

A Trilogy of Issues

A Submission:
Parliamentary Inquiry into Abuse in Victoria's Disability
Services

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On closer inspection

The attached papers form a three-part series. Each paper in the series addresses a particular focus, however they represent matters relevant to the Parliamentary Inquiry and as such combine to present a submission to the inquiry. While each paper has a particular emphasis, nonetheless, when combined they bring into sharp focus what the writers describe as a myopic predisposition by many who have shown interest in the inquiry.

This myopia has been evident in two ways. Firstly, by virtue of some having so far ignored these important issues and secondly by such issues having been addressed as through a prism. It is as though the prism distorts what can be described as well meaning and oft times espoused rhetoric, and bends it into something that is then at odds with the rhetoric. A classic example of this is the much-promoted notion of 'choice', where this has become the catchcry of the socially progressive. Yet, when the reality of choice is promoted, these same people who like to see themselves as the avant-garde of disability seek to constrain the choice to that which only they say should be available to people with disabilities.

The myopic incongruity can be expressed no better than that as made in a submission to the Senate inquiry. One part of that submission expressed the view that:

"In seeking to better safeguard people with disabilities against abuse and neglect, it is important that Governments do not create regulatory prisons for people with disabilities by over-burdening their support services with excessive compliance regimes that create a risk-averse services culture. Prevention of abuse and neglect should not become a reason for neglecting the human right to pursue an ordinary life as set out under the United Nations Convention on the Rights of People with Disabilities." (S. 4.7 p. 6.)

This view is one fully supported by the writers of this submission.

However, in another part of that same submission there was an about-turn when commenting on the National Disability Strategy:

"This structural, high level work provides a much better framework for preventing and addressing abuse and neglect of people with disabilities who are hidden from public life in segregated service settings. It is [the organisation's] experience that, when people with intellectual disabilities rely on the support of others and their lives are not witnessed in the course of their daily living, there is a high risk of experiencing abuse and neglect." (S. 6.0 p. 7.)

This second view seems to suggest that people with disability should be placed under the microscope of public scrutiny and that privacy and choice should take a back seat.

So it is that the following papers seek to cast a wider view on issues that the writers contend are either largely ignored or minimised and distorted. The writers therefore direct the attention of the Committee to such matters.

The trilogy focuses on the following three themes:

1. Wrong is Wrong – So Let's Get it Right
2. The Alternatives Void
3. The Merry-go-Round and the Avoidance of Public Accountability

Paper 1 in the Trilogy
Wrong is Wrong – So Let's Get it Right!

Abstract

This paper promotes the notion that '*wrong is wrong*'. It contends there can be no excuse for abuse, including an alleged lack of awareness, and therefore under no circumstances can abuse in any form be countenanced. As such this paper challenges the oft-made call for awareness training. It suggests that this diverts attention from the wrongness of abuse. By contrasting the protections given to employees with the relatively limited protections given to people with disabilities, the paper then considers the differences and shows how workers are protected to a greater degree against wrongs committed against them in the work place, but the same degree of protection does not exist for people with disabilities.

1. Increasingly, a trend popularised as a response to many areas of social challenge is the call for training and awareness. Training is promoted under the guise of formal qualification, support training, and individual and community awareness. The call is often made in areas as diverse as road accidents, drug and alcohol abuse, family violence, mental health and gender diversity. Such training, aimed at increasing awareness, understanding and tolerance concerning the challenges facing areas of social policy and developing practical responses aimed at dealing with the impact of the challenges facing individuals and the broader society, must of course be applauded.
2. Notwithstanding whether the above is appropriate however, many in the disability sector have also jumped on the bandwagon calling for training in awareness and understanding as a way of addressing abuse in all its forms. The writers suggest this is a concerning trend. This is not because increasing awareness and understanding are not important. It is because, if it is that those working in the disability sector or intending to seek employment in the field, do not understand the concept of duty care, and that when associated with duty of care, abuse contravenes this legal requirement, then they should not be in the field.
3. Therefore, if it is there are such people, the writers argue they should not be working in the field. The writers further argue that rather than calling for training and awareness, and in effect living in hope that such actions will lead to attitudinal change, those who should know better should be saying 'Let's get rid of those who do not know their obligations towards those for whom they care.' They should be calling loudly that there is no place for any one who has to be told that wrong is wrong and who have to have explained to them as to what constitutes wrongness. There is no place for 'do-gooder' sentiments when it comes to protecting the right of people with disabilities to live free from abuse, neglect, exploitation and violence.
4. Yet this clarion call for awareness training has come from far and wide. It seems to have been done without forethought to the one immutable fact. This fact is that abuse is wrong, that wrong is wrong and that anyone associated with the disability field should know this. To suggest direct care workers, managers, Chief Executive Officers, Boards and those responsible for overseeing, governance and complaints management, do not know the

