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Advocacy in Ageing and Disability



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- Aged and Community Care Providers Association
- Australian Federation of Disability Organisations
- Consumers' Federation of Australia
- Curtin University
- Department of Health and Aged Care (Australian Government)
- Department of Social Services (Australian Government)
- Disability Advocacy Network Australia
- First Peoples Disability Network Australia
- Independent Chairperson
- Joint Accreditation System of Australia & New Zealand
- LGBTIQ+ Health Australia
- National Centre for Disability Advocacy
- Older Persons Advocacy Network
- University of Melbourne

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Preface

This Standard was prepared by the Standards Australia Committee MB-031, *Advocacy in Aged Care and Disability*.

The objective of this document is to provide uniform minimum requirements for Advocacy in ageing and disability. It specifies requirements for the design, accessibility and quality of Advocacy Services.

This document has been drafted to be consistent with national and international laws and policies that apply to Advocacy Services. This document should therefore be read in conjunction with these laws and policies, representative examples of which are provided below. The below lists are illustrative only and not to be regarded as exhaustive.

Laws and regulations in Australia that apply to Advocacy Services include:

- (a) Aged Care Act 1997.
- (b) Aged Care Quality and Safety Commission Act 2018.
- (c) The Single Charter of Aged Care Rights.
- (d) National Disability Insurance Scheme Act 2013.
- (e) Disability Services and Inclusion Act 2023 and state and territory disability services acts.
- (f) Australian Consumer Law.
- (g) Privacy Act 1988.

International instruments and policy documents that address the rights of older people and people with disability include:

- (i) The United Nations Charter of Human Rights.
- (ii) The United Nations Principles for Older Persons.
- (iii) The Convention on the Rights of Persons with Disabilities.
- (iv) The Madrid International Plan of Action on Ageing.
- (v) Disability Discrimination Act 1992.
- (vi) Age Discrimination Act 2004.

Other instruments and legislation that uphold and protect the rights of people include:

- (A) The International Covenant on Civil and Political Rights.
- (B) The International Covenant on Economic, Social and Cultural Rights.
- (C) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- (D) The International Convention on the Elimination of All Forms of Racial Discrimination.
- (E) The Convention on All Forms of Discrimination against Women.
- (F) The Convention on the Rights of the Child.
- (G) UN Declaration on the Rights of Indigenous Peoples.
- (H) Australian Human Rights Commission Act 1986 and state and territory human rights acts.
- (I) Commonwealth Child Safe Framework.

This document was developed with the input of Advocates and people who use Advocacy in Australia. It draws on existing instruments used in Australia and overseas to certify the quality of Advocacy, including the following:

- (1) The NACAP Standard (2021).
- (2) The National Standards for Disability Services (NSDS).
- (3) The National Disability Insurance Scheme Standards.
- (4) Advocacy QPM Code of Practice 2014 (UK).
- (5) Aged Care Advocates Code of Conduct.
- (6) Aged Care Quality Standards.

This document has no legal authority unless it is —

- (aa) called up in legislation or regulation; or
- (bb) adopted by an Advocacy Service as part of a contractual agreement.

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Introduction

Advocacy context

In addition to the Acts, regulations and human rights instruments listed in the Preface, Advocacy is conducted alongside and in response to initiatives which protect and promote the human rights of older people and people with disability. These initiatives include the following:

- (a) *The Royal Commission into Aged Care Quality and Safety* (8 October 2018 – 1 March 2021). The Commission's Final Report recommended that the provision of Advocacy be included in the Objects of the New Aged Care Act, and that provision of Advocacy to assist with complaints be mandated in the Act. Recommendation 106 addresses the need for ongoing and sustainable funding of Advocacy Services to increase access and to enable Advocacy Services to better advance and protect the human rights of older people.
- (b) *The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*. First established on 4 April 2019, whose Final Report was handed down in September 2023.
- (c) *Australia's Disability Strategy 2021-2031*. The Strategy recognizes that Advocacy supports people's rights and helps to remove barriers to their inclusion and participation in the community. The Strategy acknowledges disability Advocacy as being an important way to enable and support people with disability to protect and uphold their rights.
- (d) *National Aged Care Advocacy Program (NACAP) Framework, Program Guidelines and Funding Agreement* provides free, independent and confidential advocacy support, education and information to older people and their representatives receiving, or seeking to receive, Australian Government-funded aged care services. The National Aged Care Advocacy Framework guides providers of NACAP in the delivery of high-quality and nationally consistent aged care Advocacy Services.
- (e) *National Disability Advocacy Program (NDAP)* provides people with disability access to effective advocacy support. This support works to promote and protect the rights of people with disability by helping to remove barriers to their full and equal participation in the community. NDAP is for people with disability who are facing complex challenges. The program provides support in situations where people with disability feel unable to act, speak or write about a difficult situation on their own, or do not have the support required to resolve an issue.
- (f) *National Disability Advocacy Framework (NDAF) 2023-2025*, which commits governments to work together to improve national consistency and access to advocacy services for people with disability across Australia.
- (g) State, territory and local government strategic plans and initiatives which focus on the inclusion of older people and people with disability, and those which address the planning of public infrastructure and housing and issues of accessibility.

