

19 July 2016

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Our ref: ADM/2015/812P02

The Hon Justice Peter McClellan
Chair
Royal Commission into Institutional Responses to Child Sexual Abuse
GPO Box 5283
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Dear Commissioners

Royal Commission into Institutional responses to Child Sexual Abuse – July 2016 public hearing into disability service providers

I write for the purpose of providing information in relation to matters currently being canvassed at the Royal Commission's public hearing into disability service providers, regarding:

- current systems, policies, procedures and practices for preventing, receiving, investigating and responding to allegations of child sexual abuse within institutions providing services to children with disability, and
- the NDIS Quality and Safeguarding Framework in relation to preventing and responding to allegations of child sexual abuse.

Systems, policies, procedures and practices in disability services

As you would be aware, in addition to the employment-related child protection reportable conduct scheme, NSW has had a disability reportable incidents scheme since 3 December 2014. Established under Part 3C of the *Ombudsman Act 1974*, the scheme requires the Department of Family and Community Services (FACS) and funded disability services to notify our office of allegations of serious incidents involving people with disability living in supported group accommodation. Under the NSW transitional safeguards working arrangements, NDIS funded providers are also required to notify our office.

The Disability Reportable Incidents scheme in NSW is the first – and only – legislated scheme in Australia for the reporting and independent oversight of serious incidents involving people with disability in supported accommodation. Under the scheme, we oversee the actions and systems of FACS and funded providers to prevent, handle, and respond to specified reportable incidents involving people with disability living in supported group accommodation across four areas:

- Employee to client incidents – involving any sexual offence, sexual misconduct, assault, fraud, ill-treatment or neglect
- Client to client incidents – involving assault that is a sexual offence, causes serious injury, involves the use of a weapon, or is part of a pattern of abuse of the person with disability by the other person

- Contravention of an apprehended violence order (AVO) taken out to protect a person with disability
- Unexplained serious injury.

A significant amount of our work is dedicated to building the capacity of service providers to prevent and effectively respond to disability reportable incidents, and to address abuse and neglect of people with disability more broadly. In this regard, we proactively engage with agencies to influence the direct management of incidents as they unfold, to enable the timely engagement of NSW Police, the provision of medical assistance and other supports for alleged victims, and to ensure appropriate communication with families/carers and guardians. We also undertake substantial work to identify and address systemic issues that arise through the Disability Reportable Incidents scheme, including work over the past year in the following areas.

Best Practice Working Group

Since July 2014, we have convened a Best Practice Working Group to support and inform the work of our office and the broader disability sector in relation to the Disability Reportable Incidents scheme. The group comprises disability leaders and key subject-matter experts within and outside of the disability sector – including representatives from FACS, NSW Police, National Disability Services (NDS), non-government disability accommodation providers, NSW Legal Aid, expert clinicians, advocates, and leading academics. Of recent times, the group has traversed issues that have included reportable incidents arising in the context of staff managing client behaviours of concern and in the delivery of personal care, and critical practice issues that have arisen through our oversight of client to client incidents.

Facilitating disability service provider roundtable meetings

Since March 2016, we have started hosting a series of disability service provider roundtable meetings relating to matters arising out of the reportable incidents scheme. We use the roundtable meetings to bring together a small number of service providers to discuss their experience in identifying and responding to reportable incidents, including their successes and challenges. The small forums provide an opportunity for services to discuss ways in which they have sought to overcome the practical challenges they have experienced, to share learning, and to promote good practice in the interests of protecting people with disability from abuse and neglect. The first roundtable meeting focused on the topic of coordinating risk management and investigative responses to incidents.

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

Since 2012, we have run workshops with disability services staff on responding to serious incidents in a disability service setting. The training provides practical advice to enable staff to understand:

- how to identify and respond to abuse, neglect and other serious incidents
- the systems and processes that contribute to a ‘client-safe’ environment
- the fundamental principles and strategies for conducting an investigation
- the responsibilities of key agencies – including the NSWPF, FACS and NSW Ombudsman.

In 2015/16, we delivered 68 workshops to approximately 1,322 staff of disability services. Since the start of the Disability Reportable Incidents scheme, we have also provided a modified version

of the workshop for direct care staff – and we delivered 36 of these workshops last financial year. This workshop has focused on identifying, responding to, and reporting incidents and the broader requirements relating to supporting people with disability in supported accommodation.

A sample of 160 evaluations completed by participants in 2015/16 showed that:

- 100% would recommend the workshop to others
- 96.8% rated the workshop overall as good/excellent
- 100% rated the presenter as good/excellent
- 97.5% rated the content as good/excellent
- 93.9% rated the resources as good/excellent
- 97.5% agree/strongly agree that they feel confident they can implement what they have learnt in the workplace.

