



Office of the Public Guardian (Queensland)

Submission to the Senate Community Affairs References Committee

Inquiry into violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability



Background to the Public Guardian

On 1 July 2014 a new independent statutory body—the Office of the Public Guardian (OPG)—was established to protect the rights and wellbeing of vulnerable adults with impaired decision making capacity, and children and young people in out-of-home care (foster care, kinship care), residential care and youth detention.

The OPG combines the roles that were previously separately undertaken by the Adult Guardian and Child Guardian and has special responsibilities to support and protect the rights of children and young people in the child protection system. The OPG supports children in care through two specific programs; the community visitor program for children in care, which aims to ensure children and young people in the child protection system are safe and well and are being properly cared for, and the child advocacy program, which gives children in care an independent voice, ensuring their views are taken into consideration when decisions are made that affect them.

Children and young people in out-of-home care have particular needs that must be addressed in order to ensure their safety and improve their emotional, physical and psychological wellbeing.

The Charter of Rights for a child in care under the [Child Protection Act 1999](#), section 74 and Schedule 1 describes the core rights that apply to every child and young person who is in the child protection system and includes the right to be provided with a safe and stable living environment and to be placed in care that best meets their needs and is culturally appropriate.

The OPG also works to protect the rights and interests of adults who have an impaired capacity to make their own decisions, recognizing that everyone should be treated equally, regardless of their state of mind or health.

Our charter with respect to adults with impaired capacity is to:

- Make personal and health decisions if we are their guardian or attorney
- Investigate allegations of abuse, neglect or exploitation
- Advocate and mediate for people with impaired capacity, and educate the public on the guardianship system.

The OPG also provides an important protective role in Queensland by administering a community visitor program to protect the rights and interests of the adult with impaired capacity if they reside at a visitable site.

The [Public Guardian Act 2014](#) and [Guardianship and Administration Act 2000](#) set out our legislative functions and powers and the [Powers of Attorney Act 1998](#) regulates the authority for adults to appoint substitute decision-makers.



Position of the Public Guardian

The Public Guardian welcomes the opportunity to respond to the Senate Standing Committee on Community Affairs inquiry into violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability.

In the 2013-14 financial year, there were 2,774 persons for whom the Adult Guardian (now the Public Guardian) was appointed as guardian. These individuals would struggle to either detect or report instances of violence, abuse and neglect on their own. Of this cohort, approximately 40% have an intellectual disability, with almost one quarter of guardianship clients having diagnoses of complex co-morbidities and behavioural issues, requiring specialist disability and mental health services.

Background

Violence, Abuse and Neglect and criminal behaviour

Using the terms 'violence, abuse and neglect' can be a problematic in itself. The language of 'violence' and 'abuse' of people should never divert attention from the criminal nature and seriousness of matters of rape, theft or assault perpetrated against persons with disability. So, while there are many different facets of 'abuse', including physical, sexual, psychological, financial, exploitation, emotional, verbal, institutional, chemical, restraint, bullying, and aggression, it is important to recognise that in many cases, 'abuse' may in fact amount to a criminal offence. The seriousness of this should not be diminished through the use of language of 'abuse and violence'.

Heightened risk of violence, abuse or neglect for persons with disability

People with impaired capacity are amongst the most vulnerable members of our society. Persons with intellectual, mental and cognitive disability have a greater vulnerability to abuse than the rest of the general population. They are often exposed to specific and additional risk factors not experienced by persons without disability, particularly if they are residing in residential or institutional settings and reliant upon day to day support from informal or formal care givers. In addition to this, having a disability is only one part of the picture, with persons with disability being at heightened vulnerability to social disadvantage through social isolation.

Research suggests persons with disability, both adults and children, are more likely to be victims of violence and are at a higher risk of violence and abuse than their non-disabled peers.¹ Children with disability, often have increased layers of protection available to protect against a risk of abuse or ensuring reports of abuse, particularly where there are mandatory requirements to report acts or risks of significant harm to children. However, children with disability are still at a greater risk of violence being perpetrated against them, than their peers without disability. The WHO Department of Violence and Injury Prevention

¹ See Hughes, K., Bellis, M.A., Jones, L., Wood, S., Bates., G., Eckley, L.,... Officer, A., (2012) "Prevalence and risk of violence against adults with disabilities: A systematic review and meta-analysis of observational studies", *Lancet*, 379, 1621-1629; and Jones, L., Bellis, M.A., Wood, S., Hughes, K., McCoy, E., Eckley, L.,... Officer, A., (2012). "Prevalence and risk of violence against children with disabilities: A systematic review and meta-analysis of observational studies", *Lancet*, 380, 899-907



and Disability reviewed the prevalence and risk of violence against children with disabilities and found that up to a quarter of children with disabilities will experience violence within their lifetimes, and are three to four times more likely to be victims of violence than their peers without disability.²

Data collected by the OPG regarding children with disability in the child protection system appears to indicate that children with disability are slightly more likely to be placed in a residential setting than children with no disability. As of 1 March 2015, of the children in care visited by OPG community visitors, 23% (1,556) were reported as having a disability. Of these, 37% identified as Aboriginal and Torres Strait Islanders.

Both children and adults with disabilities *in all settings* should be viewed as high-risk groups,³ whether they live in institutions, residential settings or elsewhere. It is therefore important that governments provide for strong protection measures to enable early intervention and prevention of violence, abuse and neglect in all settings of disability care.

Elevated risk of violence, abuse and neglect particularly for those with complex and severe cases of intellectual, mental or cognitive disability

Perpetrators of abuse often choose their victims because of the victim's intellectual, cognitive or mental disability, figuring that detection is unlikely, and will seek out individuals because of their apparent 'passivity, vulnerability, lack of believability and cognitive ability'.⁴

There are clear gaps in the research in relation to the prevalence and risk of violence to persons with disability. Nearly all the studies regarding violence and abuse have been conducted with respect to individuals with mild to moderate intellectual or cognitive disability. Generally individuals with high-level disabilities, particularly communication difficulties (which may or may not be due to their intellectual impairment) have been excluded from such studies due to challenges of engaging with them. This cohort remains particularly vulnerable to risk of abuse. They are often highly dependent upon care and support, and may be dependent upon their abuser for essential daily care. They are often unlikely or unable to disclose violence, living in a residential or institutional setting, with impaired communication skills. These individuals are vulnerable by virtue of their high level of impairment regardless of their care.

