

Submission
No 89

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

Name: Mr Gerard Crewdson
Date received: 10/08/2010

Partially Confidential

10 AUG 2010

To the NSW LEGISLATIVE COUNCIL
STANDING COMMITTEE ON SOCIAL ISSUES

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

I wish to make a submission under this Inquiry's Terms of Reference
1 (d) (e) and (g) concerning the Department's

(d) compliance with Disability Service Standards

(e) adequacy of complaint handling, grievance mechanisms and ADHC funded advocacy services

I am making this submission in response to the invitation issued by Committee Chair, the Hon Mr West (MLC) (ALP), in his press release of 28 June 2010:

"I'd like all interested people and organisations to contribute to this important inquiry. We particularly welcome participation from people with disability."

I was employed for 8 years with the Department caring for people with developmental disabilities. Because of the severity and nature of their disabilities they are unable to speak up for themselves and therefore participate directly in this inquiry. But their stories need to be heard for this inquiry to truly address the problems with DADHC.

"JANET'S" STORY-COVERING UP PHYSICAL ASSAULT

I want to speak first of all about "Janet." When she was an 8 month year old baby "Janet" suffered horrific injuries in a car accident which left her with severe physical and intellectual disabilities. She is resident in a DADHC Group Home in Sydney. On the morning of 8 May 1997, "Janet" was physically assaulted by a male staff member outside a day activity centre. Fortunately the assault was witnessed by centre staff and substantiated by an internal inquiry conducted by the Department's area management.

On 6 April 06, then Minister of Disabilities, Mr John Della Bosca made the following statement to Parliament concerning assaults on disabled residents at the Centre:
"The approach of DADHC to these instances of abuse, whether or not they are systemic, they are criminal offences that involve criminal mistreatment of individuals, and the individuals responsible for these offences will be reported to the police for investigation."

The staff member who assaulted "Janet" on 5 May 1997 was never reported to the police for investigation. He was simply transferred to another Group Home.

In 1997 the Department was part of DOCS and had a management culture that failed to address or covered up staff abuse and assaults of the disabled. The same culture continues in DADHC today causing problems that are serious and widespread.

"at least one person with a disability is assaulted every day in Government funded group homes in NSW.....at least 240 people with disabilities were injured so seriously that they required medical attention or hospitalisation" State Liberal Media Release 11.11.05

"1 in 26 disabled people are being abused by NSW Government Carers"

MDDA Disability Newsletter 24.11.07.

"ROBERT'S" STORY-COVERING UP NEGLIGENCE AND BULLYING

"Robert" lives in the same DADHC Group Home as "Janet." He is totally blind, has cerebral palsy, suffers from epilepsy and has an intellectual disability

On 26 July 1993, "Robert" was being bathed by a casual staff member and suffered 2nd and 3rd degree burns to his feet after they were placed in boiling hot bath water. The casual staff member was inexperienced and did not even know the basics of first aid. "Robert" was hospitalised at Concord Hospital.

"Robert" did not have any close family contact. An external advocate was appointed for "Robert" after this incident but by 1997 this service had lapsed.

On 8 Feb 1997, "Robert" was left out in the sun in his wheelchair with legs exposed and his legs became badly sunburnt. No disciplinary action was taken against the two staff responsible for this incident.

Four months later on the night of 17 June 1997, "Robert" was dropped on the floor while being handled by staff DL suffering injuries to his face and head. "Robert" was physically and emotionally unwell as a result for the next 5-6 days. I had cared for and had known "Robert" for seven years and was greatly concerned about his well being. The House Manager, DL and other staff were callous, abusive and unsympathetic to "Robert" No disciplinary investigation or action was taken against DL for breach of duty of care. The House Manager concealed this incident from DOCS Area Management contrary to OH&S policies. On 22 June 1997, I spoke to the House Manager and complained about the way "Robert" was being treated. From that day onwards I was subjected to increasing personal attack and hostility from the House Manager, DL and other staff. Together they engineered my removal from duties and then the destruction of my career.

