



**Government
of South Australia**

Minister for Human Services

Level 12 South
1 King William Street
Adelaide SA 5000
GPO Box 2832
Adelaide SA 5001
DX 115
Tel 08 8463 6560
Fax 08 8463 4480

Our ref: A19091240
Your ref: 6964622

Ms Nat Cook MP
Member for Hurtle Vale
PO Box 158
WOODCROFT SA 5162

Sent by email: tristan.rust@parliament.sa.gov.au

Dear Ms Cook

Freedom of information application

I refer to your application under the *Freedom of Information Act 1991* (the Act), received by the Office of the Minister for Human Services on 15 June 2018 seeking access to:

Since 17 March 2018, copies of any and all documents (including but not limited to physical, electronic, or written briefs, minutes, emails, and any other correspondence) regarding advice, information or meetings requested of or on behalf of the Minister regarding a South Australian Disability Advocate, or a Disability Advocate from any other Australian jurisdiction.

Unfortunately, a determination was unable to be made within the 30 days, therefore it is considered to be a 'deemed refusal' under section 19(2)(b) of the Act. However, our office has continued to process your application outside of this timeframe. Section 19(2)(a) of the Act provides that an agency can release documents outside of the thirty-day timeframe, and this is still taken to be a determination under the Act.

Seven documents fall within the scope of your application, and I have determined that three documents are to be released in full, two in part and access is refused to two documents.

Information related to the budget process is prepared for the consideration of Cabinet. Documents 1 and 6 contain such information, which I have determined to be exempt pursuant to clause 1(1)(c) of Schedule 1 of the Act.

Section 20(4) of the Act provides that if it is practicable to give access to a copy of a document with exempt matter deleted, and it appears that the applicant would wish to be given such a copy, the agency must give access to a copy of the document to

this limited extent. I have considered that once the exempt information was removed from document 1, you would wish to be given access to the rest of the document. However, I have determined to refuse access in full to document 6.

Document 5 is a Parliamentary Briefing Note, the release of which would infringe the privilege of Parliament. I have determined this document to be exempt pursuant to clause 17(c) of Schedule 1 of the Act.

Document 7 contains the mobile phone number of a third party; personal information I consider would be unreasonable to disclose. I have determined this information exempt pursuant to clause 6(1) of Schedule 1 of the Act.

If you are dissatisfied with my determination, you can seek an internal review by writing to the Minister for Human Services as the Principal Officer of the agency. Your request should be sent within 30 days of your receipt of this letter.

In accordance with the requirements of Premier and Cabinet Circular PC045, details of your FOI application, and the documents to which you are given access, will be published on the agency's disclosure log. A copy of PC045 can be found at <http://dpc.sa.gov.au/what-we-do/services-for-government/premier-and-cabinet-circulars>.

If you have any questions in relation to this matter, please contact Amanda Hockings, Office Manager, on telephone 8463 3388 or by email at amanda.hockings2@sa.gov.au. If you disagree with publication, you will need to advise the Office Manager within two weeks of the date of this determination.

Yours sincerely



Amanda Hockings
ACCREDITED FOI OFFICER

19 / 9 / 2018

SCHEDULE OF DOCUMENTS – MCOR/18/031 A19091240

Freedom of information application from Nat Cook MP seeking access to *Since 17 March 2018, copies of any and all documents (including but not limited to physical, electronic, or written briefs, minutes, emails and any other correspondence) regarding advice, information or meetings requested of or on behalf to the Minister regarding a South Australian Disability Advocate, or a Disability Advocate from any other Australian Jurisdiction.*

No	Author	Addressee	Date	Description of document	Determination	Reason
1.	Department of Human Services	Minister for Human Services	27 April 2018	Briefing: Correspondence from South Australian Council of Social Services (SACOSS) regarding disability advocacy	Released in part	Exempt – clause 1(1)(c) – Cabinet documents
2.	Minister for Human Services	Ross Womersley – CEO SACOSS	11 May 2018	Response letter	Released in full	
3.	Minister for Human Services	Ross Womersley – CEO SACOSS	3 April 2018	Email	Released in full	
4.				Attachment to email – DPC Circular 044 – South Australian Funding Policy for the Not for Profit Sector	Released in full	
5.			3 April 2018	Parliamentary Briefing Note	Refused in full	Exempt – clause 17(c) – Parliamentary privilege
6.	Department of Human Services	Minister for Human Services		Briefing – Government to honour Labor's \$600,000 National Disability Insurance Scheme Commitment to appoint a disability advocate	Refused in full	Exempt – clause 1(1)(c) – Cabinet documents
7.	Janette Hancock, Office of the Minister for Human Services	Minister for Human Services	7 June 2018	Email – Disability Inclusion Bill – Amendments	Released in part	Exempt – clause 6(1) – personal affairs



