

Submission:

Family and Community Development Committee

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Inquiry into Abuse in Disability Services



**Communication Rights
Australia**

Inquiries to:

Ms Jan Ashford
Chief Executive Officer
Communication Rights Australia
Email: jashford@communicationrights.org.au
Ph: 9555-8552
Web: www.communicationrights.com.au

Ms Julie Phillips
Manager
Disabilities from Nation Legal Service
Email: manager@ddls.org.au
Ph: 9654-8644



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Introduction

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.

Communication Rights' services are designed to break down barriers to inclusion and remove discrimination through:

- Individual advocacy, advice and referral when the system has broken down;
- Information on human rights and the right to communicate;
- Community education – how to ensure the protection of a person's communication rights.

Communication Rights uses the UN *Convention on the Rights of People with Disabilities*, Victorian *Charter of Human Rights and Responsibilities Act*, disability discrimination legislation and government policies to ensure people can enjoy their rights without fear of judgement or exclusion.

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

Communication Rights and DDLS welcome the interest of the Victorian Government in furthering the rights of people with disabilities through inquiring into the systemic issues relating to the reporting of abuse.

Communication Rights and DDLS respond to this inquiry in the context of working with some of the most marginalised and vulnerable members of the community whose voices are most often lost.

Terms of Reference

1. The strengths and weaknesses of Victoria's regulation of the disability service system with a view to informing Victoria's position on appropriate quality and safeguards for the National Disability Insurance Scheme,
 - workforce recruitment, screening, induction, training and supervision;
 - provider registration requirements;
 - systems for handling complaints; and
 - the impact of current systemic safeguards on the rights and protections of people accessing disability services;

NDIS Framework

What is not clear within the proposed quality and safeguard framework is the broader role of government, both state and federal, once the rollout of the NDIS has occurred. Consideration should be given as to their duty of care towards participants of the Scheme and the responsibility that comes with the use of public monies. It will not be sufficient for the responsibility of meeting the individual needs of people with disabilities to only lie with the NDIS as not all aspects of an individuals' life will be covered by NDIA, and not everyone will receive funding through the NDIA. It will not be acceptable for governments to see the NDIA as the sole provider of support services.

Although human rights seem to be ostensibly underpinning the NDIS, those rights appear to be missing from the draft Quality and Safeguard Framework. Human rights needs to be strongly articulated in all parts of the framework, influencing both practice and complaints mechanisms to ensure those rights are the overarching determinant in decision making for participants.

Employee Recruitment and Screening Practices

Overall the employee recruitment and screening practices of disability services has fallen short in the area of working with vulnerable and marginalised communities. People with complex disabilities and communication or speech difficulties are isolated and often defenceless against those who are opportunistic and have slipped through the screening processes. *The Committee needs to be mindful that only those who have a record will be picked up through a screening process.*

The Impact of Inadequate Resourcing

The sector lacks the capacity to effectively train and supervise staff due to insufficient funds. Staff and supports have been cut to individuals, leaving them vulnerable. The level of funding allocated to service providers has long been inadequate to provide quality services.

Fair Work Australia recently awarded the Equal Remuneration Order pay rise in recognition of the historical under-payment of community service workers. It described the decision as an important step toward achieving equal pay for workers in the sector, and one which could strengthen the workforce by helping organisations attract and retain skilled staff. The Equal Remuneration Order means community organisations must pay wage increases of between 23 and 41 per cent to workers over eight years, through to December 2019. *However funding for the wage increases has not been included in state budget forward estimates after June 2015.*

The Victorian Council of Social Services continues to advocate for a fair funding approach for non-government community services that *recognises the real cost of providing services.*

It is necessary for fair annual indexation of funding to come from the Victorian Government.

During the 2012-15 periods the Victorian Government indexed funding at two per cent per annum. This has resulted in a funding cut for community organisations.

In an increasingly complex and unequal world, Victorian community sector organisations are facing rising demand for services and increasing complexity in the issues people are facing. It is also facing rising service provision costs, and mandated increases in employee entitlements.

Despite the requirements of Department of Health and Human Services to provide high quality services, the requirement is not being supported with a fair and equitable funding model to achieve the level required.

