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Family and Community Development Committee

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# Setting the Record Straight - A submission to the Family and Development Committee

**Abstract:**
This submission raises concerns about particular information provided by individual parties appearing on behalf of particular entities before the Parliamentary Committee.

The submission challenges the efficacy of particular information provided to the Committee and argues the importance of the Committee testing that information in order to ensure their findings and any recommendations are not inappropriately influenced.

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**NOTE - On Submission Time lines**
The writers of this submission, while recognising that the date for written submissions for Stage I of the Inquiry has expired, nonetheless submit that because of the currency of the contents it has relevance for the Family and Community Development Committee (FCDC or Committee) to consider it now.

**Introduction**
The writers of this document have already provided a suite of written submissions to the Parliamentary Inquiry being undertaken by the FCDC. They have also requested to present in person to the Committee.

**The Purpose**
This supplementary submission is provided in order to ensure the Committee is better placed to assess particular information provided by individuals who have thus far presented in person to the Committee. The outcome being to ensure the Committee is better positioned to question particular information that may have been inappropriately biased in favour of the presenter or his or her organisation, that which was factually incorrect or that which was based on a questionable premise.

It should be noted that this paper has been informed by the writers' personal attendance at each of the presentations made to the FCDC as at and including 23 June 2015.

The following tables detail the issues associated with the individual presentations or responses as made on behalf of individual entities. Each table highlights – the principal issues, the presentation or responses made by the representative, the challenge to the information provided and the facts associated with the issue.

Further, each table is supplemented by what the writers submit are questions that the Committee may wish to put to the entities and to which they may seek a written response.

**Table 1:**
**Appearance of the Disability Services Commissioner (DSC or the Commissioner) – 23 June 2015**

| The Presentation or Response | The Challenge | The Facts |
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| **The Issue: The concept of Alternative Dispute Resolution** | | |
| The DSC spent a good deal of time in his presentation detailing the basis of his approach in dealing with complaints. He rationalised his approach by making reference to it being based on the concept of Alternative Dispute Resolution (ADR). | While this submission acknowledges the efficacy of ADR approaches, the writers nonetheless argue that to apply a blanket approach, as is the case with the DSC, is inappropriate.<br><br>It should be noted that ADR, particularly in relation to conciliation and mediation, were established in order to primarily deal with situations where differing views exist and where a conciliated or negotiated outcome apply.<br><br>These differ from situations of abuse, neglect, violence and exploitation. | The DSC avoided explaining how he deals with complaints that relate to abuse, neglect, violence and exploitation.<br><br>Given this failure, the writers contend that the Committee should seek information from the DSC as to how many complaints, on an annual basis, have related to abuse, neglect, violence and exploitation.<br><br>Further, why the DSC considers it appropriate that conciliation is used to deal with such matters. |

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| **The Issue: Requirement to investigate** | | |
| As noted by a member of the Committee, section 16(1) of the Disability Act 2006 (the Act) does require the DSC to investigate complaints.<br><br>In response the DSC advised that he had sought advice from the Government Solicitor and that the Government Solicitor had concurred with the view expressed by the DSC that the ADR process as undertaken by him in dealing with complaints is legally tenable. | The writers note that the DSC provided no material supporting his claim as to what he had actually asked the Government Solicitor and the specifics of the advice provided by the Government Solicitor to his query.<br><br>Regardless of this important omission, the writers note that no reference was made to section 118 of the Act, which states that the Commissioner "must" investigate a complaint that has not been considered suitable for conciliation or has failed to be conciliated.<br><br>Nor did the DSC make any reference to advice provided on the DSC website that states that "under certain circumstances a formal investigation" will be undertaken. | Based on the fact that not all in-scope complaints addressed by the DSC are fully resolved, including those where conciliation has failed, the writers contend that the DSC has an obligation to invoke S.16 (1) and S. 118 of the Act and therefore investigate complaints that have not been conciliated or considered inappropriate for conciliation – such as complaints associated with abuse etc. |
| **The Issue: The conciliation of complaints** | | |
| The DSC made reference to his approach as being one of ADR, and therefore by inference, an appropriate approach to all types of complaints. | While conciliation fits with section 118 of the Act, not all complaints may necessarily be deemed suitable for conciliation - S 118 (1)(a)(i) or further, not all complaints may necessarily be resolved through conciliation - S 118 (1)(a)(ii).<br><br>Further, and as clearly stated in S.16 (1) 'complaints relating to disability services' are to be investigated. | Despite the DSC suggesting that the process undertaken in dealing with complaints also includes a thorough assessment, and as a result of such assessments the DSC is satisfied that not one single case required investigation, the writers challenge this view.<br><br>This challenge is based on the reality that an assessment is a process that follows investigation, and not one that takes the place of an investigation. |
| **The Issue: Satisfaction survey results as performance indicator of sector confidence** | | |
| The DSC advised his view that a survey result of 70 per cent constitutes strong support that the sector has confidence in the work of his office. | The writers note that nowhere in his annual reports when making reference to satisfaction surveys has the DSC provided information as to how many people/entities actually respond to his surveys, and how representative the respondents are of the complainants. | The writers note that regardless of the 70 per cent satisfaction figure, this therefore also translates into 30 per cent not being satisfied. However, given that complaints are of an individual nature, the writers contend that satisfaction surveys have little or no relevance to the individual complainant.<br><br>The real issue is - whether or not an individual complainant believes his or her complaint has been appropriately dealt with and the outcomes are satisfactory to the individual complainant. |
| **The Issue: The concept of "It's OK to Complain"** | | |
| The DSC suggested that this mantra "It's OK to complain." was not | The writers note the advice provided by the DSC that he was appointed in April 2007 | Much is made of the matter of individuals and in particular people with disabilities and their families taking up the option to |

