



JFA Purple Orange

JFA Purple Orange Submission

Review of the National Disability Advocacy Framework

Submitter details

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About the Submitter

JFA Purple Orange is the social policy arm of the Julia Farr Association Inc. We are a non-government, social profit organisation that conducts research and engages in dialogue with people with lived experience of disability to develop policy and practice. Our work is anchored on the principles of Personhood and Citizenship.

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Contents

1. Introduction	4
2. Guidance Questions	5
3. Considerations	6
3.1. JFA Purple Orange Stance/Principles	6
4. Responses – Guidance Questions	8
4.1. Question 1. Do you believe the current Framework encompasses your vision of advocacy in the NDIS environment? If not, what changes are required?	8
4.2. Question 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?	10
4.3. Question 3. Are the outcomes of the Framework still relevant or should different ones be included? If so, what should be included?	12
4.4. Question 4. Are the outputs of the Framework still relevant or should different outputs be included?	13
4.5. Question 5. Does the Framework identify what is needed in the current and future disability environment? If not, what changes are required?	14
4.6. Question 6. Do you have any other comments, thoughts or ideas about the Framework?	15
5. Summary of recommendations	16

1. Introduction

Thank you for the opportunity to make a submission to this Review. The fundamental importance of advocacy for supporting and improving the life chances of people living with disability cannot be underestimated. A review of the National Disability Advocacy Framework is timely and necessary in a time when the National Disability Insurance Scheme (NDIS) has the potential for great change for people living with disability.

Our submission sets out our position and considerations on the matters raised by the Guidance Questions provided by the Department of Social Services.

We have developed a number of recommendations and these are presented in summary form at the end of the submission.

We would welcome the opportunity to provide additional information as required. We would also value the opportunity to meet with the Review team to discuss the submission contents in more detail.

2. Guidance Questions

1. *Do you believe the current Framework encompasses your vision of advocacy in the NDIS environment? If not, what changes are required?*
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?*
3. *Are the **outcomes** of the Framework still relevant or should different ones be included? If so, what should be included?*
4. *Are the **outputs** of the Framework still relevant or should different outputs be included?*
5. *Does the Framework identify what is needed in the current and future disability environment? If not, what changes are required?*
6. *Do you have any other comments, thoughts or ideas about the Framework?¹*

¹ Department of Social Services, 2015. *Discussion Paper: Review of the National Disability Advocacy Framework June 2015*. Department of Social Services, Canberra, ACT. 5pp. [downloaded: 25 June 2015].

3. Considerations

3.1. JFA Purple Orange Stance/Principles

- a) JFA Purple Orange has substantial and ongoing working experience, and interest, in achieving improvements in the lives of people living with disability. While JFA is not an advocacy provider, we can offer informed comment to the review based on our organisation's principles, values and experience, rather than direct evidence from providing advocacy services. It is from that perspective that commentary is provided to the NDAF review.
- b) We give unequivocal support for improvements in life chances for all people living with disability as well as the recognition of the personal autonomy, independence, agency, and dignity of people living with disability. The respect for, and promotion of, the concept of Citizenship for people living with disability is a focal point of the work of the Julia Farr Association.²
- c) JFA Purple Orange provides opportunities for people living with disability through grants and funds and addresses, through its research and policy work, a wide range of social justice issues that have particular relevance to people living with disability.
- d) We recognise the fundamental importance of the United Nations *Convention on the Rights of Persons with Disabilities* to all people living with disability in Australia.

² Williams, R., 2013. *Model of Citizenship Support* (2nd Ed). Julia Farr Association Inc., Unley, South Australia. 92pp.

- e) We recognise the importance of all associated legislation, regulations, strategies, policies and agreements that maintain (domestic) compliance with the principles of the Convention at all levels of government in Australia.
- f) We recognise the importance of the National Disability Strategy in integrating policy at all levels of government into necessary actions, including the NDIS, for the betterment of the lives of people living with disability.³
- g) Julia Farr Purple Orange gives full recognition and support for advocacy, in its various forms, as a significant tool for achieving necessary improvements for the lives of people living with disability.
- h) We recognise the opportunity to contribute to the National Disability Advocacy Framework (NDAF) review.

