Queensland Advocacy Incorporated

Our mission is to promote, protect and defend, through advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

Systems and Legal Advocacy for vulnerable people with Disability

27 August 2018

Dear Commissioner,

Please accept this submission to the National Disability Agreement Review.

Yours sincerely,

Michelle O’Flynn, Director

About QAI

Queensland Advocacy Incorporated (QAI) is a member-driven and non-profit advocacy NGO for people with disability. Our mission is to promote, protect and defend through advocacy, the fundamental needs, rights and lives of the most vulnerable people with disability in Queensland.

Our Human Rights and Mental Health services offer legal advice and representation: the first, on guardianship and administration and the latter on mental health matters. Our Justice Support and NDIS Appeals programs provide non-legal advice and support to people with disability in the criminal justice system and to participants in NDIS Appeals. This individual advocacy informs our campaigns at state and federal levels for changes in attitudes, laws and policies, and it assists us to understand the challenges, needs and concerns of people who are the focus of this submission.

QAI's constitution holds that every person is unique and valuable, and that diversity is intrinsic to community. People with disability comprise the majority of our Board; their lived experience of disability is our foundation and guide.

RECOMMENDATIONS

General

- QAI supports the recommendation of the Senate Standing Committee on Community Affairs, that the government takes to the Disability Reform Council for consideration a proposal to establish an Office of Disability Strategy under the oversight of the Disability Reform Council.[1]

Advocacy Coordination and Funding

- The Australian Government, through the Department of Social Services, must continue to provide funding for general disability advocacy, individual and systemic, by non-government organisations, with no involvement by the National Disability Insurance Agency in this funding role. Funding for advocacy separately from the NDIS will reduce the potential for conflicts of interest. Advocates must be able to offer criticism without the possibility of sanction by their funding body.

- Independent advocacy, provided by not-for-profit organisations, must be freely available to participants in the NDIS. It would be unfair to expect a person to pay for independent advocacy out of their individual budget, especially when their concerns relate to the scheme itself and the services provided through the scheme. Non-legal independent advocates can assist people to address matters without the involvement of legal practitioners, saving time, anxiety and expense.

- Allocation of advocacy funds should take into account the costs of training and workplace development, raising public awareness and the provision of independent advocacy in a variety of forms. Raising awareness of the availability of independent advocacy will help individuals and organisations to become more accountable for their actions, while providing a safety net for the people participating in the scheme.

- While a national centralized funding for systemic advocacy in a spoke and hub model may reduce costs, it is unlikely to improve efficiency in the long term, as such remoteness from the issues affecting people will not be timely, have direct relevance, authenticity or have authority. It is essential that systems advocates continue to work with direct collaboration with individual advocacy teams, to gain clear cogent and valid evidence of the experiences of people with disabilities.

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[1] Senate Standing Committee on Community Affairs. 2017. Delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities. Recommendation #3.

NB: In this submission, we respond to:

1. The relevance of the objectives, outcomes and outputs of the National Disability Agreement in the context of contemporary policy settings,

and

2. Whether the NDA needs updating in light of these considerations, to reflect the changing policy landscape, including the introduction of the National Disability Insurance Scheme (NDIS) and the National Disability Strategy (NDS).

A New National Disability Agreement

The Commonwealth, states and territories developed the National Disability Agreement (2008) prior to the National Disability Strategy (2012) and the National Disability Insurance Scheme (2013) together with the accompanying Commonwealth to state or territory bilateral agreements. They largely have made the National Disability Agreement redundant.

Its aims to enhance the quality of life and the participation of people with disabilities will remain relevant for the near future. Those aims, however, are not as comprehensive and in that context not as achievable as the broad ones of the National Disability Strategy. Likewise, the outcomes and outputs of the National Disability Agreement either are duplicated by the other two, or they are so general and detached from mechanisms to evaluate or measure them that they have little value in that context.

That is not to say that the National Disability Agreement is not useful. It can add value as a high-level commitment to and blueprint for the coordination of the federal partners across all areas of life (not only National Disability Insurance Scheme /supports) where the impairments of roughly 18.5% of the population impacts on their physical or virtual access, living arrangements, education, health, income, rights protection, self-determination and aspirations. It can add value as the establishing agreement for a strategy leader that at once specialises in disability policy and inextricably is linked to the decision-making body COAG.

There is a strong case for such an agreement. Nothing else currently serves those functions. The National Disability Insurance Scheme provides people with disability who have the greatest needs with the supports, aids, equipment, therapies and so on that will enable them to engage with the world, and, to a much lesser extent, will provide limited opportunities for non-participants who have disabilities.

The National Disability Strategy is much broader and works like a restatement of the *Convention on the Rights of Persons with Disabilities* - and to a limited extent, an implementation checklist for it. While the National Disability Strategy has many worthy aspirations and claims to coordinate planning, development and implementation between all levels of government and across all portfolios,[2] it has become primarily a reporting mechanism to the UN. It does little to

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[2] National Disability Strategy 2010-2020, p 9.

identify or obtain consensus commitment to achievable, incremental and measureable targets, and it has no mechanism for remediation when governments do not reach those targets.