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| resonating with the field and as such his office has now moved to emphasise the concept of "Speaking Up". | and has been operating under the Act since July 2007. Yet, despite the elongated nature of his tenure, the concept of "It's OK to Complain" was still being applied in documentation produced by the DSC as recently as 2014 and on the website. | complain when they believe their rights have been transgressed.<br><br>While there are likely to be a number of reasons why people have not embraced the DSC's original mantra of "It's OK to Complain", it seems ludicrous to suggest that these same people will complain because there is a new mantra of "Speaking Up".<br><br>The writers argue that a significant issue related to making complaints or the failure to lodge complaints is the influence of those who have lodged complaints and found the process used by the DSC elongated and what might be called a talkfest. Hence the dissatisfaction causes them to see the lodgement of complaints to the DSC as a waste of time. |
| **The Issue: The matter of learnings** | | |
| During the course of his presentation the DSC made reference to the concept of "learnings". | While no doubt when a position is newly created and the legislation under which it has been created is being applied and processed are being developed, learning from experience will occur. | The fact is, however, that the DSC's office has now been operating for just on eight years. The writers argue it is difficult to know what else there is to be learnt about dealing with complaints and ensuring that both the 'letter' and the 'intent' of the legislation is practised at all times. |
| **The Issue: A matter for police** | | |
| In response to a question re: sexual abuse and rapes that occurred at Yooralla, the DSC suggested that these were criminal activities and hence matters for the police.<br><br>Therefore by inference matters not needing to be addressed by him | The writers contend the DSC was evasive in responding to this question. However, in any event, it could well be argued that any matter associated with abuse, violence and exploitation in particular could be "matters for the police". Hence, in such cases the logic as proposed by the DSC would suggest that he would not entertain dealing with such complaints. | The writers are aware of complaints made to the DSC by families who have a son or daughter at Yooralla.<br><br>Further, where although the DSC accepted the complaints initially he did not investigate and instead closed the complaints without any satisfactory resolution to the complainants. |
| **The Issue: The concept of complaints** | | |
| Although the inquiry is specifically about abuse, neglect and violence, the DSC tended to shroud his answers under the umbrella of 'complaints'. | The writers note that in particular of the annual reports, the DSC has made only tangential reference to abuse, neglect, exploitation or violence, in terms of learnings related to alleged assaults and risks to wellbeing and safety.<br><br>They argue that a complaint, for example, about service provision or the completion of particular documentation is vastly different to a complaint alleging abuse, neglect, violence or exploitation. | The writers contend that given the Committee's brief, it is essential that they emphasise the difference between complaint types. The significance of this is not just in terms of data basing how many complaints the DSC may receive that are related to abuse etcetera, but even more significantly the fact that conciliation should not be seen as an appropriate response when someone's right to live free of abuse has been violated.<br><br>Clearly, the DSC has not considered this to be a significant enough issue to alter his approach when dealing with such complaints. |

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| | Therefore, they further argue that surely the DSC must have an obligation to make a distinction between the nature of complaints and highlight those related to abuse, neglect, violence and exploitation. | |
| **The Issue: Referral of complaints made back to the service provider about whom the complaint was made** | | |
| In responding to a question about this matter the DSC inferred that this was done with the approval of the complainant. | The writers argue that it is incongruent that the DSC would refer complaints made to him back to a service provider for their investigation when he himself has refused to investigate one single complaint since 2010. | The significant fact is that a complainant should not be put under pressure to have his or her complaint dealt with by the agency that they are complaining about. Indeed, S. 16(a) of the Act requires the DSC to "investigate complaints relating to disability services".<br><br>Therefore, the writers argue that by referring back to an agency the DSC is ignoring his responsibility under the Act. |

