

Submission: Inquiry into Abuse in Disability Services, Terms of Reference

Family and Community Development Committee

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1. Introduction

Communication Rights Australia ("Communication Rights") is the only specialist advocacy and information service within Australia representing the interests of people who have communication difficulties and/or little or no speech.

Communication Rights strives for a world free of discrimination for the people we represent. We bear witness to human rights infringements; we take action with, or on behalf of the individual or group; and we bring necessary change to protect their future rights.

Communication Rights' services are designed to break down barriers to inclusion and remove discrimination through:

- Individual advocacy, advice and referral when the system has broken down;
- Information on human rights and the right to communicate;
- Community education – how to ensure the protection of a person's communication rights.

Communication Rights represents a range of people with disabilities, including those with mobility requirements such as wheelchairs.

Communication Rights uses the UN Convention on the Rights of People with Disabilities, Victorian Charter of Human Rights and Responsibilities, disability discrimination legislation and government Policies to ensure people can enjoy their rights without fear of judgement or exclusion.

The **Disability Discrimination Legal Service Inc** ("DDLS") is a community legal centre that specialises in disability discrimination legal matters. DDLS provides free legal advice in several areas including information, referral, advice, casework assistance, community legal education, and policy and law reform. The long term goals of the DDLS include the elimination of discrimination on the basis of disability, equal treatment before the law for people with a disability, and to generally promote equality for those with a disability.

Communication Rights and DDLS welcome the interest of the Victorian Government in furthering the rights of people with disabilities through inquiring into the systemic issues relating to the reporting of abuse.

General Scope of Inquiry:

Communication Rights and DDLS do not have any objection to the current draft Terms of Reference as set out in the Submission Guide, except for suggesting that they are unnecessarily limited.

1. Disability Services

Since the introduction of the NDIS, much State/Federal Government and disability sector focus has concentrated on this scheme. In doing so, there is a danger of missing the broader environment in which the abuse of people with disabilities takes place.

By focusing on disability services covered by the *Disability Act 2006*, it is our position that the violence, abuse, neglect and exploitation ("abuse") of people with disabilities who receive services outside of those covered traditionally by that Act, is ignored.

We would encourage the inquiry to think creatively when considering how environmental factors and the wider service system impact on the abuse of people who are vulnerable and marginalised, and why people do not act upon the observed abuse of people with disabilities in these environments.

We believe that if the intent of the Victorian Government is to inquire into, and therefore positively address the abuse of people with disabilities, it needs to cast a wider net.

In line with the concept of social inclusion for all Victorians, there is strong encouragement, and rightly so, for people with disabilities to receive services from service providers who provide services to the whole of the community, rather than just for people with disabilities. Abuse of people with disabilities by such organisations should be viewed as equally problematic as abuse occurring within what are traditionally seen as disability services. It is not appropriate, in our view, to only consider part of the disability community when attempting to prevent abuse.

Consideration should be given to the interface between disability services and those services not covered under legislation. This could be the interface between:

- the individual and the education system
- the individual and the family (including foster care)
- the individual in private rental or housing
- community centres and private entities (pubs, restaurants)

- the individual and hospital/medical care
- the individual and the justice system.

1.1 Children with Disabilities

Once again, schools have not been considered in this Inquiry. As schools are the major "service providers" to children with disabilities, we consider this a major omission.

This is not the first time that the abuse of children with disabilities has been ignored by State or Federal Governments when it comes to the regulation of restrictive practices and abuse.

The Ombudsman's current Inquiry into the abuse of people with disabilities does not cover this area. The Commonwealth's *National Framework for Reducing and Eliminating the Use of Restrictive Practices against People with Disabilities* does not cover schools. Yet State/Federal Government obligations under human rights conventions do not exclude children.

Children with disabilities in Victoria have the least protection out of the disability community in regard to regulatory frameworks/statute. Adults with disabilities have the *Disability Act 2006*, enabling regulation of restrictive practices by the Office of the Senior Practitioner, and also protections under the *Mental Health Act 2014*.

