

The Madness of Maintaining the Failed

A Submission to the Victorian Parliamentary Inquiry into Abuse

Abstract: This submission urges the Parliamentary Committee to be revolutionary. The Committee must acknowledge the need to change particular outmoded elements of Victoria's current safeguarding system and recommend significant innovation in five current functions. The writers argue that the time has now come to cease continuing to focus on a fusion of elements from the past with the present as though they are appropriate for the future, even though they have failed. The writers argue this is madness that makes no sense.

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Only madness dictates that when something has consistently failed, it should continue to be applied.

Continuing to focus on a fusion of those elements from the past with the present and then seeking to maintain them as though they are appropriate for the future, even though they have failed, makes no sense. Instead, what is required is to be bold by establishing a future based on innovation.

This requires doing away with some of the old. Although lauded by those whose empires are built on particular out-moded processes, and where the processes have failed to be effective in stemming the tide of abuse, neglect and exploitation occurring in the disability sector, the call for the retention of the failed element is loud. Yet, when asked questions about these failed elements, apart from the cry to retain them, their advocates tend to always make a call for more funding or more powers – despite the existing powers not being fully applied. The writers of this submission argue that this is self-serving. They argue the intent, in part, is aimed on expanding ‘empires’ as opposed to demonstrating why these failed parts of the protective machinery must be replaced or modified, rather than arguing for their retention. They have not worked and they should not be retained.

By addressing its focus to the Stage 2 Terms of Reference (ToR) A (I) & (II) and Term of Reference (C) in particular, this submission makes a case for rethinking the approach to particular aspects of the so-called protective and watchdog network.

An interim measure as referenced in ToR (A) (I) must be established. Not to do so commits to continuing with the failures of the past and now. People with disabilities and their families must be provided with new avenues to report complaints, reference ToR A (III)

Examination of the current powers and processes of Victoria’s investigation and oversight bodies must go beyond the self-promotion conveyed by these bodies to the Inquiry.

A Case for Boldness and Innovation

This submission calls on the Committee to be bold and innovative. The Committee must not be seduced by the ‘feel good’ sentiments associated with those elements of the protective and watchdog network that have failed. Like an old hand me down coat that is now threadbare and whose use-by date has well past, these proven ineffective elements must now be replaced.

The Committee must call for the necessary changes as contained in this submission. The Committee must show leadership and be bold. This is the Committee’s chance to demonstrate their willingness to be part of the innovation necessary to change the direction on abuse, neglect and exploitation in the disability sector from one where the current trend is one of growth to one of eradication.

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A Framework for Innovation

The Elements	A Fusion of the Old and the Current	The Claims and Observations - The Good and the Bad -	Being Innovative	The Reality and the Rationale
<p>Community Visitors</p>	<p>Volunteer Community Visitors grew out of the Official Visitors Program that once operated for institutions in Victoria.</p> <p>Legislation mentioning an Official Visitor can be traced back to the 1906 Lunacy Act. Reference to a "Panel of Official Visitors" came into being in the Mental Hygiene Authority Act of 1950 and again in the 1959 Mental Health Act. This provided the basis of the inclusion of Community Visitors in the 1986 Intellectually Disabled Persons Services Act, which in turn provided the basis for including them in the 2006 Disability Act.</p> <p>Essentially, despite a name change, their functions and powers have not changed for in excess of a half a century.</p> <p>They are -'institutionalised.'</p>	<p><i>"Community Visitors have an important function and responsibility." P21 Inquiry. Rep</i></p> <p><i>"They are intended as an 'early warning system' about quality failures." P.21Inquiry. Rep</i></p> <p><i>"The benefits of having an independent volunteer Community Visitor Program are promoted on the OPA Website. P.77 Ombud Rep.</i></p> <p><i>"I believe there is a higher level of credibility in the Victorian Community Visitors program on the basis they are volunteers. They are not paid to do their work, they are doing it because of their generous spirit." P.77 Ombud Rep.</i></p> <p><i>"The Disability Act specifies that each residential institution (Sandhurst and Colanda) must be visited at least monthly by a Community Visitor. The Act does not include any minimum requirements for other residential services, however the Public Advocate and the department have agreed on a minimum of two visits each year." P. 74 Ombud Rep.</i></p>	<p>Replace the current volunteer Official Visitors with paid Disability Compliance Inspectors.</p> <p>Locate these Compliance Inspectors in a newly created broad-based independent - <i>Victorian Disability Compliance Authority.</i></p>	<p>No longer is it appropriate to have volunteers involved in what should be a fully professional network of watchdogs.</p> <p>After operating for almost three decades Community Visitors have not stopped the flow of abuse and neglect. Indeed, on their own advice abuse and neglect are on the increase and systemic.</p> <p>They do not have legislated powers to investigate or direct, and as volunteers nor should they.</p> <p>Their visitation program is limited and confined to one or two visits per year to residential facilities only and where such visits are very time limited.</p> <p>There is no requirement for mandatory qualification.</p>

