Inquiry into Abuse in Disability Services Submission

Submission – October 2015

Attention: Family and Community Development Committee
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Disability Services Commissioner
1. About the Disability Services Commissioner

The Victorian Disability Services Commissioner (DSC) commenced on 1 July 2007 under the Disability Act 2006 (Victorian Disability Act) to improve services for people with a disability in Victoria.

This independent statutory office works with people with a disability and disability service providers in Victoria to resolve complaints.

Our complaints resolution process is free, confidential and supportive. We encourage and assist the resolution of complaints in a variety of ways including informal approaches to resolution, assessment, conciliation, or under certain circumstances through investigations. The process is person-centred and accessible to people with cognitive or communication impairments. We receive a high level of enquiries which we use as an opportunity to coach people to raise issues and ensure the person accesses the ‘right door’ via warm referral protocols with other complaints bodies.

To resolve complaints we apply an Alternative Dispute Resolution approach within a rights-based legislative framework to achieve outcomes that addresses both the individual’s needs and aspirations, and promotes service improvement through the use of educative and advisory functions. This strengthens our effort in promoting people’s rights to raise issues about their service delivery and for staff in responding effectively to complaints.

We research ways to improve outcomes for people with a disability and improve disability services' complaints systems. We also provide capacity development activities for people with a disability, their families and disability services through a variety of education and information. Our approach to our work reflects the objectives of the Victorian Disability Act 2006. Our values and principles are aligned to the United Nations Convention on the Rights of Persons with Disabilities.

Since the establishment of this office we are able to provide comments and proposals based on the evidence and knowledge we have gained in responding to over 5,500 matters to date. Victorian disability service providers also readily contribute to our growing body of knowledge by reporting each year on the number and types of complaints they received and how they were resolved (as provided for by the Victorian Disability Act). Almost 12,500 complaints were reported between 2007 and 2015. The information assists to identify systemic issues and inform the ongoing development of the disability service system.
2. Purpose and areas addressed by this submission

The comments outlined in this submission are informed by our experience in quality and safeguards in Victoria, including eight years in directly handling complaints, review of critical incidents related to allegations of assault, and the lessons learnt from complaints as identified from service provider data. We provide these for the consideration by the Parliamentary Committee in order to achieve the best possible outcomes for people with a disability and their family members or carers.

Our participation to date with this Inquiry has included:
- Submission 10 June 2015
- Evidence at hearing 22 June 2015 by the Commissioner and Deputy Commissioner
- Additional documents post hearing 10 July 2015
- Supplementary submission 17 July 2015

The purpose of this submission is to ensure information provided to the Committee is available publically and can contribute to a balanced consideration of the issues.

The following areas are specifically addressed:
- Two systems: Complaints and Critical Incidents
- Approach of the DSC
- National comparison and considerations
- Proposed legislative amendments
3. Overview

The Inquiry seeks information into:

1. Why abuse is not reported or acted upon?
2. How it can be prevented?

Why abuse is not reported or acted upon

A primary question of this Inquiry is 'why don’t people with a disability complain and how can disability services be improved by empowering people with a disability to speak up?' Over the last eight years we have seen a significant increase in the number of people with disability and their families or carers who make complaints. This has been supported by our education efforts targeting people with a disability to know their rights, service providers to see the value of complaints and in improving their responses to complaints. However, further improvement is needed.

As outlined in our publication *Occasional Paper No 1: Safeguarding people’s right to be free from abuse*, people with a disability don’t complain or speak up because:

- They have complex communication needs
- People are not listening to them
- They fear retribution, perception as a ‘trouble-makers’ or loss of service

From our review of incidents relating to allegations of staff to client assault and unexplained injury we note that in events where staff don’t report or reporting is delayed:

- a lack of clarity and shared understanding of the definition of “assault” and poor “quality of care”
- a lack of training and recognition of “grooming” behaviour
- the need to regulate the suitability of staff
- limited understanding of challenging behaviours, why the behaviours present and the importance of behaviour support plans in preventing such behavior.

