



Advocates Discuss: services providers – external oversight

From June to October 2022, Disability Advocacy Network Australia ran the "Advocates Discuss" series of fortnightly hour-long discussions via Microsoft Teams - creating an opportunity for interested advocates to take a closer look at and speak about a number of key topics emerging in the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission or DRC) and its examination of abuse, violence, exploitation and neglect. Participants were encouraged to share their insights, observations, stories and case studies, and the discussion questions each week included opportunities to share perspectives on what recommendations advocates would like to see being made by the DRC, in relation to the topic in focus.

Identifying details have been removed from the edited transcript below. Participants in each session are identified as advocates from their state or territory, and are also numbered, where multiple advocates from that jurisdiction took part. Participants were informed that sessions would be recorded to capture their insights and observations. 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.

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Transcript from discussion – 25 October 2022

Mary Mallett:

I'm Mary Mallett, CEO of DANA, and I'm coming to you today from Nipaluna, Hobart. I acknowledge the First Nations people in the case of where I'm sitting today, it's the Muwinina people who are the traditional custodians of these lands. I'd like to acknowledge their leaders, past and present, and those Aboriginal communities that represent the lands of all the places around the country where you're joining from today.

Today's forum is actually the last in the series that we've been running. It's not to say we won't do another one or two if there are issues people want to discuss, but this is the last of the series. Siobhan, do you want to catch people up with what we're covering today and then we can get started, telling us what you know.

Siobhan Clair:

Yes. Today we decided to focus on the last two sessions on service providers as there's a hearing that's coming up called Service Providers Revisited, which - as some may be following - is DRC running these case study type hearings, looking at different aspects and different types of organisations or service providers and the problems that have emerged over the last couple of years.

So that was originally scheduled for early December. It has now been pushed back to February and they're looking at several big themes, one being external oversight, which is one that we have discussed a lot and we have heard a lot from advocates. We also know advocacy organisations have made submissions on this topic or related to this topic. Sometimes in relation to the safeguards and quality issues paper last year. So we know advocacy organisations have a wealth of expertise.

We've heard a lot on these issues when we've talked about restrictive practices in segregated settings, and some of the things we have heard is that there isn't enough external oversight, or it's not keeping people safe from violence, abuse neglect and exploitation in the context of service provision. It is a big complex topic. We have heard a lot about it and we know the fundamentals and the problems, I suppose. Some of the solutions might also be things we want to discuss today. Things like what role independent monitoring and oversight should play and how, I suppose, and how could the Quality and Safeguards Commission be doing better, how could we be monitoring the use of restrictive practices. And there are things like with some jurisdictions there are community or official visitor schemes that are there, site visits to see what's



happening inside of certain disability service provision contexts like group homes. So, yeah, that's a broad stroke summary and context for discussion today.

Mary Mallett:

I will start by asking just a few questions that are in my mind and then anybody who wants to come in and tell us anything from your perspective, please do.

There's a specific thing that I've been wondering which is, when there is a serious issue, abuse or something else, something like that, that's happening or that there has been allegations of abuse, say, at a service provider, there are investigations that happen.

Usually, the investigations - there is often an investigation launched immediately by the provider themselves. I think mostly they use independent contractors, but I'm not sure, but I would be interested in views about that, and if anybody has seen how those investigations are done and any view you have about them. Then if there's a complaint that goes to the NDIS Commission, they will do an investigation. So it seems to me to be a series of investigations that happen. If there's an advocate involved, do you get to see outcomes of those investigations? Are you brought in with investigators, are they talking to you about those things?

And then another thing is there's a couple of states that have got additional safeguarding positions like the disability services commissioner in Victoria or the ageing and disability commissioner in New South Wales, and then Victoria also has the workers registration commissioner, and I'm interested whether those in those states, are the added layers doing any good? Are they making things better? They're the first questions in my mind, if anyone wants to respond to either of those, but you can feel free to tell us whatever is important in your mind, and as much as possible we will stick to the aspects today of the safeguarding issues.

Does anybody want to dive in?

[NSW Advocate 1]:

One of the areas of concern seems to be where there are providers coming through ComPacks [Community Packages – Out of Hospital Care in NSW] or SASH [Safe and Supported at Home – Out of Hospital Care] which are offering long-term supports by default because where someone is waiting on the NDIS or other supports to kick in. The concern that has been raised is that there appears to be no oversight of some of these external providers who have been contracted through these services, and confusion as to who you would complain to if you have concerns. So, I just thought I would raise that. I don't have a neat answer to that at all. I thought I would raise it.



Mary Mallett:
Who is funding that work?

