Scheme (NDIS) has

created significant and disruptive change. It has also established clearer parameters for the role of disability service providers, as distinct from that of advocates.

The NDAF importantly acknowledges the role of advocacy in promoting inclusion, safeguarding and facilitating access to a broad range of service systems. Ensuring appropriate funding for advocacy remains critical.

Considering advocacy in the context of Australia's Disability Strategy is also important as the majority of people with disability in Australia are not NDIS participants.

The Productivity Commission's Report into NDIS Costs, released in October 2017, highlighted the need for all Australian Governments to continue funding advocacy into the future. The report called for advocacy to remain outside the scope of the NDIS to ensure that people with disability can gain access to the Scheme and that those who are ineligible for NDIS funded supports can continue to receive advocacy support.

The introduction of the NDIS has changed the advocacy landscape significantly. The NDIS structure has removed case management roles – for both NDIS participants and non-participants – which previously had a role in advocating for the service system to meet clients' needs. While it may be clearer to separate service delivery from advocacy, the change throws all responsibility onto people with disability and their families to negotiate with the service system. Many are not able to do this.

Whilst the NDIS funds Support Coordination for some NDIS participants (based on what are 'reasonable and necessary' decisions), and Local Area Coordination (LAC) services have a role in supporting all people with disability to access the community and services - the NDIS does not fund advocacy. Neither Support Coordinators nor LACs can act as advocates in the NDIS planning process or other NDIS processes. This has resulted in an increase in work for advocates assisting people with disability to access the NDIS and appeal NDIA access decisions.

In relation to specific questions raised in the consultation paper we provide the following views:

- **Pressure on advocacy providers from NDIS requirements**

With the introduction of the NDIS Quality and Safeguards Commission's (the NDIS Commission) role in managing registration of disability providers, providers of more complex supports are required to undergo external audits against the NDIS Practice Standards and Quality Indicators¹. Of direct relevance to this consultation is the requirement in the NDIS Commission Rules² for providers to demonstrate they facilitate access for participants to an advocate in the following circumstances:

¹ <https://www.legislation.gov.au/Details/F2018N00041>

² NDIS Commission Rules that require advocacy referral

- When a participant is making informed choices
- Where a participant is involved in an allegation of violence abuse, neglect, exploitation and discrimination
- When giving feedback and or making a complaint about their provider
- If a participant is affected by a reportable incident, and
- When making a complaint to the NDIS Commission

The NDIS Commission's requirements have been in operation progressively across Australia since July 2018 and as such it would be interesting to test what impact this requirement has had on advocacy services. The most recent available NDIS Commission data on the number of reportable incidents made by providers and the number of complaints received from participants however is overwhelmingly high³. Thus, the impact this requirement may be having on advocacy services is also likely to be high. Anecdotally, one provider reported they were told in March 2022 that there would be a four month wait for an advocate to support a person with a disability with their complaint.

In addition to this practice requirement, there remains disagreement amongst government departments responsible for mainstream service delivery, about which entity is responsible for meeting the needs of people with disability. The outcomes of NDIS appeals work currently conducted by advocacy services provides evidence of this. Advocacy will continue to be important in creating accessible services across all

NDIS Practice Standards Rules

Core Module;

Division 1

Independence and Informed Choice (5)-right to have access an advocate of their choice and an advocate present.

Violence, Abuse and Neglect...(2) Each participant is provided with information about the use of an advocate

Division 2

Feedback and Complaints (2) Each participant is provided with inform about their right to access an advocate

Incident Management and Reportable Incidents Rules

10 Incident Management Systems and Procedures

1 (d) to provide support and assistance to people with a disability affected by an incident access to advocates

Complains Management and Resolution Rules

A registered NDIS provider must implement and maintain a complaints management and resolution system that complies with the requirements set out in this Part.

Note: The complaints management and resolution system must also be appropriate for the provider's size and classes of supports or services provided and make provision in relation to advocates and other representatives of persons with disability (see paragraphs 73W(a), (aa) and (ab) of the Act).

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³ [Activity Report: 1 January 2022 to 31 March 2022 \(ndiscommission.gov.au\)](https://www.ndiscommission.gov.au/activity-report-1-january-2022-to-31-march-2022)

government sectors and in building inclusive communities consistent with Australia's Disability Strategy 2021-2031. This is also critical to the goals of the NDIS.

- **Risk of inconsistency and access to advocacy**

The NDAF relies on both state and territory and commonwealth funding and performance arrangements, meaning how each advocacy program is developed, funded and managed, is the decision and subsequent responsibility of the funding government, as currently occurs. This, we know from experience, results in variation in quality, access and performance across states and territories, and inconsistent experiences for people with disability to promote, protect and secure their rights.

How the ongoing adequacy of funding for advocacy will be measured and assessed, and how jurisdictions will be accountable for this is not clear in the NDAF. It is also not clear at this stage whether this will be incorporated in the disability advocacy work plan.

Ensuring the delivery of advocacy for people with disability regardless of their location, disability age or background is consistent needs to be an objective and outcome of the NDAF. Developing a consistent means to measure funding levels and performance nationally could address this.

- **Using advocacy data to inform public policy**

Effective, independent advocacy services can operate as a useful source of intelligence that alerts governments to service gaps or emerging issues that may indicate market failure or highlight other issues of concern. This may include, for example, if NDIS participants were to be prohibited from exercising choice and control due to a lack of service options, or if themes emerge in complaints. This is similar in many respects to consumer advocacy organisations in other market-based sectors. This information could inform public policy and deliver evidence-based solutions for people with disability.

- **Secure and adequate funding**

NDS notes with concern that many governments continue to fund advocacy on a short-term basis and at inadequate levels. This limits organisations' capacity to upskill staff, develop relationships with local partners, evaluate programs, and disseminate outcomes achieved to the broader disability sector. The NDAF should incorporate sustainable funding models that provide ongoing support for people with disability, advocacy services and their staff.

- **Models of advocacy provision**

Specific requirements and measures (as identified by states and territories in the Disability Strategy targeted action plans) to ensure that Aboriginal and Torres Strait Islander communities and culturally and linguistically diverse communities (CALD), access the advocacy support that they need are welcomed.

However, too much specialisation in the allocation of advocacy funding is confusing and creates barriers. NDS has proposed that a better model would be one that ensures advocacy support is available in all locations to assist individuals with disability address their specific issues and needs. Another, less preferred option, would be to establish state-wide referral pathways where people could go directly and then, based on specific need, be referred to the most appropriate service. These services would need to be well resourced, with good ICT capability, so they can communicate easily with people seeking assistance even when they live remotely. Given the NDIS Commission's five requirements for disability providers in involving advocates, mentioned above, these areas should be the essential set of fundamental supports that are provided by all advocacy agencies.

Funding decisions for generalist advocacy services should take account of the location, however that will only be part of the solution to the inadequate access these communities currently have to culturally appropriate advocacy support. As it is impossible to predict which advocacy services people from these communities will approach, all advocacy services should have some skills and capability to assist.

Traditionally a few CALD specific advocacy services have been used to service all people from a CALD background. This is not appropriate to cover the needs of people across Australia. Expecting all advocacy services to have the required skills to support all people from CALD background is also not appropriate. A triage system, working across all advocacy services, where identified experts could provide supports to this constituency could be a solution. This requires advocacy services to be networked, with the expectation that they collaborate to ensure people seeking assistance get access to the most appropriate support.

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