Submission
No 20

INQUIRY INTO SERVICES PROVIDED OR FUNDED BY THE DEPARTMENT OF AGEING, DISABILITY AND HOME CARE

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3. Convention on the Rights of Persons with Disabilities

3.1 Audit of NSW disability legislation, policy and programs

Article 4 of the CRPD sets out a number of general obligations required of parties. These include the obligation to:

- *adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention;*
- *To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;*
- *take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;*
- *refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;*
- *To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organisation or private enterprise.*

In a nutshell, these provisions require both remedial and constructive action to ensure that all legislation, policy, programmes and services meet the human rights obligations set out in the CRPD. As we have in part highlighted above, many aspects of NSW disability policy, programmes and services fail to respect, protect and fulfil CRPD rights. In light of this, we view it as essential for NSW to undertake a comprehensive audit of its disability related legislation, policy, programmes and services to ensure their compliance with the requirements of the CRPD.

3.2 Building agency capacity to implement human rights

Under Article 4(1)(i) of the CRPD, parties have a general obligation to promote the training of professionals and staff working with persons with disability in the rights recognised in the CRPD so as to ensure that they are better able to provide the assistance and services guaranteed by those rights. It is obvious from the issues we highlight above that ADHC currently lacks capacity to effectively implement a human rights based approach to policy development and service delivery for persons with disability. Consequently, we believe the next phase of *Stronger Together* ought to incorporate a suite of measures that will build the capacity of ADHC and its staff to recognise and effectively implement a human rights based approach to policy, programme and service development. This would include comprehensive professional development for all staff in CRPD rights and related issues that is calibrated with work roles, as well as the development of specific policy tools that will assist staff to ensure that practice is consistent with CRPD rights.

We would welcome the opportunity to discuss this submission with you further if this would be of assistance.

Yours sincerely

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The Director
Standing Committee on Social Issues
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Dear Madam or Sir:

Inquiry into services provided or funded by the Department of Human Services, Ageing, Disability and Home Care

Our brief submission to this inquiry seeks to raise a number of issues from the perspective of the human, legal and service user rights of persons with disability. Our analysis is based principally upon the terms of the *Disability Services Act* 1993 (NSW), the NSW Government's current 10 year plan for specialist disability services, *Stronger Together,* and the Convention on the Rights of Persons with Disabilities.

1. Background

1.1 The *Disability Services Act* 1993 (NSW)

The *Disability Services Act* 1993 (DSA NSW) is an enabling act for the provision and funding of disability services in NSW. It was enacted to give effect to an intergovernmental agreement (the Commonwealth State Disability Agreement 1991) which purported to rationalise responsibility for the provision and funding of disability services between the Commonwealth and State and Territory governments. As a condition precedent to the transfer responsibility for the provision and funding of particular service types between governments, and to the payment of Commonwealth incentive funding to the States and Territories, the States and Territories were required to enact legislation that was complementary to the *Disability Services Act* 1986 Cth (DSA Cth). The central requirements for complement were adherence to the objects of the DSA Cth, and to the principles and objectives formulated pursuant to s 5 of that Act, and to the formulation of Disability Service Standards equivalent to the then operative Commonwealth Standards.

In fact, in enacting the DSA NSW, the NSW Parliament went further than these minimum requirements by elaborating the principles and objectives of the DSA Cth into a suite of principles and applications of principles that are incorporated in the DSA NSW in Schedule 1. Schedule 1 might be conceptualised as a charter of service user rights that is made binding upon the Minister

administering the Act, requiring him or her to ensure that all disability services provided or funded by the NSW Government conform to the requirements of Schedule 1.

The DSA NSW has remedial and progressive elements. At the time it was enacted the Minister was required to determine within 2 months if a service conformed to the requirements of the Act. If it did not, the service was required to develop a transition plan that would bring it into full conformity with the Act.

