# Closed Captions – Colleen Pearce

*12 September 2017*

**ARTHUR ROGERS:**  Thanks, John, for the introduction.  It's nice to see you again.  I am reminded when John saying he was about to throw himself off the stage, about 10 years ago, I saw a video, and it is a bit about what I am going to talk about, which is balancing safety with the right of people to make choices in their own lives.  It was a video of a man in a wheelchair who decided he wanted to do bungee jumping.  I have got to say, I closed my eyes when I saw him go in his wheelchair, but he had the choice.  When we talk about quality and safeguards, we shouldn't lose fact of the sight that people with disability should be able to make decisions as much as they can and we should get out of their space and allow them to do that.  I want to run through quality and safety.

But firstly, I want to acknowledge The First People, the Wurundjeri people and their close neighbours, the Bunarong people, and their elders.  I want to acknowledge Laurie Harkin, the best Commissioner we have had.  Nice to be here, Laurie.  I want to congratulate the Commissioner and his team for developing and providing this useful important forum that you have been part of today and I have heard great reports about it.  And acknowledge the distinguished guests in the room as well as all of you.

John mentioned the minister is not here, he is not well, he hasn't been at work for a couple of days and he asked to pass on his sincere apologies but he is at home, unwell and couldn't be here today.  The bad news is I can't pretend I am an adequate replacement for what the minister was going to say but I will try.  The good news is I am going to combine the presentations and will be shorter so you might get time at the end of the day, if Laurie doesn't take it up with his closing remarks.

So, just because I am doing a bit of a broader speech, I did want to cover off a reminder about what the national quality and safeguarding framework says, a bit of it.  It was agreed last December by all governments of the council of Australian governments.  I want to cover off where we are at with implementing the national commission and then talk about transition, how we continue with what we have got in Victoria.  It is about making sure we have got the right safeguards in place, the right quality settings to see us through to full scheme.  I will include in that a few initiatives of the Victorian government.

What I would just start with, just a quick reminder about the components of the framework.  I won't spend a lot of time on these, but a reminder it is not just about correcting things.  There is an important development component.  It is one of three components and it is a developmental components for participants and their families and building capability.  One of the best safeguards is about people having the right information, readdressing the power imbalance between providers and the system and people with a disability in their families and making sure they have the adequate information, right advocacy and peer-to-peer support through self-advocacy and hopefully with the help from the local area coordination teams.  There is a note on the bottom of the next couple of slides which I will mention, the framework starts with the presumption that all people with disability have the capacity to make decisions and exercise choice and control and we should respect that as well putting safety in, if there is a tension between legislation between quality and safeguards and people making the choices when they can make the choices.  The developmental is an important part of the framework that was agreed by governments.

The next part is preventative, which is basically trying to make sure that where we can we put in processes to prevent abuse and neglect happening.  The first one of those is through the planning process.  And you know, it doesn't need me to sit in front of you and tell you planning process needs a wee bit of improvement.  And the pathway of the NDIS will make changes to that because it is not delivering the right outcomes and I don't think it is being as respectful as it should be of families and participants in the process.  But talking about advocacy being important, empowering people to self manage where they can and the bottom point about screening workers and reducing restrictive practices.  I will talk about that later because it is a joint thing we are doing with the Commonwealth.  It is important to recognise those parts of the framework that were agreed to by all parts of Australian government.

And the corrective framework, which is the national complaints commission and associated rules and regulations and the sorts of things that goes into that are those things on the screen.  You might notice there is a typo on the last dot point.  I would like to say it was intention to say there is nothing fishy about the code of conduct, sorry about the joke, but it is my inattentive proofreading. Some of those are the elements of the national framework and the commission that was announced.  I will talk a bit about where we are at with the highlights around the commission.

