



**Submission**  
to the  
**Productivity Commission Inquiry**  
in to  
**Disability Care and Support**

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## **About DANA**

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Disability Advocacy Network Australia (DANA) is a company limited by guarantee, established in October 2008 and incorporated in May 2009 to strengthen and support disability advocacy organisations across Australia. DANA's purposes include to promote the role and value of independent advocacy and to provide a collective voice for members. The DANA membership includes disability advocacy organisations from each of the States and Territories of Australia.

DANA works to a vision of a nation that includes and values persons with disabilities and respects human rights for all.

DANA has a membership of 54 agencies whose primary purpose is to provide independent advocacy support to people with disability. These agencies receive their core recurrent funding from State and/or Commonwealth Government advocacy programs targeted at people with disability, frail older people and people with mental health issues. Some agencies receive only a single source of funding for a specific target group while others receive multiple sources of funding for different target groups (disability, mental health & frail aged).

Independent advocacy agencies address the advocacy needs of those people with disability who are more likely to be vulnerable to abuse, neglect and/or breaches of their fundamental human rights. They do this through a variety of delivery models that include systemic advocacy, legal advocacy, individual advocacy support by paid advocates, citizen advocacy using volunteer advocates, self advocacy development and family advocacy development and support.

## Introduction

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DANA began the development of this submission by working with organisations of people with disability to develop a human rights compliant framework to assist people with disability and advocacy organisations to respond to the Productivity Commission Inquiry. DANA provided the framework to 116 advocacy organisations across Australia and invited them to attend face to face consultations to discuss the content and provide feedback. Consultations were held in Melbourne, Bendigo, Sydney, Adelaide, Perth, Hobart, Canberra and Brisbane. Telephone feedback was also received from the three Northern Territory based advocacy organisations. This DANA submission thus reflects input from 56 disability advocacy organisations from all the States and Territories of Australia.

The organisations represented by DANA have played an active role in the prevention of abuse and neglect and the protection of the human rights of people with disabilities. Those who are supported by advocacy agencies are commonly likely to be less able to articulate their own needs or require assistance and support to express their wishes and represent their own interests.

The development of government funded independent disability advocacy programs emerged as a result of the last major reform of disability support funding in Australia in response to the 1983 *Review of the Handicapped Persons' Assistance Act (1974)*. The resulting new legislation (*Disability Services Act 1986*) identified the need to support the rights of people with disability to enjoy all aspects of life in the community and enshrined a commitment by Australian governments to end segregation and congregate care arrangements for those who were supported under this Act. There was recognition in the Act that “consumers” would need to have access to advocacy support that was independent of specialist disability service provision to enable them to fully realise the outcomes set out in the legislation and related policy framework. Independent advocacy was regarded by government as an important mechanism in support of its service system reform objectives.

It is DANA’s view that the two reports that preceded the decision to hold this inquiry, namely, the Disability Investment Group’s report, *“The Way Forward: A new disability policy framework for Australia* and the National Disability Strategy consultation report – *“Shut Out: The experience of people with disabilities and their families in Australia ”*, propose an even more significant reform agenda targeted at addressing the undelivered promises of the current legislative, policy and service delivery framework. DANA believes that a move to more flexible and individualised approaches requires an even greater commitment than before to provide independent support to decision-making for those people with disability who do not have the experience, knowledge

and skills to operate as empowered consumers in a more “open market place” model. The “Shut Out” report specifically argues for funding increases to advocacy and other non-government agencies to participate in monitoring and evaluation of the (national disability) strategy. Independent advocacy agencies will need to be properly funded and supported to ensure that “consumers” and their families and supporters are informed, empowered and assisted to realise the full benefits of any reformed funding and service delivery arrangements.

## **Independent Advocacy**

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### **BENEFITS TO PEOPLE WITH DISABILITY**

Advocacy support is needed to assist the most vulnerable members of our society to assert their rights and interests and have their needs and wants met. People with disability are more likely than the general population to experience abuse, homelessness, institutionalisation, poverty and social isolation. Many rely on paid carers or family members for their most basic needs, making them extremely vulnerable to the actions and wishes of other people. Many do not understand their rights and entitlements.

