

DANA and DRC Workshops with WA Advocates – 28 October 2020

This document is a redacted and edited version (for privacy reasons) of live captioning transcripts from a workshop held over Zoom during late 2020.

Between October 2020 and March 2021, Disability Advocacy Network of Australia (DANA) collaborated with the Disability Royal Commission (DRC) Community Engagement team, to hold a series of virtual State/Territory focused workshops (one or two in every jurisdiction) on the topics of Restrictive Practices and Segregated Settings, with staff of the DRC in attendance. Identifying details have been removed from the edited transcript below. Participants were informed that sessions would be recorded to capture their insights and observations. The DRC organised for live captioning of this discussion by The Captioning Studio. Care has been taken but errors may exist in the transcription.

DANA would like to acknowledge the Traditional Owners of the various lands around Australia from which advocates participated in these virtual meetings and pay our respects to Aboriginal and Torres Strait Islander Elders, past, present, and emerging.

DANA would also like to acknowledge the time and generosity of participating advocates from a diverse range of advocacy organisations around Australia, and the funding of the Australian Government Department of Social Services for DANA to provide DRC systemic advocacy support. Visit www.dss.gov.au for more information.

Transcript of Zoom Workshop - 28 October 2020

MARY: ... [Zoom housekeeping] ... So, we'll start by acknowledging the traditional custodians of the various lands we're meeting on. I'm sitting in Canberra today, so on the lands of the Ngunnawal people. Most of you are in WA, with a few people in Queensland and Melbourne as well. So, I wish to acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region, and we'd like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who may be attending today's event.

[Preamble, opening statements and introductions from attendees... *redacted for privacy*]

MARY: Thanks, P15, and that's a good prompt for me to say that we're going to have a couple of focused discussions. If you've got questions about other things, put them in the chat and then the Royal Commission team will, if they can, provide a quick answer in the chat, and if they can't, they'll take it away and provide us the answer afterwards that we can circulate.

So, we're going to have two discussions today, one on restrictive practices and one on segregated settings, and so we're going to start with the restrictive practices discussion. So, it's a bit of a free

DANA and DRC Workshops with WA Advocates – 28 October 2020

for all. Any of you, you can put your hand up, and those of you who are using cameras, you can just literally raise your hand and P3 and myself, sorry, I realised I didn't introduce P3. P3 is the one who has done all the work on organising this workshop. P3 is DANA's Royal Commission Policy Officer and some of you have already had lots of interaction with P3, so apologies for that, but we will keep track of who has their hand up and you can dive in. A few of you who are not using your cameras, you might have to just dive in and speak I think, and we'll hear you, or you can put it into the chat function that you want to say something.

So, I've got a few questions to sort of guide us through, but if we go off on to useful tangents, that's okay as well.

And the other one thing, sorry, that I forgot to say at the beginning, we're recording today's session. We're recording it so that DANA ends up with a record of what it is the advocates say so that we can use some of the examples that you give or the quotes and things you say, and we can use them for other purposes to weave into submissions or other things. But I just wanted to say first so that you realise we are making a recording. But we won't be sharing it publicly.

So, we'll start with restrictive practices and, as I said, feel free to just dive in and answer or give your perspective as things occur to you. So, the first question is about what are the effects of restrictive practices on people with disability, and there's two parts to the first question - what are the effects of restrictive practices on people with disability and then how do restrictive practices lead to further violence, abuse and neglect of people with disability. It's a pretty broad question, but does anyone want to start us off from your perspective of how you've seen as an advocate restrictive practices be used? Don't be shy. Yes, P4, you've got your hand up. You go.

P4: We have put in a submission to the Commission, but we do note that restrictive practices are quite often used inappropriately and that aside from the very obvious physical injuries, it can lead to issues, long-term issues with mental health and wellbeing. There's the possibility of I guess escalating unmet needs if behaviours aren't addressed appropriately, which then can lead to that labelling of a person as being difficult or aggressive, quite dehumanising.

It means that we've seen in some cases that inappropriate restrictive practices leading to those labels has meant that people are unable to actually engage with services because providers don't want them, they're too challenging to provide services to, so all of that ends up snowballing into a situation where people are further isolated, they don't have the supports that they need, and we know that that isolation obviously increases the chances of violence, abuse and neglect and that quite often restrictions are put in place based on that "what if" perspective, so that duty of care versus dignity of risk, and risk is fundamental to the human experience. The ability to make risky decisions, it's part of learning and growing, so when we're denying people those opportunities, we're denying them the human right to learn and grow and have those natural things that every one of us should be able to experience.

DANA and DRC Workshops with WA Advocates – 28 October 2020

So, it's not just I guess the physical response, it's also those bigger picture things that those restrictive practices can lead to.

MARY: Thanks, P4. That was a really, really, very thorough sort of opening because you covered lots and lots of issues about restrictive practices just in that opening. Has anybody else got comments or perspectives from the way you've seen restrictive practices be used?

P5: I raised my hand there. I don't know.

MARY: Thanks, P5, go on.