Firstly to recap, the Commonwealth funded it in the Budget this year, it was $209 million to establish and operate a quality and safeguard commission and it is now before the Senate Community Affairs Legislation Committee, so it is passing its way through parliament.  Victoria has some concerns about that legislation and I won't go into them in detail but I do want to summarise because whilst we think the legislation is a good level of regulation, there are a couple of departures.  There is a statutory power for the practitioner roles or positive behaviour support.

We would prefer to see a separate Independent Complaints Commissioner and we made the point a number of times.  We wanted to see that because we think there is some reality and perception there would be a conflict between commission roles and registration roles.  We also thought our version of what is independent is different to the Commonwealth.  In the Commonwealth, the minister will appoint the Commissioner and can give written direction to the Commissioner.  That is not how the system works in Victoria.  Not to say that Victoria is the best system and the only system, but we think that is a more independent approach.

The last one is that we thought the rules and many of the ways the Commissioner is governed is by rules should be with agreement with states and territories and at the moment it is a question decision.  The national commission is totally funded through Commonwealth government funds, it is not a joint funding thing like the NDIS, so the same sort of cooperative arrangements through the heads of agreement don't apply.  There are many submissions to that committee and Minister Foley, who I won't attempt to rephrase it, appeared before the committee on 4 September.  Homework, you can go to the website of the committee and look at the transcript of what he said because it best represents Victoria's view and his view of where we are at with national safeguards.

In terms of where we are at, a quick overview, some of the highlights.  We have done a lot of work with the Commonwealth on rules and I will talk about rules, as you know, legislation is described as coathanger which means a lot of the detail is in the rules.  I did want to focus on a couple of the joint things.

As you would be aware, there are some things that are not just national.  Victoria will be providing a role in restrictive practices so there will still be a process in Victoria to authorise and monitor the use of restrictive practices through a senior practitioner.  That office will work closely with the national practitioner around how they promote positive behaviour support in between them, reduce the restrictive interventions.  We have been doing a lot of work how those two things might develop in the relative roles.  The other is around worker screening.  The national framework says the states and territories will do the screening, we reluctantly agreed because we thought it should be national.  The Victorian approach has to be nationally consistent.  There is no way it will work unless it is a nationally consistent approach, who is screened out, and national database so people don't jurisdiction hop and can't get jobs in one jurisdiction and get a job in another.  So we are working with the Commonwealth on that.  And we will continue with the community visitors scheme in Victoria but there is an agreement we will do a review of the community visitors process, not to not see it there because we think it is a valuable part of the processes but see how it might adapt into the National Disability Insurance Scheme environment.

So, I have done a bit of complaining about the national legislation on behalf of Victoria.  And don't want to finish this without sort of saying that we are working really hard with Commonwealth officials to get the reality up and going, whatever it looks like, whatever the national legislation it will get through parliament so we are working hard with our colleagues.  I don't know if there are Commonwealth officials here, but I want to publicly acknowledge the power of work, in quality and quantity is exceptional and we are working with them but we would prefer the legislation to say other things.

The last thing before moving on, as you would be aware, NSW, South Australia, are at full scheme by July next year, in 10 months' time.  There has to be - doesn't have to be - hopefully, there will be a national commission and a national process in place, particularly NSW will vacate that space.  They made it very clear they are not continuing with their systems into full scheme.  We are working to make sure something is in place by the middle of next year.  Our system will probably migrate, I will talk more about that at the end, by the middle of '19 so we have time to see how it might be finetuned but make sure the system doesn't develop and get foundations that are not appropriate for Victoria.  There is a lot of work to do and we are working closely with them on that.

