

# Response to National Disability Advocacy Framework



Communication Rights  
Australia



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**Communication Rights Australia** ("Communication Rights"), is a human rights information and advocacy organisation which works in partnership with people with disabilities, in particular those who have communication or speech difficulties. People request our service when they experience a breach of their rights or discrimination, and feel isolated and excluded from any redress. Our services are designed to break down barriers and remove discrimination through:

- Individual and systemic advocacy, advice and referral when the system has broken down;
- Information on human rights, entitlements, and the right to communicate;
- Community education and outreach on how to ensure the protection of communication rights.

Funded through the Victorian Department of Health and Human Services, we are governed by a voluntary Board of Directors from both the community and business sector.

We represent a range of people on a continuum from severe speech and communication difficulties, such as Autism Spectrum Disorder; acquired brain injury; illness (such as Motor Neurone Disease, stroke, mental health, physical and sensory impairment, intellectual disability); through to children whose capacity to communicate impacts on correctly and consistently sending their message (such as Apraxia). People approach us when their ability to communicate their message is impacting on their ability to access their human rights and hence are experiencing a significant deterioration in their quality of life.

Communication Rights uses the UN Convention on the Rights of People with Disabilities ("the Convention"), Victorian Charter of Human Rights and Responsibilities Act 2006 ("the Charter"), disability discrimination legislation and government policies to ensure people can enjoy their rights. Our activities promote change and facilitate inclusion into community activities.

The **Disability Discrimination Legal Service** ("DDLS") is a community legal centre that specialises in disability discrimination legal matters. DDLS provides free legal assistance through information, referral, advice, casework assistance, community legal education, and policy and law reform. The long term goals of the DDLS include the elimination of discrimination on the basis of disability, equal treatment before the law for people with a disability, and to generally promote equality for those with a disability.

## **General Comments on Framework:**

Due to the lack of legislative direction, the role of an advocate has no authority or clearly articulated statutory obligation under the National Disability Advocacy Framework ("the Framework"). The Framework remains an overarching document that is vague and inadequate, having failed to assist people with disabilities in the past, and inappropriate for the new National Disability Insurance Scheme (NDIS) environment.

The NDIS will make little difference to the rights of people with disabilities to access advocacy, it simply acknowledges a role for advocacy.

Unfortunately the National Disability Insurance Act 2013 states that the *'...role of advocacy in representing the interests of people with disability is to be acknowledged and respected'*<sup>1</sup>. This can be seen as a "motherhood statement" without any clear authority attached.

The Framework directs activities much wider than the National Disability Insurance Scheme Act. A person seeking advocacy support does so for issues attached to housing, justice, education and a range of other key areas where discrimination or injustice is experienced.

There will be only 420,000 people with disabilities funded under NDIS yet there are 4 million Australians identified as having a disability. As a result there will be a need for advocacy outside the NDIA system, and such a need is required to be addressed.

Communication Rights believes that the history of "guidelines", "principles" and "frameworks" has failed people with disabilities as it relies on the goodwill of government and service providers to:

- a) voluntarily decide to provide services in line with such guidelines and frameworks; and
- b) interpret vague statements.

Rights need to be nonnegotiable, and absolute.

The role of the advocate is often key to people with disabilities being able to access their broader rights. Respecting that assumption, the right to an advocate needs to be seen as inextricably linked to accessing general human rights.

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<sup>1</sup> National Disability Insurance Scheme Act 2013 No. 20, 2013, Chapter 1, Part 4, Page 7

## **Discussion Paper Feedback:**

1. Do you believe the current Framework encompasses your vision of advocacy in the NDIS environment? If not, what changes are required?

Although the current framework provides some generic guidance on the role of advocacy, it needs to be strengthened to ensure it can adequately safeguard the rights of the individual within the new market environment, as well as that person's interactions with other parts of the community life.

Communication Rights recommends the following changes:

1. That the Framework becomes legislation.
2. That back Framework explicitly and unequivocally includes the rights that are required to reflect Australia being a signatory of the United Nations *Convention on the Rights of People with Disabilities* and the *Convention on the Rights of the Child*.
3. That the Framework includes a person's explicit right to obtain the services of an advocate. This is particularly important for those who are vulnerable and marginalised.
4. That if the Framework does not become legislation, that adherence to it is mandatory for all disability services (including education), and included in service agreements.
5. The government commits to allocating the necessary resources/funding required ensuring that a person's right pursuant to the Framework can be realised.

The Productivity Commission<sup>2</sup> confirms the need for independent advocacy but provides no direction as to how it should be resourced.