P5: I just wanted to add onto what the previous person mentioned about restrictive behaviour. I think from culturally and linguistically diverse people with a disability, the greatest restrictive behaviour, the impact it creates is fear and with fear you have so many other things that also degrades their lifestyles and living and one of the things is feeling defeated, feeling rejected, isolated, and to that effect you find a person under this restrictive behaviour will not participate and that means they are denied choice and control of their life.

MARY: P5, can I ask you just a follow-up question about that? You're talking about people from culturally and linguistically diverse populations and is there a sense of shame or something? When you said it leads to fear, is there a reason why that might be greater within people from CALD communities?

P5: Yes, I think it's because of the historical background, and if someone is coming from refugee and, you know, migrant communities, one of the things that they find is that there is fear of authority and if they're under these restrictive conditions, they feel that they cannot say, you know, they cannot there's that feeling of guilt and it's very true there is an aspect of shame in the way they're treated or that kind of thing. So, they feel through that way they will not be able to participate, even getting services, you know, under that kind of condition.

So, it's a combination of multifaceted, a combination of things that happens to that person's life which should be really considered. If you consider that the person is feeling that probably they're not loved, and obviously with love you can get many things, the person will open up and if you find they're treated, you know, differently than what is their expectation, then they end up becoming more reserved and more feeling indifferent.

MARY: Thanks very much, P5. I just want to specifically ask if anybody from the Citizen Advocacy organisation, P6 or P7, whether you want to make a comment as to is there a difference in the way citizen advocates might see people who are under restrictive practices?

P7: I raised my hand a little while ago just to say that the effects we've seen --

DANA and DRC Workshops with WA Advocates – 28 October 2020

MARY: Oh, sorry.

P7: That's okay... there's a lot of people raising their hand, so that's fine. We've noticed some people involved with our program feeling quite resentful, so feeling resentful and then that having repercussions for them in the future because they're resentful and they act out and that causes a bad situation for them going forward. That's the thing that we've really seen, but all the other things that other people have said are very relevant as well to the people involved with our program.

MARY: Yes. Thanks. I'm going to... we have a question about the barriers that people with disability face if they want to make complaints about the use of restrictive practices. Do you see that people are able to make complaints about the use of restrictive practices? Do you see them being able to effectively use complaints mechanisms or do they not? P8?

P8: Thank you. I think that some of the barriers are the settings in which restrictive practices are used. So most commonly, I'm sure we'll talk about this in the segregated living circumstance section as well, but that's the most common area where we're seeing restrictive practices being used or in private homes, so there's no oversight beyond the people who are there. So, if they are the people who believe that that is an appropriate way to be treating people, then that is the only people who are going to see that behaviour or that restrictive practice.

And that comes back to a little bit about the effects that P4 was talking about is that many restrictive practices isolate people and isolation increases the risk of people not being able to report. Who can they report it to? The only people they're seeing are people using restrictive practices.

P4: There's no way for third parties to come in and provide them with the information they might need to know, one, what they're experiencing is a restrictive practice, two, whether or not it's been put in place following proper procedures and, three, who and how do they complain to if they're unhappy with what's happening to them. They may not have access to the house without the people who are putting the restrictive practice in place, they might not have access to a phone, computer, whatever it might be that they need to actually reach out and ask for help.

P8: I would say that the use of restrictive practices leads to that in itself because people learn that if they are to misbehave in the eyes of people who are using these restrictive practices, they will be further restricted. So, it becomes a cycle where the restrictive practice increases the use of restrictive practice and that increases the isolation and increases the chance of that person won't be able to talk to anyone about it.

MARY: Mmm. I just wonder do you see a pattern or what's your perspective on the restrictive practices that you see, are most of them authorised or are they unauthorised and does that make any difference in practice?

DANA and DRC Workshops with WA Advocates – 28 October 2020

P4: Well, we don't have a process in place in WA at the moment to authorise restrictive practices, so at the moment we're going through the process of having the legislation created. But I know that not all organisations will have the voluntary guidelines embedded, but a lot of them will be using restrictive practices without going through those best practice processes to have them approved and implemented.

I sat on a restrictive practices panel with a service provider that I worked with at one point, and you could tell that the process they were using, it was more about just getting it approved than really actually looking at the person, what their unmet needs were, and addressing those needs as the forefront. So, there's more a focus on fixing behaviour than... --

[Audio issues]

MARY: That's all right. Come back to it in a second. I'm just flicking my eyes across the screen to see if anybody else is waiting to speak. Yes, P6.

P6: I think on that issue of authorisation, maybe one comment I'd like to focus on is the use of chemical restraints, because the understanding is that they should be authorised by a medical practitioner, ideally someone expert in behaviour issues. So, I think that gives them a sort of level of authority that maybe is a bit more difficult to question than some of the others.

The other thing that concerns me about chemical restraints.... I don't have a lot of firsthand experience in the area.....is that they may be used more frequently than they need to be and my concern as a lay person is that I see them as mostly having an (inaudible) role rather than a therapeutic one and, yeah, it's one of my areas of concern about restrictive practices.

