

Health and Community Services Complaints Commissioner (HCSCC)

Report on HCSCC's role in contributing to improving the safety and quality of disability services provided to vulnerable people - March 2013

1. Introduction

The Health and Community Services Complaints Commissioner (HCSCC) in South Australia is an independent statutory authority that works under a piece of law to deal with individual complaints and systemic issues to improve the safety and quality of health and community services - this includes government, non government and private services.

HCSCC is grateful for many people from the disability sector who have provided valuable information and perspective. In particular HCSCC recognises the work of Lorna Hallahan. The report titled: ***Towards Safety and Quality in Disability Services: Confronting the "corruption of care"*** provided the evidence and rigour to partner the perspectives of the wider sector. That combination gave the focus for this report.

HCSCC is issuing this report to highlight the importance of being vigilant about promoting and protecting the rights and safety of vulnerable people living with disability. The focus of this report is on disability services in the government, non government and private sectors in SA. In particular emphasis on those people who are isolated from social networks and highly dependent on workers and disability services to meet their daily living needs is required.

Although HCSCC's law requires a focus on health and community services, HCSCC acknowledges there are many other issues across various services that impact on people with living disability including employment, training and housing.

HCSCC acknowledges the changes that have occurred in attitudes and values to recognise the rights of people living with disability. These changes are due to a combination of long term activism by people living with disability, their loved ones, committed academics, workers in innovative disability services, state and federal government strategies as well as ground breaking international and national human rights laws and policies.

HCSCC also acknowledges that inspiring concepts and principles are contained in various documents and that disability services in government, community and not for profit sectors are working to improve how they provide services and ensuring they promote and protect the rights of people living with disability. Indeed there are increasing numbers of excellent demonstration projects underway.

However HCSCC also accepts the reality that for many decades past, vulnerable people living with disabilities have not been afforded their basic human rights and have been institutionalised to accept services as provided. Little changed until relatively recent times and that means that today vulnerable people living with disability may predictably struggle to articulate what they actually want to do with their lives, let alone understand what their rights are. How are they meant to suddenly stand up for themselves – even if the laws and policies say they are entitled to - if they haven't had the real opportunity to exercise choice and explore and develop skills?

HCSCC focus is on the rights of people living with disability to be treated with respect and dignity, to be safe and to be an active participant in their own life. The commitment of service providers to this aim is recognised.

However there is a similar struggle for disability service providers as they too have developed within a historical context. The nature of the service often denied individual rights and in many services all types of rights were abused. It is telling that adequate policies and procedures to identify and respond to alleged serious abuse is relatively recent in SA. Identification and response to abuse of a person's dignity is still a struggle.

For current disability services to work within genuine rights based, person centred approaches there is a need for ongoing and significant cultural changes for both the organisations and staff. This is a huge challenge that those involved acknowledge will take time and a sustained effort.

HCSCC is concerned that in many settings there is a chasm between the stated intentions (including managerial will) and the general reality of the actual services provided. HCSCC is concerned that people living with disability can be as vulnerable as ever to being subjected to human rights abuse including (at the extreme end) being harmed by those who are tasked with ensuring their basic needs are met.

HCSCC recognises the efforts and dedication of the majority of service providers and that with hindsight past practices are often seen in the worst light and the work of good people damaged as a result.

HCSCC does not want to be alarmist but it recognises that major transitions in service delivery carry risks and opportunities. HCSCC has a contribution to make to the identification of both from the information it gathers in its complaints and other work.

This report seeks to give a brief overview of what HCSCC is doing to contribute to improving the safety and quality of disability services provision, particularly for those people who are most vulnerable.

2. Statutory role of HCSCC

The Health and Community Services Complaints Commissioner (HCSCC) is an independent statutory authority that operates under the provisions of the Health and Community Services Complaints Act 2004.

HCSCC can deal with issues relating to the safety and quality of health and community services - government, non government services and private. The Health and Community Services Complaints Act 2004 (the Act) states HCSCC should:

- improve the quality and safety of health and community services in SA through the provision of a fair and independent means for the assessment, conciliation, investigation and resolution of complaints; and
- identify, investigate and report on systemic issues concerning the delivery of health or community services.

The HCSCC Charter of Health and Community Services Rights sets out the following rights for people who use health and community services:

1. Access - right to access services
2. Safety - right to be safe from abuse
3. Quality - right to high quality services
4. Information - the right to be informed
5. Respect - right to be treated with respect
6. Participation - right to actively participate
7. Privacy - right to privacy and confidentiality
8. Comment - the right to comment and/or complain

The Act states the Commissioner must take into account the position of persons within special needs who are described as particular classes of persons who, because of the nature of the classes to which they belong, may suffer disadvantage in the provision of services unless their needs are recognised.