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- wrongness of abuse is akin to suggesting it is not widely accepted or known that the sexual abuse of children is wrong. As a society we do not debate this, it is known and accepted. Yet, if we as a society believe that those working in the disability sector have to be educated and trained to know the difference between right and wrong, in order not to abuse or to allow abuse to occur then - Where are we really in terms of dealing with abuse in the disability sector?
5. Yet, despite what should be a must of those involved in the disability sector, to know that abuse is wrong before ever stepping foot into the sector and anyone who does not know this should not be employed, no matter what the role - the voices of the righteous continue to make the call for awareness training.
 6. The writers contend that abusive behaviour in all its forms, including neglect, exploitation and violence, has little to do with the need for training in knowing that wrong is wrong. They contend that it has more to do with a behavioural trait that seeks to dominate and take advantage of the vulnerable. Therefore, awareness training will have little if any impact on stopping such people perpetrating abuse, when the opportunity arises. Keeping in mind that abuse comes in many forms and can at time be subtle and sneaky. No abuse, neither the high profiles forms such as rape and physical violence nor the more enduring everyday types of abuse including psychological abuse and threats can be tolerated.
 7. Yet, despite the above, the calls keep coming and the evidence for calls relating to awareness training, education of staff helping them to understand what constitutes abuse, neglect, exploitation and violence can be found in particular submissions and reports.
 8. The answer of course is to test to the highest degree possible attitudes and values before ever employing, and not employ those who stumble. For those already employed and who do not meet the highest standards, a way must be found to terminate their services.
 9. The writers could not but help note the starkness of the incongruity of how on the one hand there are those who promote the need for awareness training for workers and yet in its Easy Read guide to the inquiry - ***Keeping people with disability safe***, in asking the question - What is abuse? In two pages, eight graphics, and approximately 150 words the message is substantially captured.
 10. Surely, if we believe that this largely represents the message that abuse is wrong, why do some call for awareness training for staff after they have been employed? The writers argue that while it is possible to train skills - the critical element of attitude is something far more difficult to change. One only has to ask any employer.
 11. Therefore, attitude must be tested before accepting any worker into the disability sector. Let's not try and close the gate after the horse has bolted - wrong is wrong in any form and at any time.
 12. So, let's get it right first up and stop seeking to take the easy way out by calling for the need to train awareness as to what constitutes wrong. Is it so difficult to understand those actions identified by the Committee, in, its Easy Read guide - ***Keeping people with disability safe***, by describing - **What is abuse?**
 13. While there are those who make the loud call for awareness training for staff, they seem to lack any sense of awareness as to the right of people with disabilities to be able

