
inclusion&protection

A dynamic safeguarding schema for South Australians with disability who are also vulnerable to neglect and abuse

South Australian Minister's Disability Advisory Council

Inclusion&protection: A dynamic safeguarding schema for South Australians with disability who are also vulnerable to neglect and abuse

The Minister's Disability Advisory Council (MDAC) was mindful throughout its investigations and deliberations on this issue that our work could influence many people who are currently living with high levels of loneliness, restriction, oppression and fear in their daily lives. They are people who are unlikely to complain or to participate in consultations, but we do not want them to be unheeded. We have been unswerving in our commitment to ensure that their future is filled with support, nurture, freedom and hope. They are the people to whom we must be accountable. We hope we have not let them down.

The MDAC thanks all those people who contributed to their discussions on this particular issue, who attended meetings, sent documents and shared their experience and wisdom. In particular, the MDAC thanks Ms Pat Coidan, DFC for her support and considerable efforts in pulling it all together.

A report from the South Australian Minister's Disability Advisory Council to the Minister for Disability, the Hon Jennifer Rankine MP.

Adelaide SA
February 2011

Contents

Overview.....	4
Inclusion&protection: Conclusions in brief.....	6
Recommendations.....	8
Introduction.....	10
PART ONE: Setting the scope.....	12
PART TWO: Analysing risk and protection.....	17
PART THREE: A systematic and systemic approach to inclusion&protection.....	21
Next steps.....	26
Recommendations.....	27
Resources.....	28
Membership of MDAC.....	33
Attachment A: Framework for Safeguarding Vulnerable Adults with Disabilities	
Attachment B: MDAC presentation to the Minister for Disability January 2011	

Overview

The brief and its outcomes

In July 2010, the Minister gave the MDAC its Reference #5 entitled: **Reference on Protecting People with Disability Who Are Also Vulnerable**. In August 2010, MDAC wrote to the Minister asking that immediate attention be paid to resolving a number of serious complaints before the Department for Families and Communities (DFC) and SA Police (SAPOL) and support efforts within Home and Community Support SA to revise and redevelop policies, processes and protocols for preventing neglect and abuse and for dealing with serious matters. The MDAC also met with the Minister to discuss a proposal emanating from the Hon. Kelly Vincent MLC about a mandatory reporting regime in disability services. While that proposal is addressed here, the advice of the MDAC is covered in a separate letter, copy attached.

The MDAC was tasked to:

- Develop a high level framework for the protection of vulnerable people with disabilities
- Explore contemporary theoretical and best practice approaches to safeguarding vulnerable individuals and groups
- Explore possible mechanisms (e.g. restrictive practices, supported decision making, mandatory reporting, community visitor's scheme, personal plans, restraint and state disability legislation).
- Report to the Minister for Disability by the end of 2010

Strategic alignment

The following list identifies important current policy initiatives within the disability portfolio. A strategic response by government to a number of these initiatives will contribute to the protection of vulnerable citizens with disability in Australia. It also highlights the national flavour of the policy arena and points to opportunities for the State Government to influence outcomes at a national level.

The MDAC places a higher emphasis on a number of these initiatives including: the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) as the core document establishing the expectations of the sector; the National Disability Strategy (NDS) with its opportunities to influence the state agenda through the Council of Australian Governments (COAG) processes (and as the key document shaping the National Disability Agreement (NDA) and associated standards and research agenda development and the work of the Productivity Commission; the Activating Citizenship Blueprint being developed in SA and its links with Promoting Independence; and associated legislative review starting with, but not confined to, the *Disability Services Act 1993 (SA)*.

United Nations Convention on the Rights of Persons with Disabilities (International)
<i>Disability Discrimination Act 1992 (Commonwealth)</i>
<i>Disability Services Act 1986 (Commonwealth)</i>
<i>Disability Services Act 1993 (SA)</i>
<i>Equal Opportunity Act 1984 (SA)</i>
<i>Children's Protection Act 1993 (SA)</i>
<i>Carers Recognition Act 2005 (SA)</i>
<i>Guardianship and Administration Act 1993 (SA)</i>
<i>Supported Residential Facilities Act 1992 (SA)</i>
<i>Health and Community Services Complaints Act 2004 (SA)</i>
National Standards for Disability Services
National Disability Strategy 2010
Productivity Commission Inquiry into Lifetime Care and Support
National Carers Strategy 2011
National Child Protection Strategy Framework
Health and Community Services Complaints Commission Charter of Rights
National Disability Agreement 2009
South Australia's Strategic Plan
Promoting Independence: Disability Action Plans for South Australia
Activating Citizenship: Social Inclusion Disability Blueprint
Department for Families and Communities Five Year Strategic Plan 2009 – 2013

Inclusion&protection: Conclusions in brief

Social worker Carol Swenson tells us that: *'Without a philosophical analysis we lack vision; without a contextual analysis we lack an understanding of social forces; without a needs assessment we lack an idea of what people want; without pragmatic thinking we lack a plan of action.'*¹

In making this report to the SA Minister for Disability, the MDAC strives to balance these elements into a high level framework to safeguard individuals with disability at risk of, or experiencing, neglect and abuse. The MDAC interprets 'high level' to address conceptual and strategic issues and to exclude the development of department or service level policies, while recognising the importance of well designed and operational policies at the program level and the service interface.

1. Situational analysis (Clarke, 2005) and social ecological modelling (Bronfenbrenner, 1979) reveal forces and factors that contribute to vulnerability and work toward protection.
2. Risk can be loosely categorised, with increasing severity, as devaluation, depersonalisation and dehumanisation with decreasing numbers of people encountering the more severe aspects of abuse and neglect, including criminal behaviour.
3. Vulnerability is primarily a feature of situations (not persons) and rises as de-personalisation rises. This becomes more evident with force-field analysis (Lewin, 1943).
4. Impairment and functioning is a contributing factor, not a determining factor in vulnerability to neglect and/or abuse.
5. Only a small percentage of neglect and abuse occurs because bad people have been employed in disability services (see Zimbardo, 1972, 2007).
6. Inclusion must be linked to protection. Exclusion (as separation from community) increases risk of depersonalisation and dehumanisation; abandonment (as left to fare alone in 'community') increases the risk of devaluation.
7. Personalisation provides a way to analyse risk, identify current and future protective factors while linking it through planning and case work to a strong vision for the person (Bigley et al, 2009). Force-field analysis reveals the balance of forces between risk and protection and provides guidance in building up protective factors as part of personalised planning.
8. Seeking and sustaining 'right relationships' in communities and in services can centralise a high value on respecting the person and ensuring this is reflected in daily practice across services and bureaucracies. In the end, mentality (respect and high expectation) is more important than mechanisms (Kendrick, 2003, 2004).