It took five years and proceedings in the NSW Industrial Relations Commission before the Department finally admitted that "Robert" had suffered a significant injury on 17 June 1997 and that I had raised legitimate concerns at the time. This admission was made on 13 Dec 2002 by their legal counsel Mr

Your Honour if it helps I am prepared to accept... that Mr M..... had a fall ana he suffered an injury and the injury was significant, so that it was a matter of significance to the point it was a matter of concern , and that concerned about it, and that his concern was legitimate." T/s 13/12/02 p 242

Despite this belated admission, to this day, no disciplinary action has ever been taken against DL was causing "Robert's significant injury. Instead DL was rewarded with promotion to management. And no action was taken against the House Manager for concealing this injury. On 12 Sept 1997 a further injury was caused to "Robert" when his left thigh became bruised due to protruding metal on the front passenger's seat of the Group Home car. I spoke to the House Manager about this hazard but she failed to have it removed

On the night of 23 Sept 1997 "Robert" called me into his bedroom as soon as I arrived on night shift and said to me "**D bullying me**"

D is "DL"- the staff member who had injured him 3 months earlier on 17 June.

On 10 Oct 1997, I was on a morning shift with DL. I discovered that "Robert" had a bruised right knuckle after being taken on a trip to Canberra by DL. I asked DL to explain how the bruise came about and also referred to the injury the previous June. What then occurred has been recorded in a decision by Justice Boland of the NSW Industrial Relations Commission *v DOCS (2005)*

"On 10 October 1997 Mr [redacted] had what he described as a "confrontation" with Mr L.... An exchange occurred between Mr L...and [redacted] over the feeding of AM at breakfast. [redacted] had said "I have worked in this house for seven years." Mr L retorted "seven years too long." Later [redacted] raised with Mr L the question of client freedom of choice and Mr L said, "Look they are brain damaged. They can't make choices like we can"

Following this conflict Mr L contacted DOCS Area Management who that same day contacted a NSW agency called HealthQuest. In his 2005 decision, Justice Boland went onto to quote the message sent to HealthQuest

"The message recorded at HealthQuest of [redacted] call on 10 October 1997 was as follows

*Re [redacted]
Residential care worker
Delusional behaviour causing concern-a couple of managers with mental health training thinks he has a mental health problem.
EAP counselling suggested-but declined
Eg believes Dept will be taken over by McDonalds. He was sensitive and gentle at first but traumatic incident in private live (sic) keeps coming up...."*

Justice Boland then went onto find that the mental illness allegations were without foundation and prejudicial:

"In relation to what [redacted] had conveyed to HealthQuest I would make the following observations

- (1) Delusional behaviour causing concern-I can see no evidence that Mr Crewdson was showing symptoms of delusional behaviour..there were no signs of delusions.*
- (2) Managers with mental health training-There was no evidence that any of the managers ..had any mental health training...*
- (3) .*
- (4) Mc Donalds-I have already made an observation about this and to convey to HealthQuest that Mr Crewdson believed the department would be taken over by McDonalds without checking the validity of such a prejudicial allegation was irresponsible*
- (5) Traumatic incident in private life keeps coming up-..there was no evidence that it "keeps coming up." This was a further prejudicial allegation. "*

On the 10 Oct 1997, Mr L set in motion events that led to false allegations of mental illness being made against me to HealthQuest directly after I had confronted him about his mistreatment of "Robert." I was ordered to undergo a humiliating psychiatric examination at HealthQuest. I was declared unfit for duties on the basis of these false and prejudicial allegations which were kept hidden from me at the time. These false allegations destroyed my career and have stigmatised me for life.

ONGOING RETRIBUTIONS AGAINST STAFF REPORTING ABUSE

In 1993 Parliament enacted the NSW Disability Services Act 1993. (the "DSA")
Sec 6 of the "DSA" imposes a duty on the Minister to ensure that *"services are provided in conformity with the objects of (the) Act and the principles and applications of the principles set out in Schedule 1."*

Schedule 1 (inter alia) states:

"Persons with disabilities have the same basic rights as other members of Australian society.... Their rights, which apply irrespective of the nature, origin, type or degree of disability, include the following:

...

(f) persons with disabilities have the same right as other members of Australia society to participate in the decisions which affect their lives

(h) persons with disabilities have the right to pursue any grievance in relation to services without fear of the services being discontinued or recrimination from service providers.