Without advocacy support, many people with disability do not have the knowledge, skills or personal resources either to effectively engage with the systems established to protect and support them or to seek to have those systems changed when they fail to respond appropriately to their concerns or needs. Many, without advocacy support, are unable to convince their families, associates or broader community that they are entitled to live an ordinary life involving meaningful activity, friends and social interaction. When advocacy support is not available or is severely restricted the key decisions in the lives of vast numbers of people with disability are taken by others with little regard for their wishes, interests or capabilities and their individuality and capacity to contribute to the community is overlooked and devalued.

The involvement of advocates redresses the power imbalances created through vulnerability so that the voices of the more vulnerable people with disability are heard and understood. A stronger voice leads to others taking notice and taking action in response. A stronger voice allows people with disability to exercise control over their lives, establish meaningful relationships with other people and to, as far as possible, direct their own engagement in and contribution to the life of the community.

### **NECESSITY OF INDEPENDENCE**

Advocacy support for people with disability comes from many sources: family, friends, and public minded citizens with an interest in human rights, government officials, service providers and independent advocacy organisations. All possible sources of advocacy support will, from time to time, have interests that differ from those of the people with disability being supported. Many will have limited capacity, knowledge or resources to devote to the task.

Independent advocacy organisations are vital additions to the advocacy support available because they focus on minimising any potential conflicts of interest and on developing their advocacy skills and expertise to achieve the outcomes desired by people with disability. They are

not beholden to another set of service or government imperatives and so are able to focus wholly on serving the goals and interests of people with disability.

Independent advocacy organisations take on a range of vital tasks.

- They assist people to advocate for themselves or for others.
- They represent the interests of people with disability in circumstances where others may be conflicted and where people are unable or find it difficult to represent themselves.
- They educate and empower people with disability and their families to develop self-advocacy skills.
- They seek systemic change using research, evidence collection and dedicated influence mechanisms.

A well resourced, well managed independent advocacy program plays an important role in meeting Australian governments' obligations to protect its more disadvantaged and vulnerable citizens. Community managed advocacy agencies, connected to local and regional communities, are an effective and efficient mechanism for governments to meet this responsibility.

## **The Need for Reform**

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Advocacy organisations report that a significant element of their advocacy work is related to the stresses placed on the current disability support systems across all jurisdictions by inadequate levels of funding and the associated demand management strategies employed by funding bodies and service providers. For example, advocacy for housing and support for one individual is likely to result in that individual moving forward in the queue at the expense of another person equally in need.

Under-investment in social housing across the community has placed significant restrictions on where people can live and the types of housing and support models they can access. For many people with disability this can mean being forced to share a home with others who are incompatible at best and a threat to a person's safety and well being in more extreme circumstances. Large waiting lists for accommodation and support make people who are in the system fearful of complaining and seeking better options while those on waiting lists become desperate enough to seek unsatisfactory options such as congregate arrangements that have proven to be inadequate and harmful in the past.

It is of concern to DANA and its members that the failed congregate care models of the past may be a resort for governments that seek to ration expenditure in disability support programs rather than make a commitment to address all disability support needs within a framework that is based on citizenship, rights and equality. In ratifying the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in July 2008, the Australian Government made a commitment to address the support needs of all people with disability in the context of this human rights framework. The UNCRPD is binding upon all Australian governments and their agencies.

Article 19 of the Convention applies the traditional civil and political rights of liberty and security of the person, and freedom of movement, to one of the most pervasive human rights abuses experienced by persons with disability; their segregation and isolation from the community in institutional environments. It requires parties to the CRPD to recognise the equal right of persons with disability to live in the community, and participate in community life, with choices equal to others. The state obligations that relate to this right include the obligation to ensure that persons with disability are able to choose their place of residence and where and with whom they shall live on an equal basis with others; the obligation to ensure that persons with disability are not obliged to live in a particular living environment; and, the obligation to ensure that persons with disability have access to a range of community support services that support living and inclusion in the community, and which prevent isolation and segregation from the community.