TO MINISTER FOR HUMAN SERVICES

RE: CORRESPONDENCE FROM SOUTH AUSTRALIAN COUNCIL OF SOCIAL SERVICE (SACOSS) REGARDING DISABILITY ADVOCACY

Decision/action required by: N/A

Recommendation	Response
1. That you approve the draft response to Mr Ross Womersley, CEO, SACOSS.	Approved / Not Approved / Noted

Comments:

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Hon Michelle Lensink MLC

11/15/2018

KEY POINTS

- On 1 April 2018, *The Advertiser* reported that you announced the State Government's intention to proceed with funding of \$600,000 for disability advocacy including \$200,000 to establish a Disability Advocate role to help maintain accountability as the National Disability Insurance Scheme (NDIS) is being rolled out. Additional funding of \$400,000 was included for community advocacy.
- On 3 April 2018, Mr Ross Womersley emailed you regarding working collaboratively with SACOSS to develop and build a framework of consultation and discussion to assist in clarifying the role and function of the Disability Advocate. Mr Womersley has attached the July 2017 Premier and Cabinet Circular 044 which aimed to support collaborative partnerships between government and the non-government sector.

DISCUSSION

On 1 April 2018, *The Advertiser* reported that you announced the State Government would commit \$600,000 to strengthen the disability advocacy sector. Funding of \$200,000 will be used to appoint an independent Disability Advocate and the remaining \$400,000 will be used to boost funding for community advocacy.

Clause 1(1)(c) - Cabinet

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This commitment is focused on advocacy regarding National Disability Insurance Scheme (NDIS) matters and NDIA performance. However, it should be noted that the NDIS already addresses advocacy through a number of initiatives:

- From 1 July 2018 in South Australia the NDIS Quality and Safeguards Commission will provide information about the rights of people with disability under the NDIS as well as manage complaints, incidents, proper registration and restrictive practices.
- The NDIS *Information, Linkages and Capacity Building (ILC)* Commissioning Framework allows scope for some advocacy activities to be funded.
- Brain Injury SA receives Commonwealth funding to provide advocacy for NDIS participants who wish to appeal their NDIA plan through the NDIS Administrative Appeals Tribunal.

Mr Ross Womersley is the Chief Executive Officer of SACOSS, the peak body for non-government health and community services in South Australia.

SACOSS is part of a national network, comprised of Australian Council of Social Service and state and territory Councils of Social Service which assist disadvantaged and vulnerable people Australia wide. Its membership includes a broad cross-section of small and large health and community services organisations, including disability service providers, and some government agencies as well as individual honorary members.

In his email Mr Womersely expresses an interest in working with you and the Department of Human Services in building a framework of consultation to provide further definition and clarity to the role and function of the Disability Advocate. Additionally, he suggests that Kelly Vincent would be a potential candidate for the position if she was interested.

The focus of the funding announcement was on issues regarding the NDIS, specifically ensuring that people with disability receive adequate funding allocations from the NDIA. It would also be worth considering that the funding for advocacy also address the emerging concerns regarding the interface between the NDIS and mainstream sectors.

A good and fulfilling life will only be possible for people with disability if they have reasonable and necessary support from the NDIA and access and inclusion from mainstream services. This is what the Disability Inclusion Bill 2018 addresses.

It should also be noted that the Public Advocate is already charged with general advocacy functions under the *Guardianship and Administration Act (1993)* and that a Disability Advocate would be best located within the Public Advocate to enhance the disability advocacy capability of that office and to make best use of its administrative infrastructure.

BUDGET

Are there financial implications	Yes
Is there a budget impact	Yes
Is there an FTE impact	Yes

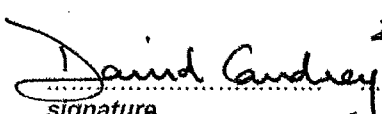
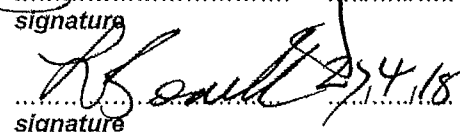
Chief Financial Officer noted:.....

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MEDIA/SENSITIVE:

No

Division	Disability Policy Unit	
Director	David Caudrey	 24/4/18 signature
Deputy Chief Executive	Lois Boswell	 24/4/18 signature

ATTACHMENTS

1. Draft response to Mr Ross Womersley, CEO, SACOSS

Contact Officer:	Chris Horsell Chief Project Officer 84514303/ chris.horsell@sa.gov.au
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Minister for Human Services

Level 12 South
1 King William Street
Adelaide SA 5000
GPO Box 2832
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DX 115
Tel 08 8463 6560
Fax 08 8463 4480

COPY

18MDIS/300

Mr Ross Womersley
Chief Executive Officer
South Australian Council of Social Service
Marjorie Black House
45 King William Road
MALVERN SA 5016

Dear Mr Womersley */Ross,*

Thank you for your email dated 3 April 2018 offering SACOSS collaboration to develop the role of the proposed Disability Advocate position.

The South Australian Government is concerned that eligible South Australians receive adequate funding allocations through the National Disability Insurance Scheme (NDIS).