The lack of adequate resources affects people with disabilities in a number of ways, including:

- barriers to having access to advocacy services;
- service providers recruiting unskilled staff, requiring cheaper pay rates.

The Committee Legal Centre sector, charged with providing specialist disability community legal centres to service people with disabilities, suffers from the same funding problems. The Productivity Commission in December 2014 recommended \$200 million be provided to legal assistance schemes throughout Australia.

Within our submission to the NDIA Quality and Safeguard Framework we outlined the following key components of a quality system:

Workforce issues

A Code of Practice may be sufficient for people working in house maintenance or gardening, but anyone having direct contact with vulnerable clients requires a 'vulnerable persons check'.

Given the high rates of neglect, abuse and exploitation of people with disabilities in the disability service sector, an external quality evaluation is necessary, which is focussed on receiving feedback directly from clients not chosen by providers.

When we refer throughout this document to "vulnerable persons check" we recommend that the suggestions made to the Royal Commission into Institutional Responses to Child Sexual Abuse¹ be adopted as set out below:

"The pre-employment screening practices other than criminal background checks (often referred to as sources of 'soft information' in the literature) that evaluation authors identified as necessary components of a comprehensive pre-employment screening procedure included (in order of most frequently to least frequently mentioned):

- a) Scoping Review: Pre-employment screening practices that aim to prevent child sexual abuse*
- b) Conducting thorough reference checks (for example, those obtained directly from previous employers by asking direct questions about any concerns regarding the applicant's suitability to work with children)*
- c) Holding employment interviews that focus on determining the applicant's suitability to work with children (such as value-based interviewing; for more information, see Erooga, 2009)*

¹ 'Scoping Review: Evaluations of pre-employment screening practices for child-related work that aim to prevent child sexual abuse' February 2015

- d) *Checking suspected or substantiated child abuse against other sources of information, such as child-abuse registries, children’s court decisions or disciplinary body proceedings*
- e) *Critically examining an applicant’s employment history and/or written application (to identify gaps in their employment history and thus clarify their cause, or to explain ambiguous responses to direct questions about criminal history)*
- f) *Verifying the applicant’s identity using methods such as photo-based documents or fingerprinting*
- g) *Verifying the applicant’s education or qualifications (in order to determine if they are qualified to undertake child-related work).”*

In summary:

- highest level of scrutiny to be administered to those working with vulnerable and marginalised members of the community;
- each worker is responsible to keep their own registration current and not be reliant on the service provider;
- checks should include international check;
- casual staff should maintain their registration;
- regular independent feedback should be obtained on the service from the individual to ensure they are not at risk;
- people should have access to independent advocates who have skills in communicating with the individual;
- individuals should not be disadvantaged financially when a higher level of scrutiny of staff is required for them – choice should be available; and
- a fair and equitable payment made to qualified staff with appropriate levels of quality management and training.

Provider registration requirements

As set out above, it is essential that registration as a NDIA provider is required when providing services for ‘more complex needs’ individuals. Monitoring is required to ensure:

- staff have a higher level of skill and scrutiny;
- access to independent Communications Support Workers/Interpreters;
- codes of practice for all those working with people who are vulnerable;

- quality evaluation with reference to recommendations of the Royal Commission into Institutional Response to Child Sexual Abuse

In summary the highest level of scrutiny is required for staff working with people who are vulnerable and marginalised. A 'vulnerable person's check' needs to be developed nationally, and to be made mandatory.

- A national registration program needs to be established to audit services.
- An independent external evaluation monitoring body is required.
- An appropriate funding model developed to ensure appropriate training, scrutiny and supervision is provided for those working with 'complex need' individuals.

Recommendations included in the Ombudsman's Phase 1 Report "The Effectiveness of Statutory Oversight".²

We endorse the recommendations made by Disability Advocacy Victoria in their submission to the Committee dated 8 July 2015.

In regard to *Recommendation One* we see great value in establishing an independent oversight body that has the elements outlined in Appendix 4 of the Victorian Ombudsman's Report.