[NSW Advocate 1]:

Through health, but it doesn't seem to fall neatly into the complaint pathway for health because it's a bit more of an involved and complicated contractual relationship, from what I understand. That seems to be the response that people are getting, so it doesn't fit neatly within the health complaint because it's not regarded as that kind of service.

Mary Mallett:

Yeah. Okay. All right. Thanks. The investigations that I asked about, has anybody seen those investigations happening or seen the outcomes of them? Being good, bad or indifferent? Maybe not.

[ACT Advocate 1]:

Hello, it's [ACT Advocate 1] from [Advocacy organisation]. In a former role at a service provider, we had a serious incident, so this is now wearing my hat around dissatisfaction around an investigation, a former hat, but it is relevant to the lack of communication. We had a serious incident which we reported, and what was particularly disappointing was we wanted feedback on what we had done, as to whether we handled the serious incident, had been appropriate or not. We never received anything. We only ever received an acknowledgment of having reported the serious incident, and that we had met the timeframes but never received any feedback that we felt we in handled it well, never received feedback that what we had done to manage that serious incident was appropriate, or if we could have done better. As a service provider we were left wondering.

Mary Mallett:

Was that the NDIS Commission investigating the quality and safeguards?

[ACT Advocate 1]:

Yes, the Quality and Safeguards Commission. So we just assumed no communication meant they were happy with what we had said. We thought we had managed it well, but there was a learning opportunity to give feedback, that we don't know. That's not so much as an advocate but wearing a service provider hat – but I imagine most service providers want to know if they have done well, then be acknowledged, and if they haven't, then 'yeah this is good but you could do better in these areas'.

Mary Mallett:

I'm assuming from the silence, really, that most advocates don't get to see what the investigation reports say, yet they might have useful input and feedback.



[VIC Advocate 1]

That's been my experience. Where there has been reports of serious violence and abuse, there has been an independent contractor. We were told, not by the independent contractor themselves, but we were told that there was no substance to the complaint. There ended up being very much substance to the issue, and we then engaged NDIS Quality and Safeguards Commission. I think they had access to the findings of the independent internal investigation, or quasi-external, and trying to get information out of the Quality and Safeguards Commission was also very difficult.

I think we got access to an action plan, so they then work with the organisation to 'how can you improve staff training around this particular issue', be it whatever it relates to, manual handling or if it was an act of violence. But they also indicated that they had access to the details of staff meetings around the time of the incident and so on, but we weren't given access to those and I can't tell you the legislation that was cited, but my understanding is that there were concerns from them raised around staff privacy and giving out too many details about the staff members that were involved because there was an ongoing investigation.

So, really, the role of advocacy in that situation was just to prompt action from the Quality and Safeguards Commission to follow-up because they seemingly wouldn't look into it unless they were getting, or get back to the family about where things are at, unless they were getting the regular prompts from us, and they weren't really interested in having us involved in the details of the investigation so we were kept on the outer.

Mary Mallett:

Thanks very much, [VIC Advocate 1]. That seems to fit with what we have heard a lot. Interestingly, I don't know if there is anybody on the line today who is going to be taking part in Melbourne on Thursday. There is an advocacy forum that the NDIS Commissioner is holding in Melbourne. They have invited one advocate from each organisation to attend that, likely to be the CEOs from the organisation, I suspect. I think there will be other people online, so I'm not sure if some of you will be taking part in that, but there will be opportunities during that agenda on Thursday to tell the NDIS Commission some of these things.

They have heard them before, but they don't seem to be taking them on board and I think the advocacy sector needs to challenge them a bit about providing more information to advocates and keeping you in the loop more.



I can see [WA Advocate 1] has something in the chat about the Quality & Safeguards Commission say they don't receive any updates and it is up to the person with disability to update them instead... and they're really not paying any attention to the fact that there are signed consent forms [giving the advocate authority to discuss the matter with the Commission.]

There is something in the way the NDIS commission views advocates that is not quite balanced in the way it should be, and I think collectively we have to keep pushing back on that.

[VIC Advocate 1], you mentioned about the independent contractor. It's not something we've talk about much or looked at much. I see them advertising sometimes, those kinds of independent contractors. Of course, they are independent, but they are being paid by the provider, so they have got a financial interest in the work. Siobhan, have you seen anything where the Royal Commission have looked at that aspect? Do you remember in any of those previous service provider hearings, did that come up and did they ask any details?

Siobhan Clair:

I think it has, yeah. I'm not sure what conclusions they have drawn from that, and I think from the discussion last fortnight, I think there's a lot of concern that with the initial problems being identified, whether that's an allegation of abuse or a complaint, that its largely service providers investigating themselves, or at least that's the impression how often any independent – how seriously these things are taken. Where it's something serious, I think it's probably escalated to that more often, but, yeah, it's not something that we have heard a lot about, except that a lot of concern that often things are not independently investigated by that form of independent...which is potentially problematic, where they are really being brought in by a service provider to manage a situation, as opposed to finding out what's really happened with integrity. An external oversight mechanism that has good consequences and actually addresses the problems.

