



**South Australian
Community Visitor Scheme**

Level 3, 182 Victoria Square
ADELAIDE SA 5000

GPO Box 292
Adelaide SA 5001

Tel: 1800 606 302
Fax: 08 7424 7239

Email: cvs@sa.gov.au
www.sa.gov.au/cvs

**Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
community.affairs.sen@aph.gov.au**

To whom it may concern,

The South Australian Community Visitor Scheme (CVS) welcomes the opportunity to provide a submission to the Senate Standing Committees on Community Affairs' national enquiry into Violence, abuse and neglect against people with disability in institutional and residential settings.

The CVS is an independent statutory scheme that conducts regular visits and inspections of all emergency departments of hospitals, acute mental health units and disability accommodation and Supported Residential Facilities (SRFs). The Principal Community Visitor (PCV), Maurice Corcoran AM reports directly to the Minister for Mental Health on mental health issues and the Minister for Disability on disability issues. The PCV is required to provide an Annual Report to both Ministers by 30 September each year (links to Annual Reports are attached as appendix 1) and are tabled in both Houses of Parliament.

The CVS is in place to be a 'safeguard' and to independently check into the quality of care and support provided to people with a mental illness in acute care and to people with a disability in disability accommodation. The visits and inspections into disability accommodation commenced in 2012 and identified a significant cohort of individuals who had both an intellectual disability and very little if any communication, had little or no family involvement and were under the guardianship of either the Minister or Public Advocate.

From our experience over the past 4 years, we think it is vital that there be Community or Official Visitor programs to all institutions and residential facilities as an important means to detect violence, abuse and neglect of people with a disability, including those with a mental illness. Evidence from almost four years of operating also suggests that our Community Visitors build trusting relationships with not only service users but also staff who disclose many issues of concern relating to the care and treatment of vulnerable individuals.

Senate Inquiry

On 11 February 2015, the Senate referred the following matter to the Senate Community Affairs References Committee for inquiry and report:

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

Brief background of the Community Visitor Scheme

The CVS obtains its visits and inspection powers under the *SA Mental Health Act 2009* and specifically sections 50-54 which outlines the powers, functions and roles of the PCV and Community Visitors (CVs) (Attachment 2). The scheme commenced operation in July 2011 and requires two CVs to undertake the monthly visits and inspections and prepare a written report to the PCV. Issues identified at visits are recorded in reports and referred to the PCV when they are of a serious nature and/or are ‘systemic’. They are also transferred onto an ‘Issues Register’ that is tabled for discussion with the CVS Advisory Committee.

Many issues are referred directly back to services providers as a means of quality improvement and have been used systematically by managers to address quality. The CVS also reflects back observations of a positive nature i.e. when individual staff are observed or commended for exceptional work, and this is quite often promoted back within agencies and means a great deal to individuals and team moral.

In 2012, Regulations were developed under the *SA Disability Services Act 1993*, to enable the Community Visitor Scheme to expand out into disability accommodation and Supported Residential facilities (SRFs). For more details on this legislation or on the CVS, please refer to our website [Community Visitor Scheme](#)

Submission

This CVS submission will now attempt to respond to the relevant sections of the terms of reference for this enquiry.

The terms of reference are:

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

Response: The CVS visits and inspects approximately 10 group houses and SRFs per week in South Australia and approx. 34 acute mental health units per month. These visits must be undertaken by two Community Visitors at a time who are required to inspect all areas of the facilities and to engage with as many of the service users or residents that they are able to and to identify whether they have any issues or concerns. Many of the residents that CVs visit do not have any family nor informal supports and the CVS promotes itself as an ‘independent statutory scheme’ that they can disclose issues to and a scheme that can advocate on their behalf.

It is through these exchanges and comments from staff that the CVS builds a picture and both qualitative and quantitative data is collected on the experiences of people with a

disability. This may include restrictive practices that are evident in facilities such as restraints on individuals, locks on doors, cupboards or fridges which CVs are then required to enquire into the assessments and paperwork to justify such restrictions.

The CVS also responds to requests to visit facilities and anyone who has a genuine interest in individuals who are in either mental health or disability facilities can request that we do a visit. Requests have been made to the CVS that have included serious allegations of abuse such sexual abuse, physical abuse, emotional and financial abuse and various types of neglect. Depending on a range of factors, the CVS may undertake a priority visit or may refer to another relevant authority such as the Police, Sexual Assault Unit, the Public Advocate or Health and Community Services Complaints Commissioner, the Chief Psychiatrist or the Minister for Mental Health or Minister for Disability.

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

Response: It has been recognised both nationally and internationally that people with a disability and those with a mental illness are twice as likely to be physically and sexually abused than those without a disability. When individuals are dependent on personal care for all their personal needs such as washing, toileting and dressing they are going to be exposed to many individuals who provide this intimate care.