(i) persons with disabilities have the right to protection from neglect, abuse and exploitation

Schedule 2 of the DSA (Application of Principles) states (inter alia)

"Services and programs must apply the principles set out in clause 1. In particular they must be designed and administered to achieve the following:

(n) to ensure that appropriate avenues exist for persons with disabilities to raise and have resolved any grievances about services, and to ensure that a person raising any grievance does not suffer any reprisal.

In 1993, Parliament simultaneously passed the Community Services (Complaints Appeals and Monitoring) Act 1993. (the "CAMA" Act) Sec 46 of the CAMA Act makes it a criminal offence for the Department to take retribution against a person who complains about services provided or not provided to the disabled in its care.

As set out in the previous pages I had complained on 10 Oct 1997 about the treatment of the residents in my group home workplace including their "freedom of choice" and injuries caused to one of the residents "Robert." Immediate reprisal action was taken against me in the form of false allegations of mental illness made to HealthQuest. In Feb 1998 the NSW Deputy Ombudsman was quoted in the Sydney Morning Herald **"One of the things agencies do on occasions is to claim that the whistleblower is mentally unstable and ask HealthQuest to do an assessment."** "When the truth hurts" SMH 7.2.98

In June 1998, Parramatta Local Court Magistrate Jim Swanton when convicting a House Manager of assault against a disabled resident made the following comment: *"There was a culture of fear within the NSW Department of Community Services that prevented carers reporting assaults by a senior colleague"* Daily Telegraph 11/6/98

The Daily Telegraph headline read "Dickensian culture of fear" but in my case a more accurate comparison could be made to Nazi Germany. That regime also employed psychiatrists to discredit and punish dissenters by declaring them to be mentally ill. *In Nuremberg, storm troopers took a 19 yr old girl ..cut off her hair and tied a placard around her neck "I have offered myself to a Jew" said the placard. It was August 13, 1933. .Some weeks later, the girl was pronounced mentally ill and taken to an asylum."*

FAILURE TO ACT BY OMBUDSMAN/COMMUNITY SERVICES COMMISSION

The disabled residents in my Group Home workplace not only suffered assault and injuries at the hands of staff but were also subjected during the same period to repeated verbal abuse and a regime of unlawful restrictions and punishments. I had tried to raise these matters within the Department only to be met with hostility personal attack and a direction to attend HealthQuest. I then made a formal and detailed complaint to the then Community Services Commission-the supposed statutory watchdog for the Department. The Commission refused to undertake any independent investigation and instead referred my complaints back to the Dept. DOCS Management instituted a limited internal review and tried to withhold the results from me. The DOCS Internal review completed in June 1998 substantiated four of my allegations. These substantiated allegations were listed by Justice Boland in his decision DOCS (2005)

44 The four substantiated allegations were:

- (1) Assault of ('Janet") (a female client) by staff member ...*
- (2) Denial of choice in bathing, showering*
- (3) Lack of Respect for residents as evidenced in language used in communication book and staff discussions*
- (4) Failure to maintain client medical or financial records*

The most serious allegations concerning injuries caused to 'Robert" by DL and his being bullied by DL and other staff were not investigated at all. The Commission simply accepted the denials of the Department at face value. And no disciplinary action was taken against staff against whom my allegations had been substantiated. Instead the Department intensified its reprisals against me. I had been suspended without pay and this suspension was continued until I was destitute and homeless. DOCS Management then terminated my employment in Oct 1998 and attempted to gag me under a Deed of Release.

BREACHING STATE RECORDS ACT-LOSS/DESTRUCTION OF RECORDS

I eventually challenged the legality of the Department's actions and my HealthQuest referral in the Industrial Relations Commission. The Department had now become DADHC. When I summonsed workplace records some key documents had gone missing or were destroyed without explanation. This matter was reported to the State Records Authority. On 30 March 04, I received a letter from State Records Authority, excerpts from which are quoted below.

"Dear Mr

DEPARTMENT OF AGEING DISABILITY AND HOME CARE

.I have heard from the Department of Ageing , Disability and Home Care about the progress of their investigations into the destroyed or missing documents... (M Director General of the Department) reports that searches are still continuing for outstanding records, such as the complete file of "R. M" ..., the assault record on "J. H...., the shift returns and the behaviour management directives. Ms . has acknowledged that the Department has breached provisions of the State Records Act 1998. This is a matter of serious concern to State Records and I expect the Department to take action to rectify the matter In her response to me . has

*stated that the Department is committed to improving records management throughout the organisation and she has outlined a comprehensive and long-term plan to address the current gaps in compliance and improve records management....Yours sincerely
Director."* (emphasis added)

(A copy of the full letter is annexed to this submission marked Attachment 1)

To this day those records are still apparently missing without explanation. I had come to believe that the injury caused to "Robert" by DL on 17 June 1997 had resulted from assault but a full and proper investigation of this incident is no longer possible because of documents missing from his file. These include all the shift records from the week after his injury and the incident and medical reports.