1.2 The United Nations Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities (CRPD) was adopted by the United Nations General Assembly in December 2006. It was ratified by the Australian Government in July 2008. According to the terms of Article 4(5) its provisions are directly binding upon the State of NSW.[1] The CRPD does not purport to recognise new human rights, but instead applies existing human rights to the circumstances of persons with disability. It incorporates civil and political rights and economic, social and cultural rights. Civil and political rights are immediately realisable, which means that they must be complied with at and from the point of ratification. Economic, social and cultural rights are progressively realisable, which means that they need not be fully complied with at the point of ratification. However, parties must work towards the full realisation of these rights to the maximum extent of their available resources.

2. ADHC's compliance with the requirements of the DSA NSW

2.1 Transition plans for non-conforming services

As noted above, the DSA NSW incorporates both remedial and progressive elements. The remedial elements are set out in ss 6 and 7 of the Act. In summary, the Minister was required to determine within 2 months of the enactment of the DSA NSW whether each NSW provided or funded disability service conformed to the requirements of the Act. If the Minister determined that a service did not conform, funding to that service either had to be terminated or the service had to be directed to develop a transition plan to bring it into full conformity to the Act.

In fact, the Minister determined that the vast majority of NSW disability services did not conform to the requirements of the Act and directed that transition plans be developed. The requirements for transition plans are set out in s 7 of the DSA NSW. In brief outline, a transition plan had to provide for the service concerned to be provided or funded as closely as possible in conformity with the objects of the Act, and with Schedule 1 of the Act, and it had to specify the earliest practicable date by which the service would reach full conformity with the requirements of the Act. In other words transition plans were intended to be progressive remedial plans that would result in non-conforming services being brought into conformity with the requirements of the new Act within the shortest possible period of time.

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[1] The direct applicability of these human rights obligations to the State of NSW is also reinforced by Article 29 of the *Vienna Convention on the Law of Treaties* 1969.

Provided that a transition plan met these requirements and was developed and adopted by the Minister according to the process set out in the Act, it operated as a 'defence' or 'shield' to the over-riding requirement, set out in s 6(1) of the Act, that the Minister only provide or fund fully conforming services.

There are two views as to the outer boundary for the period of time within which non-conforming services had to become fully conforming to the requirements of the Act. One view, which is based upon an interpretation of s 6(3)(b) of the Act is that conformity had to be reached within a three year period. The preferred (or at least prevailing) view was that provided the requirements of s 7 of the Act continued to met, there was an opened ended period of time for the service to reach full conformity.

Despite the explicit legislative requirements, and the vast amounts of money and other resources that were deployed by government, service providers, persons with disability and their advocates in relation to the initial assessments of service conformity and in the development of transition plans, within a few years these plans were ignored by ADHC's predecessors.

A strategic decision was made circa 1996 to allocate the Commonwealth CSDA incentive funding to those services that required relatively small amounts of funding to reach full conformity. A wide variety of small projects were funded under this initiative (for example, Disability Service Standards policy development, minor service reconfigurations etc). By these means most services were, at least notionally, brought into conformity with the Act. However, these were not the poorest quality services.

The poorest quality services, which included all of the large residential centres for persons with disability, received no transition funding in 1996, and quite soon they fell behind in the implementation of their approved transition plans. Consequently, within about 2 years the Minister was funding these services contrary to the explicit duty set out in s 6, and therefore *ultra vires*, the DSA NSW.

There have of course been subsequent developments that have resolved the issues associated with some of these non-conforming services. For example, a series of scandals during the late 1990s/early 2000s resulted in funds being allocated to devolve some residential institutions such as the Hall for Children, Mannix Children's Centre, and Whitehall.

However, most of the poorest quality services remain substantially unchanged from the state they were in when they were declared non-conforming with the requirements of the DSA NSW in 1993, and for most of the period since then, they have continued to be provided or funded in defiance of the Minister's and ADHC's (and its predecessor's) clear obligations under s 6 of that Act.