While there are many precautions such as security checks, protective behavior training etc., there remains significant risks for these individuals. What's more, we also know that those with pedophilic tendencies will target those with intellectual and communication impairments. That is why it is so important to have safeguards in place to act as 'watch-dogs' and that perpetrators also know that they are at greater risk of being 'found out'. To take these safeguards away would give out a clear signal to not only those in need of care but also those who are looking out for an easy target.

The Victorian CVS have reported a 37% increase in incidents of abuse, neglect and assaults across its mental health and disability streams during the 2013-14 year. They had 287 incidents compared to the previous year where there were 209 but also acknowledge that this is the tip of the 'iceberg' as many incidents are not reported.

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

Response: Please response to (b) and also to note that there is considerable evidence that many incidents of violence and abuse goes unreported and even when it is reported, it is very difficult to get a conviction.

The South Australian Government has attempted to address this through the **SA Disability Justice Strategy** which includes changes to the Evidence Act and to also implement a program that recruits 'communication assistants' to assist with investigative interviews to ensure better outcomes for those with communication impairments.

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

Response: Please see responses to (C)

- 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;

Response: The SA government has made a clear commitment to the CVS being in place as an Independent Statutory body that conducts regular visits and inspections to all the above facilities. CVs have the same powers as a health inspector and can request copies of any documents related to the care and treatment of service users.

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

Response: Article 16 of the *UN Convention on the Rights of People with a Disability* (UNCRPWD) - (Freedom from exploitation, violence and abuse) compels States Parties, including Australia, who are a signatory to this Convention to address a number of measures that include: -

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted

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

Response: No comment

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

Response: Protective behavior training for staff and especially residents who should also receive a statement of rights about what they should expect from a residential service that complies with service standards. This document should also state how they can get assistance and advocacy to lodge a complaint if they believe their rights are not being upheld.

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

Response: See above response to h

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

Response: Promoting independent quality assurance monitoring that provides feedback on service improvement.

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

Response: Refer to response to (f), that ensures Australia meets its obligations, has independent statutory monitoring and reporting.

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

Response: One of our major concerns are for those individuals who have an intellectual disability, are non-verbal or have no means of communicating with others other than grunts, screams or facial expressions, have no family or informal supporters. Who will advocate for them and have an ongoing interest in their well-being and monitoring the services they receive?

This is one of the most rewarding positions I have had mainly because we get to go out and meet many individuals who are in this position and we are able to check up on them and ensure, as far as is possible, they are okay and leading the best possible lifestyle given their limitations. I sleep better knowing this and hopefully so do our Ministers but who will do this under an NDIS when safeguards are being questioned?

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

Response: As is required under Article 16.3 of the UNCRPWDs, all facilities and programs designed to serve persons with disabilities are effectively monitored by independent authorities. That monitoring bodies such as the SA CVS and Victorian CVS continue to report to respective Parliaments and can refer any incidents and/or suspicion of abuse and neglect to relevant authorities for formal investigation.

Thank you for the opportunity to provide a submission to this important enquiry, please contact me directly to clarify any of the above responses.

Yours sincerely

Maurice Corcoran AM

Principal Community Visitor
South Australian Community Visitor Scheme
Ph: 1800 606 302

W: www.sa.gov.au/CVS
Level 3, 182 Victoria Square, Adelaide.



(Appendix 1)

Annual Reports of the Principal Community Visitor

[Principal Community Visitor Annual Report on Mental Health Services 2013-2014](#)

[Principal Community Visitor Annual Report on Disability Accommodation 2013-14](#)

(Appendix 2)

Mental Health Act 2009

Division 2—Community visitor scheme

50—Community visitors

- (1) There will be a position of Principal Community Visitor.
- (2) There will be such number of positions of Community Visitor as the Governor considers necessary for the proper performance of the community visitors' functions under this Division.
- (3) A person will be appointed to the position of Principal Community Visitor, or a position of Community Visitor, on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, will be eligible for reappointment.
- (4) However, a person must not hold a position under this section for more than 2 consecutive terms.
- (5) The Governor may remove a person from the position of Principal Community Visitor, or a position of Community Visitor, on the presentation of an address from both Houses of Parliament seeking the person's removal.
- (6) The Governor may suspend a person from the position of Principal Community Visitor, or a position of Community Visitor, on the ground of incompetence or misbehaviour and, in that event—
 - (a) a full statement of the reason for the suspension must be laid before both Houses of Parliament within 3 sitting days of the suspension; and
 - (b) if, at the expiration of 1 month from the date on which the statement was laid before Parliament, an address from both Houses of Parliament seeking the person's removal has not been presented to the Governor, the person must be restored to the position.
- (7) The position of Principal Community Visitor, or a position of Community Visitor, becomes vacant if the person appointed to the position—
 - (a) dies; or
 - (b) resigns by written notice given to the Minister; or
 - (c) completes a term of appointment and is not reappointed; or
 - (d) is removed from the position by the Governor under subsection (5); or
 - (e) becomes bankrupt or applies as a debtor to take the benefit of the laws relating to bankruptcy; or
 - (f) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
 - (g) becomes a member of the Parliament of this State or any other State of the Commonwealth or of the Commonwealth or becomes a member of a Legislative Assembly of a Territory of the Commonwealth; or
 - (h) becomes, in the opinion of the Governor, mentally or physically incapable of performing satisfactorily the functions of the position.
- (8) The Minister may appoint a person to act in the position of Principal Community Visitor—
 - (a) during a vacancy in the position; or

