

Setting the Record Straight Supplementary Submission - 2 Submission to the Family and Community Development Committee

Abstract:

This submission raises concerns about particular information provided by individual parties appearing on behalf of particular entities before the Parliamentary Committee on 29 June 2015.

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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Setting the Record Straight – Supplementary Submission 2
A Submission to the Family and Community Development Committee
Inquiry into the Disability Sector

NOTE - On Submission Time lines

The writers of this supplementary submission respond to the advice contained in a letter dated 26 June 2015 from the Chair of the Family and Community Development Committee (FCDC) to the writers. In that letter the Chair advised the opportunity to “provide a supplementary submission by Friday 3 July 2015” was being made possible.

Introduction

The writers of this document have already provided a suite of written submissions to the Parliamentary Inquiry being undertaken by the FCDC. They also submitted a supplementary submission in relation to the presentations made to the Committee on 15 and 22 June 2015. That submission was entitled Setting the Record Straight. Therefore, this submission is also entitled Setting the Record Straight - Supplementary Submission 2.

The writers have also previously requested to present in person to the Committee and tangentially association to this request is the focus of the last part of this submission - A General Comment on Focus and Presentations 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 presented in person to the Committee on 29 June 2015. 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 the presentations made to the FCDC on 29 June 2015.

The following list of questions associated with the individual presentations or responses as made on behalf of individual entities, highlights what the writers contend represent the principal issues. The writers submit that these questions challenge particular of the information provided and/or particular facts associated with the issue.

As such, the writers submit the questions are ones that the Committee may wish to put to the entities and on which they may seek a written response.

1. Appearance of Community Visitors (CVs or the Visitors) – 29 June 2015

Comment

The presenters made much of an alleged deficit of resources and the relationship of this to restrictions on CVs visiting each facility more than twice per annum. The concerning factor associated with this claim is that neither the CVs nor the Public Advocate in her presentation on 22 June 2015, presented any figures to support the claim of budget constraints restricting the work of CVs. Neither did the CVs nor the Public Advocate make any reference to what some might see as a top-heavy and no doubt costly OPA Policy and Research Unit consisting of six employees, including a manager.

In her recently released report (24/6/2015) the Ombudsman stated that the services provided through the CV program cost twice that as allocated by the Department of Health and Human Services (Par: 482). In the same report the Public Advocate is reported as advising that she funds the shortfall out of OPA funding (Par: 483). Neither the Ombudsman’s report nor the 2014 Annual Report of the Office of the Public Advocate provide any specific financial data, other than the CV program costs \$1.6 M to run. No figures are provided to show how this money is distributed between various costs centres associated with the CVs, and in particular whether the cost of what might be called office-based staff is included.

The writers contend that given the CV program is funded by public funds, there is an onus on those who call for more money, including the Ombudsman, the Public Advocate and the representative CVs to not only provide detailed financial information of current expenditure, but also to identify where any shortfalls might be, how much additional money is required and for what purposes.

The writers link this matter to their previous argued 'more principal' and therefore urge that the Inquiry has an obligation to challenge those who call for more public funds, no matter for what purpose, to be able to provide not just the rationale but also detailed financial evidence.

Matters for follow-up

The writers suggest that in light of the Committee advising the Community Visitors that they may put further questions, the Committee may wish to consider the following:

Question 1: In relation to reports of abuse, neglect and violence reported to the Community Visitors Board, how many of these were submitted as a complaint to the Disability Services Commissioner for each of the past five years to end of June 2015?

Question 2: Of the 2,786 scheduled visits and the 49 requested visits made by CVs in the 2013-14 reporting year, how many of those visits reported concerns or observations of abuse, neglect or violence?

Question 3: Of the number of matters raised with DHHS in the reporting year 2013-2014, what has been the response times for each, using the categories of up to 1 month, 2-6 months, 7-12 months, over 12 months?

Question 4: Can you explain how budget constraints restrict the number of visits made by Community Visitors?

Question 5: What action do CVs take when access to Incidents Reports is not forthcoming either as a result of staff refusing or not having access to the computerised records or refusing to provide a print out?

Question 6: Out of the total number of visits made by the CVs during the 2013-2014 reporting year, how many times were the CVs unable to access incident reports?

Question 7: In terms of family members accessing CVs how do CVs support this?

Question 8: Have the CVs ever requested, through the Community Visitors Board, for the Disability Services Commissioner to initiate an investigation of matters concerning abuse, neglect or violence, and if so how many and what action did the CVs take given the Commissioner has not undertaken any investigations since 2010?

Question 9: Given the advice that CVs make on average only two visits per year to each service outlet, and acknowledging there are many clients who do not have capacity to represent themselves in making complaints - How do CVs ascertain information from these clients or their families in order to ensure these clients' right to make a complaint to Community Visitors under S. 30 (h) of the Disability Act 2006 is not compromised?