**Matters for follow-up**
The writers suggest that in light of the Committee advising the DSC that they may put further questions to him in writing, the Committee may wish to consider the following:

**Question 1**: In relation to the following table, noting that the figures have been extracted from your Annual Report, can you advise for each of the reporting years as in 2008 to 2014, how many of the In-scope complaints as defined by you, did you deem to be complaints associated with abuse, neglect, violence or exploitation?

| Annual Report | Number of In-scope Complaints | Number of Complaints Referred for Investigation | Number of Complaints Referred for Conciliation | Number of Complaints only Partially Resolved | Number of Complaints Not Resolved |
|---|---|---|---|---|---|
| 2008 | 90 | 5 | 23 | Not evident | Not evident |
| 2009 | 115 | 1 | 3 | Not evident | Not evident |
| 2010 | 118 | 0 | 5 | 17 | 20 |
| 2011 | 120 | 0 | 11 | 14 | 22 |
| 2012 | 140 | 0 | 18 | 29 | 14 |
| 2013 | 156 | 0 | 17 | 33 | 12 |
| 2014 | 150 | Not reported | 13 | 32 | 14 |
| Total | 889 | 6 | 90 | 125 | 82 |

**Question 2**: If there have been complaints associated with abuse, neglect, violence or exploitation, can you advise why you do not provide specific data on this in your annual reports?

**Question 3:** In terms of your Alternative Dispute Resolution model, how do you see this applying for those complaints where conciliation is not appropriate given that a serious misdemeanour such as abuse, violence or exploitation has been, or may have been perpetrated?

**Question 4:** Given that you have not undertaken a single investigation since 2010, how do you explain your referral of complaints made to you back to the agency against which the complaint had been made for them to investigate, when you have not deemed it necessary to undertake any investigations of your own since 2010?

**Question 5:** Given the figures as in the table under Question 1 that in the years 2010 to 2014 inclusive, a total of 207 of a total of 679 In-scope complaints were either not fully resolved or not resolved at all, and where if conciliation was either deemed to be not appropriate or where

conciliation failed - Can you explain why you did not initiate any investigation into any or all of that 30% of complaints not resolved?

**Question 6:** In your personal presentation you advised the Committee that you had sought advice from the Government Solicitor and that the advice provided was that your approach of dealing with complaint does not transgress the legislation. Can you advise if this advice was sought in writing and also whether the response was provide in writing? – If so can you please forward a copy of such written material?

**Question 7:** Further to the matter of your approach to dealing with complaints and the above, as in Question 6, how do you explain your failure of not initiating one single investigation since 2010 in the context of Section 16 (a) of the Disability Act?

**Question 8:** Further to Question 7, how do also explain your failure since 2010 to initiate one single investigation in light of Section 118 (a) and (b) of the Disability Act and the fact 207 complaints remained unresolved since that time, noting that given these complaints were considered to be In-scope by you, it must reasonably be assumed that Section 118 (1) (b) did not apply to any of them?

**Question 9:** Of the 207 unresolved complaints since 2010, how many of those did you decided that no further action was required as under Section 117 (1) (b) of the Disability Act and how many did you consider it reasonable to stop dealing with as per Section 117 (1) (c) of the Disability Act.

**Question 10:** Of those complaints as in Question 9 above, how many of those complaints were deemed to relate to abuse, neglect, exploitation or violence?

**Question 11:** In your annual reports from 2011 to 2014 you report there has been an "increased number of complaints relating to alleged assaults, abuse, neglect or risk to people receiving services." You have also stated that this increase is a "trend". Given your obvious awareness of complaints received by you include those related to abuse, neglect and risk, can you explain why despite your knowledge of these types of complaints you have elected not to investigate them?

**Question 12:** Can you advise if you support the claim that 'wrong is wrong' and that abuse, neglect, exploitation and violence are wrong and if so, they are not matters for conciliation but should be investigated?

**Question 13:** Regarding the 70 per cent satisfaction rating you attribute to your agency, can you advise how many individuals responded to the survey, compared with how many complaints were made to the DSC over the survey's response time?

**Question 14:** How do you see the former mantra of "It's OK to Complain" and your current approach of emphasising "Speaking Up" as truly influencing people to make complaints given 30 per cent of respondents to your Satisfaction Survey advised they are not satisfied?