MARY: Thanks, P6. Did you want to say something then?

P9: I wanted to add to that... --

MARY: I wasn't sure whether you had your hand up to speak.

P9: Sorry. I just wanted to add to that just to say that I think it's the voice, you know, who is speaking in that conversation, is it a person with the disability that is speaking or is it someone else on their behalf that is speaking? So, the level of power or the level of control that they have in that conversation is quite an important factor.

So, I think again what we have seen in terms of our experience is that restrictive practices are really used for behavioural and that behavioural is to do with well, we don't want to deal with this challenge and it's a perceived challenge and that challenge is something which is a label put on by an organisation rather than actually is this necessary and then if it is necessary, who is saying this

DANA and DRC Workshops with WA Advocates – 28 October 2020

is necessary. And within that conversation is did that person with the disability have that open, frank discussion, you know, with that person who can actually diagnose and say you need this as a restrictive practice.

So certainly from our experience, I think it's very important to note that really people with a disability don't often have the power to voice what they want and so it is others that are actually, you know, whether - whoever they may be, the parents, carers, people in organisations, they are speaking on behalf of the person with a disability and perhaps are seeking, for whatever their own reasons are, these restrictive practices and certainly, like I said, it's often that it's not necessary.

So, I would question mark... I certainly question mark when it comes across my desk who's actually making this decision, is this decision necessary. But yes, often we find those issues there.

MARY: Thanks, P9. That was a really good description or sort of questioning really to what extent at least some of the people who have restrictive practices in place have even been consulted, informed, have had it discussed with them at all as to what is happening or why. That's what I'm taking from what you're saying there, and because going back to the issue about making complaints well, how does somebody make a complaint about restrictive practice when really, they're not even fully aware that it is a restrictive practice and that they could complain about it. And of course in Western Australia, the Quality and Safeguards Commission isn't yet in place, it's coming in from, I've forgotten, is it 1 December or 1 January?

P9: December. I believe it's December.

MARY: Yes. It isn't in place yet, so it's sitting in a different place from most of the rest of the country. P8, did you remember the thing you wanted to say?

P8: Yes, sorry. I just wanted to highlight that we're talking about a lot of service providers in like formal settings. I think it's important to acknowledge that restrictive practices are used in private homes, by like families and by other support people, and that they are much more challenging to identify and assist people with because people are often not having that level of oversight that a formal organisation might and I think that's something that's really important to highlight to this Royal Commission is that it's not just looking at service providers as perpetrators or users of abuse, violence, neglect and exploitation, it's also informal settings, and I think it's really important to highlight that the general public and other informal supporters may not recognise what restrictive practices are and that they're using them. .

P4: I think also looking outside just the disability support sector. If you look at places like health settings, mental health settings, prisons, police, they often have required reporting for seclusion or physical restraint, but we do know that there will be cases of other types of restrictive practices occurring in those settings that are not regulated that will not fall under the legislation that's coming through in WA, you know, prisons, for example, where punitive measures because of

DANA and DRC Workshops with WA Advocates – 28 October 2020

unmet needs are occurring and things are being put in place that almost amount to a restrictive practice, but there's no restrictive practices in prisons, you know, there's no legislation, there's no guidelines, that focus on the disability sector but these things are happening in places outside of that sector.

MARY: Thank, P4, that's a very useful point to make that we shouldn't just be restricting what we're talking about to the traditional disability service providers. A poll has popped up. Has that popped up for everybody? It's popped up in front of me.

P3: Can everyone see that? I thought I'd try the polling function because it came up in the conversation, we'd see if that worked at all. It should be one you can choose multiple answers.

MARY: I think you have to answer it to make it go away. Is that right, P3?

P3: I'm not sure.

MARY: We'll try.

P3: Is there a thing in the corner? Maybe not.

MARY: Anyway, you can either move it to one side, you can close it, or you can just do the multiple-choice thing and tick the different boxes for where you observe restrictive practices happening. Sorry, that's an experiment that we haven't tried before. So, we'll keep talking around it, though.

There are a few things that have been mentioned that I'd like to pick up on in what needs to change to improve the situation for people with disability around restrictive practices.

Now, what needs to change in terms of law and policies, but also in the community and within organisations, and you've touched on a few of them. So obviously in WA there's new legislation that's coming in. So have all of you had... disability advocates and people with disability had opportunity to be consulted and be part of the process as that legislation has been developed is one question and then what stage is the legislation at?

P4: I can answer to that. So, at the moment the Department of Communities has asked us for feedback on some terms of reference and they'll be releasing a discussion paper around the legislation that they're proposing to introduce. At the moment what they have in practice is like a policy that they're looking at implementing with service providers in line with when the Quality and Safeguards Commission goes live. So, there will be a reporting requirement, it just won't yet be enshrined in legislation, and they're hoping that that will happen next year.

DANA and DRC Workshops with WA Advocates – 28 October 2020

MARY: Right, thanks, P4. That's a useful thing to keep track of and obviously there will be an opportunity then when the discussion paper comes out for advocates and people that you work with to have some input into what that looks like.