Further we agree that the Victorian Parliament Family and Community Development Committee instigate measures to strengthen the disability sector prior to the introduction of the full roll out of the NDIS.

If there is a decision to transfer the proposed powers of an oversight body to an existing organisation, we would recommend that transfer be made to the Victorian Ombudsman. It is our view that the Ombudsman presents the most professional and least conflicted statutory authority in Victoria currently, to perform this role.

In regard to *Recommendation Two* we support the need for increased funding for independent advocacy and the completion of a comprehensive assessment of the need for advocacy. We would like to emphasise the urgent need to include in the assessment process those who have communication or speech difficulties, being some of the most marginalised and vulnerable members of our community.

² Victorian Ombudsman "Reporting and Investigation of Allegations of Abuse in the Disability Sector: Phase 1- the Effectiveness of Statutory Oversight" June 2015

We agree that advocacy responsibility and administration should not sit within DHHS but equally we do not support the transfer to the Office of the Public Advocate ("OPA"). OPA's model of advocacy is sometimes in conflict with that of a person with disability and the independent advocate who is supporting the individual. This can be quite distressing for people with disabilities and their families.

In relation to *Recommendation 2 b (ii)* we agree that there is a need to ensure that advocacy organisations work consistently and use best practice approaches in their work. We believe that the best placed organisation for this role is the peak body for independent advocacy organisations - Disability Advocacy Victoria. It already has a membership of most of the independent advocacy organisation within Victoria and its membership has a wide range of learning around best practice advocacy.

Systems for handling complaints

Most registered service providers will have a documented complaints handling process. To date the experience of some people with complex disabilities, communication or speech difficulties is that these processes have structural barriers, as they rely on telephone, online systems or having a requirement to negotiate with a person who may not understand their method of communication. Many people require support from an independent advocate to make a complaint to service providers for a range of reasons, including fear of retribution, communication barriers, inaccessible complaint systems and/or not having the confidence to independently lodge a complaint.

There is a need for an independent communication support system or 'Intermediaries', as found in United Kingdom for those who are empowered to make complaints independently. A communication support service would allow an individual to access professionals trained in a variety of communication methods, and therefore allow their direct involvement. While not necessarily the responsibility of the NDIS, such issues need to be resolved in order that all people with disabilities can access complaints systems and make decisions.

A national and independent complaints body is required to investigate and take action on behalf of the participant under the NDIA beyond that of the External Merits System. A consistent method of dealing with any complaint including the provision of support for individuals during the process is essential. Advocacy agencies are already performing this role within the trial areas but within their existing budgetary constraints. For

further information and an understanding of the existing barriers within the system please refer to our submission on NDIS Quality and Safeguards (provided).

The impact of current systemic safeguards on the rights and protections of people accessing disability services

The Victorian Ombudsman in her June 2015 reports that 'the current complex landscape' is a barrier to fairness for many people. It is particularly difficult for those who have complex disabilities, communication or speech difficulties and have little or no access to online services. It is often impossible for them to directly access statutory bodies, established to protect their rights, without the support and assistance of an advocate.

Isolated, marginalised and for many without a means to easily communicate, individuals wait for an advocate to appear, or for a worker who has the commitment and time, to access an advocate on their behalf.

The lack of real assurance that statutory bodies provide to ensuring the rights of people in abusive situations are fully protected has been documented within advocacy files over many years. The landscape is littered with many reports on the inadequacies of the current statutory bodies and their ability to adequately protect people with disabilities from abuse. It is hoped that the Victorian Ombudsman's report does not become yet another one of these documents, that is – not acted upon.

To provide a contemporaneous example, the existing Disability Services Commissioner(ODSC) in Victoria has not provided people with disabilities with an effective complaints mechanism, and has caused significant dissatisfaction for individuals and advocates attempting to address complaints with service providers. The complaints about the ODSC from advocates include:

- a complex complaints registration process;
- access to the office not "disability friendly";
- it does not investigate complaints despite having the power to do so;
- when an advocate is involved ODSC staff rely too heavily on the advocate to facilitate the process;
- little understanding of complex cases;
- limitation on only providing mediation services.