**Question 15:** In relation to not dealing with matters that may have been referred to the police, can you advise whether this means that any complaint received by you which may have criminal overtones, including that of abuse and violence by one party against another, would not be dealt with by you. And therefore, rather than you deal with such complaints, would you instead refer such matters to the police?

**Table 2:**

**Appearance of the National Disability Services – 23 June 2015**

| **The Issue: The concept of Zero Tolerance** | | |
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| **The Presentation or Response** | **The Challenge** | **The Facts** |
| The presenters provided detailed advice as to the NDS's introduction of a Zero Tolerance framework for members to apply, and indicated that this has been given wide support. | While the writers fully support the notion of Zero Tolerance, they argue that it should not require a formal paper and process to reinforce this expectation.<br><br>Indeed, they suggest that if service delivery organisations are not cognisant of their duty of care in regards to Zero Tolerance then it is an indictment on the Department of Health and Human Services (DHHS) system and the individual organisations. | All service providers operate under the law as in the Disability Act and the legal requirement of duty of care as well as a myriad of policies and procedures associated with protecting the client's rights to be free from abuse and neglect, including Funding and Service Agreements.<br><br>As such, these formal requirements must constantly be seen as taking precedence over any informal process such as that associated with Zero Tolerance.<br><br>The writers express their concern that it is too easy for representative organisations like the NDS to promote and undertake actions that appear to be stronger than what the law requires. |
| **The Issue: Moving from academic rhetoric to practical solutions** | | |
| The presenters explained how much of the NDS's activities are centred on moving from research to practical solutions in regards to abuse. | While the writers do not deny that research has a place in the disability sector, and that the NDS objective also has a place, they nonetheless suggest that the sector is, either intentionally or unwittingly, being promoted as being more complex than it actually is. | The one critical fact that should not be ignored is that abuse, neglect, violence and exploitation in any form constitutes at the very least a failure in duty of care, and at the very worst a criminal offence.<br><br>The writers argue that it does not take research or a translation of the research to reiterate this fact.<br><br>As such, the writers are concerned that representative organisations and academic institutions are tending towards promoting research and then proffering solutions to matters that are already known to constitute abuse, neglect, violence and exploitation. |
| **The Issue: Understanding abuse** | | |
| The presenter suggested that there is research to suggest that many people working in direct services in the disability sector do not understand what constitutes abuse and neglect. Therefore, he proffered that funding is required to educate staff in understanding abuse, and the government needs to invest in this. | The writers challenge the proposition that there are many working in the field who do not understand the concept of abuse and neglect.<br><br>They argue that rather than training, if indeed this is required, the recruitment process should test an applicant's knowledge and understanding of these concepts and the associated principle of duty of care. | All direct service organisations, including DHHS, have structures in place to support direct care through supervisory practices and management arrangements. Further, it ought be a requirement that training, as an ongoing activity, is part and parcel of any organisation's obligation.<br><br>The writers express concern that this part of the NDS presentation constituted what the writers have previously called the 'more principle' as in more training and more money. |

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| **Issue: The Role and authority of the NDS** | | |
| The presenters confirmed that they are an Australia-wide membership organisation for service providers. | While the writers acknowledge the NDS as a membership based organisation, they note that of the 300 or so registered service providers in Victoria, only around 200 are members of the NDS.<br><br>The challenge therefore is to distinguish between whether the NDS truly represents the view of all service providers, or only its membership organisations, or alternatively whether it represents its own view. | One clear fact is that as a membership organisation the NDS has no part to play in the direct provision of services to people with disabilities. Further, that it has no part to play in the receipt of complaints, or the investigation of matters associated with abuse, neglect, violence and exploitation.<br><br>Therefore, at best its knowledge is based on information provided by members.<br><br>The writers note that the NDS received seed funding of around $10 million from the NSW government for its Centre for Applied Disability Research and also have received $3 million from the NDIS funding for service provider capacity building. |
| **Issue: Membership support** | | |
| In response to a query regarding the level and type of support provided to a member agency in the event of the agency having allegations of abuse made against them, the presenters advised that the NDS does not provide legal support. | The writers noted that the presenter was somewhat hesitant in addressing this question and failed to provide the Committee with any detailed information as to the NDS's actions in relation to an organisation where abuse has been identified as a major issue and in particulate where any such allegation have been proven. | The writers note that the former CEO of the Yooralla organisation was a member of the NDS Board/Committee structure. Further that he remained so even with the abuse allegations becoming public and then being proved.<br><br>To the writers' knowledge, the NDS took no action against Yooralla or its former CEO. |
| **Issue: Victoria leading the way** | | |
| The presenters emphasised the view that Victoria is "leading the way" in terms of its legislation, systems and processes and responses to abuse and neglect. | The writers note the propensity of entities such as NDS Victoria along with watchdog entities to frequently promote Victoria as the leader in the disability sector when it comes to safeguarding systems and practices. | Clearly, the Public Advocate's advice that abuse and neglect is systemic across the disability sector align with the establishment of the Ombudsman's investigation, and both major parties advising their intention to establish a Parliamentary Inquiry prior to the 2014 election.<br><br>The writers are concerned at what they call 'self promotion' seems to dismiss the reality of the incidents of abuse and neglect, violence and exploitation occurring across the sector. Noting also that the VALID representative supported the view that abuse and neglect are widespread. |
| **Issue: IGUANA and its application** | | |
| In response to a question relating to prevention, the presenters made reference to the Public Advocate's IGUANA initiative and indicated | The writers make the same comment about IGUANA as they have above about the Zero Tolerance initiative.<br><br>That is, while much is made of such initiatives, of themselves they | Again, whether or not an organisation signs up to IGUANA and whether or not the NDS promotes IGUANA, the reality is that whether abuse, neglect, violence or exploitation exist or whether they do not, the clear legal requirement is that individuals working in the disability |

