



Royal Commission
into Violence, Abuse, Neglect and Exploitation
of People with Disability

Executive Summary, Our vision for an inclusive Australia and Recommendations



Final Report

September 2023

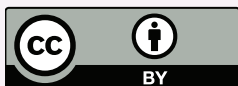
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Final Report

Executive Summary,
Our vision for an
inclusive Australia and
Recommendations

28 September 2023

His Excellency General the Honourable David Hurley AC DSC (Retd)
Governor-General of the Commonwealth of Australia
Government House
CANBERRA ACT 2600

Your Excellency,

In accordance with the letters patent issued on 4 April 2019 and amended on 13 September 2019, 13 May 2021 and 24 June 2021, we have made inquiries and now submit to you the *Final report* of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

We are also submitting this report to their Excellencies the Governors of New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia.

Yours sincerely,



The Honourable Ronald Sackville AO KC



Ms Barbara Bennett PSM



Ms Andrea Jane Mason OAM



The Honourable John Francis Ryan AM



Dr Rhonda Louise Galbally AC



Dr Alastair James McEwin AM

Acknowledgement of Country

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission) acknowledges Australia's First Nations peoples as the Traditional Custodians of the lands, seas and waters of Australia, and pays respect to all First Nations Elders past, present and emerging.

We recognise their care for people and country. In particular, we acknowledge the Traditional Custodians of the lands on which our offices are based: the Gadigal people of the Eora Nation where our Sydney office stands, the Jagera and Turrbal people as Traditional Owners and Custodians of the lands on which the city of Brisbane is located and the Ngunnawal and Ngambri peoples upon whose land the city of Canberra is located.

We pay our respects to all First Nations people with disability and recognise the distinct contributions they make to Australian life and to the outcome of this inquiry.

Acknowledgement of people with disability

The Royal Commission acknowledges people with disability who fought and campaigned long and hard for the establishment of this Royal Commission.

We acknowledge the courage and generosity of people with lived experience of disability who shared their knowledge and experiences of violence, abuse, neglect and exploitation with the Royal Commission. Their contributions to the Royal Commission have been indispensable in framing recommendations designed to achieve a more inclusive society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation.

Content warnings

This report contains information about violence, abuse, neglect and exploitation that may be distressing to readers.

The report contains first-hand accounts of violence, abuse, neglect and exploitation. As a result, some direct quotes in the report may contain language that may be offensive to some people.

First Nations readers should be aware that some information in this report may have been provided by or refer to First Nations people who have passed away.

Table of contents

Chair’s foreword	ix
Path to the Royal Commission.	x
Terms of reference.	x
Scope of the inquiry.	xi
People with disability at the heart of the inquiry.	xi
Human rights.	xii
Intersectionality.	xiii
Commissioners’ views.	xiii
Acknowledgements.	xiii
The future.	xiv
Our vision for an inclusive Australia	1
Introduction.	1
Visions for the future.	1
Adopting a human rights approach.	11
Promoting a more inclusive society.	13
Conclusion.	26
Executive summary	37
Introduction.	37
About the Royal Commission	39
Establishing the Royal Commission.	39
Conducting our inquiry.	40

Nature and extent of violence, abuse, neglect and exploitation.	43
People with disability in Australia	44
Interpersonal violence, abuse, neglect and exploitation	46
Realising the human rights of people with disability.	53
Australia’s international human rights obligations	54
Australia’s implementation of disability rights.	55
Enacting an Australian Disability Rights Act.	57
Strengthening the <i>Disability Discrimination Act</i>	61
Enabling autonomy and access.	67
Autonomy and access of people with disability	67
Accessible information and communications	68
Support for decision-making	70
Improving advocacy and informal supports	75
Overcoming barriers to health care and treatment	77
Reducing and eliminating restrictive practices.	81
Prohibiting non-therapeutic involuntary sterilisation.	86
Inclusive education, employment and housing	89
Achieving inclusive education, employment and housing	89
Achieving inclusive education	95
Achieving inclusive employment	107
Achieving inclusive homes and living.	115
The future of group homes.	120