Focus Areas

There are many areas of service and government that could do with better Federal, state and territory coordination. There are for example, nine criminal jurisdictions, so when the Australian Law Reform Commission makes recommendations about access to justice that have implications for each of those jurisdictions, there is great need for an established set of principles and a mechanism to review the possible impact of and to implement those recommendations. If left only to the discretion of each particular jurisdiction, any proposed reforms may be implemented differently, creating cross-jurisdictional inequities and confusion.

> QAI supports the recommendation of the Senate Standing Committee on Community Affairs, that the government takes to the Disability Reform Council for consideration a proposal to establish an Office of Disability Strategy under the oversight of the Disability Reform Council.[3]

An Office of Disability Strategy can identify gaps in services and coordinate multi-jurisdictional responses to them. In addition to multi-jurisdictional responses to challenges in criminal justice, such a body can address challenges in, for example, mental health, transport access and disability advocacy.

Mental Health Services

At the periphery of the National Disability Insurance Scheme, there is confusion and uncertainty about the dispensation of mental health services to people who are not scheme-eligible. The NDIS will provide for ~ 64000 people with psycho-social disability, representing about 10% of all people with psycho-social disabilities. A proportion of the 90% who will not qualify for the NDIS use Commonwealth funded mental health programs, such as Partners in Recovery, Personal Helpers and Mentors, the Day to Day Living program and the Mental Health Respite: Carer Support (MHR:CS) program funded by the Department of Social Services. All of these will cease (by absorption into the NDIS) on 1 July 2019.

Pursuant to the Intergovernmental Agreement for the NDIS Launch,[4] Australian, state and territory governments have agreed to provide continuity of support for people who are not eligible for the NDIS. However, according to the NDIA more recently, '[t]he NDIS does not replace the mental health system and does not replace community based support or medical clinical care for people living with mental health conditions, but, rather, must be designed to work collaboratively with these sectors. We continue to work to do this'.[5]

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[3] Senate Standing Committee on Community Affairs. 2017. Delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities. Recommendation #3.

[4] 7 December 2012, p. 11.

[5] Ms Gunn, Acting Deputy Chief Executive Officer, Participants and Planning, NDIA.Committee Hansard, 16 June 2017, p. 16.:

QAI has received many reports from people in regions where the National Disability Insurance Scheme has launched in Queensland that many supports to people with mental health conditions have been withdrawn and not replaced.

Access

In Queensland, the state government decided to run trains that are not compliant with the Disability Standards for Accessible Public Transport. When the Human Rights Commission rejected Queensland's application for exemptions from the Disability Standards for Accessible Public Transport, Queensland left the trains in-service. QAI has reports from the All-Aboard network in Victoria that the Victorian government has likewise flaunted the Disability Standards for Accessible Public Transport by continuing to keep non-compliant tram stops operational.

The Disability Reform Council must re-examine compliance mechanisms under the standards. We look forward to a day when we see uniform access for all Australians: safe crossings at lights for people who are both deaf and blind; an end to exclusionary communities where people with cognitive impairment and/or literacy issues cannot access public transport, and so on.

Advocacy Coordination

On 1 July 2018, the NDIS arrived in Australia's third most populous city. It will provide more support, more opportunity and more economic and social participation. People with disability will engage more broadly with the world. The Productivity Commission has predicted, for example, that workforce participation[6] by people with disability will increase once the NDIS is operating nationally.

That participation and engagement in the workforce, in education, in recreation, tourism, the built environment, transport and in community life generally will not always be welcome, or run smoothly. Many people with disability will manage those transitional challenges themselves but many others will need advocacy to secure the rights the Commonwealth has endorsed.

The NDIS is improving the lives of many people with disability, but it is increasing demand for advocacy in relation to its own implementation, and in relation to all the other areas of life in which citizens who have disabilities engage. People with disability still experience disadvantages in education, health, housing, workforce participation and access to justice, and the Commonwealth, states and territories must commit to strengthening independent advocacy.

The Commonwealth has signed international covenants that offer specific protections to persons with disabilities, including the *Universal Declaration of Human Rights,* the *Convention on the Rights of the Child*, and the *Convention on the Rights of Persons with Disabilities* (CRPD). The CRPD is a recent step in a political battle to establish such rights. The challenge is to find a way to realize such rights, turning aspirations into better lives.

While every Australian nominally 'owns' human rights, they have practical effect in this country only insofar as they are legally conferred and enforced. We do not yet have mechanisms for the enforcement of those rights at every level of government - such as human rights statutes

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[6] See Chapter 20- Productivity Commission. 2011. *Disability Care and Support.*

backed by enforceable penalties. Instead, they present a symbolic and aspirational effect beyond their practical implementation. Such rights place the onus to change on institutional structures rather than on individuals. The aim is not to make individuals better able to compete on an open market; the key, the *Convention on the Rights of Persons with Disabilities* says, is to make structural changes that will allow institutions to accommodate everyone and all abilities.