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| support for it. | cannot and do not stand instead of the law and at best must only be seen as add-ons to the existing law and policy requirements. | sector, and organisations responsible for people with disabilities, are legally obliged to ensure that clients live free from abuse, neglect, violence and exploitation. |

**Matters for follow-up**
The writers suggest that in light of the Committee advising the NDS that they may put further questions to the organisation in writing, the Committee may wish to consider the following:

**Question 1**: In relation to your Zero Tolerance initiative how do you see it operating within the context of the legislation, Funding and Service Agreements and DHHS policy and procedures?

**Question 2:** How many registered service providers across Australia and particularly in Victoria are not members of the NDS?

**Question 3:** It is understood the former Chief Exceptive Officer (CEO) of Yooralla was a member of the NDS Board. Once the abuse occurring at Yooralla became known, what action, if any, did your Board take in relation to the then CEO of Yooralla?

**Table 3:**

**Appearance of VALID – 23 June 2015**

| **The Presentation or Response** | **The Challenge** | **The Facts** |
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| **The Issue: The presenter** | | |
| The writers note that the long-time CEO of VALID did not present and instead a person who described his role as that of a Project Co-ordinator delivered the presentation.<br><br>It was noted at the beginning of his presentation the presenter advised that he would be making general comments only and would be not able to provide detailed evidence and data.<br><br>Albeit he advised he has 36 years' experience in the sector. | The writers express some concern that what some may see as the pre-eminent advocacy organisation in Victoria did not see fit to be represented by someone who was able to address some of the basic facts being sought by the Committee. | VALID receives government funding for its advocacy work as well as other work e.g. an annual Having a Say conference.<br><br>The committee may be interested to establish information as to how much of VALID's funding is directed towards direct advocacy for people with disabilities and the allocation that is provided to what might be called "other" activities.<br><br>It is important o note that VALID is not a research organisation, it is not a Registered Training Organisation, nor does VALID provide direct services.<br><br>As such, its principal function ought to be to provide support to people with disabilities, including those people who have been abused, neglected, exploited or who have had violence perpetrated against them.<br><br>Given this, the Committee might also like to establish how many cases of direct advocacy are provided on an annual basis and how many of these related to abuse, neglect, violence and exploitation. |