Developing guidance on responding to serious incidents

We are finalising guidance for staff in disability services on the initial and early response they need to provide to serious incidents, including a comprehensive resource guide, a quick guide, and a one-page flowchart. The resources were developed in consultation with a range of NSW agencies, including the NSWPF. However, we are conscious that anything we develop in this area must have an eye to the national landscape. In this context, in November 2015 we convened a roundtable meeting in Melbourne to discuss the draft resource guide with key NSW, Victorian and Commonwealth parties, including representatives of NSW and Victorian Police.

We have also developed a draft *Joint Protocol to reduce the contact of people with disability in supported accommodation with the criminal justice system*. The core principles of the Joint Protocol are based on the protocol that we have developed and implemented in relation to young people in residential out-of-home care. Among other things, the Joint Protocol aims to:

- reduce the frequency of police involvement in responding to behaviour by people with disability living in supported accommodation, particularly in circumstances which can be better managed by the disability service provider
- promote the safety, welfare and wellbeing of people with disability living in supported accommodation by improving relationships, communication and information sharing between local police and disability services, and
- ensure that appropriate responses are provided to people with disability living in supported accommodation who are victims.

We have conducted extensive consultations with a range of parties in relation to the Joint Protocol in NSW, including NSWPF, FACS, National Disability Services (NDS), the Intellectual Disability Rights Service, the NSW Council for Intellectual Disability, the NSW Mental Health Commission, People with Disability Australia, and Legal Aid. As the two documents provide complementary guidance, we intend to issue the Joint Protocol at the same time as the resource guide for disability services staff.

Data collection, analysis and reporting

During this financial year, we reviewed our information holdings relating to notifications of disability reportable incidents by provider, to identify potential areas of under-reporting. Our analysis identified:

- providers who had yet to notify our office of any disability reportable incidents

- providers who appeared to be under-reporting particular types of reportable incidents (such as client to client incidents) given our other information holdings
- under-reporting of unexplained serious injuries by non-government providers.

To ensure that all providers across the sector have a strong awareness and working knowledge of the scheme, we are providing refresher training to those who have not yet notified our office of any reportable incidents. We have also met with a range of providers in relation to identified areas of potential under-reporting, and have noted improved practice by these agencies in response to our discussions, including internal changes to enable a coordinated and consistent approach to assessing incident reports.

Rights Project for People with Disability

FACS has funded us to deliver the Rights Project for People with Disability, a capacity-building project aimed at developing a practical framework that enables people with disability and their supporters to better understand and exercise their rights in the transition to the NDIS. Our focus is on three main areas:

- empowering people with disability to understand and exercise their rights
- promoting accessible complaint systems and practices among NSW government agencies and disability service providers
- strengthening systems to prevent, identify and respond to abuse, neglect and exploitation of people with disability.

We are developing a range of practical and targeted resources for people with disability in a variety of formats, and are prioritising the delivery of training to people with disability living in large residential centres and group homes. We have also developed a video to improve the understanding of government agencies and disability service providers about person-centred complaint handling.

We have established a Joint Advisory Committee to inform our project, as well as three related FACS funded projects being run by the NSW Council for Intellectual Disability and My Choice Matters; the Public Guardian and NSW Trustee and Guardian; and a consortium of Association of Children's Welfare Agencies, the Intellectual Disability Rights Service and Life Without Barriers. Our office is providing secretariat support for the meetings on behalf of all of these projects. The Joint Advisory Committee has met three times so far, and will meet quarterly for two years.

In April 2016, we held our first 'expert forum', bringing together 40 experts from across Australia to discuss the access of people with disability – particularly those who are more vulnerable – both to the NDIS and other key supports. Following the forum, we produced a consolidated list of resources from across Australia and internationally that are relevant to upholding the rights of people with disability. The list is available on our website.

The project also has a focus on building the capacity of relevant agencies to understand and implement their responsibilities in relation to the rights of people with disability through ongoing sector engagement about quality systems for preventing and responding to abuse and neglect, and delivering training to disability service providers on responding to serious incidents.

Resources to improve investigative interviewing of people with cognitive disability

It is well documented that in NSW and other Australian jurisdictions there are substantial barriers to people with disability engaging with the criminal justice system on an equal basis with others, including reporting to police and participating in investigations and court proceedings. To ensure allegations of abuse are effectively investigated and prosecuted, it is essential that investigators have the resources to assist them to interview people with cognitive disability using an appropriate and sensitive approach.