Breaches of the State Records Act are a criminal offence but no action has ever been taken against any Departmental officers despite DADHC Director General admitting breaches had occurred. Under their Act the State Records Authority cannot conduct investigations themselves but must rely on the Department.

ASSAULTS AT WESTMEAD CENTRE-THE

CASE

In June 2005, Sydney Morning Herald journalist Adele Horin reported that DADHC staff at Westmead were being investigated for the assault of a severely disabled 16 yr old woman

According to Ms Horin, the victim's father had "complained to the NSW Ombudsman...that their daughter had a black eye and bruising on her arm but were told the injuries resulted from an altercation with other residents or were self inflicted. said the Ombudsman had relied on reports from some staff who had now been shifted out of the unit" SMH 29.6.05 Adele Horin

Two years later in May 2007, Ms Horin reported that a DADHC nurse had been convicted of assaulting had been "struck on her face, put in a headlock and dragged by her hair" This assault only came to light because two young Assistant Nurses had the courage to report what had actually happened and "turn whistleblowers." father praised their actions and said "they've gone through hell since." SMH 2.5.07 Adele Horin

Also in 2007 the Parramatta Sun newspaper reported:

"A doctor who complained about the treatment of severely disabled patients at the Metro residences in has been fired" Gerard Sutton Parramatta Sun 8.8.07

Ten years earlier in July 1997 the Wood Royal Commission in its Final Report had identified a management culture of fear and reprisal within DOCS:

"It is of concern to the Royal Commission that there should be fear engendered in people who are trying to improve the system or concern as to the existence of a coterie of inner managers whose interest in the past has been to suppress all criticism and innovation. An open environment in which internal informants are protected according to law and in which staff are encouraged to discuss problems and make suggestions for improvement is essential." Vol IV Chap 8 para 8.274

That same management culture continues on in DADHC as is evidenced in the above treatment of the two whistleblower assistant nurses at Westmead and the whistleblower doctor at Rydalmere.

JUDICIAL INDIFFERENCE TO STAFF MISTREATMENT OF DISABLED

The attempt by DADHC Management in 2005 to cover up the assaults against
by lying does not surprise me in the least. Nor am I surprised that that the
two trainee nurses who spoke the truth were put through hell. In that same year the
NSW Crown Solicitor was representing the Department in my industrial proceedings.
The Crown Solicitor was defending DADHC staff who had assaulted, injured, abused
and unlawfully treated disabled residents in my Group Home. The Crown Solicitor
was also defending DADHC staff and managers who had lied about my being
mentally ill and engineered my removal from employment on that false ground after I
had complained about the mistreatment of the residents.

My referral to HealthQuest and subsequent removal from duties and suspension
without pay had not been legally authorised and was therefore ultra vires.
I had also been denied natural justice in that the allegations of mental illness were
kept hidden from me and I was given no opportunity to answer and defend myself.

The Crown Solicitor on behalf of the Department however argued in the Commission
that I was not entitled to being treated legally and fairly in my employment simply
because I was alleged to be mentally ill. This argument was accepted by Justice Roger
Boland of the Industrial Relations Commission and my proceedings were accordingly
dismissed with costs. I eventually sought judicial review against this decision in the
NSW Supreme Court of Appeal. The Court of Appeal on 25 July 2007 approved the
decision of Justice Boland which was summarised at 17-18 of its decision.