Mary Mallett:

Can I ask, do you feel or see that there is confusion – still - existing about complaints - I can see you've got your hand up and [NSW Advocate 2], I will go to you first and then come back to my question.

[NSW Advocate 2]:

That's okay. On the subject of independent contractors, there are issues with established service providers, and it is a vexed issue. Many will argument around the role of independent contractors, that they provide a great service extending choice



and control. But, there is an element of it that is operating outside of the regulatory framework, so there are a number of platforms now where people can act as independent contractors. And what is happening amongst service providers, and I know this having worked for a service provider and having worked for an online provider who employs its support workers, is that within service providers, people are employed by the service provider, but they're also registering as an independent contractor. And service providers will tell you this - often the independent contractor will come in and say, "Listen, instead of taking this service from the service provider on the weekend, I can offer you this service potentially at a discounted rate". I've even heard of people setting up quasi services within their own home, as day centres.

So that kind of thing is happening, and what occurs is that the people with disability are thinking that whatever the conditions and whatever the protections are, that they're getting from the service provider will be extended when the independent contractor acts independently. Of course, that's not the case, and if you talk to service providers, they will tell you that that's happening pretty consistently across the sector now.

In fact, Tony Burke [MP] is about to bring in a suite of regulations that are going to increase the employment, improve the employment standards for independent contractors. We don't want to address the "uberisation", if you like, of workers in the disability sector, but on the other side of that there is a definite question around who is the person, who is responsible when they engage an independent contractor - is it the platform? Because a lot of these platforms will obfuscate from responsibility and put it back to the contractor and the contractor doesn't necessarily know that that's their obligation.

Mary Mallett:

There's a lot in that piece there about this thing where people are sort of stealing people away from the providers that the worker has been working for, and may even continue to be working for themselves, but they are working as an individual, so they're not quite at the point of setting themselves up as an unregistered provider, because that's the thing in my mind. I'm probably not clear in my own mind as to where the line is between an individual worker working as an independent contractor, and potentially through one of the platforms, or if they then call themselves - give themselves - a company name and whatever, and call themselves a provider of a business.

I'm not sure where that distinction is there, or if it's only if they are employing other people to work with them or under them, and then what that touches on is the whole issue of unregistered providers and what oversight, what is the difference between the oversight that sits over the registered providers - versus the unregistered providers.



[NSW Advocate 2]:
Precisely.

Mary Mallett:
And is it sufficient for the unregistered ones?

[NSW Advocate 2]:
My personal view, and others may differ, you listen to IR people talking about this stuff, they will come back to the issue of who is the person conducting the business or undertaking, who is ultimately responsible? If there is an independent contractor, and if something happens to the person with disability while being in the care of this independent contractor, a lot of these platforms will argue that the responsibility is the contractor, and the contractor may well be ignorant and certainly the person with disability is ignorant, and these are some of the vexed issues around the role of independent contractors.

Mary Mallett:
I suspect the new big NDIS review that has just been set up will be running for the next year, but I'm sure this area is something that they will be looking at. It certainly gets a bit of media attention, and we hear advocates saying they see good work being done by unregistered providers and, of course, some people wanted to, for choice and control, they want to be able to choose who they are using.

We will have to do some further maybe discussions as a sector around where to land on that issue about the registered and unregistered providers.

Complaints, one of the things that I'm interested in is do you think that people with disability know who to make a complaint to? In any State or Territory anywhere where any of you are based, is there clear, good, accurate information easily available where if something happens, who is responsible and who to make a complaint to.

Any comments on that? If people contact the NDIA, are there good referral processes between the various complaint regulators?

[NSW Advocate 1]
People I have spoken to, and advocates have confirmed this, people are generally very confused as to who they should complain to. They're often not aware of the bodies like the Commonwealth Ombudsman and particularly when they feel that they've been making a number of complaints to the NDIS, and they don't know where to go to from there.



Sometimes I've seen some letters that will indicate you can talk to the Commonwealth Ombudsman, but that might not be the best form of communication with that particular individual. So, there are standard ways of communicating, but not adapted to the individuals who are making a complaint, so they're aware of the pathways available to them. It is generally very confusing and unclear, and also fear that if they make a complaint, they might jeopardise their future funding for support, or be seen as a difficult person, particularly if they've come from being a difficult parent in a school environment and seen how they're treated in that space.

They don't want to become a difficult parent in the NDIS environment, and they feel that the person there supporting may be penalised or they themselves may be penalised, so it's quite problematic.

