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Inquiry into Abuse in Disability Services: Stage 2

**Submission to the Victorian Parliament's
Family and Community Development
Committee**

October 2015



About VCOSS

The Victorian Council of Social Service (VCOSS) is the peak body of the social and community sector in Victoria. VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups, and individuals interested in social policy. In addition to supporting the sector, VCOSS represents the interests of vulnerable and disadvantaged Victorians in policy debates and advocates for the development of a sustainable, fair and equitable society.

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Introduction

VCOSS welcomes this Inquiry into Abuse in Disability Services. Many people with disability are reliant on disability services to meet their everyday needs and to assist their social and economic participation.

VCOSS advocacy for systemic change that improves the lives of people with a disability is informed by a social model of disability, which understands the disadvantage and discrimination experienced by people with disability is not created by their impairments, but by the physical and social environment in which they live. Part of this understanding is that when the built environment is not designed for universal use, people with disability are prevented from living like other people in our society, physically and socially separating them as 'different' people with 'special' needs.

All people with disability have the right to be free from violence, abuse and exploitation as well as the right to privacy, the same as every Australian. Unfortunately, abuse and neglect of people with disability occurs and the current services and systems of oversight and advocacy need to be enhanced to better protect vulnerable people with disability.

People with disability deserve the best protection possible and protective systems should be enhanced prior to the full roll out of the NDIS. When the NDIS is fully implemented, the important elements of an enhanced protective system must be maintained, either at a state or national level.

The focus of this inquiry is on abuse in disability *services*, including residential, respite and day programs funded by the Victorian Government. Neglect and abuse of people with disability also occurs in mainstream settings. Elements of an effective system that protects people in disability services and enhances their rights may also protect people with disability in mainstream settings.

Active community participation is a protective factor as is contact with the mainstream service system. In a residential service, people with disability tend to be shut off from the rest of the world and any abuse becomes less visible. For someone in a residential service substantial contact with people outside the residence lessens opportunities for abuse to occur and increases the possibility of early detection if it occurs.

One of the potential benefits of the National Disability Insurance Scheme (NDIS), which aims to give greater choice and control to people with disability, is that greater support should be available that allows greater opportunity to connect with the community, and access specialist and mainstream services as required. This will help to reduce the segregation and isolation of people with disability.

However, community connection in and of itself is insufficient to protect vulnerable people. People with disability also need a strong protective system that incorporates:

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- a robust but fair regulatory system for service providers
 - a responsive complaints system
 - a system of reporting and rectifying systemic problems
 - a responsive criminal justice system.

This submission focuses on the first three items above as well as other matters included in the Terms of Reference of this Inquiry.

Experience of disclosing or reporting abuse

The abuse and neglect of people with disability appears to be widespread and persistent.¹ It ranges from low level harassment and lack of appropriate care to extreme situations of criminal physical and sexual assault. Too often, the harm from abuse and neglect is compounded because the reports or complaints about abuse or neglect are not dealt with in an effective, fair and prompt manner. The person with disability suffering from the abuse or neglect is often further disadvantaged and may even feel punished. Incident reporting appears not as effective as it should be at delivering change in services at a systemic level.

Experience of people making a complaint

VCOSS members and disability advocates report that people with disability, their carers and family face several difficulties in making a complaint about abuse or neglect. This arises as they do not necessarily know who to complain to nor how to make an official complaint. While information on the complaints system is provided by the Disability Services Commissioner and others, it is either not accessible or known by many people with disability or their carers.

Carers and family members may not wish to make a complaint due to the fear of the consequences, including that services will be withdrawn or that the complaint will result in a poor outcome for the person with disability. Further, carers and family members are often unaware of their right to make a complaint on behalf of the person with disability. The right of carers and family members to make a complaint needs to be explicit.

Case Study: Negative consequences arising from making a complaint

Ms G lives in DHHS supported accommodation as she has severe intellectual disabilities and communicates through non-verbal means. Her mother, Ms H was concerned about the level of care being provided to her daughter, particularly given her medical and dietary needs, and brought up these issues with the service. This resulted in a series of negative actions being taken by the Disability Accommodation Services Manager including imposing a ban on communicating directly with service staff over a period of 5 years, which meant that Ms H had to email the service staff to be able to check up on her daughter. The manager also sought to restrict Ms H's attendance at the supported accommodation, including only being able to visit their daughter if an independent person accompanied her.