*17 On 26 August 2005, Boland J dismissed the claimant's application. In his
reasons for judgment, Boland J found that there had been flaws in the process by
which the claimant was referred to HealthQuest and put on leave. Boland J said that
the finding was open that he had not been accorded procedural fairness; that the
direction that he attend HealthQuest was not authorised by cl.17 of the Regulation,
because it was not given by the Department Head or a person with delegated
authority; and that the declaration that he be placed on sick leave was not authorised
by cl.84 of the Regulation, for similar reasons.*

*18 However, Boland J accepted Dr. [redacted] evidence that, at the time she saw him,
the claimant may well have been suffering from significant mental illness and that it
was inappropriate that he return to work. Boland J said this:*

*77. ... Whilst cl 17 exists for the protection of a staff member so that they are not
subjected to unfair and improper treatment, there was a reasonable basis for concern
about the state of Mr [redacted] mental health and despite the flaws in the
procedure that brought the applicant to HealthQuest, once a valid medical opinion
was expressed the first respondent was in no position to question the validity of that
opinion." See [redacted] v IRC (2007)]*

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I presented the Court of Appeal judges with the evidence of staff mistreatment of
residents in my Group Home and the serious injury caused to "Robert." At (40) of his
decision Justice Hodgson simply stated:

*"40.....while the Director General's Counsel did admit that a resident suffered a
significant injury and that the claimant's concern was legitimate, he did not admit
that this injury resulted from an assault"*

In the [redacted] case, the Department likewise had refused to admit that the
injuries caused to her at Westmead resulted from staff assault but a subsequent
investigation proved otherwise. The injuries caused to "Robert" have never been
investigated to this day or the unexplained loss/destruction of vital evidence.

DOCS/DADHC USES DEEDS OF RELEASE TO GAG WHISTLEBLOWERS

Under this Inquiry's published Terms of Reference this Committee is to look at

- (a) *the historical and current level of funding and extent of unmet need*
- (f) *internal and external program evaluation*
- (g) *any other matters*

I have been making a submission on the Department's non compliance with Disability Service Standards and the adequacy of the Department's complaint handling mechanisms. Within this same context I wish to raise issues that also cover terms of reference (a) (f) and (g) above including the Department using Deeds of Release to gag whistleblowers and the amount of public money spent by the Department to defend itself in my court proceedings. I estimate that this amount exceeds \$1 million.

In legal proceedings extending over ten years, 1998-2008, the Department, HealthQuest and NSW Government lawyers continued to justify their actions against me on the ground that I was supposedly suffering a serious mental illness. This position was maintained even after the original allegations had been exposed as being without foundation. The Department's real concern behind the fiction of mental illness was the fear that that if reinstated I would continue to pursue the Department over its mistreatment of disabled residents. This concern was openly voiced and shared by the presiding judge in my industrial proceedings on 16 Nov 2004:

JUSTICE BOLAND "j , *you clearly have the concern I expressed whether is trying to achieve an objective, that is, to obtain relief and establish some sort of basis for his own purpose, perhaps at some later time, to pursue the Department in respect of what he alleges to be inadequate treatment of residents"* NSW Industrial Relations Commission hearing 16.11.04 T/s p 56.

Justice Boland made this statement while ruling that documents recording "Robert's" hospitalisation for 2nd and 3rd degree burns in 1993 should not be admitted. This ruling was also made after the Department's belated admission in 2002 that resident "Robert M" had suffered a significant injury on 17 June 1997. Justice Boland was at the time fully aware of the injuries caused to "Robert", the assault of "Janet" and the Departmental cover-up of these incidents. He was also aware of the fact that the Department had lost or destroyed documents related to these incidents.

On 1 Nov 2009 the newspaper "*The Independent on Sunday*" reported a parallel situation in England within the British National Health System and judiciary: .

"NHS whistleblowers are routinely gagged in order to cover up dangerous and even dishonest practices that could attract bad publicity and damage a hospital's reputation... Experts warn that patient's lives are being endangered by the use of intimidatory tactics to force out whistleblowers and deter other professionals from coming forward....judges are also failing the public by agreeing to NHS gagging orders when presiding over whistleblower cases in court....This evidence of widespread gagging comes amid government insistence that whistleblowers are fully protected under the 1998 Public Interest Disclosures Act...The introduction of the Act was hailed as a huge step forward. Yet whistleblowers still risk facing "trumped up" allegations of misconduct, improper behaviour or mental illness if they feel compelled to voice concern"
"NHS is paying millions to gag whistleblowers 1.11.09" (my emphasis)