For those with more complex and severe cases of intellectual or cognitive disability for whom the Public Guardian has guardianship, these matters are complicated. These individuals are often socially isolated in residential or institutional settings not only due to their disability, but also because of their personality, challenging behaviour and the absence of family or any other appropriate person in their life who is able to act as guardian for them. The government is obligated to ensure there are strong protective measures in place that oversight and monitor disability service provision and supports, to ensure that the most vulnerable members are safe from the risk of violence, abuse and neglect.

² Jones, L., Bellis, M.A., Wood, S., Hughes, K., McCoy, E., Eckley, L.,... Officer, A., (2012). "Prevalence and risk of violence against children with disabilities: A systematic review and meta-analysis of observational studies", *Lancet*, 380, 899-907

³ *Ibid.*, Jones et al., (2012) "Prevalence and risk of violence against children with disabilities" at 906

⁴ Gill, M. (2010) "Rethinking sexual abuse, questions of consent, and intellectual disability" *Sexuality Research and Social Policy*, 7(3), 201-213 at 203-4



Senate Terms of Reference

1. The impact of violence, abuse and neglect on people with disability, their families, advocates, support persons, current and former staff and Australian society as a whole

There is significant evidence of the impact of violence and abuse within the general population. Violence clearly has far-reaching and life-long consequences, both for a victim's mental and physical health, and their social functioning.⁵

Understanding and identifying abuse requires recognition of the complex nature of abuse, particularly in circumstances where the victims have intellectual, mental or cognitive disabilities and the abuse occurs in residential or institutional settings. In such cases, there is a risk that victimization may even lead to the abused individual becoming an abuser themselves, amplifying the imperative for effective mechanisms in services and independent monitoring directed towards preventing abuse happening in the first instance.

Recommendation:

Taking into consideration the issues raised in the rest of this submission, it is recommended that focus be directed towards encouraging research and data collection in relation to the impact of violence, abuse and neglect upon persons with disability in all care settings. Research should be conducted in such a manner as to not re-traumatise highly vulnerable victims of potential crime. However, a greater understanding of the impact of violence could benefit improved tailoring of therapeutic responses and care for people with intellectual, cognitive or mental disability who have experienced abuse, and may assist in the identification of early warning signs of abuse.

2. The different legal, regulatory, policy, governance and data collection frameworks and practices across the Commonwealth, states and territories to address and prevent violence, abuse and neglect against people with disability

Protective role of the Public Guardian

It is an adult guardian function of the Public Guardian to 'protect' an adult with impaired capacity from neglect, exploitation or abuse.⁶ The Public Guardian may investigate any complaint or allegation that an adult with impaired capacity is being, or has been neglected, exploited or abused.⁷

The Public Guardian has specific powers to protect against abuse of an adult with impaired capacity. These include the power to suspend the operation of all or some of an enduring power of attorney's power if there is reasonable grounds to suspect that the attorney has neglected their duties or abused their powers.⁸ The Public Guardian may also apply to the Queensland Civil and Administrative Tribunal (QCAT) for a warrant to enter and remove an

⁵ See Mikton, C., and Shakespeare, T., "Introduction to special issue on violence against people with disability." *Journal of Interpersonal Violence* (2014), 3055-3062 at 3057 for studies conducted on long-consequences of violence upon victims.

⁶ See section 12(1)(a) of the *Public Guardian Act 2014*

⁷ See section 19(a) of the *Public Guardian Act 2014*

⁸ See section 34(1), (2)(b) of the *Public Guardian Act 2014*



adult where there are reasonable grounds to suspect immediate risk of harm, because of neglect (including self-neglect), exploitation or abuse.⁹

Investigations by the Public Guardian

The OPG also safeguards the rights and interests of persons with impaired capacity by investigating allegations of neglect, exploitation and abuse. Where a criminal offence is suspected, the matter is referred to the police for their investigation. However, the investigative function is dependent upon allegations of abuse being reported to the OPG, and is not a pro-active investigative power. Not being a proactive investigative power, the initiation of an investigative process relies upon families or carers, or others involved in the person's life, to identify that the person is at risk of abuse. The risk is that some cases of abuse, neglect or exploitation of persons with impaired capacity, particularly those who are socially isolated, may remain unreported.

Under its investigative powers, the Public Guardian has the power to require people to produce records and accounts; gain access to any relevant information, including medical files, or issue a summons to a person requiring them to provide information.¹⁰

Investigations of allegations of abuse may include but are not limited to:

- physical
- sexual
- psychological (such as threats and harassment)
- financial (such as misusing a person's money)
- neglect (such as withholding medication or not providing regular food)
- exploitation (such as taking advantage of the person)
- abuse of power of attorney (such as under an Enduring Power of Attorney the person may not be acting in the interests of the person with impaired capacity)

The purpose of an investigation is to identify the level of risk for the vulnerable person and the action needed to best protect them. Investigations gather evidence to find out whether the allegations can be substantiated on the balance of probabilities. Where possible, the OPG tries to resolve allegations informally, however if necessary, the OPG also refers matters to the police or where relevant, to QCAT.

The OPG has limited powers when determining neglect, exploitation and abuse and does not have the power to prosecute cases of abuse. The primary focus of an investigation is to determine whether the decision-making support or care is deficient and amounts to neglect, exploitation or abuse, and then help the person with impaired capacity obtain better arrangements for their support and care.

The OPG recognises that a person being harmed may not be able to report it, or be in a position to report it. In such circumstances, the OPG works with carers, support providers and family members to immediately report suspicions of abuse to the agencies involved with the person's care, and also to report the matter to the OPG or the police directly where a criminal offence is suspected.

⁹ See section 36 of the *Public Guardian Act 2014* which empowers the Public Guardian to apply to QCAT under section 148 of the *Guardianship and Administration Act 2000* for a warrant to enter and remove the adult with impaired capacity.

¹⁰ See Chapter 3, Part 3 of the *Public Guardian Act 2014*



There may be some complaints which the OPG cannot investigate, for example, if the person does not have impaired capacity or if there is a more appropriate body to investigate an allegation. In these cases, where the OPG has been advised of an issue outside of its jurisdiction, the OPG will refer the matter to the appropriate agency.

Investigations of a complaint might also reveal that an adult with impaired capacity has inadequate decision-making support in place. In these cases, one option might be for the adult to have a formal guardian appointed to make certain personal decisions on the person's behalf, or for an administrator to be appointed to make financial decisions. However, QCAT is responsible for determining the outcome of this matter – not the Public Guardian. An application would therefore be made to QCAT to determine the most appropriate person to make decisions for the adult for personal or financial matters. QCAT may determine that the most appropriate person to make these decisions is someone from the adult's supportive network, such as a family member or a friend. As a last resort, the Public Guardian can be appointed guardian for a personal matter where there is no one else more suitable.