Advocacy organisations have played a major role in bringing to the attention of the Australian governments the abuse, neglect and institutional harm perpetrated against significant numbers of people with disability. This has resulted in the closure of many large institutions and the development of more appropriate accommodation and support services. Governments have, however, failed to complete this task and many large institutions remain in operation, falling outside the requirements of both the disability services legislation and the obligations set out under the UNCRPD.

The Inquiry has been commissioned on the basis that current arrangements are broken, inadequate and ineffective in meeting the needs of people with disability and their families. It is our view that the outcomes of the Productivity Commission Inquiry should lead to significant reform of current disability support arrangements on the scale of reforms similar to the introduction of compulsory superannuation and universal health insurance (Medicare).



## Scheme Design

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### A NEW DISABILITY SUPPORT SCHEME - KEY ELEMENTS

Reforms should ensure that any new disability support system is a national scheme that includes the following key elements. It should:

- be based on entitlement for all who are eligible across their entire lifespan
- be properly funded to address additional costs related to disability so that a person is able to have full enjoyment of their human rights as set out in the UNCRPD and other UN human rights instruments and participate in all areas of life; political, civil, social, cultural and economic
- be based on equity for all who are eligible
- take into account the impact of gender, indigenous background, cultural diversity, geographic isolation and the specific needs of children
- be based on self determination; recognising individual needs and choices and ensuring maximum flexibility
- commit to the empowerment of people with disability and those families, friends and supporters who act to protect their rights, interests and well-being
- be portable throughout the country
- respond to the inevitable changing circumstances of an individual over their lifespan and to crisis situations when they occur
- invest in prevention and early intervention initiatives to ensure that the cost of support doesn't escalate when needs are not addressed in a timely manner

#### **Further Work:**

***Significant work is needed to better understand how to provide an appropriate level of funded support that blends with natural family and community supports and an individual's own resourcefulness and strengths to achieve optimal outcomes for the person. The Productivity Commission Inquiry is encouraged to investigate the experience of current service system arrangements.***

***Consideration should be given to how the proposed new scheme might best work to support the principle of self-determination within more communal and family based cultures. Additional issues also arise out of the Federal intervention in the Northern Territory and its relationship to any entitlement to an individual funding package.***

### A NEW DISABILITY SUPPORT SCHEME- ENABLING INITIATIVES

While a great deal of discussion and focus has been given to the individualisation of support and funding, DANA believes that there are some important elements of a new system that are critical to the success of any proposed reforms in particular because they support and underpin the effective utilisation of individualised funding. These include:

**1. Structural Investment and Reform**

The need to address the inter-face and inter-relationship between systemic and structural barriers to inclusion for people with disability in Australia and their individual and personal support arrangements must be taken into account in this Inquiry. Investment in making our communities and their services universally accessible and inclusive will lead to a reduction in the level of funding needed in personal budgets for support and equipment. Research into the additional cost of disability caused by structurally disabling environments and systems should be part of this Inquiry.

**2. Strong Independent Advocacy Program**

The existence of independent, professional and accessible advocacy services for people with disability will be critical to the success of any future model of disability support, both during the transition phase and ongoing. Independent advocacy provides the oil that enables a disability support system to work effectively. In the context of a new approach to funding disability support, independent advocacy would:

- assist people with disability to be informed about the support choices available to them, assist them through the decision-making and implementation processes and assist them to effectively communicate their decisions and wishes to service providers and governments
- in particular, assist people with limited decision-making capacity to participate in decisions relating to their supports to the fullest extent possible
- where required, directly represent the interests of the person with disability to protect and promote their rights and/or empower and support those family members, friends and others that act for and with them for this purpose
- assist service providers (and system-level decision-makers such as funding agencies) to better understand the needs of consumers
- identify issues of common concern to people with disability and seek reform to address the issues

The diversity of models of advocacy support provided by our member agencies reflects the diversity of the advocacy support needs of people with disability and their families. Some advocacy agencies focus on supporting and empowering people with disabilities to represent their own interests through providing advocacy and leadership skills development training.