Question 10: Given both the Ombudsman's and Public Advocate's call for additional funds to deliver the Community Visitors program, the Committee requests the Office of the Public Advocate provide detailed income and expenditure statements associated with the CV program. Associated with this, the Committee asks, how much is required in additional funds and how such additional funds would be applied?

Question 11: In relation to funding the CVs program and topping-up that program from OPA funds, the Committee requests OPA to provide financial details as to how much 'top-up'

occurred in the 2013-2014 financial year and the actual amounts taken from which particular areas of the OPA budget?

2. Appearance of the Department of Health and Human Services – 29 June 2015

Comment

The writers emphasise the legislated authority and responsibilities of the Secretary of the Department of Human Services. The significance of this is highlighted in S. 8 and S. 9 of the Disability Act 2006 and is considerable in terms of the services provided through department's programs, including accommodation and support as well as funding and monitoring funded sector service providers.

The attention of the Inquiry is drawn to the fact that as noted by Mr Rogers, who presented for the department, he has been the senior officer responsible for the disability program for some considerable time. To the writers' knowledge, this has been well in excess of a decade. As such, whatever the deficits in terms the department's role and responsibilities, the former Secretary and Mr Rogers must be held accountable.

Matters for follow-up

The writers suggest that in light of the Committee advising the departmental representative that they may put further questions to the organisation in writing, the Committee may wish to consider the following:

Question 1: In relation to funded agencies where abuse, neglect or violence have been reported or noted by DHHS - What, if any action, has been taken by the department in relation to those reports?

Question 2: In light of the proven abuse that occurred at Yooralla why did DHHS not stand-down the Yooralla Board?

Question 3: In relation to the current KPMG Review of Yooralla and as commissioned by DHHS, will the full outcome report be made publicly available, if so when and if not why not?

Question 4: In relation to the Joyce review and as commissioned by Yooralla, Mr Rogers stated that it is available on Yooralla' website. This is not so. Has DHHS encouraged Yooralla to make this report public and if not why not?

Question 5: Why does DHHS not make public, Category 2 Incident Report data as applying to deaths?

Question 6: What was the total number of deaths that occurred in disability accommodation for each of the reporting years 2010-2011, 2011-2012, 2012-2013 and 2013-2014?

Question 7: Further to Question 6, how many deaths were reported as Category 2 Incidents for each of the reporting years 2010-2011, 2011-2012, 2012-2013 and 2013-2014?

Question 8: What process does DHHS have in place to investigate all deaths in order to ascertain whether any deaths, including those reported as Category 2 Incidents, occurred as a result of abuse, neglect or violence?

Question 9: In relation to the service audits of service providers that are undertaken every three years and reviewed mid-cycle, why are the results of these audits not made public?

Question 10: Further, in relation to service audits, since 2006 how many audits were undertaken of Yooralla and what was the result of each?

Question 11: Given the Disability Support Register for long-term accommodation and support has been in excess of 1,400 for several years, how does the department explain Mr

Roger's comment that he does not consider the system is in "crisis" but is simply "under pressure"?

3. Appearance of Victoria's Ombudsman – 29 June 2015

Comment

The writers noted the significant reliance given by the Ombudsman to her recently released report of her investigation and also the instruction given to the Inquiry to "work cooperatively with the Ombudsman to avoid unnecessary duplication."

The writers of this supplementary submission contend that the following does not duplicate the work undertaken by the Ombudsman as detailed in her report. They submit that it seeks to expand on important matters highlighted in the report, but which the writers contend require further detail to be provided.

Matters for follow-up

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

Question 1: Given the Ombudsman's report has identified several pathways for the reporting of abuse, neglect and violence, why is this characterised in the recently released report as representing a complex system (P. 19), when in fact the pathways reflects the multiple options available in the work place for consumers to make complaints?

Question 2: The Ombudsman stated, "No-one owns the problem" – In the context of the statutory authority given to the Secretary of the Department of Health and Human Services and that given to the Disability Services Commissioner, how does she explain this statement?

Question 3: The Ombudsman stated that leadership is a significant problem in the disability sector – Does the Ombudsman consider that to a greater or lesser degree the Secretary of Health and Human Services, the Disability Services Commissioner, the Public Advocate, some service agency Boards and some Chief Executive Officers are failing their leadership obligations? Further, if so, does the Ombudsman consider those individuals who are failing their leadership responsibilities, particularly where this failure has been in relation addressing abuse, neglect and violence, should be replaced?

Question 4: The Ombudsman advised that systemic failure require more than one example of a single entity such as Yooralla. Despite this, does the Ombudsman consider it is possible that the abuse reported at Yooralla can reasonably be described as being systemic within that agency?