Community visitors Program

Role of Community Visitors

The Public Guardian appoints community visitors on a casual basis to protect the rights and interests of adults with intellectual, psychiatric or cognitive disability. Community visitors provide a rights protection and abuse prevention service to more than 6000 Queensland adults who may be subject to abuse, neglect or exploitation due to their impaired decision-making capacity resulting from disability.

Community visitors make inquiries and lodge complaints for, or on behalf of, residents of visitable sites. Community visitors have the power to refer complaints to an external agency—for example, the Department of Communities, Child Safety and Disability Services (DCCSDS), Queensland Health, or the Residential Services Unit where appropriate.

Issues that may be enquired into by a community visitor include:

- adequacy of services provided for assessment, treatment and support
- appropriateness of standards of accommodation, health and wellbeing
- provision of services in a way that is least restrictive of the person's rights
- adequacy of information available for consumers about their rights
- operation of an accessible and effective complaints process

OPG community visitors can also inquire into other matters at the request of the Public Guardian and refer unresolved complaints to external agencies for investigation or resolution.

Visits to accommodation sites

The OPG's adult community visitors independently monitor three different types of accommodation called 'visitable sites' where vulnerable adults live. Visitable sites are:

- disability accommodation provided or funded by DCCSDS
- authorised mental health services
- private hostels (level 3 accreditation)



Adult community visitors conduct regular visits to more than 1,200 visitable sites across Queensland. These visits are unannounced so that community visitors can observe the standard of service delivery provided by the site on a typical day. However, when they attend a site, community visitors are required to:

- notify staff when they arrive at the site
- discuss any concerns with consumers and staff
- clarify any issues when reasonable and practical to do so
- resolve complaints by or for a consumer
- report to staff when leaving the site.

When on the site, the community visitor has legislative authority to: access all areas of a site; require staff to answer questions; request documents related to the support of adults with impaired capacity at the site; make copies of relevant documents; and talk in private with the adults, or staff at the facility. At the end of each visit, the community visitor then produces a report which is sent to the service provider and the Public Guardian.

Community visitors perform an essential function of being independent ‘eyes and ears’ on the ground who are able to identify issues that others (including family) may not be able to see.

Child community visiting program

The child community visitor program has a different focus to that of the adult program. It is focused upon providing help and support to the most vulnerable children and young people in out-of-home care, residential care, mental health facilities, and young people in detention or prison.

The child community visitor program was re-focused following the Queensland Child Protection Commission of Inquiry’s Report, *Taking Responsibility: A Roadmap for Queensland Child Protection* published in June 2013. However, there are observations made under this report that may be of relevance to quality and safeguards and developing a nationally consistent program for community visitors for persons with disability. This report concluded that there was little benefit from visiting children and young people in stable child protection placements or those who simply didn’t want to be visited. The report proposed that the community visitor program be re-focused upon children and young people in the child protection system considered to be the most vulnerable and who would therefore benefit from more regular visits from the community visitor. Therefore, under this revised program, whether a child or young person receives a regular visit from the community visitor depends upon their particular *needs* and *vulnerabilities*. If they are in long term care, or well-settled in their placement, the community visitor may visit them less frequently or not at all. A child or young person may also request that they no longer receive visits from the community visitor if they so wish.

Recommendation

It is recommended that an effective quality and safety framework should incorporate a community visitor program for monitoring and oversight of the services delivered. However, consideration should be given to focusing upon the *most vulnerable* and identifying those that would benefit most from regular visits by a community visitor.



Safeguards and visiting schedules could then be dependent upon the *individual needs* and *vulnerabilities* of the person with disability, maximising the benefit to those who are most at risk of violence, abuse and neglect.

3. What needs to be done to protect people with disability from violence, abuse and neglect in institutional and residential settings in the future, including best practice in regards to prevention, effective reporting and responses

Protection from violence, abuse and neglect is needed in all care settings

Appropriate and effective protection should be founded on the premise that the risk of violence and abuse towards persons with disability occurs in all service and support settings.¹¹ People with disability should be able to feel 'safe' from violence, abuse or neglect regardless of where they live, and who they receive support and care from.

Recommendation

There need to be mechanisms in place for early intervention and prevention and elimination of violence, abuse and neglect in all settings, whether institutional, residential or at home.

Protection must be appropriate to differing functional abilities, individual vulnerabilities and needs

All persons with disability have the equal right to be protected from violence, abuse and neglect. However, not all persons with disability have an equal ability (regardless of supports and skills provided) to protect themselves, identify abuse, or to speak out regarding violence, abuse and neglect.

Vulnerability to abuse also needs to take into consideration the broader social dimension and the social isolation that many individuals with disability face. It is essential that protection encompasses measures to enhance a person's ability or capacity to engage in meaningful social interactions. Through undertaking significant activities in the community, and development of work and life skills, early intervention measures could assist the person to develop peer and work relationships that break down the barriers of social isolation. Similarly, measures should be taken to build the capacity of the person to self-advocate, as much as possible, promoting the person's autonomy and empowerment to make their own decisions.

In this context, protective measures need to accommodate the issue that persons with cognitive or intellectual disability who have impaired communication skills may be at risk of being misinterpreted and misunderstood. This may adversely impact upon their ability to exercise their legal rights and may compromise their safety and functioning. Developing the skills of people with disability to recognize and report abuse or violence is of extreme value. However, for those with severe and complex disability, for whom developing such skills may be more of a challenge (or even impossible), greater levels of external and independent protection should be provided in proportion to the *needs* and *vulnerability* of the person with disability, to enable them to be effectively protected against acts of violence and abuse.

¹¹ Cambridge, P., Beadle-Brown, J., Milne, A., Mansell, J., & Whelton, B. (2011) "Patterns of risk in adult protection referrals for sexual abuse and people with intellectual disability", *Journal of applied research in intellectual disabilities*, 24(2), 118-132 at 125



Recommendation

Protective measures should be pro-active, intervention should be early, be preventative, proportional and individualised with respect to the vulnerability and needs of the person with disability, ensuring that those who are most vulnerable can benefit from strong and external protective measures safeguarding against violence and abuse.

The need to build a strong evidence base to identify risk and protective factors

Studies have shown there are certain risk factors and patterns of abuse. These risk factors include recognition that almost all known perpetrators of sexual abuse of people with intellectual disability are men, the largest group being men with intellectual disability themselves, followed by staff and family members as the next largest group of known perpetrators.¹² Likewise, studies have shown that victims of abuse are not gender specific. Both women and men with intellectual disability are vulnerable to abuse. Identifying other risk factors associated with violence, abuse and neglect are critical to developing appropriate and effective protection mechanisms to prevent and respond abuse.