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- to live, engage in day programs and work free from abuse in any form.
14. These same people seem to conveniently ignore the protections given to workers.
 15. Protections include access to an Employee Assistance program (EAP), to have complaints heard through a formal hearing process, to be represented by their industrial body, to progress workplace complaints to FairWork Australia, to have the provision of the Occupational Health and Safety Act enacted including the right to work in a safe environment, and for this to be monitored by Workplace Inspectors who have the legislated power to impose Provisional Improvement Notices (PINs).
 16. By contrast, people with disabilities have none of these strong protections.
 17. While there is a residential visitation program as through Community Visitors, this well-intentioned program is a volunteer program. And, while the program has the power to inspect and inquire and report, it does not have the muscle power such as that allocated to professional Work Place Inspectors.
 18. While there is a complaints process, we have a complaint's officer who refuses to investigate - including in relation to complaints alleging abuse, neglect, exploitation or violence.
 19. The review of complaints is unnecessarily elongated. It is time consuming and repetitive, it puts the complainant through the wringer while all the time the complaint goes un-investigated.
 20. While there is a compulsory incident reporting process, there is prima facie evidence to suggest that the process is not always applied or that reports are not always made available or necessarily followed up.
 21. The reporting of deaths has been manipulated to the degree that some are recorded as Category 1 incidents while others are recorded as Category 2 incidents. Category 2 incidents are hidden from public scrutiny.
 22. While there exists contractual arrangement between the Department of Health and Human Services (DHHS) and registered service providers, no evidence has been presented to show the terms and conditions of these contracts are applied when an agency fails to meet its governance obligations as in addressing and exposing abuse.
 23. While funded sector agencies generally now have sophisticated infrastructures where Boards have replaced Committees and Chief Executive Officers have replaced Program Directors, when a worker perpetrates abuse against a client, the first reaction is often to protect the organisation.
 24. While there is the existence of funded advocacy, like community visitors, they do not have any real power to impose or direct.
 25. Workers have strong legislative protection, they have strong protections established through their Enterprise Bargaining Agreements (EBA).
 26. By contrast, while people with disabilities have legislated rights and principles and have a United Nation Convention, they do not have an enforceable contract with service providers.
 27. The time has arrived for people with disabilities to be given the same power of protection given to those who have a duty of care towards them.

Paper 2 in the Trilogy
The Alternatives Void

Abstract

This paper addresses the much-peddled myth that it is largely the grouping of people with disabilities in what are defined as congregate and segregated settings that causes abuse. In other words, the abuse occurs because of the system. There is no acknowledgement that it is people who perpetrate abuse in all its forms. The closing down of specialist services is promoted as the way to prevent abuse occurring, yet this solution fails to acknowledge that there are many groupings of people in society. The paper exposes the failure of the myth-peddlars to propose legitimate alternatives for all people with disabilities.

1. The emergence of choice, as in people with disabilities having the freedom to choose their services, and in particular where they live and with whom, and also having control over the funds allocated to them, as is the case with the NDIS, are concepts that represent a challenge to the ideologues.
2. While the ideologues applaud and promote the notion of choice and control, on the other hand they tend to push the idea that choice and control should only operate in the parameters they consider represent 'best practice'.
3. While the writers acknowledge there are significant limitations in relation to a diversity of choices being available to people with disabilities and therefore how they can spend their allocated funds, nonetheless, this lack of diversity cannot be automatically assumed to suggest that all forms of group based service provision are bad.
4. The contention that facilities that provide such services are closed off from what we euphemistically call the 'community' seems to suggest the 'community' is some utopian place. It is as though group homes, specialist day services and supported employment, are not part of the utopian community.
5. The writers argue the community comprises two principal elements. The first is the entities that exist and the second the activities and people that we as individuals choose to engage with as part of our family, friendship, work, and recreation and leisure associations.
6. Despite a limited range of services being available to people with disabilities, both in type and geographic spread, it is fallacious to suggest that those specialist services that are available, whether accommodation, day services, or workplaces, necessarily breed abuse and neglect because they are so-called segregated from the community.
7. As such, it is fallacious to attempt to marry the argument concerning the limitations in choice and then characterise this as being the basis for abuse and neglect.
8. Further, it is also fallacious to then suggest the best prevention strategy against abuse and neglect is in effect to do away with any form of group living, any form of group based activities and, by inference, any form of group based workplaces for people with disabilities.
9. The writers deplore the simplistic and manipulative attempt to characterise abuse and neglect as being a product of location and congregation, and to totally ignore the fact that it is people who perpetrate abuse and neglect.
10. This self-serving view, which is primarily aimed at establishing a totally non-specialist service environment, ignores the reality that abuse, exploitation, violence and neglect occur in all settings within our society.