¹ Carol Swenson 'Clinical social work's contribution to a social justice perspective' *Social Work* Nov 1998 v43 i6 p527

9. Working systematically and systemically to protect people will improve outcomes for service users and improve the work environment for agencies and staff as well as providing protection in non-service settings (Wolfensberger, 1977). Linking inclusion&protection requires investment by government in developing communities and services as well as building a wise and committed workforce.
10. A dynamic and integrated safeguarding schema must offer a redundancy of approaches and mechanisms which must also be conceptually coherent and not build in any contradictions, perversities or ambiguities. It must also build in feedback loops that ensure an ongoing cycle of improvement. The schema is best based on a developmental approach which embeds monitoring and continual improvement rather than surveillance and reporting.

Recommendations

The MDAC recommends that:

General:

1. The Minister accepts the premise of this report and commits the State Government to developing and resourcing an integrated, dynamic safeguarding schema that addresses the dynamics of devaluation, depersonalisation and dehumanisation.
2. The Minister ensures that this schema includes a coherent mix of mechanisms ranging from the developmental, to the preventive, to the corrective. All aspects of the schema must be established and empowered to carry out the aspect of the approach that fits their purpose.
3. All safeguarding initiatives are linked to the National Disability Strategy and *Activating Citizenship Blueprint* due to be presented to government in mid 2011, especially as it seeks inclusion for all citizens with disability and their families and carers. This must include a government supported rights monitoring regime that includes both government and non-government agencies, including independent advocacy groups.
4. Consistent with persistent advice from MDAC, the Minister extends individualised funding across the services sector and develops a plan for phasing out service models that isolate and exclude individuals, particularly in group settings.

Particular and immediate:

5. The Minister does not support the draft *Mandatory Reporting Bill 2010 (SA)* before the Legislative Council as in its current form it is not operational and seeks to enshrine a punitive/regulatory approach which is contrary to the best advice of MDAC to entrench an engaged, constructive partnership encapsulating extensive monitoring and review and relying on current enforcement regimes.
6. The Minister monitors the interagency arrangements between SAPOL, DFC and other government agencies to ensure that matters of a serious criminal nature are not overlooked and prosecutions not pursued.
7. Under her responsibility for all-of-government policy in this area, the Minister commissions an immediate detailed audit of the current system of safeguarding in order to identify existing gaps.
8. The current review of the *Disability Services Act (SA) 1993* considers safeguarding as a major component of its brief, especially looking at current Victorian legislation.
9. The current work of Home and Community Support SA is supported as an example of emerging good practice in the field and that transparency, consultation and refinement continue. (MDAC is available to give separate advice on this matter as the policy and procedures develop.)

10. The Minister establishes a Serious Case Review Panel (similar to the British model) to openly investigate serious cases of abuse and neglect and to inform future policy development.
11. The Minister works with the Minister for Health and Treasurer to ensure that the Health and Community Services Complaints Commission is adequately funded to guarantee that community based services remain in the purview of the Commission and that it is resourced to carry out this work, especially the outreach component of their planning. (The MDAC predicts an increase in complaints as more people become empowered to report, especially as the government renews its focus on these issues).
12. The Minister supports the development of an independent project similar to or connected to the Better Practice Project in the Aged Care Sector to lead a long term *Humanising Practice Project* across all levels of the disability services sector.

Introduction

Linking risk and protection and the importance of philosophical and conceptual coherence

Abuse and neglect are evidence of a clear failure of relationships in all spheres of the person's life.

Not only have community members and service workers and providers not acted in their best interests, failed to ensure their safety and wellbeing and to protect their rights, where they have family members and others who love and desire the best for them may have been powerless to act. At times it is family members or other associates who have acted to exploit, neglect or abuse the person.

It is clear that neglect and abuse are driven by intricate dynamics which must be understood and analysed with honesty while guarding against social over-protection in which the person is restricted in all choices and denied the exercise of life-expanding risk taking. Therefore the drive for inclusion cannot be disconnected from the need for protection. The person cannot be adequately protected from neglect and abuse when experiencing exclusion; neither can they be left unprotected while 'included'. This recognition raises disturbing issues for all those who are committed to ensuring the wellbeing and rights of Australians living with disability and their families and carers. We all have to face up to the inadequacy of current systems and to the difficult challenge of protecting people without further limiting their choices and autonomy.

Safeguarding the person requires a systematic and systemic approach to building developmental, preventative and corrective safeguards across all levels and spheres of community life and the services system. This requires a redundancy of safeguards to exist in government and non-government settings. This approach must wrestle daily with the tension between exploring dignity of risk and a tendency toward social over-protection. All solutions must be guided by a commitment to the least restrictive alternative.

Safeguarding service quality requires a related approach which ensures that all services are adequately resourced and all staff and management have access to ongoing professional development. Services must also have clear expectations about proper action, operate a model of service soundly based in rights protection and solid evidence, and policies and procedures that monitor quality (such as regular external evaluation) and ensure all breaches against services users are reported and acted upon.

Government has a wide scope to influence the emergence of right relationships (Kendrick, 2000) in which individuals with disability are protected and their vulnerability reduced and supported when neglect and abuse occurs. This report offers a set of recommendations that can drive reform and consolidation in this area and contribute to emerging national deliberations.

This document

This document presents the considered advice of the MDAC in response to the brief, the context, the evidence (including consultation with key stakeholders) and following several months of detailed deliberation. It is in no way the final word on the topic, but aims to offer a sufficiently comprehensive ‘take’ on the question that it can guide government at all levels to work together to increase protection.

The document offers a brief overview of conclusions and recommendations, before looking at methodological complexity (Part 1), detailed findings (Part 2) and concluding with policy proposals (Part 3).