So is there any other... so that's the legislation. Then what about in terms of the policies, in the provider sector? Does that just depend on... at the moment does every organisation have their own.....you mentioned guidelines, but I wasn't sure whether that was organisational specific or whether there is... you said something about best practice guidelines.

P4: So, WA has the voluntary code of practice for the elimination of restrictive practices, but it is voluntary, and some organisations have implemented it, others haven't. So, it is the best practice the implementation of a restrictive practices board, all of those processes that you would see in other places that are occurring, but like I said, it's up to the individual provider previously as to whether or not they actually went ahead and put that in place.

I think with the rollout of the NDIS and the Commission coming to WA, the state introducing the policies and legislation, that will become something that needs to happen for providers who are planning on being able to put restrictive practices in place, but the concern then becomes whether if they're not formally putting them in, they're just using them without authorisation, obviously, that process doesn't happen anyway.

MARY: Yes.

P5: I just wanted to add, sorry, I can't actually navigate back to the raising hand because when I do that when I'm already on session it's difficult. So that's why I'm just jumping in. Sorry for that. I just wanted to add on also the issue that it's very important also to look at the attitudes, the general attitudes in the community, which is very important. That's the area that actually legislation should be able to target to the extent that there is a good awareness in the community out there.

To give just an example, in the culturally and linguistically diverse community, instead of considering the person with a disability, they will consider such person who is under the restrictive behaviour to be a sick person, you know, a sickness, you know, as something that is a health condition rather than a disability itself. So that kind of an attitude, which really compromises the aspect of that individual to participate in the community, should be investigated. That should really create more awareness in the community out there that will be able to consider because our community, culturally and linguistically diverse communities, are not even aware about this policy, about what is restrictive behaviour. They really don't know about that and what are the legislations that are guiding this.

So, in order to minimise that kind of violation of those regulations, it's very important to create awareness in the community so that you change the attitude of the community.

DANA and DRC Workshops with WA Advocates – 28 October 2020

MARY: Thanks, P5. That's exactly the kind of thing that the Royal Commission needs to understand and all of us need to know really what it is that... what are we wanting to advocate for. One of the things that strikes me as you're saying that is whose responsibility is it to do that raising awareness, creating awareness, to put all of the right explanations in the relevant languages and then try to get them through to the right people in the communities? That's a significant piece of work, isn't it, that has to be funded properly.

As the Quality and Safeguards Commission is sort of getting ready to come into WA, are you seeing... are they having information sessions or are they starting to share materials around any of these kind of issues, or not yet? No? Okay. That's interesting because they're one of the places that will be picking up these issues, but it is interesting that they're not... maybe they'll come out with a splash on 1 December. But thanks, P5, because that's something that needs some proper attention is raising awareness among families in general. It's a shame because the people from [WA Advocacy organisation] were not able to join us because that's their sort of patch is dealing with families in particular and we'll probably talk to them separately.

So, has anybody else got any comments about what else needs to change in the community or in organisations, disability organisations, or others around the understanding of restrictive practices? P6 and then P8, yes.

P6: I'm not sure if this is the right time to make this comment, Mary, but one of the things that I did want to say is I think in order to understand what kinds of changes are needed, we also need to think about why restrictive practices are used and one of my concerns is that there may not be enough attention given to those underlying reasons and some of the connecting factors. Now, I may be wrong here, but it seems to me pretty obvious that there's a reality that any care setting will have limitations of resources and staff and the more acute those are, the greater will be the pressure to look at other ways of managing risk like restrictive practices and perhaps the other thing there is training of care professionals. I'm thinking of health care particularly. I'm aware that the Royal Commission has had extensive correspondence with the training institutions, the universities and other training organisations about training in the health care area, so I'm very pleased to see that. Thanks.

MARY: Thanks, P6. And P8, you had your hand up.

P8: One of the things we recommended was that we'd like to see a policy or some sort of funding around strengthening informal networks for people because we know that when people have those networks, they are less likely to be subject to abuse, violence, neglect and exploitation and it also means that restrictive practices have that external oversight from someone other than the people using them. So that's something that we would really like to see because it's just another way to reduce people's risk and safeguard, yes.

DANA and DRC Workshops with WA Advocates – 28 October 2020

MARY: Yes. P10, one of you, yes. Sorry, you've both got the same name underneath.

P10: I don't know why, sorry. One thing that we've experienced... could you mute yours, P7 ... despite what our name says here, we've experienced an issue where one of our proteges experienced some issues and because he had a guardian under the Guardianship Act, we had a lot of trouble getting an advocate in for him and we got literally told that we could not have an advocate for him. Because we have a lot of trouble with citizen advocates getting them recognised as an official advocate service, that's one thing that we'd like to see changed at some level moving forward with the Quality and Safeguards Commission. It would be really good to get some kind of recognition in there for citizen advocacy in some form. Sorry, it's really disturbing, I'm getting a bit of feedback off P7's machine over here.