A significant element of advocacy support and protection of a person's rights is provided through the natural supports of families, friends, concerned citizens and support workers. Some advocacy agencies focus on supporting and empowering these networks through providing knowledge about advocacy skills, rights and the service system.

Where an individual has no or limited support networks there are advocacy agencies that provide either voluntary or paid individual advocacy support. When there is a need for independent professional advocacy support or legal advocacy, there are again agencies that focus on this form of individual advocacy.

Systemic advocacy agencies play a key role in legislative and policy reform processes that address underlying gaps in services and supports and strengthen system mechanisms for protecting more vulnerable citizens from abuse and neglect. It is DANA's view that this diversity offers a healthy mix of formal and informal support options around advocacy support.

Elsewhere in this submission, DANA proposes a new administrative structure for advocacy that we believe will better support the independence of advocacy and the links between individual and systemic advocacy effort.

### **3. Community Development And Capacity Building**

Any new scheme will need to invest in initiatives that build community capacity, provide good information, encourage empowerment and choice and promote innovative development of disability support strategies that are life enhancing and value adding for people using individual budgets. In areas where "the market" can't respond effectively, governments will need to initiate specific service development that ensures appropriate supports are accessible.

The development of regional/local disability resource centres managed and operated by people with disabilities and their organisations is a possible structure for doing this work. These disability resource centres could also play a role in sustaining and supporting informal supports of families, friends and neighbours within local communities and have the capacity to refer individuals to a local advocacy agency when required or on request.

#### **Further Work:**

***Consideration should be given to the programs in the UK, Victoria and Western Australia that have invested in community capacity building and local area coordination with a view to identifying infrastructure investments that are effective in promoting social inclusion and community participation.***

*Consideration should be given to the Independent Living Centre models that have been developed in the US, Canada, UK and Europe with a view to determining whether these models might make a useful contribution to the proposed new scheme.*

**4. Research and Development**

Research funding needs to be allocated under the scheme to identify gaps, program failures and successes to inform progressive improvements in both structural reform and models for individualised support. The availability of this funding will be critical to the success of the scheme in responding to the needs, rights and interests of people with disability.

## **Eligibility for the Scheme**

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It is DANA's view that people with disability of any age that require disability support to pursue and enjoy the same freedoms, opportunities and rights as other Australians, should be eligible for assistance under the scheme.

Underinvestment in disability support over many years has resulted in diminished opportunities for many people with disability to participate in community life on an equal basis with other Australian people.

The discussion paper released by the Productivity Commission raises the idea that a new scheme should target people defined as having "severe or profound" disability. DANA recommends rather that a new scheme should:

- Take a more inclusive approach in line with the UNCRPD. Article 4 (c) of the UNCRPD requires that States Parties take into account the protection and promotion of the human rights of all persons with disabilities in all programs and policies.
- Establish eligibility for disability support based on the demonstrated need as determined by the impact of a person's impairment on their capacity to undertake normal activities of daily living. It is critical that such a scheme maintains its capacity to respond to complexity and diversity of need and context; that it allows for flexibility in operation and that it resists the tendency of eligibility based schemes towards rigidity of policy and application of funding principles.
- Recognize the need to include groups from the start that might fall through gaps:
  - Refugees and new migrants waiting for residency and citizenship papers
  - People with disabilities in correctional services system
  - People with disabilities in segregated settings, such as institutions and boarding or rooming houses
- Include people with psycho-social disabilities and people with ageing related disabilities. While ageing related disability has been excluded in the terms of reference for this inquiry it is DANA's view that a new scheme needs to consider this group as the needs and support strategies for an individual with disability are similar across their lifespan.

In the first major evaluation of the administrative arrangements for implementation of the Disability Services Act 1986, then known as the Commonwealth States Disability Agreement - CSDA (later Commonwealth, States & Territories Disability Agreement-CSTDA), Professor

Anna Yeatman proposed progressive integration of a number of programs that served similar functional needs. Her recommendations included consideration of progressive integration of CSDA funded disability programs with the HACC program and the CRS and the Aged Care programs on the basis of the commonality of functional needs and supports that were being addressed in each. Yeatman suggested that “... a need for continuing support in one or more areas of life does not directly relate to any particular category or level of impairment, disability or handicap. The need for support arises from a complex and individual interaction between the impairment, any reduced capacity, the person's environment and personal circumstances (1996, 40).”