We are also concerned that mainstream agencies in South Australia have access and inclusion plans so that our citizens with disabilities can have better lives.

To achieve these goals effective advocacy services are an essential component.

Thank-you for your offer of collaboration which will be part of our considerations as we roll out this initiative.

Yours sincerely

Michelle Lensink

Hon Michelle Lensink MLC
MINISTER FOR HUMAN SERVICES

11/15/2018



From: Ross Womersley
To: [DHS:Minister Lensink Correspondence Unit](#)
Subject: FW: Potential to illustrate the principles of co-design and a new style of relationship with the non-government sector
Date: Tuesday, 3 April 2018 5:23:40 PM
Attachments: [image001.jpg](#)
[PC044 South-Australian-Funding-Policy-for-the-Not-for-Profit-Sector.pdf](#)

From: Ross Womersley
Sent: Tuesday, 3 April 2018 5:17 PM
To: 'Lensink, Michelle'
Cc: Catherine Earl
Subject: Potential to illustrate the principles of co-design and a new style of relationship with the non-government sector

Dear Minister,

I was very encouraged by the announcement over the weekend that you intended to proceed with funding to establish a Disability Advocates role to help maintain accountability as the NDIS is being rolled out and to also make additional funding available for better advocacy support to people living with disabilities (and their families and loved ones). Congratulations on your initiative and leadership. For the record, this investment in advocacy is long overdue.

I am not sure how advanced plans are in thinking about what this role should do and indeed the functions it should play but I did not want to let the opportunity pass because this could be an excellent way of showcasing co-design and the type of relationship envisaged in the new funding rules and guidelines captured in PC044 (attached) and sought by the sector.

I would be delighted to work with you (and your Department) to build a framework of consultation and discussion with key stakeholders to give stronger definition and clarity to the role and function this position should play. Clearly this would be an early and important message to all involved about the type of relationship you would be seeking to fashion.

I know you will be struggling to get all sorts of systems in place as you transition to government but think this might be a great opportunity. Please don't hesitate to call on me if this is of interest.

I would also note that an outstanding candidate for such a role if she was interested, might of course be the now almost certainly displaced Hon Kelly Vincent.

With sincere thanks, Ross

Ross Womersley
CEO
South Australian Council of Social Service

cid:image004.jpg@01D3BEAD.4EA40CB0



Marjorie Black House | 47 King William Rd, Unley SA 5061

P: 08 8305 4222 | Direct: 08 8305 4223 | M: 0418 805 426

E: ross@sacoss.org.au | W: www.sacoss.org.au | twitter.com/SACOSS

Justice, opportunity and shared wealth for all South Australians

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**Government
of South Australia**

Department of the Premier and Cabinet Circular

**DPC CIRCULAR 044 - SOUTH AUSTRALIAN FUNDING POLICY FOR THE
NOT FOR PROFIT SECTOR**

1 July 2017

South Australian Funding Policy for the Not For Profit Sector

1. Overview

The South Australian Government recognises and values the important role that a strong and independent not-for-profit (NFP) sector plays in building community and culture, and in delivering services to improve the lives of South Australians. We know that the best outcomes for people and communities are achieved when we work in partnership with the NFP sector to plan and deliver activities and services.

The *South Australian Funding Policy (Policy)* aims to support and strengthen collaborative partnerships between government and the NFP sector. It provides a consistent approach to all aspects of funding, sets clear requirements for public authorities, and reduces the administrative burden on NFPs and maintains their independence. It also ensures that we capture learning and evidence that can be used to continually improve outcomes for South Australian communities.

2. Who Does This Apply To

The *Policy* applies to ongoing and one-off funding arrangements, including funding for services to the public authority directly, or to a third party, and grants that use a formal contractual agreement, regardless of dollar value.

The *Policy* applies to all public authorities that establish and manage the funding of service agreements and the provision and management of grants, and arrangements with the NFP sector, but does not include funding arrangements with schools, universities and churches. Nothing in the *Policy* prevents public authorities from adopting the *Policy* and supporting documents for other NFP funding arrangements.

The *Policy* must be read in conjunction with relevant Treasurer's Instructions, State Procurement Board policies and guidelines and other relevant legislation.

When funding programs where both the NFP sector and for-profit organisations have the ability to deliver the requirement, the aim will be to use a consistent approach as outlined above.

3. Principles

The *Policy* is based on best practice principles for government and NFP funding relationships, as outlined below.

Robust planning and design

- Robust planning and design supports efficient, effective, economical and ethical funding administration and is proportional to the scale and risk profile of the funding activity.
- Public authorities and the NFP sector work together when planning and developing funding strategies to ensure outcomes are based on evidence of community need.
- Planning is based on a rationale for the funding activity, and defines the expected outcomes and measures of success.
- Funding activity is designed to achieve value, accountability, probity and transparency.