Moreover, ADHC (and its predecessors) have not developed and implemented any method of determining if a transiting service has achieved full conformity with the Act. In other words the remedial provisions of the Act have been largely ignored by ADHC and its predecessors since about 1998. This is a major contributing factor to the poor quality of many services provided or funded under the DSA NSW.

In 2006 the NSW Government finalised and published a ten year plan for specialist disability services in NSW, called *Stronger Together.* This included proposals for the redevelopment of the Lachlan, Grosvenor, and Peat Island Centres and Ferguson Lodge (all large residential centres that were declared non-conforming in 1993). We will discuss these developments further below. However, in this context, we note that none of the plans prepared for these redevelopments reflected the approved transition plans adopted by the Minister in 1996, and nor were they prepared and approved according to the explicit requirements of s 7 of the DSA NSW.

Again, these developments have been pursued in clear defiance of the Minister's and ADHC's statutory obligations under the DSA NSW.

2.2 The provision of financial assistance to designated services

The duty reposed in the Minister under s 6 of the DSA NSW to only provide or fund services that conform to the requirements of the Act is operationalised under Part 2, Division 2 of the Act. In summary, the Minister is authorised to approve financial assistance to individuals and eligible organisations only if satisfied that providing this assistance would conform to the objects of the Act and to Schedule 1 of the Act. Section 11 requires the Minister to determine the general terms and conditions upon which financial assistance is to be provided. Section 12 sets out the terms and conditions that the Minister must determine with respect to eligible organisations. These terms and conditions include:

- The extent to which the organisation must conform to the principles and applications of principles set out in Schedule 1 of the DSA NSW, and
- The outcomes to be achieved for persons in the target group.

Although it is arguable that ADHC's funding arrangements for non-government service providers accord in oblique terms with some or most of the requirements of Part 2, Division 2 of the DSA NSW, they do not, in plain terms, address the two requirements highlighted in the bullet points above. However, the situation is much worse for ADHC directly provided services.

When the DSA NSW was first enacted, the administering agency was the NSW Department of Community Services, and the responsible Minister was the Minister for Community Services, Minister for Ageing, and Minister for Disability Services. The Department of Community Services was at that stage the largest provider of disability services in NSW, and these services included the largest and most of the poorest quality residential institutions for persons with intellectual disability. This was viewed as creating an acute conflict of interest and an inequality between the government and non-government service sectors for the implementation of the DSA NSW.

In order to deal with this situation, in 1996, the then government removed the strategic policy and regulatory functions relating to the status of persons with disability, and to specialist disability services specifically, from the Department of Community Services and reposed these in an Ageing and Disability Department. This created a so-called 'funder-provider' split that was intended to provide leverage for service quality improvement. Ministerial responsibilities were also separated, and by these means under the DSA NSW the Minister for Disability Services became the funder and regulator of the services provided by the Minister for Community Services. However, due to protracted in-fighting between the two Departments, the funding arrangements required by Part 2, Division 2 of the DSA NSW were never put in place for the services operated by the

Department of Community Services. An additional confounding factor was that although separate Ministerial portfolios were created these portfolios continued to be held by the same natural person.

In 1998, the specialist services provided by the NSW Department of Community Services and the Home Care Service of NSW were transferred and merged with the Ageing and Disability Department to create the Department of Ageing, Disability and Home Care. Ministerial responsibility for this new Department was vested in a Minister for Ageing and Minister for Disability Services. This merger represented a return to the structural conflict of interests associated with the funder and regulator of disability services also being a major provider of disability services, and of those services that are among the poorest quality services. This situation continues under ADHC.

As we shall discuss further following, this has at least three very negative consequences for the quality of disability services in NSW. First, despite its assertions to the contrary, ADHC (and its predecessor) has not established an effective independent quality assurance system in relation to its own services. Second, it means that as the agency ultimately responsible for the funding of disability services, ADHC has a conflict of interest identifying and pursing quality improvement strategies in disability services that might require additional funding and innovative funding approaches. Third, in spite of the explicit requirements of the DSA NSW, ADHC and its Minister have failed to ensure that the allocation of funding for direct services complies with s 10 of the DSA NSW, and this has the effect, and probably the purpose, of frustrating the consumer protection measures incorporated into s 20 of the DSA NSW.