In terms of abuse being acted upon, access to justice is often denied, as the person with a cognitive disability when questioned by Police and others may not remember the dates, or the people or the exact circumstances—only that it happened to them and they live in fear of it happening again.

How it can be prevented

It is essential that:

- people with a disability are empowered to speak up without fear of retribution
- people with a disability participate in the employment of staff
- people with a disability have a role to play in the ongoing assessment or evaluation of the organisation from whom they receive services
- staff are appropriately screened for suitability
- organisations are required to support people with a disability to make complaints and speak up about their service experience
- organisations learn and make changes as a result of receiving complaints
- there is an oversight of adverse incidents that ensures that the rights of a person with a disability are respected, service failures are addressed and as far as possible, similar incidents are prevented through the implementation of effective practice.
4. Two systems: Complaints and Critical Incidents

For the purpose of clarity, we take this opportunity to describe two functions undertaken by the Disability Service Commissioner.

**Complaints:**
The Disability Services Commissioner was established in 2007 primarily as a complaints handling body, with a focus to support a changed culture recognising the rights of people with a disability and improve the provision of disability services in Victoria.

“Complaints ... should be seen primarily as a method of quality assurance, rather than as providing a means of detecting and punishing wrongdoers. A complaints body can operate as a practical mechanism to support and enforce a statement of core values.” (Victorian Law Reform Commission, 2003, p. 153)

The intention is for the office holder to discharge their powers by informal means. This is the foundation for our approach to build the sector’s capacity through influencing attitudinal and practice change rather than just achieving compliance.

Over 95 per cent of issues raised with our office are related to issues other than assault or abuse (over 85 per cent other than assault, abuse or neglect). Most complaints relate to issues of service quality including insufficient service/care, inadequate or insufficient communication, or staff behaviours and attitudes. Almost half of the enquiries and complaints raised pertain to group homes.

The approach the Disability Services Commissioner regarding these complaints is noted in Section 5 of this submission.

**Critical Incidents:**
The Commissioner’s Inquiry in 2011 into the Quality of Support Review processes that follows allegations incident of staff-to-client assaults in Department operated services, recommended 21 improvements to the process. This included a recommendation for independent oversight of these incident reports.

In response the then Minister for Disability Services and Reform requested DSC to conduct independent review of incident reports relating to allegations of staff-to-client assault and unexplained injuries (commenced June 2012). Our role assumed through this referral by the Minister is to provide advice to the Minister, Department Health & Human Services and service providers on individual incidents, themes and issues identified from our reviews.

- In 2012-13 we reviewed 281 incident reports
- In 2013-14 we reviewed 309 incident reports
- In 2014-15 we reviewed 332 incident reports

DSC believes there is significant opportunity to ensure that regulation and safeguards take a person-centered approach (also highlighted in Women with Disability Victoria evidence on 19 October 2015). This is the model DSC adopts in its oversight of critical incident reports.

For the last three years we note the following recurring issues; namely that greater attention must be given to the person as is given to the organizational process.

- A lack of focus on people’s outcomes and safeguarding people’s rights during investigations.
- The need for the disability sector to have more proactive engagement with Victoria Police
A lack of clarity and shared understanding of the definitions of assault and abuse

To fill a void of information in Victoria, DSC developed practice guidance for the sector to support the rigor of the approach adopted by disability service providers responding to incidents that give adequate attention to the wellbeing of people who receive services. We are currently supporting work by the NSW Deputy Ombudsman & Community and Disability Services Commissioner to develop a ready-reckoner approach for direct support staff in NSW.

It is important to reiterate:
- oversight of staff-to-client alleged assault or unexplained injuries is conducted by our office through Ministerial referral
- we have no legislative power to conduct assessment or investigation into critical incidents.

