



**Submission made by Julia Farr Association
to the**

**Review of the Health and Community Services
Complaints Act 2004**

Terms of Reference:

To consider the functions and powers of the Health and Community Services Complaints Commissioner and make recommendations about any necessary structural, functional or procedural changes.

1.0 PURPOSE

The purpose of this submission is to inform SA Health through the Health and Community Services Complaints (HCSC) Act Review about ways in which the functions and powers of the Health and Community Services Complaints Commissioner (HCSCC) can be further enhanced in support of people living with disability and living in supported accommodation.

2.0 RECOMMENDATION

That the State Government of South Australia extend the functions of the Office of the HCSCC to include an Official Community Visitors Scheme that through a schedule of active, 'no-notice' visiting of service venues:

- increases the likelihood that complaints are gathered from people who might otherwise stay silent for reasons of fear, lack of information, lack of technology, or other circumstances*
- ensures that such complaints are followed up in ways that bring good resolution without adding to the complainant's vulnerability, especially in respect of retribution*
- identifies through first-hand observation by Official Community Visitors, any service issues that need to be addressed in order to assure quality and safety.*

3.0 INTRODUCTION

JFA and its predecessor organisations have been involved with the disability community for 130 years. The organisation holds that the following values should inform policy development in this area:

- Personal authority – where people living with disability and their families have and exercise control over the key decisions in their lives
- Social inclusion – where people living with disability and their families are included as active citizens in the life of the wider community
- Capacity building – where people living with disability and their families, through access to experiences and support, are growing their capacity to enjoy active lives of choice. This also includes the wider community growing its capacity to be inclusive and supportive of people living with disability and their families.

JFA is not a service provider, nor an advocacy agency, has no political affiliations, and is not Government funded. As such, we feel we are in a good position to offer comment and analysis without vested interest.

JFA, through enquiry and networking in the disability community and the wider community, seeks to foster innovation, share useful information, and identify and promote policy and practice that may be helpful in improving the life chances for people living with disability and their families.

JFA sees the review of the functions of the HCSCC as an important opportunity to explore ways to strengthen arrangements so that people living with disability and their families are heard on issues that are important to them, and especially in those areas where their vulnerability may be exploited.

4.0 CURRENT FUNCTIONS OF HCSCC

Rather than making a submission about existing HCSCC functions we wish to address an additional function that is not currently available.

JFA does note, however, that the HCSCC has been in dialogue with the Department for Families and Communities (DFC), and that as a result the DFC is likely to strengthen the contracting arrangements with service providers to help ensure that there are more robust complaints mechanisms in place across all health and community service provision to people living with disability and their families. This is important progress because it cannot yet be said that all people living with disability are enjoying an appropriate standard of quality and safety when using services.

The JFA believe that the functions of the HCSCC can be further enhanced to support people living with disability and living in supported accommodation to have their complaints responded to. We welcome the opportunity to comment on this as part of the review of the Health and Community Services Complaints Act 2004.

5.0 LIVING IN SUPPORTED ACCOMMODATION

A range of supported accommodation services are provided to people living with disability in South Australia under the Commonwealth State and Territory Disability Agreement. In 2002, of the 2,373 people receiving these services, 938 were living in large residential institutions and 663 in community-based group homes (AIHW 2003). As at November 2002 a total of 202 group homes, widely dispersed throughout metropolitan and regional areas, were funded by the State Government (Social Development Committee 2003). In a number of cases people living with disability in such supported accommodation arrangements are not provided with the opportunity to make significant personal decisions about how they live their lives, about how they can be actively involved in the rich associational life of the wider community, and how they can access experiences that develop their personal capacity.

'Institutionalised' practices in supported accommodation

The existence of 'institutionalised' practices within supported accommodation services is one aspect that can contribute to people living with disability not being provided with the opportunity to make significant personal decisions. Factors considered characteristic of institutions which can impact on this are; a lack of opportunities to make decisions, a lack of privacy and not being in contact with the wider community (Social Development Committee 2003). These characteristics are not only associated with larger residential institutions but group homes as well, because "they have the capacity to develop 'institutional' features where appropriate strategies are not in place to protect against this" (Social Development Committee 2003, p. 135).