There is a need to develop a stronger evidence base to identify risk and protective factors relevant to persons with mild, moderate and severe disabilities, particularly for those with complex behaviours and needs. This evidence should inform development, evaluation and review of any quality and safeguards framework.

Recommendation

In order to provide appropriate and effective protection from violence, abuse and neglect, there needs to be commitment to funding research and developing an evidence base to identify the precise risk factors associated with individuals with cognitive, mental or intellectual disability who may be either victims, or at risk of violence, abuse or neglect.

Need for clear systems responsibility for service providers and government

It is the responsibility of the government to ensure that the rights and interests of its citizens are protected. This is even more critical when those citizens are highly vulnerable to abuse and violence. Even if service providers are responsible for the practical measures to ensure rights are protected, it is the state's responsibility to ensure these rights are enshrined in law, protected, monitored and enforced.

Protection mechanisms should include recognition and reporting mechanisms at the individual, service and Government levels. Individuals should be equipped as far as possible with skills to recognize and report abuse. However, raising these issues and empowering people with disability to address abuse, can lead to further distress being caused to a person, particularly where skill development may disclose previous incidence of abuse. Protective systems should therefore address not only prevention and intervention, but also obligate support to be provided to the individual following abuse.

Where programs seek to develop independent style 'consumers' within the most vulnerable in the community, to enable them to recognize and report abuse, there must still be a systems level responsibility with robust powers of inquiry, investigation and oversight over

¹² Cambridge, P., Beadle-Brown, J., Milne, A., Mansell, J., & Whelton, B. (2011) "Patterns of risk in adult protection referrals for sexual abuse and people with intellectual disability", *Journal of applied research in intellectual disabilities*, 24(2), 118-132 at 125



service providers. Individuals with complex and severe intellectual, mental or cognitive disability are often unable or restricted in their ability to develop skills. They remain extremely vulnerable to on-going abuse if there are insufficient oversight mechanisms engaged by service providers, independent monitors and government to ensure against abuse.

While abuse may be perpetrated by a carer or service provider, in a residential or institutional context, persons with disability are just as vulnerable to violence or abuse from other members of the residence, as they are from a carer. Early intervention and prevention mechanisms should be in place in the service to ensure identification of risk factors and prevent abuse from happening. It is the responsibility of the service provider in the first instance, to recognize, respond, report and record cases of violence, abuse and neglect. The risk of poor recognition and under-reporting may mean that the data relating to prevalence of abuse is significantly under-estimated.

All health care and support staff within residential and institutional settings should have a professional and legislatively obligated responsibility to speak out and report suspected abuse. Service agreements and the development of national quality and safety standards should have a 'zero tolerance' attitude towards violence, abuse and neglect, ensuring that staff address issues of abuse by carers, as well as ensuring residents in the institution or residential care service are safe from violence and abuse from other residents. Reporting of abuse should be encouraged so that staff do not remain silent, and are ensured that reporting will be taken seriously and addressed through the appropriate channels. Without agreed national standards, there is ongoing risk of inconsistent approaches across services in every state towards violence, abuse and neglect across services, leaving staff to develop their own informal thresholds of what is considered to be violence, abuse or neglect.

Systems responsibility within a quality and safeguards framework should incorporate reporting mechanisms. This could include annual reporting on violence, abuse and neglect as part of the monitoring of the service funding agreements and improvement of service provision.

Protection mechanisms are also required at Government level to ensure that services comply with policies and procedures and address issues and risk of violence, abuse and neglect. In particular, it is important to maintain independent, robust oversight to address potentially abusive cultures in organizations and services, and to identify and address issues related to a breakdown in care relationships. Government should ensure that there are a suite of protective measures along a continuum of protective measures from early intervention, reactive responses to allegations of abuse, through to prosecutorial powers for abuse, violence and neglect.

An independent complaints mechanism separate from funding and service provision is a critical element of any protective framework to guard against and prosecute cases of violence, abuse and neglect.

Legislatively empowered oversight mechanisms should also oversight the use of any restrictive practices to ensure that best practice is complied with and that the use of



restrictive practices does not amount to abuse through the misuse of physical interventions. The framework should ensure that service provision and clinical care are focused upon the reduction and elimination of the use of restrictive practices.

Recommendation

- a) Development of a suite of protective measures across the spectrum of early intervention, prevention, investigative, and through to prosecutorial powers for violence, abuse and neglect.
- b) Robust oversight at the government level should include continuation, expansion and strengthening of existing investigation mechanisms such as the community visitor program to pro-actively protect the rights of persons with mental impairments and vulnerable persons living in such settings.
- c) Creation of an independent complaints mechanism separate from funding provision and service delivery to ensure independent and impartial oversight and review of complaints.
- d) It is also recommended that whistle-blower schemes such as those enabled under the *Public Interest Disclosure Act 2010* (Qld) enable disclosures of abuse and violence to be disclosed in the public interest and should be mirrored in any safeguards framework
- e) Best practice in services should ensure that:
 - When people with impaired capacity disclose abuse, they are listened to, believed and appropriate action is taken to ensure the safety of the person and reporting of the abuse to the appropriate authorities
 - Staff are aware of how behavioural changes can be an indication of abuse
 - Ensure that psychological support is available in a timely manner for people with intellectual, mental or cognitive disability who are abused
 - Good record keeping, processes of resolution of reports of abuse, and transparency in resolution of allegations of abuse, to enable government to efficiently oversight policy and practice in services

4. The role of the Commonwealth, states and territories in preventing violence and abuse against people with disability

Under Article 16 of the United Nations Convention on the Rights of Persons with Disabilities, the State is responsible for taking 'all appropriate legislative, administrative, social, educational and other measures' to protect persons with disabilities from exploitation, violence and abuse. Domestic law should incorporate recognition of Australia's commitment to this Convention and recognize the role of Government to ensure that there are appropriate measures in place to: prevent abuse; effectively and appropriately respond to allegations of abuse; and ensure appropriate post-abuse support is provided to foster the health, welfare and well-being of the person with disability, appropriate to their age, culture and gender.

Predators are indifferent towards society's most vulnerable, and invariably, actively seek out those who are unable to speak out for themselves. It is the role of government to ensure that those who are particularly vulnerable and unable to protect their own rights and interests, should not only have services held responsible for their safety, but also have the added security of appropriate and efficient monitoring by an independent government agency (such as a Disability Ombudsman) with strong oversight and enforcement powers.