¹ For example see Office of the Public Advocate, *Community Visitors Annual Report 2013-2014*, 2014, p.6.

More recently, there were also threats to 'evict' her daughter if Ms H didn't agree to the rules on visitation.

Ms H brought this issue to the attention of the Disability Service Commission (DSC); however, states while some agreements on communication between the family and the service were reached, the primary concern of the care issues around her daughter's health were not addressed through this process. At the time of writing, the DSC has not resolved the complaint made by Ms H regarding DHHS threat of evicting Ms G.

As a result of her experience, Ms H believes that there is no accountability for services and suggested that many families and carers fear retribution if they make a complaint.

As reported to VCOSS by Mrs H

Non-verbal people or people with low communication capacity have difficulty in disclosing a case of abuse or neglect to their service providers, family or carers. Children and young people are in a similar situation regarding disclosure and complaints. Monitoring and reporting systems need to be particularly vigilant as these sections of the community are particularly vulnerable.

VCOSS members report that there is a widespread perception that making a complaint does not result in any action being taken to protect the safety and wellbeing of the person or result in action being taken against the alleged perpetrator. The Disability Services Commissioner's role is not seen as effective. This perception may relate, in part, to Disability Services Commissioner seeking to conciliate complaints rather than making a finding and a recommendation for action regarding the person complained against.

Carers and family members often feel that when they make a complaint their views are not taken seriously as they are considered over-protective. Some report that their complaints have led to the Department seeking guardianship orders to prevent further complaints.

Further, there is a widespread concern that making a complaint will lead to worsening of the situation. The person with disability may be forced to move service provider. This can be extremely difficult when there are few services available. The victim feels punished because they made a complaint.

Case Study: Punishing the victim

Ms S commenced with a service provider in 2012. At that time she was 53 years old, and had a preference for engaging in community activities. The provider supported her using a home to community model. By converting a block funded centre based day placement of 18 hours into individualised 1:1 hours, she was able to participate in the community because she was living in a group home that had staffing during the day. She wasn't forced to be out of the house between 9am and 3pm on weekdays. However, there was a co-resident who assaulted her on multiple occasions, including at times being reported to Victoria Police with significant bruising on her face following the assaults. The situation was addressed by removing Ms S from her own home and relocating her to another residential service. Ms S

was moved rather than the assailant as there was greater funding at the original house, which was felt would better support the assailant.

In moving Ms S, she was punished for being a victim of assault. She was removed from her home, her support workers and her community, and given the lower level of staffing resources available in the new home. She was required to change her day support provider as she was no longer able to remain at home during the day and utilise the home to community model that she preferred.

As reported to VCOSS by a VCOSS member organisation

Disability advocacy services continually highlight that complaints are not dealt with appropriately and sometimes it takes third party advocacy for appropriate action to be taken. VCOSS notes that a number of submissions to the Senate Standing Committee on Community Affairs Inquiry into Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings highlight the importance of advocacy organisations assisting with disputes and complaints about services.² The importance of advocacy is explored further on in this submission.

Critical incident reporting

VCOSS understands the purpose of critical incident reporting is to learn from adverse events to try to prevent their recurrence. An effective system needs to ensure:

- Accurate reports
- Analysis of events to understand causes and systemic issues
- Feedback to services so that changes can be made to prevent further incidents
- Feedback to clients and their family or carers.

Unfortunately, it appears such a system is not effectively operating in Victoria. Rather, there is a lack of integrity in reporting, analysis of events does not appear to be occurring and little or no feedback is given to services so that they can change their operations to prevent further incidents. The reporting system is structured so that no feedback is given to clients or their carers so they can be confident that similar incidents are unlikely to recur.

Critical incident reports are meant to be completed by the most senior staff member who witnessed the incident, or the staff member who was first told about the incident, with a manager or the CEO completing part of the report. However, VCOSS members have indicated that the incident reports are sometimes changed by staff not witness to the incident, such as a senior management. VCOSS members also indicated that departmental officers sometimes change reports. This reduces the integrity of the reports.

VCOSS members suggested that little or no action is taken by the Department Health and Human Services as a result of incident reporting. They are unaware of any departmental analysis of events and hence any changes are a result of initiatives unrelated to incident reporting.

² For example, see submission 14 from Disability Justice Advocacy Inc and submission 34 from Ms Fiona Given.