On 6 Oct 1998 I unwillingly signed a Deed of Release with the Department and HealthQuest after I had become destitute and had been rendered homeless as a direct result of the Department illegally suspending me without pay 8 months earlier. The Department used the Deed to terminate my employment as of 2 Oct 1998 and secretly paid me \$25,000-a sum less than my total loss of wages at the time. Under the Deed the Department and HealthQuest were released of all liability for their actions. However no money was paid to me by HealthQuest or CSAHS under the Deed as compensation for such a release. On 29 Sept 1998 the Deputy CEO of CSAHS issued a delegation for the NSW Government Medical Officer to sign the Deed "*relating to Mr* _____ *subject to the following:*

1. *That the release in no way implies any fault on the part of HealthQuest or the Area Health Service*
2. *The release does not include any form of apology from either HealthQuest or the Area Health Service*
3. *The release does not involve the Area Health Service or HealthQuest in any expense or costs."*

A copy of this delegation 29.9.98 is annexed to this submission marked Attachment 2.

As a precondition of receiving financial relief under the Deed I was made to also sign a public statement retracting complaints of unlawful discrimination and victimisation against the Department and HealthQuest. This false statement was read out to the NSW Administrative Decisions Tribunal by the NSW Crown Solicitor on 6 Nov 1998 as my apology to the Department and HealthQuest. On 26 Aug 2005 Justice Boland in the NSW Industrial Relations Commission upheld this Deed despite knowing the true circumstances behind its signing and the fact that HealthQuest had not paid any compensation. On 25 July 2007 the NSW Supreme Court of Appeal again upheld this Deed. At the same time these judges ruled that there were reasonable grounds for believing I was mentally ill when I signed the Deed which if true would in itself render the Deed invalid and unconscionable. I am aware of at least one other case within the Department where a Deed of Release has been used to illegally terminate the employment and gag a member of staff after they reported serious issues of client safety. I call upon this Committee to inquire into the Department's use of such Deeds and gagging clauses. This practice allows the Department to evade its legal obligations not to take reprisals against staff who complain about the treatment of residents. This practice also covers up serious problems within the Department and therefore allows those problems to continue behind a cloak of secrecy.

I also call upon this Committee to inquire into the Department's use of the HealthQuest process as a form of reprisal against whistleblower staff. In Oct 2008 another Parliamentary Committee published a Report into the management of the NSW Ambulance Service. The Report uncovered an entrenched culture of mismanagement and workplace bullying that had led to several ambulance officers committing suicide. There was evidence in the Report of HealthQuest being used as a form of reprisal against officers speaking out against these problems. "3.50 Another participant declared that the repercussion of speaking up often leads to isolation-more bullying, harassment, intimidation, using IPS against the officer "healthquesting" them and any other hoops, they can throw up at them to make life difficult" Committee Report Oct 2008 at p 97 Submission 71 p 4 (emphasis added)

UNLAWFUL DISCRIMINATION/ BLACKLISTING FROM EMPLOYMENT
Under s 49 of the NSW Anti-Discrimination Act 1977 it is unlawful for an employer to treat an employee unfairly or dismiss them solely on the ground of mental illness or presumed mental illness. Employees must be treated according to their actual ability to perform the inherent requirements of the position and not on the basis of presumptions or prejudices about disability. My referral to HealthQuest in 1997 was unlawful under the Act because it was based on a presumed mental illness and not any failure or inability to perform my duties. I made a complaint of unlawful discrimination against the Department and HealthQuest to the NSW Anti-Discrimination Board and my complaint was referred to the Equal Opportunity Tribunal (as it then was) in May 1998 for a hearing. It was impossible for me to continue however because of poverty due to my illegal suspension without pay and I had no choice but to sign the afore mentioned Deed of Release. Even if I had been able to continue with a hearing my case would probably have been dismissed. The Tribunal in a previous decision had determined that a HealthQuest assessment of unfitness overrode the Anti-Discrimination Act and gave a legal exemption to State Government Department to discriminate on the ground of disability. However on 18 Aug 2001 the NSW Administrative Tribunal in a landmark decision held that this interpretation of the law was wrong and a HealthQuest unfitness assessment did not permit NSW Departments to discriminate against employees or applicants on the ground of disability. See *Corrective Services v Maxwell (2001) NSWADTAP 21*

