

Disability Council NSW

Submission to the Australian Government Department of Social Services National Disability Advocacy Framework



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Disability Council NSW

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The Disability Council NSW (also known as 'Council') was established under the *Community Welfare Act 1987* (NSW), and was transferred under the *Disability Inclusion Act 2014* (NSW) on 3 December 2014. Council's main responsibilities under the Act are to:

- Monitor the implementation of Government policy;
- Advise the Minister on emerging issues relating to people with disability, and about the content and implementation of the NSW State Disability Inclusion Plan and disability inclusion action plans;
- Advise public authorities about the content and implementation of disability inclusion action plans;
- Promote the inclusion of people with disability in the community and promote community awareness of matters concerning the interests of people with disability and their families;
- Consult with similar councils and bodies, and people with disability; and
- Conduct research about matters relating to people with disability.

The Council consists of a diverse group of 11 members. Each member is appointed for up to four years by the Governor of NSW on the recommendation of the State Government's Minister for Disability Services. Members are selected to be on Council because:

- They live with a disability.
- They are an expert on disability.
- They want to improve the lives of people with disability.

Introduction

Council welcomes the opportunity to make a submission to the Australian Government Department of Social Services Review of the National Disability Advocacy Framework.

Council continues to strongly support the key elements of the current framework including the principles, outcomes and outputs outlined in the National Disability Advocacy Framework Discussion Paper. The principles are rights-focused and reflect those enshrined in the *United Nations Convention on the Rights of Persons with Disabilities*. It is important that Australia maintains this rights based approach to uphold its obligations under the United Nations Framework. The outcomes and outputs in the Framework capture the need for advocacy to continue to enact positive change at an individual and systemic level.

Individual and systemic advocacy promotes and protects the rights of people with disability. Specifically, the United Kingdom Commission for Social Care Inspection (2008) report, *Safeguarding adults: A study of the effectiveness of arrangements to safeguard adults from abuse*¹, found that advocacy support makes a significant difference to outcomes for people with disability.

This submission will address the importance of resourcing for advocacy support and the crucial role of individual advocacy following the implementation of the National Disability Insurance Scheme (NDIS) and the National Disability Strategy. It will also investigate the role of systemic advocacy in NSW in the preparation of disability inclusion action plans.

¹ Commission for the Social Care Inspection (2008) *Safeguarding adults A study of the effectiveness of arrangements to safeguard adults from abuse*, London, p. 3 (available at <http://www.elderabuse.org.uk/Documents/Other%20Orgs/CSCI%20Report%20-%20safeguarding.pdf>)

Resourcing

Whilst the National Disability Advocacy Framework encompasses Council's vision of advocacy in the NDIS environment, inadequate resourcing of the advocacy sector remains a key inhibitor for the sector to deliver its intended outcomes. Failure to support access to and funding for advocacy is denying some people with disability the opportunity to effectively and fully participate in all aspects of their life on an equal basis with others, directly or through freely chosen representatives, as outlined in Article 29 of the *United Nations Convention on the Rights of Persons with Disabilities*.

The intended benefit of the NDIS reforms is to give control and choice to people with disability and to continue to provide access to State-based mainstream services. In order to realise the full potential of these reforms and support all people with disability in Australia, Commonwealth and State governments need to agree on a joint funding model to properly resource the sector. A vibrant advocacy sector benefits all levels of Government levels and supports positive change for people with disability.

The NSW Government currently provides approximately \$10 million p. a. to services that provide disability advocacy, information and representation. Council understands that NSW is one of the only states that will not continue to fund some residual state-based disability services post NDIS implementation.

To ensure the success of the NDIS and National Disability Strategy, it is essential that people with disability in NSW continue to have access to advocacy and representation services, and that their access is not constrained by rationalisation. It is therefore critical that at a minimum, the Commonwealth carefully assesses which services will continue to be provided under the Information, Linkages and Capacity Building Framework and which may be left unfunded. If this does not occur, there is a real risk that advocacy services in NSW will be rationalised, specific funding will be lost and people with disability encountering difficulties will have no avenue for assistance and support.

Recommendation 1

That the Commonwealth and NSW Government agree on a joint funding model to properly resource the advocacy sector. At a minimum, funding must be equal to the current investment from the National Disability Advocacy Program and the NSW Government.