Currently only NSW has independent oversight through a legislative mandate and associated powers. Refer to Section 6 ‘National comparison and considerations’ of this submission for further information. It is our view that Victoria or any national model should have sufficient legislated powers to ensure appropriate responses to oversight of (reportable) critical incidents, and that this function sits suitably with complaints handling.
5. Approach of the DSC

To enable the committee to appreciate the breath of the sector, and the challenges of our office in reaching all people, there are approximately 50,000 – 78,000 people with a disability using disability services and over 350 disability service providers who fall under our jurisdiction. Under an NDIS the number of people using services will be approximately 105,000 and employees will double with an unknown growth in disability service organisations.

The office has 15.1 FTE in total - 8.6 for resolution work, 2.5 FTE to provide capacity development i.e. training and resources, and 0.8 FTE for critical incident oversight.

As the Victorian Ombudsman notes, ‘Not all complaints require investigation, and many can be resolved quickly and informally. But whether or not they are investigated, all complaints contribute to a picture of dissatisfaction, which can be used to drive improvements in public administration.’ (Media Release 7 October 2015). We share this view.

Person-Centred and Alternative Dispute Resolution (ADR) approaches

In recognition of the barriers and fear people with a disability and family members face in raising complaints, adopting an approach that is impartial, accessible and engages the person receiving services is critical. Applying an Alternative Dispute Resolution approach within a rights-based legislative framework assists to achieve outcomes that address both the individual’s needs and aspirations, and promotes service improvement through the use of educative and advisory functions. This strengthens our effort in promoting people’s rights to raise issues about their service delivery and for staff in responding effectively to complaints.

Alternative Dispute Resolution is characterised by an impartial person assisting those in a dispute to resolve the issues between them. It provides for a flexible process that can be adapted to individual needs or issues. Therefore the methods we use vary for example from phone discussions, face-to-face meetings, document exchange to individual private meetings.

An Alternative Dispute Resolution model, accessibility and focus on resolution are highlighted as a key recommendation in the 2014 Commonwealth and ACT Ombudsman’s review of complaints handling bodies¹.

The focus on resolution is particularly crucial for people with a disability than for people who do not have a reliance on continuous supports. Where impairment is permanent and profound, disability can be long term with service delivery occurring over an extensive period of time. In complaints dealt with by DSC there is often a long history of service to a person with a disability often with many shared experiences (both positive and negative). A snapshot of 50 complaint forms received by DSC indicated an average service relationship of five years, with the longest relationship being 30 years. There is an overlapping interest between those involved in planning and future delivery. Relationship factors, such as trust and ability to work in partnership, are highly valued.

Strategies used to engage people with people with severe and profound disability

We draw upon our working relationships with other statutory authorities, peak bodies, advocates and service providers to promote access to our office. Further, a benefit of the legislation requires

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that service providers must advise people using their service about both their organisation’s complaint process and provide information about the Disability Services Commissioner.

Our resolutions process is accessible and flexible. We encourage people to make a verbal complaint if that is the fastest and easiest way to capture their concerns. This makes it easier for people with a profound or severe disability to raise an issue. We can be contacted by phone on our free call number, email, electronic platforms (web or social media), Skype, TTY, Fax, and in writing. We tailor our communications including agreements in Easy English. We will meet with a person with a disability if this will work best. We encourage the use of support people and advocates.

We have designed bespoke training for people with cognitive impairment that engages them in an appropriate way as to understand their right to complain; in addition we publish a quarterly Plain Language newsletter called ‘Speaking Up’ (available at www.odsc.vic.gov.au).

As a result we have seen an increase in people with a disability using services initiating contact with our office from an average of 25 per cent to 29 per cent in 2015.

Number of complaints dealt with

Using ADR and educative approaches, we have seen a 188% increase in the number of new enquiries and complaints our office handles and 57% increase in complaints since our establishment. Last financial year being our highest number (209 complaints).

Resolution rates

Consistently we achieve 70% resolution rate, with a further 15-20% partially resolved. These issues often include desired outcomes that we do not have influence over, for example staff disciplinary action or resource decisions such as a change in accommodation. However, there are occasions whereby involvement from our office has resulted in acknowledgement of an inappropriate placement and change in accommodation.

