

# Submission to Family and Community Development Committee

29 October 2015

## Inquiry into Abuse in Disability Services Stage 2



**Communication Rights  
Australia**



**Villamanta Disability  
Rights Legal Service Inc.**

**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.

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

**Villamanta Disability Rights Legal Service** Inc. ("Villamanta") is a community legal centre that works only on disability related legal and justice matters for people who have a disability. Its priority constituency are people who have an intellectual disability and most of its legal casework is done for them. Villamanta provides free legal advice in several areas including information, referral, advice, casework assistance, community legal education, and policy & law reform. The long term goals of Villamanta are to ensure that people who have a disability have the same rights and opportunities as other people and are equally included in the community; in particular, that they know about the law and are able to use the law to secure their rights.

The above organisations take this opportunity to contribute to Stage 2 of the Inquiry.

## **Human Rights and Safeguards**

*How can the rights provided under the Charter of Human Rights in Victoria be maintained for people accessing disability services in the transition to the NDIS once it has been fully rolled out?*

We submit these issues transcend the NDIS.

Recommendation:

The reliance on casual workers and contractors by service providers needs to stop. A minimum percentage of permanent workers should be compulsory in government and government contracted disability service agencies.

Recommendation:

People who are vulnerable, marginalised and isolated be provided with the supports to access independent advocacy organisations to assist them in the protection of their rights.

Recommendation:

Government to commit to ensuring the rights of people with disabilities by ensuring complaints handling processes are independent of service provision and government influence. (See section below)

Recommendation:

Government commits to the adequate funding of independent advocacy organisation and community capacity building programs to assist individuals who are isolated, marginalised and vulnerable.

Recommendation:

Government commits to the right of *all individuals to be given a functional communication system* so they may participate as an equal member of the community and report abuse, including the resourcing the necessary equipment, support and training to achieve this goal.

Recommendation:

For those who are able to communicate to be supported for key meetings through the provision of the role of funded 'intermediaries' to ensure their independent voice is heard.

Recommendation:

Government lobbies other states of Australia to develop a national framework of response to the rights of people with communication or speech difficulties to ensure

they have a means to communicate and consistency throughout the country. This would also include the establishment of national system of 'intermediaries' similar to that administered by the current National Auslan Interpreter Booking and Payment Service (NABS), has been funded by the , While Government since 2005.

### **Independent oversight body**

*During the interim period of transition to the NDIS from 2016 to 2020, should the Vic Government:*

*Create a new body under new legislation?*

*Allocate the responsibilities to a single existing body?*

*Improve the integration of existing bodies to fill the gap?*

We submit these issues transcend the NDIS.

Recommendation:

A new body should be established due to the fact that the current authorities have failed to prevent abuse. If an independent body was established now, with coordination and planning, such a body could transfer over to become the state arm of a new national oversight body.

The Office of the Public Advocate has a conflict of interest due to its Guardianship Program and will not be accepted by many people with disabilities and their families.

The Victorian Equal Opportunity and Human Rights Commission are often interveners in matters before VCAT involving the *Equal Opportunity Act* and the *Charter* and therefore would be seen to have a conflict by service providers.

The Disability Services Commission has lost the confidence of the sector.

Therefore if the decision to reject the establishment of an independent oversight body is made and an existing statutory authority was chosen perform this function instead, we endorse the office of the Ombudsman.

*Should the state maintain responsibility for some elements of the safeguarding system during and after the transition to the NDIS?*

Recommendation:

Safeguarding should be independent from government.

*What arrangements should be in place?*

Recommendation:

It is important that the position description for whoever leads a body which is charged with processing complaints and overseeing abuse includes the requirement of a history of standing up for the realisation of human rights for people with disabilities. The body needs the powers to inspect, investigate, direct and make recommendations about the fitness of service providers to work with people with disabilities. People with disabilities and disability advocacy agencies should be involved in this process.

Recommendation:

The Community Visitors Scheme should be transformed into a formal funded program and transferred to the new oversight body.

### **Disability advocacy services**

*What would be the most appropriate approach to the administration of funding for disability and advocacy services?*

Recommendation:

The amount of funding for advocacy agencies should be arrived at on the basis of a comprehensive assessment (see below). The administration of such funding could then be undertaken by Disability Advocacy Victoria as a purely administrative function.

In terms of the administration of funding for disability services, the following are options:

- part of an existing government department that is not involved in the provision of services to people with disabilities administers the funding
- a new authority is established to administer the funding

The requirement for independence is due to the fact that a new independent oversight body may be making recommendations that funding to a particular service provider on the basis of violence, abuse or neglect, or repeated failure to competently process complaints, be withdrawn.

*Should an existing or new body have responsibility for this role?*

Recommendation:

An independent private research organisation could be engaged by government to undertake the role of assessment.

*In undertaking a comprehensive assessment of advocacy needs, what components of the advocacy system need to be evaluated or reviewed?*

Recommendation:

Funding for advocacy agencies should be arrived at on the basis of advocacy need. Therefore a comprehensive assessment of the advocacy sector and its ability to meet the needs of people with disabilities should be undertaken. Such an assessment should rely heavily on information from people with disabilities, as well as data from advocacy agencies.