Criminal justice and people with disability	123
Over-representation in the criminal justice system	124
Criminalisation of disability	124
The right to humane treatment in criminal justice settings	125
Youth detention	126
The rights of people found unfit to be tried	129
Screening, assessing and identifying disability	131
The NDIS and criminal justice	132
Improving data collection	133
Police responses to people with disability	134
Diversion from the criminal justice system	135
Disability and family violence law and policy	137
First Nations people with disability	141
The experiences of First Nations people with disability	141
Disability services	153
Disability service providers	154
NDIS Quality and Safeguards Commission	163
Independent oversight and complaint mechanisms	171
Addressing gaps and barriers	172
Governing for inclusion	177
Strengthening national disability policy and strategy	178
Reforming national disability governance	181

Beyond the Royal Commission	183
Delivering change	184
Building the policy evidence	185
Our impact	186
Recommendations	193
Volume 4, Realising the human rights of people with disability	193
Volume 5, Governing for inclusion	209
Volume 6, Enabling autonomy and access	213
Volume 7, Inclusive education, employment and housing	239
Volume 8, Criminal justice and people with disability	270
Volume 9, First Nations people with disability	279
Volume 10, Disability services	285
Volume 11, Independent oversight and complaint mechanisms	301
Volume 12, Beyond the Royal Commission	309
Glossary	313
Key terms	313
Acronyms and abbreviations	331

Chair's foreword



The Honourable Ronald Sackville AO KC

In the words of our terms of reference, we intend our *Final report* to be the means by which Australia can be transformed into:

a more inclusive society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation.¹

As I recorded in my opening remarks at the Ceremonial Opening Sitting held on 16 September 2019, the Royal Commission is the product of tireless and persistent efforts by disability advocates, who had long recognised people with disability are routinely subjected to violence, abuse, neglect and exploitation.² Completion of our *Final report* therefore marks the culmination of many years of advocacy by people with disability and their representative organisations. Yet completion of the *Final report* also marks the beginning of a new stage in the reform process.

As many people with disability told us – at public hearings, in submissions, private sessions and responses to issues papers, and at community engagements – there is not much point to a lengthy Royal Commission if its recommendations do not lead to transformational change. Advocacy by people with disability and disability representative organisations, so often referred to in this report, will have a crucial role to play in ensuring our recommendations are accepted and implemented, thereby bringing about the far-reaching changes in laws, policies and practices so badly needed.

Path to the Royal Commission

The path to the Royal Commission opened up in the 1970s and 1980s, when disability theorists rejected the medical model of disability in favour of the social model.³ The medical model saw disability as an individual defect to be eliminated, cured, or hidden away.⁴ The social model focuses on the environment in which a person with disability lives.⁵ This model sees people being disabled by social barriers, including discriminatory attitudes, inaccessible physical environments and forms of communication, and failures to provide adjustments needed to enable people with disability to participate in education, workplaces and the wider community.⁶

The emergence of the social model of disability contributed to the enactment of the *Disability Discrimination Act 1992* (Cth),⁷ which renders unlawful direct or indirect discrimination on the ground of disability in defined settings, such as employment, education, the provision of goods and services, and accommodation. At an international level, the social model contributed to the drafting and adoption of the signal achievement of the disability rights movement, the *Convention on the Rights of Persons with Disabilities (CRPD)*, which entered into force on 3 May 2008.⁸ Australia ratified the *CRPD* on 17 July 2008.

