

# THE QUALITY OF JUSTICE

A Submission to the Parliament of Victoria's Family and Community Development Committee  
Inquiry into Abuse in Disability Services

Submission S031F

Received 28/10/2015

Family and Community Development Committee

## Introduction

1. This submission specifically addresses the quality of justice underpinning the overarching considerations associated with Terms of Reference A and C to be addressed by the Parliamentary Committee.

**Term of Reference A:** *"The Committee should consider any further systemic issues that impact on why abuse of people accessing services provided by disability service providers within the meaning of the Disability Act 2006 are not reported or acted upon ..."*

and

**Term of Reference C:** *"The Committee should examine the powers and procedures of Victorian investigation and oversight bodies with jurisdiction over abuse of people with a disability ..."*

2. Despite what may have previously been put to the Committee, this submission addresses the stark reality of the quality of justice.
3. Significantly and undeniably, no matter what attention and evidence is submitted in relation to Terms of Reference A and C, in order to understand and expose the true significance of these two Terms of Reference it is essential they are measured against the principles and criteria as required in law.
4. While several submissions, including those submitted by the writers, have put forward reasons why the systemic issues of abuse, neglect and exploitation are *"not reported"*, within the context of this submission the writers emphasise why many of those matters that are reported are not *"acted upon"*.
5. While many submissions, including those submitted by the writers, have addressed *"the powers and processes of Victorian investigation and oversight bodies"*, this matter must also be addressed in the context of the requirements of the law.

## A Matter of Law

6. There can be no debate that despite the frequent references to human rights, ultimately it is how the law is implemented that determines the quality of justice. It is both the specific wording and the intent of the law that dictates the actions required to deal with cases of reported abuse, neglect and exploitation. Ultimately, it is the law that determines the powers and processes of the various *"oversight bodies with jurisdiction over abuse of people with a disability"*.
7. While there are a number of statutes that may apply in relation to abuse, neglect and exploitation, including the Wrongs Act 1958, the Crimes Act 1958 and legislation associated with Consumer Affairs, the primary piece of legislation that must be applied by the oversight bodies is the Disability Act 2006.
8. The Committee has been presented with clear evidence via the many submissions and public presentations, that the law has not always been upheld. The evidence has shown some service providers via their Boards and Chief Executive Officers have failed to uphold the law. The evidence has also shown the oversight bodies themselves - the now Department of Health and Human Services (DHHS), the Disability Services Commissioner (DSC) and the Office of the Public Advocate (OPA) - have failed to uphold the law. Further, and significantly, the Community Visitors Board and the Disability Services Board have also failed to ensure adherence to the law by those over whom they have governance responsibility.

## Case Studies

9. Several people have attested through the Committee's public hearings, as well as through written submissions, as to the failure of the individual oversighting bodies to exercise their powers and responsibilities. Significantly, some submissions have made reference to oversighting bodies having not

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met their duty of care in accordance with the law. While this submission does not seek to detail specifics of individual cases, the writers nonetheless advise the Committee that they are currently dealing with or are aware of a number of cases whereby one or another or all of the bodies, as in the Department, the Public Advocate and the DSC, continue to ignore the law.

10. Although these cases are ongoing, there is strong prima facie evidence to indicate that there has been a manipulation of information, a misrepresentation of the facts, and what appears to be collusion. As such, the writers wonder just how many case studies need to be presented in order for the Committee to confront the issues of manipulation of information, the misrepresentation of facts, and the failure to uphold the law, in order to establish these as being in part the reasons why reports of abuse, neglect and exploitation are not "*acted upon*".
11. Further, in examining the "*powers and processes*" of the overseeing bodies, the Committee must therefore confront and report on why these bodies and the individuals responsible for them are allowed to continue to operate with such flagrant disregard for the law and their obligations to people with disabilities.

#### The Unavoidable and Necessary Judgement

12. Action, powers and processes can and must only be judged against their adherence to the law and the underlying principles of fairness and transparency. If the quality of justice in the disability sector vis-à-vis dealing with abuse, neglect and exploitation is to be judged on fairness and the law, then the Committee must expose any element of what might be called an '*unlawful society*' as in a bastion of self and group protection that might be operating among the overseeing bodies.
13. Where the evidence shows that reports are not always "*acted upon*" (ToR A) and where "*the powers and processes of the oversight bodies*" are not always enacted (ToR C) in accordance with the law, then the judgement can only be and must be that there is a severe deficit in the quality of justice.
14. Examples previously detailed by the writers in their submissions to Stage 1 and Stage 2, as well as examples provided by many others who have made submissions, must draw the Committee to make two unpalatable but nonetheless necessary conclusions.
15. Firstly, that by not having acted appropriately in relation to reports concerning abuse, neglect and exploitation, and/or not having appropriately used the powers invested in them through the law, the oversight bodies must be judged to have failed to enact the law.
16. Secondly, by having failed to adhere to the law, the oversight bodies must, therefore, also be judged to have acted in a dishonourable, unprincipled and unethical way.

#### Concluding comment

17. The writers submit that until or unless the oversight bodies commit themselves to a quality of justice that applies both the letter and the intent of the law, and act in a principled way where the ethics of fairness are applied, and further unless these bodies are judged on the principles of natural justice, this inquiry will have stood for nought.

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End of Submission