Mary Mallett:

Yes. It's really good to be reminded about the fear of retribution, which people often talk about if they're asked and advocates are certainly familiar with, and it may be that the complaints, all of the complaints mechanisms, haven't taken that on board in the way they do their messaging, to help people understand that if they contact a complaints process that they're not going get penalised and maybe the NDIS Commission, of course, can't guarantee it?

I can see some comments in the chat. [NSW Advocate 3] says the same thing, that people don't know where to go to make a complaint and [NSW Advocate 5], what people do is contact their service provider which then can make them more vulnerable.

And, of course, people are often encouraged to deal with the issue, of course, directly with the provider.

That is what people are encouraged to do and I think the NDIS Commission probably doesn't quite realise what a challenge that is for people, or they haven't landed on it yet.

At the beginning when the NDIS Quality and Safeguards Commission came in, I know that in each State and Territory there were fridge magnet things that were created that had listed the relevant complaints phone numbers that people could ring, and they were widely distributed right at the beginning. I don't know if they're still using them or have they updated them? I don't know. I haven't seen them recently. Does anybody have a view on what can be done to help people to know who they can ring when they've got a complaint? Does anybody have an off-the-top-of-your-head solution around that? Is it better promotional material from all the complaints mechanisms that explains clearly what to do, flow charts. I don't know.



[NSW Advocate 4]:

Just a quick question here. Similar to, if we are injured and we call 000. It should be very similar in a sense we contact emergency services, so there's nothing like that. Just for our local area there's ADE, Australian Disability Enterprise and when you go there it is difficult for them to find out who they need to contact, if they contact their service provider, which is where they work, their employer, and it is hard for them to find out. Sometimes these stickers you're talking about, they just stay on the fridge and there's nothing for them and the people who have intellectual disability or something else, it comes down to their carers or someone else. I think we need some sort of empowerment or education through the service providers where they already employed or getting services from through them. It would be very essential, I think.

Mary Mallett:

Yes, thank you very much. Yes, that's true. No matter how beautiful the fridge magnets are, if they just stay up on the fridge and people cover them up with the menu for the week or whatever, it's not much help to anybody. There're some suggestions in the chat - maybe an Ask Izzy type of application, or TV and radio ads.

[SA Advocate 1]:

I have a client who was a worker who was trying to let someone know that some abuse was happening in the organisation they were working for, with for with an 18-year-old client so they called CARL, the Child Abuse Report Line in SA, and CARL told them to call the Ombudsman or the police and CARL didn't make a referral to the commission either. She noted it was really difficult to find out where to report to because the police weren't interested and then eventually, she made a complaint to the Safeguards Commission, and it went terribly wrong. She ended up getting fired soon after for making a complaint because then there was some poor communication from the safeguarding commission, back to the workplace, and she had a really difficult time. Even when she was trying to go down a pathway, she kept getting directed by departments and agencies to the wrong pathway again.

Mary Mallett:

Thanks. That's an interesting example [NSW Advocate 5] I can see your comment about the 'no wrong door approach'. Every one of those bodies will have something that says they have a no wrong door approach, but, obviously, they don't link together properly. That's the beginning point. Unless somebody can make a complaint to the right body, then there isn't going to be an investigation, there isn't going to be anything that happens and there's no opportunity for it to get resolved properly.



These complaint processes are the beginning of the whole thing, and if they're not working well, and they're not referring to each other, and they don't understand, I suspect it's likely that even the people who work within some of those different regulators and complaints mechanisms, don't necessarily all understand what everybody else does.

So generally, I'm assuming that advocates, almost always, are likely to know where to help direct the person to, but the problem is they're not necessarily contacting an advocate first either. Like you mentioned [NSW Advocate 4] it is the support workers and others who need to understand all that information. It's actually quite a big challenge, isn't it, and I think that will come up with the Safeguards Commission this week.

Siobhan Clair:

I will just jump in and reflect on some of those things. I think it comes up in this research paper that I'm keen to see published on the DRC website that I posted about

Mary Mallett:

Is that the work that Dinesh did? Is it public yet?

Siobhan Clair:

No, they were expecting sometime in October but hoping it will be on the website soon. Obviously, we want accessible and inclusive complaints systems and that can be appropriate for complaints. It needs to be better, but the quality of disability services, that is a complaints issue. That's something that there should be a complaints thing for. Obviously, that needs to then act on reports of violence, abuse, neglect and exploitation as well, but whether that's the appropriate setting.