PART ONE: Setting the scope

Developing a conceptual framework

Toward a social ecological approach to analysing risk and protection for adults living with disability

1. Social ecology

The social ecological model (Bronfenbrenner, 1979) extends current thinking about a social model of disability which has wide acceptance across all areas of policy development in Australia and similar international settings.

In brief, a social model of disability centralises social, cultural and structural issues as important arena for policy development – the focus is away from impaired individuals and their correction and control and towards the social and political spheres. This, however, is seldom translated effectively into building an evidence base for policy development. This is perhaps, in part, due to the fact that most of the available data is focussed on quantifying aspects of the diagnoses and functioning of people with impairments as well as their service usage. We have scant information about how systems impact on people, shaping their choices and their lives. Furthermore, research and consultation questions tend to centralise impairment prior to addressing other aspects of civil life, such as the presence of barriers to full participation. Contrary to some very strict forms of social model enquiries the MDAC, however, has recognised that impairment is significant in assessing the person’s vulnerability to neglect and/or abuse. The social ecological model allows us to preserve a strong focus on the individual; including an acute understanding of functioning and impairment; the intimate spheres of their life (what Kurt Lewin called their ‘life space’); and the wider social, cultural and political forces that both open up opportunities for flourishing and/or constrain their daily choices and expose them to further risk.

Social ecology offers a typology of ‘nested’ systems analysis – micro, meso, macro and exosystems – which can provide a structure for investigation and analysis of the dynamics of risk and protection.

2. Dynamics of context are important

Much of the theory and research literature on the vulnerability of certain groups of people (with disability and others) and integrated comprehensive approaches to protection tends to be grounded in social interactionism – a branch of social psychology and sociology that looks at the ways situations impact on the choices and behaviours of individuals. Social interactionism explores how relations shape individuals with other players in their world and how groups of people become labelled and stigmatised. There is also a considerable body of research – sustained over almost 50 years – which asks why otherwise reasonable people end up doing bad things to weaker people.

Alongside this, in the specific disability literature, a growing exploration of the meaning and impact of a social ecology model of disability (Bronfenbrenner, 1979) also directs researchers and policy developers to look at wider social contexts as well as immediate social situations (services, communities, workplaces and private homes). See section on methodology below.

3. Impairment is also important

This combination of insights from theory and research and the related assumptions also informs best practice documentation and development in this policy arena. The MDAC adopted a primarily social/ecological framework for exploring vulnerability to neglect and abuse, leading the Council to seek a dynamic approach to safeguarding that takes account of the particulars of the individual, including the nature and severity of their impairment and their vulnerability as well as wider social forces that could be mustered to protect them. This link ensures that we do not assume that the more severe the disability, the higher the risk of abuse and neglect, when the evidence clearly shows that a person with profound impairment can be safe if held in the right relationships, while someone with a mild impairment, living with isolation and discrimination and entirely dependent on services is at higher risk. MDAC, however, does recognise that impairment is significant when the person lacks capacity to ensure their own protection, either in the exercise of judgment about risk or in speaking up for themselves when experiencing neglect and/or abuse. This lack of capacity may be evident, comprehensive and sustained throughout the person's life (in the case of a person with significant intellectual disability), be episodic (in the case of a person with a severe mental illness) or partial and developing or declining (as in the case of a person with an autism spectrum disorder or a degenerative condition such as Huntington's Disease).

Therefore, the MDAC interprets the project brief to address the unacceptable risk of and presence of abuse and neglect in community settings and disability services and by:

1. Developing an understanding of the systemic forces contributing to the emergence of risk and vulnerability
2. Developing an understanding of the dynamics of best practice safeguarding within service systems and communities as well as at the service interface.
3. Developing a proposal for an integrated and dynamic safeguarding schema

Definitions

Vulnerability	A contextual issue, which interacts with the person's individual characteristics, in particular their impairment profile. It is not an attribute of the individual
Abuse See: 'No Secrets' 2008 Section 2 for more detail	May consist of a single act or repeated acts. It may be physical, verbal or psychological, it may be an act of neglect or an omission to act, or it may occur when a vulnerable person is persuaded to enter into a financial or sexual transaction to which he or she has not consented, or cannot consent. Abuse can occur in any relationship and may result in significant harm to, or exploitation of,

	the person subjected to it
Harm See: 'No Secrets' 2008 Section 2 for more detail	Harm should be taken to include not only ill-treatment (including sexual abuse and forms of ill-treatment which are not physical), but also 'the impairment of, or an avoidable deterioration in, physical or mental health; and the impairment of physical, intellectual, emotional, social or behavioural development'. These latter categories may be very important to an individual's ability to recover from an illness or have the best possible quality of life". (Making Decisions, 1999)
Neglect	Including ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, the withholding of the necessities of life, such as medication, adequate nutrition and heating
Abandonment	Related to neglect – leaving the person unsupported – could be related to service model or lack of adequate funding
Restrictive practices	Practices deployed by health, disability and educational services , including physical and chemical restraints, seclusion and denial of 'privileges' in order to manage a person's behaviour (especially when it is perceived to be violent or challenging)
Oppressive practices	Practices which emerge in services and in the wider community to limit choice and autonomy, in order to manage service complexity especially the competing needs of a range of people reliant to a service. Closely related to discrimination and vilification in the wider community
Depersonalisation Further explained below	Relates to responding to the person as a problem, diagnosis, someone's child, not seeing the persona as an individual and designing supports and services best suited to their needs and aspirations
Dehumanisation Further explained below	Relates to extreme depersonalisation in which the person is treated as less than human, often subjected to repeated acts of intentional harm and abuse, often of a violent and/or sexual nature, includes humiliation, harassment and bullying
Safeguarding Further explored below: note this is a rudimentary definition.	An integrated approach to keeping vulnerable persons safe from harm by building protections around them and by ensuring services, families and community cannot inflict abuse and or neglect, by ensuring that devaluation, depersonalization and dehumanization do not occur
Protection	Relates to an understanding of the vulnerability of the person and planning to ensure they are not exposed to undue threat while exercising their rights

Addressing methodological issues

1. Situational analysis

The MDAC applied a simplified version of Situational Analysis (Clarke, 2005) which maps discourse and forces in each of these spheres. A more detailed situational analysis would 'thicken' our understandings of these dynamics, the interactions between certain elements of the spheres or levels within the system and open up more avenues for positive influence.