Collaboration and partnership

- Public authorities and the NFP sector work collaboratively and flexibly to achieve shared outcomes.
- Wherever possible, public authorities need to choose methods that will promote open, transparent and equitable access to funds.
- Where appropriate, public authorities offer longer term contracts (three years plus three years plus three years) to enable strong, ongoing relationships.
- Positive working relationships are maintained through effective collaboration that supports the needs and interests of NFP organisations and funding recipients.

Proportionality

- Processes are as simple as practicable whilst still being robust and accountable.
- Balance is maintained between managing the complexity of a funding activity and the risk for the NFP sector, recipients and the South Australian Government.
- The volume, detail and frequency of reporting requirements are proportional to the risks involved and policy outcomes being sought.

An outcomes orientation

- Outcomes are clearly defined and include quantitative, qualitative and milestone information that is realistic about what the funding is intended to achieve, both for beneficiaries and with regard to policy objectives.
- Outcomes should be reviewed regularly and whenever changes are made to the funding activity.

Achieving value with relevant money

- Government and the NFP sector work together to achieve value for the South Australian community.
- Value is achieved by establishing ongoing, joint monitoring arrangements throughout the life of the funding arrangement.
- Value considers both cost and non-cost factors and promotes proper use and management of public resources.
- Value demands standardised, efficient and effective funding processes across government that do not impose burdensome requirements on the NFP sector.

Governance and accountability

- Clear governance and accountability is demonstrated for all aspects of the funding process (planning, selection/allocation and management) for both government and the NFP sector.
- Staff involved in developing or managing funding activities have the necessary skills, knowledge and experience.
- Good record keeping informs better decision making and compliance with accountability obligations.
- Processes minimise red tape and duplication and ensure consistency across all public authorities.
- Public authorities support contracts through ongoing communication, active contract management and performance monitoring commensurate with the risks involved.

Probity and transparency

- Funding activities meet legislative and policy obligations.
- Probity and transparency are achieved through funding decisions that are impartial, appropriately documented, publicly defensible and lawful.
- Appropriate mechanisms are in place to identify and manage potential conflicts of interest for funding activities.
- A transparent and systematic application and selection process enhances government, NFP sector and public confidence in the funding activity outcomes and contract administration processes.

Community development principles

- Public authorities consider the desired impact or change they are seeking to achieve within the community.
- Funding activities are advanced only where the desired impact or change will improve outcomes for South Australia.
- Where possible, and particularly in relation to health and community services, funding should reflect a community development approach which builds resilience in the community and the capacity to respond to change

and crisis and empowers individuals in the process of development and service delivery.

4. Dispute Resolution

A NFP organisation that has a complaint against a public authority regarding compliance with the *Policy* should, in the first instance, raise the complaint with the public authority. If the complaint relates to a procurement by the public authority, then the State Procurement Board's Supplier Complaints Policy applies.

If the Supplier Complaints Policy does not apply and the NFP organisation is not satisfied with the response of public authority to a complaint, then the NFP organisation can seek a review by the Department of Treasury and Finance.

5. Review and Amendment

Volunteering SA&NT, the South Australian Council of Social Service, the Conservation Council of SA, Sport SA, or the Arts Industry Council of SA (the peak groups) or other NFP sector representative organisations may at any time provide recommendations for a review of the *Policy* or provide specific recommendations for change to the South Australian Government.

The South Australian Government may initiate, from time to time, a review of the *Policy*. The South Australian Government will engage as early as possible with the NFP sector, including, as a minimum, the peak groups.

Prior to considering changes to the *Policy*, the South Australian Government will consult on the specific changes proposed with the NFP sector, including, as a minimum, the peak groups. If the proposed changes proceed to formal recommendations to Cabinet for change to the *Policy*, then the outcomes of the consultation will be provided alongside the change proposal to Cabinet for decision.

6. Definitions

Funding means any payments made by the government to an NFP organisation related to a contract, grant or other agreement in relation to funding of that NFP organisation.

A **not-for-profit** is an organisation that does not operate for the profit, personal gain or other benefit of particular people. *Not-for-profit organisations* consist of two broad categories¹:

- Charities, which will usually² be registered with the Australian Charities and Not-for-profits Commission (charities can be further broken down into the

¹ <https://www.ato.gov.au/Non-profit/Getting-started/Types-of-not-for-profit-organisations/>

following types: public benevolent institutions, health promotion charities and other charities)

- other types of not-for-profit organisations such as community service organisations, professional and business associations, sporting and recreational clubs and cultural and social societies.

7. Policy Framework

In the South Australian Government, accountability for funding activities and outcomes rests with public authority chief executives, who are required to operate and comply with relevant State Procurement Board policies and guidelines and Treasurer's Instructions.

Funding activities, whether funding of services or administering a grant, require a consistent approach, including:

- appropriate and robust planning, proportional to the scale and risk profile of the funding activity
- clearly defined and transparent selection or application processes in accordance with good probity practices
- sound management and reporting frameworks that deliver value.

