



# **Office of the Public Advocate South Australia**

## **Submission**

**Draft National Disability Advocacy Framework 2022-25**

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## CONTENTS

1. Introduction .....	3
2. The Public Advocate .....	3
3. Disability Advocate .....	4
4. Feedback on the National Disability Advocacy Framework (NDAF).....	4
4.1. Rationale.....	4
4.2. Objectives .....	6
4.3. Principles .....	6
4.4. Definitions .....	8
4.5. Outcomes.....	8
4.6. Implementation – Responsibility, Reform and Policy Directions .....	9
5. Conclusion .....	9
6. Recommendations .....	10

## Review of the National Disability Advocacy Framework 2022-25

### 1. Introduction

The Public Advocate welcomes the opportunity to provide a submission on the draft National Disability Advocacy Framework 2022-2025 (NDAF).

The Public Advocate has an important role in systemic advocacy for people living with disability and mental incapacity in South Australia, with advocacy efforts directed towards fulfilling the functions outlined in the *Guardianship and Administration Act 1993* (SA).

In recent years, the Public Advocate has lobbied for the establishment of Community Visitor Schemes, improvements in forensic and disability services, new approaches to restrictive practices, and state legislative reform including amendments to the *Mental Health Act 2009* (SA) and the *Guardianship and Administration Act 1993* (SA). The Office of the Public Advocate (OPA) has also participated in project work to support reforms in Advance Care Directives, the promotion and protection of the rights of vulnerable adults and trialling supported decision making to assist people with disability to make their own decisions.

There are some situations when the OPA will also assist an individual through advocacy. This may include representing the interests of an individual who has mental incapacity and is experiencing discrimination, abuse, or neglect.

With this strong connection to disability advocacy, the Public Advocate recognises the importance of the NDAF in guiding the effective and timely provision of advocacy for people with disability across Australia and ensuring greater consistency across government-funded advocacy programs. This feedback on the draft NDAF has been provided to help strengthen disability advocacy arrangements into the future.

### 2. The Public Advocate

The South Australian Public Advocate promotes the rights and interests of people with impaired decision-making capacity. The Public Advocate is supported by the Office of the Public Advocate (OPA) to provide guardianship, investigation, advocacy, dispute resolution, and information to support people who need assistance with decision-making.

The Public Advocate is a statutory officer who advocates for and on behalf of people with impaired decision-making capacity and their families, carers, and supporters. In particular, the Public Advocate administers South Australian laws that relate to adults who are unable to make decisions for themselves, who are at risk of abuse or neglect and may require assistance with decision making.

The OPA's Dispute Resolution Service can provide preliminary assistance and mediation if a person has made an Advance Care Directive (ACD); if there is a

dispute about consent to medical treatment and if there is disagreement about decisions or decision-makers.

The Public Advocate can be appointed by the South Australian Civil and Administrative Tribunal (SACAT) as a guardian of last resort if a person has impaired decision-making capacity, there is a lifestyle, accommodation, and/or health decision to be made and there is no other appropriate person to be appointed.

What this means in practice is that the Public Advocate will only be appointed if there is no one else in a person's life able and willing to make necessary decisions, or if there is family conflict meaning that agreement on decisions is difficult or not possible. Consequently, the Public Advocate often must make decisions for people who have complex needs or experience complex situations and who may be without support networks.

### **3. Disability Advocate**

The South Australian Disability Advocate is a position that was established in November 2018 to identify and address systemic problems with the implementation and performance of the National Disability Insurance Scheme (NDIS). The Disability Advocate works to ensure South Australians with disability and their families can fully realise the benefits of the Scheme.

The Disability Advocate is not a statutory officer but is located within the Office of the Public Advocate to ensure that the role is sufficiently independent from government service provision.

The Disability Advocate makes regular reports to state ministers and senior state and NDIA officers. Reports, position papers and discussion papers by the Public Advocate and/or the Disability Advocate are available on the OPA website at [Office of the Public Advocate \(opa.sa.gov.au\)](https://opa.sa.gov.au).

### **4. Feedback on the National Disability Advocacy Framework (NDAF)**

The questions outlined in the Australian Department of Social Services' (DSS) submission guide have been used to assist in developing feedback to the NDAF review. Specifically, this submission will review the rationale, objectives, principles, outcomes, definitions, and implementation mechanisms of the NDAF.

#### **4.1. Rationale**

The rationale statement drafted in the NDAF provides a clear justification for the provision of advocacy services for people with disability. However, it does not touch on the rationale for delivering a national framework.

The inquiries of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disabilities have highlighted the persistent interface issues between the NDIS and State-led service systems, where identifying responsibility for the provision of services is often unclear. Where there is uncertainty about the responsibilities of governments, service gaps can emerge or persist because no one is clearly accountable for them and people with disability can miss out on much needed support.

