



## **United Voice Submission:**

### **Senate Standing Committee on Community Affairs**

#### **Violence, abuse and neglect against people with disability in institutional and residential settings**

**9 April 2015**

##### **About United Voice**

United Voice is a union of workers organising to win better jobs, stronger communities, a fairer society and a sustainable future. Members work in a diverse range of industries including disability support, aged care, early childhood education and care, education, cleaning, hospitality, healthcare, security, emergency services and manufacturing.

A large number of United Voice members work in the public sector or in publicly funded sectors. Many United Voice members are in low-paid and under-valued employment, and all rely on government to provide access to quality public services, to ensure a secure retirement, and to monitor and regulate economic activity to ensure a fair and equitable society.

Whilst coverage and titles may differ on a state basis, nationally United Voice has over 3,200 members who work in the disability sector. As the people working in the disability sector on a daily basis, our members appreciate the opportunity to have their opinions, concerns and experiences considered as part of this inquiry.

*"I love what I do, a person doesn't know when they or someone they love may need care. Skilled & committed workers are needed in this industry, it's not work if you love what you do"*

- Homecare Worker, NSW

## **Introduction**

United Voice members across the country have reacted with significant concern at the increasing number of reports of violence, abuse and neglect against people with disability in institutional and residential settings.

A number of United Voice members' responses to this inquiry are included in this submission, many of whom not only work in the sector, but whose children or other family members use disability support services.

United Voice members understand the vital role the workforce has in preventing, responding and remedying incidents. Quality supports that respect the rights of people with disability to live free from violence, abuse and neglect requires a stable, professionally trained, qualified and dedicated workforce.

Retaining good quality workers must be recognised as the key in exposing and overcoming abuse and neglect in the sector. It is essential that the paid workforce be acknowledged as a vital part of the solution and the abhorrent actions of a minority must not be allowed to cloud the public perception of the whole workforce.

We believe the recommendations contained in this submission are equally applicable to services delivered in a homecare setting and the committee should expand the focus of its inquiry to capture this environment.

United Voice welcomes this important inquiry and the opportunity to make a submission on behalf of our members. We urge the Senate Standing Committee on Community Affairs to support the recommendations contained in this submission.

For more information on this submission, please contact Philippa Clarke

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## Executive Summary

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1. People with disability deserve the highest quality support services that are provided in a manner that is safe, accountable, respectful and responsive to an individual's needs and goals. The capacity of the Australian disability sector to provide such quality support services is brought into question by reported instances of abuse and exploitation committed against people with disability by those who have been entrusted to provide a service.
2. We acknowledge that while most disability support services are delivered in a way that does not put people with disability at risk, United Voice members know that violence, abuse and neglect against people with disability does occur.
3. United Voice members completely oppose violence, abuse and neglect against people with disability in the workplace and fully support the introduction of preventative and responsive safeguards.
4. United Voice members understand the vital role that the workforce has in exposing and overcoming abuse. Quality support services that fully respect the rights of people with disability to live free from violence, abuse and neglect requires a stable workforce of professionally trained, qualified and dedicated people.
5. Quality support services require workers who have the necessary skills to recognise indicators of abuse, know how to appropriately respond to suspected malpractice and are supported and encouraged to raise concerns without fear of being persecuted or targeted by their employer.
6. Due to the massive workforce growth projected under the NDIS, it is essential that systemic workforce issues, particularly attraction and retention issues are adequately addressed to ensure the provision of quality support services remains sustainable into the future.

*"I love this industry. It's not about coming into work, doing an 8 hour shift and leaving. It's so much more than that. For some people we can be their eyes, their ears or their hands".*

- Disability Support Worker, WA

*"I absolutely love caring and helping people. My great grandparents raised me and have always been my biggest inspiration. I believe in doing absolutely everything I*

*can to make the person I am caring for happy and comfortable. That is how I was raised and I'm so thankful “.*

- Homecare Worker, NSW

## Summary of Recommendations

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**Recommendation 1** The Government mandates access to ongoing professional training and career development to all disability sector workers, acknowledging that a stable and quality workforce of professionally trained, qualified and dedicated workers is a vital safeguard for people with disability from abuse, violence and neglect.

**Recommendation 2** The Government fund the development and implementation of a national workforce development strategy produced in consultation with all sector stakeholders to establish the sector as a viable professional career choice, to ensure the sustainability of a quality workforce of professionally trained, qualified and dedicated workers.