### **Further Work**

***Given that there is currently a separate Productivity Commission Inquiry into aged care, it is our strong recommendation that both this and the aged care inquiry seek to address the benefits and risks of a future disability support model that brings together the needs of people with disabilities across the lifespan. While such an approach would need to take into account the need for flexibility around key life transitions, it is hard to find a persuasive argument to maintain separate systems of support.***

## **Scheme Funding**

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Whatever funding model is chosen it needs to conform to the following key principles:

- The level of funding for individual disability support should be determined through a self assessment approach based on what support is necessary to support full inclusion as defined in the UNCRPD. The assessment process should:
  - involve the individual's needs being separately assessed from needs of their family
  - be based on a social model of disability
  - be nationally consistent and supported by well trained people
  - occur in a location or setting where the individual is most comfortable
- The funding model must not be permitted to use cost driven thinking to limit choice.
- The funding model should be guided by the social model of disability rather than by a medical approach.
- Funding should be benchmarked against relevant national economic and social indicators.
- Eligibility to access disability support should not be means tested.

### **Further Work:**

***Further research is needed to develop a better understanding about both the market place economics and different models of insurance that could be considered to support such a scheme. Questions to be addressed include:***

- ***How can we avoid the chosen Scheme placing pressure on the choices people make about support providers and service options?***
- ***What are the outcome and cost benefits of a system based on self-assessment?***
- ***What savings in government and service administration costs can be achieved by a scheme which avoids the current duplication that occurs in these areas?***

***Investigation should occur of costs to the community of NOT implementing a fully funded national disability support scheme based on self-determined, individualised budgets. Consideration here should be given to the opportunity cost of the loss of human potential and well being for people with disabilities and their family members together with the direct costs of increased rates of incarceration, hospitalisation, abuse, neglect etc arising from current system failures. There have also been many reports on service system failure and waste in various jurisdictions that highlight the broken nature of current approaches. A review of these reports would be of assistance in establishing the case for a new individualised approach to support.***

## **Workforce Issues**

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DANA believes that for any disability support model to work effectively to address the human rights and citizenship entitlements of Australians with disabilities, there needs to be a well trained, skillful and well-managed disability support workforce. Training for this purpose will need to place an increased emphasis on rights and values, flexibility and responsiveness to the needs and wishes of others.

It is our view that the paradigm shift being proposed for the new scheme will require a significant investment in workforce development that prepares support workers for a major reframing of their role and their relationship with those they support. Advocacy organisations are well placed to play a part in this transition as well as in the ongoing workforce training and development. This will require resourcing over and above funding allocated for direct advocacy support.

The workers in the disability advocacy workforce will also need training and development to ensure that they are well equipped to play their role. Investment in advocate training should be supplemented by investment in mentoring and networking mechanisms to build capacity knowledge and expertise in this small but critical workforce.

While there is a belief that market forces will generally promote more choice and empowerment for those who use disability support, markets are limited in their capacity to deliver good outcomes for people in situations where real choices and good information about how to do things differently are limited or non-existent. In some remote, regional or indigenous communities, advocacy agencies report that even if the funding is made available, the lack of community and service infrastructure and the economic viability issues will more than likely lead to neglect and limited capacity to realize the rights and entitlements available to other Australians with disabilities.

We know from overseas experience that many people will continue to use existing services but that over time the take up of more individualised support models is likely to increase. While ever most people access the service system for their support there will be an ongoing need to monitor service quality. Currently, Victoria is leading a national project around a Quality Framework for disability support provision. We believe that the key orientation of the Victorian Quality Framework, specifically, its focus on “consumer” defined outcomes should be a core focus for improvements in the way that advocacy quality is judged. Care needs to be taken however to ensure that the monitoring methodology chosen is cost effective and does in fact drive quality improvements that benefit people with disability.