The key event leading to this Royal Commission, following repeated calls for a royal commission over many years by disability advocacy groups, was the inquiry conducted by the Senate Community Affairs References Committee (Senate Committee) in 2015, concerning violence, abuse and neglect against people with disability in institutional and residential settings.⁹ The Senate Committee's very first recommendation was to establish a royal commission to inquire into violence against, and abuse and neglect of, people with disability.¹⁰

Three and half years later, the Australian Government supported the establishment of this Royal Commission and engaged in extensive consultations to settle the terms of reference.¹¹ On 5 April 2019, the Prime Minister announced the establishment of the Royal Commission.¹²

Terms of reference

Our terms of reference are lengthy, but as we have pointed out during the life of the Royal Commission, the key features include:

- the very broad scope of the inquiry, which directs us to examine and expose violence against, and abuse, neglect and exploitation of, people with disability in all settings and contexts¹³
- the requirement we examine these issues through the sharing of individual experiences by people with disability, their families and carers¹⁴
- the explicit recognition that Australia has international obligations to promote the human rights of people with disability, including the protection of people with disability from all forms of exploitation, violence and abuse under the *CRPD*¹⁵

-
- the acknowledgement that specific experiences of violence against, and abuse, neglect and exploitation of, people with disability are multi-layered and influenced by experiences associated with gender, gender identity, sexual orientation, intersex status, and ethnic origin or race, including the particular situation of First Nations people and culturally and linguistically diverse people with disability.¹⁶

Scope of the inquiry

The twelve volumes of our *Final report* (including one volume recording anonymised summaries of accounts given by participants in private sessions) cover a very wide range of subjects. They incorporate the conclusions and recommendations we have reached, primarily from evidence given at 32 meticulously planned and conducted public hearings.¹⁷ Our conclusions and recommendations also incorporate what we have learnt from other important sources available to us, such as submissions, responses to issues papers, research projects and private sessions.

The *Final report* contains a total of 222 recommendations. This may seem to be a large number, but it reflects the very many settings and contexts in which violence against, and abuse, neglect and exploitation of, people with disability take place. These settings and contexts are identified throughout the *Final report*, but particularly in Volume 3, *Nature and extent of violence, abuse, neglect and exploitation*. We have identified numerous policy issues that must be addressed by governments, institutions and the community as a whole if the aspirations expressed in the terms of reference are to be achieved.

Compiling the *Final report* and indeed carrying out the Royal Commission's extensive program of public hearings and engagement activities has been a formidable undertaking. It has not been made any easier by the extensive interruptions to our public hearings and other activities associated with the COVID-19 pandemic. That we have completed our work within the allotted time frame¹⁸ is a tribute to all those who have worked so diligently and with such dedication over the life of the Royal Commission.

People with disability at the heart of the inquiry

People with disability have been at the heart of our inquiry. We took very seriously the direction in the terms of reference to consider the need to establish accessible and appropriate arrangements for people with disability and their families and carers to engage with the inquiry, give evidence and share information about their experiences.¹⁹

We adopted a trauma-informed approach to communicating with people with disability who wished to engage with us, whether by giving evidence, making submissions, participating in private sessions or in other ways. We set out to ensure the physical, social, emotional and cultural safety of everyone who wished to recount their experiences. Volume 2, *About the Royal Commission*, explains in more detail the steps we took, including the preparations for and conduct of public hearings.

We made strenuous efforts to contact as many people with disability as possible to inform them of our work and encourage them to tell us about their experiences. These efforts had to counter the COVID-19 restrictions in force for a significant period of the Royal Commission's life. By adapting our practices and making liberal use of technology, we were able to achieve our objectives.

As Volume 2 records, we took evidence at 32 public hearings from 837 witnesses, of whom 209 were people with disability. Commissioners held private sessions with 1,785 participants, 61 per cent of whom were people with disability speaking about their own experiences.²⁰ Of the 7,944 submissions we received in various formats, 55 per cent were from people with disability and a further 29 per cent from family members of people with disability. Despite the disruptions caused by the COVID-19 pandemic, we conducted over 700 community engagements, providing further opportunities for people with disability, their families and supporters to engage with us.²¹

The voices and experiences of people with disability have guided our approach to the policy questions, influenced the subject matter of hearings and informed the conclusions and recommendations in our *Final report*. We are immensely grateful to each and every person who has been prepared to share with us their experiences, aspirations and ideas.