2. Force field analysis

Force-field analysis provides an analytical approach to situations marked by conflict either overt (in the case of abuse) or covert (in the case of restricted choice). It addresses the balance of negative or restraining forces (risk factors) and positive or progressive forces (protective factors). In order to increase the level of safety and wellbeing among people with disability, the balance clearly needs to shift to and remain with protective factors. This report offers recommendations that will enable this shift to be strengthened.

3. Policy appraisal process

The MDAC applies a policy appraisal tool, developed in May 2008 and refined through use over that time. It takes a systematic approach to deliberation about policy proposals emerging from the investigation phase and/or emanating from government, looking at structural issues, philosophical base, and evidence base.

Evidence inputs and policy advice determination processes

The MDAC supports the emergence of evidence-based policy development and evaluation. When addressing such a complex issue as inclusion&protection evidence must be sought from a range of fields.

1. Literature review

A comprehensive survey of relevant theory, journal articles, research reports, best practice models

2. Documentation review

Participation in deliberation with Home and Community Support SA and review of best practice approaches in other jurisdictions – nationally and internationally:

What are the essential elements of an integrated safeguarding approach?

What is best practice in inclusion&protection schemas nationally and internationally?

How can government use its power and resources to ensure safe and beneficial service interactions?

What legislative mechanisms need to be put in place?

How does the UNCRPD work at the service interface?

What protections need to be put in place independent from service settings? (Especially advocacy, supported decision-making, guardianship)

How can services guarantee safe and beneficial interactions with service users?

What works to make service environments safe and beneficial?

What ensures personalisation?

What about reporting, sanctioning, monitoring neglect and abuse? (Especially the efficacy of mandatory reporting)

3. Consultation with key stakeholders

Focussed on expert and personal anecdotal evidence of abuse and complaints handling as well as learning about best practice in other jurisdictions:

What makes people vulnerable?

What contributes to de-personalisation?

How can we understand the susceptibility of services to tend to neglect and abusive practices connected to the vulnerability of person reliant on services?

What are the systemic forces that increase vulnerability of service users and agency/worker tendency toward neglect and abuse?

What is missing in situations where people are facing neglect and abuse?

What is present in situations where people are facing neglect and abuse?

How can we discern who might be a threat to service users?

What is capable of responding powerfully to these dynamics?

4. Deliberation and policy appraisal

Throughout the duration of the project, the MDAC processed findings and explored policy advice options based on the application of the *MDAC policy appraisal tool* developed in 2008. It also includes some key questions, namely:

Does this policy proposal help individuals to build a future that is rich with relationships, opportunities, rewarding experiences, high quality support when needed...?

Does this policy proposal open doors to community participation and contribution for South Australians citizens living with disability and their families?

Does this policy proposal strengthen the existing family and community based supports within the person's life?

Does this policy proposal provide openings for those people who are most vulnerable to further social exclusion, including people without family support or with aged, ill or much stressed family/carers, people resident in institutions, prisons, special residential facilities, and indigenous people?

What other dimensions might be added to this proposal to give it structural resonance, philosophical coherence, and implementational efficacy?

PART TWO: Analysing risk and protection

Findings#1: Understanding the dynamics of vulnerability and abuse

It is possible to develop a loose taxonomy of risk of/or vulnerability to neglect and abuse into three categories: devaluation > depersonalisation > dehumanisation. These tend to proceed sequentially with a declining number of people subject to the behaviour as it increases in severity. While categories are a useful tool – especially when it comes to a systematic approach to safeguarding – it is important to explore the dynamics between these levels. Extending the social ecological model it is clear to see the interactions among exo, micro, meso and macro spheres. Those who experience dehumanisation are likely to have also experienced devaluation (at a community level) and depersonalisation (at a service level); although this may not always be evident (this is known as isomorphism). The following picture provides a brief description of how socially devalued people become at increased risk of serious neglect and abuse. This understanding of a dynamic set of interactions also places potential and actual abusers into the context for their behaviour.

- 1. Situational analysis provides important insights into what creates a hot-house for abuse and neglect.** (The difference between explanations based on the ‘one rotten apple in the barrel vs. the barrel is rotten.’) The MDAC has found a consistent body of research that highlights the threats to people when they are de-individuated by virtue of service design and are grouped – especially when it comes to meeting basic survival needs – housing, meaningful activities, social connection. Instead of services striving to meet an individual’s needs, protect their rights and support them to pursue personal desires and goals in their idiosyncratic ways, services become focussed on managing complex behaviour interactions across a group of people who are brought together initially to meet service delivery needs. Where such groups develop harmony and friendly connection this is often an unpredicted outcome.
- 2. In almost all cases of neglect and abuse in services the staff person does not set out to harm the service user.** Many workers are ill-equipped to deal with the situational complexity produced by grouped service settings. The procedures developed within the service are directed at risk reduction, which tends to limit the choices of service users rather than support them to experiment and extend their worlds of experience. These limitations produce frustration and negativity within service workers and service users, contributing to rising levels of stress within the service setting. Many workers who feel disappointed and alienated simply leave. Those who stay tend to be either more comfortable with rule-based or authoritarian approaches or are able to wisely read the complexities within the service and chart a supportive, nurturing path through the dilemmas, finding ways to reduce stress and increase cooperation and group goal setting. This is the set of dynamics in which all players concerned will experience the most disassociation as they voice a rhetoric of care and empathy at the same time as living and working in an increasingly conflict filled location.

- 3. There is a slippery slope from de-personalisation into neglect of needs, rights and interests and further into oppressive practice.** The challenge to balance competing ways of being and doing and needs requires a too-frequent setting aside of the individual's legitimate claim for support and particular attention. Negotiation of needs and compromise of expectations is not necessarily negative for people but many service settings cement patterns of neglect and stigmatisation around certain individuals who are likely to react to stressful situations with so-called challenging behaviour. The tendency to exhibit uncooperative or challenging behaviour is therefore located in the individual (as an aspect of their impairment) rather than as a reaction to environmental factors. Therefore the person is likely to attract increasing levels of behaviour management which becomes restrictive, can merge into oppressive practice and finally into abuse. The person with disability becomes the problem.