These initiatives acknowledge that there are many different types of Advocacy which can support older people and people with disability, including informal advocacy that may be provided through families, friends and carers. The scope of these initiatives includes the provision of ageing and disability Advocacy funded by Australian, state and territory governments.

Advocacy delivery

Advocacy aims to protect and advance the human rights of those who access it. Advocacy is typically delivered to individuals, so this Standard applies principally to Advocacy Services which deliver Individual Advocacy.

Advocacy can also be delivered systemically, either when an issue is experienced by many individuals, or when a potential barrier to the enjoyment of human rights is identified at the policy, regulatory or legislative level. Not all Advocacy Services are resourced to provide Systemic Advocacy, but most

providers of Individual Advocacy are able to contribute in some way to Systemic Advocacy, either through collaboration, the provision of data or case studies, or responses to policy papers or other consultations which address human rights issues affecting older people or people with disability. While Advocacy sometimes requires an Advocate to work on behalf of a Person, most Advocacy is done by the Advocate working with the Person to build their capacity for Self-Advocacy.

Individual Advocacy typically involves a professional Advocate assisting a Person. Self-Advocacy is both a service type and a principle of service delivery, covered under Article 19 of the UN CRPD. Australia's Disability Strategy 2021-2031 has, as part of its Outcomes Framework, a requirement for Advocacy Services to report on the percentage of people accessing Advocacy who report increased choice and control to make their own decisions. In this regard, Advocacy is not only person-centred but also person-led.

The social model of disability

The social model of disability informs Disability Advocacy by challenging previous medical paradigms which view an individual's impairment as the cause of their disadvantage. Commitment to the social model has been expressed by all Australian governments through Australia's Disability Strategy 2021-31, and is the basis for reports such as the Working Together to Deliver the NDIS (NDIS Review: Final Report). The social model views disability as a social construct, as stated in the Final Report:

Intersecting societal barriers are the obstacles to equal participation, not people's impairment.

[SOURCE: NDIS Review, Working Together to Deliver the NDIS (NDIS Review: Final Report), 2023]

Human rights model of Advocacy

Advocacy is informed by a human rights approach. In addition to delivering Advocacy within the legal and human rights frameworks which exist within Australian jurisdictions, Advocates recognize and seek to achieve outcomes that are articulated in international instruments and policy documents such as the UN Convention on the Rights of Persons with Disability and the Madrid International Action Plan on Ageing. The human rights approach requires Advocacy to be carried out in a manner which models best practice in the application of human rights when supporting older people and people with disability.

Principle of equal recognition before the law

Advocacy is often provided to people whose right to make decisions is in question or has been transferred to a substitute decision-maker. Article 12 of the UN CRPD affirms

that persons with disabilities have the right to recognition everywhere as persons before the law,

enjoy legal capacity on an equal basis with others in all aspects of life

and that measures be taken to ensure people are given

the support they may require in exercising their legal capacity.

[SOURCE: United Nations, *Convention On The Rights Of Persons With Disabilities (CRPD)*, Article 12]

NOTE Substitute decision-making is covered by various state and territory guardianship acts, state and territory public trustee acts, enduring powers of attorney, enduring guardianship orders and advance health directives.

Supported decision-making

Older people and people with disability have the right to make, and take part in, decisions affecting all aspects of their life. The presumption should always be that older people and people with disability have the ability to make decisions. Supported decision-making is the process of providing support to people to make decisions to remain in control of their lives.