As part of our Rights Project for People with Disability, we have commenced a project to develop a guidance and training package for complaint handling staff and investigators in disability services to improve their communication skills with people with cognitive impairment, and to provide advice on obtaining ‘best evidence’ from people with cognitive impairment who are the subject of, or witnesses to, alleged abuse. The resources will provide practical advice about the impact of trauma and cognitive disability on communication, fundamental principles of investigative interviewing, specific interview techniques, and practices to avoid. The resources will also include a broad disability awareness component which focuses on cognitive disability, and will be tailored for use by police in their training of investigators and other officers.

To assist us to develop these resources, we are engaging an expert with extensive knowledge and experience in relation to communication with people with a cognitive disability in an investigative environment. We will also seek input and advice from a range of stakeholders in the disability and criminal justice sectors.

Specialised skills within the NSWPF

We note that evidence given at the Royal Commission’s public hearing on 12 and 13 July in relation to case study 41 has included views on the need for a specialised team within JIRT to work with children with disability. In this regard, the evidence to the Commission has included statements about the need for:

- more consultation by interviewers on the child’s capabilities, including with families, and
- more funding and training for police dealing with, and interviewing, children with disability.

In our experience, there is a need to improve investigative interviewing of people with cognitive impairment more broadly – including children and adults – to maximise their ability to give evidence and gain effective access to justice. Our current project, outlined above, is focused specifically on this issue.

We agree that there would be merit in having a specialised team within the NSW Police to enable appropriate, sensitive and informed communication and interviewing of people with cognitive impairment. In our view, there would be considerable benefit in enhancing an existing specialist team, such as the Child Abuse Squad, to have a broader jurisdiction in relation to vulnerable persons, including people with cognitive impairment (including matters relating to elder abuse). The UK Metropolitan Police, which includes Sexual Exploitation Teams that focus on children and vulnerable adults, may provide a useful example.

We appreciate that there is an alternative view regarding the need to build capacity in frontline officers, Local Area Commands, and Regional Commands through expansion of Vulnerable Community Support Officers, including recommendation 10 in the recent report from the NSW

Legislative Council inquiry into elder abuse in NSW.¹ While we support the development of identified positions in the Regional Commands to provide advice and assistance with matters involving vulnerable persons, the nature of the matters that have been reported to the Disability Reportable Incidents scheme – involving serious criminal allegations – warrant a more comprehensive approach. However, in making this point, we believe that staff working in a specialist squad could complement, as distinct from replace, the role of Vulnerable Community Support Officers.

In our discussions with police on this issue in recent years, they have pointed to the need for there to be data that demonstrates the need for a specialist squad. However, we note that the data captured by the NSW Police in this area doesn't allow an informed judgement to be made about the extent of the need. We believe that the establishment of our Disability Reportable Incidents scheme has provided a compelling case to demonstrate that there is a substantial number of matters involving people with disability that require a sophisticated response.

For example, since the commencement of the scheme in December 2014, we have been notified of:

- 239 matters involving criminal allegations against employees of disability services, including sexual offences, physical assaults, and fraud, of people with disability in supported accommodation
- 192 matters involving criminal allegations against clients of disability services, including sexual offences and physical assaults of other people with disability in supported accommodation, and
- 5 matters involving breaches of apprehended violence orders (AVO) that had been taken out to protect people with disability in supported accommodation.

To date, 14 people have been charged with one or more criminal offences.

NDIS Quality and Safeguarding Framework

We are actively involved in providing input to the development of the NDIS Quality and Safeguarding Framework, with a view to ensuring that it provides a comprehensive and nationally consistent approach to safeguards for people with disability that are at least as strong as what currently exists in NSW. Against the background of our work in relation to the NSW disability reportable incidents and reportable conduct schemes, our views have particularly been sought on the reporting and handling of serious incidents involving NDIS participants, and the screening of employees seeking to work with participants. In this regard, we have emphasised the need for:

- an independent national body to have a proactive and hands-on approach to overseeing reportable incidents
- expansion of the current reportable incidents scheme to encompass a broader range of participants and providers, with provision to prescribe the suppliers/ types of supports that are included in the scope of the scheme, so that it can be adjusted over time
- information exchange provisions relating to the safety of participants

¹ Recommendation 10 is 'That the NSW Police Force establish a Vulnerable Community Support Officer in each Regional Command in New South Wales, with the position entailing training and support to front line officers, police response, liaison with local service providers and other government agencies, community education, awareness and engagement.'

- a nationally consistent approach to screening employees and prospective employees of registered and (certain) unregistered providers.