The South Australian Government provides comprehensive guidance via a range of Treasurer's Instructions and State Procurement Board policies and guidelines for public authorities to manage funding activities. The Policy Framework consists of:

- Treasurer's Instruction 15 - Grants
- State Procurement Board policies and guidelines

A range of templates and standard contract documents have been developed by the Department of Treasury and Finance and the Crown Solicitor's Office, in consultation with the NFP sector, to ensure a consistent approach across government, and to simplify processes for the NFP sector and government.

Changes to these policies, guidelines and templates should only be made after consultation with the NFP sector as per clause 5 above.

For further advice or assistance please contact:

Janet Haydon
Director, Capacity Building
Community Services
Ph: 8415 4202

² Charities must be registered with the ACNC if they are to utilise federal tax concessions, but charities may operate outside of the ACNC and in SA are covered by the South Australian *Collection for Charitable Purposes Act*.



TO MINISTER FOR HUMAN SERVICES

RE: GOVERNMENT TO HONOUR LABOR'S \$600,000 NATIONAL DISABILITY INSURANCE SCHEME COMMITMENT TO APPOINT A DISABILITY ADVOCATE

Decision/action required by: N/A

Recommendation	Response
1. That you proceed with \$600,000 (one off) for disability advocacy as part of a 2018-19 Budget Bid.	Approved / Not Approved / Noted
2. That you allocate the Advocate funding to the Office of the Public Advocate.	Approved / Not Approved / Noted

Comments:	<p style="text-align: center;">-----</p> <p style="text-align: center;">Hon Michelle Lensink MLC / / 2018</p>
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KEY POINTS

- On 1 April 2018, you announced the State Government's intention to proceed with funding for disability advocacy including \$200,000 to establish a Disability Advocate role to help maintain accountability as the National Disability Insurance Scheme (NDIS) is being rolled out. Additional funding of \$400,000 was for community advocacy support to people with disabilities and their families.
- The funding for a disability advocate for assisting community advocacy will need to be sought as part of the 2018 – 2019 budget process. This briefing provides options and recommendations for this budget bid.
- It is recommended that \$600,000 be sought as a once off funding allocation for 2018 - 2019 budget process with funding directed to the Office of the Public Advocate.

DISCUSSION

This commitment is focused on individual advocacy regarding NDIS matters and National Disability Insurance Agency (NDIA) performance. The NDIA has already addressed advocacy through a number of initiatives:

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- From 1 July 2018 in South Australia the NDIS Quality and Safeguards Commission will provide information about the rights of people with disability under the NDIS as well as manage complaints, incidents, provider registration and maintain restrictive practices.
- The NDIS Information, Linkages and Capacity Building (ILC) Commissioning Framework allows for advocacy activities to be funded. Examples of ILC funded advocacy activities recently announced as part of Round Two ILC grant allocations in South Australia include:
 - \$453,260 over two years for Our Voice Australia which is a user led self- advocacy organisation for people living with intellectual disability. The funding aims to support people living with intellectual disability to engage with the NDIS and connect with their community.
 - \$154,499 over one year to the Paraplegic and Quadriplegic Association of South Australia for a Peer Support Advocacy Support Service to support individuals with Spinal Cord Injury through practical information and demonstrations on independent living skills and community access skills.
 - \$570,102 over two years to the South Australian Council on Intellectual Disability (SACID) to develop a multi-modal information resource for people with intellectual disability, that will enable them to co-design and deliver information at forums, meetings and events.
- Brain Injury SA receives Commonwealth funding to provide advocacy for NDIS participants who wish to appeal their NDIS plan through the Administrative Appeals Tribunal.
- The Federal budget released on 8 May 2018 included an unquantified amount of additional funding to support disability advocacy organisations and ensure that people with disability continue to have access to advocacy services as the NDIS enters full scheme. This has been included in the forward estimates

The following options are proposed for consideration:

Funding

Funding for disability advocacy could be provided on a one-off or recurrent basis. Given your initial media announcement was not specific regarding time frame, one option is that the funding sought is for a single year (2018/19) at a total cost of \$600,000.

A second option is that funding sought is for four years (recurrent) starting in 2018/19 at a total cost of \$2.4 million.

It is recommended that funding be provided on a one-off basis targeted to assist with the final period of transition from the state to the NDIS, to ensure participants transferring are well served by the NDIA at a time when the NDIA is consolidating its systems. The announcement of funding for disability advocacy in the 2018/19 Federal budget will ensure Commonwealth involvement on a longer term basis and State involvement is best targeted to people transitioning to the NDIS.

Advocate Location

Funding for disability advocacy could be located with the Equal Opportunity Commission (EOC) as was indicated in the Labor Party commitment prior to the election. However, the functions of the Commissioner under the *Equal Opportunity Act 1984* do not include advocacy and without the legal basis, it is unlikely EOC would wish to undertake this activity.