³ For example, see: Goggin, G. & Wadiwel, D., 2014. Australian disability reform and political participation. *Australian Review of Public Affairs Digest*, September 2014. n.pages. **Online edition.**

4. Responses – Guidance Questions

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

JFA Purple Orange fully supports the work of advocacy, individual and systemic, in Australia’s disability sector. Our support recognises the significant contribution the work of advocates and advocacy organisations makes for positive differences to the lives of people living with disability.

The NDIS undoubtedly has the capacity to alter the nature of the work of the disability sector in fundamental ways. Advocacy services need to be available to those aspiring or eligible participants (in the NDIS) needing assistance with planning, appeals, complaints mechanisms and so on). Some of the existing NDAP providers are already tasked with providing these services.

The National Disability Strategy underscores the importance of accessible and inclusive communities. In pursuit of this, people living with disability, their families and supporters will need the option of access to advocacy services.

There may be specific reasons or purposes that might require changes to the NDAP because of the nature of advocacy work required for the particularities of NDIS processes. Others are better placed to make specific claims about those matters. Taking a broader perspective, it is difficult to understand why changes are necessary; the overall need for people living with disability to access the NDAP is not lessened because of the NDIS. If anything it has increased since Australia gave its commitment to the United Nations Convention on the Rights of People with Disabilities.

JFA Purple Orange recognises, nonetheless, that the development of a competitive (NDIS) marketplace will alter the relationship of people living with disability, and their families and supporters, with service providers. Reliance on existing legislation and consumer-related advocacy may not be sufficient to maintain, fully, the interests of eligible participants in the NDIS. There will be a need for different forms of advocacy, in the NDAP, to address potential differences in approach between people living with disability and operations of a competitive marketplace. The ‘different forms of advocacy’ might include the need to address issues with a human needs perspective

with for-profit businesses, or employment-related issues in self-management situations.

The NDAP and NDAF have been subject to a number of “reviews”;⁴ improvements have subsequently been attempted in a number of relevant areas. In current circumstances, we recognise that incremental improvements to programs can be helpful, but it is important to ensure that any such incremental improvements do not compromise NDAF Principles. The objectives of NDAP are clearly set out on the DSS website:

[t]he National Disability Advocacy Program (NDAP) provides people with disability access to effective disability advocacy that promotes, protects and ensures their full and equal enjoyment of all human rights enabling community participation.

The policy and implementation of the NDAP is guided by the principles and objectives of key legislation, conventions, agreements and frameworks, including but not limited to: the United Nations Convention on the Rights of Persons with Disabilities; the National Disability Strategy; the National Disability Agreement, the National Disability Advocacy Framework; and the Disability Services Act 1986 (DSA).⁵

We expect any changes to NDAF, should they occur as a result of this review, to uphold and advance these stated objectives and requirements to the fullest extent.

We recommend that planning be undertaken in the short-term, by Department of Social Services (DSS), to address potential issues that could arise from interactions between people living with disability and changes arising from the NDIS and the

⁴ For example, see: Jenny Pearson & Associates Pty Ltd., 2009. *Research of the Models of Advocacy Funded under the National Disability Advocacy Program. Final Report*. Department of Families, Housing, Community Services and Indigenous Affairs, Canberra, ACT. 70pp.

⁵ Department of Social Services website. *Disability and Carers. National Disability Advocacy Program (NDAP)*. (Updated: 27 May 2015). **Web**. [28 June 2015].

development of a competitive disability services sector. Planning is necessary as the market is not yet fully developed but in the process of development. The interests of people living with disability may not coincide with the pursuit of sustainability of a competitive services sector. In other words, the primary focus of service agencies must be about the extent to which they can be helpful in improving circumstances in which full and meaningful lives can be had and not on goal of agency sustainability for its own sake. Advocacy will be essential to maintain a focus on the interests of people living with disability in these circumstances.

The importance of independence and frank fearlessness raises questions about the role of (government) funding broker of advocacy services. Currently, it is the DSS. It could be argued that this places the Department in a vexed position. Because of other roles the Department has, advocacy efforts may at times be critical of its work. Understandably, these circumstances could generate challenges for the DSS, particularly in its role of funding advocacy services. We strongly recommend that serious consideration be given to relocating the funding role for advocacy services with another, statutorily independent, administrative body e.g. the Human Rights Commission.

