

8 July 2022

Disability Advocacy Policy
Department of Social Services
GPO Box 9820
CANBERRA ACT 2601

By email: disabilityadvocacysecretariat@dss.gov.au

Dear Review Team

National Disability Advocacy Framework 2022-2025

Thank you for the opportunity to provide feedback on the draft of the National Disability Advocacy Framework 2022-2025 (the **Framework**). Aged and Disability Advocacy Australia (**ADA**) appreciates being consulted on the updating of the original Framework, which is a critical and foundational document that informs policy development relating to disability advocacy services around the country.

About ADA Australia

ADA is a not for profit, independent, community-based advocacy and education service with nearly 30 years' experience in informing, supporting, representing and advocating in the interests of older people, and persons with disability in Queensland.

ADA also provides legal advocacy through ADA Law, a community legal centre and a division of ADA. ADA Law provides specialized legal advice to older people and people with disability, including those living with cognitive impairments or questioned capacity, on issues associated with human rights, elder abuse, and health and disability legal issues related to decision-making.

ADA advocates and legal practitioners work with identified First Peoples advocates through the Aboriginal and Torres Strait Islander Disability Network Queensland (**ATSIDNQ**), a network established to support mob with disability and provide individual advocacy services for Aboriginal and Torres Strait Islander people with disability.

Review of current Framework

ADA has reviewed the existing Framework and provides the following for the Secretariat's consideration.

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Vision of advocacy

Encouragingly, the language of the Framework appropriately recognises the principles of human rights and person-centred policy that must underpin the document. This is reflected in the high-level acknowledgement of the critical role that advocacy plays, and must continue to play, in ensuring that persons with disability are afforded equal opportunities and protections both under the law, and in systemic policy development and operation. The placement of the United Nations Convention on the Rights of Persons with Disabilities (**UNCRPD**) at the top of the legislative and policy instruments listed under 'Principles' is supported.

Whilst the insertion of these high level 'guiding principles' is important, we consider that they should also point to the practical aspects that must be provided for, to ensure that these statements will lead to their intended outcomes. Without being overly prescriptive, the Framework must provide some insight into *how* the objectives will be achieved.

A singular reference to the presumption of capacity is insufficient. In our experience, the presumption of capacity and the legislative frameworks, definitions and policies that are intended to guide its application are poorly understood by government, healthcare systems and practitioners, service providers, statutory bodies and tribunals. This often leads to a rudimentary acknowledgement of the presumption, if the party is even aware of its existence, leading to negative outcomes for persons with disability. The Framework should highlight not only the existence of the presumption of capacity, but dictate that it is understood and appropriately applied at all times.

Principles

As mentioned above, ADA supports the inclusion of principles in the document. We consider that stronger language would be appropriate. For example, that the Framework imposes a positive obligation on the parties to implement strategies and policies to ensure that practice aligns with the principles.

We submit that under 'Access to Supports' the Framework should include an additional point which recognises the need for adequate and consistent funding arrangements between government and advocacy services, to ensure sustainability of these services and ensure continued access for persons with disability. Further detail should expressly acknowledge that need for advocacy services for all persons with disability, including specialised advocates to assist persons from culturally and linguistically diverse backgrounds (**CALD**), First Nations people, people with disability who identify as LGTBQA+, as well as persons in regional and remote areas.

Outcomes

It is important that outcomes are clear and achievable. Whilst not being over-prescriptive, the outcomes should be appropriately detailed to provide a reasonable understanding to allow an objective observer to consider if the outcome has been achieved.

Some parts of the drafted 'outcomes' achieve this balance: for example, *'People with disability are accorded the same rights and freedoms as all Australians'*.

We submit that some amendments be considered in relation to the following 'outcomes':

- *People with disability are able, and given opportunity to fully participate in all aspects of the civil, political, economic, social and cultural life of our communities*
- *Aboriginal and Torres Strait Islander peoples will be fully consulted in all aspects of advocacy design and delivery; have access to culturally and linguistically appropriate, and culturally safe disability advocacy, including access to community-controlled organisations delivering disability advocacy, and have access to, and the capability to use locally relevant data and information*
- *Culturally and linguistically diverse communities have access to culturally and linguistically appropriate, and culturally safe, disability advocacy that ~~features~~ invites the engagement and input of relevant local communities*

What is needed now, and in the future?

The Framework does not recognise that persons with disability have a right to access advocacy services, and that this right should be applied regardless of setting or circumstance. This includes in settings of health care (including mental health) and residential institutions, education settings, judicial and criminal justice settings, and in places of detention.

Without this recognition, persons with disability who seek advocacy support will continue to encounter barriers to accessing this support, in conflict with the intended outcomes of the Framework.

This can be improved by the express recognition of a right to advocacy, and an acknowledgement of the responsibilities on government with respect to funding sustainability for advocacy services – including specialised and localised services to assist the diversity of people with disability.

Further, we suggest inclusion of wording which acknowledges the urgent need for community, institutional and government education programs designed to upskill and improve awareness of the rights-based legislative obligations imposed by the CRPD and other domestic instruments, including state-based human rights legislation. As mentioned above, significant improvement in understanding of capacity, including an obligation to utilise appropriate capacity guidelines when seeking to determine capacity, is urgently required.

Endorsement of Disability Advocacy Network Australia submission

ADA would like to add our support to the submission by Disability Advocacy Network Australia (**DANA**) on the draft Framework and what is needed to realise its intended outcomes.

We urge the Disability Reform Ministers and their respective governments to prioritise this work and make strong commitments on disability advocacy funding and collaboration to help realise the vision of Australia's Disability Strategy 2021-31 and the National Disability Insurance Scheme: an Australia that includes and values people with disability and respects human rights for all.

Well-resourced and focused disability advocacy not only makes good sense socially, it also makes good economic sense, leading to better financial outcomes for the taxpayer.

Thank you again for the opportunity to comment. ADA would be pleased to further assist the Committee with its inquiry. Should you wish to discuss this submission, please do not hesitate to contact Vanessa Krulin, Solicitor and Senior Policy and Research Officer on [REDACTED]

Yours faithfully

A handwritten signature in black ink, appearing to read 'Geoff Rowe', with a long horizontal flourish extending to the right.

Geoff Rowe
Chief Executive Officer