I mentioned the rules, I think I have listed - I think I just pressed the wrong button.  Someone needs to help me.  I said to the guy, I pressed the wrong button can you fix it and he said he was leaving.  There is a body of rules we are working on and they will be the rules that basically guide the operation of the commission.  There is not a lot of detail.  There is detail, but not a lot of detail in the legislation.  So the rules of the subordinate legislation, the process with rules is they are actually developed by the Commonwealth.  At the moment, they are consulting with us and we have got good consultation but at the end of the day, the Commonwealth will make decisions of what rules to be approved by Minister Porter.  They can be disallowed in parliament but that is unusual and doesn't happen often but they are subordinate and will guide the commission.  They can be changed at times by the Commonwealth minister, again by the same process.  We think we have got a vital interest in what the rules say and we would like to agree with them rather than just be consulted.  If we don't get to the stage of agreement, the Commonwealth will come up with something but we are being fully consulted and we are having good input but they are fairly hurried and mostly an internal government process.  All those rules have to be set out, I don't have the timetable on them because I can't remember it.  Some are advanced but some have a way to go but they have to be in place if we are going to get a national process by July next year.  It is only 10 months away, you take out Christmas and it is not long but I think the Commonwealth is working over Christmas on those things.

I will finish the slides there but I do want to finish off with a couple of things around transition, these are things the Minister would have said today.  There are two important things with transition, the first is that we have got until July '19, at least, and I say "at least" because we are scheduled to be at full scheme.  We are not on track yet but we are hoping to be.  We have to maintain and develop the Victorian safeguards until then.  The Victorian safeguards, as you know, applies until the national process takes over and then we have to basically wind down and finish some of the Victorian safeguards that we have in place and hand them over to the Commonwealth, which won't be on one, there will be transition because clearly some things won't finish on 30 June.  We can't stand still with the safeguards because we continually learn about what might be needed and I will go through a few things that just happened.

The second thing is to agree with the Commonwealth and agree how our system transitions into their system.  So that is so people don't get missed, so a complaint or an incident that needs to be followed up, it won't get lost and we are confident it won't happen with the commission in Victoria but we need to make sure it is national.  And the people out there who want to make a complaint, the families, and providers understand the system of transition and know where to go when and we are not confusing people.  We need to work on both of those.

Firstly, I will mention a few things that happened recently.  I won't go over the Victorian safeguards history, because you know those.  But there a few things the government has done.  Last month, the government amended the Victorian Disability Act and included the principle of zero-tolerance and strengthened the oversight powers and this was in response to a range of things including the inquiry.  There was money in the budget for that but it gave the capacity for a yearly review, conduct own investigations and train and develop professions to work in the sector and appoint an authorised officer to visit a premise and it didn't have to be scheduled and the provider doesn't respond, the Commissioner can name them in the annual report.  I mentioned the things that can be mentioned in the report.  There is broad strategy which is giving tools to create ways to prevent and identify abuse, enhancing safeguards and building capability of people with a disability and I mentioned that earlier.

Also, Victoria has developed a code of conduct for workers which we will try to work out how it works into the national scheme and the government has announced it would like, or intends, to introduce legislation and an accredited scheme for Victoria's workforce to make sure we have the right workforce and the skills where we need them and that quality, it is an opportunity contributor to policy.  All of those things, again, and policy of safety, that is it, policy and safety.  All of those things, again, I just want to mention again when you mention accreditation and registration, I want to stress, sometimes the balance and there is a tension between safety and legislation and safety in regulations and understanding the importance of people rights to make choices around their own lives and in Victoria, people who self managed had different choices and they have been able to choose different workers which is not the same controls as being registered providers.  We need to think about those tensions and make sure we don't lose the capacity to make self-choices in Victoria.

I will finish up now, but a couple of things, the minister would say, Victoria is committed and he is personally committed and you will see it from his speeches and presentations, committed to maintaining a strong and effective safeguard mechanism both in transition but also to work with the Commonwealth and other jurisdictions to make sure we have the most appropriate safeguards and quality provisions in place through legislation and other means.  We are working closely with other colleagues in other states and the Commonwealth to do that.

The last thing I will recap, we want to work with the Commonwealth to transition what we have got in Victoria to something nationally.  We don't want to lose what we have in Victoria in terms of the gains, we want to see improvement to the framework but not losses to the gain we have seen in Victoria, they are not perfect and can be improved but they have served us well over the last little while.