The Australian Government has also created legal and policy benchmarks that underpin the rights of people with disabilities.[7] It enacted a *Disability Discrimination Act 1992* (Cth), created a Human Rights Commission, and appointed a Disability Rights Commissioner to raise awareness of disability issues, empower people to challenge inequities in treatment and promote the human rights of people with disabilities. It has entered into domestic agreements with the states and territories, including the *National Disability Strategy 2010-2020*,[8] and the *National Disability Advocacy Framework*, all of which mandate government support for advocacy, as do the *Disability Services Act 1991* (Cth) and the general principles of the *National Disability Insurance Scheme Act 2013.*[9]

The second of the six 'Major Policy Areas' of the *National Disability Strategy 2010-20* is 'Rights Protection, justice and legislation—statutory protections such as anti-discrimination measures, complaints mechanisms, advocacy, the electoral and justice systems'. The outcome measure for this Policy Area is that 'people with disability have their rights promoted, upheld and protected'. (It is said that without the mechanisms to ensure those rights are upheld "You can die with your rights on").

Government financial support for advocacy has fallen into two broad areas: individual advocacy, and systemic advocacy that takes lessons from individual experiences and attempts to drive policy and legislative reform. The NDAP (National Disability Advocacy Program) allocates about AUD $15 million annually to approximately 68 disability advocacy organisations around the country.[10] State and territory governments fund many more advocacy services, although the spread of those services is patchy.

In Queensland, for example, the state government provides advocacy-specific funding to approximately a dozen not-for-profit disability and community mental health services, and the Attorney-General allocates a small proportion of the annual LIPITAF (from the interest earned by Queensland legal practitioners' statutory trust fund) disbursement to legal and non-legal disability advocacy. Advocates across the country, try to do the best they can for and with people with disabilities. Many advocates, of course, *are* people with disabilities. But despite Australia's human rights framework and despite the funding of disability-specific advocacy,

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[7] Including the Commonwealth's *Education Act 2004; Human Rights and Equal Opportunity Commission Act 1986; Commonwealth Privacy Act 1988; Disability Discrimination Act 1992; Review of the Disability Discrimination Act 1992; Disability Services Act 1991* and the *Transport Standards*.

[8] *National Disability Strategy 2010-2020* Policy Area Two- includes 'Rights protection, justice and legislation—statutory protections such as anti-discrimination measures, complaints mechanisms, advocacy, the electoral and justice systems.'

[9] Section 4 (13).

[10] http://www.fahcsia.gov.au/our-responsibilities/disability-and-carers/program-services/for-people-with-disability/national-disability-advocacy-program

people's human rights are still violated and their supports are insufficient to guarantee a good life.

In its review of NDIS Costs (2017), the Productivity Commission identified a lack of clarity in the roles and responsibilities of governments related to the funding of advocacy services including systemic advocacy, individual advocacy and self-advocacy. In Queensland, the NDIS was set to absorb state funding that goes to disability advocacy agencies. Under the 2013 Bilateral Agreement between the Commonwealth and Queensland, the latter would give some money previously allocated to disability advocacy services to the National Disability Insurance Agency (the 'NDIA').

The affected agencies and their allies launched the #advocacymatters campaign. Queensland's Coralee O'Rourke, Minister for Communities, Disability Services and Seniors, offered equivalent advocacy funding if she was re-elected in 2017. The Minister reaffirmed this commitment during Queensland budget estimates in July 2018.

The affected agencies have no way of holding the Queensland government to this commitment. The State has no policy commitment or overarching agreement that binds it to this commitment. If Queensland reneges, agencies like Speaking Up For You (SUFY) which offers general individual advocacy and NDIS Appeals, and AMPARO, which offers disability advocacy for Culturally and Linguistically Diverse ('CALD') people, and many others may have to reduce their services.

NSW advocacy agencies faced the same loss of funding for the same reasons. They ran a similar campaign, and in late 2017 the NSW government agreed to reinstate funding. However, in both states, these are interim solutions. In advocacy, as in many other areas of disability policy, service delivery is in disarray, largely because of the disruptive effect of the NDIS.

QAI maintains that to avoid conflicts of interest, advocacy is provided best where the funding source is separate to the systems and or services that are the focus of the advocacy. Separating the sources of advocacy funding from the sources of service delivery funding requires high-level coordination.

Conclusion

Along with the examples we briefly have provided in criminal justice, mental health provision, transport access and advocacy, we need Commonwealth, state and territory coordination of all forms of government provision that affect people with disabilities: health, education, aged care, housing and more. Without it, we will have coordination of direct disability support (the NDIS) but other provision will remain 'underfunded, fractured and unfair'.