Recommendation

- a) Government has the responsibility to ensure that carers and support workers are effectively screened to ensure that only appropriate persons are employed in services funded by the government to provide disability support services. Government should also undertake a monitoring and oversight role, through investigative and independent community visitor programs, possibly operated through a new office of the Disability Ombudsman, to ensure that people with impaired capacity who are at risk of violence, abuse or neglect are identified, protected and supported.
 - b) As the government is increasingly distanced from direct service provision through funding arrangements with non-government service providers, greater consideration should be given to mandating reporting requirements for abuse, violence and neglect of people with impaired capacity on a nationally consistent basis, similarly to mandatory reporting requirements in the child protection system.
5. The challenges that arise from moving towards an individualised funding arrangement, like the National Disability Insurance Scheme, including the capacity of service providers to identify, respond to and prevent instances of violence, abuse and neglect against people with disability

Individualised funding arrangements are predicated on the ability of a person to be able to freely choose their own funding and supports. It is primarily suitable for those with mainstream disability needs, rather than for those with moderate to severe impaired capacity and complex needs requiring specialist disability supports. Even if people with a mild to moderate intellectual or cognitive disability are able to be supported to choose their own funding and support arrangements, substantial (in some cases 'full') support may be required for people with complex and severe intellectual and cognitive disability.

Individuals who have guardians appointed to make personal or financial decisions generally lack both the ability or resources to contract as 'consumers' with support providers, and have minimal or no appropriate support networks in the community.

Under current funding arrangements, a disabled person with complex needs and severe mental, cognitive or intellectual impairment is unlikely to be able to live independently, on their own, in the community. The funding required for the substantial support package that would be required to enable the person to live independently with 24/7 care is often too costly for government. Even with movement towards individualised funding arrangements, this scenario is unlikely to change. Therefore it is likely that due to the high support needs of these individuals, they will continue to have to reside in a group or residential supported accommodation setting and will still have to rely heavily upon others to assist them in 'choosing' supports and services.

Individualised funding arrangements should include the provision of 'case management' roles for those who need assistance with managing their own individualised funding arrangements, until the person develops the ability to independently manage their own arrangements. Case management would be able to identify issues early on where there are situations of abuse, violence or neglect, and assist the person to negotiate with the service provider to address the issues highlighted. Case managers could provide robust representation early on in the assessment process and negotiation of service provision, and



ensure that services are delivered as expected. They would also be able to address issues such as crisis planning and ensuring that emergency services are coordinated and provided to a person when a service provider fails to provide critical services.

Individualised funding for support programs and skill development are predicated on the basis that these funding arrangements will change the dynamics of the power relationships. This may be the case in many circumstances. However, there are many circumstances in which the power dynamic will not be altered and clinical capacity needs to be developed for staff to identify, respond to and prevent abuse from occurring. There will always remain a cohort such as those under guardianship orders, (who although small in numbers), who due to a variety of reasons (whether related to their disability and social issues), are unlikely or unable to ever obtain the full benefit of the individualised funding arrangements and be fully independent 'consumers' of disability services and supports, regardless of supports provided.

The hardest cases, such as where the person has severely impaired capacity and complex behavioural needs, highlight the need for safeguard measures and the need to build the capacity of clinicians and support workers to address these needs and how to understand and recognise the person's concerns. In such cases, a great deal of labour and time would need to be invested through spending time with the person to determine their needs and concerns. Therefore, not only is the building of capacity required, but also sufficient funding for the labour intensive nature of this work. Building capacity also includes training and equipping clinical and support staff to understand the complexity of communication in clinical encounters involving language barriers, in order to recognise signs and risk of abuse for those in their care.

While much of the capacity building of the workforce is often left to the disability sector, government is responsible for ensuring that the capacity is adequate to meet the needs. Government needs to address the existing gaps in capacity, which include the ability to provide specialist disability services, and provide those services in remote or rural locations in a way that is culturally appropriate, particularly for vulnerable indigenous persons with disability. A key issue of capacity building is also ensuring crisis support management plans exist. If abuse or violence is identified and the service provider is unable to deliver services, there need to be adequate strategies in place to ensure that a vulnerable person with disability who is highly dependent upon support is provided with emergency disability support services.

Recommendation

Funding and investment is required to create a specialist disability workforce able to provide labour intensive 2/47 care, particularly in remote and rural locations. These services also need to be equipped to meet emergency support situations should service provision fail due to identification of abuse or violence.

Government should also ensure that specialist training is carried out by service providers that builds the skills of support workers, to meet specialist disability needs and help them to identify issues of abuse or violence, particularly for those with heightened vulnerabilities.

6. What elements are required in a national quality framework that can safeguard people with disability from violence, abuse and neglect in institutional and residential settings.
 - a) A national quality framework should safeguard people with disability from violence, abuse and neglect by addressing the personal and systemic barriers that people with mental disability face to full participation in society. This includes not only supporting the person to develop skills to overcome barriers, but also recognising that government has the responsibility for breaking down systemic barriers through robust oversight, monitoring and enforcement of safeguards, particularly for the most vulnerable.
 - b) A safeguard system cannot assume that all barriers to access will be broken down by provision of 'support' mechanisms to people with disability, motivated by the ideal that all people with disability will become 'consumers' able to navigate the market based system, recognize abuse and report it. A safeguards and quality system, that also builds the abilities and capacities of persons with disability, needs to be adaptable to being scaled up or down dependent upon an individual's needs or risk factors, and should not be based upon a market based scheme of 'consumer' complaints.
 - c) An appropriate and effective national quality framework, needs to realistically address the fact that while some people with disability will be able to be supported and equipped with skills to address and report violence, abuse and neglect, there will still be people, including those with complex or severe intellectual, mental and cognitive disabilities who will not be able to address these barriers without significant ongoing support, or may never be able to address these issues at all.

There is scant evidence to verify the effectiveness of programs to prevent violence against persons with a disability, or prevent recurrence, or mitigate its consequences once it has taken place, particularly for those with severe intellectual or cognitive impairments such as those under guardianship orders. Behavioural and cognitive programs generally focus upon individuals with mild or moderate intellectual or cognitive disabilities, and do not necessarily address the needs and vulnerabilities of persons with more severe forms of intellectual disability, or those with challenging behaviours, or severe communication challenges. Therefore not all individuals will have, or develop, the ability to reach the level of 'adept independent consumer' as assumed by the NDIS framework. A quality and safeguards framework therefore needs to have a robust mechanism by which government can proactively investigate and inquire into rights protection and safeguarding against violence, abuse and neglect in *any* service or setting, particularly for those who are not able, or struggle to engage, in a market based system.