Our definition of when a complaint is resolved is as identified by the person who made the complaint. This is less obvious across other statutory offices in Victoria that report when a complaint is closed.

Evaluation of our office by the people who use our service

Based on feedback from people who use our service we have made improvements and maintained 80-90% satisfaction rating in the process, the way their complaint was handled, staff competency and complaint outcome. On average our response rate is 39 per cent.

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2 **Resolved:** Where the person who made the complaint decides that the issue(s) have been resolved by reaching agreement.

**Partially resolved:** A number of the complaint issues were resolved by reaching agreement. A number of complaint issues were not able to be resolved through agreement.

**Not resolved:** Agreements have not been reached on any issue(s) in the complaint.

Note: at times this is due to the views of the person who made the complaint being unknown in circumstances where it is not appropriate or possible to seek their view.
Learning organisation – continuous improvement

As we expect service providers to learn from complaints we also ensure that we review and continue to improve our service. We acknowledge the feedback by people with a disability about how we can improve, including the evidence by Youth Disability Advocacy Service on 19 October 2015 around the time taken to progress a complaint.

In 2014 we undertook a comprehensive review of our complaints handling process and have made improvements. Although some improvements occurred earlier, most commenced from 1 July 2015. We are:

• reducing paperwork, making complaints lodgment faster and easier
• confirming in writing which issues we can and cannot pursue
• requiring service providers to be more timely in providing information
• reducing the average time for complaints handling
• making it easier for people who make complaints to give feedback electronically
• measuring outcomes for each issue in addition to complaint resolution.

Conciliation

The purpose of conciliation is to assist people to reach an agreement on how the complaint can be resolved. The intention is not for people to prove or disprove the complaint. Instead, the conciliation process allows the person who made the complaint and the service provider to state their point of view, discuss the issues in dispute and reach a resolution together if possible.

Based on research in the United States, DSC developed the Four As of complaints handling – Acknowledgement, Answers, Action and Apology. The Four As are fundamental to effective complaints handling that focuses on the person’s experience and what they are seeking from the complaints process.

The decision to take a matter to conciliation will vary, however this approach can further foster the ongoing and long term nature of the relationship between the service provider and the person making the complaint (particularly if they are the person receiving the service). In a small proportion of matters where there may have been abuse, these allegations are appropriately reported to Police who have the power to conduct a criminal investigation. The DSC has no power to undertake criminal investigations.

It is not appropriate to use conciliation to address acts of abuse. Acts of abuse should always be immediately reported to Victoria Police. Police deal only with criminal matters and require evidence to a higher standard of proof than that of civil investigations. They do not examine organisational policy and practice against the requirements of the Disability Act 2006. Where Police are addressing criminal matters, DSC can be addressing matters of systems, policy and practice. The way that a service provider conducts their business and the relationship between the provider and the person with a disability will contribute to the safety and wellbeing of the person with a disability. Conciliation in areas of communication, relationship and service quality often leads to improvement in practice and experience of people with a disability.

Investigations

In comparison to other entities, our complaint assessment process is comprehensive and it is in this early stage that most complaints are resolved. It has been commented by staff in other statutory authorities that the process undertaken by DSC by any other definition would constitute an ‘investigation’, however our language reflects the intention of the enabling legislation under which we work.
Over the last 12 months, we have seen an increase in people raising complaints with our office related to issues that require investigation to obtain a beneficial outcome. We completed 159 assessments (or routine investigations). We currently have four active investigations. Complaints to our office regarding sexual or physical assault constitute 4–7 per cent (3 per cent staff-to-client assault, 4 per cent client-client) and 5 per cent for complaints of neglect by the service provider per annum. This has been supported through public engagement of these issues through media, the Parliamentary Inquiry and Victorian Ombudsman’s Investigation.

The legislation provides powers for investigation where the Commissioner decides to accept the complaint and considers it not suitable for conciliation or where matters have proceeded to conciliation and the Commissioner is of the view that conciliation has failed and further action is required.