MARY: But thanks, that's actually good timing to raise that issue. The Quality and Safeguards Commission have a consultative committee which I'm on and it meets quarterly, and the next meeting is next week and one of the topics is around mapping broader safeguarding ecosystem, obviously advocacy, all advocacy and citizen advocacy are part of that. So, I will raise exactly that issue, thanks, at that meeting.

We might move on to the other topic, which is about segregated settings. I feel like all of you are raising lots of really useful issues and we could pick any one of those and just keep going deeper and deeper, so apologies if we're skating over the surface of some really important things. The Royal Commission are deeply interested in all of these matters and any submissions that you want to make into the Royal Commission on any of these issues and go as deep as you have time to do, then they would like to hear from you.

But we might switch our topic to something that has already been mentioned, actually, it's very relevant because it's about segregated settings. So again, we just have a few prompt questions. What are the common features that you see in your advocacy work in those environments that have fostered violence, abuse, neglect and exploitation? What are the features that lead particularly to those issues, you know, those problems arising? And if it feels like it's too obvious to even bother saying, it might be that you might be thinking oh, my God, of course it's just because they're segregated and isolated, so yes. Maybe we'll skip past that question. All right, P10.

P10: Lack of outside support and intellectual disability in our circumstance. Like if they don't have any outside support and somebody is speaking up for them and they've got an intellectual disability, they just seem to be a prime candidate for abuse.

MARY: Yes. P8?

P8: One of the biggest factors we see between people in more problematic areas is the attitudes of the staff and the management working there, so when they see the people that they're working

DANA and DRC Workshops with WA Advocates – 28 October 2020

with as an individual, as a person, then we don't see as many problems. When they see them as a problem, as a behaviour challenge, as a job, then that's where we see more restrictive practices, more abuse, more violence, and that is something that sometimes comes from the head down challenge of that organisation, that particular organisation, and their views on the people they're working with and sometimes it's an individual.

That's something that if we were to have... I know in the aged care settings they have an agreement where people have to do some education about attitudes with an advocate or with an organisation that has an advocacy focus. It would be ideal if that was seen in disability settings as well.

MARY: P8, can I just pursue, when you mentioned about the attitude of staff and then it comes from the head down from the organisation, and for any of you, would you say that you see, can you see significant differences in Western Australia between one service provider and another in the way that they deal with the people? So, if they're all running group homes and segregated settings, but the culture inside them is quite different - would you say that in Western Australia you have examples of organisations who have a bad culture and some that you would say are much better? Is that the case? There's nodding happening.

P8: So yes, sometimes there is an attitude that comes from the head down and sometimes it's just the amount that they invest in their staff in terms of education and training. So I'll just use an example I've just come from a discussion recently with [WA LGBTI organisation], which is an LGBTI group down the hall from us, and they say that groups that employ them to do education around safe practices for LGBTI people find that they have a lot less attitude problems with their staff who they know what the rules are, they know what's okay to do and we see that in other ways as well, so where attitudes are encouraged by an organisation, positive attitudes towards people, appropriate behaviour, appropriate use of restrictive practices, then people who work for those organisations know what's expected of them and they know what's okay and what they can't get away with.

P4: And in some cases, it comes down to that cost/profit mentality of we need to make... it's a business, we need to make money, so we don't have the money to... we're casualising our workforce, we're not investing in training, we're not investing in the support and supervision of our staff, so we're not equipping them with the tools to respond to those needs of a person in a way that isn't restrictive or isn't violent or abusive or exploitive.

MARY: So Western Australia is the last state coming in finally into the NDIS, or coming in fully. Do you have a sense that the disability sector becoming a market under the NDIS has that... can you see an impact that it's having on training budgets or capacity of the service providers to do more training with their staff?

DANA and DRC Workshops with WA Advocates – 28 October 2020

P8: Sometimes - sorry, sometimes it's just training and sometimes it's that service provider...- I'm trying to be vague because I'm thinking of a specific example, a- service provider will....- --

MARY: Feel free, as long as you're not defaming somebody.

P8: A service provider will take over from another service provider and their attitude will be more cost focused and the particular individual that they're working with has a lot more needs than they want to deal with and so their attitude is well, we're just not going to put in the effort, I guess, to deal with that person and we're going to move them on and find a more easy person to deal with in this setting.

So the particular example I'm thinking of is someone who's been in a particular group home for a number of years, a new service provider comes in, finds that they aren't managing this person's needs very well and this person is behaving in a way to try to communicate that and it's just too much trouble, they evict them, and that's where the financial considerations of an organisation butt up against that individual human rights person-centred goal that we would like to see organisations pursuing.

P9: Can I just add to that, Mary, it's just that with the NDIS the whole modelling when we look at it, it's to do with that consumer approach, so the choice and control we've talked about for the participant, but when we look to the other side of the coin and we look at the service provider, their modelling is then as a business approach. We've got KPIs, we've got profit margins, we need to have streamlining of operations. So, when you get that sort of modelling, that goes to some level of conflict with the caring, compassionate, let's deal with these issues. So, it becomes just the whole modelling then I think becomes a challenge for the participants and for the whole system to really work with.