**Recommendation 3** A nationally consistent pre-employment screening process must be introduced which will form an important preventative strategy to safeguard against abuse, violence and neglect against people with disability in the workplace.

**Recommendation 4** The national pre-employment screening process involves an independent and comprehensive risk assessment that will improve the safety, security, trust and transparency within the disability sector, will be respectful of worker rights to privacy and natural justice, and will enhance the integrity and quality of the workforce, making it beneficial for both people with disability and workers.

**Recommendation 5** All workers in the sector must have access to on-going professional training, education and information to recognise and appropriately respond to indicators of abuse, violence and neglect.

**Recommendation 6** Nationally consistent whistle blower legislation must be introduced to support and encourage workers to speak up without fear of being persecuted or targeted by their employers where a report is made in good faith.

**Recommendation 7** A national, independent and centralised complaints body must be introduced that has the power to investigate and respond to allegations of suspected malpractice and is subject to transparent reporting obligations to ensure public accountability and improve sector data collection.

**Recommendation 8** The importance of external mechanisms for monitoring quality and service practice are recognised through the introduction of a national program of Community Visitors who are empowered to visit accommodation facilities for people with disability without prior notice and monitor and report on the quality of services provided.

## Quality Support

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*“I am proud & honoured to help others... I am proud of the level & quality of care we provide to the community. I care”.*

- Homecare Worker, NSW

7. Maintaining a stable and quality workforce is a vital safeguard against violence, abuse and neglect against people with disability in a service environment. The alternative to a quality workforce at best will mean a reduction in the quality of support services. At worst, this will result in increased incidents of violence, abuse and neglect across the sector.

*“I think clients, especially the elderly and the disabled, should be entitled to receive care in a dignified, professional manner by care workers with enough time to meet their needs”.*

- Homecare Worker, NSW

8. Quality support requires a stable workforce of professionally trained, qualified and dedicated workers who are fully supported to provide a service that is respectful of, and facilitates, an individual’s needs and goals.
9. There are currently no mandated minimum qualifications in the disability sector, yet there are high levels of relevant formal qualifications within the workforce. In the disability sector 79% of

the direct care workforce has post school qualifications<sup>1</sup>. Qualifications are best placed to ensure that a person has the required knowledge to provide quality support services.

10. Whilst professional, ongoing training is essential for an individual's career development, this should be delivered in addition to, and not in place of, formal qualifications. On the job and ongoing training outside of a formal qualifications framework relies on the individual employers taking on the responsibility for the workers professional development. This can lead to huge variances across the sector in terms of workforce skills. In turn, this can reduce mobility among the workforce, as well as a potential variance in the quality of skills between providers depending on their individual commitment to training.
11. United Voice members have raised concerns about the reduced value providers are placing on qualifications and the quality of training that is currently being delivered in-house. Simply providing access to training, without having regard to its quality or appropriateness, will not result in quality support services. What is required is access to ongoing professional training, in conjunction with formal qualifications, which is provided by a qualified trainer and provides an appropriate balance between theory and hands on experience.

*"It seems like the RTOs are teaching people all the theory, but where is the practical hands on experience? We get new starters who have gone through training and don't know how to do basic things like shower people, or use hoists. How does that even happen? It just makes things twice as hard for everyone else. How can they call that training?"*

- Disability Support Worker, WA

12. Increasing complexity of care, higher expectations from people who use services and growth in community and based and in-home care delivery means that workers are often placed in demanding situations without immediate support. Appropriate qualifications and access to quality ongoing training and education is essential to ensure that all workers across the sector have the required knowledge and skills to carry out their role to a high standard.

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<sup>1</sup> B. Martin and J. Healy, 'Who Works in Community Services: a profile of Australian workforces in child protection, juvenile justice, disability services and general community services', *National Institute of Labour Studies Flinders University*, 2010.

**Recommendation 1** The Government mandates access to ongoing professional training and career development to all disability sector workers, acknowledging that a stable and quality workforce of professionally trained, qualified and dedicated workers is a vital safeguard for people with disability from abuse, violence and neglect.

