



Submission by the
Commonwealth Ombudsman

**REVIEW OF THE NATIONAL
DISABILITY ADVOCACY PROGRAM**

Submission by the Commonwealth Ombudsman, Colin Neave AM
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The office of the Commonwealth Ombudsman welcomes the opportunity to respond to the *Review of the National Disability Advocacy Program* (the NDAP) discussion paper.

BACKGROUND

The Commonwealth Ombudsman's role

The Commonwealth Ombudsman has broad jurisdiction to investigate the administrative actions and decisions of most Australian Government agencies, including the actions and decisions of private providers contracted to deliver services on behalf of those agencies. Some of the most common types of complaints to the Commonwealth Ombudsman are about:

- the delivery of payments and services under social security and family assistance law (the Department of Human Services' Centrelink program)
- the assessment and collection of child support liabilities (the Department of Human Services' Child Support program)
- the delivery of immigration programs and services (the Department of Immigration and Border Patrol)
- services delivered by Australia Post
- people's experience of job services programs (oversighted by the Department of Employment ('jobactive' or mainstream job services), the Department of Social Services (disability employment services), and the Department of Prime Minister and Cabinet ('Community Development Program' or indigenous employment services).

Also relevant to this review, the Commonwealth Ombudsman has jurisdiction to investigate the administrative actions and decisions of the National Disability Insurance Agency (NDIA).

Most people with disability are likely to engage with some or all of the above agencies and programs in their life. For many people, including people with disability, interacting with these agencies and programs can be complex, confusing or intimidating. This confusion and complexity is likely to be even more apparent when the person receiving the service believes it is inadequate, or considers a decision is incorrect or unfair.

Some people with disability will seek resolution of difficulties or errors that arise in these interactions by contacting the agency directly to make a complaint or seek a review, making a review application to a suitable external body, or complaining to this office. However, many others will not feel equipped, or even be aware of their right to do so in the absence of assistance or support from another person or organisation.

RESPONSE TO TERMS OF REFERENCE

The importance of advocacy

Our office has previously made submissions to the *Proposal for a National Disability Insurance Scheme Quality and Safeguarding Framework*¹ and the *Review of the National Disability Advocacy Framework*.² In both submissions we expressed the view that any safeguarding system in the disability environment cannot operate optimally in the absence of a robust, dynamic and well-resourced advocacy system.

Indeed, we suggest it is important to remember that underpinning the NDIS, the NDAP and the National Disability Advocacy Framework (NDAF) is the *National Disability Strategy 2010-2020*. The focus of that strategy is 'an inclusive Australian society that enables people with disability to fulfil their potential as equal citizens.

We know from our work that even where government agencies and complaint bodies make every effort to be visible and approachable, there will likely remain instances where people with disability are unwilling or unable to make a complaint in the absence of a trusted source of support. This is a reality in many of the areas of our work where the most vulnerable people impacted by government administration are also the least likely to complain for a variety of reasons including fear of retribution or withdrawal of services. We find that the issues in these areas often only become apparent through the hard work of advocacy organisations, who either make complaints on behalf of individuals or bring broader systemic problems to us for consideration.

More generally, people with disability benefit from advocacy in a number of areas of their lives, including in navigating their interactions with institutions such as education, health, housing, finance, telecommunications and justice.

Models and accessibility of advocacy

The discussion paper seeks views about how advocacy should be delivered to best meet the needs of the people who would benefit from it. This includes the model of advocacy and where it is delivered.

It is clear that advocacy has broad application in the lives of people with disability and that a one-size-fits-all approach is less than optimal. With this in mind, we would support a NDAP that provides for a range of advocacy models (including individual, peer, legal, systemic and disability-specific) to be delivered.

We acknowledge that there are obvious challenges in ensuring that advocacy is available and readily accessible to all people with disability, particularly where they face additional barriers including language, culture, remote or isolated locations (including people in large residential facilities), and complex support and/or communication needs.

Historically funding has been designated for the provision of certain specialised advocacy services. While these can be helpful to a specific group of people, it may also mean that others in a particular area who fall outside the target group do not have access to the advocacy they need.

¹ <https://engage.dss.gov.au/ndis-qsf-submissions/1432615332/>

² <https://engage.dss.gov.au/ndaf-submissions/1438056409/>

We would encourage government and advocacy organisations to think about innovative approaches to providing advocacy in such situations, including: using technology to expand geographical reach; providing financial and practical support to allow existing organisations (particularly in more isolated locations) to develop their capacity to deliver a broader range of advocacy options; and the development of networks to allow advocacy organisations to share skills, experience and expertise.

We note that the submission made by National Disability Services suggests that all generalist advocacy services be networked and linked by a single national contact number, which would then transfer calls to the nearest appropriate service. In our view, such an arrangement would likely assist in reducing the complexity for people with disability in identifying available advocacy services, provided it also allows for people to contact services directly if they prefer to do so.

Coordination on systemic issues

The discussion paper seeks views about ensuring information on systemic issues is shared by advocacy organisations with the right people and organisations.

The Commonwealth Ombudsman's office knows from its own work how difficult it can be to gain awareness of issues affecting vulnerable people, including people with disability, directly from the source. Quite often, our office only becomes aware of systemic issues affecting people with disability via advocates in the course of our regular engagement with those organisations.

However, this arrangement relies on either our office having an existing relationship with advocates, or advocates being independently aware of our office's role. While we would not necessarily propose that advocacy organisations be required to engage in standardised real-time reporting against trends, our office would certainly support the development of a resource available to (among others) advocates, peak organisations and oversight bodies, that would provide information about each organisations' roles and responsibilities and key points of contact.

In our view, the ready availability of this sort of coordinated information would serve two important purposes:

1. to support advocacy organisations in knowing which person or organisation is the most appropriate point of contact if they wish to highlight an emerging trend or systemic issue, or wish to consult other bodies about coordinating work on common issues
2. to give oversight bodies, service providers and government visibility of the advocacy options available in a particular geographic location or area of specialty and make suitable referrals.

Our office recently held a Disability Complaint Handling Forum at which a number of the bodies mentioned above were present. We anticipate that one of the outcomes of that Forum will be greater sharing of information about the work each organisation is doing, or planning to do, to improve safeguards for people with disability.

Interface with the NDIS and maintaining independence

The transition of state disability funding into the NDIS is an issue that understandably concerns advocacy organisations and other peak organisations, many of whom are

worried that these funds will be invested solely in individual supports and result in a reduced investment in disability advocacy.

In our view it is essential that greater clarity is provided about precisely what advocacy or advocacy-like supports can be funded under an individual package, and which are to be funded outside of the NDIS. It will also be important to further explore, and settle the issue of whether organisations funded by the NDIA to deliver Information, Linkages and Capacity (ILC), decision support and pre-planning services can also be funded by the Commonwealth, state or territory government to act as an advocacy organisation.

In our recent work, we have noted a great deal of confusion for participants around the difference between making a complaint about an action or decision and requesting a review of a plan or decision. We consider that a well-funded, well-informed advocacy system would assist greatly in ensuring that participants are informed and supported to access the most appropriate complaint or review pathway to their situation.

Access to justice

From our own discussions with participants, carers, families, service providers and advocates, we are aware that many people with disability find the process of pursuing external merits review by the Administrative Appeals Tribunal extremely complex and legalistic. At present, a limited number of organisations are funded under the NDIS to provide support with the external merits review process. It will be important to ensure that funding for this function grows commensurately over the coming years as the number of NDIS participants increases.