From Oct 1999 onwards I had reapplied for positions within the Department in disability care and was repeatedly rejected. The first position I applied for was with the Department's Cumberland Prospect Area. I was determined overall by the interview panel to be the most meritorious applicant. The panel report stated
*"Overall response to questions was above the average of others interviewed.
Has 8 years residential care experience. Demonstrated good knowledge of DAS (Disability Services Act) and programming and all responses showed a commitment to people with disabilities."*

I was however refused employment in part on the basis that HealthQuest had declared me allegedly unfit two years earlier on 29 Oct 1997. I lodged a further complaint of unlawful discrimination against the Department with the NSW Anti-Discrimination Board. The Department argued that their actions were lawful and the matter was referred to the NSW Administrative Decisions Tribunal for a hearing. This time the case did proceed to a full hearing but the hearing was delayed for 9 years. Meanwhile I was reduced to poverty and homelessness throughout this period due to the Department's refusal to employ me and my being stigmatised with alleged mental illness. The Tribunal handed its decision down on 13 Oct 2008 this time applying the law as set out in *Corrective Services v Maxwell (2001) NSWADTAP 21*

The Department by refusing to employ me from Oct 1999 was found by the Tribunal to have acted unlawfully under s49D of the NSW Anti-Discrimination Act 1977

See *v Director General DOCS and Anor (2008) NSWADT 279*

(When the original complaint was made the Department was still part of DOCS)

The Department was ordered to pay the then maximum compensation under the Act of \$40,000. It is the first time that a NSW Government Department has been found to have unlawfully discriminated against a person on the ground of presumed mental illness. For 9 years the Department had wrongly insisted that its actions were lawful thereby subjecting me to prolonged injury and huge financial loss

DADHC NON COMPLIANCE WITH DISABILITY SERVICE STANDARDS

As previously stated the Disability Service Standards are set out in Schedule 1 of the NSW Disability Services Act 1993 which is prefaced by a statement of equality:

"Persons with disabilities have the same basic rights as other members of Australian society.... Their rights, which apply irrespective of the nature, origin, type or degree of disability":

The target group of people under the Disability Services Act include people with mental illness receiving a government funded service. The DADHC, whatever it's public pronouncements, in reality does not acknowledge that people with disabilities have the same rights as other members of Australian society. In my case the Department has spent perhaps over \$1 million in public monies in NSW Courts to defend officers who have abused assaulted and mistreated severely disabled people in its care with impunity. The Department has also successfully argued in the NSW Industrial Relations Commission and the NSW Supreme Court that I had no basic human or legal rights including the right to natural justice as a person presumed/alleged to be mentally ill. Such a position is clearly at complete odds with the principles of the Disability Services Act 1993. I have based my estimate of \$1 million in legal fees to argue this position on a detailed bill of costs I have received from the NSW Crown Solicitor connected with other proceedings. This is money that the Department should have been expending on direct care of the disabled. The Department has punished experienced staff like me fully committed to the well being of people with disabilities and driven us out of the service. This has contributed to the problems revealed in the shocking figures quoted earlier:

I in 26 disabled people are being abused by NSW Government Carers"

MDDA Disability Newsletter 24.11.07.

Mr West as Chair of the Committee you stated in your press release for this Inquiry: *We particularly welcome participation from people with disability."*

I have attempted to speak up on behalf of people like "Robert" ^{and} "Janet" –the victims of abuse concealed within the Department as they cannot speak for themselves. I have also spoken from the point of view of someone who has been cynically and falsely labelled with a psychiatric disability as a means of punishment and silencing. NSW Ambulance officer [redacted] likewise was subjected to false allegations of disability in 2004 as a means to remove him from his position as supervisor at Cowra.

"My sector manager phoned me Christmas Eve...I would find myself HealthQuested in the not too distant future and that would be the end of it. Happy Christmas .

NSW Ambulance Officer

e-mail to NSW premier 16/4/08

This left Ambulance Officer [redacted] exposed once more to ongoing bullying and harassment and resulted in her suicide in April 2005. Christine's mother in law, Ms [redacted], made an anguished submission to the Parliamentary Review into recommendations arising out of Ambulance Service Inquiry dated 25 Jan 2010.