I did some research into the NDIS service agreements even as a legal document and looking at it from a contractual point of view and I found so many issues around really the participant... yes, we say, yes, they've got tools and control, but really how do they exercise that? How do they actually go and say to the service provider, "I have issues with this, what are my options?" And I absolutely hear that yes, the Quality and Safeguards Commission is coming, but the role that the Safeguards Commission is going to have and what maybe other rights that the participant may have outside of that I'm a bit unclear on.

I can't assist my clients in navigating 'do you have a consumer problem' because as a contractual lawyer I can say, "You know what, on the face of it you've got a contractual issue, there's a breach of contract going on here, so you might actually be able to get jurisdiction within the Magistrate's Court or other courts to deal with that" or do you just have the exclusive jurisdiction of the Quality and Safeguards Commission because that's where now we need... so there's for me anyway a lack of clarity.

DANA and DRC Workshops with WA Advocates – 28 October 2020

But going back to the point about again I think there's an imbalance between the participant and the provider and that leads to, as P8 was saying, you know, if it's a little bit too hard, we can't deal with it, let's go to somebody else because that meets our KPIs and profitability margins.

MARY: Thanks, P9. P4, I'll come back to you in a second. I was going to say of course, to bring us back to the segregated settings, the issue is people in segregated settings have less power, so they have less capacity to be the consumer because, generally speaking, the provider has the control. P4, did you want to...--

P4: I just wanted to bring it back to that setting where the service providers are saying that for this to be financially viable, we have to provide you with all of your supports and your support is tied to your accommodation and I guess there comes that risk of if I piss off my service provider, I'm going to lose my house, you know, so I will put up with being potentially abused, neglected, exploited, having restrictive practices put against me because I'm really worried about my housing and where I'll go or if I can find another place in another home --

P8: Or I'll lose my community. It's not just that they will not have a home because even if they are moved to another home because they're unhappy with the service provider, they've lost their community and it can be very challenging for people to rebuild that and it can be very challenging for people to get to that if they've moved.

P4: We are seeing even outside segregated settings service providers saying, "No, we must have your full package for us to provide this particular support" which again that comes back to that isolation and the lack of safeguarding for a person where you have the one provider, and often people with guardians, that is the choice that sometimes they'll make, it's easier for us to just go with the one provider who deals with everything so we don't have to deal with multiple providers, you know, and it's done and dusted and then they're I guess relying on the provider to do the right thing.

MARY: Thanks, P4. So can any of you... do any of you have... how do you fix this terrible system? Are there any solutions that you can see in Western Australia that are likely to work to improve what happens for people with disability in segregated settings, but let's think about group homes first. I'm interested in moving the conversation on to prisons, actually, if we get a chance, but in group homes in the first place. Any short-term solutions or long-term. what are the things that the whole advocacy sector should be pushing for in WA that might make a difference for people? Is there anything, where are the things that might make a change?

P7: Is it okay for me... I just wanted to say one way that I can see would improve things is to allow people to have an advocate, someone outside the system to come into NDIS meetings and things like that to make sure they're taking an overview of the whole plan and that everything is fair, simply for a person with disability that may not be able to speak up for themselves. But we're seeing as an organisation that a lot of the time our advocates aren't allowed to have access to the

DANA and DRC Workshops with WA Advocates – 28 October 2020

NDIS plans. Therefore, they cannot get that overview, even to the point of going to an NDIS meeting and everybody else having a copy of the NDIS plan and the advocate didn't have a copy of that.

So, what we'd like to see as an organisation is, I don't know, a law, a policy put in place where somebody who doesn't have involved family and has an advocate there for that reason, that advocate would be able to view those things for them to be able to effectively advocate for them and have that overview. If they're only allowed to see selected documents or have selected information, they can't get an overview of the whole life and identify that there's abuse going on.

So, it does say in the NDIS plans and things like that that people are entitled to have an advocate if they want to, but we don't always see that followed through. So that's the solution that I can see that would... something that needs to be pushed more and checked and made sure everybody, anybody with disability is shown that that is an option for them.

MARY: Thanks, P7. P4?

P4: Me again. Sorry. We know that some work has been done for people in the east who live in segregated settings who don't have informal support to have access to an advocate through the NDIS process and mandating something similar to that over here I think in the short term would at least make sure that people are aware of their rights. Yes, like P7 said, they have access to an advocate, their voice is being heard, but long term we need to make sure that people who are at risk, you know, that we are funding circles of support so we're funding supported decision making that we are building into the supports they're getting, these safeguards that they need to protect them in the long term and build up that safety around them and it's something that I know the NDIS is talking about, but if and when it becomes a reality, we don't know.

MARY: Yes, that's interesting because the NDIS... the NDIA have now got into their corporate plan that they're going to do work on supported decision making. They are starting. What I'm attempting to push is for them to bring advocates into that work. It's a challenge. The NDIA likes to, like all big systems, they like to get things ready to go before they will do proper serious consultation.