4.2. Question 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?

The matters addressed by the NDAF Principles are of crucial importance to the lives of people living with disability, and reflect the work of the sector and government to develop them. It is a reasonable assumption that the Principles are sound, and in current circumstances, fit for purpose.

In the absence of information or evidence to explain or describe how a '*changing disability environment*' is being imagined and operationalized (the drama of any reform process lies in the operational detail) it is difficult to provide informed commentary about appropriateness of changes to the current suite of NDAF Principles.

Nonetheless, it is notable that the Principles do not explicitly address the necessary independence of advocates and advocacy work. The role of NDAP providers in relation to government policies or initiatives, ongoing funding and/or a competitive disability

services market, is likely to be compromised if their independence is not assured. The independence to be frank and fearless, free from concerns about coercion or retaliation, in pursuit of the interests of people living with disability should be a foundation Principle of the NDAF.

The NDIS is social insurance, with universal cover, funded by taxpayers. The cover addresses costs of lifetime support. Funding for advocacy within the particularities of rules of the NDIS, will be, it is assumed, allocated appropriately within the Scheme. The NDIS operates within legislated Objects and Principles, which mirror some of those adopted by the NDAF.

It is unclear at this time whether the NDAP will provide advocacy services for people who wish to appeal decisions made by the National Disability Insurance Agency (NDIA). Appeals against decisions can be either via internal NDIA processes or through the Administrative Appeals Tribunal. The AAT is to develop specific services for NDIA related decisions. The role of NDAP providers in either of these processes has not been determined. We recommend that research be undertaken to determine whether AAT processes will accommodate NDAP-related services and supports. If NDAP services can be accessed then NDAF Principles should be developed to reflect the particularities of NDIS-related statutory appeals processes.

With the preceding points in mind, we recommend there may be necessity to add some ethically valid principles that account for aspects of the NDIS e.g. that no person living with disability will be disadvantaged, in terms of access to advocacy, if they are not eligible for NDIS participation.

Planning for how advocacy work might adapt to circumstances of a competitive NDIS market has been recommended previously. We also recommend that a planning for the development of relevant NDAF principles be undertaken. Additional principles would be focussed on the role of advocacy and the primacy of interests of people living with disability in relation to the operation of a competitive disability services marketplace.

Advocacy services under NDAP, within and outside the NDIS will still be a necessary and essential service for the betterment of the lives of people living with disability. To this end we recommend that a firmly worded Principle be developed that protects the independence of properly accredited NDAP providers. This is particularly necessary in environments where advocacy work is consistent with NDAP Objectives, the interests

of people living with disability and professional integrity and practice, but critical of policies and practices of governments and/or private or public sectors.

We recommend that the NDAF Principles be augmented to emphasise the importance of building capacity for self-advocacy. Sufficient funding should be made available to build individual capacity for self-advocacy and this funding should be available to people living with disability whether or not they are participants in the NDIS.

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

There appears to be no circumstances in the current environment that would suggest the existing suite of NDAF Outcomes should be changed. However, we recommend that statements of additional NDAF Outcomes should be considered, which focus on the primacy of the interests of people living with disability in relation to their interactions with a competitive disability services marketplace.

We also recommend that an NDAF Outcome be developed addressing the important role advocacy plays in identifying and mitigating disadvantage and/or inequality and/or precariousness which impacts the lives of people living with disability. This would be an Outcome that would be worthwhile as well as an increasingly essential response to current and emerging circumstances.^{6,7,8}

We recommend that Outcome statements emphasise the importance that supported self-advocacy is evident across the disability community.

⁶ For example, see: Australian Institute of Health and Welfare (AIHW), 2009. *The geography of disability and economic disadvantage in Australian capital cities*. AIHW, Canberra, ACT. 26pp.

⁷ For example, see: Australian Council of Social Service (ACOSS), 2014. *Poverty in Australia 2014*. ACOSS, Strawberry Hills, New South Wales. 46pp.

⁸ For example, see: ACOSS, 2015. *Inequality in Australia 2015*. ACOSS, Strawberry Hills, New South Wales. 50pp.

