

*Submission to the Senate Enquiry into 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.*



Abuse, neglect and poor practice are only prevented from occurring in residential settings for people with disability, under current arrangements, by the good will of staff.

Organisations that provide these services are largely left to their own devices to maintain good practice, and lawful treatment of the people in their care. The supervisory regime relies upon Official Community Visitors as the only official external scrutiny of a residential service. Everything else comes from the operating organisation — or not, which is usually more to the point.

In NSW organisations that are funded by the government have a funding agreement which requires that a number of disability service policies prepared by Ageing Disability and Home Care (part of the Department of Family and Community Services) are adhered to. FACS appears to have no system of enforcing the use of its policies apart from relying on others through a practice (I'd hardly call it a 'system') of what it terms 'third party accreditation.' This is where a commercial firm for a fee certifies that an organisation has appropriate standards. It is hard to see how certification at a moment in time can have any substantial corrective or performance effect on an organisation that is committed to its own internalised system of reporting, reference and authority, as most organisations are.

The end result is that, in effect, organisations are left to themselves to supervise their own compliance with the policies, law and human rights requirements that they choose to comply with, enforce or have any regard to. The debacle at Yooralla is a case in point of where such an arms-length system ends and the lack of effectiveness of the Board in proper discharge of its duties.

My work takes me into many disability organisations and I've come across organisations that choose which 'policies' they will attend to, that don't require their senior management to know and understand, then apply and train in the policies that are applicable, have senior management with very slender understanding of common legal requirements including WHS rules for employers, have operating managers that mismanage restrictive practices and medication, including illegally altering medical prescriptions to control people's behaviour, all without the supervision or any possibility of intervention from senior people who would never set foot inside an operating care home.

This is further compounded by the fact that people with disability typically cannot effectively speak up for themselves in many cases, have difficulty communicating and are therefore often ineffective reporters, are often not believed or understood, cannot provide evidence for a court and have no access to police to report on their own behalf. They rely on their care workers and the organisations they are (often) trapped within. Thus prosecutions for abuse are difficult to mount and rare. The Community Visitors can easily be managed to not see 'problems' and have no enforcement power anyway, so are of little use in this setting.

This is the nub of the problem. People with disability in residential services are cut off from the everyday community and its informal mutual oversight of its members. They are cut off from the justice system and are vulnerable at every point of their lives to exploitation, abuse and ill treatment. This is even more the case for single person overnight shifts where there is no system of management supervision or electronic surveillance to detect unusual movement patterns in the house.

That governments trust private organisations with the care and custody of people with disability with such an idealistic regime for protecting them is chillingly naive and represents a case of governments turning their backs on the people who most of all should be able rely on government to protect them.

At the same time as governments are relaxing their protection of vulnerable people, trusting private organisations that are themselves effectively isolated from the general community, we see how they really perform, as the Royal Commission into the dreadful practices that institutions have permitted to flourish in sexual and other abuse of children reveals. It exemplifies how unreliable such organisations are in caring for people. Give a person absolute power (which institutions do have over their inmates), and they become absolutely corrupted. The only body that can address this is government through legislated assertive intervention in those institutions and organisations, bringing them all equally before the law and not able to hide behind institutional barriers.

What is needed is a robust independent inspectorate of disability services with inspectors who are experienced disability workers trained as investigators who are able to enter service and related premises, question, investigate and examine services without notice and without a warrant, and are able to prosecute, but more importantly, issue notices and fines on the spot for standards breaches, with severe penalties for obstructing their work.

The regime that applies in the NSW Boarding House act is an example that should apply to any residential or day program or employment service for people with disability. If governments don't do this, they are just paving the way for another Royal Commission into institutional abuse in 20 years time. History shows that left to themselves there is little to prevent institutions acting out *The Lord of The Flies* thinking themselves outside the law and immune to its application.

It is significant that some organisations have operating rules that require reporting to management instead of informing police of a criminal or suspected criminal act or a matter of neglect or abuse.

This allows organisations to inhibit the actions of concerned staff in reporting matters to the authorities and to hide mistreatment or illegal activity to protect the organisation, quietly moving any dangerous workers who then abuse people in other services. Both Yooralla and the NSW Knox School evidence before the Royal Commission into Institutional Responses to Child Sexual Abuse exemplify such practices.

It should be an offense for an organisation to instruct staff to not notify police, contrary to their civic and moral duty; this would extend to any inspectorate that is created. That is, it should be an offense to instruct staff not to notify authorities, or otherwise prevent them from so doing, and a further offense to take action against staff for making a notification, as per the Community Services Complaints Reporting act and WHS act, for example.

Without these provisions, we will end up providing less for the protection of people with disability than we currently do for fish.

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