You will note the legislative provisions provide the Commissioner with the discretion to determine the above elements, which the Commissioner considers on a case by case basis informed by the evidence obtained during the assessment and or conciliation phase.

A central part of the Commissioner’s decision to conduct an investigation is based on the principle that there is information that has not come to light through the assessment process that is necessary for resolution of the complaint, or that the complaint issues are not appropriate to be resolved through conciliation. In most cases we acquire the information and engagement of the relevant parties, i.e. people with a disability, family members or service providers, to resolve issues.

Our approach to Investigation functions and powers as prescribed by the Act has been confirmed by the Victorian Government Solicitor in legal advice sought by this office earlier this year, and which has since been provided to the Committee.
6. National comparison and considerations

Complaints Handling

There are seven national entities with the remit of independent disability complaints handling (WA, NSW, NT, ACT, SA, TAS and VIC). Six of these bodies have responsibilities for other functions:

- NSW: Deputy Ombudsman & Community and Disability Services Commissioner
- SA: Health & Community Services Complaints Commissioner
- WA: Director, Health & Disability Services Complaints
- NT: Health & Community Services Complaints Commissioner
- TAS: Health Complaints Commissioner and State Ombudsman
- ACT: Disability & Community Services Commissioner; role also performs the functions of the Health Services Commissioner

In Victoria, we have a discrete entity charged with empowering people with a disability to speak up and to deliver handling complaints. Utilising annual reports we note there is a variation in the quantum of disability enquiry and complaints issues where this is not a discrete function.

<table>
<thead>
<tr>
<th>2013-14</th>
<th>VIC</th>
<th>NSW</th>
<th>ACT</th>
<th>SA</th>
<th>WA</th>
<th>NT</th>
<th>TAS</th>
<th>QLD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total complaints &amp; enquiries</td>
<td>931</td>
<td>1,423</td>
<td>269 (health)</td>
<td>2,114</td>
<td>2,485</td>
<td>667</td>
<td>318</td>
<td>not available</td>
</tr>
<tr>
<td>Disability enquiry &amp; complaints</td>
<td>931</td>
<td>380</td>
<td>67</td>
<td>75</td>
<td>44</td>
<td>46</td>
<td>1</td>
<td>not available</td>
</tr>
<tr>
<td>% of disability</td>
<td>100%</td>
<td>27%</td>
<td>100%*</td>
<td>4%</td>
<td>2%</td>
<td>7%</td>
<td>0%</td>
<td>not available</td>
</tr>
<tr>
<td>Note: due to reporting differences a margin of error exists</td>
<td>737 enquiries, 194 complaints</td>
<td>204 enquiries, 176 complaints</td>
<td>27 complaints, 40 enquiries *the role of disability complaints is a discrete function</td>
<td>Based on complaints from identified ‘special need’ disability</td>
<td></td>
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</table>

There are also variations in State based complaints authorities in how disability complaints were reported in 2012-13. Consumer Affairs Victoria received 9,395 disputes (front-end) however the proportion that relates to disability services is unknown. Victorian Ombudsman reported 34,375 ‘approaches’ and 1,391 human services complaints. Most of these complaints related to Child Protection or Housing with 11% (0.4% of total approaches) related to other human services delivery. The numbers of complaints and enquiries from people with disability or related to disability service provision are not identified in the report.

There is an opportunity for a whole of government approach to ensure complaints processes are accessible, and DSC takes the opportunity to broadly share our tools, resources and experiences to improve access to mainstream complaints processes. In recent times we have consulted with or provided access to our resources for Australian Competition and Consumer Commission, Victorian Department of Education and Training, Victorian Ombudsman, Consumer Affairs Victoria, Tasmanian Department of Health and Human Services,

The analysis more than strongly suggests that where a non-discrete disability complaints body exists, a focus on disability is less likely to result. Hence, we have advocated consistently since our first submission to the Productivity Commission that a body in principle similar to the one established under the Victorian legislation should be adopted.