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Funded Advocacy	<p>Before funded advocacy there existed what was known as 'Citizen Advocacy'. Funded advocacy can be argued to have come into being on the coattails of the 1986 Intellectually Disabled Persons Services Act.</p> <p>Funded advocacy in Victoria therefore, has been in existence in Victoria for almost three decades. Yet, in effect, it has set its own directions.</p> <p>The level of scrutiny of the activities of funded advocacy organisations by the funders, as in the State via DHHS and the federal Government is highly questionable.</p> <p>So-called advocacy has spread into a range of other activities including education, training and information along with systemic and individual advocacy. The call for more money by funded advocacy organisations is a common theme.</p> <p>Advocacy must be considered to be failing when compared to how Consumer Law is applied to the broader population.</p>	<p>The Ombudsman's Report (P.46) notes that, <i>"Of the \$4.8 million provided for advocacy, only \$1.59 million is allocated to supporting individuals."</i></p> <p>Despite the above, neither the Ombudsman's Report nor the Parliamentary Committee's Report provided any comment as to why only \$1.59 million goes to supporting to individuals and as to what the differential of \$3.21 million is allocated.</p> <p>Yet, despite \$3.21 million of the total of \$4.8 million not being allocated to supporting individuals the Ombudsman's Report (P. 47) quotes from a submission made by VALID to the Inquiry into Social Inclusion of Victorians with a Disability that <i>"Because of the limited supply of independent advocacy, individual advocacy, including VALID's, has tended to become focused on reacting to situations of crisis or high need and has become less available to people who need advocacy support in their day-to-day lives."</i></p> <p>Despite the promotion of advocacy, a composite analysis of its alleged effectiveness in relation to stopping abuse or neglect is not available.</p>	<p>In keeping with the concept of same rights and same responsibilities, do away with funded client advocacy.</p> <p>Instead, create a <i>Disability Consumers Unit</i> within Consumer Affairs Victoria.</p> <p>And, make this unit responsible for dealing with consumer, as in people with disabilities, complaints.</p> <p>Further, legislate this unit as having responsibility for taking up consumer complaints on behalf of people with disabilities.</p> <p>Nonetheless, in order to support and protect families of people with disabilities from abuse and bullying, establish a dedicated funded family advocacy program.</p>	<p>Funded advocacy has been in vogue in Victoria for almost three decades. It has grown like topsy. Advocacy organisations are effectively in competition with each other for clients and funds.</p> <p>Efficiency and effectiveness of advocacy processes and practices and their value for money is not scrutinised. Many seek to be more than advocacy by straying into information and training.</p> <p>They are largely dependent on 'good will' and do not have directive powers. Neither do they have their roots in consumer protection.</p> <p>Dedicated funded family advocacy must be established as recognition for the ongoing significant part played by families of people with disabilities.</p> <p>Also, despite the principles associated with respecting families as detailed in the Disability Act, current practices and processes tend to isolate families. Thus, they must be given a voice.</p>