The failure of ADHC and its predecessors to administer funding for disability services in accordance with the explicit requirements of the DSA NSW is a major contributing factor to the poor quality of many disability services in NSW.

2.3 Service monitoring and review

Section 15 of the DSA NSW provides that the Minister must ensure that a review is conducted of each service to which financial assistance is provided at intervals of not more than 3 years. Such a review must identify the extent to which the eligible organisation and designated services have complied with the terms and conditions required to be put in place under s 12 of the DSA NSW, and the extent to which the outcomes required by those terms and conditions have been achieved by persons in the target group. As has been outlined above, both these requirements reference the objects of the DSA NSW and the Schedule 1 of the Act.

Although s 15 does not specify that service monitoring and review must be independent of a service provider, according to ordinary principles of administrative law, it is clear that the Minister would need to be satisfied of the matters specified upon reasonable grounds. This would require a method of review that deals comprehensively with the objects and schedule 1 and which penetrates to their full beneficial extent.

ADHC is currently implementing a so-called Integrated Monitoring System (IMS). This includes a 'service review and monitoring' component that incorporates a service provider self-assessment, desk audit by regional ADHC staff, then an on-site review, and service development action

planning, if required. The framework for these activities is a 'service review instrument' which is structured around three domains: 'organisational capacity;' 'providing services and programs; and 'capacity building.'

There are a number of very serious problems with the Integrated Monitoring System viewed from the perspective of service recipients through the lens of s 15 of the DSA NSW. First and most obviously, there is no independence in the administration of the IMS for services provided directly by ADHC. The self assessment is undertaken by service staff, and the desk audit and service reviews are undertaken by regional policy and program staff, but each form part of the same regional structure responsible to the same regional executive who are responsible for dealing with any problems that are identified. This is an overwhelming conflict of interest. Second, the performance criteria and key performance indicators do not directly or comprehensively address the matters set out in the objects and in schedule 1 of the DSA NSW. A wide range of issues are canvassed in the IMS, which may be beneficial, but the IMS does not generate sufficient of the specific information required by s 15 to ensure that the DSA NSW's consumer protection regime is effective. Third, the IMS method is essentially a desk audit and policy/administrative review approach. There is no, or very limited, direct evaluation of the services. A service may have excellent policies but operate poor quality services that ignore these policies and might potentially score favourably under such a methodology. Finally, there is very little, if any, opportunity for service users and their associates (family members and advocates etc) to contribute their views on service quality and quality improvement priorities.

In 1998/99 the NSW Law Reform Commission undertook a review of the DSA NSW. The Commission's report drew attention to the structural conflicts of interest in the quality assurance of specialist disability services outlined above. In order to deal with these and related problems it recommended (recommendations 26 and 27) the establishment of an independent Disability Quality Assurance Council (DisQAC) to accredit and monitor specialist disability services. The Commission recommended that the membership of DisQAC include representatives of consumers and service providers with recognised knowledge and expertise. The functions proposed for DisQAC included:

- Establishing a new quality assurance system
- Assessing and certifying services in transition
- Assessing and certifying new services as conforming with the DSA
- providing advice and support to services about quality service provision;
- monitoring whether services are achieving continuous quality improvement;
- identifying and registering services of "concern", where closer monitoring may be necessary;
- notifying the Minister if a service fails to comply with the requirements of the quality assurance process; and
- recommending to the Minister that sanctions be imposed on services that fail to comply with the objects, principles and applications of principles, the revised Standards (see Recommendation 28), or their transition plans.

Unfortunately, the Commission's recommendations have never been acted upon.