While systems and processes, (such as complaints systems) can be made more accessible for some individuals, without appropriate and effective measures and safeguards which are proportionate to the vulnerability of the individuals concerned, some systems will remain 'inaccessible'. The most vulnerable of this cohort may not be able to reach the level of perception and understanding required to identify and speak



out about abuse and violence, let alone navigate an abuse reporting process.

Individualized and proportional safeguards are needed according to the measure of vulnerability of the person, with overall responsibility residing with the state to ensure that pro-active measures are taken to engage with individuals and services to help identify and resolve issues of risk of abuse, violence and neglect.

With all these factors taken into consideration, and in light of the heightened vulnerability of those under guardianship orders, it is essential that any national quality framework has a strong protective framework that enables reporting and investigation of violence, abuse and neglect, and prevention and early intervention. While initial monitoring and oversight should be the responsibility of the service provider, the framework should legislatively empower the state with a pro-active, inquisitorial, audit-like role to protect against, identify and investigate and prosecute violence, abuse and neglect to ensure those who continue to be vulnerable are protected, regardless of the extent and level of supports provided to strengthen their own reporting abilities. Additional mechanisms, such as pro-active and relational community visitor programs and independent advocacy organizations are key to identifying and addressing risk of violence and abuse, and ensuring that action is taken.

- d) Sufficient legislative protection should also be provided within any framework for those who complain or whistle-blow. The individual in question, families, carers, visitors, or staff all need to feel safe to report issues. There should be appropriate legislative, policy and procedural protections in place to reduce and eliminate fear of retribution or reprisal for speaking out. It is essential that any framework deals appropriately and effectively with the fear that no services will be available to the person with disability, should a complaint be made. Where a person's support needs are high and complex, there are often less service providers available, particularly in regional, rural or remote areas and the threat of no other support being available is a real and genuine fear should a complaint be made. Therefore any quality service provision framework, needs a localised response plan that places responsibility upon service providers to provide emergency or interim arrangements to meet the person's needs where there are cases of abuse, while other more permanent arrangements are made.
- e) The existing protective mechanisms in Queensland, such as the yellow and blue card system, complaints mechanisms, guardianship and community visitor programs are not comprehensive protective mechanisms, but do have a significant place in providing protection against abuse, but remain limited in the protections that they can provide.

Government should be legislatively empowered to both de-register and enforce strong penalties against violence, abuse and neglect. Registration and de-registration of individuals seeking to work with vulnerable persons should be legislatively mandated, rigorous and of the highest quality and standard, to ensure the vetting and barring of persons from employment or support of persons who may be a risk to those needing disability services or supports. Such a process could include ensuring criminal



background checks (including spent convictions) are conducted on prospective employees.

While service providers should be responsible for vetting of individuals (particularly those engaged in direct contact and disability support), there should be legislative requirements placing responsibility upon the providers to tailor their vetting of workers to meet the individual vulnerabilities of the person in question. Vetting of persons for employment should not necessarily be contingent on the nature of the service provided, but should primarily be contingent upon the *vulnerability* and *needs* of the person with disability. For example, ensuring that staff are safe to work with participants should require the service provider to take into consideration that gardening services to a person with heightened vulnerability, such as a person with complex or more severe disability who is less equipped to protect themselves from abuse or violence, may require higher levels of scrutiny and screening for employment than for 'less vulnerable' persons. Workers and service providers should be able to be de-registered for failing to conform to best practice standards, or be found to have committed an offence where they have unreasonably failed to protect a person from violence, abuse or neglect.

- f) In order to evaluate the effectiveness of any national quality frameworks, there need to be mechanisms for effective and consistent recording and monitoring of data, in order to improve the long term quality and comparability of data. Government should be empowered to examine and evaluate service policy and procedures, and implementation, with agencies required to routinely collect their own data on protection and management of issues of abuse, violence and neglect, including referrals, characteristics of abuse, action taken and outcomes.
- g) Raising widespread awareness that abuse and the potential for abuse can occur in any care setting should be a priority of a quality and safeguards framework. This could be achieved through the provision of training materials aimed at diverse groups, including staff, vulnerable persons, families, carers and the public. Awareness should be raised of factors that heighten the vulnerability of people to abuse and reporting abuse such as communication difficulties and challenging behaviours. The framework should ensure services, advocates and those with oversight responsibility at the government level proactively help staff, investigators, families and visitors to recognize the signs and symptoms of abuse when people are unable to disclose abuse themselves (due to communication problems; or severe intellectual, mental or cognitive or other disabilities).



Observations by Queensland Community Visitors

The following information is provided on the basis of observed practical experiences of Community Visitors in Queensland with respect to the issues outlined in the Terms of Reference. The OPG would commend this information for careful consideration by the Committee.

- a. the experiences of people directly or indirectly affected by violence, abuse and neglect perpetrated against people with disability in institutional and residential contexts;

- Community Visitors report continued prevalence of consumer to consumer assault/violence as a result of poor transition planning and consumer incompatibility issues. Service providers tend to focus on filling vacant beds to maximize the funding dollar as opposed to meeting consumer needs/rights to a living environment free from violence/abuse. This is more prevalent in private-for-profit service provider settings.
- Community Visitors report a lack of adequate process when violence occurs. For example, when consumer to consumer assault occurs, it is rare that the Queensland Police Service (QPS) is contacted. In effect, consumer to consumer assault has become normalized and acceptable within many residential settings.
- Community Visitors report that in residential settings where there are challenging behaviours in the form of violence/assault, there is a correlation between the prevalence of violence and inconsistency in staffing. In turn, this leads to a lack of continuity in staffing which results in inconsistent behaviour management.
- Many consumers who reside in residential settings are subject to deprived environments where choices and possibilities are limited. Consumers with impaired capacity will react adversely through frustration and an inability to express their views and wishes in relation to unmet needs.
- Apart from the Community Visitor Program, there is a distinct lack of external mechanisms to monitor/report/escalate matters of abuse, neglect, violence and exploitation of this vulnerable cohort.