With changes in the policy and service environment following the introduction of the NDIS, there have been uncertainties relating to the provision of disability advocacy services. Some advocacy functions (such as decision supports, safeguard supports and capacity-building) have been funded by the National Disability Insurance Agency (NDIA) either as grants through the Information, Linkages and Capacity Building (ILC) program or through individual NDIS plans. However, other functions, such as systemic advocacy and legal advocacy (including legal review and representation) are not funded through these programs either because they are not suited to individualised funding models or because they are provided outside the NDIS.

Governments have taken some action to clarify funding responsibilities and address service gaps relating to NDIS interface issues across a range of mainstream service systems including health, mental health, early childhood development, child protection and family support, school education, higher education, Vocational Education and Training (VET), employment, housing and community infrastructure, transport, justice and aged care. However, uncertainties remain relating to the provision of other disability services outside the NDIS, including advocacy services.

The Commonwealth, State and Territory Governments share responsibility for advocacy services not funded by the NDIA. The Commonwealth Government contributes through the National Disability Advocacy Program, while each State and Territory Government takes a different approach to funding of advocacy services. Some jurisdictions have maintained their previous level of advocacy funding while others have reduced or withdrawn funding following the implementation of the NDIS.

A key rationale for the NDAF is that it improves government accountability by clarifying roles and responsibilities of Commonwealth, State, and Territory Governments in funding and regulating the provision of disability advocacy services outside the NDIS. Clarifying the responsibilities of governments promotes greater consistency across jurisdictions in the delivery of government-funded advocacy programs and could help narrow or prevent advocacy service gaps that have emerged across jurisdictions following the introduction of the NDIS. A lack of clarity in responsibilities is not the only factor that contributes to service gaps, but it contributes to a policy environment where gaps are able to emerge and persist.

**Recommendation 1:** That the rationale statement is amended to include the role the NDAF plays in improving government accountability, by clarifying and reinforcing the obligations of Commonwealth, State and Territory Governments in funding and delivering advocacy supports to people with disability thereby narrowing or preventing advocacy service gaps.

## 4.2. Objectives

The objective statement drafted in the NDAF clearly stipulates a goal of delivering access to advocacy for people with disability, but it offers no direction on how this goal will be achieved or what methods will be used to accomplish it.

An important and unique characteristic of the NDAF is that it updates the shared responsibilities of Commonwealth, State and Territory Governments in funding and regulating disability advocacy services following the introduction of the National Disability Insurance Scheme and the Australian Disability Strategy 2021 – 2031. The clarification of high-level responsibilities of governments should improve access to advocacy services for people with disability nation-wide by promoting greater consistency across jurisdictions in the delivery of government-funded advocacy programs.

**Recommendation 2:** That the objective statement is amended to reflect the NDAF's purpose of updating shared roles and responsibilities of Commonwealth, State and Territory Governments in funding and regulating disability advocacy services and promoting greater consistency across jurisdictions in the delivery of government-funded advocacy programs.

## 4.3. Principles

The Public Advocate supports the draft principles to guide the provision of advocacy for people with disability but recommends amendments to those that reference Aboriginal and Torres Strait Islander people with disability, respect for diversity, and intersectionality. This section of the NDAF would also benefit from additional principles to guide the delivery of advocacy in the context of the changing disability environment.

**Recommendation 3:** That the current draft principles be amended as follows:

### **Aboriginal and Torres Strait Islander People with Disability**

- The National Disability Advocacy Framework follows the same underpinning principles that govern the Closing the Gap National Agreement:
  - The ongoing strength and resilience of Aboriginal and Torres Strait Islander people is acknowledged in sustaining the world's oldest living cultures.
  - When Aboriginal and Torres Strait Islander people have a genuine say in the design and delivery of policies, programs and services that affect them, better life outcomes are achieved.
  - Partnerships and shared decision-making processes are implemented to support the design and implementation of disability advocacy.
  - To ensure cultural capability in advocacy services, Aboriginal and Torres Strait Islander perspectives are embedded into their design, delivery, and evaluation.

## Respect for Diversity

- The practices, values, beliefs and cultures of individuals and families are respected.

## Intersectional Approach

- Intersectionality refers to the ways in which different aspects of a person's identity can expose them to overlapping forms of discrimination and marginalisation, including but not limited to age, gender, sex, sexual orientation, gender identity, ethnicity, colour, nationality, language, religion, ability, and relationship status.
- Attitudes, systems, and structures in society and within organisations can interact to create inequality and result in exclusion including sexism, racism, homophobia, biphobia, transphobia, intersex discrimination, ableism, ageism, and stigma.
- Where these aspects or characteristics combine it is recognised that people may find it more difficult to get the help that they need to overcome systemic barriers.

**Recommendation 4:** That the following additional principles be included to guide the delivery of advocacy in a changing disability environment:

**A human rights approach** – the legal and human rights of people with disability are recognised and upheld.

**Independence** - advocacy services, and the funding of advocacy, should be independent of all agencies involved in funding, regulating, or providing other disability services (such as employment, accommodation support, personal care support, independent living support, respite, vocational training) to ensure they can be free from all actual, potential, or perceived conflicts of interest and can operate without fear or favour.