The failure of ADHC and its predecessors to conduct periodic reviews of disability services in accordance with the explicit requirements of the DSA NSW is a major contributing factor to the poor quality of many disability services in NSW.

2.4 DSA NSW's consumer protection regime

As noted above the DSA NSW, at the time it was enacted, was significantly stronger than its Commonwealth counterpart in a number of key respects. One of the ways in which it was stronger was through the incorporation of a consumer protection regime in s 20 of the Act. Under s 20 a series of decisions related to the funding of disability services are made reviewable on their merits by the Administrative Decisions Tribunal (ADT). A service recipient or any person with a genuine concern may appeal such a decision if they are of the view that it fails to meet the requirements of the DSA NSW.

However, in practice this consumer protection regime has been frustrated by ADHC's failure to administer the DSA NSW according to its terms. Most significantly, as has been noted, ADHC has not conformed to the requirements of Part 2,Division 2 of the DSA NSW in the allocation of financial assistance to its direct services. Because ADHC and/or the Minister fails, or refuses, to comply with Part 2, Division 2, the ADT has taken the view that it does not have the necessary basis to claim jurisdiction: *Minister for Disability Services v People with Disability Australia Inc* (CSD) NSWADTAP 44. That conclusion is currently subject to appeal in the Supreme Court. However, in the meantime, contrary to the clear intention of Parliament, funding-related decisions about ADHC's direct services are not subject to merits review by the ADT.

Moreover, if the ADT's decision in *Minister for Disability Services v People with Disability Australia Inc* (CSD) NSWADTAP 44 is correct, then it necessarily follows that all ADHC funding for its direct services is being administered *ultra vires* that DSA NSW.

The position is different with respect to non-government services funded by ADHC. Funding approvals, translated into funding agreements, do appear to be made periodically in relation to all or most of these services. To date, the ADT has taken the view that these decisions are sufficient to provide it with jurisdiction. However, while appeals against such decisions are at least possible, ADHC does not advise service users and others when it makes reviewable decisions, or of the appeal rights they have in relation to these decisions. In fact, in our experience, this information is actively withheld in order to frustrate the merit review process. People seeking information about reviewable decisions are forced to lodge and pay for Freedom of Information requests to establish what decisions have been made, when, and on what terms. These requests are also, in our experience, vigorously resisted.

The failure of ADHC and its predecessors to give effect to the consumer protection regime incorporated into s 20 of DSA NSW is a major contributing factor to the poor quality of many disability services in NSW.

2.5 Direct funding arrangements

Section 10(1)(a) of the DSA NSW reposes power in the Minister to provide financial assistance directly to persons within the target group, or to a person who provides that person with care and

support. The intention of this section, at the time the DSA NSW was enacted, was to facilitate the direct payment of funds for disability supports to eligible persons so that they could make their own arrangements rather than be dependent upon service providers.

Direct funding arrangements do not necessarily suit everyone, but for many people they provide empowerment and flexibility, and have the potential to immediately and very significantly improve quality of life.

Direct funding is generally a more efficient means of providing assistance because it eliminates a variety of intermediaries and their associated transaction costs. It also generally has a greater cost-benefit because it allows eligible persons to utilise available funding to tailor their support services to their individual needs and preferences, rather than have to passively accept pre-determined service configurations and responses.

ADHC has failed to effectively operationalise s 10(1)(a) of the DSA NSW. While some (so-called) individualised funding arrangements and programmes have been developed over time, generally speaking, these initiatives have not involved direct funding to eligible individuals. In fact, there is significant cultural resistance with ADHC to direct individualised funding. In our view all eligible persons ought to be able to opt for a direct individualised funding arrangement as an alternative to the transfer of this funding to service providers.

The failure of ADHC and its predecessors to operationalise the direct funding provisions set out in s 10(1)(a) of the DSA NSW is a major contributing factor to the poor quality of many disability services in NSW.