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Alternatively, funding of \$200,000 could be provided to the Office of the Public Advocate (OPA) to fund the Disability Advocate position and executive support. If the Advocate role is placed in the OPA, the OPA can draw on existing administrative support and the position can be a part-time position to ensure the role is managed within the \$200,000 budget.

Section 21 of the *Guardianship and Administration 1993*, outlines the role of the Public Advocate which includes public advocacy inclusive of all people with disability. Disability advocacy clearly aligns with the current activity of OPA and the proposed funding fits with the additional work OPA are already undertaking as part of the state's transition to the NDIS. This would ensure that the advocacy is targeted to the most vulnerable and isolated citizens eligible for the NDIS. It is recommended the Advocate funding (\$200,000) be allocated to the Office of the Public Advocate.

On 3 April 2018, Mr Ross Womersley CEO of South Australian Council of Social Services (SACOSS) emailed you to express an interest in collaborating to develop the role of the proposed Disability Advocate position (18MDIS/300). You advised him that consideration would be given to the offer as the initiative was rolled out but made no commitment to partnering. Although SACOSS have expressed an interest in collaborating to develop the role of Disability Advocate, this role fits within the *Guardianship and Administration Act 1993* and as above this direction will ensure improved efficiencies and outcomes for people with disability.

Community Advocacy Location

Funding of \$400,000 could be put out as community grants. However, this would create an expectation of ongoing funding. Given the Government's commitment is focused on individual advocacy regarding NDIS matters and National Disability Insurance Agency (NDIA) performance it would be difficult to ensure the advocacy activities of community agencies align with those of the Disability Advocate position in OPA.

On that basis it is recommended an alternative option of providing funding of \$400,000 to OPA for community advocacy focused on ensuring NDIS participants receive their required allocation of funds. This would mean OPA would manage funding for the Disability Advocate and the community advocacy resource thereby ensuring a combined and comprehensive service. This will also reduce risk of community backlash if community advocacy funding is discontinued after one year (when the NDIS transition is complete). OPA may make grants to NGOs to further community advocacy.

Allocation of community advocacy funding to OPA will require the preparation of a Memorandum of Administrative Agreement (MOAA) between the Department of Human Services (DHS) and OPA and a subsequent procurement process to determine how OPA distributes community advocacy funding.

Risk

Community advocacy sector and in particular SACOSS may not see the recommendation for OPA to receive the funding for the advocacy service to fulfil their expectations

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BUDGET

Are there financial implications Yes

Is there a budget impact Yes

	2017-2018 \$000	2018-2019 \$000	2019-2020 \$000	2020-2021 & ongoing \$000
Operating Expenses		600		
Operating Revenue		-		
Net Operating Cost		600		
Capital Expenditure				

Is there an FTE impact No

Chief Financial Officer noted:.....

MEDIA/SENSITIVE: No

Division	Disability Policy Unit		
Director	David Caudrey /..... /.....	
		signature	
Deputy Chief Executive	Lois Boswell /..... /.....	
		signature	

Contact Officer:	Chris Horsell, Chief Project Officer 8415 4303/ chris.horsell@sa.gov.au
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Lensink, Michelle (DHS)

From: Hancock, Janette (DHS)
Sent: Thursday, 7 June 2018 3:12 PM
To: Lensink, Michelle (DHS); Maddeford, Selena (DHS)
Subject: FW: URGENT ADVICE TO ATTORNEY GENERAL: Equal Opportunity Commission (Disability Inclusion Bill - Amendments)

Please see David's comments below re: EOC suggestions.

According to David, no prior submissions have been received from the Commission in regards to what they are advising. In David's words- they have not followed proper process!

Regards
Janette

From: Caudrey, David (DHS)
Sent: Thursday, 7 June 2018 11:18 AM
To: Hancock, Janette (DHS) <Janette.Hancock@sa.gov.au>
Subject: RE: URGENT ADVICE TO ATTORNEY GENERAL: Equal Opportunity Commission (Disability Inclusion Bill - Amendments)

Hi Janette,

We have not seen this advice before.

It was supplied to the Opposition regarding their amendments and it looks like it was supplied without reference to the Attorney. Their communication looks like a scramble to advise the Attorney.

I have made specific comments in the text below.

David Caudrey

Establishment of a Disability Advocate:

- In principal the EOC supports the establishment of an independent disability advocate within the Office of the Equal Opportunity Commission. The establishment of an independent advocate is one mechanism that could potentially strengthen government and community accountability in South Australia under the National Disability Strategy 2010-2020 by working to eliminate persistent and systemic discriminatory practices. The independent advocate could support people with disability to safeguard their rights and overcome barriers in accessing mainstream services that impact on their ability to participate in the community. We would argue that the role of the Disability Advocate would sit better with the Office of the Public Advocate and that a role for the advocate outside NDIS transition has not been canvassed widely.
- There has been a call for stronger accountability measures under the National Disability Strategy by the Senate Standing Committee on Community Affairs. On the 30 November 2017, the Senate Standing Committee released their report into the delivery of outcomes under the Strategy. The Committee noted that while the overall support for

the Strategy remains high, implementation of the Strategy has been poor, with progress reports presenting a more optimistic view of progress than evidence on the ground suggests. The Committee reiterated concerns about ongoing discrimination against people with disability and among other concerns, lack of accountability and evaluation mechanisms. The establishment of an independent advocate could partly address the Committee's concerns in this area. Concern regarding accountability for NDS outcomes is widespread. An independent advocate is but one mechanism and an untested one. Improved accountability of state authorities and a strengthened role for the CE and Minister (as in the Disability Inclusion Act) are other mechanisms.