From our experience the current systemic safeguards on protecting rights is dependent upon the skill of individual advocates to argue cases to those who have the statutory obligations to protect people with disabilities. This should not be the case.

2. Identify interim measures to strengthen the disability services system prior to transition to the National Disability Insurance Scheme;

Victoria has one of the strongest independent advocacy sectors within Australia, and regardless of what decisions are made under the NDIA these protections should not be diminished. The diversity of the sector provides opportunities for choice and the availability of specialist support to population cohorts that require a specialised understanding of their needs. As identified by the Victorian Ombudsman's Report, the advocacy sector is so poorly funded that its ability to act as a safeguard is diminished.

All levels of governments need to make a long-term commitment to advocacy and consumer protection to people with disabilities to ensure equity of access to services, and more importantly, their safety. Independent advocates are able to engage with their community to a far greater degree than the statutory bodies, and people with disabilities have the confidence that they will be supported to take action when their rights are not being upheld, or they are being abused.

In addition it must be remembered that an individual's life encompasses much more than only supports provided through the NDIS as shown by the data from Victorian state issues collated by both Disability Advocacy Victoria and Office for Disabilities³. Advocacy requests around care supports were approximately one third of all complaints received while the greatest areas of concern were education, access to justice, health and a means to communicate.

Whatever changes are made to the system, people with disabilities need clarity and transitional continuity of service to be maintained. Reviews and changes must occur keeping in mind the impact inappropriately handled system change may have.

³ QDC Data Collection 2012-2013

3. Measures to strengthen the capacity of providers to prevent, report and act upon abuse to enhance the capability of service providers to transition to the National Disability Insurance Scheme;

As recommended in our response to the Victorian Ombudsman Report's Recommendation One, Communication Rights and DDLS' membership would see great value in the establishment of an independent oversight body that has the elements outlined in Appendix 4 of the Report.

Adequate and consistent funding of independent advocacy organisations to engage with the independent body is essential in particular to provide support to the most marginalised and vulnerable members of the community. Advocates have a history of working closely with community members, are independent, and owned by the community they represent.

4. Identify the measures to support people with a disability, their families and informal supports to report and respond to abuse;

The supports required to enable people with disabilities to report abuse include the following.

Internal complaints procedures

Staff will only report abuse internally if they are confident they will not be victimised for doing so, and if there is a robust internal complaints system accompanied by an organisational culture that responds to complaints strongly.

Internal service provider cultures are only going to be created and maintained when government and the community make it absolutely clear that any sort of abuse and neglect of people with disabilities will not be tolerated, and that an independent oversight body will be responding strongly, with serious consequences for the service provider.

Currently, there is little incentive for service providers to make the elimination of abuse of people with disabilities a high priority.

Support for people with disabilities and family members

Family members are often reluctant to take action when their family member is abused because of their reliance on the service providers' support. Family members of people with disabilities who are non-verbal

have significant concerns about retribution against the person within the environment that the initial abuse is reported.

Two solutions to this problem are these. Firstly, that service providers, as mentioned immediately above, adopt a culture whereby the proper handling and elimination of abuse is an organisational priority. Creating an environment where staff believe they will be rewarded for reporting abuse rather than victimised, should follow.

Secondly, the advocacy sector needs to be strengthened to ensure that there is always access to independent advocacy in order that the person with a disability and/or their family member can be immediately supported in the reporting and investigation of abuse.

The Community Visitors Program, while providing an additional layer of monitoring, is not a substitute for advocacy, and does not generally provide staff members with specialised skills in communicating with people with disabilities (e.g. Deaf, Deaf/Blind, Complex Communication Needs Etc).

Independent advocates are available to provide long-term assistance if required throughout the process of reporting abuse, proceeding through police interviews, and involvement in the legal system. The legal system itself presents numerous barriers for many people with disabilities especially for those victims who have little or no speech. We have found that Police are often loath to take statements unless pressured by advocates. The difficulties people with disabilities in Victoria experience in attempting to receive proper consideration from Victoria Police has been outlined by the Victorian Equal Opportunity and Human Rights Commission.⁴

Lawyers require instructions from people with disabilities and in many cases do not accept alternative methods of communication as being viable due to ignorance. Courts also require education to ensure that a person with complex communication needs can give evidence in the communication method of their choice. Regrettably, strong advocacy is often required to ensure this access.