The new NDIS environment will impact on advocacy through potential increased demand for services when individuals wish to negotiate service contracts that are not meeting their needs. Evidence from advocacy service RIAC (Regional Information and Advocacy Council) within NDIA

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<sup>2</sup> Productivity Commission, Inquiry Report, Overview and Recommendations No. 54, 31 July 2011 Productivity, Support and Care, page 28

Barwon Pilot Region, reports a significant increase in advocacy requests as a result of the NDIS.

2. Are the principles of the Framework appropriate for guiding the delivery of advocacy for people with disability in a changing disability environment, including in the context of the NDIS? If not, what changes are required?

"Principles" in and of themselves have no power. The principles need to be supported by directives. Such directives need to include:

1. Advocacy should be a free service.
2. People accessing advocacy have the right to an appropriately skilled advocate familiar with the disability sector, and the right to communicate with that person through their method of choice (Auslan, Augmentative and Alternative Communication methods or deaf/blind sign).
3. The right to independent advocacy. Advocacy needs to remain independent of service provision and remain closely linked to the provision of information. The role of advocacy is complex and needs to be scrutinised to ensure it does not move into 'the best interest model' and keeps a human rights focus.
4. The right to specialist advocacy. There is recognition that there is great benefit in, for example, advocacy organisations that specialise in providing services to specific ethnic groups, in order that there is an understanding of linguistic and cultural needs. People with disabilities need the same access. The "bigger is best" model often seen by government to deliver resourcing advantages is not necessarily a model that best meets the needs of people with disabilities.
5. The right to diversity and choice. In line with services to the general community, people with disabilities need choice in relation to advocacy.

3. Are the outcomes of the Framework still relevant or should different ones be included? If so, what should be included?

Unless there is any measurement of the outputs, they are redundant.  
Unless government seeks evidence of the outputs, they are redundant.

Therefore while the outputs are worthy, they do not achieve in and of themselves. If government's intention is that the outputs are mandatory rather than simply aspirational, then there will need to be some evidence of their achievement. This requires a process to be established.

4. Are the outputs of the Framework still relevant or should different outputs be included?

1. The outputs are adequate but need to have some explanatory notes attached. Within the present outputs it states for example (13 (a)) that advocacy is tailored to meet the individual's needs. There is no explanation as to what the markers would be to meet that output. Therefore, in our view, the outputs have often not been met to date.

The outputs could be strengthened by the acknowledgement of the need of specialist communities who require more than a generic approach to advocacy (see page above).

2. Targeted data collection should provide evidence into gaps in the provision of advocacy and its quality as viewed by people with disabilities.

5. Does the Framework identify what is needed in the current and future disability environment? If not, what changes are required?

1. Evidence from the Barwon Trial Region and confirmed by the recent Victorian Ombudsman's Report<sup>3</sup> Phase 1 states in Recommendation 2 that there is a need to increase advocacy funding, and a comprehensive assessment needs to be undertaken in this regard. We support such an assessment

Victoria has developed a strong advocacy sector with excellent practice models that should be replicated across Australia. The mix of both state and federal funded agencies within Victoria provides both strength to the sector and diversity.

Special concern is raised throughout the Ombudsman's report for those most vulnerable and marginalised, and their access to those can represent them.

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<sup>3</sup> "Reporting and investigation of allegations of abuse in the disability sector: Phase 1-the Effectiveness of Statutory oversight" June 2015

2. There is no explicit right to be provided with and trained in a communication method. A number of people with disabilities due to the failures of their education have not received comprehensive language assessments or training in a communication method. This prevents communication with all sectors of the community, including advocacy, and results necessarily in "best interest" advocacy rather than human rights-based advocacy.

6. Do you have any other comments, thoughts or ideas about the Framework?

1. Whatever decisions are made about the Framework, people need clarity and transitional continuity of advocacy services to be maintained to ensure their voice is heard within and outside of the NDIA process. Attention needs to be given as to the barriers that inadequate timelines create for people who require time to communicate.
2. Governments could use the data collected through systemic advocacy as a feedback mechanism on the effectiveness of government policy.
3. Internet access is not available to all people. Less than 40% of people with communication or speech difficulties have access to any telecommunication. Access to information and advocacy needs to be tailored to the needs of the individual as such information and advocacy build a bridge between services/community and vulnerable and marginalised people.
4. Community based advocacy is essential.
5. Information should be provided in a way that is accessible to the individual.
6. Without explicit instruction and mandatory requirements, the Framework will remain a policy documents that has no power. This is of no use to people with disabilities.