Independent advocacy and the NDIS

The NDIS is changing the provision of disability services across Australia. Strong independent and professional advocacy is critical for individuals who are accessing NDIS supports. The role of independent advocacy is crucial in ensuring people with disability can effectively navigate the complex system of NDIS supports in order to make informed decisions on choice and control with minimum risks.

Council notes that in an increasingly privatised market under the NDIS, some people with disability are extremely vulnerable. Council is aware of unmet need for advocacy services across NSW, including in the NDIS trial sites. Individuals in the NDIS trial sites who have not had the support of individual advocates have faced barriers to the NDIS as they have

been extremely disadvantaged in meetings about their NDIS package². Individual advocates are critical to ensure NDIS participants engage in the planning process and secure packages that are appropriate to their needs. These advocates must be independent of the service system, providing impartial support.

Independent advocacy and mainstream services

Whilst the NDIS is changing the provision of support for people with disability, not all support mechanisms will be covered by NDIS and many will remain the responsibility of the NSW government. People with disability in NSW will require individual advocacy in order to access the full range of quality generalist and specialist State-based services and supports available.

Many people with disability who will not be supported under NDIS will experience structural and ongoing discrimination and disadvantage in accessing mainstream services. Many of the issues dealt with by advocacy providers are not just about disability services but include a raft of generic services in housing, health, education, transport, employment as well as law and justice. These issues will still exist, even for people with disability who are accessing NDIS supports. Failure to provide advocacy support for people with disability, irrespective of whether they are supported under NDIS, will be denying people with disability their right to have support to make decisions and choices in all aspects of their lives.

Recommendation 2

That all people with disability have access to advocacy services when they are required.

Systemic advocacy

Advocacy and representative bodies draw on the real lived experience of people with disability to inform policy development. This role is vital in working for systemic change across all areas of government, business and community life to improve the lives of people with disability. For all levels of government, supporting systemic advocacy for people with disability is a key indication of the commitment to uphold human rights in Australia and realising the full implementation of the *United Nations Convention on the Rights of Persons with Disabilities*.

Council notes that systemic advocacy plays a critical role in informing government policy. This role is highlighted in NSW where the state government mandates consultation with people with in the NSW State Disability Inclusion Plan (DIP) and disability inclusion action plan (DIAP) preparation, under the *Disability Inclusion Act 2014* (NSW) (the Act) and the *Disability Inclusion Regulation 2014* (NSW) (the Regulation). Part 2 of the Act requires the NSW Government to develop a four-year DIP to guide how government organisations work towards inclusion. It also requires NSW Government departments, local councils and other public authorities to develop and implement DIAPs.

The DIP includes whole-of-government goals to support the inclusion of people with disability in the community and improve their access to mainstream services and community facilities in NSW. The DIP also requires government agencies to work

² Reported by Colleen Pearce, Public Advocate, Office of the Public Advocate Victoria at the Council for Intellectual Disability NSW Conference "We Are Worth The Investment! People with Intellectual Disability and the NDIS" on 17 July 2015.

collaboratively, and with local councils and other public authorities, to provide appropriate and relevant supports and services to people with disability within local communities through DIAPs. DIAPs must be developed by all public authorities, including NSW Government departments, local councils and public authorities as set out in the Regulation. These plans contain actions to be put in place so that people with disability can participate fully in the local community and can access supports and services provided by the public authority.

The legislative requirement to consult will assist agencies to ensure the DIP and DIAPs are relevant and practical and that they reflect the needs of people with disability. It is important that agencies consult with service users and systemic bodies, including peak and representative organisations, which have a raft of collective experience and also a grasp on systemic policy. In addition, membership organisations are able to gain access to a 'grass roots' perspective of issues facing people with disability and develop policy positions based on individuals' experience.

Without peak and membership bodies, it is unclear how government agencies will be able to reach people with disability and whether they will be able to comply with the legislative requirements of the Act. Failure to consult with appropriate peak bodies may mean that barriers for people with disability are not addressed in DIAPs.

In order to ensure the DIP and DIAPs achieve their intended outcome, it is important that there is public investment in systemic advocacy to ensure the rights of people with disability are upheld. Peak and representative bodies play a crucial role in systemic advocacy by re-addressing discriminatory practices of the past and enabling long-term systemic change in the future.

Recommendation 3

That Governments at both State and Federal level continue to recognise the value of systemic advocacy in informing policy development, and support it as a key link between people with disability and policy makers.