Overall the advocacy process is complex and multifaceted. It requires the advocate to have knowledge both of the individual and legal frameworks to be able to respond when the system presents barriers to a person with a disability.

⁴ "Beyond Doubt-Experiences of People with Disabilities Reporting Crime" 2014

5. Committee should undertake research to determine best practice approaches to how abuse of people accessing services provided by disability service providers within the meaning of the Disability Act 2006 can be prevented and this should include:

- identifying early indications of abuse;
- strategies to prevent abuse occurring;
- consideration of needs specific to particular cohorts.

Identifying early indications of abuse is inextricably linked with the willingness of staff to report such abuse, and therefore we refer to our response under 4 - Internal complaints procedures above.

Strategies to prevent abuse occurring link in with workforce issues discussed above.

Best practice research locally and internationally could build on existing work practices for vulnerable and marginalised communities. One vital area of importance for people with complex communication needs is having a means to communicate which is accepted without question by others. Communication Rights' advocacy practices have been developed from international research through audit tools adhering to a human rights framework. Data has been collected over the last five years, evaluated, and constant refinement of work practices occur to ensure best practice is achieved.

Strong and effective advocacy is best achieved through evidence-based approaches. Communication Rights has existed for over 30 years and DDLS for over 20 years. Both organisations have established a reputation for providing reliable and trustworthy responses to people requesting service, and employing staff who have developed a specialisation in disability.

Villamanta Disability Rights Legal Service has also developed a specialisation in working with people with disabilities.

Such organisations are well-placed to feed into any research regarding best practice. However it is important that a broader framework be considered other than only "*services provided by disability service providers within the meaning of the Disability Act 2006.*"

If society and government are going to take a holistic approach to eliminating as much as possible, violence, abuse and neglect of people

with disabilities, then the model that the national Senate Community Affairs Committee has recently taken is preferred. It is not acceptable that some areas of service provision in Victoria have stringent requirements to ensure the prevention of abuse, or the proper response to reports of abuse, and others do not. It is not acceptable that adults with disabilities receive regulation and protection, but children with disabilities in schools, do not.

6. Examine the powers and processes of Victorian investigation and oversight bodies with jurisdiction over abuse of people with a disability, with particular focus on the ongoing role of these bodies in the context of the National Disability Insurance Scheme;

We refer to the conclusions reached, and the recommendations made in the Victorian Ombudsman's Report.

Recommendations

Recommendation 1

A single independent oversight body containing the elements in Appendix 4 of the Victorian Ombudsman's Phase 1 should be established.

Recommendation 2

The independent oversight body should be newly established, becoming part of or informing a new national body charged with the oversight of complaints about disability service provision throughout Australia.

Recommendation 3

If it is the case that the Victorian Government decides to transfer oversight responsibility to an existing agency, our first preference is that this agency be the Victorian Ombudsman.

Recommendation 4

The Victorian Government undertake a comprehensive assessment of the advocacy needs of people with a disability.

Recommendation 5

An independent body is established with the responsibility of administering the funding for advocacy agencies.

Recommendation 6

Disability Advocacy Victoria is funded to provide oversight to advocacy services to ensure consistency and best practice.

Recommendation 7

Human rights needs to be strongly articulated throughout any NDIS or non NDIS quality and safeguards framework, influencing both practice and complaints mechanisms to ensure those rights are the overarching determinant in decision making for participants.

Recommendation 8

A vulnerable person's check be created as set out in this submission.

Recommendation 9

An independent communication support system or 'Intermediaries', is investigated to be modelled on the United Kingdom system to ensure people with complex communication needs can make complaints independently.

Recommendation 10

Any positive approaches and decision-making to ensure the reduction and elimination of the abuse of people with disabilities cover all areas of services to people with disabilities, including children.

Recommendation 11

A review of the funding to disability service providers take place in order to ascertain the impact of, and the relationship between low wages, unskilled staff and abuse.