13. Providing good quality jobs which provide good quality support services is essential for the sustainability of the disability sector.
14. In recent years the disability sector has expanded in response to a growing need. Despite this, the sector is still characterised by a high level of unmet need and workforce supply is stretched. Further, average rates of staff turnover in the disability sector are 29%. This is high when compared to other industries<sup>2</sup>.
15. Existing attraction and retention problems in the sector will be exacerbated by the required level of workforce growth. It is estimated that the implementation of the NDIS will roughly double the level of demand for disability support workers over the next 25 years<sup>3</sup>.
16. Competition for workers between the aged and disability sectors will also intensify as aged care reform puts further strain on the pool of potential workers. Where workforce supply is limited, the quality of the workforce, and therefore the quality of the service, can suffer.

*“We are so short staffed that management will end up hiring anyone out of desperation...even if they are unsuitable for the job”.*

- Disability Support Worker, WA

17. Ongoing professional development and formal recognition of competencies where people gain higher level and/or specialist qualifications will establish professional career paths. This in turn, will improve the public perception of the sector as a professional career choice, thereby improving attraction and retention of quality workers.

*“The industry has become a revolving door of people who only want to do the job for a short term. How are you going to attract the right people to the industry if society doesn’t see this as a viable long-term employment choice? We want this job to be recognised and respected as being a professional career. Because that’s what it is”*

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<sup>2</sup> Productivity Commission, ‘Disability Care & Support’, 2011.

<sup>3</sup> Ibid.



- Disability Support Worker, WA

**Recommendation 2** The Government fund the development and implementation of a national workforce development strategy produced in consultation with all sector stakeholders to establish the sector as a viable professional career choice, to ensure the sustainability of a quality workforce of professionally trained, qualified and dedicated workers.

## Pre-employment screening

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*“There are many vulnerable people in the community and they need to feel confident in those workers who are entering their homes and develop trust with those workers to know that they will receive a high standard of care and that their service is delivered in a friendly, professional manner”.*

- Homecare worker, NSW

18. We note that successfully safeguarding a person from abuse requires a myriad of safeguards that will operate differently for each individual. Pre-employment screening processes are only one part of the broader framework of safeguards and the success of a screening process will turn on the availability of reliable data on which to base a comprehensive risk assessment.
19. Recruitment practices which aim to eliminate the risk of employing someone who poses a threat to the safety and wellbeing of a person with disability, such as pre-employment screening, are important safeguards in preventing violence, abuse and neglect in the workplace.
20. Pre-employment screening requirements for employment in the Australian disability sector are mandated by specific state and territory legislation. Despite some commonalities in the process for pre-employment screening, overall they comprise a set of inconsistent approaches.
21. While all states have specific legislation which mandates pre-employment screening processes for people who work/volunteer with children with disability, currently only South Australia<sup>4</sup>, New South Wales<sup>5</sup>, Queensland<sup>6</sup>, Tasmania<sup>7</sup> and the Australian Capital Territory<sup>8</sup> have legislated

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<sup>4</sup> Disability Services Act 1993

<sup>5</sup> Disability Inclusion Act 2014

<sup>6</sup> Disability Services Act 2006

<sup>7</sup> Registration to Work with Vulnerable People Act 2013

requirements for pre-employment screening for those who work/volunteer with adults with disability.

22. Some jurisdictions (Tasmania & ACT) have a combined working with children and vulnerable people scheme whilst others (South Australia, New South Wales, & Queensland) have separate schemes. Commonly, these require police clearances and relevant background checks.
23. In stark contrast, Western Australia<sup>9</sup>, Victoria<sup>10</sup> and the Northern Territory have no legislative requirements for pre-employment screening for people who work with adults with disability.
24. This nationally inconsistent approach is problematic as it can result in workers being subjected to multiple screening processes to work across state borders. This can be confusing and disruptive and can have different outcomes as to someone's suitability to work in the sector. These inconsistencies provide a potential loop hole that can be targeted by someone who has the direct intention of committing harm or who wants to avoid disclosing something from their past.
25. With the move to federalise the disability sector through the NDIS, it logically follows that a nationally consistent pre-employment process would best serve the sector. This could ultimately lead to a national registration system for disability workers, which would enhance the public perception of the industry as providing a viable professional career choice.

**Recommendation 3** A nationally consistent pre-employment screening process must be introduced which will form an important preventative strategy to safeguard against abuse, violence and neglect against people with disability in the workplace.

26. Criminal background checks are a valuable tool for employers during recruitment and clearly reduce the risk of employing those who pose an unreasonable risk to people with disability. The research shows a clear connection between a person's criminal history and their future behaviour<sup>11</sup>.