Community Visitors have reported on the following situations of abuse on behalf of adults with disability:

- access to community involvement: where this is restricted due to funding or understaffing, the individual is the subject of neglect as they are being denied the opportunity to engage in their community if it is their choice to do so.
- inadequate support: there is no consistency with regards to training and support provided to staff who work with adults with disability. As such, the skills and level of commitment between support staff is notably varied. There appears to be no minimum standard skills set mandatory for support staff.
- 'hidden' abuse: it is evident that some individuals suffer abuse/neglect in silence. Emotional abuse can be one of the more prevalent forms of 'hidden abuse' identified. Particularly where consumers are non-verbal or have limited communication skills. It can manifest in changes in behaviour, retreating to isolated areas in the home and an unwillingness to engage.

- Inability to access advocacy: There is a distinct lack of advocacy and support networks funded to support individuals at risk of violence, abuse and neglect. This is particularly prevalent in regional areas.
- Inability to access specialist assessment: there is a distinct lack of access to specialist services in regional areas. People with disability are at risk of accelerated deterioration in physical and mental health when they are unable to readily access specialist services.
- Potential risk of working against their will: One example is where one individual was ageing, did not want to go to work, but because other members of the household went to the same workplace, and there was no funding to support her at home by herself, she continued to go to work against her wishes.
- No accountability at day services: there appears to be a distinct lack of communication between day services and accommodation service providers. For example, one individual was morbidly obese. At home he was subject to a healthy diet plan. Day services would not support this when he was with them and regularly he would be given high sugar treats.
- Financial abuse: family members have used the funds of people with disability for their own means.

b. the impact of violence, abuse and neglect on people with disability, their families, advocates, support persons, current and former staff and Australian society as a whole;

- Post deinstitutionalization, the governmental culture of acceptance/normalization of abuse and neglect has carried over to the residential environment within the broader community.
- The Community Visitor Program receives a considerable volume of contact from concerned family members and staff of residential settings in the community at large. A large percentage of these callers request anonymity due to fear of reprisal from the service provider management/executive. Family callers fear relinquishment of their loved one. Staff member callers fear loss of employ/demotion.
- In some instances, consumers who have come from institutional settings are more vulnerable to violence, abuse and neglect due to isolation from and within the community in which they live.
- Across all three sectors (mental health, supported accommodation and disability), service providers are largely unaware of, and therefore fail to access, any available advocacy services for consumers in their care.
- Advocacy is not seen as a role or function of staff from most accommodation support arrangements.
- Staff at some support arrangements are highly unionized and as such, any inducted new staff are coerced into a culture which negates the opportunity for required transparency in the reporting of violence, abuse and neglect.

- The impact on people with disability who are subject to violence, abuse and neglect includes:
 - deterioration in physical and mental health
 - low self-esteem
 - self-imposed isolation
 - disengagement from family, friends and the community
 - self-harm
 - escalation in challenging behaviours which can result in harm to self, to others and risk of criminal charges.
- The impact on Australian society as a whole includes:
 - pressure on health services
 - absence of engagement/contribution of people with disability in their local communities
 - increased recidivism rates for people with disability and pressure on police/courts.

c. the incidence and prevalence of all forms of violence, abuse and neglect perpetrated against people with disability in institutional and residential settings;

- Community Visitors report the most prevalent circumstance of violence, abuse and neglect results from the unsuitability of co-tenancy arrangements. Community Visitors regularly come across circumstances where people with disability are subject to verbal and physical abuse in their homes as a result of co-tenancy decisions. Because there is a lack of funding and accommodation options, it can often be the case that these individuals have to remain in this situation as there are no other alternatives. Individuals have little (if any) say as to who they live with. In circumstances where individuals have diverse support needs in the home, it can be the case that individuals with less complex support needs are neglected as support staff hours are consumed caring for those with higher needs.
- Apart from the Community Visitor Program, there is a lack of external/independent oversight to monitor the protections that should be afforded to people with disability in state or state funded care.
- A lack of adequate internal monitoring systems with regard to protections, allows perpetrators of violence, abuse and neglect to remain largely undetected.
- In an arena which is increasingly dollar driven, neglect can be quite subtle in particular where consumers are not afforded reasonable access to services such as dental, medical, podiatry or assessments for other health care needs including, but not limited to, speech and language pathology, psychiatry/psychology, dieticians and diabetes services.

d. the responses to violence, abuse and neglect against people with disability, as well as to whistleblowers, by every organisational level of institutions and residential settings, including governance, risk management and reporting practices;

- Many support settings/services have historically poor staff culture. This ingrained negative culture does not promote transparency and leads to under reporting of matters that fit within the scope of definition of abuse, neglect or exploitation. Staff who are prepared to speak out risk reprisal from service management, loss of employment, transfer to less favorable work environments, and bullying from other staff/management. Poor management/culture leads to poor risk management processes which in turn fails to mitigate risk of abuse, neglect and exploitation to consumer cohort.
- The response to violence, abuse and neglect against people with disability is not a priority across the board. This could be attributed to a lack of funding, resources and a lack of communication between organisations.
- The reporting framework and documentation/recording of incidents of violence, harm and neglect is vastly different between service providers. There should be a mandatory reporting process for every funded organisation to support people with disability. This should include: a standard reporting procedure, a standard document for recording details, consistency around storage and access, and relevant training for staff.

e. the different legal, regulatory, policy, governance and data collection frameworks and practices across the Commonwealth, states and territories to address and prevent violence, abuse and neglect against people with disability;

- Consumers in care historically and across the board, make poor witnesses due to levels of impairment and capacity issues.
- In Queensland, the Guardianship regime lacks sufficient enforcement powers, relying on service provider goodwill to address matters of continued and ongoing abuse and neglect for those who have appointed decision makers.
- There is no workable interface between the disability sector and the QPS. This lack of interface becomes a subset of normalization of abuse perpetrated against those who experience impaired capacity through disability.

f. Australia's compliance with its international obligations as they apply to the rights of people with disability;

- International obligations remain disassociated with current service standards, particularly within the disability service sector.
- Current legislation, alongside of the Human Services Quality Standards (HSQS) and the National Mental Health Standards (NMHS) do not reflect the Convention on the Rights of Persons with Disabilities.
- Both HSQS and NMHS contain clauses which depict "within available resources" or "within resource capability" as opposed to being not negotiable, in particular with regard to acceptable standards of care.

g. role and challenges of formal and informal disability advocacy in preventing and responding to violence, abuse and neglect against people with disability;

- Access to advocacy services is depicted in HSQS, NMHS & Residential Services Accreditation Standards. Access to adequate advocacy services is hindered by a lack of advocacy agency resources in relation to consumer need. This is particularly evident in remote, rural and regional areas.
- Consumer access to advocacy services increases workload for service management.
- Support staff don't view advocacy as part of their support worker role. If they advocate, they can be subject to reprisal regarding their employ from service management.
- Support staff who advocate on behalf of consumers report frustrations due to a lack of outcomes when matters are escalated within a service delivery framework. This leads to disempowerment, staff frustration and abandonment of issues.
- The biggest challenge is the lack of funding to ensure that there are sufficient advocacy support networks for people with disability. The advocacy groups currently operating (for example, Rights in Action in Cairns) have been unable to take on any new clients because of the overwhelming workload. The lack of resources in this respect is particularly evident in regional areas.
- There are many people with disability in the community who do not have anyone in their life to act as a formal or informal advocate.
- A challenge for advocates that Community Visitors have identified is a lack of time and funding to commit to the role. It has also been the observation that there are some advocacy groups who are more concerned about their public profile and have their own agenda when advocating on behalf of a person with disability. This is the exception rather than the rule, however, it can occur.
- Informal advocates (which may include family) also need access to support which is often not available for them.