Often that's something that should be reported to police if it's abuse. Like, that meets a threshold that sometimes this idea of things, the violence in group homes just being a disability service regulation issue as opposed to being taken more seriously like - this is a justice issue, this is a crime, this is something quite serious that needs more than just the response of maybe an Ombudsman or a complaints commissioner. So whether, yes, we need an accessible and inclusive complaints system, but that's not going to be the solution to what the DRC is trying to - because there will always be reasons why people with disability have trouble making complaints in the first place or are scared to or don't know their rights and don't recognise that things need to be complaint about or reported.

Mary Mallett:

Thanks. Absolutely right. Completely true, thank you.



We're interested in getting your feedback on something that we've probably mentioned before, and Siobhan put something in the chat towards the beginning of the chat which was about something - we're in the middle of writing a submission to the Royal Commission all about advocacy, and we have done some consultation with the sector early on, a few months ago, as we put in some draft place holder recommendations and we're still working on this piece and at least some of it will come out and be sent and to the sector so you have more visibility of it. But one of the things that we're debating, and that we think, perhaps, is - is there potential for something that we would - Siobhan has mentioned it - is there role for funding a specific safeguarding advocacy? That would be for a cohort of people that are at greater risk.

So, it would be agreed that these people are at higher risk than others, and an organisation in that area would be allocated these certain number of people to have a sort of more formal connection with them, where they instead of waiting for the person to make a complaint or to reach out for an advocate, an advocate would go and visit that person. It's a little bit like a community visitor scheme. And we're wary of turning advocates into community visitors or visitors into advocates.

If anybody has an idea about how this would work or any views on whether it could work, and would you object to that term if we used it, that safeguarding advocacy? Because to some extent, of course, we know that what all advocates do, the work you do anyway, we would say is a form of safeguarding.

We're not sure that it is a good idea to identify a specific role of safeguarding advocates. We're open to any thoughts that anybody has or happy to have a discussion at a separate time if anybody gets any brain waves about this. [NSW Advocate 6]?

[NSW Advocate 6]:

I like that. I've worked in safeguarding specifically in a previous role. I really like that idea. Implementation of it would be tricky. The line between or at least in my experience, safeguarding needs to be embedded in everything, every day, so we're at the line where advocacy begins and ends.

I agree with what you've said. I love the idea of it but it would need to be - lines could be crossed and you could have an individual advocate and a safeguarding advocate supporting the same person and it can become unclear whose role is what. Whether there is more scope for safeguarding to be formally built into the existing role of an individual advocate, maybe, and increasing the level of support they can provide or something. I'm not sure. I agree with everything you've said. But how do you work it out in practice?



Mary Mallett:

And as we're trying to put this submission together, we get stuck at some of these points and it's maybe that, of course, all we can do for the moment is say that we think this idea is needed. It needs further exploration. It needs a serious project to bring people together to try and design something, to work out what the funding mechanisms would be, exactly who are the people, what are the numbers of people that would be involved, and how do you distribute them to the local advocacy organisations or distribute the responsibility for them and all of that stuff.

This is not the kind of thing we can design on the fly. We don't have the money to do the work of the design. It does seem to me that probably the only thing we can do is to put it in as a suggestion to the Royal Commission, and with the recommendation that it gets seriously - you know, a project be developed where it is seriously investigated afterwards.

[NSW Advocate 6]:

Does it exist elsewhere and how does it work and what is the framework it works within because another thing is when the safeguarding advocate sees that kind of connection, is it that there is a role to reduce the areas of vulnerability and capacity building, or does a safeguarding advocate continue indefinitely with the person which evolves to a general advocate role. Anyway, yeah, they're all the questions.

Mary Mallett:

Yeah, and bearing in mind that citizen advocates already do this in their part of the sector, they do this long-term protective relationships work all the time. [NSW Advocate 2] around [VIC Advocate 1], you have both got your hands up.

[VIC Advocate 1]:

[VIC Advocate 1] from [advocacy organisation]. Really broad support for that idea as opposed to anything detailed or constructive. Just noting that when I previously worked as a support coordinator, comparing it to now as an advocate, it is clear that the people that make it to advocacy aren't always necessarily those who are most in need of this service because you come across people working as support coordinator going into group home environments who could really use advocacy, but don't necessarily have that family member to reach out to an advocacy service, so having something, be it at an NDIS planning meeting or something a bit more universal where some of these high-risk situations or people are identified, seems important to capture the people in need. How it would work is a tough question and advocates don't necessarily have the stick that NDIS Quality and Safeguards Commissions do in terms of we can't do banning orders and things like that, are the tools that other legislated bodies have at



their disposal, but in terms of capturing people in risky situations, it sounds like a really good idea. It's quite crude..

Mary Mallett:

Yes you're correct, it's quite crude. We can sort of feel, I think, an increasing need for this thing that we haven't quite got the words around yet, but the Royal Commission absolutely could do more work themselves open it or recommend that work be done on it.