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<sup>8</sup> *Working with Vulnerable People (Background Checking) Act 2011*

<sup>9</sup> In Western Australia it is merely a contractual obligation pursuant to a service provider's Service Agreement with Disability Services Commission that direct support workers have a current police clearance. People who directly employ their support staff are not subject to contractual obligations with DSC, therefore it is at their personal discretion to request or require a police clearance from their workers.

<sup>10</sup> In September 2014, the Victorian Government introduced a Disability Worker Exclusion Scheme. This is a negative register of workers who are deemed unsuitable to work in the industry and does not itself require employers to undertake background checks on workers prior to employment.

<sup>11</sup> 'Ensuring a Qualified Long-Term Care Workforce: From Pre-Employment Screens to on-the-job monitoring' *US Department of Health and Human Services Assistant Secretary for Planning and Evaluation Office of Disability, Aging and Long-Term Care Policy*, May 2006

27. Importantly, police checks are limited in their usefulness as they only identify people who have a criminal record at a specific point in time and will not capture criminal activity once a person is actively employed. Further, they will not reveal instances of alleged abuse, which did not result in criminal charges.
28. The inequities that prevent people with disability from reporting crimes and having them successfully prosecuted further reduces the effectiveness of a system which mandates police checks only. A 2009 study reported that 40 per cent of crimes against people with mild or moderate intellectual disability and 70 per cent of crimes against people with severe intellectual disability went unreported to police<sup>12</sup>. While these inequities remain unresolved, it is important to also consider non-conviction criminal information and non-criminal information (such as workplace records) to ensure a comprehensive screening process occurs.
29. There is a real risk that inclusion of non-criminal information, particularly workplace records, would lead to poor quality or biased information being considered as part of the assessment. To mitigate this risk, the source, relevance, and reliability of information must be taken into account and the information must be excluded unless satisfied on reasonable grounds that the it is accurate.
30. A successful pre-employment screening process must carefully balance the rights of people with disability to be free from violence, abuse and neglect against the rights of workers such as right to privacy and natural justice. Features of a system that are respectful of these rights include;
- The assessment is conducted by an independent authority with the employer only provided with the outcome and not the grounds on which the decision was made.
  - The assessment is limited to relevant and credible information only.
  - Penalties are in place to deter vexatious/frivolous complaints being made against a worker.
  - The assessment must have regard to the inherent requirements of working with people with disability.
  - Applicants who receive a negative assessment must be entitled to an internal review processes and external appeal.

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<sup>12</sup> P. French, J. Dardel and SP. Kelly, 'Rights Denied: Towards a National Policy Agenda about Abuse, Neglect and Exploitation of Persons with Cognitive Impairment', *People with Disability Australia*, 2009

*“Most people who work in the sector will not have a problem with undertaking a pre-employment screening process, provided it is appropriate and their rights to privacy are being respected. If someone does have a problem, then maybe they aren’t right for the sector”*

- Disability Support Worker, WA

**Recommendation 4** The national pre-employment screening process involves an independent and comprehensive risk assessment that will improve the safety, security, trust and transparency within the disability sector, will be respectful of worker rights to privacy and natural justice, and will enhance the integrity and quality of the workforce, making it beneficial for both people with disability and workers.

## Responding to abuse

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31. We recognise that disability in itself does not necessarily make a person vulnerable. However, some people with disability may be more vulnerable to abuse due to their specific circumstances including; isolation, mobility constraints, dependence, lack of community relationships and language or communication barriers.
32. As discussed above, maintaining a stable and quality workforce is a vital safeguard against violence, abuse and neglect against people with disability in a service environment. The role of the workforce as a safeguard becomes even more important where there is an increased risk of vulnerability.
33. Providing access to training for all workers across the sector that specifically addresses the rights of people with disability, how to identify risk and indicators of abuse and educates workers on how to appropriately respond to suspected abuse will ensure that workers understand their important role in safeguarding people with disability from violence, abuse and neglect.
34. As indicators of abuse will be highly individualised and identification will largely rely on a positive relationship between the person with disability and the worker, a stable, professionally trained and qualified workforce that can provide continuity of care and support is imperative.

*“I have been working in the same job for almost 15 years so I know the guys really well by now. Even though they might not be able to verbally articulate it, I can tell when something isn’t right, I know them well enough to recognise the signs”.*

- Disability Support Worker, WA

**Recommendation 5** All workers in the sector must have access to on-going professional training, education and information to recognise and appropriately respond to indicators of abuse, violence and neglect.