More broadly, we have stressed the importance of a national oversight body having functions that enable a *strengths-based* rather than deficit based approach. Using the breadth of our functions in relation to community and disability services as a benchmark, we have indicated that the oversight body should have functions in relation to examining systemic issues, including to:

- review the causes and patterns of complaints and identify ways in which the underlying causes could be removed or minimised
- inquire into issues affecting NDIS participants (or persons eligible for NDIS supports) and NDIS providers of supports
- keep under scrutiny the systems of NDIS providers of supports for handling complaints, and for preventing, handling, and responding to reportable incidents
- promote access to advocacy and decision-making support for NDIS participants and persons eligible for NDIS supports
- monitor and review the delivery of NDIS supports, both generally and in particular cases
- make recommendations for improvements in the delivery of NDIS supports and for the purpose of promoting the rights of NDIS participants.

We will continue to work with NSW and Commonwealth representatives to support the development and design of the Framework.

In addition, our office is increasingly contacted by people raising concerns about abuse, neglect and/or exploitation of individuals with disability living in community settings, such as their family home. This year, in response to existing gaps in the coordination and response to these matters in NSW, we have taken the following action.

Work with the National Disability Abuse and Neglect Hotline

Since earlier this year, we have had an agreement with the National Disability Abuse and Neglect Hotline that they will make ‘warm referrals’ to our office of matters involving allegations or concerns about abuse, neglect or exploitation of people with disability in community settings (following provision of consent by the caller). In response to these matters, we typically undertake inquiries, check available intelligence, and identify further action that may be required to resolve concerns or to establish whether the person requires protection and/or supports.

Work with the Public Guardian

In some cases, we identify that further investigation is required to establish whether the person with disability is in need of guardianship or other protection/support. In such cases, we have an agreement with the Public Guardian to refer relevant information for his consideration as to whether submission of a guardianship application – or other action – might be appropriate. We note that guardianship legislation in NSW does not currently allow the Public Guardian to automatically investigate the care and circumstances of individuals with disability (or older people) who are reported to be at risk – rather, the Public Guardian has to lodge a guardianship application and seek to have NCAT make a short-term order to enable him to undertake such investigations, including consultation with the person reported to be at risk.

Convening interagency meetings

A key role we are playing in relation to matters concerning alleged abuse, neglect or exploitation of people with disability in community settings, is to bring relevant agencies together to discuss the information that is known about the person's current care, circumstances and risks, and to reach agreement on what action is required. In the main, the agencies include any disability service which may have/ had involvement with the person, NSW Police, and the Public Guardian; but have also included other key mainstream agencies, including housing and health services. We facilitate the exchange of relevant information and enable coordination of the safeguarding approach for the person with disability (and oversight of the agreed actions).

Submissions to inquiries and reviews relating to abuse and neglect of people with disability

In March, we made submissions to inquiries and reviews related to abuse and neglect of people with disability, including to the NSW Legislative Council's inquiry into elder abuse in NSW, and the NSW Law Reform Commission's *Review of the Guardianship Act 1987*. Both submissions emphasised the need to expand the functions and powers of the NSW Public Guardian to strengthen the Public Guardian's ability to conduct investigations in relation to vulnerable adults who are reported to be at risk of abuse or neglect in the community.

Our submission to the NSW Law Reform Commission also highlighted the need to amend the Guardianship Act to, among other things:

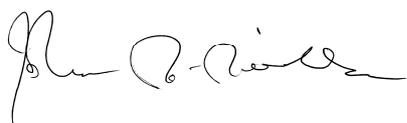
- reflect the UN Convention on the Rights of Persons with Disabilities and incorporate more expansive, comprehensive and human rights-centred principles
- ensure that financial management orders are time-limited and subject to regular review
- incorporate information exchange provisions that are focused on ensuring the safety of people with cognitive impairment.

Forum on the abuse, neglect and exploitation of people with disability

In our view, there are timely and valuable opportunities to improve systems and practice in relation to abuse, neglect, and exploitation of people with disability, and we are keen to work with key parties in NSW and nationally to improve community-based safeguards. It is important that the opportunities afforded by inquiries, reviews, and other relevant work are maximised to drive a coordinated approach to addressing these issues, with a view to national consistency wherever possible. To this end, in November our office will hold a forum on this topic, with a focus on abuse, neglect and exploitation of people with disability in both disability service and community settings.

I trust that the information provided is of assistance to the Royal Commission. Please do not hesitate to contact Steve Kinmond on 9286 0989 or Ms Julianna Demetrius, Assistant Ombudsman, on 9286 0920 if you would like to discuss this matter.

Yours sincerely



**Professor John McMillan
Acting NSW Ombudsman**



**Steve Kinmond
Community and Disability Services Commissioner
Deputy Ombudsman**