- The EOC would be a logical place to host the position. We are an independent statutory body with legislative mandate to promote equal opportunity between citizens in SA and facilitate the participation of citizens in the economic and social life of the community, including people with disability. The EOC aims to facilitate access and inclusion and prevent and address discrimination against people with disability when accessing goods and services, employment, education, accommodation, clubs and associations, the granting of qualifications and the sale of land. The function of the disability advocate role aligns with functions of the EOC and the intent of the Equal Opportunity Act. It would require a more detailed analysis of the Equal Opportunity Act and other Acts (Guardianship and Administration, Health and Community Services Complaints etc.) to come to a view about whether the statutory officer has the power required to auspice the Disability Advocate. The most suitable statutory office would appear to be the Public Advocate.
- This position, if created, would require adequate resourcing of at least \$300,000 to provide for the position of advocate and 2 policy/project/support staff to support the work of the advocate. The EOC does not have the FTE capacity to support the work of the advocate without additional resourcing. This is very low. A full-time advocate @ \$150K p.a. with 3 policy officer staff plus on-costs plus goods & services would cost around \$600,000 p.a.
- We further advise that the primary function of the disability advocate should be to support people with disability to safeguard their rights and overcome barriers in accessing mainstream services that impact on their ability to participate in the community – thereby strengthening government and community accountability under the National Disability Strategy. We were clear that the role should not be about ensuring South Australians get the support they are entitled to under the National Disability Insurance Scheme (NDIS). In fact, we argue that creating a separate independent advocacy role in SA to address NDIS access and eligibility issues sends a message that the South Australian government does not have faith in the NDIS to deliver appropriate supports to people, nor does it have faith in the Federal Department of Social Services to run an effective NDIS appeals process. While there are certainly problems with the NDIS, including their appeal and review processes, we think it is important for the South Australian Government to work in partnership with the Federal Department of Social Services and the NDIA to rectify these concerns within existing COAG mechanisms. We also argue that it would not be appropriate to replicate functions of the new Quality and Safeguards Commission being established to oversee the delivery of quality supports and services under the NDIS. This is precisely the opposite of what Labor announced in the election campaign and the Minister agreed to support ie advocacy re the NDIS. This abandons advocacy regarding NDIS matters in favour or advocacy regarding disability access and inclusion matters (state responsibility).
 - In meeting with South Australian advocacy agencies this year, the EOC was informed that federal funding to deliver NDIS appeal services is grossly inadequate for these advocacy agencies. In addition, because much of the work of the South Australian disability advocacy sector has recently been dominated by NDIS appeal work, they have had little capacity to tackle some of the broader mainstream disability discrimination issues faced in areas such as health and education. For

these reasons we believe there needs to be a broader review of advocacy support for people with disability and their carers under the NDIS, as this has implications for achieving successful outcomes for people with disability under both the NDIS and NDS. This is a Commonwealth responsibility – they do have provision for advocacy regarding NDIS matters and when transition is over and the NDIS is bedded down a state-funded advocate will not be needed.

Appropriate legislative amendments to the EO Act to assist in the elimination of persistent and systemic disability discriminatory practices in South Australia in line with the goals of the NDS