Own Motion Powers

Of the seven national independent disability complaints handling bodies (WA, NSW, NT, ACT, SA, TAS and VIC), six of these entities have legislated ‘Own Motion’ capability. The Act does not
provide own motion capacity for the Victorian Disability Services Commissioner. This capability, if legislated in Victoria, would allow the Commissioner the avenue of investigating serious matters where a complaint has not been raised. Currently, it is contingent upon a complaint of a specific matter to be before the office or for the Minister to agree to an Inquiry.

Jurisdiction

Victoria is one of the only jurisdictions where the funding stream for disability services dictates the jurisdiction of complaints to the Commissioner. While there is variation, other states or territories identify the service type as the primary vehicle, with ACT setting a benchmark of any service provided to a person with a disability. It is recognised that the scope will not always be implemented and referral will be made to other appropriate complaints mechanisms depending on the issue. Jurisdiction should ensure a consistent approach for all people with a disability.

<table>
<thead>
<tr>
<th>Jurisdiction in the context of complaints</th>
<th>VIC</th>
<th>NSW</th>
<th>ACT</th>
<th>SA</th>
<th>WA</th>
<th>NT</th>
<th>TAS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disability services by a registered disability service provider; contracted or funded service provider; and disability services provided by the Department.</td>
<td>Broad remit including: implementation company under NDIS, Department, community services, home care, boarding houses and any agreement with Minister.</td>
<td>A service provided to a person with a disability. Provides examples however broad interpretation.</td>
<td>A service provided for the care, treatment or accommodation of persons who have a physical disability or mental dysfunction: a service to treat or prevent illness, injury, disease or disability… Other broad services under health (i.e. leisure) or community service (i.e. social advancement).</td>
<td>Service provided specifically for people with disability, whether by carers or others; or a service provided specifically for carers.</td>
<td>Service provided in the Territory specifically for people with a disability or their carers.</td>
<td>A service provided for the care, treatment or accommodation of persons who are aged or have a physical disability or mental dysfunction.</td>
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Oversight of critical incidents

- NSW Ombudsman, Deputy Ombudsman & Community and Disability Services Commissioner Part 3C: Supported Group Accommodation. Outcomes they have seen in this short space of implementation
  - Between enactment in December 2014 and April 2015, 170 incidents were reported.
  - 2 employees charged with criminal offences and CEO stood down.
  - Refer to attachment 1 for detailed information - note this information was provided at the hearing on 22 June 2015.

As noted in our submission to the Department of Social Services regarding a national framework for quality and safeguards we identify the following issues:

- Variability in person-centred practices underpinning responses to critical incidents
- Absence of a mandated reporting scheme with legislated oversight role
- Information sharing provisions posing barriers to sharing information regarding organisational performance
- Lack of or difference in definition of what constitutes abuse,
- Lack of workforce education and training to disability staff in responding to abuse

While not a fixed view, we do see alignment opportunities may exist with discrete disability oversight functions of complaints, critical incidents and restrictive interventions. This would enable a
concentrated effort to address organisational practice issues and education; take action on individual matters that are insufficiently handled; and identify areas of systemic improvement.

Without a clear legislative responsibility and structure there is confusion and absence of investment in the education of staff and capacity building of the sector. In the absence of this clarity or action, we have independently developed practice guidance for service providers. The resources provide guidance to disability service providers undertaking investigations of staff to client assaults and unexplained injuries. The aim is to promote practice that addresses both the experience of the person with a disability and the staff member subject to the allegation.

Community Visitors

In regard to the Community Visitor programs, there is significant variation across jurisdictions as to how this is undertaken. We acknowledge improvements are required to ensure efficient pathways for complaints to be raised and resolved.

We agree with the Australian Guardianship and Administration Council submission that evaluation of this program and other models is required, including that which exists in New Zealand (national disability advocacy scheme) as part of the Health and Disability Commissioner. Refer to <http://www.hhrjournal.org/2013/08/19/new-zealands-national-health-and-disability-advocacy-service-a-successful-model-of-advocacy/>.
7. Proposed Legislative Amendments

Over time we have proposed a range of legislative amendments to the Disability Act that would in our view have further enhanced the rights and protections of people with a disability.