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11. Is it that those advocating the demise of specialist services and people with disabilities living together and participating in recreation and education and work activities have no awareness about domestic violence, workplace bullying and that the sexual abuse of children has been shown to more likely occur in the family home and be perpetrated by someone the child knows? That abuse such as road rage, the misuse of entitlements and the abuse of power occur on a regular basis in settings that have nothing to do with people with disabilities?
12. The pejorative use of the term 'segregation' suggests that those who use it have little understanding of how our community operates, and indeed could not operate unless we do have specialist services. After all, schools, hospitals, banks, sporting bodies, and common interest groups all provide specialist services.
13. Additionally, the term 'congregate', which is simply another word for group, is also used in a pejorative way to suggest that people with disabilities fraternising together is a sin, and therefore should never occur.
14. This manipulative use of language is designed to support the argument for closing down specialist services. The argument is antiquated and irrelevant. It has no place in the current debate concerning safeguards and how these might apply to a range of service environments.
15. If it is the grouping of people which causes abuse, as suggested by the protagonists condemning group activities, including accommodation arrangements, then the logic of their protestations leads to a situation whereby every person with a disability would live as a single person.
16. The irony of such a suggestion, when considered in the context of abuse and its associated elements, is that given the argument put by the protagonists about people with disabilities being isolated, and yet examples of abuse having been perpetrated in group based settings, seems to ignore the reality that for those people with a disability who require support, living alone is likely to make them even more vulnerable.
17. Despite the lack of choice, the reality is that people with disabilities are part of the community, and always have been. To simply condemn existing service arrangements and opportunities without putting forward practical alternatives, where such alternatives do not create the unintended consequences of people with disabilities being completely isolated, and having a regime imposed on them and their families demonstrates a total inability to be innovative in a practical way.
18. If it is that the academics, ideologues and senior bureaucrats seek to promote a new order, then let them recognise and acknowledge and identify options that meet the demands of the full range of disability types and functional levels.
19. It is all very well for the experts and gurus to condemn existing service types but the real challenge is for them to identify what types of services would they develop to cater for those people who have multiple disabilities, whose capacity does not allow them to live independently, and who do not have the communication ability, even with support, to express their aspirations, their desires and needs.
20. This is the real challenge. As yet, there is no evidence to show that those who espouse negativity about people with disabilities living and working together have the solutions where there is a clear need for 24 hours a day, 7 days a week, specialist service provision.
21. Perhaps it is that the experts support condemning families and ageing parents to continue to provide the supports and accommodation for their equally ageing sons and daughters with a disability.

Paper 3 in the Trilogy

The Merry-go-Round and the Avoidance of Public Accountability

Abstract

This paper addresses what the writers describe as the merry-go-round of referral and the refusal of publicly funded entities to accept responsibilities and own an issue. The paper highlights how protocols and practices have become established whereby individuals have been able to avoid dealing directly with complaints, allegations and service deficits. The paper details the impact on people with disabilities and their families and highlights why the credibility of those employed through the public purse has reached the low water mark. Significantly, the paper also exposes the failure of those with the power, authority and responsibility for performance management and consequences associated with the management of abuse, neglect, exploitation and violence reporting and disclosing, when exposed to the public accountability test.