3. HCSCC work to contribute to improving the safety and quality of disability services provided to vulnerable people

HCSCC has prioritised its statutory obligations to improve the safety and quality of disability services provided to vulnerable people. HCSCC acknowledges that many people living with disability are able to advocate for themselves and/or have strong social networks to assist them.

HCSCC's prioritisation is part of its ongoing work and also in response to the SA government's report: **Strong Voices** - A Blueprint to Enhance Life and Claim the Rights of People with Disability in SA (2012-2020). The report was released in October 2011 by the SA Department for Communities and Social Inclusion.

The Strong Voices report made several recommendations about HCSCC's role including:

The HCSCC must be resourced to perform this role and systemic issues in line with its current role must be addressed. In implementing this reformed function, the HCSCC must commit to an awareness and education campaign on rights, obligations and the HCSCC's role as a gateway for complaints about disability care, support, discrimination and wellbeing. A specific focus of the campaign will be to eliminate the use of restrictive practices.

Although HCSCC's funding will be reduced in July 2013 HCSCC has committed to the priority of contributing to the improvement of the safety and quality of disability services. HCSCC's focus is on those people who, because of their disability and/or their living circumstances, are vulnerable, often not strongly connected to the broader society and reliant on workers to provide for their every day needs. HCSCC has determined that these people fall within the Act's meaning of special needs groups.

HCSCC has been operating since October 2005 and one of the most significant investigations to date has related to the safety of vulnerable people receiving disability services. This investigation commenced after HCSCC received five separate complaints alleging vulnerable people in various disability services had been harmed by staff members. Those individual complaints led to a systemic investigation into the mechanisms in place to protect the rights of vulnerable people and to identify and respond to allegations of harm against them.

Although HCSCC has received relatively few complaints about safety in disability services it has become increasingly evident from experience and anecdotal information that there are major issues to address.

Rather than wait for complaints to drive the work, HCSCC sought information about the evidence of low complaints about harm in disability services and the likely incidence of harm in disability services.

HCSCC commissioned a paper from the respected academic and disability activist, Lorna Hallahan. The paper, ***Towards Safety and Quality in Disability Services: Confronting the "Corruption" of Care*** was released in November 2012. Copies of the paper are available from HCSCC's website: www.hcscclsa.gov.au.

In summary the main points of the paper are:

1. people living with disability who are isolated from social connections are especially vulnerable to violence and denial of their human rights and even more so if they are dependent on workers and organisations to provide their basic needs
2. disability services have evolved in ways that fail to prioritise the best interests of the very people they exist to provide service for. In effect compassionate well intentioned workers can be quickly and subtly inducted into styles of service

provision that directly and indirectly undermine the human rights and dignity of people living with disability.

3. the low prevalence of complaints by people living with disability, especially the most vulnerable, is predictable due to issues such as their ability to communicate, their fear of upsetting the services they are dependent on, including fear of retribution – and also the fact they may not know that they are entitled to better services.
4. multiple strategies are needed to ensure that people living with disability, their social networks, disability services and agencies such as HCSCC are enjoying, promoting and protecting human rights and responding quickly and appropriately if services are not safe.

The paper suggests the following practical strategies to enable the HCSCC to contribute to the prevention and redress of rights denial, abuse & neglect of people living with a disability.

Consistent with the health promotion approach which builds specifically on assets building, the advance of anti-oppressive practice and empowerment, the HCSCC has access to a unique arrange of resources and opportunities including:

1. Continuing to elicit and deal with complaints respectfully and in a timely fashion, as well as collecting data about complaints.
2. Taking leadership, along with other key players, in addressing restrictive practices, consistent with the *Strong Voices* report (2011).
3. Further developing the HCSCC Charter work and the Charter champions network
4. Building up resources through the HCSCC website.
5. Employing the arts as a means to provide voice and intensity to the demands to be treated with respect and to live from violence and rights denial. A process that discloses present oppression, focused, for example, on restraint and seclusion, in order to build community compassion and action.
6. Carrying out a Public People's Commission which invites those affected to tell their stories in an entirely safe and supportive environment but no longer condemns service users, families and concerned workers to silence.
7. Examining strategies used in other sectors such as child protection e.g. 'Signs of Safety' as ways of assisting those who come into contact with people reliant on services to recognise the signals both the signs of abuse and the signs of safety.
8. Working with National Disability Services at state and national levels on building quality and safety focused on recognising violence and rights denial and taking action to transform services into trauma-informed organisations in which restrictive practices are no longer used.
9. Undertaking similar work with DCSI.
10. Building connections and shared work with women's organisations, including Women with Disability Australia on their anti-violence work.

4. HCSCC Investigations

In line with 4 (above) HCSCC will provide summaries of its relevant systemic investigations and current and past activities are outlined hereunder.

July 2012 - current

HCSCC investigation into safety for vulnerable people using government and non government disability services in SA.