In addition, no information is provided back to the carer, family and person with disability or they are simply given a vague response of 'don't worry it's been dealt with'.

The apparent lack of analysis and feedback means that services may not be aware that reports point to systemic issues. Hence these are not dealt with in an effective manner leaving vulnerable people open to further abuse or neglect.

VCOSS suggests that incident reporting of abuse, neglect and the death of people with disabilities in institutional and residential settings must be mandated by legislation, inquiries into abuse, neglect and death instituted, changes made as a result and reports made publically available.

Community Visitors Scheme

The Office of the Public Advocate operates the Community Visitors Scheme in Victoria. One of the schemes strengths is that Community Visitors are empowered by law to visit disability accommodation services and supported residential services as well as mental health facilities.

Their current roles are to:

- observe the service environment and staff interaction with residents
- make enquiries and inspect documents,
- communicate with residents to ensure they are being cared for and supported with dignity and respect
- identify any issues of concern.

Community Visitors Schemes are an important component of an overall system for identifying and reporting on abuse and neglect in residential disability services including Supported Residential Services. This scheme could be enhanced in a number of ways, including:

- encouraging volunteers to identify good practice or poor practice, rather than just focusing on more serious issues of abuse or neglect
- training of Community Visitors in communication with non-verbal clients or be accompanied by people with these skills
- ensuring residential service employees have access to Community Visitors independent of service management
- making reports publicly available (but this would need to maintain privacy for residents).

Human rights and safeguards

In 2008, Australia ratified the United Nations Convention on the Rights of People with Disabilities and thereby accepted that all people with disability should be free from exploitation, violence and abuse, have a right to freedom and security and have a right to have their privacy respected, among other rights. These rights are also reflected in the Victorian Human Rights Charter. However, for too many people with disability there is a gap between their experience and the principles enshrined in the Convention.³ Thirty-one per cent of submissions to the Shut Out report highlighted the need for greater protection of rights of people with disability.⁴

Stage 2 of this Inquiry is asking how the rights under the Victorian Charter of Human Rights and Responsibilities can be maintained for people accessing disability services under the National Disability Insurance Scheme. VCOSS suggests that the rights of people with disability are not adequately protected under the Victorian Charter and that enhancements to this protection need to occur as soon as possible.

The Victorian Government has initiated an independent Review of the Charter of Human Rights and Responsibilities. The enhanced protections under the Charter for all Victorians, including people with disability as recommended by VCOSS in its submission, were reflected in the report tabled in Parliament in September 2015. These recommendations related to:

1. Fostering cultural change across government and the community.
2. Including a direct cause of action against public authorities who may have acted inconsistently with human rights, or failed to consider human rights in making a decision.
3. Amending the Charter to include access to a range of judicial and non-judicial remedies where human rights are found to have been infringed.

Adopting these recommendations would enhance human rights protections under the Charter prior to the full implementation of the NDIS. Human rights protections should then be maintained under the NDIS. However, of concern and in light of what is known about abuse and neglect in this state, the consultation paper *Proposal for a National Disability Insurance Scheme Quality and Safeguarding Framework* does not foresee a significant role for the promoting rights along the lines that currently exist in Victoria nor enhancements proposed by VCOSS in the Charter Review.

³ National People with Disabilities and Carer Council, *SHUT OUT: The Experience of People with Disabilities and their Families in Australia*, 2009, p.17

⁴ *Ibid* p.17.

Independent oversight body

VCOSS supports Recommendation 1 of the Ombudsman's Report that an independent oversight body be established to deal with serious incidents involving people with disability.⁵ VCOSS believes that the Victorian Government should gather together many of the oversight roles of various bodies such as the Ombudsman, Office of the Public Advocate, the Disability Services Commissioner and the Department of Health and Human Services into one entity provided that entity:

- is independent
- is resourced sufficiently to undertake its oversight and investigation role
- has legislated authority to gather information and require changes to services to better protect people with disability.

Independence is important to ensure the rights of people with disability are upheld, to support confidence in the system and to prevent conflicts of interest that may arise if the oversight body is part of the disability services system (e.g. service provider or funder). For example, the Department of Health and Human Services is both a service provider and a funder of services. There is a perception that the department's role in overseeing restrictive practices conflicts with its other roles. The body must also be free (and seen to be free) from influence by other authorities such as Ministers and departmental officials.