3. *Stronger Together*

In our view, there are very significant problems with the way that *Stronger Together,* the NSW Government's current 10 year plan for specialist disability services has been conceptualised and implemented.

3.1 Centrality of persons with disability

Stronger Together positions and interprets persons with disability as passive and dependent recipients of services, to be assessed, treated, managed and controlled by service providers and government. It is expressed so as to position family members and carers as the primary target group for government assistance, so that they may be relieved from, and rewarded for, the burden of association with a family member with disability. This heuristic is not only semantic; it also underpins many of the programmatic initiatives incorporated into *Stronger Together.* This heuristic is deeply offensive to the dignity of persons with disability, and it is entirely inconsistent with a human rights approach to policy and programming for persons with disability. *Stronger Together* ought to be reformulated to give priority to persons with disability, and to ensure that strategic goals such as greater dignity, independence, autonomy, control, and empowerment of all persons with disability are at the centre of government action.

3.2 *Stronger Together* Accommodation Policy

Among other things *Stronger Together* states that the government will pursue a new accommodation policy and a range of new accommodation options. This includes the redevelopment of the Lachlan, Grosvenor and Peat Island Centres and of Ferguson Lodge (each non-conforming institutional accommodation services). In *Stronger Together* the Government claims that these developments 'will be consistent with contemporary accommodation and care standards and will comply with the *NSW Disability Services Act 1993.*'[2] However, in reality, these redevelopments represent a reversion to service models that congregate, segregate and isolate persons with disability from the community, and very obviously fail to conform to the requirements of the DSA NSW. ADHC's failure or refusal to administer funding for these services in accordance with Division 2 of the DSA has the purpose or effect of preventing merits review of these redevelopment decisions (that was the application in *Peat Island*). So while ADHC claims these redevelopments conform to the DSA NSW, it has in reality done everything in its power to prevent that claim from being subject to independent merits review.

NSW's reversion to institutional service models under *Stronger Together* is also an explicit violation of the human right of persons with disability to equality before the law,[3] and their human right to live independently and be included in the community.[4] It is a tragedy that will lead to increasing international embarrassment not only for NSW, but also for Australia, as these developments are brought before international human rights bodies (as they inevitably will be).

Stronger Together ought to be reformulated as a matter of the utmost importance and urgency to eliminate these policy settings, and to replace them with policy settings that will create individualised, direct funding options that will enable and empower persons with disability to secure a decent life in the community. Moreover, in order conform to Australia's human rights obligations with respect to persons with disability, and to avoid escalating international criticism and embarrassment associated with their current violation, the institutional service models that have been created under *Stronger Together* to date must be devolved and replaced with individualised, community based models of support that maximise independence, autonomy and control for persons with disability.

3.3 Failure to effectively protect from abusive behaviour management practices

Hundreds, if not thousands, of persons with disability who use ADHC provided or funded services are subject to chemical, physical, mechanical and psychological restraints, to seclusion and other behaviour management practices. Many of these practices are dangerous and unnecessary.

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[2] *Stronger Together* at page 4.

[3] CRPD Article 5; segregation is inherently unequal and unfavourable treatment; *Brown v Board of Education* 347; *Penn. Assn for Mentally Retarded Children v Penn* 334F Supp. 1257 (1971); followed in *Dalla Costa v ACT Department of Health* (1994) EOC 92-633 and *Alex Purvis on behalf of Daniel Hoggan v State of New South Wales (Department of Education),* Human Rights and Equal Opportunity Commission, Matter 98/127 November 2000 (later overturned on appeal, but not on this point).

[4] CRPD Article 19; which requires state parties to recognise that persons with disability have the right to live in the community with choices equal to others.

The Office of the Senior Practitioner was established under *Stronger Together* to oversee behaviour intervention practices. While the need for government action to promote positive behaviour support and to protect persons with disability from abusive behaviour control practices is overwhelming, the Office of Senior Practitioner, as it is currently formulated, is a weak and ineffective response.

