Disability Justice Advocacy inc.

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

08 April 2015

Subject: Submission to Senate Inquiry 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

Dear Secretary

Disability Justice Advocacy Inc (DJA) makes the following submission based on our experience of working with people with disabilities in residential and respite services funded by the Victorian Government and private providers..

DJA provides Individual, Legal and Systemic advocacy services to people with high support needs associated with disability that live in any of the 28 metropolitan municipalities as shown on the map below.

Over 3.1 million people live within this catchment and according to the 2011 Census; almost 160,000 people with disabilities with high support needs are potential clients. We are funded by the federal government through the Department of Social Services (DSS)

In our experience, the responses to violence, abuse and neglect against people with disability, as well as to whistle blowers, by residential and respite services are inadequate because:

1. Notifications of allegations by victims are too often treated as Incident Reports and not referred to relevant authorities such as the police.
2. Police sometimes regard abuse allegations as internal residential or OHS issues and fail to investigate.
3. Police though lack of training, find it too difficult to interview victims who are non-verbal.
4. Some victims are reluctant to report abuse because of fear of reprisals such as withdrawal of services.
5. Some victims are unable to communicate the abuse due to a lack of support and appropriate Augmentative and Alternative communication aids.
6. Some victims are prevented from reporting abuse by pressure from family members.

Case Study 1

Client AB lives in a community residential unit. He has 24-hour worker support and he is also non-verbal and has an intellectual disability.

He was rushed to hospital during a night shift with a severely lacerated penis that required surgery. His brother came in and gave consent for the surgeons to perform the operation. His penis was so badly lacerated that if he had not had immediate surgery he possibly would have lost enough blood to have died.

The worker completed an incident report, but it was substituted by one completed by management — a different incident report was completed — and it was claimed that it was caused by a plastic urine bottle, such as in the image below.

Our advocates who have worked in the industry in personal care know that you cannot severely lacerate a penis enough to require surgery using one of those bottles unless there is some excessive force involved. We referred the matter to police under the federal Disability Services Standard 12, which is freedom from neglect and abuse.

Under our duty of care we made an immediate report to the local police station and we warned them that management had allegedly fabricated an incident report.

However, the first person the police officer spoke to was the manager of the facility who lodged the incident report, and they took no further action as a result of that conversation.

Client AB's brother, who was his legal guardian, was reluctant to pursue the matter any further because he was frightened that his brother might be removed from the house.

Case Study 2

Client CD had been sexually abused by a taxi driver who regularly drove her from her group home to the Day Service. She was non-verbal and had Cerebral Palsy. Notifications of this abuse were recorded as Incidents using the Group Home Incident Reporting process but the matter was never referred to the police until we were alerted by a member of the House staff.

Police were unable to charge the taxi driver because of the standard of evidence required from the victim who was non-verbal. No Independent 3rd person was called by the police. The staff member who made the referral to us was transferred to another house.

Case Study 3

Client EF is 16 years old, non-verbal, has Autism and complex challenging behaviours. She was relinquished into state care by her single mother who had two other younger children with disabilities and couldn't get the funding support from DHS to keep the family together.

Client EF was placed in 5 different respite facilities across the west and north metropolitan areas of Melbourne over a two year period and was physically assaulted quite seriously on two occasions by other residents.

These assaults were recorded as Incidents and no notifications were made to police by the staff at the various respite facilities. In the end, the mother was so concerned that her daughter was due to be placed back into a respite facility where she had previously been assaulted, that she contacted our agency and we facilitated the return of her daughter to the family home with appropriate supports in place.

Case Study 4

Client GH is non-verbal and has an intellectual and physical disability requiring an electric wheelchair. Whilst being transported in a Group Home Wheelchair Accessible vehicle, she was assaulted by a casual staff member who was sitting in the back. The assault took the form of a slap to the face and punch to the chest because Client GH wouldn't stop grunting and it was felt it was distressing the other clients in the vehicle.

This was recorded as an Incident and no referral was made to the police. The casual staff member was banned from the Group Home, but no support was provided to the victim of the assault.

We were alerted to this Incident by one of the permanent House Staff who wanted further action taken against the casual. We referred the matter to the local Police but upon investigation the original Incident Report had gone missing. No further action was taken by the management of the Group Home or the Police. The casual Staff member or the victim of the assault were never interviewed by police.

Case Study 5

Client IJ is non-verbal and in advanced stages of MS and living in a non-government Group home. She is completely reliant on staff for 24 hour care. Her only means of communicating is "Yes" or "No" and is by blinking.

Staff made all the decisions for her including what she would eat, what clothes she would wear, what time she ate and what time she went to bed or to the toilet. She was often left for hours without continence support in a soiled state. Her sister referred her to our Agency because she felt her sibling was being neglected and abused.

Upon investigation, Client IJ had been frequently sworn at using offensive language by one particular support worker as well as being pushed and shoved and told she was useless and ought to be put out of her misery.

We devised a communication aid for the client who communicated these complaints to us by blinking. As a result we lodged a complaint with management but the only action taken was to transfer the worker to another Group Home.

However, the communication aid was successfully used by the rest of the staff to enable client IJ to communicate her needs and wishes at appropriate times during the day.

Her sister who was her Guardian decided not to take the matter to the police because she was fearful of consequences for her sibling.

Observations and Recommendations

This is just a small snapshot of the type of cases of violence, abuse and neglect and failure to take appropriate action that we have on our files. From the 01/10/2009 to the 31/03/2015 **16.75%** of our advocacy clients have been victims of violence, abuse or neglect in residential or respite services in our intake area. Another **4.86%** of victims made requests for advocacy but lived outside our intake area so we had to make referrals for them to other services.

The response often depends on the management of the Group Home or respite facility and the leadership and training that is provided to support workers and the action or inaction by police and family members of victims.

There have been cases as well where support workers have been singled out for detrimental treatment by management because they have lodged complaints on behalf of residents without the approval of management.

This victimisation of whistle blowers actively discourages reporting of neglect, abuse and assault to external relevant authorities such as the Police at the expense of victims.

Recommendations

1. There should be a requirement on all residential support staff in both government and non-government residential and respite settings across Australia for mandatory reporting of violence, abuse and neglect of people with disabilities to police, in much the same way as the process for Child Protection works.

2. Residential support staff and House supervisors need further training in Incident Reporting as opposed to external notifications of violence, abuse and neglect to police.

3. Police need more training in disability awareness and the use of Independent 3rd Persons from the Office of the Public Advocate in Victoria. In fact, the requirement to use an Independent 3rd Person should be mandated in legislation as it is currently only listed in the Victoria Police Manual.

4. The recommendations of the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) report entitled “Beyond Doubt” into people with disabilities as victims of crime should be implemented in Victoria. See http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/reports/item/894-beyond-doubt-the-experiences-of-people-with-disabilities-reporting-crime

5. The implications for a national approach to the VEOHRC recommendations should be researched and considered for implementation.

Yours Sincerely

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