35. A workplace culture where people are supported and encouraged to speak up requires an accessible, transparent and robust complaints system that workers have received appropriate education and training, and a national whistle blower policy that allows workers to raise concerns without fear of persecution.
36. This recommendation requires an employer to have an internal complaints system in place for reporting and responding to incidents and allegations of suspected abuse. Most funding contracts already require providers to have internal complaints handling mechanisms in place. This requirement is also reflected in Standard Four of the National Standards for Disability Services.
37. We receive constant feedback from our members that they have not received any formal training in the complaints system that exists in their workplace. Clearly the first step in a successful complaints process is ensuring employees are aware of it and understand their obligations when making a complaint.
38. It is concerning to receive feedback from members who feel discourage from raising concerns where they don’t perceive any value in their employers complaints system. Having a complaints procedure that is not transparent or effective is arguably just as bad as a complete absence of any system.

*“I saw a worker hitting and verbally abusing clients. When I reported it all that happened was that the worker was moved to another house and put on as a casual. It promotes a culture of encouraging people to not speak up when the employer just simply sweeps the problem under the rug and moves the trouble maker on”*

- Disability Support Worker, WA

39. Nationally consistent whistle blower legislation for the private disability sector is a necessary initiative. Merely having established complaints procedures will not be a sufficient safeguard in a workplace culture where workers are disinclined or are not supported to make a complaint or raise a concern. Protecting potential whistle blowers at law will improve workplace cultures and attitudes to raising concerns.

*“Sometimes it’s not easy to say what you see or what you suspect. It seems that staff either won’t speak up because they are scared of what might happen to them, or they feel that management won’t do anything with the complaint anyway”.*

- Disability Support Worker, WA

**Recommendation 6** Nationally consistent whistle blower legislation must be introduced to support and encourage workers to speak up without fear of being persecuted or targeted by their employers where a report is made in good faith.

## National Complaints Body

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40. As with pre-employment screening, complaints handling agencies in the Australian disability sector are mandated by specific state and territory legislation. Further, the ability of workers to access these agencies varies across jurisdictions.

41. It is of paramount importance to have an effective and accessible external complaints body for people with disability or their advocates to make a complaint regarding a service. As the workforce plays a vital safeguarding role, particularly where an individual may be considered vulnerable due to their specific circumstances, it is also necessary that workers be afforded the opportunity to make a complaint. In the continued absence of whistle blower protections in the private disability sector, this access becomes even more necessary.

42. A national complaints handling agency would clearly assist in resolving individual issues in a consistent manner. Where the agency is subject to transparent reporting requirements, this would improve data collection across the sector, which in turn would help identify systemic issues and form the basis of recommendations for systemic change.

**Recommendation 7** A national, independent and centralised complaints body must be introduced that has the power to investigate and respond to allegations of suspected malpractice and is subject to transparent reporting obligations to ensure public accountability and improve sector data collection.

## National Community Visitors Program

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43. An independent, centralised complaints body as recommended above does not negate the need for additional external safeguards that monitor and report on the quality of disability services.
44. The Community Visitors program run through the Victorian Public Advocate is an example of a successful external safeguard that aims to protect and advocate for the rights of people with disability.
45. Community Visitors are empowered under legislation to visit community residential units and supported residential services, without prior notice, and report on the quality of the services being provided to residents<sup>13</sup>. In the year 2013-14, a total of 2,935 visits were made and 147 incidents relating to abuse, violence and neglect were reported to the Office of the Public Advocate<sup>14</sup>.
46. Although a community visitors program would not be applicable to services provided in an individual's private residence, the introduction of a national (or nationally consistent) community visitors program, based on the established program in Victoria, would strengthen safeguards for people with disability in residential environments.

*"The importance of having someone who can visit the homes, unannounced, and make a true report on what's going on is cannot be understated. The element of surprise is essential if you want to see the true picture of what is going on in the house"*

- Disability Support Worker, WA

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<sup>13</sup> Supported Residential Services (Private Proprietors) Act 2010; Mental Health Act 1986; Disability Act 2006.

<sup>14</sup> Community Visitors Annual Report, 2013-14.

**Recommendation 8** The importance of external mechanisms for monitoring quality and service practice are recognised through the introduction of a national program of Community Visitors who are empowered to visit accommodation facilities for people with disability without prior notice and monitor and report on the quality of services provided.