Safety of people living in large residential institutions and group homes

The possibility that people living with disability are abused or neglected while in residential institutions or group homes because of their personal vulnerability is another concern that has been raised by people living with disability, their families and the community (Lee 2008; Social Development Committee 2003; Supported Accommodation Task Group 2006). The Social Development Committee found in its inquiry into supported accommodation that "[i]t was generally acknowledged that, despite quality systems, abuse and maltreatment does occur from time to time in both types of arrangements" (Social Development Committee 2003, p. 136).

Why people living with disability do not make complaints

It is of paramount importance to explore ways to strengthen arrangements so that people living with disability and their families are heard on issues that are important to them, and especially in those areas where their vulnerability may be exploited.

This importance is underscored by the proceedings from JFA's conference *The Loop 2007*, that operated at several country venues in South Australia, as well as in Adelaide. The conference theme, '*Why is it so hard to speak up and be heard?*', attracted over 200 participants, who had much to say on this question. A copy of the conference proceedings is attached to this submission as Appendix 1.

The proceedings show that there are a number of reasons why people don't speak up. These reasons included:

- no information about where to go and how, to give my view
- lack of confidence
- too tired
- fear of punishment
- time and distance
- attitudes and behaviours of people running the system
- unhelpful and lengthy processes to respond to issues.

(JFA 2008)

Alarmingly, the list includes *fear of punishment*. Such fear has the potential to block many people from taking active steps to voice their concerns about services, on the basis that they will somehow be punished as a result, whether such punishment occurs as emotional abuse, and physical harm, or in more subtle forms of neglect, such as delays in responding to requests for assistance with tasks of daily living, or withdrawal of 'good will'.

This situation comes about because a person's vulnerability places the care-giver in a position of relative power. Because of this power imbalance in the relationship between care-giver and care-recipient, we cannot solely rely upon complaints mechanisms that are dependent upon the care-recipient actively and personally initiating the complaint.

The likelihood of a care-recipient actively making a complaint is further diminished when other factors apply, such as:

- *The care-giver agency is also the landlord of the property where the care-recipient resides*

It is not right that one agency should be involved in many aspects of a person's life. When this happens, the stakes are raised significantly for the person who is not happy about services, because if they complain they bring

into uncertainty not only their support arrangements but also the roof over their head (Swift 2008).

- *Impoverished family/personal networks*

It is not uncommon for people living with disability, because of circumstances, to be at greater risk of diminished personal networks of family and friends when compared to their non-disabled peer citizens. The relative absence of an active, supportive network of family and friends can contribute to the person's isolation and therefore their vulnerability (Supported Accommodation Task Group 2006). Their dependence on their relationships with their professional care-givers presents a further barrier to speaking up, because the few relationships they have may consequently be lost. Also the absence of regular visits from, and time with, family and friends, means there is none of the natural 'service monitoring' that takes place through such relationships.

For all of the above reasons, there need to be additional arrangements that in effect bring the complaints mechanism to the person without that person having to actively go out and seek it. The challenges that people living with disability face while living in supported accommodation can and do impact on their capacity to raise concerns and be heard. The broad distribution of supported accommodation services throughout South Australia creates further challenges in regards to enabling individuals to have their complaints responded to. The introduction of the Official Community Visitor Scheme (OCVS) is a system which could assist in responding to these issues through ensuring that no matter where people live they are able to have their concerns responded to.

6.0 OFFICIAL COMMUNITY VISITORS SCHEME

The purpose of an OCVS is to provide an essential further avenue for people living with disability to raise their concerns and have these actioned through providing them with "access to an independent person to promote their well-being and circumstances" (Official Community Visitors 2004, p. 5). An Official Community Visitor (OCV) is considered objective because they are independent of government departments and service providers (Official Community Visitors 2004).

The OCVS operates in all states except South Australia (Bidmeade 2005). Although there are some variations between states in regards to who is supported by the OCVS and the services they receive, the emphasis on providing an independent voice for raising complaints and having them heard is maintained (Council of Official Visitors 2002). Below is an overview of how the OCVS works in New South Wales (NSW) and Victoria where the scheme has been supporting people living with disability in supported accommodation for over 13 years and 20 years respectively (Office of the Public Advocate 2007; Official Community Visitors 2004).