- Currently, there is no provision in the Equal Opportunity Act 1984 (SA) for broader, wide-ranging investigatory powers for the Commissioner to achieve compliance with the legislation. True
- The law stipulates the circumstances in which the Commissioner can conduct an investigation and this is in relation to individual complaints only. There is no provision for the Commissioner to take steps, on her own initiative, to actively investigate and ensure compliance with the legislation (for example, conducting a public enquiry). This means that in order to drive change (including the access and inclusion agenda for people with disability), the EO Act relies heavily upon the individual victim of discrimination to pursue complaints through the Commission and the South Australian Employment Tribunal in order to resolve their complaint. The EOC then focusses on processing these individual complaints without having the necessary legislative tools to resolve the underlying causes of discrimination. The EOC wants to expand into areas that are the responsibility of the Office of the Public Advocate or the Department of Human Services.
- We strongly encourage an expansion of the Commissioner's investigatory powers to achieve compliance with the EO Act. Fundamentally, to achieve the outcomes of the NDS, we believe there needs to be a significant shift away from a complaints based-administrative forum for the resolution of individual complaints to the creation of an enforcement body that actively seeks compliance through fast and flexible dispute resolution. We would like to see the South Australian Equal Opportunity Commission be empowered to take steps, on its own initiative, to actively investigate and ensure compliance with the legislation, including the ability to conduct a public enquiry. This approach has been adopted in other jurisdictions, including Victoria. As an example of the practical application of this investigatory power in Victoria, the Victorian Equal Opportunity and Human Rights Commission has recently launched an investigation into potential unlawful systemic discrimination against people with mental health issues by the travel insurance industry. It may be that the EOC needs more powers of investigation thereby better aligning with other jurisdictions, but they are looking at a punitive, compliance approach rather than the cultural change approach that we are pursuing through the Disability Inclusion Act.
- These broader, wide-ranging investigatory powers sit with the Commissioner for Equal Opportunity (not a disability advocate). The Equal Opportunity Commissioner already has provision in the Equal Opportunity Act to delegate powers and functions under the Act to a Public Service employee. Should a Disability Advocate be appointed at any time, the EO Commissioner could delegate this power to the disability advocate if they were appointed as a public servant. Alternatively, were an advocate not appointed, the Commissioner with these extended investigatory powers could play an important role in strengthening government and community accountability for disability access and inclusion under the National Disability Strategy. Technical points if it were decided to locate the disability advocate with the EOC.

Disability Employment Targets of 3% for the Public Service

- The Equal Opportunity Commissioner supports South Australian Public Service disability employment targets. At the end of 2017, the Commissioner for Equal Opportunity discussed this with the Commissioner for Public Sector Employment. Good

- Disability discrimination in employment continues to be our most common ground of complaint at the Equal Opportunity Commission. Last financial year (2016-17) disability discrimination complaints accounted for 44% of our total number of complaints. Of the disability discrimination complaints received, 30% related to disability discrimination in employment. Noted
- There has been a decline in the number of people with disability employed in the SA public service, and current numbers are not representative of the 20% of the population currently living with disability. Public sector employment of people with disabilities has been inching up (1.27% in 2013 – 1.36% in 2017). The 20 % figure includes all citizens (not just those of working age (15-65).
- Access to meaningful employment for people with disability free from discrimination is a fundamental human right for all South Australians. Agreed
- State governments in Victoria, Queensland and NSW recently announced targets to increase the employment of people with disability in the public sector. Victoria – 6% by 2020, Queensland 8% by 2022, NSW 5.6% by 2027. This is worth exploring, but disability rates are self-declared data so the current 1.36% figure is going to be an under-estimate. If you are not careful, a target invites a compliance mentality by encouraging employees with a disability that may offer no impediment in the work-place to declare it so that the stats can hold up.
- It is our opinion that the disability employment targets stipulated in the former state government's South Australia State Strategic Plan were not specific enough (i.e. increasing disability employment targets across the entire community (both public and private sectors) by 10%). OK
- The Equal Opportunity Commissioner supports a very specific target (increasing annually) for the South Australian Public Service in consultation with the Commissioner for Public Sector Employment.
- While the Commissioner supports targets, she is ambivalent about whether this is best achieved through legislative or policy mechanisms. Certainly, legislating for disability employment targets is not an uncommon practice and has been done in countries like Ireland, Germany and France. However, we advise the following:
 1. That a specific target is not set in legislation – but that a more general target based on the estimated proportion of people of employment age with a disability in the SA community is legislated;

OR

 2. That the setting of targets on an annual basis is written into the legislation, but delegated to individual Ministers to set for their own departments.

An alternative to a legislative approach could be for the Commissioner for Public Sector Employment to issue a Commissioner's Guideline on employment targets under Section 14 (1)(d) of the Public Sector Act. This would enable the Commissioner for Public Sector Employment to have carriage of the employment target and drive change across the public service. Again, this may be moving beyond the accepted role of the EOC

Importantly however, the EO Commissioner is concerned that setting targets within a legislative or policy framework means that public sector agencies will need to identify employees with disability. This will require people to disclose their disability. The Commissioner does not support mandated self-disclosure for people with disability in the workplace. Ultimately the choice to disclose must rest with the individual with a disability. Agree – disclosure of disability should not be mandatory. What is required is that an employee declare any impediment to their capacity to do the job.

T: (08) 8207 2253
 M: 0439 241 774
 E: tricia.spargo@sa.gov.au

Dr Niki Vincent, Commissioner for Equal Opportunity (South Australia)
Equal Opportunity Commission | Level 17 45 Pirie Street Adelaide SA 5000
GPO Box 464 Adelaide SA 5001
T: (08) 8207 2250 | **M:** (08) +61 (0) 439 493 303 | **Freecall:** 1800 188 163
TTY: (08) 8207 1911 (for deaf, hearing and speech impaired)
E: niki.vincent@sa.gov.au | **W:** www.eoc.sa.gov.au

www.facebook.com/commissionernikivincent/

www.linkedin.com/in/dr-niki-vincent-phd-600705/

<https://twitter.com/nikivincent>

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