Advocacy agencies will have a vital role to play in the proposed reform process to ensure that the systems and structures established actually deliver on their promise of meeting individual needs and wishes and complying with their rights.

**Further Work:**

***Further work needs to be undertaken to explore the merits and risks of professionalisation and accreditation of the disability support workforce.***

***A better understanding is required of how similar schemes operating internationally and in Australia, have worked and what this has meant for service user satisfaction.***

***Further consideration is needed of the likely workforce impact of a more market based approach to the demand for and supply of disability workers.***

***Further work needs to be undertaken to address current and projected occupational health and safety barriers to individualised support and the associated risk management culture in agencies that provide disability support.***

***We need to explore how people in more remote and smaller communities can benefit from any proposed service reforms? What alternative approaches or options will work in these settings?***

## Scheme Governance

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DANA supports the establishment of an independent national body (possibly a statutory authority) to govern the new disability support scheme. Article 33.3 of the UN Convention states that: “.....*persons with disabilities and their representative organisations shall be involved and participate fully in the monitoring process*”. Key features of such a body would be as follows:

- The Board should consist of a majority of people with disabilities. It should include individuals with a disability, disabled person’s organisations (DPO) representatives, and representatives of those groups of people with disability who would not otherwise have their interests represented (advocacy organisations). Representation would also need to take into account the need for gender equity and input from indigenous people and people from culturally diverse backgrounds.
- The Board would develop mechanisms to ensure that it was properly informed about and able to respond to regional needs and differences.
- The costs of operating the Board would be funded through the scheme, taking into account the full participation costs for board members and appropriate payment of sitting fees.
- The body would have a research and development role to drive significant cultural paradigm change around disability support.
- The body would be underpinned by specific enabling legislation and report against UNCRPD based performance measures.
- The activities of the body would reviewed regularly by a relevant administrative review body.

## **Protections and Safeguards**

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Shifting funding and decision-making from service providers to service users creates a significant shift in the drivers in a reformed disability support scheme. There are positive expectations that this will create market forces that empower consumers and make service providers more attentive and responsive to the needs of individuals. At the same time, concerns about the capacity of the market place to develop and deliver good outcomes for all who are eligible for a new scheme were also expressed through our consultations.

DANA believes that any scheme that introduces greater choice and self-determination will also require access to independent advocacy support, an independent complaints resolution mechanism and well resourced consumer education and consumer protection bodies. A significant reform of disability support along the lines of current suggestions will place significant demands for more vulnerable individuals to be supported in their decision-making processes.

### **DEDICATED ADVOCACY ADMINISTRATION AND LEADERSHIP**

The introduction of government funded independent advocacy programs in Australia emerged as part of the last major disability support program reforms in 1986. It is our view that Australian disability services legislation has been progressive in respect of its recognition of the need for independent advocacy support as an integral part of the national and state government commitment to the prevention of abuse and neglect and the promotion of rights and equity for citizens with disability who rely on disability support. However, there is a need for better legislative protection that positions the function of independent advocacy as a key instrument to protect the rights, interests and well being of more vulnerable citizens in any future reformed disability support system.

In the current climate of significant COAG reforms across health, aged care and disability support, there is a window of opportunity to position independent disability advocacy support in a more strategic administrative framework.

DANA proposes the development of a single statutory authority to administer the advocacy funding currently administered under a number of different government programs across commonwealth and state jurisdictions. This would:

- provide an administrative structure independent of other service provision administration
- reduce wasteful over-administration of limited funding
- provide a stronger voice for the role and resourcing of advocacy within government

- ensure that governance and administration of advocacy was informed by people with relevant expertise in the area
- increase the continuity of development and quality improvement of a national advocacy program
- create the capacity to leverage philanthropic funding to add value to core government funding for a national advocacy program

Such an Authority, properly constituted and funded, would, through driving quality improvements to advocacy, also drive a culture of respect for and inclusion of people with disability in the life of the community.