Independence of the OCVS and its mandate

In both NSW and Victoria the OCVS is linked to legislation. In NSW OCVs are appointed by the Minister for Community Services and given statutory powers under the NSW Community Services (Complaints, Reviews and Monitoring) Act 1993 and are responsible for visiting services funded or run by the Department of Community Services or the Department of Ageing, Disability and Home Care (NSW Ombudsman 2006). OCVs are appointed for up to three years and can be reappointed for an additional three years (Official Community Visitors 2004). Under the Act they have the authority to:

- visit and inspect a service with or without notice at a reasonable time
- talk privately to people living with disability being supported by the service and staff
- inspect service documentation relating to how it operates
- provide information to people living in supported accommodation on external supports available to help them raise their concerns, such as advocacy services
- encourage the rights of people living in supported accommodation to privacy, confidentiality and the right to complain
- report on issues regarding the conduct of the service such as, reporting to services for the purpose of resolving issues at a local level and reporting serious concerns to the NSW Ombudsman and to the Minister (NSW Ombudsman 2006; Official Community Visitors 2004).

The OCVS in NSW is coordinated by the NSW Ombudsman which is also an independent body that directly reports to Parliament (NSW Ombudsman 2006).

As part of this role the NSW Ombudsman performs a number of functions such as:

- recruiting OCVs
- providing regular training and support to OCVS
- looking into serious complaints and misconduct that have been identified
- supporting services through educating and informing them about how improvements in service delivery can occur
- supporting people living with disability to access advocacy support if required (NSW Ombudsman 2006; Official Community Visitors 2004).

Prior to the NSW Ombudsman commencing coordination of the OCVS in 2003/04 the OCVS was the responsibility of the former Community Services Commission (Official Community Visitors 2007).

In Victoria the OCVS operates out of the Office of the Public Advocate and is linked to the Victorian Disability Act 2006 where OCVs are appointed to visit residential services run by disability services providers as defined in the Act (DHS 2007). Their

mandate is similar to OCVs in NSW. However, they are also able to inspect any records that are required to be kept under the Act and inspect any documentation which relates to the person living with disability that is not medically related although these documents can be viewed if consent is provided by the individual or their guardian (DHS 2007). The OCVs also have the option to report concerns not only to the state's Ombudsman but also the Disability Services Commissioner, Secretary of the Department of Human Services and Senior Practitioners (DHS 2007).

In order to fulfil their mandated functions, OCVs are required to regularly visit and monitor services. In NSW the frequency of visits is dependent on the size of the residential services and the age of the people who are supported there with visits occurring at least every six months (Official Community Visitors 2004). Although OCVs assist in identifying issues on behalf of people living in supported accommodation they are not considered advocates as they "are only occasional visitors, whereas advocates should have a long-term relationship with individuals. Visitors have a broader view, as to the conduct of the service generally, as well as to the individual" (Official Community Visitors 2004, p. 18). OCVs are responsible for informing individuals about the advocacy supports available and assist them to link with these services if required (Official Community Visitors 2004).

Issues that have been identified and addressed by OCVs

In NSW and Victoria the OCVS has identified and assisted in resolving a range of issues impacting on the lives of people living with disability. Some of the key areas of concern raised have been:

- services not meeting the needs of people living with disability due having an insufficient focus on developing and implementing individual or person-centred plans
- facilities not being maintained and providing an environment which is not home-like
- inadequate access to the community and family and friends
- inappropriate levels of assistance from support staff
- health care needs not being actioned in a timely manner
- issues surrounding the safety of people living in supported accommodation (Official Community Visitors 2004, 2007; Office of the Public Advocate 2007).

The concerns that have been identified and actioned through the OCVS in NSW and Victoria highlight just how effective and beneficial the scheme is. This is particularly so for people living with disability and living in supported accommodation who may be less likely to directly raise their concerns due to being more vulnerable and isolated.