Among many other problems, it lacks legislative objectives and a legislative framework for its functions, it has no powers, it is not independent of Ageing Disability and Home Care, which is the major provider of services to persons with disability, and it does not publicly report. Consequently, NSW fails to effectively protect persons with disability against violations of their right to personal integrity,[5] their right to freedom from abuse, neglect and exploitation[6] and their right to freedom from torture or cruel, inhuman or degrading treatment or punishment[7] as these arise from abusive and neglectful behaviour management practices.

As a matter of the utmost importance and urgency, the Office of the Senior Practitioner ought to be established as an independent statutory office under legislation that requires it to eliminate abusive and restrictive behaviour management practices and ensure their replacement with positive behaviour support. It ought to be reposed with a wide range of functions and powers to ensure that these objectives can be effectively pursued, and it ought to be required to publicly report annually statistical information about the type and prevalence of restrictive practices used in disability services and elsewhere, and on the success of its efforts to eradicate abusive and unnecessary restrictive practices.[8]

Specifically, the legislation establishing the Office of the Senior Practitioner ought to prohibit the following behaviour management practices:

- Practices that are experimental;
- Practices that cause pain or discomfort;
- Practices that are cruel, inhuman , degrading, or humiliating;
- Practices that result in emotional or psychological deprivation or other harm;
- Physical restraint; and
- Seclusion.

Specifically, the Senior Practitioner ought to have the following powers and functions:

Powers

- Declare a restrictive practice prohibited (both at large and in relation to a specific individual)
- Authorise, or refuse to authorise, a restrictive practice (both at large and in relation to a specific individual);
- Impose mandatory conditions on the use of restrictive practices (both at large and in relation to a specific individual);
- Give compulsory directions to service providers in relation to the use of restrictive practices;
- Enter any premises upon reasonable notice, interview any personnel, and examine and copy any document about or relating to the use, or suspected use, of a restrictive practice.

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[5] CRPD Article 17
[6] CRPD Article 16
[7] CRPD Article 15
[8] CRPD Article 31

Functions

- Developing standards and guidelines in relation to the use of restrictive practices;
- Developing and delivering professional education in relation to restrictive practices and positive alternatives to restrictive practices;
- Research and development in relation to restrictive practices, and in particular, to positive alternatives to the use of restrictive practices;
- Evaluating and monitoring the use of restrictive practices;
- Developing policy recommendations to government and other relevant bodies about any matter relating to the use of restrictive practices;
- Publication of comprehensive periodic reports detailing the type and incidence of restrictive practices used in NSW.

3.4 Abuse and neglect prevention strategy

There is substantial evidence to suggest that abuse, neglect and exploitation of persons with disability remain a grave problem in NSW disability services. *Stronger Together* as it is currently formulated fails to designate specific action to identify and combat abuse, neglect and exploitation of persons with disability in the community and in the specialist service system.[9]

The next phase of *Stronger Together* ought therefore to incorporate the development and implementation of an Abuse and Neglect Prevention Strategy to provide a coordinated strategic framework for tackling this issue. In particular, this Strategy ought to include measures, which would include flexible individualised funding supports that would enable persons with disability to escape service system-based violence.

3.5 Advocacy support services

Stronger Together has failed to produce any significant increase in the availability of independent advocacy support services for persons with disability. The existing system is still subject to a very high level of unmet demand and there are many areas of the State where persons with disability have limited or no access to advocacy support. Additionally, particular population groups, in particular persons with psycho-social impairment, have very limited access to advocacy support.

Persons with disability require access to advocacy assistance in order to realise their human, legal and service user rights. The next phase of *Stronger Together* ought to target a significant expansion in the availability of independent advocacy services, focusing on areas of the State where there are currently limited or no available services of this kind. This initiative ought also to establish new administrative arrangements that will provide advocacy services with the maximum possible independence from ADHC and other direct services for persons with disability.

[9] As required by CRPD Article 16

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