



Ref: 801322

12 June 2020

Dr David Caudrey and Ms Kelly Vincent
Co-Chairs Safeguarding Task Force
Department of Human Services
ADELAIDE SA 5000

Via email: disability.advocate@sa.gov.au

Dear Co-Chairs

Gaps in safeguarding arrangements for people with disabilities in South Australia

1. The Society notes the Safeguarding Task Force has been established by the State Government to examine the current gaps in oversight and safeguarding for people living with disability in South Australia (“the Task Force”).
2. The Society notes the Task Force will consider gaps in safeguarding arrangements for people with disabilities in South Australia arising from the policies and practices of:
 - 2.1 The National Disability Insurance Agency;
 - 2.2 The NDIS Quality and Safeguards Commission; and
 - 2.3 State Government instrumentalities.
3. The Society has considered the Terms of Reference for the Task Force and provides some brief comment regarding those terms of reference below. In addition, the Society makes comment in relation to the current legislative gaps with respect to the safeguarding and protection of people with disabilities in South Australia, which may be of interest to the Task Force.

Terms of Reference

4. The Society supports the Terms of Reference in principle and considers that probing into the safeguarding gaps between Commonwealth and State systems is a valuable task and aligns with the purpose of the Disability Advocate’s role which is to monitor the transition from state-funded services to the NDIS.
5. The Safeguarding Task Force was established following the death of Ms Smith, however, the Society notes that the Terms of Reference of the Task force does not consider the specific circumstances of Ms Smith’s death. This is entirely appropriate, as if it did so, it would risk prejudicing the other inquiries including that of the Police and Coroner. Examining the circumstances of Ms Smith’s death after those inquiries have taken place, would be more appropriately conducted by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability given their powers under the *Royal Commissions Act 1902*.

6. Members of the Society who specialise in disability rights have suggested that it would have been beneficial for the Taskforce to frame their Reference to acknowledge why people with disabilities may need safeguarding. For example, low unemployment rates or barriers to social participation. It has also been suggested that the Terms of Reference would have also benefited from being narrowed to safeguarding from violence, abuse and neglect arising *in service provision*.

Gaps in the current legal framework

7. Currently in South Australia, beyond first responders such as child protection and SA Police (SAPOL), there is no specific, overarching legislative framework to protect people with disabilities living in the community who experience violence, abuse, neglect or exploitation.
8. As a result of transition from State-funded disability systems to the National Disability Insurance Scheme (NDIS) and essentially an absolving of responsibility by the State for the provision of disability services, previous safeguarding measures which existed prior to the NDIS, such as the Community Visitor Scheme under the *Disability Services (Community Visitor Scheme) Regulations 2013 (SA)*, and Departmental Care Concern Investigations, are no longer available.
9. Under the Commonwealth model, the *National Disability Insurance Scheme Act 2013 (Cth)* establishes the NDIS Quality and Safeguards Commission. The Commission is an independent agency with statutory powers to investigate complaints made about NDIS-registered providers. The Commission relies on people with disabilities (or their representative) making the complaint and if the provider is not a NDIS registered provider, they will not have jurisdiction to investigate.
10. Prior to the NDIS, the Community Visitor Scheme (CVS) established under the *Mental Health Act 2009 (SA)* had powers to visit and inspect disability accommodation premises under the *Disability Services (Community Visitor Scheme) Regulations 2013 (SA)*. A disability accommodation premises included any premises where a disability service provider was providing accommodation services to a person with a disability. These Regulations are still in force (albeit amended since the original version in 2013) but by virtue of being Regulations to the Disability Services Act, the CVS is limited to State-funded disability accommodation premises of which now, there are very few.
11. Under the *Disability Inclusion Act 2018 (SA)*, there is power to establish a CVS by regulation. A Scheme set up under those Regulations would benefit from the broader purview of the *Disability Inclusion Act*, which is not bound by state funding, and has broader objectives of providing safeguards in relation to the delivery of all supports and services for people with disability.¹
12. The Society notes that the Disability Inclusion (Community Visitor Scheme) Amendment Bill 2020 has recently been introduced into the South Australian Parliament. The Society has considered the Bill and strongly supports the establishment of a CVS in South Australia. **Enclosed** for the information of the Task Force is the Society's comments in relation to the Bill provided to the Hon Nat Cook MP on 12 June 2020.
13. In addition to the establishment of a CVS in South Australia, in its letter to the Hon Nat Cook MP, the Society highlights the potential for Adult Safeguarding Unit recently established in South Australia to work in a complementary manner to a CVS to provide a comprehensive safeguarding regime to protect and uphold the rights of people with disability in South Australia.

¹ See section 8(c) of the Disability Inclusion Act 2018 (SA)

14. Finally, while legislative instruments and bodies are only one part of the solution in addressing the safeguarding of people with disability in South Australia, they nevertheless can play a very important role. While such matters may be outside of the purview of the Task Force at this time, it is important to consider the broader legislative framework that currently exists (or is being contemplated in the case of the CVS) in addressing gaps that exist in the oversight and safeguarding for people living with a disability in South Australia.
15. The Society notes that the Task Force is currently preparing an interim report with urgent recommendations which is due to be delivered by 15 June 2020 and a further and final report with full recommendations is due to be delivered by 31 July 2020. The Society may seek to provide further comment to the Task Force following the publication of these reports.

Yours sincerely



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Enc: Letter to the Hon Nat Cook MP re Disability Inclusion (Community Visitor Scheme) Amendment Bill 2020