Question 5: Given the abuse that was proven to have occurred in Yooralla and the failure of the Yooralla Board to meet its full governance responsibilities in terms of protecting the right of clients to live free from abuse, as well as the obvious failure of the Department of Health and Human Services failing to adequately monitor Yooralla's obligations under its Funding and Service Agreement – What sanctions, if any, does the Ombudsman consider should have been applied to the Yooralla Board and the Secretary of the department?

Question 6: Recommendation 2 of the Ombudsman's report calls for "an increase in funding for advocacy." Given the report provides only cursory financial data (Par: 248 Page 46) in relation to the funding of advocacy and does not provide any figures in relation to the number of individual advocacy events or systemic advocacy events, which must be considered as critical measures in terms of advocacy - The Inquiry seeks advice as to what data the Ombudsman based her call for more money?

Question 7: Given the Commonwealth also funds advocacy organisations in Victoria - How does the Ombudsman consider the dual funding arrangements for advocacy between state and federal governments might be addressed through a single administrative arrangement?

Question 8: Further to Question 7, the Committee notes that the Ombudsman’s report made no comment in relation to the desirability of or need for separate funded family advocacy – The Committee therefore asks the Ombudsman her view on this matter?

Question 9: Table 2 on page 27 of the Ombudsman’s report identifies 84 deaths reported as Category 1 incidents in the 2013-2014 reporting year. A change in reporting deaths that occurred in late 2011 lead to some death being reported as Category 2 incidents. Given Category 2 figures are not made public, but based on death figures reported prior to the mid-year change in 2010-2011 the reporting of in excess of five death per week occurring in supported accommodation facilities is consider by the Committee as being a matter of concern and therefore worthy of review. Given these matters, the Committee therefore seeks advice as to whether the Ombudsman sought to address the matter of deaths in care, noting the potential of some to have occurred as a result of neglect, abuse or violence?

Question 10: The Committee notes the information provided by the Ombudsman in relation to the role, authority and operation of the Disability Services Commissioner. It also notes that table 4 on page 58 of the report fails to note that S. 16 (a) of the Disability Act 2006 also requires the Commissioner “to investigate complaints relating to disability services.”

Despite the Commissioner stating at interview (Item 368 page 61 of the Ombudsman’s report) that the “simple rule, if the facts of the matter were not evident to me {during the assessment stage}, that would be a reason to conduct an investigation ... “, and also when commenting on the Ombudsman’s draft report, the Commissioner stating “Informality is a key aspect of the legislation” {Item 370 page 61of the Ombudsman’s report} the Committee notes that the Ombudsman report made no comment about the incongruity of these statements with those made by other informants to the Ombudsman’s investigation and the requirements of the Disability Act 2006.

Given the Commissioner has taken what he describes “as a journeymen approach” to dealing with complaints {Par: 366 page 60 of the Ombudsman report}, the Committee seeks advice from the Ombudsman as to whether she agrees with the approach taken by the Disability Services Commissioner in relation to those complaints that concern abuse, neglect or violence?

Question 11: Further, and as a result of the Ombudsman’s investigation, the Committee requests comment as to whether the Ombudsman supports the apparent view of the Disability Services Commissioner that abuse, neglect and violence perpetrated against people with disabilities should be the subject of conciliation, or does the Ombudsman adopt the contrary position that complaints relating to abuse, neglect and violence must, as a matter of course, be investigated?

4. A General Comment on Focus and Presentations to the Committee

The writers of this supplementary submission recognise the authority of the Committee to determine who should appear in person before the Committee.

However, the writers respectfully suggest that the entities called by the Committee to date do not necessarily totally reflect, what might be called the grass roots view as to what is occurring in relation to abuse, neglect and violence in the disability sector. They also suggest that there is some danger in automatically assuming that because a person holds a particular position, which is one of authority or perceived importance, that the views and submissions expressed by such people are more important or have greater credibility to the views and submissions provided by other such as the writers, families and staff employed by service entities.

As such, the writers urge the Committee, in terms their public hearings, to seek input from the grassroots.

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The writers respectfully suggest that while they accept the process adopted by the Committee is not inquisitorial, nonetheless, they content that given the significance of the Inquiry, and hopefully what it will report and recommended, the rigour of the questioning should be uncompromising. The writers therefore contend that those who are funded through the public purse and appear before the Inquiry should be exposed to precise questioning; including supplementary questions, and be required to substantiate particular claims that they may make.

It is largely for this reason that the writers have provided the above lists of questions and hence urge that the Committee does follow-up with the entities concerned. To treat them with a softly-softly approach will, in the writers' opinion, leave much that should be thoroughly pursued by the Inquiry, unexposed.

End of Submission

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