Human rights

In addition to referring to Australia's obligations under the *CRPD*, our terms of reference recognise that people with disability have the right to the full and equal enjoyment of all human rights and fundamental freedoms, including respect for their inherent dignity and individual autonomy. We have been committed to developing and implementing an approach to our work informed by human rights. We have aimed 'to translate human rights into practical and sustainable policies and practices that change the values and standards the community expects to be upheld for people with disability'.²²

We have sought to make good our commitment to a human rights approach, particularly in public hearings (including Public hearing 18, 'The human rights of people with disability and making the *Convention on the Rights of Persons with Disabilities* a reality in Australian law, policies and practices') and in this *Final report*. The recommendations in Volume 4, *Realising the human rights of people with disability*, proposing a national Disability Rights Act and amendments to the *Disability Discrimination Act 1992* (Cth) are of fundamental importance. They address the challenge of translating principles expressed and rights recognised in the *CRPD* into enforceable obligations under Australian domestic law.

As important as the recommendations in Volume 4 are, the human rights of people with disability have informed all our work and underpin a great many of our recommendations. The Australian community's acceptance of, and respect for, the human rights of people with disability are essential elements in realising the aspirations that led to the establishment of the Royal Commission.

Intersectionality

The multi-layered experiences of many people with disability are often described as ‘intersectionality’. Our *Final report* addresses at many points the concept of intersectionality by reference to the experiences of groups specifically mentioned in the terms of reference.

With the guidance of Commissioner Andrea Mason OAM, we have paid particular attention to the multi-layered experiences of First Nations people with disability. Three public hearings were exclusively concerned with issues of great significance to First Nations people with disability.²³ Other public hearings, although not necessarily exclusively concerned with the experiences of First Nations people with disability, gave prominence to those intersectional experiences.²⁴ Volume 9 of our *Final report, First Nations people with disability*, brings together the evidence and information we received demonstrating how First Nations people with disability are especially at risk of violence, abuse, neglect and exploitation.

We examine the diverse experiences of culturally and linguistically diverse people with disability in a number of volumes. Our analysis draws particularly on evidence given at Public hearing 29, ‘The experience of violence against, abuse, neglect and exploitation of people with disability from culturally and linguistically diverse communities’. It also takes account of information provided by people with disability from those communities and organisations representing them.

The analysis in Volume 8, *Criminal justice and people with disability*, addresses the high levels of family, domestic and sexual violence experienced by women and girls with disability, drawing on evidence given at Public hearing 17, ‘The experience of women and girls with disability with a particular focus on family, domestic and sexual violence’, as well as a considerable volume of other material.

Commissioners’ views

Commissioners, after careful consideration, have formed a common appreciation of the policy issues that should be addressed. They agree on the vast majority of recommendations. While the Commissioners’ views differ on a small number of issues, they are unanimous as to the critical measures needed to bring about a more inclusive society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation.

Acknowledgements

A very large number of people have contributed to the work of the Royal Commission. In particular, the staff of the Royal Commission – in the Office of Solicitor Assisting, the Policy, Data and Research Branch and the Engagement and Corporate Branches – have demonstrated great dedication, expertise and resilience in enabling us to fulfil our responsibilities under the terms of reference. The willingness of so many of our staff to work uncomplainingly under the unrelenting pressures of time and high expectations made it possible to achieve what sometimes seemed to be beyond our grasp.

Special mention should be made of the contributions of Ms Neva Frecheville, Ms Mary Ann O’Loughlin AM, Mr Andras Markus, Ms Louise Amundsen, Ms Sally Crawshaw and Ms Emma Appleton. All did a superb job. The Official Secretary, Mr Paul Cronan AM, managed a large and complex organisation with consummate tact, resolve and an abundance of common sense and sound judgment.