- 4. Those with bad intentions are attracted to settings where authoritarian models of response towards 'problem' people emerge, in order to perpetrate deliberate assaults on vulnerable people.** While there appears to be little current data on levels of serious and criminal assault on people using services, earlier research (in the 1990s) points to groups of individuals more likely to fall prey to such abuse. They are people who cannot speak up for themselves, those who are living in highly segregated and restrictive settings (evidence from prisons supports this), women and girls, especially those with severe intellectual disability, and those who are identified as behaviourally challenging. Individuals with fragile or non-existent relationships external to the service are also at higher risk (no-one to watch over them). Serious and criminal assaults are likely to be either or both sexual and physical. Other assaults include bullying, tormenting, excluding, deriding, mocking, humiliating, torturing and depriving of freedom, food, sleep etc. as well as leaving in excrement and filth. Where assailants such as these 'get away with it' they often bully and intimidate other workers. Indeed, the literature suggests that where bullying of staff is evident, it is highly likely that mistreatment of service users is happening, often below the radar. This is the extreme outcome of de-personalisation described here as de-humanisation.

- 5. Neglect, abuse and exploitation are not confined to disability services.** The MDAC has discovered growing evidence of exploitation, abuse and assault in community settings, particularly where individuals with impairments that limit their self-protective functions or have low impulse control do not have a network of supportive relationships around them. Those without others to watch over them, living with poverty, social isolation and with few skills in self-protection are more likely to encounter people with bad intentions prepared to rip them off, extort and take advantage of, sexually exploit and intimidate them. Consistent with international trends many of these people are also coming into contact with the criminal justice system and ending up in dangerous settings such as prisons, where they are further subject to bullying, intimidation and exploitation. Post release they are even more vulnerable as they lack the skills and resources to access appropriate services and social supports.

If this picture is a reliable account of the dynamics of vulnerability and abuse, it highlights the need for an ecological (systemic and systematic) approach to abuse prevention and redress. Simplistic models that only address employee recruitment or reporting responsibilities will not subvert these dynamics.

Findings#2: Understanding the dynamics of safeguarding and protection

Extending this social ecological approach into the exploration of what reduces risk, diminishes vulnerability and increases freedom, safety and autonomy highlights the necessity to link particular protective dynamics with threat dynamics. Consistent with force-field analysis, it is important that the protective forces are evenly stronger than the risk factors, otherwise the stasis will occur, or even worse, the threat may be realised.

1. Personalisation is central to protecting people considered particularly vulnerable.
2. Personal approaches can weave safeguards into each individual's life, especially in the area of supportive relationship building and limiting dependence on grouped and restrictive services as well as reducing social isolation.
3. Models that are grounded in citizenship (a.k.a. 'citizenhood') and rights protection are able to provide a balance between protection and empowerment without unnecessary rights impairment and restriction.
4. Safeguarding models must be conceptually coherent and not build in any contradictions, perversities or ambiguities. It must also build in feedback loops that ensure an ongoing cycle of improvement. The schema is best based on a developmental approach which embeds monitoring and continual improvement rather than surveillance and reporting.
5. Safeguarding can occur on three different levels, listed here in terms of efficacy and formality (see Kendrick, 1993):
 - *Developmental safeguards* are those that remove the dynamics leading to devaluation and depersonalisation in settings that can become a hot-house for neglect and abuse. They operate in macro and meso spheres. They can also operate within the exosystem i.e. within related systems that may directly influence the well-being of the person, their choices and opportunities to be embedded in interdependent relationships.
 - *Protective safeguards* that identify individual risks and ensure that real/active measures are in place to protect them. This level also includes those measures that agencies may adopt to develop protective policies, train staff etc. as well as wider service system initiatives such as monitoring, quality assurance, accountability procedures enshrined in funding agreements. Therefore these operate primarily in the micro and meso spheres.

- *Corrective safeguards* are those that deal with situations of neglect and abuse. They need to be credible, strong, and swift in response and aimed at reducing the ongoing impact of the failure to protect. They must ensure immediate safety. They also need to provide immediate and sustained therapeutic support to traumatised individuals.
6. A safeguarding approach must enshrine a redundancy of protections so that when one fails the person is not left exposed. Formal mechanisms although essential are less likely to be efficacious. This reflects a 'mentality is more important than mechanisms' approach.
 7. Systemic issues must be addressed systemically, including being prepared to reform service models to reduce their adverse impacts arising from the perpetuation of institutional practices in a variety of settings.
 8. Systemic responses must address agency development, including the facilitation and maintenance of 'people-first' cultures, staff development and zero tolerance policies.
 9. Systematic and systemic responses also require comprehensive, formal, integrated and independent protective mechanisms, including but not limited to: supported decision-making and guardianship; advocacy; community visitor schemes; anti-discrimination provisions and rights monitoring; high profile and well-regarded external complaints handling mechanisms; effective policing in serious and criminal matters; serious case reviews and consideration of other legislated approaches such as mandatory reporting in services.

PART THREE: A systematic and systemic approach to inclusion&protection

Governments around the world are wrestling with the obligation to protect vulnerable citizens, in particular adults without capacity to protect themselves and/or living in dangerous situations with increased risk of neglect and/or abuse. The MDAC looked at these approaches alongside schemas of child protection, violence prevention and protection of the vulnerable aged people. The following section presents a high level approach to safeguarding that MDAC believes will best position South Australia to protect citizens with disability while advancing their inclusion and citizenship.

Core assumptions (derived from a critical reading of the literature and documentation in this field).

- Inclusion and protection are closely linked and effective inclusion is likely to be the most reliable long term safeguard as it reduces opportunities for depersonalisation, even though communities can be devaluing.
- A schema that protects protective relationships is likely to be successful across the broad range of situations in which people carry out their lives.
- A schema that is conceptually coherent and philosophically sound has more chance of success as it does not build in perversities, contradictions and ambiguities.
- A systematic and systemic approach is more likely to be successful than an adhoc approach that focuses most effort on catching 'bad' people.
- An effective safeguarding schema must recognise that mal-intentioned individuals may be employed in disability services or exploit community members, and be able to address this as matter of urgency.
- A schema that invites engaged, constructive partnerships to work against risk dynamics and redress (correct) instances of abuse and neglect is more likely to gain compliance from all levels of the system.