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

There appears to be no circumstances in the current environment that would suggest the existing suite of NDAF Outputs should be changed. However, we recommend that suitable, additional, NDAF Outputs be considered, focussing on the primacy of the interests of people living with disability in relation to their interactions with a competitive disability services marketplace.

We also recommend a firmly worded Output be developed that addresses the importance of the independence of advocates and advocacy work.

We recommend, as a matter of consistency with NDAF Principles and Outcomes, a suitably worded Output be developed that clearly supports the concept of self-advocacy with, if necessary, appropriately structured integration with NDAP-related services (e.g. advice and support).

Organisations that are funded through NDAP have, necessarily, to meet Standards and other similar obligations (e.g. quality assurance frameworks) to be recognised and funded by the DSS. However, despite meeting these obligations, the independence of advocacy organisations is, apparently, not assured when, for example, undertaking systemic advocacy. The absence of NDAP Principles clearly articulating the necessity for independence of advocates and advocacy work is of concern. Consistent support for independence from interference from various sources should be expressed in the NDAP Outcomes and Outputs.

We believe recent attempts by government to alter funding arrangements for advocacy organisations were/are not in the best interests of people living with disability, particularly in terms of the many challenges, demands and opportunities they face during and beyond the current reform process. This has particular importance regarding the need for critical assessments of policies and the use of systemic advocacy as an important means of maintaining respect, support and inclusion of people living with disability in society. There are many influences driving government policies that could, with or without intent, diminish the interests of people living with disability, for example:

‘the shift in emphasis away from a social model focus on structural forces has important implications for disabled people, their families and indeed the general

*population in both wealthy and poor countries alike. ... inequality within and across nation states has escalated. ... as we move further into the new millennium economic and political stability in all countries is likely to be increasingly fragile and the struggle for a fairer and inclusive global society more difficult.*⁹

And:

*'[w]ithout supply-side mechanisms designed to bring as many people into competition for paid work, the fear for the state is that economic growth, and hence the number of people in paid work, will be held back. Hence, in order to increase the number of people in paid work, including disabled people, it was held to be necessary to make changes in social security policy for them as a supply-side adjustment as a means of economic regulation.'*¹⁰

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

On the face of available evidence it appears the Framework delivers what is required in the '*current ... disability environment*'. The NDAF appears to be working and, moreover, delivering what is required for its stakeholders and constituents. If there is unmet needs for advocacy it is reasonable to assume that providers in the NDAP will be informing DSS and the government.

The NDIS and the development of a competitive NDIS market will potentially alter how advocacy is understood and delivered. If, as is likely, the for-profit sector has an

⁹ Barnes, C., 2012. Understanding the Social Model of Disability: Past, present and future. *In: Watson, N., Roulstone, A. and Thomas, C. (Eds). The Routledge Handbook of Disability Studies*. Routledge, London, United Kingdom: 23.

¹⁰ Grover, C. & Soldatic, K., 2012. Neoliberal restructuring, disabled people and social (in)security in Australia and Britain. *Scandinavian Journal of Disability Research* **15**(3): 227.

increasing presence in service provision, advocacy organisations will need to adapt to the situations that arise from interactions in a competitive market.¹¹ The role of competition in the operation of an NDIS marketplace will generate challenges and demands for advocacy organisations and their relationships with government, commercial interests and people living with disability requiring advocacy (e.g. potential problems arising from the human needs of people living with disability, drive for profit and solvency as well as other factors such as remoteness, incomplete coverage of services, and competing perspectives on what “disability” is).^{12, 13} The interests of people living with disability should not be displaced by preferences for operations occurring in competitive marketplaces (unless undeniably beneficial to those interests).¹⁴

However, as the shape and structure of the NDIS marketplace is not known at this time, we recommend that the NDAF be subject to ongoing reviews, at frequencies to be decided, for a period of up to three years (i.e. within the electoral cycle). This approach would allow realistic amendments to be made to the NDAF, reflecting circumstances arising from the operations of the NDIS and a competitive disability services market.

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

The NDIS is a major policy reform, which has the potential to deliver life transforming benefits to people living with disability. However, in and of itself it will not resolve the

¹¹ For example, see: Fritsch, K., 2015. Gradations of Debility and Capacity: Biocapitalism and the Neoliberalization of Disability Relations. *Canadian Journal of Disability Studies* 4(2): 12-48.