Siobhan Clair:

It's something we've heard time and time again in some kind of form, whether it's talked about, designating, its more getting the system buy-in, whether it's the NDIS or other government systems that are recognising the high risk for someone and then, yeah, rather than being about a specific issue, being more about investigating their life and going 'are there risk factors here, and how can we do this long-term developmental work?'

[NSW Advocate 2]

Just a thing that came up for us recently and just on this role of capturing people who are at high risk. One of the things that we do quite regularly is provide submissions to councils for their disability inclusion action plans. And one area that we sort of try and include is the role, perhaps, of Rangers or whatever they do in councils, but there's boarding houses in councils that maybe housing people with disability who may be experiencing abuse, neglect. Pointing out the possibility of the role that they may play in exposing some of these things.

There's any number of people out working at that level of government doing any number of things. This could be an area of, and it's not just a council level, different collaboration. We've heard lots of different things coming out of the aged care Royal Commission. It's hard to imagine that there weren't people coming around and inspecting, and seeing those sites for different reasons, and why weren't things picked up? So that's another area where that could be more collaboration within the community.

Mary Mallett:

Thanks. What that brings to mind for me is that these safeguarding advocates or whatever they're called, if they come to fruition, is that they might also then have a kind of that educative and coordinating role in their community or communities in a region or something, where part of their role is talking to all the other people who have that potential opportunity to know what's happening for people, but either are oblivious



to it or not paying attention, or are not knowing what they should do about it. Thanks. That's useful.

We have gone down a few rabbit holes today in this discussion, so if there's anything anybody wants to raise that has anything at all to do with any aspect of safeguarding, and if you've got - if there's any suggestion you want to make about what do you think, what's the most important thing that keeps people safe? What are the most important couple of things that determine somebody is safe? Anybody want to tackle that? A comment formal or informal oversight, another comment saying inclusion. Obviously people being more visible in community and having more people to be connected with.

[NSW Advocate 2]

My one word would be regulation, more regulation.

Mary Mallet:

Where would you put the regulation and who should be regulated?

[NSW Advocate 2]

I would just make it far more accountable across the entire sector, more accountability on providers. I don't think that we can have a situation where we have got some people operating in the sector who just don't have any oversights anymore.

And there are people operating in the sector who are not required to have worker screenings and that's just not acceptable in this day and age, I don't think.

Mary Mallett:

Yes. I can see [NSW Advocate 5] and [TAS Advocate 1] saying independent people in your life. The question is how do we get those independent people into people's lives if they're not there? If they don't naturally happen, what can be done and how can people's NDIS plans be used for that purpose? [NSW Advocate 5]?

[NSW Advocate 5]:

Yes, hello, everyone. I'm coming at this from a service user as well as an advocate. I'm not disagreeing with what [NSW Advocate 2] said at all, but no amount of regulation is going to solve an issue for someone who lives by themselves and is in a similar circumstance to how Ann-Marie Smith was in and I think there needs to be some role or responsibility for service providers when people are isolated in those circumstances in ensuring that they are well looked after when they may only be relying on one or two or a short number of workers, and I know there was some debate on all of this through the Commission on how to tackle that, and I think it will remain an issue unless there is some recognition from service providers and their role in ensuring there's



protections for those that have one, two, or only a small number of workers coming into their home. And things that can be done to try and improve that, so, you know, contingency planning and so on and so forth.

Mary Mallett:

Thank you. Some people have put in the chat a variation in provider, so not one provider doing everything and [NSW Advocate 6] added to that, which is the separation of housing and supports in particular. Also accessing community and informal supports. Siobhan put in a quote from a previous workshop about how people have that lack of connection to community.

Advocates can see where they are working advocating for people with respect things have gone wrong. They can see what has led up to it and why things have gone wrong, but it's difficult to - the NDIS has now turned into this very enormous complex system. All of these things need to be thought about, not just, obviously, to feed into the Royal Commission to see what they can put in their recommendations and how government will respond, but also the NDIS review, which is also looking at the Quality and Safeguards Commission as well. To see what sort of changes can be made, where all of the leverage is, and the power in every sense of the word is with the providers. It's an enormous amount of money and the huge number of providers in the sector, all of them busily working away to create incomes for themselves and to extract the maximum income they can out of somebody's NDIS plan, and so they are ticking the boxes that they have to, so [NSW Advocate 2] your point about the more regulation, more accountability, that two the points followed by [NSW Advocate 5] you're immediately making, so that's exactly how those arguments play out with in trying to protect people, we want more and more oversight, regulation and accountability and [NSW Advocate 5's] point that even then, no matter how much accountability or regulation you have, it still doesn't always protect an individual and providers, the providers who want to get away with things can still try to do that. What I'm trying to think about is, is it the advocates role and advocacy as a whole at the systemic and individual level, we have to become clear about exactly what do we need to be advocating hard for in this environment. [NSW Advocate 6].