The Minister asked me to say about the commitment he has got and the government has got to working cooperatively working with all of you, people with a disability and their families and all the stakeholders because that is when you get it right.  You can't overestimate the advantage of listening to people with a disability and taking notice of what they say and want and stakeholders and providers who live this thing every day.  We would be, and the government is, committed to working with everybody to try and get this right.  We want to make it basically see the regulations and national framework provide the best response to promoting equality and preventing abuse and neglect.  I don't think any system can prevent it from happening but as much as it can, build people's capability and take the right decisive action when things go wrong.  Thank you for your time and I am happy to take questions.  Thank you.

**(APPLAUSE)**

**QUESTION:** Thank you for your questions.  Does Victoria think worker screening in other states is as strong as we what we are aiming for here?

**ARTHUR ROGERS:**  I hope so.  We want a nationally consistent worker process.  We are not developing our own process in isolation in Victoria, we are developing a national approach, nationally consistent approach to worker screening.  As I mentioned before, we all recognise, when I say "we" the states and territories recognise that if you have got the same approach to be in every state and territory, you apply it to the same group of workers and apply the same tests so a person doesn't get through the system in NSW but does in Victoria and vice versa, so we know it is important it is consistent and there is agreement around trying to do that.  There is also a view from all of us, I mentioned before, we need a database that we can see and if someone is struck off in NSW, I use them because they are next door, we know that and they don't come and work in Victoria and elsewhere.  That is mutual recognition their process is the same as ours.  We have all got a stake in making sure that happens.  We are committed to doing that.  States and territories, it is a bit like herding cats.  So far, we are all committed to the same outcome service providers in Victoria are required to be living to the DHHS standards, will we have similar standards in the NDIS.  The framework envisages the framework, it finished consultations in June and July.  It will be a tiered system.  For instance, independent living and those activities, those providers must meet the standards and must be able to show they can meet the standards and will be subject to independent verification, similar to Victoria, where there will be independent auditors appointed and subjected to regular audit of meeting the standards and the code of conduct.  Some of the process about which providers will be in the process, you don't want the one approach for every provider, someone who is providing transport, for instance, might be a different standard than someone providing SIL.  There will be a graduation, but the short answer, similar to Victoria but it will be national standard which I think were built out of the Victorian standards next question.

**QUESTION:** What is the local presence going to be?

**ARTHUR ROGERS:**  I did have my notes, and I meant to mention this.  The national commission's budget was $209 million over four years.  The recent announcement about the head office, which is in western Sydney, somewhere in western Sydney, that is where the office of the national commission will be.  The announcement basically said that office would have 150 staff and about 150 elsewhere in Australia.  So, we have been asking for quite a while and Minister Foley has requested it for a number of times there will be a presence in Victoria.  We haven't quite got that yet but the press release from Minister Porter and Prentice talked about staff being in Australia.  So we are sure there will be a presence in Victoria.  Whether it will be adequate and what they will do is yet to be seen.

We have been strong by saying the roles of the Complaints Commissioner and the Commissioner, you need to be local and accessible and personal.  The minister will advocate to make sure it is an adequate presence in Victoria.  I am sure there will be offices in different places but we need to nail it down in the next few months what supports are being proposed within this framework to assist people who choose to self-manage their arrangement. Not a thorny issue but an issue that had a lot of discussion.  A person in the national framework who chooses to self-manage they don't have to pick a provider from a register provider.  They can pick another provider and so the national - NDIA will work with people about self-management and make judgments who can self-manage.

I think it is important within the framework those people who do choose to self-manage or may be able to are given the supports to do that and the mechanisms to do that.  It is not clear yet what that will be but it is important they do that.  In Victoria, if you self-manage you can do that.  We think that was appropriate.  There is some debate around, for instance, should a self-manager be encouraged or required to go to the work exclusion scheme and make sure someone is not on the scheme? Also, anyone working in this space will be subject to the code of conduct.  They will need some assistance to understand what that is and what they do if someone breaches that code of conduct.  I think the intention is yes, but I haven't seen it detail yet how it will actually work.