- h. what should be done to eliminate barriers for responding to violence, abuse and neglect perpetrated against people with disability in institutional and residential settings, including addressing failures in, and barriers to, reporting, investigating and responding to allegations and incidents of violence and abuse;

- There needs to be a significant cultural shift in service delivery and service delivery management. The cultural shift needs to be implemented from management/executive downwards toward grass roots support staff.
- A comprehensive strategy regarding community education in relation to abuse, neglect and exploitation needs to be implemented.
- Zero tolerance policies need to be implemented within both government and non-government agencies with regard to abuse, neglect and exploitation.
- Funding agreements (within the NGO sector) need to clearly specify escalation and investigation protocols which are transparent and deliver an outcome within a specified period of time.
- Government agencies need to adopt a consistent approach across the state when disclosures regarding abuse, neglect or exploitation are made.

- Clearer and more consistent pathways of referral are required when matters relating to abuse, neglect and exploitation are disclosed.
- A greater voice for people with disability when deciding where they should live and with whom.
- Mandatory reporting process for all service providers to record incidents of violence and abuse.
- Minimum standard of training and skills for staff employed at sites to support people with disability.
- Security and criminal history checks for all support staff particularly in regional areas where the pool of skilled staff is limited. Community Visitors have identified that support staff may have their employment terminated with one service (for example, allegations of inappropriate support, speaking inappropriately to individuals, theft of monies) only to start employment with another service provider soon after.
- More accountability and reporting with regards to incidents which occur at day/respite services.

- i. what needs to be done to protect people with disability from violence, abuse and neglect in institutional and residential settings in the future, including best practice in regards to prevention, effective reporting and responses;

- Community Visitors recommend the following to enhance protections:
 - An increase in funding (training specific) to service providers to ensure that their grass roots staff are adequately trained and assessed to have the required skills to work in complex environments.
 - Development of minimum standards in relation to staff training/required skill sets.
 - Implementation of stringent mandatory reporting when instances of abuse, neglect or exploitation are identified.
 - Core component of training element needs to focus on abuse prevention, maintenance of rights and escalation processes for identified matters of abuse, neglect or exploitation.
 - Community Education strategy to be developed and implemented in relation to human rights, abuse, neglect and exploitation.
 - More stringent accreditation processes which encompass data from independent stakeholders such as the Community Visitor Program.
 - Clearer, more accountable assessment of consumer needs which are reality based, before a consumer is placed in an environment that is totally unsuitable leading to the consumer being set up to fail. Comprehensive and adequate initial assessment and transition processes will prove more cost effective/efficient over time.
 - Equity of access to independent advocacy services even in rural and remote areas.

- i. identifying the systemic workforce issues contributing to the violence, abuse and neglect of people with disability and how these can be addressed;

Community Visitors identify the following workforce issues:

- Consistent, effective, measurable and assessable workplace training for grass roots support staff which is specific to consumer cohort.
- Maintaining stability in the support team to enhance consistency of support;
- More consistent criminal history screening.
- Mandatory reference checking with outcome of report clearly documented.
- More involvement from external stakeholders which will provide a measure of protection (Office of the Public Guardian; Community Visitor Program; advocacy agencies).
- Industrial Relations review of staffing arrangements that leave a sole support worker with a number of consumers alone and largely unmonitored for an extended period of time, thus increasing risk to consumers.

j. the role of the Commonwealth, states and territories in preventing violence and abuse against people with disability;

- Governments need to take a proactive approach to the prevention of abuse, neglect and exploitation of people with disability rather than a reactive response to the consequences.
- This means working collaboratively and allocating sufficient financial resources to improve the availability of suitable accommodation options, establish mandatory reporting standards, and increase funding for advocacy services and increase community education.
- A Community Education Strategy with a focus on human rights needs to be developed.

k. the challenges that arise from moving towards an individualized funding arrangement, like the National Disability Insurance Scheme, including the capacity of service providers to identify, respond to and prevent instances of violence, abuse and neglect against people with disability; and

- Individualised funding arrangements already exist in Queensland.
- The biggest challenge identified is how we can ensure that safeguards are maintained under an individualized funding arrangement.
- The NDIS appears to inadequately address the issue of a large cohort of consumers who are non-verbal and do not have the capacity to 'self-select' the services that they require.
- Service Providers, particularly within the NGO sector, have a poor understanding of consumer "capacity".
- The increasingly prevalent "private for profit" sector presents an ethical dilemma. People with complex disability and associated lack of capacity are at risk of becoming commodities. This has historically happened within the level 3 hostel sector in Queensland. That is, people who have impaired capacity through disability, and have no-one to advocate on their behalf, can be subject to exploitation through lack of choice.



- Financial safeguards such as regular and stringent financial audits by independent agencies will need to be undertaken regularly and be reviewable and transparent to promote accountability.

I. what elements are required in a national quality framework that can safeguard people with disability from violence, abuse and neglect in institutional and residential settings.

- The Convention on the Rights of Persons with Disability needs to be incorporated into current legislation (including relevant standards such as the NMHS & HSQS).
- Minimum standards of care need to be developed alongside a general overhaul of current inefficient accreditation processes.
- Development of a penalty unit system that is utilized when service providers are found to be lacking in the standard of services provided.
- Regular, thorough assessment of Service Provider performance in direct relation to consumer quality of life and access to required services to address areas of unmet need.
- Development of a uniform complaints system that is transparent and accountable.

Concluding Comment

The OPG is pleased to lend support to the Committee as it progresses this inquiry in the interests of ensuring that persons with intellectual, cognitive or mental disability are protected from violence, abuse and neglect. The OPG would be pleased to make representatives available to the Committee should there be an opportunity to expand on the issues raised above.