[NSW Advocate 6]:

I think so much is attitudinal change, like, across the board. Because it can add layer upon layer upon layer of regulation, I agree, so much more regulation is needed and there needs to be more coordinated oversight, but it has to go hand-in-hand, really, with a change in attitude across society and I guess that's the systemic advocacy side of it, but until the bar is raised with that, my worry about regulation is it becomes a tick-a-box and it plays out into complaints that there's so much regulation that it's hindering the provision of services and not cost effective to provide services, and once you go



down that pathway, the attitude veers away from raising the bar and expectations of what is acceptable and equitable. You can veer off at times. It has to be so careful. The regulation has go hand-in-hand with the change in society, so the regulation is regulating an expectation, rather than regulating that boxes will be ticked if that makes sense.

Mary Mallett:

Yes. I know, as opposed for regulating for a bare minimum.

[NSW Advocate 6]:

Yes, that's what I'm trying to say.

Mary Mallett:

NDIS has been around for ten years now and that's why there's a review. Are there people that you are still advocating for who you would think their life hasn't changed and improved much, and then are there people where it has made a big difference

But probably for advocates we're more concerned about the people if there are a whole cohort of people whose lives haven't improved, does anybody think that's true? We sort of think it is, but I'm interested to know if that's the case or are we prophets of doom unnecessarily?

While you're thinking about that, I can see there's a chat about people are easy to overlook. Yeah. It is my sense that the advocacy sector is aware of these people who do get overlooked and pushed to one side and ignored, exempt that they often are then also at risk of violence from other residents in group homes, if they're the more vulnerable people, and then potentially also occasionally from staff.

We have nearly used up our time, and every time we dive into one of these topics, you can go down multiple... unpack different layers about what to do it about it. As I said some of you will be part of the discussions with the face-to-face or online on Thursday with the NDIS Commission, and there is a forum tomorrow that you may be taking part in, in Melbourne, but I think this is an aspect that we might have to have - I think we will have to have further discussion on.

As the NDIS review puts out some details, they've got a website, they've got the terms of reference there, but there's nothing about when their consultations start or how they will do that, but I think we will try and make sure that they have a series of - I'm sure they will do stuff - with different States and Territories, but we will make sure that we coordinate them to have some sessions with advocates, and we have to try and focus



in on particular topics because the whole scheme is too big. [NSW Advocate 6], we will come back to you.

[NSW Advocate 6]:

Sorry, I forgot to take my hand down.

Mary Mallett:

That's all right. We're in last minute. I open it up for any last comment. Okay.

Thanks very much for coming again today. These are big issues. We really value the fact that advocates many come in to discuss these issues and that we can then - the transcripts of these discussions are messy, but they reflect what your views and what you say and we provide them to the Royal Commission as a deidentified transcript. And they are absolutely interested in everything that advocates have to say.

There was going to be a hearing in early December about service providers and they have moved that to February which is interesting because we didn't know they were going to do any more hearings next year, and we know there's at least that one.

We're not sure about others. Siobhan has put the link in, and you can subscribe for information from them. Thank you very much, everyone. I will let you go and find your lunch. We will talk again some other time. Thank you, bye.

Siobhan Clair:

Thanks, everyone. Thanks for joining today.

END OF MEETING



Comments In Chat

Siobhan Clair:

Apologies for background noise at my end...

We'll be guided by what attendees most wish to discuss, but some of the questions that have been raised in relation to safeguards and quality are:

- What role does, or should, independent monitoring and oversight play in safeguarding the right of people with disability to live free from violence, abuse, neglect and exploitation?
- Should the NDIS Quality and Safeguards Commission be taking a more active role in ensuring service providers are adhering to the appropriate standards?
- Should the NDIS Commission conduct more independent investigation following complaints (rather than mediation)?
- Should more punitive and stringent approaches be used in safeguarding, when it comes to regulating service providers?
- Are current safeguards in relation to monitoring the use of restrictive practices adequate?
- Should community visitor schemes be expanded (or introduced in those jurisdictions without them)? Should this include unannounced site visits to group homes (and other settings)?

Is there a role for funding of specific 'safeguarding advocacy', where systems recognise that a person with disability (eg NDIS participant) is at higher risk and then allocates an advocacy organisation– or certain processes automatically connect people with an advocacy organisation (and they can choose to 'opt out' if they wish)?