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<p>Disability Services Commissioner</p>	<p>The creation and inclusion of the Disability Services Commissioner (DSC) role in the 2006 Disability Act, was based on a need for an independent complaints management process.</p> <p>Although, in part, modelled on the Health Services Commissioner as provided for in the 1986 Health Services Act, a significant weakness of the DSC is that complainants cannot go to VCAT to appeal decisions.</p> <p>Additionally, other than via the Minister, the DSC does not automatically review Incident Reports despite such reports having preceded the creation of the DSC by some 20 years.</p>	<p>The Ombudsman’s report (P. 60) notes the DSC saying he uses his powers of investigation <i>“Sparingly, as I have taken what I would describe as a journeymen approach, an educative approach to change the thinking of the sector...”</i></p> <p>The same report (P60) states <i>“An academic said ‘the DSC has not been as strong as it could have been. He is trying to be nice to everybody.’”</i></p> <p><i>Further, “A legal service said ‘[they] would never send clients to [the DSC] concerning allegations of abuse as nothing gets dealt with effectively’ ... ‘{The DSC} is inadequate and fails to use his powers of investigation.’ (P 61)</i></p> <p>The Parliamentary Committee’s report (P.99) noted that between 2010 and November 2014 the DSC <i>“... has not undertaken any investigations despite having identified complaint matters that are not suitable for conciliation.’</i></p> <p>Significantly <i>‘The Committee found that there is an expectation that there should be consequences for service providers that fail to address complaints or incidents relating to abuse, neglect or exploitation in disability services.’</i> Yet, the DSC is unwilling to name providers.</p>	<p>Discontinue the position of Disability Services Commissioner.</p> <p>Create a new position entitled – <i>Director, Reporting, Investigations & Complaints Management.</i></p> <p>Locate this new position within a newly created broad-based independent - <i>Victorian Disability Compliance Authority.</i></p>	<p>The position is in effect isolated and limited.</p> <p>The position has no directive authority.</p> <p>The ability to be proactive is limited.</p> <p>The position largely depends on protocols with other parts of the safeguarding network.</p> <p>The position is one that mixes complaints management with a range of what might be called ‘soft’ functions that allow it to dabble in activities on the periphery of hard-edged investigation and complaints management.</p> <p>It has now been operating for in excess of eight years. Despite the positive spin given by the Commissioner to his own performance, the position has not performed to the high and necessary expectations that abounded when it was first created.</p> <p>It must now be considered to be outdated.</p>

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Incident Reports	<p>Incident Reports came into being in the 1980s and, while having gone through some relatively minor changes, they largely continue as first created.</p> <p>The Ombudsman's current investigation recognises the reporting on abuse, neglect and exploitation has been "<i>patchwork in nature.</i>" (P. 83). Also with reference to that report (P. 83), it is reasonable to conclude that, in whatever form, incident reporting has largely failed.</p> <p>This failure is significant given reporting is promoted as a major element of the safeguarding framework.</p> <p>Reporting, although a feature of the disability sector since 1986 is outmoded in its current form.</p> <p>If abuse, neglect and exploitation and violence are to be countered and if deaths in care are to be transparently reported, then the Disability Act 2006 must be changed.</p>	<p>The Ombudsman's Report (P. 28) states that "<i>The current incident categorisation model is confusing and can result in incorrect categorisation of incidents.</i>"</p> <p>Also in the Ombudsman Report (P.28) in relation to incident reporting the State Manager of the National Disability Services Victoria, is quoted as saying "<i>Service providers will have their own practice review exercises ... in the wake of an incident but that sort of relationship with the department seems to be pretty fragmented and [there] doesn't seem to be a lot of feedback mechanisms that come through ... post reporting.</i>"</p> <p>The Parliamentary Committee's Report (P.109) makes reference to a KPMG report in which "<i>KPMG has recommended a change to the categorisation model, including 'more clearly defining and differentiating incident type, removing duplication, minimising the capture of routine, non-critical incidents and reflecting a primary emphasis on significant harm or risk of harm.'</i>"</p>	<p>Remodel and rename those reports associated with abuse, neglect, exploitation and violence as well as deaths.</p> <p>For abuse, neglect exploitation and violence create a new report form entitled the <i>RAVEN – Report: Abuse – Violence – Exploitation - Neglect.</i></p> <p>For deaths – a new form to be established and to be called the Death in Disability Report (DDR).</p> <p>Both reports must be mandated in legislation. Each must be used for the exclusive use for the types of matters identified.</p> <p>Reporting must be to the Disability Compliance Authority.</p>	<p>The current incident reporting system has been in place for well in excess of two decades.</p> <p>While some changes have been made to format and requirements, a major problem exists in relation to their effectiveness. Further, at times there is confusion associated with designation of incidents.</p> <p>Given reporting is a key element of a safeguarding platform, it is essential therefore that reports are not only mandated.</p> <p>But also, that they are exclusively targeted to the reporting of abuse, neglect, exploitation and violence.</p> <p>And further, that there is a separate report form for deaths.</p>