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| **The Issue: The UN Human rights framework** | | |
| The presenter emphasised the importance of the UN Human Rights framework as being important to ensure that people are not imprisoned in institutional structures, procedures and protocols'. | While the writers acknowledge the importance of a human rights framework for disability services, nonetheless, they argue there is a danger that, by individuals and entities constantly referring to the UN Convention on the Rights of Persons with Disabilities, there is a tendency to lose sight of, for example, the law that operates as Victoria's Disability Act 2006, the Federal Disability Services Act 1986 and the NDIS Act 2013. | It seems undeniable that abuse, neglect, violence and exploitation are occurring in the disability sector. Therefore, other than providing a framework, the reality is that a human rights framework cannot directly address abuse, neglect, violence and exploitation are not.<br><br>It must be noted that we have had human rights based disability legislation in Victoria since 1986, yet according to the Public Advocate, abuse and neglect continue to increase. |
| **The Issue: Informal supports** | | |
| The presenter expressed his view that there has been a dissipation of informal supports, including that of volunteers, in the disability sector.<br><br>He argued that a greater emphasis on informal supports could have a positive impact in combating abuse, neglect, violence and exploitation. | The writers note that the presenter provided no factual data to support his claim, that there has been a reduction of informal supports.<br><br>In any event it is a moot point as to whether, if there has been a reduction in informal supports, this has a direct correlation with an increase in abuse, neglect, violence and exploitation. | The writers note that in this part of the presentation, the presenter made no reference to families, either in the context of formal or informal supports.<br><br>They note that it has always been the case, even during the institutional era in Victoria and since the spread of supported accommodation in the community, that families still provide the highest proportion of both direct and informal supports. |
| **The Issue: Funded disability advocacy** | | |
| The presenter promoted the notion of the need for a strong and funded disability advocacy, arguing that history tells us that the market does not work. | The writers submit that there is an incongruity in this part of the VALID presentation.<br><br>They note that despite funded advocacy having been in vogue since 1986 and becoming more prevalent, at the same time it is reasonable to suggest that abuse, neglect, violence and exploitation in the disability sector has been on the increase. | The writers note that even when it came to the horrendous acts that occurred in the Yooralla organisation, neither VALID nor any other funded disability advocacy agency was to the forefront of protecting client rights, condemning the organisation or calling for the Yooralla Board to be stood down.<br><br>As such, whether or not the market works, it can be just as readily stated that funded advocacy has not worked to the degree that might have been expected. |
| **Issue: Housing and compatibility** | | |
| The presenter made reference to housing and the link with the way clients are allocated, suggesting there is a high potential for incompatibility to occur. | The writers submit that the concept of compatibility versus incompatibility has been over-emphasised and is often used as a reason why abuse, neglect, exploitation and violence has occurred in some facilities.<br><br>They argue that compatability is a term that can only be applied loosely, in that the question must be asked, "What is it that | The facts are that when it comes to exploitation and neglect, these two transgressions are very much actions likely to be committed by staff and as such have nor direct relationship to compatibility or incompatibly.<br><br>When it comes to abuse, again it is more likely than the abuse of a client is perpetrated by staff and again has no direct relationship to client compatibility or incompatibility |

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| | constitutes compatability?" For example, is it age, gender, interests, abilities, disabilities, language capacity?<br><br>Despite the oft-given focus to compatibility the writers are not aware of any evidence of incompatibility as being the principal reason for the occurrence of abuse, neglect, violence or exploitation. | While recognising that there may be a fine line between abuse and violence, and also acknowledging, as reported by the Community Visitors and via Incident Reports, that there is some violence perpetrated by clients on other clients, it cannot be assumed that such violence is as a result of incompatabilty.<br><br>Indeed, more to the point, the violence must be seen as a product of the client's behaviour, and therefore should be addressed as such. |
| **Issue: Certificate IV and training – imbalance OH&S and rights** | | |
| The presenter made reference to Certificate IV training and that 'people' are choosing not to employ people with this training.<br><br>He further submitted that there is an imbalance in terms of the focus on staff OH&S and duty of care and client rights. | The writers note that in terms of clients allegedly employing people who do not have formal qualifications, the presenter provided no evidence to support this claim.<br><br>Further, nor did he provide any evidence to support his claim that client rights are being neglected because greater emphasis is being given to staff OH&S and duty of care. | The writers submit that it is reasonable to conclude that the presenter has in some ways mixed up three considerations, that is, occupational health and safety (OH&S), duty of care and client rights.<br><br>In terms of OH&S, the facts are that it is the OH&S Act 2004 that provides protection to employees and has nothing to do with clients.<br><br>The protection of clients in terms of health, safety and needs are subject to the principle of duty of care.<br><br>In terms of client rights, it is the client's right that staff do meet their duty of care to them. Notwithstanding this however, based on the writers' experience they are aware of situations where OH&S provisions and the protection of staff have been used to combat complaints about the failure of staff to meet their duty of care and hence the client's rights. |

**Matters for follow-up**
The writers suggest that in light of the Committee advising VALID that they may put further questions to the organisation in writing, the Committee may wish to consider the following:

**Question 1**: What do you identify as VALID's core business?

**Question 2:** How many cases of direct advocacy were provided in the financial year 2013-2014 and further, how many of these related to abuse, neglect, violence and exploitation?

**Question 3:** In cases of violence being perpetrated by a client against another client and where your services are sought, what action you take?

**Question 4:** What data based evidence does VALID have to support your claim that people, are tending to choose supports from people who do not have relevant qualifications?

**Question5:** What action, if any did VALID take in relation to the public exposure of the abuse that occurred at Yooralla?