1. **A critical question:** A question asked in relation to Stage 2 of the Parliamentary inquiry is – *What experiences have people with disability, families and carers had when disclosing or reporting abuse?*
2. This question is important in the context of whether or not there are manufactured roadblocks to disclosing and reporting, and hence this leads to the question of how best to unblock and facilitate disclosing and reporting.
3. The original question is also important in the context of discussing what happens to those who either refuse or are unable to meet their obligations in dealing with such disclosures and reporting. Or, in other words - Is there any real public accountability for this refusal or failure?
4. In the writers' experience, they argue that while there are a number of reasons why people either do not report or disclose, or eventually give up if they do, a significant reason is that associated with the link between the 'giving up' is a lack of integrity.
5. **Integrity weaknesses:** In terms of integrity weaknesses, this has its roots in complainants having had experiences where those who have failed in their role to deal with reported incidents of abuse have then failed to be brought to account for their failure.
6. **The experience:** By way of two real live examples that are included in this paper for illustrative purposes and are detailed below. By providing these references, the writers have deliberately elected not to provide the finite detail for each, other than to suggest that each reflects the same theme. But, just as importantly these two examples are representative of many cases known to the writers.
7. The theme in all is the same. It is one that highlights the failure of those with responsibilities to address complaints in a timely and judicious manner.
8. The theme also illustrates how complainants and the clients on whose behalf the complaints were made have effectively been treated with disdain.
9. By considering the same references, the writers highlight the theme of how referral and an absence of ownership place the complainants on a merry-go-round of inaction.
10. **The merry-go-round:** As if on a merry-go-round, complainants are shuffled from one agency and one manager to another. Yet, no one takes up the cudgel of

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- responsibility. No one is willing to assume ownership.
11. In the meantime, the 'bright shiny prancing horses' as represented by watchdog entities, bureaucrats and Boards and managers go up and down and around and around without going anywhere.
 12. **No ownership and no accountability:** The theme is also one whereby no one is held to account. No one with responsibilities has faced any consequences for their inaction, and refusal to take ownership of the issue.
 13. **Case study 1:** As detailed by Submission Number 25 as made to the inquiry and as published on the Committee's website. This case involves abuse by one client against another. In addition to the service provider, it involves inaction and the abrogation of responsibility by DHHS managers, the DSC who were made aware of the case as it happened.
 14. Specifically the case shows how despite sexual abuse being perpetrated by one client on another on a number of occasions and over a period of in excess of five months, the offender was not removed from the facility until he committed the offence several times.
 15. The case also shows how despite the family of the abused client formalising their concerns to DHHS on more than one occasion the Department failed to act judiciously.
 16. The case also shows how a "high level meeting" was held between "*Eastern DHHS and Northern DHHS CPU*" the parents of the client who was abused although being told about the meeting, they "were not privy" of the discussion nor were they "given any feedback."
 17. The case also shows that despite the family of the abused client lodging a complaint with the Disability Services Commissioner (DSC) the Commissioner advised they had no jurisdiction.
 18. **Case Study 2:** A case study in which one of the writers continues to be involved. This case involves a threat made by a DHHS middle manager to evict a client from her DHHS residential placement.
 19. Specifically the case shows that despite the manager's admission the client had done nothing to warrant such a threat, he still made it.
 20. The case shows that the threat was made as retribution against the client's mother and in response to her having raised issues about a failure of staff to meet their duty of care to her daughter.
 21. Further it shows how despite the mother formalising a complaint to the DSC and the evidence of the threat having been made, the DSC was still "assessing" some three months later.
 22. The case also shows that despite clear breaches of the VPS Code of Conduct and the DHHS Values and Vision having occurred, neither the VPS Commission nor the DHHS Secretary were prepared to address such breaches.
 23. It was only after repeated requests by the complainant and her support person that the DSC stated they would consider all "relevant documents".
 24. **What are the 'learnings':** So, what can we learn from the above cases in terms of experiences some "*people with disability, families and carers {have} had when disclosing or reporting abuse?*"

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25. What are the 'learning's for the Committee to note, to condemn and to report? Recognising of course that this case does not stand-alone as an example of the abrogation of responsibility and the no accountability practice.
26. **The first is:** The reporting of complaints is a pathway blocked by hurdles e.g. procrastination, diversion and bureaucratisation of the process.
27. **The second is:** The willingness of those with authority and responsibly to refer rather than address.
28. **The third is:** The failure of the complaint entity to deal with complaints in a timely and judicious manner.
29. **The fourth is:** Is how power is abused and how intimidation is used to control.
30. **The fifth is:** How those in positions of power, responsibility and authority are able to act with impunity.
31. **The sixth is:** The divide between the rhetoric of rights and the catch cry - "*It's OK to complain!*" and the reality of complainants being given the run around.

End of Submission