HCSCC notes that the Department for Communities and Social Inclusion (DCSI) is the main provider of government disability services and also the main funder of non government disability services.

HCSCC has informed DCSI that safety issues for vulnerable people in disability services is a main priority. To that end HCSCC has asked for and received information about the following issues:

- a. HCSCC has concerns that DCSI processes for safeguarding vulnerable people may still fall short of best practice in both government disability services and DCSI funded non government disability services.
 - i. DCSI responses to HCSCC:
 1. DCSI internal policies and procedures have been improved and are adequate to identify, report and manage allegations of abuse of clients
 2. DCSI contractual arrangements with funded non government disability services requires those services to report of concerns about the safety of clients
 3. the DCSI Care Concerns Investigation unit functions adequately to deal with allegations of abuse of clients within both government and DCSI funded non government disability services
 4. DCSI is a lead agency in the NDIS developmental work on safety and quality.
 - b. DCSI Consent and Restraint Policy was released July 2012 with the aim of ensuring that all services provided to people in disability services complied with the relevant laws relating to giving of consent and use of restraint. Restraint covers physical, chemical, mechanical and other types of limitations placed on an individual.
 - i. HCSCC concerns:
 1. That DCIS roll out of the new policy meant it was likely that some people living with disability would still be subject to actions that:
 1. would not be identified as restraint because they were part of what has been accepted practice over many years

2. staff may not report on some actions as being restraint because of the above and because options for alternative management were not understood or known
3. the three year roll out of the new policies, with accompanying training and expert in house support, is unlikely to ensure that people's rights are being provided for today
4. that non government disability services funded by DCSI are not required to comply with the policies until a later date.

ii. DCSI responses to HCSCC:

1. that in DCSI services resources are being devoted to training staff in positive behaviour management to ensure alternatives to restraint are available
2. that in DCSI services there are sufficient mechanisms in place to ensure that restraint practices will be identified, reported and reviewed
3. that DCSI funded non government services will be required to comply with the Consent and Restraint Policy when new contracts are entered into in July 2013.

October 2008 - June 2012

HCSCC investigation into safety for people using SA government disability services identified government disability services did not have in place:

- a. a rights based protective service model
- b. consistent identification of and responses to alleged abuse of services users by staff

HCSCC closed the investigation for the following reasons:

- i. government disability services had in place an interim procedure to manage and report to executive and HCSCC alleged serious abuse of services users by staff in both government and government funded community services
- ii. government disability services agreed to develop a rights based protective service model
- iii. the context changed with the arrival of the Strong Voices report and the National Disability Insurance Scheme (NDIS)

5. Other actions HCSCC has taken to improve the safety and quality of disability services in SA

National Disability Insurance Scheme

The Commonwealth government has announced that in conjunction with states there will be a National Disability Insurance Scheme (NDIS) commencing in July 2013 with various trials in each state.

The SA launch site for NDIS is for children up to 14 years of age, with the initial launch in July 2013 focussing on children up to 5 years of age and then other age groups being added in the following 2 years.

HCSCC has met with key DCSI staff to understand how the NDIS will work in SA and to stress the importance of taking into account the HCSCC Charter of Health and Community Services Rights, with a specific focus on safety.

HCSCC acknowledges that for all involved in SA, the NDIS is still a developmental concept and many systems have yet to be developed, let alone tested.

HCSCC recognises that non government disability service providers will be involved in the NDIS and this will change the current funding and governance arrangements with DCSI. HCSCC has connected with non government disability services via their SA peak body, National Disability Services (NDS). HCSCC will increase this work to promote the requirements of the HCSCC Charter of Health and Community Services Rights, with a specific focus on safety.

HCSCC has met with the Chief Executive Officer of the national NDIS Launch Agency, has drafted a submission on the development of both the national NDIS Act and the state Act to replace the Disability Act with a strong focus on the following and highlighted the importance of the need to:

- to ensure rights based, person centred services are provided
- to have strong rights based safeguarding mechanisms in place
- provide genuine rights based supported decision making resources
- have clarity about options available for people to have their concerns about disability services addressed in an effective and efficient way

Community Visitor Scheme for disability services

HCSCC is involved in the development of the Community Visitor Scheme (CVS) for disability services, which was another recommendation of the Strong Voices Report. The new scheme will commence operation in 2013 and HCSCC has agreed on a Memorandum of Understanding with the CVS in relation to management of complaints about disability services.

6. Conclusion

HCSCC has a clear role in contributing to improving the safety and quality of disability services provided to vulnerable people and looks forward to forming partnerships with others who also have a role.

Please contact Sandy Edwards, Manager Complaint Resolution Service on 8226 8652 with any suggestions, comments or criticisms of HCSCC efforts.



Steve Tully
Health and Community Services Complaints Commissioner