- (b) when the Principal Community Visitor is absent or unable to perform the functions of the position; or
- (c) if the Principal Community Visitor is suspended from the position under subsection (6).

51—Community visitors' functions

- (1) Community visitors have the following functions:
 - (a) to conduct visits to and inspections of treatment centres as required or authorised under this Division;
 - (b) to refer matters of concern relating to the organisation or delivery of mental health services in South Australia or the care, treatment or control of patients to the Minister, the Chief Psychiatrist or any other appropriate person or body;
 - (c) to act as advocates for patients to promote the proper resolution of issues relating to the care, treatment or control of patients, including issues raised by a guardian, medical agent, relative, carer or friend of a patient or any person who is providing support to a patient under this Act;
 - (d) any other functions assigned to community visitors by this Act or any other Act.
- (2) The Principal Community Visitor has the following additional functions:
 - (a) to oversee and coordinate the performance of the community visitors' functions;
 - (b) to advise and assist other community visitors in the performance of their functions, including the reference of matters of concern to the Minister, the Chief Psychiatrist or any other appropriate person or body;
 - (c) to report to the Minister, as directed by the Minister, about the performance of the community visitors' functions;
 - (d) any other functions assigned to the Principal Community Visitor by this Act or any other Act.

52—Visits to and inspection of treatment centres

- (1) Each treatment centre must be visited and inspected once a month by 2 or more community visitors.
- (2) 2 or more community visitors may visit a treatment centre at any time.
- (3) On a visit to a treatment centre under subsection (1), the community visitors must—
 - (a) so far as practicable, inspect all parts of the centre used for or relevant to the care, treatment or control of patients; and
 - (b) so far as practicable, make any necessary inquiries about the care, treatment and control of each patient detained or being treated in the centre; and
 - (c) take any other action required under the regulations.
- (4) After any visit to a treatment centre, the community visitors must (unless 1 of them is the Principal Community Visitor) report to the Principal Community Visitor about the visit in accordance with the requirements of the Principal Community Visitor.
- (5) A visit may be made with or without previous notice and at any time of the day or night, and be of such length, as the community visitors think appropriate.
- (6) A visit may be made at the request of a patient or a guardian, medical agent, relative, carer or friend of a patient or any person who is providing support to a patient under this Act.
- (7) A community visitor will, for the purposes of this Division—
 - (a) have the authority to conduct inspections of the premises and operations of any hospital that is an incorporated hospital under the *Health Care Act 2008*; and

- (b) be taken to be an inspector under Part 10 of the *Health Care Act 2008*.

53—Requests to see community visitors

- (1) A patient or a guardian, medical agent, relative, carer or friend of a patient or any person who is providing support to a patient under this Act may make a request to see a community visitor.
- (2) If such a request is made to the director of a treatment centre in which the patient is being detained or treated, the director must advise a community visitor of the request within 2 days after receipt of the request.

54—Reports by Principal Community Visitor

- (1) The Principal Community Visitor must, on or before 30 September in every year, forward a report to the Minister on the work of the community visitors during the financial year ending on the preceding 30 June.
- (2) The Minister must, within 6 sitting days after receiving a report under subsection (1), have copies of the report laid before both Houses of Parliament.
- (3) The Principal Community Visitor may, at any time, prepare a special report to the Minister on any matter arising out of the performance of the community visitors' functions.
- (4) Subject to subsection (5), the Minister must, within 2 weeks after receiving a special report, have copies of the report laid before both Houses of Parliament.
- (5) If the Minister cannot comply with subsection (4) because Parliament is not sitting, the Minister must deliver copies of the report to the President and the Speaker and the President and the Speaker must then—
 - (a) immediately cause the report to be published; and
 - (b) lay the report before their respective Houses at the earliest opportunity.
- (6) A report will, when published under subsection (5)(a), be taken for the purposes of any other Act or law to be a report of the Parliament published under the authority of the Legislative Council and the House of Assembly.