The following principles represent a starting point for translating a systemic view into practice.

Planning Principles

Related to planning and developing an integrated and dynamic schema:

- Systemic (must address the dynamics of risk factors and vulnerability)
- Systematic (must address all levels and arena in the system)
- Simultaneity (must ask questions in a way that opens up opportunities for growth in protective factors)
- Oblique (sometimes the indirect route is the best way to achieve change)
- Multiplicity (must explore as many pathways to change as possible)
- Congruent (must avoid perversities and inconsistencies)

Personalisation principles

Related to planning for the personal safeguarding, responsive to the individual's needs and rights:

- Dignity of risk (must ensure that the person is avoided acceptable risk to explore, learn, make mistakes and grow)
- Provision of social protection (including protection of rights, provision of supports, developing social and future conditions conducive to inclusion)
- Least restrictive alternative (any intervention that removes a person from mainstream community living must ensure that the person does not experience disproportionate restriction or become exposed to further risk of depersonalisation and dehumanisation)
- Visionary (must be based in strong appreciation of the person and high expectations consistent with the nature of their functional impairments)
- Ethical (must ensure that all actions are grounded in respect for the person's humanity and their rights and needs)
- Planned (must have a purpose and direction for intervention in the person's life)
- Formative (must be amenable to change in the person's capacity, situation, desires and relationships)

Safeguarding principles

Related to key elements in an integrated and dynamic schema:

- Redundancy (more than required, as any single safeguard is never 100% reliable)
- Goodness of fit (must link with the needs of the person, the purview of the service, the purpose of the safeguard)
- Multiple level (must address all levels at which a person's life space an situation is determined)
- Blend of government and non-government, formal and informal, specific and generic
- Integrated (must ensure that all agencies and individuals required to resolve are situation are participant in that process; must ensure that no one part of the schema is ignorant of the function of any other)
- Operational (must be able to work to protect people in their everyday lives, must be resourced, must attract people with a strong commitment and capacity to ensure inclusion&protection, must open up pathways for constructive partnerships)
- Formative (must be under constant review and open to monitoring and improvement)
- Transparent (all relevant people need to know about it, how to access each part of the schema and how to pursue redress if need be)
- Respectful (must respond to each person in their current reality and ensure that actions are driven by a vision of their flourishing, a commitment to their rights, and a pursuit of fairness and justice)

Diagram#1: Safeguarding levels

Showing the range of important functions that must be addressed in a dynamic and integrated safeguarding schema

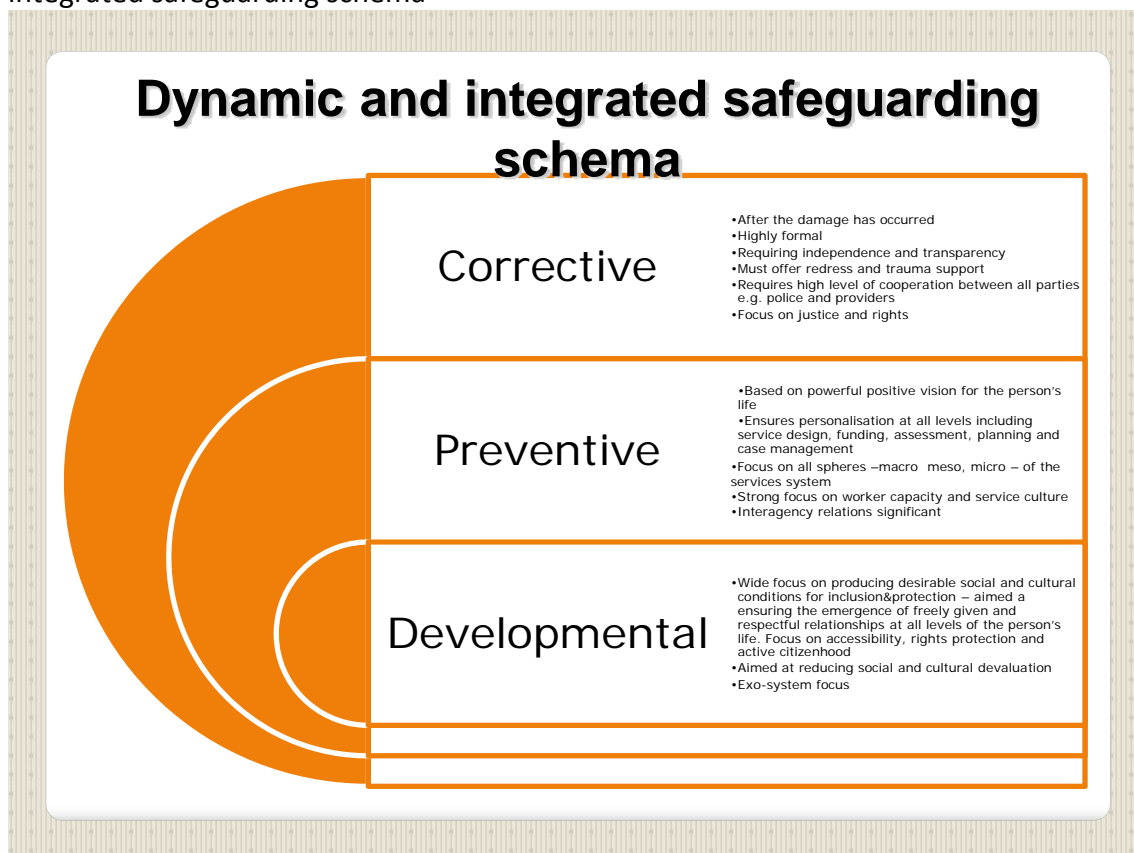


Diagram #2: Safeguarding mechanisms

Showing a range of mechanisms and approaches available to a full schema replete with options. This is not a comprehensive list.



