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Dear Ms Cunneen

Review of Community Visitor Schemes

Thank you for providing us with an opportunity to make a written submission to the national Review of Community Visitor Schemes.

Our interest in this matter stems from the desire to ensure that appropriate arrangements are in place to protect vulnerable Tasmanians (including those with disability in closed environments) against abuse and neglect and to establish public confidence in the quality and safety of services being delivered to vulnerable Tasmanians. We consider that community visitor schemes should be implemented as an integral component of a comprehensive safeguarding framework in this State.

The *Anti-Discrimination Act 1998* (Tas) (ADA) provides that it is unlawful to discriminate against a person on the basis of disability in certain specified areas of activity.¹ It also prohibits a person from engaging in conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of disability² or inciting hatred toward, serious contempt for, or severe ridicule of a person or group of people on the grounds of disability.³

¹ *Anti-Discrimination Act 1998* (Tas) s14 prohibits direct discrimination; s 15 prohibits indirect discrimination and s16(k) identifies disability as a protected attribute. Section 22 outlines relevant areas of activity.

² *Anti-Discrimination Act 1998* (Tas) s17(1)

³ *Anti-Discrimination Act 1998* (Tas) s19(b)

Equivalent provisions exist in the *Disability Discrimination Act 1992 (Cth) (DDA)*.⁴

Protections against discrimination and related offensive conduct are not limited to those persons who are recipients of National Disability Insurance Scheme (NDIS) funding. They may equally apply, for example, to those who are vulnerable by virtue of their age or age-related disability in other closed environments such as nursing homes and aged care facilities and to those people with disability who are outside the NDIS funding framework.

We are of the view, however, that the establishment of a community visitor scheme would significantly contribute toward meeting the quality and safeguarding standards under the NDIS.

International human rights instruments recognise the need for special safeguards for those in closed environments due to their particular vulnerabilities. This is because people in such situations may face unique barriers to accessing services and supports, raising concerns or making complaints. Ongoing preventative oversight must be undertaken with sufficient universality, timeliness and frequency to enable issues to be identified early and to be addressed quickly.

Issues being considered in terms of developing quality and safeguarding mechanisms for those in receipt of NDIS funded packages are similar to those encountered in aged care and risk similar problems. Aged care quality assurance has been of significant concern following extensive reports of elder abuse.

Of particular concern regarding current national quality and safeguarding arrangements is the extent to which the regulatory system focuses on service provider regulation. The focus of regulatory arrangements is often on complying with contractual requirements rather than responsibility for meeting quality outcomes or protecting human rights.

The Convention on the Rights of Persons with Disabilities places responsibility on Australia to take appropriate measures to ensure the accessibility of services and systems to all people and provide appropriate assistance and support. Further, the Convention requires States ensure that people receive the support that they need to exercise their legal capacity and make decisions for themselves. This should include assisting people to enforce their rights as consumers and to exercise choice to change service providers when they are dissatisfied with their care and treatment. Accordingly, all complaints and consumer protection mechanisms must uphold the principles of the Convention and, to the greatest extent possible, support people to exercise their autonomy and legal capacity. Advocacy and community visitor

⁴ *Disability Discrimination Act 1992 (Cth)* ss 4, 5, 7 and 24

programs play a critical role in this regard particularly in situations where those at risk may have difficulty in raising a complaint on their own behalf.

Concerns raised about the accessibility of current complaints systems in aged care should also be taken into account when establishing quality and safeguarding mechanisms for those in receipt of NDIS funded services. In relation to aged care services, it is evident that the majority of complaints received by the Aged Care Complaints Commissioner are made by family members or representatives of the resident and concerns have been expressed that the mistreatment of residents may be under-reported by residents who are not actively engaged with family or friends. Whilst it is acknowledged that the quality and safeguarding framework proposed in relation to the NDIS includes measures to increase the capacity of individuals in receipt of NDIS funding to assert their rights, the reality is that in many instances there will be a need for a community visitor or similar individual to assist them in this process. It should be noted, however, that many older people with disabilities fall outside the NDIS scheme.

Whilst national quality and safeguarding mechanisms are an important component of ensuring that services are fit for purpose, they should not be established as a substitute for regular external monitoring at a local level. Nor do we consider that community visitors should be restricted in the mechanisms they can use to raise and have issues considered. Knowledge of external complaints bodies as well as multiple avenues through which complaints can be made is particularly important in closed facilities where the institutional power dynamic discourage internal complaint or complaints where the issue is referred back to the facility for resolution.

People with disability need to be supported by an advocacy service that is independent with respect to funding, power, resources and expenditure and that supports those who engage with disability services as well as those who are more isolated, vulnerable or disadvantaged for some reason.

In Victoria and Queensland, proactive monitoring of disability services is carried out by their community visitor scheme. Community visitors are independent statutory appointments empowered by law to visit disability residential services, supported residential services and mental health facilities. They can make unannounced visits as well as visits in response to critical incidents and are able to inquire into all things related to a person's care or treatment. They also have broad inspectorial powers and have the right to inspect any part of the premises in which services are being provided, meet with any resident, inspect documents and make enquiries related to the provision of services.

We consider that the current framework for safeguarding vulnerable adults (both people with disability and other vulnerable adults) must be comprehensive enough to take into account all forms of abuse and neglect. This includes actions taken by both service providers and others with whom vulnerable adults are in contact. At present

there is no single one-stop shop where those who may witness abuse or neglect or those who are subject to abuse or neglect can contact.

In its June 2018 report *A Future Without Violence: Quality, safeguarding and oversight to prevent and address violence against people with disability in institutional settings*, the Australian Human Rights Commission expressed the view that 'best practice oversight and monitoring of institutional settings can be achieved through independent complaint and reporting bodies that have oversight of a service system, and the operation of community visitors and independent and systemic advocacy programs' (p.38). This is a view shared by Equal Opportunity Tasmania.

The Australian Law Reform Commission (ALRC) in its 2017 report into elder abuse recommended that every State and Territory adopt adult safeguarding legislation that has the power to investigate complaints and seek to resolve complaints. Such an agency would not be restricted in the nature of the complaints it could receive, but would also have the power to refer a complaint to a more appropriate body (including police) were this warranted. The South Australian government has subsequently introduced legislation for this purpose.

Safeguarding Agencies of the type proposed by the ALRC would provide an important counterbalance to national quality and safeguarding measures. Importantly in the context of the current review such an Agency could usefully have responsibility for other protective mechanisms such as community visitor schemes.

Yours sincerely



Sarah Bolt

ANTI-DISCRIMINATION COMMISSIONER

6 November 2018