There needs to be an initial commitment to consolidate the funding currently identified in both the administration and delivery of advocacy programs under the proposed national body. This needs to be followed with a commitment to maintain advocacy funding that is linked to population growth and funding growth to disability and aged care services.

DANA also proposes that funding is allocated to enable it to operate as an effective representative body for the independent disability advocacy sector, operating as a collective voice for the sector and those more vulnerable citizens it represents, providing leadership in sector development and quality improvement and partnership with organisations of people with disabilities in promoting and protecting the rights, interests and well-being of all Australians with disabilities.

#### **ENHANCED COMPLAINTS MECHANISMS**

Australia currently has a number of State and Territory based complaint systems, established under disability services or similar acts. These complaints systems have very serious shortcomings which limit their capacity to ensure quality services and supports for people with disabilities. In some cases there are significant conflicts of interest. In others there is a lack of appropriate activism and expertise, and most have very limited jurisdiction. These structural problems must be addressed.

Establishment of a new national system for the provision of supports and services to people with disability should also lead to the establishment of a new national disability complaints authority knowledgeable about the provision of individualised services and support and about human rights. The authority ought to have jurisdiction over all services and supports governed by or delivered under the new scheme. The authority ought to have royal commission-like compulsory powers, and be able to direct service improvements to comply with expectations including the expectation that services comply with the terms of the UNCRPD.

The Australian Human Rights Commission's jurisdiction and functions ought to be expanded by legislative amendment, to provide it with the power and capacity to effectively deal with complaints, and undertake policy and education work in relation to all UNCRPD rights.

- The AHRC ought to be provided with jurisdiction to initiate complaints.
- The disability and human rights (including discrimination) jurisdiction ought to be costs-free.
- Any future proposal for an Australian Bill of Rights ought to include measures for incorporating the UNCRPD into the Bill.

## **GUARDIANSHIP**

Guardianship and administration powers can play a significant role in the protection and promotion of the rights of the individual. Experience in how well these arrangements work vary from state to state.

DANA supports a shift away from substitute decision-making to supported or assisted decision-making, particularly in the light of UN Convention on Rights of Persons with Disabilities (Article 12) concerning equal recognition before the law. This Article requires that: *"States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for effective safeguards to prevent abuse in accordance with international human rights law."* Article 12.4 gives clear direction that such safeguards must:

- respect the rights, will and preferences of the person,
- be free of conflict of interest and undue influence,
- be proportional and tailored to the person's circumstances,
- apply for the shortest time possible and be subject to regular review by a competent, independent and impartial authority or judicial body.

DANA recommends that the guardianship legislation in each State and Territory be reviewed for its compliance with the UNCRPD and for its capacity to contribute positively to the establishment of a system of services and supports that allows people with disability to exercise the same choices and freedoms as other members of our society.

We recommend further that the guardianship legislation specifically make provision to allow for a concerned party or advocacy agency to seek the Tribunal's involvement in a matter where the service and supports chosen are in breach of a person's rights and or do not appropriately take into account their wishes and interests.

## **Conclusion**

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DANA welcomes the decision of the Australian Government to ask the Productivity Commission to conduct this inquiry into the disability support arrangements for people with disabilities in Australia. We are of the view that there is a need for significant change in the current arrangements and a radical restructuring of the funding and administration of not only the disability support program, but also parallel programs in mental health care and aged care.

This is an opportunity for a reframing of what it means to be an Australian citizen in that it offers an opportunity for greater equity and inclusion in the social, economic, cultural, civic and political opportunities for Australians with disabilities. It is our experience that the current funding and administration arrangements in this area lead to exclusion, neglect, abuse and denial of rights for many of those who rely on support for their daily activities of living.

It is also our hope that we will learn from the disappointment of the last major reforms to disability support legislation and policy that promised much but ended up delivering more of the same and then only to those lucky enough to be at the front of the queue. We believe Australia has the capacity to fully resource implementation of the UNCRPD and all its various articles. DANA believes that such a framework supported by an independent advocacy program and appropriate complaints, monitoring and redress mechanisms will make the task of this challenging and significant reform more achievable.