Diagram #3



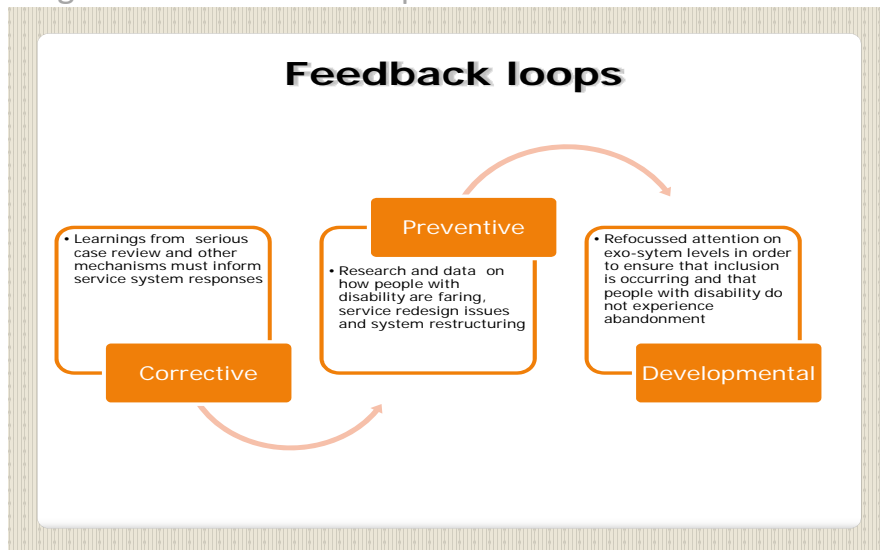
Diagram#4



The importance of feedback in maintaining the integrity of the schema

As the schema aims at being dynamic, operational and integrated it must be able to respond to input from ongoing best practice development in other jurisdictions, systematic monitoring and from serious case review.

Diagram #5: Feedback loops



Next steps

The MDAC concludes that within her role as Disability Minister, including direct responsibility for service delivery under the Disability Services Act [1993] (currently under review) and the remit to influence all of government policy and practice (especially through promoting independence, also currently under review), the Minister can strategically to move from the current adhoc approach to safeguarding to a nationally significant and innovative model. This model must be responsive to the complex dynamics of exposing people with disability to undue risk and threat of abuse and neglect. Such an initiative must be closely aligned to work being undertaken by the Social Inclusion Initiative to develop a Blueprint for Disability by mid 2011.

Current program and policy trends requiring close attention

- Introduction of the D-START assessment tool in Community and Home Support SA
- Report on Phase 1 of the Self-Managed Funding Project in Community and Home Support SA
- Trial of Supported Decision Making in the Office of the Public Advocate (OPA), SA
- The implementation of the services improvement project in DFC
- Review of the National Disability Advocacy Program
- Implementation of the *Mental Health Act 2009 (SA) and Regulations 2010*
- Pending release of the Productivity Commission report on a long term disability care and support scheme
- The update of South Australia's Strategic Plan (SASP)
- The pending release of *Activating Citizenship*
- The National Disability Strategy and development of the National Carers Strategy
- The development of a National Disability Data and Research Agenda
- Implementation of National Child Protection Framework

Specific best practice policy options taken from other jurisdictions

A dynamic safeguarding schema for South Australians with disability who are also vulnerable to neglect and abuse must include detailed analysis of the following, including but not limited to:

- Aspects of the *Disability Act 2006 (Victoria)* and similar legislation in others states
- Supported decision-making approaches within guardianship schemes with reference to Canadian models
- Zero-tolerance regimes such as United Kingdom (UK) model 'No Secrets' and its' recent review
- Report of the Australian Government and the shadow report of the 3rd sector on Australian implementation of the UNCRPD to the United Nations Treaty Body
- Queensland Advocacy Inc. work on developing standards based on UNCRPD
- Structure and operations of the *Serious Case Review Panel* in the UK
- Review of recently released *Social Care Governance* workbook in the UK
- Development of various personal assessment and planning tools such as *The Outcomes Star* and tools developed by *In Control*

- Reablement approaches (from UK) especially for people leaving the corrections system

This analysis will contribute to generating specific recommendations about the structure of key elements within the integrated, dynamic safeguarding schema. The following recommendations address immediate and longer term policy options.

Recommendations

The following recommendations refer to the implementation of the 'big picture' systemic elements of the proposed schema.

The MDAC recommends that:

1. The Minister accepts the premise of this report and commits government to developing and resourcing an integrated, dynamic safeguarding schema that addresses the dynamics of devaluation, depersonalisation and dehumanisation.
2. The Minister ensures that this schema includes a coherent mix of mechanisms ranging from the developmental, to the preventive, to the corrective. All aspects of the schema must be established and empowered to carry out the element of the approach that fits their purpose.
3. All safeguarding initiatives are linked to the National Disability Strategy and Activating Citizenship Blueprint due to be presented to government in mid 2011, especially as they seek inclusion for all citizens with disability and their families and carers. This must include a government supported rights monitoring regime that includes both government and non-government agencies, including independent advocacy groups.
4. Consistent with persistent advice from MDAC, the Minister extends individualised funding across the services sector and develops a plan for phasing out service models that isolate and exclude individuals, particularly in group settings.

Additional recommendations that:

5. The Minister does not support the draft *Mandatory Reporting Bill 2010 (SA)* before the Legislative Council as it is currently not operational and seeks to enshrine a punitive/regulatory approach which is contrary to the best advice of MDAC to entrench an engaged, constructive partnership encapsulating extensive monitoring and review and relying on current enforcement regimes. (See separate letter)
6. The Minister monitors the interagency arrangements between SAPOL, DFC and other government agencies to ensure that matters of a serious criminal nature are not overlooked and prosecutions not pursued.
7. Under her responsibility for all-of-government policy in this area, the Minister commissions an immediate detailed audit of the current system of safeguarding is undertaken to identify current gaps.
8. The current review of the *Disability Services Act 1993 (SA)* considers safeguarding as a major component of its brief, especially looking at current Victorian legislation.
9. The current work of Home and Community Support SA is supported as an example of emerging good practice in the field and that transparency,

consultation and refinement continue. (MDAC is available to give separate advice on this matter as the policy and procedures develop.)