**QUESTION:**  Next question.  What good is a code of conduct if it is not enforced consistently across organisations and states?

**ARTHUR ROGERS:**  Not much, I guess is the answer.  But it is a national code of conduct.  And it will be monitored, will, will be regulated and monitored by one body, the national commission.  They will have an investigation and a monitoring and a function.  I am assuming that at least with the national commission you will get consistency because it will be the same body doing that.  But it is going to be important, I think, to empower people to actually say, "This is not good enough, you are not meeting this code of conduct".  You can't do that if someone doesn't know it or feel empowered to speak up.  A number of great things the Victorian commission has done is empower people to speak up.  We have to make sure people are empowered and the means to speak up if something is not right.  And we want to see that continue around it is okay to complain if it is not okay in Victoria and it has changed the culture of services in the state.

**QUESTION:** Perhaps last question? We can keep going.  Will we have to reregister?  If so, what is the process?

**ARTHUR ROGERS:**  At the moment, you have got to be registered in Victoria.  If you are registered in Victoria, the agency will deem you to be registered for the scheme.  Those functions that the agency does now will go to the national commission.  We are working on the basis if someone is registered in Victoria they will be able to migrate to registration in the scheme.  Because we are not quite far along enough in terms of establishing a commission, it is not yet determined, but it is broadly agreed it should be an easy migration from registration here.  It will be subject to the national process but we are aiming to make that migration as simple as we can for providers because you have gone through one set of hoops here, so not to do it again.

**QUESTION:** How important is independence for the future Commissioner? What does independence mean?

**ARTHUR ROGERS:**  Good question.  Thank you for asking that one.  It must be the Dorothy Dixer I put out.  We have a commission that is appointed by parliament and not subject to written direction of a minister.  That is a pretty standard sort of model that applies to statutory roles in Victoria.  The prevailing model in the Commonwealth is not that.  The prevailing model, apart from two or three different statutory bodies, the minister will appoint the Commissioner and be able to give written direction, not about individual cases but written direction.  That is not the model that we think is independent.  To be fair about this, the Commonwealth argue that Victoria needs that because the Victorian government is both a provider and a regulator and a funder and the Commonwealth is not all of those things.

Our view is that that, there are still conflicts between a minister's role, and this is not about a particular minister, this is nothing about the current incumbents at all, it is about the structure of what is independent.  We have got a view on that and the national parliament will sort that out but we think it is important to be seen as independent and act independently and act to fulfil its charter.  So more day-to-day independence would be preferable from our point of view, recognising, to be fair, the Commonwealth system is different.  Trying to be balanced but we have a different view.  At the end of the day, the national parliament will decide what will happen and we will implement it.

**QUESTION:** If there is going to be independent quality audits, what will they be like?

**ARTHUR ROGERS:**  Is there a rule around those? There will be.  There will be a requirement for certain things to get registration you need to be independently verified you meet the standards.  The commission will appoint independent auditors, much like we do now.  I can't imagine they will be totally different to what Victoria has appointed and they will be required to do the audit in compliance with national standards and the code of conduct and probably other things too.  I don't think it will be a lot different in the broad than what the Victorian system is, but the detail is not worked out and there is a lot of detail not worked out with the national processes.

**QUESTION:**  Last question - will there be a nationally recognised scheme like DWES?

**ARTHUR ROGERS:**  That is the worker exclusion scheme.  It won't be a national process.  It will be a state by state or territory, state by state exclusion process.  Hopefully as I mentioned before, it will be the same in every state.  The same people can be screened for the same activities against the criteria and there will be a list that is nationally available.  I am hoping it will be nationally consistent, based on a national database but not a national DWES system but it will cover all people who want to work in registered agencies to the NDIS.  Thanks, everybody.

**(APPLAUSE)**