So, it's not really an issue for today for discussion, but it is a problem, and the advocacy sector needs to... we need to find whatever gaps we can push our way into because the NDIA are doing some work on these issues. They're just not as... they're not as keen as you'd imagine to talk to... they view all of us as external stakeholders rather than as a really critical part of keeping people safe.

Are there any other suggestions? I've got a couple of other things I want to move us on to. Any other suggestions... sorry, P6, do you want to go? While P6 is speaking, any last suggestions

DANA and DRC Workshops with WA Advocates – 28 October 2020

anybody has about changes at any level legislation, policy, in the community, in organisations or anywhere, that might bring about some change in segregated settings? P6?

P6: Yes, with the segregated settings, I understand the central role of the NDIS in the disability sector, but there's been a number of other segregated settings mentioned, like prisons. One I'd like to draw attention to because I think it's something that has some commonality and that maybe we can draw some useful input from is the aged care sector, which has recently had a parallel Royal Commission. So, I think that's an area maybe we should look at. Thanks. That's all I wanted to say.

MARY: Thanks, P6. There's nobody else leaping in for the minute. I'm interested to know in Western Australia what access do you think, do any of you personally in your work or in your organisation more broadly, what kind of access do the disability advocates have into the justice settings, into police stations, prisons, you know, all the corrective services, the forensic disability, those kinds of settings where people with disability are involved in justice issues,- do you think in WA that there is...- --

P4: MARY, you seem to be frozen.

P11: We might have to wait for MARY's WiFi. It looks like a connection issue.

P3: I'll jump in there and take over momentarily while Mary is reconnecting. So, I think she was asking about because we do have a question that we were going to ask about justice, so I think she was wondering whether there's sufficient access for people in custodial settings to access advocacy, independent advocacy. So, does anyone have something to contribute on that topic?

P12: I can't speak directly, but we have a person working at [our organisation] who's looking specifically at First Nations people, but looking at rolling out an independent support person program in WA which is apparently a program that runs in Victoria and New South Wales which would provide people with disability in the justice system I think at the time of arrest with an independent support person who would be able to assist them through that process and essentially advocate for them. So that's at the beginning stages of that project, but yes, that's where [our organisation] is at with that type of work.

P3: That sounds like a positive example. I imagine there's lots of scope for more disability justice plans. P4?

P4: I'd just like to add to that... so the independent support person project is based on a feasibility study that [our organisation] did a couple of years ago and we haven't reached a decision around the model, so at the moment they're working on a model as to what that will look like with those initial interfaces with the criminal justice system, so it's still very much in early stages and there's a lot of collaboration happening across the sector to help inform that model and the I guess pilot

DANA and DRC Workshops with WA Advocates – 28 October 2020

project that's happening. So, there's a working group that needs to be established and updating the feasibility and actually doing the pilot itself.

But in terms of general access of advocates into prisons, I don't think prisons promote disability advocacy services. We do get contact from prisons but it's really hard to get in contact with people in prisons, it's really hard to be able to facilitate that support, and a lot of the stuff that's come through that we have got, most of it is around issues with NDIS and getting appropriate supports within the prison.

P8: As part of my role, I have worked with a number of people in the justice setting, but they are all people that are already known to [our organisation], or their family are known to us, and this is an issue that I think the advocacy organisations have been running up against a lot - particularly in the last couple of years - is that the people who come to our services are already people who know us.

So, because of often our long wait lists and our long... our capacity is directed towards helping individuals, we're not able to get out and do as much outreach as we would like to. So, the people who may need support... if they don't know that support exists, they can't access it. So as an organisation, and I imagine as a sector, we would like to see more people being made aware that these services exist and then us being actually available to assist them without huge wait lists, if that makes sense.

P4: And there is currently a review of the inspection standard for prisons in WA that's happening and they're looking at introducing specific standards relating to disability, so we have been putting some feedback into that around ensuring information about advocacy is available for people, you know, not just I guess around NDIS, but even making complaints within the justice settings themselves. So hopefully those recommendations are taken on board.

P5: I just wanted to raise one point about the issue of actually, advocacy flowing from prison to advocacy organisations in terms of referrals. So, I think this is an area that needs to be improved because we don't find a lot of referrals from the justice system coming to the advocacy... so that advocacy can proactively work with the justice system. So that area needs to be improved because that's why we don't find a lot of issues that we can be able to work on. So, referrals, the link and engaging with the justice system, the advocates and engaging with the justice system needs to be improved. So yes.

MARY: Thanks, P5. I've dived back in again after my internet. Can you believe the internet in the middle of Canberra is unstable? But it is. Those were really useful and interesting issues.

So I may have missed it, but in WA, you've got and I can't remember what it's called, someone will have to remind me - the sort of coalition of Western Australian advocacy organisations that meets, and I think it's a bit broader than disability advocacy if I'm right because I think it includes the

DANA and DRC Workshops with WA Advocates – 28 October 2020

mental health advocacy as well. Is that where these issues get picked up and pursued and shared? What mechanisms are you using or can you use in WA for all of you to sort of keep track of where these things... you know, advocacy around the criminal justice sector, for instance? How would that get pushed along in WA and all of you be able to be kept informed? P4, I think you were going to answer, yes.