10. The Minister establishes a Serious Case Review Panel (similar to the British model) to openly investigate serious cases of abuse and neglect and to inform future policy development.
11. The Minister works with the Minister for Health and Treasurer to ensure that the Health and Community Services Complaints Commission is adequately funded to guarantee that community based services remain in the purview of the Commission and that it is resourced to carry out this work, especially the outreach component of their planning. (The MDAC predicts an increase in complaints as more people become empowered to report, especially as the government renews its focus on these issues.) See separate letter attached.
12. The Minister supports the development of an independent project similar to or connected to the Better Practice Project in the Aged Care Sector to lead a long term Humanising Practice Project across all levels of the disability services sector.

Resources

The Art of Deep Questioning and Deliberating as a Way to Build Vision and Capacity: An Appreciative Inquiry Protocol (2009).

Australasian Society for the Study of Intellectual Disability (2010). *Official Position Statement. Against the Use of Restrictive Practices in the Support of People Who Have an Intellectual Disability*: Department of Human Services.

Bigby, C Proceedings of the 4th Annual Roundtable on Intellectual Disability Policy 2009

More than Community Presence: Social Inclusion for People with Intellectual Disability.

Making life good: An evaluation of a reputed exemplary residential support service for people with intellectual disability and severe challenging behaviour.

Bigby, C. (2008). Known well by no one. Trends of the informal social networks of people with intellectual disability five years after moving to the community. *Journal of Intellectual and Developmental Disabilities*, 33, (2) 148-157.

Community Living British Columbia (2009). *Addressing Personal Vulnerability Through Planning: A guide to Identifying & Incorporating with Adults with disability*

Disability SA (2010). *2008-09 Review of Service Coordination in Service Coordination Review Report*

Disability Services Commissioner. *Complaints Culture Questionnaire for your Organisation*. from www.odsc.vic.gov.au.

Disability Services Commissioner (2009). Disability Services Commissioner Newsletter (Vol. Spring, 2009). Melbourne, Victoria: Disability Services Commissioner.

Galbally R, & Deane K (2010). Insurance Reform Will Enable a Fair Go For All. *The Australian Literary Review*.

Goodall C (27 January 2010). *Disability SA: Consenting to Treatment by Medical Dental or Other Health Professionals Procedure*.

Goodall C, & Fopp P (2010). *Disability SA: Consenting to Restraint Procedure*.

Goodall C, & Jones M (20 May 2010). *Disability SA: Managing Client Restraint Standard*.

Goodall C., Fopp P, & Jones M (27 January 2010a). *Disability SA: Assessing a Client's Capacity to Give Consent Procedure*.

Goodall C., Fopp P, & Jones M (27 January 2010b). *Disability SA: Consenting to Lifestyle Issues Procedure*.

Government of South Australia (2007). *South Australia's Strategic Plan 2007: Summary of Targets*.

Government of South Australia Department for Families and Communities (June 2010). *Ageing and Disability Service Improvement Consultation Paper*.

Government of South Australia, Office for Women. *Family Safety Framework: Practice Manual*.

Hallahan L (2009). *Why Relationships Matter with People with Disability*. Flinders University.

Higginbotham P Mr Drouet's Establishment for Pauper Children, Tooting. Retrieved from www.workhouses.org.uk/index.html?Drouet/Drouet.shtml

Jones M (2010). *Disability SA: Assessing, Planning and Using Restraints*.

Kendrick M J (2010). Historical Contributors Towards Increasing Respect for the Voices of People with Disabilities in Western Societies. *International Journal of Disability, Community & Rehabilitation (IJDCR)*, Vol 9, No. 1.

Kendrick MJ (2002). Intentional Safeguards for Vulnerable People. Retrieved from www.kendrickconsulting.org

Kendrick MJ (2005). *"Self Direction" in Services & The Emerging Safeguarding & Advocacy Challenges that May Arise, A Discussion Paper for an Exploratory Study Session Connecticut Office of Protection & Advocacy for Persons with Disabilities*.

Literature Review and Considerations Safeguards and Restrictive Practices

Lewin K. (1943). Defining the "Field at a Given Time." *Psychological Review*. 50: 292-310. Republished in *Resolving Social Conflicts & Field Theory in Social Science*, Washington, D.C.: American Psychological Association, 1997

McVilly K (2008). *Physical Restraint in Disability Services: current practices; contemporary concerns and future directions. A Report commissioned by the Office of the Senior Practitioner*.

Minister's Disability Advisory Council (July 2010). *Reference on Protecting People with Disabilities Who are Also Vulnerable*.

Moseley C (2001). Balancing Safety and Freedom in Consumer-Directed Systems of Support. Retrieved from www.self-determination.org

Salisbury B, & Collins D (2004). *The Role of Informal Community-Level Safeguards*. South Australian Office of the Public Advocate (2010). *Annual Report 2010*. Collingswood, South Australia.

Stockdale K (2010). *Disability SA: Management of Care Concerns Procedure*.

Strategy & Policy Guardianship & Alternative Care Directorate Families SA (2009). *Protocol between Families SA and Disability SA in relation to Services for Children and Young People involved with the Care and Protection System.*

The Parliamentary and Health Service Ombudsman (2009). *Principles for Remedy.*

Uditsky B *The Role of Advocacy in an Environment of Individualized Funding: some ideas on safeguarding individualized funding into the future:* Alberta Association for Community Living.

Victorian Government of Human Services (2005). *Responding to Allegations of Physical or Sexual Assault: Departmental Instruction.*

Willey P (2010). *Disability SA: Reporting of Incidents to SAPOL Guideline.*

Wolfensberger W (1977). *Law and Mental Retardation: A Monograph Series. "A Multi-component Advocacy/Protection Schema"*. Ontario, Canada.

Wolfensberger W (2010). *How to Comport Ourselves in an Era of Shrinking Resources in Intellectual & Developmental Disabilities.* Syracuse, NY USA.

Zimbardo, P.G (2007). *The Lucifer effect* Random House NY.

Membership of MDAC

Dr Lorna Hallahan (Chair)

Mr Neil Lillecrapp (Deputy Chair)

Dr Evdokia Kalaitzidis

Ms Gaelle Mellis

Ms Jackie Beard

Ms Katharine Annear

Ms Michelle Hagarty

Mr Mike Taggart

Ms Silvana Gant