7.0 WHY THE OFFICIAL COMMUNITY VISITORS SCHEME SHOULD BE PART OF THE FUNCTIONS OF THE HCSCC

JFA commends the commitment of the HCSCC to independently and impartially support people in the community, including people living with disability, in respect of complaints about health and community services. 1515 people contacted the HCSCC Enquiry Service in 2006 – 2007 via phone, email, fax or mail (HCSCC 2007). This highlights its utility in supporting people with complaints. JFA believes this can be further enhanced through the introduction of the OCVS, with the capacity to augment the functions of the HCSCC (as defined in the Health and Community Services Complaints Act 2004) in a range of ways.

- *Local level approach – support to both service users and service providers*

The HCSCC is responsible for supporting service users to have their complaints resolved through encouraging them to work with the service provider. Providing that support is dependent on people contacting the HCSCC through its Enquiry Service and raising their concerns. Through the OCVS the HCSCC will be able to go directly to individuals living in supported accommodation to identify and assess what their concerns are and support them to have these issues resolved through providing advice and information to service providers about how this can occur. This will enable the HCSCC to proactively help individuals who may not have the capacity to raise their concerns due to factors such as vulnerability and isolation.

- *Understanding the needs and rights of people living with disability*

The HCSCC is responsible for taking into account people who have particular needs and the issues that may result if these needs are not met when reviewing complaints and determining what action to take. In order to fully explore the needs of people living with disability involved in a complaint there are a range of perspectives that need to be considered and understood, including the various types of disability individuals may live with, the perspectives of their family members and the issues where such viewpoints interface. OCVS would provide the HCSCC with greater capacity to do this through the appointment of OCVs carrying an understanding about the needs of people living with disability and knowledge and experience in the area of community services, for example based on “experiences such as previously living in care, being a parent of a person who is in care, working in the welfare sector, or acting as an advocate for people in need” (Official Community Visitors 2004, p. 8). Once people are appointed as OCVs they undertake a thorough induction process and are provided with regular training to ensure they are aware of their statutory obligations and responsibilities (Official

Community Visitors 2004, 2007). If implemented in South Australia, these factors will ensure that people appointed as OCVs have the necessary knowledge and understanding about the needs and rights of people living with disability and the various perspectives that exist within the disability community.

- *Enhanced independent role when responding to complaints*

As part of the 2006-07 service evaluation of the HCSCC it was identified that “many complainants see HCSCC as an extension of their complaint about a service provider, rather than an independent, impartial reviewer” (HCSCC 2007, p. 37). This was despite people being informed about the functions and power of the HCSCC (HCSCC 2007). The introduction of the OCVS would assist in further defining the independent and impartial role of the HCSCC through appointing OCVs who have no association with service providers and creating a contact at the local level where such queries can be clarified.

- *Enhanced links with services providers and organisations that support health and community service users and providers*

The HCSCC is responsible for maintaining links with health and community service providers and other organisations that advocate for service users and have an interest in the provision of services. The focus of the OCVS, on regularly visiting and monitoring services and supporting people living with disability to access advocacy support, complements this function of the HCSCC. The OCVS would enable the HCSCC to also have links with different services and organisations at a local level when supporting individuals to have their complaints actioned.

In addition to enhancing the functions of HCSCC, the OCVS could provide further advantages that warrant consideration on the basis that it has the capacity to identify problems early:

- *Reduction in volume of formal complaints to the HCSCC*

By OCVS proactively supporting people living with disability to have their complaints heard and working directly with service providers to resolve them, this is likely to reduce the number of formal complaints made to the HCSCC. This is on the basis that ‘a stitch in time saves nine’.

- *Less disruption to people's daily lives*

By identifying problems earlier, quality improvements can be made that ensure continuity of service, as opposed to the disruption of a wholesale service change, or the disruption of a hospital admission or similar, because of the effects of a poor service.

- *Savings to the public purse*

By improving the chances of addressing problems earlier, the OCVS can bring financial benefits, by avoiding costs associated with 'bottom-of-cliff' scenarios, such as wholesale service change as a reaction to system failure, hospital admissions as a result of poor services, and formal complaints.

8.0 Concluding Comments

The intention of this submission has been to set out an argument for the introduction of an Official Community Visitors Scheme in South Australia. JFA hopes that HCSCC arrangements can be strengthened via an OCVS, so that vulnerable people have greater opportunity to be seen and heard, and earlier, on issues that affect them, and for proactive action to be taken in response.

Thank you for the opportunity to make this submission.

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