Suggestion for change includes but is not limited to:

- The definition of service providers (s3) being expanded to explicitly cover any disability service provided by state government funding (i.e. TAC and NDIS funded disability services). This would alleviate the potential for people and service providers from falling through gaps due to difference in funding arrangements, particularly with the roll-out of the NDIS. For example people using the same specialist service (behaviour support, respite, accommodation) may not be able to access independent complaints due to the funding pathway.

- Functions of DSC (s16) to include review of critical incidents. This would give legislative effect to the current administrative arrangement that this office has in place with the Minister. We are of the view that it is desirable to ensure adequate responses are provided to the most serious issues. It should also allow the Commissioner to utilise powers that at this stage are only available if the person raises a complaint regarding the incident.

- Enable the Commissioner to have own motion capability as in all other similar entities nationally through amendment to Part 3 Division 3 (s16(m)) by removing the following words ‘Subject to the approval of the Minister’.

- Powers of DSC - s17 (1)(f) - Part 3 Division 3: be expanded to include ‘seeking information about the implementation of agreements and recommendations arising from complaints’. While DSC has implemented processes to follow up agreements made between the person and providers, DSC has no legal power to compel actions to be followed nor are there consequences that would motivate providers to do so.

- Section 105 and Section 106B – Division 5 and 5A: To enable DSC to mandate how reporting is conducted each year and prescribe which organisations are required to report annually their complaints to DSC. This is similar to the prescribed reporting function in Western Australia.

- Improved information sharing provisions and review of s128 secrecy provision to enable DSC to deal with complaints more effectively (particularly when are dealing with anonymous complaints), and share information with Police as required.
8. Conclusion
The Disability Services Commissioner welcomes an increased community focus on the wellbeing of people with a disability and review of the systems that are designed to protect some of the most vulnerable Victorian citizens. As a part of that system we see our paramount duty is to make every person with a disability feel it is safe and easy to speak out about any concern.

When complaints are raised, issues of concern are identified. This facilitates awareness and the development of solutions to address issues, such as abuse. Where complaints are not raised the landscape is silent. This is important to understand when comparing safeguarding models.

Victoria has established some of the strongest safeguards in the county, yet clearly there is much we can improve upon. We must, however, also be cautious that in any changes the lessons learnt and areas that are evidenced as working are not lost.
Attachment 1: NSW Ombudsman, Deputy Ombudsman & Community and Disability Services Commissioner Part 3C: Reportable Incidents

Reportable Incidents

1. The concerns
   - there were inconsistent reporting requirements across the sector, depending on whether the person with disability resided in supported accommodation operated by FACS or a non-government provider, or in an assisted boarding house
   - there was no independent oversight of these matters (outside of complaints to our office)
   - there was no comprehensive picture of the extent of abuse, neglect and/or exploitation of people with disability in disability services, and
   - there was a paucity of guidance for disability services in relation to responding to serious incidents, particularly client-to-client assaults and decisions relating to reporting to Police.

2. Part 3C of the Ombudsman Act

Part 3C requires and enables the Ombudsman to:
   - receive and assess notifications concerning reportable allegations or convictions
   - scrutinise agency systems for preventing reportable incidents, and for handling and responding to allegations of reportable incidents
   - monitor and oversight agency investigations of reportable incidents
   - respond to complaints about inappropriate handling of any reportable allegation or conviction
   - conduct direct investigations concerning reportable allegations or convictions, or any inappropriate handling of, or response to, a reportable incident or conviction
   - conduct audits and education and training activities to improve the understanding of, and responses to, reportable incidents, and
   - report on trends and issues in connection with reportable incident matters.

Within 30 days of becoming aware of a reportable allegation or reportable conviction, the Secretary of FACS, or head of a funded provider, must give the Ombudsman notice of the allegation and/or conviction.

