Submission:

Mr Martin Foley MP

Minister for Housing, Disability and Ageing, Mental Health and Equality and Creative Industries

Office of the Disability Services Commissioner



Contact:  ****

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Disability Advocacy Victoria is the peak body for independent disability advocacy organisations within Victoria.

With the announcement of the retirement of the current Disability Services Commissioner, Disability Advocacy Victoria believes it timely to request significant changes to the Office of the Disability Services Commission (“the Office”).

In 2015, the Victorian Ombudsman, in her report entitled ‘Reporting and Investigations of Allegations of Abuse in the Disability Sector: Phase 1 the effectiveness of statutory oversight’, set out the problems plaguing the Office.

Since that time, exactly 3 years ago, complaints about the ineffectiveness of the Office continue.

Legislation

Consistent with the Department of Health And Human Services’ (“DHHS”) recent move to a “zero tolerance” attitude towards the abuse of people with disabilities, we believe that an oversight body that is completely independent from DHHS, and with statutory powers that unambiguously allow it to investigate and sanction service providers, is necessary.

In our view, the current links between the Office and DHHS do not allow the Office to be fully independent. This has eroded the trust of the disability and advocacy communities. It has not gone unnoticed that the Commissioner himself, and recent Deputy Commissioner, were both former employees of DHHS. It is a widely held view that this has contributed to the failure by the Office, as set out in the Ombudsman’s Report, to enthusiastically go about its duties.

The lack of confidence in the Office, the perceived conflict of interest, and the evidence of the lack of robust investigations, all contribute to a statutory authority that is seen as being of little value to the disability sector. We believe it is time that the Office was either completely replaced by a new statutory authority, or significant changes to the legislation that established the Office, should happen as a matter of urgency.

The overhauling of the Office’s legislation could also allow it to cover violence, abuse and neglect in the education system of children with disabilities. This area continues not to have an independent statutory authority governing complaints.

We strongly suggest that your office calls for submissions on law reform of the Office’s supporting legislation.

Disability Services Commissioner

Assuming that the Disability Services Commissioner (“the Commissioner”) is going to be replaced, we urgently request that the recruitment process be reviewed and the involvement of people with disabilities in that process be mandated.

Given the purpose of the Office is to investigate complaints where people with disabilities are the victims, we believe that it is vital that people with disabilities have an overwhelming majority in terms of representation on any interview panel for the successor to the Commission. We believe such representation would assist the Victorian Government to comply with its obligations under the Convention on the Rights of Persons with Disabilities, Articles 4 (3) and 33 (3). As you know, Australia has signed the optional protocol for the Convention and are therefore bound to comply.

We respectfully suggest that it is insufficient to consult with the disability community without ensuring that representatives have the support of the relevant Disabled Persons Organisations. It is also important that those who are usually without a voice in the community are represented. For example children, and those with profound to severe disabilities, including those who require Augmentative and Alternative Communication to communicate, and/or their representatives, must in our view be involved in the recruitment process, as it is they who are the most vulnerable and marginalised, and therefore susceptible to abuse.

We hope that in the interests of the protection, and more importantly rights, of people with disabilities, you will give urgent consideration to the matters raised above.