**Accessing advocacy** – people with disability have opportunities to access advocacy, on the basis of need.

**Individual needs** – people with disability receive advocacy that is designed to meet their individual needs and interests.

**Valued status** – the intrinsic value of people with disability is recognised and each person is supported and encouraged to enhance their valued status in the community.

**Service management** – each advocacy service provider adopts quality management systems and practices that optimise the effectiveness of advocacy for people with disability and facilitate continuous improvement.

**Staff, recruitment, employment, and training** – each person who has an employment relationship with an advocacy service provider has appropriate skills and competencies.

#### 4.4. Definitions

While the NDAF defines types of disability advocacy including individual, systemic, and self-advocacy, it does not stipulate what services will be provided by Commonwealth, State and Territory Governments and how these services will be provided. Supplying clarity about service provision through the NDAF is particularly important for advocacy services that sit outside the NDIS, where the weight of concern about service gaps lies. At present, precisely what advocacy services governments will provide and how they will provide them remains largely unclear.

**Recommendation 5:** That the NDAF be amended to stipulate what types of advocacy services governments will provide and how they will provide them.

The NDAF does not include a definition of legal advocacy. However, the national disability advocacy principles referenced in the NDAF recognise that disability advocacy is inclusive of legal advocacy and representation, where it is required to assist people with disability to exercise their rights. It is not clear whether the omission of legal advocacy in the definitions list is an oversight, or whether the delivery of legal advocacy will not be considered a responsibility of governments under the NDAF.

**Recommendation 6:** That there be clarification on whether legal advocacy will be provided by governments under the NDAF.

**Recommendation 7:** That legal advocacy be included in the NDAF list of definitions.

#### 4.5. Outcomes

An outcomes framework should measure, track and report on outcomes for people with disability engaged with advocacy services and track those changes in outcomes over time. While the Public Advocate recognises that the NDAF will be supported by a disability advocacy workplan which will drive the implementation of outcomes, it is important that outcome measures are clearly defined in the NDAF so that they can be easily operationalised in the workplan.

The current set of outcomes presented in the NDAF represents an appropriate set of ideals but may prove difficult to measure and report against.

**Recommendation 8:** The NDAF could be strengthened by considering a range of more measurable outcomes. For example, outcomes could include:

- Awareness of the advocacy service;
- Understanding of the service aims;
- Access to the service;
- Alignment of service with policy;
- Empowered service user;
- Improved service quality
- Promotion of independent living;
- Independent representation available;
- Improved status/credibility of advocacy scheme;

- Improved family/carer understanding and attitudes;
- Improved service monitoring;
- Improved inter-agency working;
- Assistance with decision-making in complex cases;
- Fulfilled legal requirements.

#### **4.6. Implementation – Responsibility, Reform and Policy Directions**

As responsibility for the NDAF rests with Commonwealth, State and Territory Governments, each signatory must be clear about its own responsibilities and what success, or failure, looks like in relation to the NDAF's implementation.

The success of the NDAF will also largely depend on the advocacy workplan that is yet to be drafted. The Public Advocate recommends that this workplan be co-designed with key stakeholders including people living with disability, advocacy services, and representatives from the Commonwealth, State and Territory Governments. The work plan must contain actions with specific timeframes and responsibilities.

**Recommendation 9:** That the disability advocacy workplan, intended to support implementation of the NDAF, be co-designed with key stakeholders including people living with disability, advocacy services, and representatives from the Commonwealth, State and Territory Governments. The work plan must contain actions with specific timeframes and responsibilities assigned to the actions.

### **5. Conclusion**

In its current form, the NDAF fails to clarify government commitments, roles and responsibilities in the funding and delivery of disability advocacy. Nor does it articulate the type and nature of disability advocacy to be provided. There is an opportunity to better specify these requirements through the review of the NDAF's rationale and objectives.

A key question that remains is whether a framework of this nature is the most effective tool for strengthening government cooperation and accountability in relation to the delivery of advocacy for people with disability across Australia.

Perhaps consideration should be given to the merits of establishing an overarching agreement on disability advocacy within the framework of the Intergovernmental Agreement on Federal Financial Relations (IGA FFR), considering there is a current lack of consensus amongst jurisdictions about the value of updating the National Disability Agreement to reflect roles and responsibilities of governments in relation to advocacy, following the implementation of the NDIS. A national agreement on advocacy would strengthen government financial accountability and ensure consistency in advocacy investment across jurisdictions.

## 6. Recommendations

**Recommendation 1:** That the rationale statement is amended to include the role the NDAF plays in improving government accountability, by clarifying and reinforcing the obligations of Commonwealth, State and Territory Governments in funding and delivering advocacy supports to people with disability; and narrowing or preventing advocacy service gaps through these accountability measures.

**Recommendation 2:** That the objective statement is amended to reflect the NDAF's purpose of updating shared roles and responsibilities of Commonwealth, State and Territory Governments in funding and regulating disability advocacy services and promoting greater consistency across jurisdictions in the delivery of government funded advocacy programs.

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