### **Professional development**

*Should minimum qualifications be introduced for all disability workers?  
If so, what should be the minimum qualification?  
Should this be a state or national requirement?  
Should there be compulsory requirements for professional development for disability workers?  
If so, what core components of ongoing professional development would be required*

Recommendation:

There needs to be minimum qualifications for all care workers. People with disabilities and the advocacy sector should be consulted as to what those minimum qualifications should be. Other types of testing regarding suitability to work with vulnerable people should also be conducted.

### **Workforce culture**

*What does the Victorian Government need to do to support a disability workforce culture that does not tolerate abuse, neglect or exploitation?  
What do Victorian disability service providers need to do to promote and achieve a workforce culture that does not tolerate abuse, neglect or exploitation?*

There are currently no strong incentives for government and government contractors to substantially alter current cultures.

There are few consequences for the current cultures that allow mistreatment and abuse to flourish. There appears to be no real commitment or interest at Secretary or Deputy Secretary levels to overhaul the system in that regard. Apart from rhetoric, there has been no evidence to date that any leader in government has made a

singular effort to reform the sector in order that violence, abuse, neglect and exploitation do not occur. On the contrary, anecdotal evidence suggests that the reporting of human rights abuses to DHHS and private providers are routinely ignored.

Recommendation:

Consequences for leaders in government who provide disability services, and for senior personnel in private service providers, need to be established. For example directors of private companies can be held personally responsible for numerous breaches of law by employees. There is no reason why the same should not occur in this sector.

### **Complaints handling**

*If an independent oversight body is introduced, should it have the responsibility for handling general complaints about disability service providers?*

*Is there a new independent oversight body with responsibility for complaints handling and responding to serious incidents, should it have the power to conduct own-motion investigations?—should these powers relate to both complaints and the investigation of allegations of abuse and neglect?*

Recommendation:

We submit there is little utility in having separate independent oversight bodies for one segment of disability services and not others. In fact we submit that any reports of the abuse of people with disabilities from any type of service provider (including schools) should be handled by the one agency.

### **Guidelines for responding to abuse**

#### **Visiting Schemes**

*In view of the skills necessary in identifying and responding to abuse and neglect, should consideration be given to paid inspectors or paid official visitors in Victoria?*

Recommendation:

If government is serious about preventing the abuse of people with disabilities, programs relying on volunteers should not be seen to be sufficient to do the job. A more formal inspector role, with training in disability issues and working for the independent oversight body would be preferable.

## **Mandatory Reporting**

Recommendation:

The Government should introduce mandatory reporting to a new independent, oversight body.

Paid inspector and official visitors within a new oversight body should be mandated to make such reports.

*What functions of the DHHS should be transferred?*

*Should any be retained by the DHHS?*

Recommendation:

DHHS should be viewed as any other service provider. They have proved to be incapable and disinterested in reforming the provision of services to people with disabilities. They should not be expected to have any safeguarding role as they have not shown evidence of performing this role effectively within their own organisation.

## **Oversight of restrictive practices**

*Should the senior practitioner be independent from DHS in its role in oversight of restrictive practices?*

*If so, what option would be most appropriate for the nature of that independence? I*

Recommendation:

It should be noted that the Office of Professional Practice (formally Office of the Senior Practitioner) is part of DHHS. It needs to be independent, however also needs more resources and a higher level of expertise in its ranks.

Currently, workers who wish to subject people with disabilities to restrictive practices have to lodge a behaviour plan with the Office of Professional Practice (OPP). Credentials of the person developing such a behaviour plan are irrelevant. The quality of the plan, and whether it is going to be monitored and evaluated is irrelevant. Data collection is not provided to the OPP. The OPP currently endorse people without qualifications undertaking Functional Behaviour Assessments.

If we wish to intervene in violent worker responses to challenging behaviours, it is important that those working in the area of challenging behaviours, who have the responsibility of mitigating or extinguishing those behaviours, have the highest level of expertise. It is not sufficient for any person, no matter how inexperienced to lodge

documents with the OPP in order to obtain their imprimatur to begin physically restraining people with disabilities.

A review of the OPP and its ability to monitor restrictive practices for people with disabilities over the entire State, and the qualifications of those working for the OPP, would be desirable.

*Should Authorised Program Officers in disability services have minimum qualifications for making decisions in relation to emergency restrictive practices, such as restraint?*

Recommendation:

There will be unplanned emergencies where whoever is at hand may have to restrain a person with a disability in an extreme situation. The immediate staff member in the vicinity, if something truly dangerous is about to occur, is not going to be able to find an Authorised Program Officer to seek permission to restrain. However from that moment onwards, the service is on notice that a Functional Behaviour Assessment from a qualified person, the development of a Behaviour Plan, and the professional monitoring and evaluation of that plan, is immediately required.

We submit that it is dangerous to give workers such authorisation. The science behind the efficacy of Functional Behaviour Assessments and subsequent Behaviour Treatment Plans performed by expert personnel suggests that restraint and seclusion should be able to be eliminated in most cases. It is cheaper and quicker to respond with restrictive practices than it is to engage expertise to properly address challenging behaviours. We believe the focus should be on obtaining such high-level services.