**Question6:** Does VALID consider families as being important in providing formal and informal support to their family member with a disability, and if so, in what way?

**Question 7:** Does VALID provide advocacy support for families, and if so in what form and in what circumstances?

**Question 8**: Has VALID ever taken up, with government, the issue of the greater protection given to employee rights under the OH&S Act 2004 compared to the protection of the right of people with disabilities to live free from abuse, neglect, violence and exploitation – and if so when and how?

**Table 4:**

**Appearance of the Senior Practitioner – 15 June 2015**

| The Presentation or Response | The Challenge | The Facts |
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| **The Issue: The role of the Senior Practitioner** | | |
| The presenter provided a detailed outline of his role, responsibilities and authorities in accordance with the Disability Act 2006. | A principal challenge is for the Committee to fully appreciate that in terms of abuse, neglect, violence and exploitation the functions of the Senior Practitioner are principally restricted to Restrictive Interventions and Compulsory Treatment. | While it may well be that some restrictive interventions and compulsory treatments relate directly to reducing harm to others and as perpetrated by a client, it must be emphasised that in terms of the combined actions of abuse, neglect, violence and exploitation the Senior Practitioner has limited scope. |
| **The Issue: Protocols and liaisons** | | |
| The presenter made reference to protocols with other oversight entities, and liaison undertaken in relation to a joint review of relevant Category 1 Incident Reports through a joint monthly meeting with the DSC.<br><br>He noted that 40 such reviews have been undertaken. | The writers note that Category 1 Incident Reports can cover a range of incident types. Therefore those that might be determined as "relevant" to joint review by the Senior Practitioner and the DSC ought only be those that are relevant to compulsory treatment and restrictive interventions. | While the writers do not necessarily condemn the application of protocols between entities, nonetheless they emphasise the importance of individual entities each being ultimately responsible for their particular components of the Disability Act 2006.<br><br>It must also be noted, it is the DHHS Secretary who has ultimate oversight of all such matters associated with the work of the Senior Practitioner and the incident reporting system. |
| **The Issue: Behaviour Support Plans** | | |
| The presenter made reference to what he submitted is a link between training in the development of Behaviour Support Plans (BSPs) and the quality of such plans. | While this link may be well-established, nonetheless the writers submit that the critical consideration in terms of BSPs is that of their implementation and whether or not the BSPs relate to abuse and violence being perpetrated by one individual on another individual. | In order to establish the Senior Practitioner having any significant influence in relation to abuse and violence, the Committee would need to know how many cases he deals with on an annual basis, and how many BSPs are directly related to abuse and violence perpetrated against another party. Further, what evidence exists to show that the behaviour support intervention has had a positive impact on reducing any such abuse or violence? |

**Matters for follow-up**

The writers suggest that in light of the Committee advising the Senior Practitioner that they may put further questions to him in writing, the Committee may wish to consider the following:

**Question 1**: How many cases that you deal with on an annual basis, are directly related to abuse and violence perpetrated by a client against another party.

**Question 2:** How many Behaviour Support Plans that you approve annually, relate directly to abuse and violence perpetrated by a client against another party.

**Question 3:** What evidence do you have to show that the behaviour support intervention has had a positive impact on reducing abuse and violence perpetrated by a client against another party?

**Table 5:**

**Appearance of the Public Advocate – 15 June 2015**

| The Presentation or Response | The Challenge | The Facts |
|---|---|---|
| **The Issue: Legislative functions** | | |
| The Public Advocate (PA) detailed her functions as required under the Guardianship and Administration Act 1986 (GAB Act), nothing that primarily they relate to guardianship, investigations of guardianship matters and advocacy.<br><br>The PA noted that under the current legislation she does not have an 'own motion' authority to investigate particular matters. | The writers note that while the PA operates under the GAB Act, Community Visitors who are subject to the direction of the Public Advocate operate under the Disability Act 2006.<br><br>The writers submit that if an own motion authority were to be established in legislation, the question must be asked as to how the PA might use this. | Despite the significance of guardianship, and investigating matters associated with guardianship, the writers note that the PA's authority is restricted in terms of abuse, neglect, violence and exploitation. That is, other than reporting the incidence of same, and primarily as through the visitation of CVs to residential settings, she has little direct intervention role. Other that is than that which occurs where guardianship is involved.<br><br>In relation to own motion actions, the writers note that the Ombudsman has this ability and further that while not an 'own motion', the DSC has an investigative authority in relation to complaints submitted to him.<br><br>Therefore, while it could well be an advantage for the PA to also have an own motion authority, the writers contend that it would be pointless establishing this if it turned out that the function was not used when it ought be, noting again that although the DSC has clear authority to investigate complaints, he chooses not to use this authority. |
| **The Issue: Investigative powers and limitations** | | |
| In her presentation the PA made reference to having undertaken 362 investigations. She noted however, that her investigative powers are limited to those as listed under section 16(1)(d) of the GAB Act or matters referred by the Victorian Civil and | While the presenter made reference to having conducted 362 investigations, it is important for the Committee to understand that these investigations cannot necessarily be assumed to be in relation to abuse, neglect, violence and exploitation. | It is important to note that the PA in her own right does not have the legal authority to visit supported accommodation facilities or day services, and while CVs have the authority to visit residential services, they have no such authority to visit day services. |