Under Part 3C, a reportable incident involves any of the following:

(a) an incident involving any of the following in connection with an employee of FACS or a funded provider and a person with disability living in supported group accommodation:  
   (i) any sexual offence committed against, with or in the presence of the person with disability,
   (ii) sexual misconduct committed against, with or in the presence of the person with disability, including grooming of the person for sexual activity,
   (iii) an assault of the person with disability, not including the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated under workplace employment procedures,
   (iv) an offence under Part 4AA of the NSW Crimes Act 1900 committed against the person
(v) **ill-treatment or neglect** of the person with disability, or

(b) an incident involving an *assault of a person with disability living in supported group accommodation by another person with disability* living in the same supported group accommodation that:

(i) *is a sexual offence*, or

(ii) *causes serious injury*, including, for example, a fracture, burns, deep cuts, extensive bruising or concussion, or

(iii) *involves the use of a weapon*, or

(iv) *is part of a pattern of abuse* of the person with disability by the other person, or

(c) an incident occurring in supported group accommodation and involving a *contravention of an apprehended violence order* (AVO) made for the protection of a person with disability, regardless of whether the order is contravened by an employee of FACS or a funded provider, a person with disability living in the supported group accommodation or another person, or

(d) an incident involving an *unexplained serious injury* to a person with disability living in supported group accommodation.

3. **Initial Data**

Between 3 December 2014 and 3 April 2015, we were notified of 170 reportable incidents:

- 100 (59%) involve allegations of employee to client incidents
- 58 (34%) involve allegations of client to client assault
- 10 (6%) involve allegations relating to unexplained serious injury, and
- 2 involve allegations of the contravention of an AVO.

(a) **Employee to resident reportable allegations**

Of the 100 notifications relating to employee to client conduct:

- 42 (42%) involve allegations of physical assault
- 28 (28%) involve allegations of sexual assault or sexual misconduct
- 25 (25%) involve allegations of ill-treatment and/or neglect, and
- 5 involve allegations of fraud.

Two notifications have resulted in employees being charged with criminal offences.

(b) **Client to client reportable allegations**

Of the 58 notifications relating to client to client conduct:

- 18 (31%) involve allegations of assault resulting in serious injury
- 18 (31%) involve allegations of assault involving the use of a weapon
- 14 (24%) involve allegations of assault that is part of a pattern of abuse, and
- 8 (14%) involve allegations of assault involving a sexual offence.

Two notifications (involving assault resulting in serious injury) have resulted in clients being criminally
charged.

(c) Unexplained serious injury

The 10 unexplained serious injuries reported include fractures, extensive bruising, and burns.

(d) Contravention of AVO

In both of the notifications we have received concerning the contravention of an AVO, the allegations related to breach of the AVO by another person with disability living in the same supported group accommodation.

The effectiveness of the disability reportable incidents scheme relies on comprehensively capturing, analysing and publicly reporting on the data, including patterns, trends and outcomes.

4. **Areas that require attention**

(a) Pre-placement planning and decisions

(b) Post-placement management

(c) Response to serious incidents
   (i) Recognition and rapid response
   (ii) Reporting and communication
   (iii) Process and practice; critical legal issues
   (iv) Review of existing guidance and practice

5. **Current areas of work**

(a) Best Practice Working Group
   - the need for a comprehensive policy and practice framework for preventing and effectively responding to abuse, neglect and exploitation of people with disability
   - pre-placement planning, assessment of risk, client matching and compatibility
   - staff screening and recruitment practices
   - availability of, and access to, relevant clinicians and expert advisors (including psychologists, behaviour support clinicians and mental health clinicians)
   - assessing the capacity of individuals to consent to sexual activity
   - reducing the use of restrictive and restricted practices, and improving practice in relation to their use, consent and authorisation
   - support for victims with disability, and
   - the criminal justice response to people with cognitive impairment.

(b) Education and training on preventing and responding to serious incidents in disability services

(c) Development of guidance for disability services on the initial and early response to serious incidents

(d) Empowering people with disability and their supporters

(e) Working with the NSW Police Force to improve the response to serious incidents involving people with disability

(f) Data collection, analysis and reporting