[NSW Advocate 1]:

One area of concern that has been raised by clients is who has oversight of providers that are contracted through health services (such as COMPACKS, SASH). This is not NDIS providers I am talking about. They do not seem to come neatly within the purview of the Age and Disability Commission



Siobhan Clair:

The overview of responses to S & Q Issues paper noted *"Some responses said that the present system is unnecessarily complex because of the requirement that the NDIS Commission, service providers and State agencies work together. "*

[WA Advocate 1]:

In WA, The Quality & Safeguards Commission told us that if they are investigating a service provider, or a complaint in general, the advocates do not receive any updates and it is up to the person with disability to update us instead... even if there is a signed consent form giving the advocate authority to discuss the matter with the Commission.

[NSW Advocate 1]

In relation to independent contractors the response (from some very good sole contractors) is that they would be happy to be registered if they could afford it. The cost is often prohibitive.

[NSW Advocate 1]

It is very unclear to most individuals.

[NSW Advocate 3]

[NSW Advocate 3] – [Advocacy Organisation] here. In my experience I have found not many people know where they can go to, to make a complaint

[NSW Advocate 4]

It is very difficult for individual, to know who is the authority to contact (if they need to complain), generally they contact their service provider, which can make them very vulnerable

Siobhan Clair:

DANA was involved last year in a DRC-commissioned research focused on 'Accessible and inclusive complaints' so hopefully that report will be published soon here: [Link to research page]

[VIC Advocate 2]

maybe like an 'ask izzy' type of application

NSW Advocate 1

In relation to promoting services for complaints - accessible TV and radio ads.

[NSW Advocate 5]

There should be a "no wrong door" approach between state and fed complaints bodies



Siobhan Clair

Another thing we've heard from advocates is that people will have heard from other people's lack of satisfaction or positive outcomes from making complaints so will be deterred, or think 'what's the point?' - or that people need advocacy support to make a complaint in the first place

[WA Advocate 1]:

Absolutely true!

[NSW Advocate 3]

100% Siobhan. Police do not investigate violence, abuse and sexual abuse on people who are non-verbal living in group homes. Basically this is preventing them from having any form of justice and they are still potentially living with or having workers continue to abuse them. Their basic human rights are not being respected at all

[NSW Advocate 1]

It would be great if very isolated individuals (no informal or limited informal supports) particularly those with communication issues had independent individuals able to make contact with them and review their situation (in consultation with the individual of course - so supported decision making).

[NSW Advocate 6]:

So true VIC Advocate 1

[NSW Advocate 1]:

VIC Advocate 1 - great points. We seem to rely on default protection in the form of health providers noticing issues and making a call.

[NSW Advocate 1]:

Oversight keeps people safe - formal or informal.

[NSW Advocate 4]

inclusion

[TAS Advocate 1]

Independent people in your life

[VIC Advocate 1]

Variation in providers (as opposed to everything under the one roof). Accessing the community/informal supports as per previous points.



[NSW Advocate 6]:
Agreed [NSW Advocate 2]

[NSW Advocate 6]:
Separation of housing and supports

Siobhan Clair

“For so many people in group homes and go to day programs - they have no one in their life outside of a closed service system. If everyone in the service system agrees on the quality of the person's life, it takes for them to have 'behaviours of concern' to be able to protest. It means that people who don't protest may be incredibly unhappy and no one recognises it. The lack of outside people, or connection [to] the community is a huge problem...There needs to be monitoring of quality of life - and it has to be external and independent.”

VIC Advocate, February 2021 Zoom workshop with DRC

Siobhan Clair:

*“...there's some models out there that has a very big gap between the boots on the ground to the management. So the manager might manage five houses, but there's no-one actually on the ground actually working with the staff actually giving that sort of mentoring or that sort of leadership to make sure that things are happening
...There's not a lot of consultation I don't believe with the staff with their management. Management have it all perfectly written out. They have it all detailed, everything looks wonderful on reports, but the staff on the ground have no idea these things are in place and there's no communication down below.
So it all looks wonderful up the top and when you make a complaint to the Quality and Safeguards Commission, it all looks wonderful to them because everything is ticked off and it looks like a neat little package. However, realistically and in reality it's not happening. Why would people make a complaint if things were okay? If it's not investigated, then there's no point.”*

VIC Advocate, February 2021 Zoom workshop with DRC

[NSW Advocate 1]

Worst abuse and neglect has seems to relate to individuals who are easy to "overlook". They don't or can't act out or their acting out is so subtle only close family members have managed to "catch it" and raise the alarm.



ADVOCATES DISCUSS



Siobhan Clair:

You can subscribe for updates at base of webpage: Building a strong, more effective NDIS | NDIS Review

Siobhan Clair

Thanks for all your input and thank you interpreters

[NSW Advocate 1]:

Thank you so much.

[NSW Advocate 4]:

Thank you

Siobhan Clair:

and captioner for excellent work Today

[VIC Advocate 1]

Thanks!