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|---|---|---|
| Administrative Tribunal (VCAT).<br><br>Further, that her powers of inspection are limited as under 18 (A) of the GAB Act, which is limited to having the authority to enter institutional premises. | | |
| **The Issues: Inter-agency liaison** | | |
| The presenter made reference to inter-agency liaison, particularly with the Senior Practitioner and VCAT. | Whether or not this liaison performs an important function or not, the writers suggest that the question for the Committee is whether this liaison relates directly to matters associated with the abuse and violence perpetrated against people with disabilities. | Again, the writers point to the fact that while inter-agency protocols and liaisons may have some part to play in the disability sector, ultimately it is the individual authority designated to the individual entities that dictate the operations of each entity. |
| **Issue: The IGUANA campaign** | | |
| The presenter made reference to the IGUANA guidelines as established by the Office of the Public Advocate (OPA) and advised that 30 agencies had endorsed them. | The writers note that there are some 300 registered service providers in Victoria. Therefore based on the figure provided by the PA they note that just on 10 percent have, at this stage, signed up to the IGUANA guidelines. | Again the writers point to the fact that regardless of the initiative that has been taken by the PA in developing the IGUANA guidelines, the legislative and contractual obligations of service providers are clearly defined in the Disability Act 2006 along with the requirement of meeting their duty of care. |
| **The Issue: Culture, acceptance of abuse and normalisation of violence and not knowing "What the right thing is."** | | |
| The PA made reference to cultural considerations and what she deemed as an acceptance of abuse and a normalisation of violence.<br><br>She further suggested that staff "Do not know what the right thing is". | The writers suggest that if indeed there is an acceptance of abuse and a normalisation of violence, this represents a serious condemnation not just of Victoria's disability sector but more particularly those charged with the responsibility of service delivery, service monitoring and watch-dogging, include the PA and Community Visitors.<br><br>They do however suggest that it is a dangerous proposition to make in the absence of factual data, and in doing so it condemns those organisations, managers and staff who in fact 'do the right thing'. | Reference to 'culture' can be overstated in a field such as disability. What may be the culture in one entity cannot be assumed to the culture existing in another.<br><br>The writers find it hard to believe that there are staff, managers, CEOs and Board in the disability sector who do not know what the right thing is when it comes to duty of care to clients in their care.<br><br>The concept of what is right and what is wrong surely is not difficult to grasp. If it is that more guidelines, more training and more money are required then the writers argue that more stringent consequences should be taken against those who allegedly "do not know what the right things is" and who therefore do the wrong thing. |

**Matters for follow-up**
The writers suggest that in light of the Committee advising the Public Advocate that they may put further questions to her in writing, the Committee may wish to consider the following:

**Question 1**: Other than matters associated with Guardianship, what real and legitimate involvement can the position of Public Advocate have in seeking to reduce the incidence of abuse, neglect, violence and exploitation in Victoria's disability sector?

**Question 2:** If the legislation were to be amended to provide you with own motion powers, can you identify how you might apply it?

**Question 3:** In relation to the IQUANA Guidelines, can you advise how many funded agencies have not as yet signed up to them?

**Question 4:** In your presentation you made comment that people do not know 'What the right thing to do is'. Can you explain this, particularly in light of the legislation, funding and service agreements, service guidelines, training and the increase in the number of trained staff and the fact that 'wrong is wrong'?

**Question 5:** Comments provided in your 2014 Community Visitors Board Annual Report state that abuse and neglect is "a systemic problem" in the disability accommodation sector and that it includes "physical, sexual, emotional" abuse and neglect, and further it has been described by you as being 'the tip of the iceberg'. Give your advice that you have previously raised such concerns – What specific actions have you taken, in your capacity as the Public Advocate, over the various years you have noted is as a concern to either address this matter directly or to pursue it being addressed?

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## End of Submission

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