"I had decided not to make a further submission as I have totally lost faith that any thing positive had come out of the review.. "Bullying and harassment are still live and well? Ignored? Swept under the carpet, call it what you like, still the NSW ambulance service

do nothing.. A prime example of this blatant disregard of the type of behaviour is the ongoing treatment by the NSW Ambulance service of ..My son has lost his wife and her daughter still asks us "why did she die"? What do we say? You cannot explain that type of animalistic behaviour to a little girl who is just 7."
I am really cynical and don't expect any real change.."

I feel exactly the same level of despair and cynicism about the willingness of this Committee to truly address the problems I have raised about DADHC in this submission. The problems are the same as those exposed in the Ambulance Service Inquiry. I tried to expose bullying within DOCS now DADHC from 1998 and the misuse of HealthQuest process to punish whistleblowers. Had those practices been properly exposed then and addressed the suffering and death of [redacted] and other such tragedies could have been prevented

I want this submission to be fully published and accessible to the public. They have a right to know what is truly happening within the Department. I have not identified any residents or staff by their real names. The information from my own case is based on evidence and findings already published in court decisions. I am ready to provide any further information that might be required.

Yours sincerely

2 Aug 2010

Attachment 1	Letter Director State Records Authority to	30.3.04
Attachment 2	Letter Deputy CEO CSAHS to GMO	: 29.9.98

30 March 2004

Dear Mr

Department of Ageing, Disability and Home Care

Thank you for your email of 15 March 2004.

I have noted your submission regarding the State Records Act 1998 and your comments will be considered in the review.

Your email also contains an allegation about an officer of the Department of Ageing, Disability and Home Care, and I have referred the matter to the Independent Commission Against Corruption as the appropriate authority to investigate the matter.

Further to my letter of 7 January, I have heard from the Department of Ageing, Disability and Home Care about the progress of their investigations into the destroyed or missing documents. Ms [redacted] the Director General of the Department has reported that some of the missing records have been located, including the following:

- Affidavit of [redacted], dated 23 June 2003,
- Original communication books, from 23 August 1995 to 17 August 1996, from 18 August 1996 to 19 January 1998,
- Original report books, from 23 August 1995 to 15 April 1996, 16 April 1996 to 9 December 1996, from 10 December 1996 to 25 May 1997,
- Original medical documents (loose) for resident: [redacted] between 1994 and 1997,
- Original personal file of Mr [redacted]
- Incident reports, and
- House records/registers.

Ms [redacted] reports that searches are still continuing for outstanding records, such as the complete file of [redacted] the assault record on [redacted]; the shift returns and the behaviour management directives.

Ms [redacted] has acknowledged that the Department has breached provisions of the State Records Act 1998. This is a matter of serious concern to State Records and I expect the Department to take action to rectify the matter.

In her response to me, Ms [redacted] has stated that the Department is committed to improving records management throughout the organisation and she has outlined a comprehensive and long-term plan to address the current gaps in compliance and improve records management. I

have also met with senior Departmental officers to discuss these matters. State Records will provide guidance and assistance to the Department in this project.

If you have any questions regarding this matter, please feel free to contact Ms
on _____ or by email on _____@records.nsw.gov.au.

Yours sincerely

Director
director@records.nsw.gov.au

Attachment 2



CENTRAL SYDNEY AREA
HEALTH SERVICE

29 September 1998

Director
HealthQuest
PO Box K609
HAYMARKET POST OFFICE 1240
Fax: 9211 11 60

Dear Dr

Further to our telephone conversation of yesterday afternoon I wish to formally advise that you have the delegation to sign on behalf of HealthQuest the release relating to subject to the following:

1. That the release in no way implies any fault on the part of HealthQuest or the Area Health Service. ✓
2. The release does not include any form of apology from either HealthQuest or the Area Health Service. ✓
3. The release does not involve either the Area Health Service or HealthQuest in any expense or costs. ✓

Yours sincerely

Driff. signed & needs done & more.
DFU.
30.9.98

HealthQuest
 29 SEP 1998
[Signature]

Deputy Chief Executive Officer



University of Sydney



CRGH

CSAHS

Queen Elizabeth II Centre
59 Missenden Road
Camperdown NSW 2050
Telephone: (02) 9515 9644

Incorporating

- Royal Prince Alfred Hospital
- Concord Repatriation General Hospital
- Balmoral Hospital
- Division of Population Health
- Rozelle Hospital