Other than prosecutions under the *Crimes Act* for abuse (and we refer to the failure by Victoria Police to respond appropriately to complaints by people with disabilities¹) there is no regulation of treatment, despite the recognition that abuse of students with disabilities is occurring in Victorian Government schools, such abuse engaging human rights legislation including the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*².

The Family and Community Development Committee need to consider the appropriateness of yet another inquiry ignoring the abuse of children with disabilities. We strongly suggest that in order to meet its obligations under the *Conventions on the Rights of the Child*, the Victorian Government ensure that children with disabilities are covered

¹ *Beyond Doubt: the Experiences of People with Disabilities Reporting Crime 2014*, Victorian Equal Opportunity and Human Rights Commission

² *Held Back: the Experiences of Students with Disabilities and Victorian Government Schools to thousand 12*, Victorian Equal Opportunity and Human Rights Commission, Chapter 10.

in this inquiry through the examination of their abuse, and the reporting of such abuse, in the context of their attendance at both special schools and mainstream schools - recognising that these environments cover the majority of children with disabilities in Victoria.

1.2 Abuse in the Home

Abuse in the home is often observed by service providers who are reluctant to report such abuse. The definition of "home" can be as varied as the family home, boarding houses, foster homes and accommodation provided by charities. Services are reluctant to report such abuse for a range of reasons.

While Government may consider such environments "out of reach" in terms of its own obligations and control, if Government genuinely wish to inquire as to the reasons why abuse is not acted upon in certain environments, it is important to understand the contributing psychological factors to the non-reporting of abuse. We suggest that these will include, but are not limited to, repeated and historical abuse not acted upon in a range of environments, and a belief that abuse is systemic, acceptable and will be ignored.

We also recommend that the effect of available alternative emergency housing and specialist support to those reporting abuse is also an important factor to be considered.

1.3 Capacity to Report

One of the most fundamental requirements to reporting abuse is communication. If a person with a disability does not have a communication method, they will not be able to report. Linking with point 1.1 above, but not restricted to the school environment, we believe it is important to consider the issue of people with disability and their capacity to report. We should make it clear that we do not intend to mean cognitive capacity in this context, but whether a person with a disability has received the necessary support in their education and/or thereafter through disability service provision, to have a communication method ascertained through formal assessment, to have communication devices provided, and to have the necessary ongoing training to competently use those communication methods.

To withhold the provision of such communication supports places people with disabilities who have complex communication needs in the most vulnerable and marginalised position. For those who make a

deliberate choice to work with people with disabilities in order to exploit or abuse them, those who cannot communicate are the most likely to be targeted.

2. Complaints and Monitoring

2.1 Victoria Police

We recommend that the role of Victoria Police needs to be examined. One of the more disturbing facets of the abuse of people with disabilities is that it is often mitigated through the regarding of such abuse as not constituting a crime (as it would against a person without a disability). In terms of abuse that would normally be a breach of the *Crimes Act*, it is not appropriate to bring such complaints before the Disability Services Commissioner or other regulators. Reporting to Victoria Police of abuse must be considered in our view.

2.2 Ombudsman

Given the broad dissatisfaction that people with disabilities and the disability advocacy sector have regarding the ability of the Disability Services Commissioner to competently handling complaints, the role and response of the Ombudsman must also be considered in this Inquiry in our view.

3. Legislation - Evidence Act

Linked in with issue of reporting of abuse to the Victoria Police, one needs to consider whether the *Evidence Act* and its limitations/perceived limitations play a part in discouraging Victoria Police members to progress such reports. Given the often repeated position of Victoria Police in relation to the capacity of people with cognitive disabilities to give evidence (that position being that their cognitive disabilities present a barrier) it is important to consider whether this position is justified and whether it prevents people from reporting abuse.

We look forward to contributing to the final Inquiry.