P4: I'm not sure if you were here, Mary, for discussion around the independent support person project.

MARY: I was coming back in as that was starting.

P4: So that has multiple stakeholders within the disability sector and it is something that gets raised, so the disability coalition is a forum where we do share systemic issues and look at, I guess, if there's a whole of coalition response that we can do, whether that's lobbying government or responses to submission papers or whatever it might be, so that - yes, it's definitely a forum and I know advocates in general talk amongst themselves around issues that can then be raised up individually with their organisations, yes.

MARY: A thought that occurred to me... I don't know how closely any of you are paying attention yet to the new version of the National Disability Strategy, so by the middle of next year we'll have a new 10year National Disability Strategy. So, the National Disability Strategy team in DSS, are working on it and then they've got to get every state and territory to agree. But one of the things that will be brought into this next strategy, they're suggesting a term called targeted action plans and it's not entirely clear how those targeted action plans would work, but my impression is that they will be and they're looking for ideas, but that they might, for instance, over a one- or two-year period focus specifically on education across all the states and territories or in the next targeted action plan might be around justice.

One of the thoughts I hadn't had before, and it's just occurred to me as you were all describing that previous area, was what we should be arguing is that for each targeted action plan, it comes with a specific advocacy fund that provides additional advocacy and for outreach probably in particular, so when you, P5, and others and P8 were saying because you've got waiting lists and you're at capacity, you've got no space or time to do the outreach, to develop those better connections, for instance into the prisons, so you then get the referrals, P5, that you were saying are not coming out. So, if we could get an advocacy stream of funding linked to those targeted action plans, it might allow some of that additional work to be done that you can't do when everybody is running between your existing clients trying to manage your current case load. So, I'll take that idea back to the National Disability Strategy people and see if we can get any movement there.

DANA and DRC Workshops with WA Advocates – 28 October 2020

We're coming towards the end of this workshop and so I'd just like to see if any of you have any comments at all about anything to do with either the segregated settings or restrictive practices, any thoughts really that you feel you'd like to say that you haven't yet? P4?

P4: Yes, sorry, again. We think in WA there needs to be a look at the role of guardianship and administration in restrictive practices because we know that obviously people who have guardians often don't have all of those safeguards around them. They are in the segregated settings; they will experience restrictive practices. In some instances, guardianship acts as the restrictive practice and is used to restrict someone inappropriately.

So I think there needs to be a look at in general the relationship of the guardianship system in WA to abuse, neglect and violence because, yeah, it is a best interests system, not, you know, a person's choice system and I think it's a key issue here for the state.

MARY: Yes. Thanks very much, P4. What I meant to say at the beginning is so we are making a recording from today. We will get a transcript written up from that - I'll come to you in a second, P13 - and we will send it back to you so we will send you all back notes from today's meeting so that you've got a record of it yourselves. P13? P13, did you want to say something?

P13: Thanks, P1.

MARY: Yes, go ahead.

P13: I wanted to say that all these issues that were raised about restrictive practices, segregated settings, access to advocates, all of that, are greater in regional WA.

MARY: So all of those issues are even worse in regional WA, yes, yes.

P13: That's all. Thank you.

MARY: Yes, thanks, P13. We might... I might pass back to P15, if you wanted to make... do you want to make any comment from the Royal Commission's perspective and as we do our windup? You hold your thoughts, P15. I'll just see if there's anybody else, especially anybody who didn't get a chance to speak yet, who wants to give us any last piece. Going, going, gone. Okay. All right, P15, over to you.

[Closing statement]

MARY: Thanks, P15, and I'm certainly very conscious, as I'm sure everybody from the Royal Commission is, that if it hadn't been for COVID, there would have been a hearing in Western Australia. There was planned to be one before the end of the year. It's just such a shame that that wasn't able to happen. I think we would like to try to work out how is it going to be possible

DANA and DRC Workshops with WA Advocates – 28 October 2020

to get more attention on Royal Commission issues in WA, how to get the media to pay attention or get the general public and a broader group of people with disability to know that it's on because we certainly have seen from other advocates in other states that as a hearing happens, it does draw much more attention to the Royal Commission and it causes a spike in calls and submissions and how is that going to happen in WA if WA is going to be locked up forever by the sound of it, so in your little western bubble.

So, it is an issue and I'm not sure what you can do about it from the inside in WA, but we're keen to hear and absolutely the rest of the Royal Commission is keen to hear about any suggestions and whatever it is, at the moment there's only online sort of forums and things, but maybe we can do more of those and different formats or something, I'm not sure. But any suggestions, please do bring them up.

[Wrap up]

Okay, thanks very much, everyone. Please stay in touch with DANA and with the Royal Commission on any of these issues and let's stay in touch. Okay, thanks, everyone. Bye.

(End of workshop)