Being sufficiently resourced is essential if the body is to conduct its role appropriately. The funding required will be dependent upon the role of the body but there needs to be a mechanism to guarantee sufficient funding.

The legislation that establishes the body must be clear about its independence, role and authority.

VCOSS has some suggestions about the role, power and location of this oversight body.

Role

An independent oversight body should have a holistic role to address matters concerning abuse and neglect of people with disability. The fragmented nature of the current system has led to inconsistent reporting and accountability mechanisms and a lack of action being taken to address both individual and systemic issues. Therefore VCOSS agrees with the Ombudsman that an

⁵ Victorian Ombudsman, Reporting and investigation of allegations of abuse in the disability sector: Phase 1 – the effectiveness of statutory oversight, June 2015, p. 8

independent oversight body should have the functions presently carried out by a number of different bodies in Victoria, including:

- Gathering and responding to complaints
- Investigating critical incidents
- Maintaining the disability worker exclusion scheme or its replacement
- Maintaining a visitors scheme
- Investigating complaints about restrictive practices

Locating these roles in one independent body ensures all possible relevant information that relate to issues of abuse and neglect will be collected in one location. This will enable the body to conduct a thorough analysis of the issues experienced by people with disability and their carers and to enable systemic issues to be identified and addressed.

There is a possibility that this role could be extended to take complaints from people with disability about mainstream services as they relate to the person's disability. For example, some schools use restrictive practices, such as restraint and seclusion, and the oversight body could have a role in taking complaints about these practices.

Power

The independent oversight body needs to have the power to conduct investigations into complaints and critical incidents. It should be able to look at the cause of problems and if there are any systemic issues make recommendations for their remedy. The body needs to have the power to compel government and non-government services to act to address individual and systemic issues. Failure to comply with the recommendations should have consequences.

Location

Currently, the oversight functions are located in the Department of Health and Human Services (critical incidents, disability worker exclusion scheme and oversight of restrictive practices), the Disability Services Commissioner (complaints handling) and the Office of the Public Advocate (community visitors scheme).

One option is to establish a new body through legislation while amending the role of the Department of Health and Human Services and the Office of the Public Advocate. As the main function of the Disability Services Commissioner is complaints handling, this would be abolished if a new body is created that includes complaints handling.

The other option is to widen the scope of an existing organisation. This oversight body needs to be independent of government, which excludes the Department of Health and Human Services. The Office of the Public Advocate's guardianship role may not be compatible with the oversight functions. The best placed existing organisation to be the independent oversight body such as the Victorian Ombudsman, Disability Services Commissioner or the Victorian Equal Opportunity and Human Rights Commission.

VCOSS has no firm view on which of these is best placed to undertake the roles or whether a new organisation should be created. However, we do believe that whichever is chosen it must have independence, funding and legislative authority.

Disability advocacy services

Disability advocacy services assist in protecting the human and legal rights of people with disabilities as well as promoting these rights to the wider community. VCOSS believes that advocacy, at both an individual and systemic level, is essential for the operation of the disability services system especially as it transitions to the National Disability Insurance Scheme. It will help support people with disabilities to make decisions affecting their lives and uphold their rights in the system. Advocacy is also essential to improving accessibility to the mainstream services system.

Multiple purposes of advocacy

Individual disability advocacy is about empowerment and information provision, assisting with complaints and informing people about their rights. It can take a simple form such as assisting a person to complete an application for a service or helping them to communicate their needs, through to lodging a human rights or disability discrimination complaint. It also builds the capacity of people with disability and their carers to self-advocate. Empowering and resourcing people with information enables them to advocate more effectively.

Disability advocacy also helps identify problems so people can advocate for change at an individual or systemic level. When systemic issues, which create barriers to access and inclusion for people with disability, are identified and addressed, the whole community benefits. Disability advocacy can also work in partnership with all levels of government to improve policy and program development.

Funding advocacy

Victoria has a strong and diverse disability advocacy system and it is important this is retained and strengthened in the transition to the NDIS, including preserving areas of specialisation such as legal, youth and children's advocacy, as well as specialist advocacy areas, such as for people with acquired brain injury, people with intellectual disability, non-verbal people or people with complex communication needs and people with autism.