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The Disability Act	<p>The current Disability Act 2006 replaced the 1986 Intellectually Disabled Persons Services Act and the 1991 Disability Services Act.</p> <p>Just as much changed in the disability sector over the 20 period between the historic 1986 Act coming into being and the creation of the 2006 Act, equally there have been further significant changes in the nine years since the creation of the 2006 Act.</p> <p>Yet, just as the 1986 Act extracted and used, although perhaps modified to some degree, parts of the <i>Mental Hygiene Authority Act of 1950</i> and the <i>1959 Mental Health Act</i>, the current Act is now, to a large degree, outdated.</p> <p>While there are several sections of the 2006 Act requiring significant changes, specifically in the context of this submission, there are those as related to the fusion element that must be changed.</p> <p>Not to do so condemns the 2006 Act to a twentieth-century response that is out of touch with twenty-first century needs.</p>	<p>While the Ombudsman's Phase 1 Report makes brief (P. 20) & (P.24) reference to the Disability Act 2006, and despite the identification of significant flaws in the Act and it clearly not being geared to accommodate necessary systems changes, the report fails to acknowledge the need for legislative change.</p> <p>Similarly, the Parliamentary Committee's Interim Report makes only limited reference to the Act (P.2)</p> <p>Despite the failure of each of the above to acknowledge the importance of legislative change, nonetheless in her foreword to her Phase 1 Report, the Ombudsman states -<i>"Doing nothing while waiting for a national scheme is not an option. All too often in past years we have seen reports result in reviews which simply confirm the existence of the problem. For the sake of the people with disabilities, Victoria cannot afford to wait any longer to fix this."</i></p> <p>Fixing those parts of the system, including the people inadequacies, that are broken or not suitable for a future focus, must include making legislative changes.</p>	<p>Amend the Disability Act 2006 in all those areas associated with the above innovations.</p> <p>In particular however, ensure that the Act's current ambiguity in relation to investigations is changed.</p> <p>This being in order to require an investigation to be undertaken in relation to each and every complaint or report associated with abuse, neglect exploitation, violence and death.</p>	<p>The current Act will require amending in order to meet the changes as identified by the above.</p> <p>However, of particular import are those sections associated with investigations.</p> <p>Given the increased focus on abuse, neglect and exploitation and the need to increase the focus on violence and death, the current sections of the Act leave too much open to interpretation.</p> <p>This has been evidenced by the Disability Services Commissioner's ongoing failure to investigate complaints, including those associated with abuse, neglect and exploitation.</p> <p>If complaints and reports associated with abuse, neglect, exploitation, violence and death are to be taken seriously the Act must be totally unambiguous in requiring investigations to be undertaken.</p>