¹² For example, see: Bickenbach, J.E., 2001. The Political Economy of the Disability Marketplace. In: Albrecht, G., Seelman, K. and Bury, M. (Eds). *Handbook of Disability Studies*. Sage Publications, Thousand Oaks, California, USA: 585-609.

¹³ For example, see: Birch, K. & Tyfield, D., 2013. Theorizing the Bioeconomy: Biovalue, Biocapital, Bioeconomics or ... What? *Science, Technology and Human Values* 38(3): 299-327.

¹⁴ Bickenbach, J.E., 2001. *Op cit*: 605ff.

issues and challenges that many people living with disability face, and not least of which are the impacts of disadvantage and/or inequality arising from e.g. unemployment or underemployment.

It is very clear there is an ongoing and essential need for individual and systemic advocacy. Systemic advocacy, underpinned by evidence delivered from many sources, including individual advocacy, is no less essential now than prior to the inception of the NDIS.

Systemic advocacy is, at times, likely to be critical of government or corporate policies and procedures. Constructive criticism is a necessary part of democratic participation of citizens in their community. This holds true for people living with disability.

JFA Purple Orange would not support any moves by the government of the day, or the Department, to allow a situation where, because of the NDIS, advocacy and particularly systemic advocacy, would be reduced in effectiveness. It is appreciated, as noted previously, that systemic advocacy might embarrass or annoy politicians or governments. There are no sufficient reasons, in the context of full democratic participation, that systemic advocacy, or other forms of legitimate advocacy, should be stifled or ignored.

Alterations to funding arrangements, increasingly onerous performance requirements or other measures that reduce the effectiveness of advocacy for the betterment of the lives of people living with disability, whether individually or in groups, should not be considered or implemented as a result of any review of the NDAF.

5. Summary of recommendations

1. We recommend that planning for advocacy needs and requirements in a competitive services marketplace is undertaken at the earliest opportunity. The interests of people living with disability may not coincide with the pursuit of profit of a competitive services sector. Advocacy will be essential to maintain a focus on the interests of individuals and groups in such an environment.
2. We strongly recommend that serious consideration be given to relocating the funding role for advocacy services with another, statutorily independent, administrative body.

3. We recommend that, consistent with the previous recommendation, NDAF outcomes and outputs be developed, which recognise the advocacy needs and requirements of people living with disability, particularly in circumstances where a competitive services marketplace operates.
4. We recommend that work be undertaken to determine whether Administrative Appeals Tribunal processes will accommodate NDAP-related services and supports, and adjustments made to NDAF to reflect these circumstances.
5. We recommend that NDAF Principles be developed to address the advocacy needs of people living with disability who are not eligible for participation in the NDIS.
6. We recommend that NDAF Principles be augmented to emphasise the importance of building capacity for self-advocacy.
7. We recommend that NDAF Principle(s) be developed that protects the independence of properly accredited NDAP providers. This is particularly necessary in environments where advocacy work is consistent with NDAP objectives, the interests of people living with disability and professional integrity and practice, but critical of policies and practices of governments and/or private or public sectors.
8. We recommend that, consistent with the previous recommendation, appropriate NDAF Outcomes and Outputs be developed that recognise the independence of NDAP providers.
9. We recommend that NDAF Outcome(s) be developed addressing the important role advocacy plays in identifying and mitigating disadvantage and/or inequality and/or precariousness which impacts the lives of people living with disability.
10. We recommend, as a matter of consistency with NDAF Principles and Outcomes, a suitably worded Output be developed that clearly supports the concept of self-advocacy with appropriately structured integration with NDAP-related services (e.g. advice and support).
11. We recommend that the NDAF be subject to ongoing reviews, at frequencies to be decided, for a period of up to three years (i.e. within the electoral cycle), allowing realistic amendments to be made to the NDAF if necessary, reflecting

circumstances arising from the operations of the NDIS and a competitive disability services market.

NOTES:

Submission requirements-

- i) Closing Date: 24 July 2015 (5 p.m. AEST)*
- ii) Date of submission: 24 July: 2015 (3 p.m. ACST)*
- iii) Method of submission: Online (via registration at *DSS Engage*)*