VCOSS believes that the Victorian Government should have a continuing role in funding disability advocacy beyond the implementation of the NDIS. Disability advocacy assists people with disability overcoming barriers to mainstream systems and support, access to the built environment,

public transport, education and employment, and most significantly, access to information and communications systems. As many of these are state government responsibilities, the Victorian Government has an obligation to continue to support disability advocacy services. It can also ensure the strength and diversity of the system continues. Ongoing Victorian Government support for disability advocacy needs to ensure that all people with disability, their carers and families have access to advocacy support if and when they need it.

Advocacy should be funded separately from organisations that deliver or monitor disability services, to maintain independence and provide stronger safeguards. This would also be supported by stronger reporting and accountability mechanisms, as recommended by the Victorian Ombudsman in the inquiry into abuse in the disability sector.⁶

The transition to NDIS

The transition to the NDIS will increase the need and demand for disability advocacy services. Professional, independent advocacy will help people with disability and their carers to navigate the new system and to engage with services under the NDIS. VCOSS members report that disability advocacy services in the Barwon launch site have experienced significant increases in demand resulting from the transition to the NDIS, to help people assert their rights in the planning process. Equally important is the need to provide advocacy for people with disability who will not qualify for individual support under the NDIS.

⁶ Victorian Ombudsman, *Reporting and investigation of allegations of abuse in the disability sector: Phase 1 – the effectiveness of statutory oversight*, June 2015

Workforce Issues

The National Disability Insurance Scheme is expected to increase the workforce in disability services substantially over the next few years.⁷ Disability services will be competing for employees with the rest of the health and social assistance industry. The growth in the workforce potentially increases the risk of abuse or neglect for people with disability since inappropriate people may be employed to provide services. The risk could be mitigated by appropriate pre-service training, employment screening, on-going professional development and the development of a workforce culture that abhors abuse and neglect.

Prevention, screening and accreditation

The Disability Worker Exclusion Scheme commenced on 29 September 2014 to screen employees in Disability Residential Services operated or funded by the Department of Health and Human Services. It does not extend to Supported Residential Services or other disability services.

Since the Disability Worker Exclusion Scheme has only been operating for just over one year and needs evaluation it is too early to assess its effectiveness. A rigorous evaluation should show whether the scheme is effective or if alternatives such as a working with vulnerable persons check are more appropriate.

Once the evidence is in, consideration should be given to broadening the scheme to include supported residential services and other disability services. VCOSS questions the merit of a scheme that excludes a person from working in a residential service but permits them to work alone in a person's home.

Whichever scheme is adopted, VCOSS believes that a national or nationally coordinated approach would prevent people moving from away from a state where they are excluded to state where they could gain employment.

Training and professional development

VCOSS believes that there is widespread support among our members for there to be regulated minimum qualifications for workers in disability services. However, further consultation with the sector is needed to determine what the minimum qualification should be. Further, it seems unlikely that the expected increase in workforce could be achieved with a minimum qualification requirement under the current NDIS pricing.

⁷ Hayward, D. 'Shifting from Social Provision to Social Investment', *Insight*, Vol 13, 2015, pp 8-11.

There are many excellent but unqualified workers in the disability services sector at present. These workers may be lost to the sector if minimum qualifications are required without recognition of prior learning. Incentives for existing, unqualified employees could be provided to undertake training but the cost may outweigh the benefits.

Training and ongoing professional development, particularly in regard to rights and protections for people with disability and communication skills may assist employees identify and report abuse and neglect.

Other service areas have implemented minimum qualifications, such as under the National Quality Framework for Early Childhood Education and Care. There may be lessons for the disability services sector from that experience.

Workforce culture

We have seen from the evidence presented at the Royal Commission into Institutional Responses to Child Sexual Abuse that abuse and neglect of children exists as part of the prevailing culture of an organisation. It doesn't exist in a vacuum but is part of a continuum of violence that is not always physical and results from attitudes that vulnerable children have no rights. The same could be said for people with disability.

Cultural change needs to occur across the Australian community that recognises the rights and contributions of people with disability. Workforce cultural change would be part of this that accepts a zero tolerance approach to abuse and neglect in disability services.

The National Disability Services Zero Tolerance Framework is an example of how the disability services sector has sought organisational cultural change as well as improving practices.

A zero tolerance approach also needs protection for whistleblowers. Staff who report incidents of abuse and neglect to the independent oversight body may fear for their jobs without decent protections.

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