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OPA Reference:

31 March, 2015

Ms Jeanette Radcliffe  
Secretary  
Standing Committee on Community Affairs  
References Committee

Via email: [community.affairs.sen@aph.gov.au](mailto:community.affairs.sen@aph.gov.au)

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Dear Ms Radcliffe

**Re: Submission to the Senate Community Affairs References Committee inquiry into Abuse against people with disability in care**

Thank you for your advice about the inquiry, and the invitation to submit.

I wish to address terms of reference (e), (f) and (h), which are as follows.

- (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;
- (f) Australia's compliance with its international obligations as they apply to the rights of people with disability;
- (g) role and challenges of formal and informal disability advocacy in preventing and responding to violence, abuse and neglect against people with disability.

My comments related to these terms of reference are as follows.

1. The prevention and response to abuse should be grounded in human rights, and be evidence based, referring to the international experience in adult protection.
2. As would be expected the United Nations Convention on the Rights of Persons with Disabilities provides excellent guidance.
  - 2.1. The convention recognises that disability is an interaction between a person's impairment, and attitudinal and environmental barriers. Historically in providing adult protection, policies have focussed on the impairments of the victims of abuse, rather than environmental safety.
  - 2.2. Article 16 of the UNCRPD, Freedom from exploitation, violence and abuse, provides a very useful checklist of practical legislative and policy measures that need to be implemented.
  - 2.3. Article 12 of the UNCRPD, provides for equal recognition before the law, and a requirement to support people exercise their capacity. Empowering people to make

decisions in their own life is protective. Links with support people, can overcome isolation. Not providing this support, is a form of discrimination, which takes away a person's confidence and strength to make decisions, but also speak up when facing abuse or exploitation.

3. The need for effective safeguarding extends to all groups of at risk adults, irrespective of age. It is a responsibility across key sectors such as health, social welfare, and justice. International experience supports the approach that all areas of health, social welfare and justice must take responsibility, and communicate and coordinate their actions. The UK No Secrets Policy,<sup>1</sup> and the Scottish Adult Protection Legislation<sup>2</sup> are examples of this.
4. Internationally rights based adult protection is not divided up into disability, aged, and other at risks groups. This would create excessive duplication, and diminish the effectiveness of a coordinated system. The system should span across institutional and residential settings, for adults of all ages and link with strategies to reduce and eliminate domestic violence.
5. A particular issue of controversy has been **mandatory reporting**. This approach has had problems in child protection, as reports can be made, and the mere act of reporting is seen by some to be a discharge of responsibility. We favour an approach of **mandatory response**, that provides clear duties for all providers when they become aware of a risk of abuse, or actual abuse. These duties may include immediate action to keep a person safe, working with other sectors (e.g. the police, or social work services), and a clear strategy of escalation and reporting.
6. This office in conjunction with University of South Australia, completed a project on rights based adult protection. It was funded to consider elder abuse. However the principles of grounding legislation and policy in human rights, and implementing evidence based strategies from overseas remain the same, irrespective of age. A copy of this report, Closing the Gaps, is attached to this submission.
7. As indicated in this report, there are actions that need to be taken by both the Commonwealth, with its funding responsibilities for services, and the states with their powers to legislate to permit interventions both in and outside institutions. There is a strong analogy between the current Commonwealth funding of aged care, in the context of elder abuse, and the future Commonwealth funding of disability services, in the context of abuse of younger at risk adults.

These objective could be achieved by adopting a National Adult Protection policy. A model adult protection act, could then be used as a template by the states to provide uniformity. Commonwealth legislation that provides for the funding of disability and aged care services, should have explicit safeguarding standards and requirements that complement measures taken by the states.

I would be happy to talk to this information if requested.

Yours sincerely,

6/ John Brayley  
**Public Advocate**

Attachment: Closing the Gaps: Enhancing South Australia's Response to the Abuse of Vulnerable Older People

<sup>1</sup> No Secrets: guidance on protecting vulnerable adults in care <https://www.gov.uk/government/publications/no-secrets-guidance-on-protecting-vulnerable-adults-in-care>

<sup>2</sup> Adult Support and Protection (Scotland) Act 2007 [Scottish Adult Protection Legislation](#)