We owe a substantial debt of gratitude to Ms Kate Eastman AM SC, Senior Counsel Assisting the Royal Commission. Ms Eastman was the architect of our wide-ranging and powerful program of public hearings. She was also responsible for preparing and conducting the majority of the public hearings. She did so with great skill, thoroughness and careful attention to ensuring witnesses with disability felt safe and supported.

I express our deep appreciation to other counsel who appeared at public hearings. These included Mr Pat Griffin SC, Dr Kerri Mellifont QC,²⁵ Mr Lincoln Crowley QC,²⁶ and Ms Elizabeth Bennett SC, each of whom was responsible for conducting particular hearings.

I wish to acknowledge the very substantial contributions made over four and a half years by my colleagues: Commissioners Barbara Bennett PSM, Rhonda Galbally AC, Andrea Mason OAM, Alastair McEwin AM and the Honourable John Ryan AM. In particular I thank them for their willingness to conduct our program of private sessions, which constituted such an important and in many respects demanding aspect of our work. I also thank them for responding so promptly within the extremely stringent time limits imposed for comments on successive drafts of volumes of the *Final report*.

We are fortunate to have had the benefit of the knowledge and experience of Commissioners Galbally and McEwin, who have been leaders in the disability community for many years and who have long argued for reforms to address the experiences of people with disability of violence, abuse, neglect and exploitation. We are also fortunate to have had the benefit of Commissioner Mason’s understanding of the disadvantages experienced by First Nations people with disability and her commitment to improving their lives.

The future

We have received Letters Patent from all six states, mirroring the terms of reference contained in the Letters Patent issued by the Governor-General.²⁷ While most of our recommendations are directed to the Australian Government, some are directed to states and territories. Others are directed to non-government agencies, such as service providers and professional associations responsible for training of health practitioners.

The Australian Government is primarily responsible for implementing our recommendations, but it is not exclusively responsible. A co-ordinated strategy is required, involving governments and non-government agencies. Indeed the responsibility for reforms is shared by the entire Australian community. Transformational reforms cannot occur without fundamental changes in community attitudes towards people with disability.

Endnotes

- 1 *Letters Patent* (Cth), 4 April 2019, as amended, (c).
- 2 Transcript, Ronald Sackville AO QC (Chair), Public hearing 1, 16 September 2019, P-8 [10–13].
- 3 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Interim report*, October 2020, pp 55, 345.
- 4 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Interim report*, October 2020, p 345.
- 5 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Interim report*, October 2020, p 346.
- 6 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Interim report*, October 2020, p 346.
- 7 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Interim report*, October 2020, p 55.
- 8 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008); Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Interim report*, October 2020, p 346.
- 9 Senate Community Affairs References Committee, Parliament of Australia, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*, November 2015.
- 10 Senate Community Affairs References Committee, Parliament of Australia, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*, November 2015, pp xv, 268 [10.10].
- 11 Department of Social Services, *Consultation report: Terms of reference for a Royal Commission into violence, abuse, neglect and exploitation of people with disability*, 2019, pp 3–4.
- 12 Prime Minister Scott Morrison, *Establishment of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*, media release, Canberra, 5 April 2019.
- 13 *Letters Patent* (Cth), 4 April 2019, as amended, recitals, (a).
- 14 *Letters Patent* (Cth), 4 April 2019, as amended, recitals, (k).
- 15 *Letters Patent* (Cth), 4 April 2019, as amended, recitals.
- 16 *Letters Patent* (Cth), 4 April 2019, as amended, (g).
- 17 The Opening Sitting was followed by 32 public hearings.
- 18 On 13 May 2021, the Australian Government extended the timeframe for the delivery of this *Final report* from 20 April 2022 to 29 September 2023: *Letters Patent* (Cth), 4 April 2019 as amended 13 May 2021.
- 19 See *Letters Patent* (Cth), 4 April 2019, as amended, (k).
- 20 Volume 2 records the number of private sessions held at time of printing for that volume.
- 21 For further information, see Volume 2, *About the Royal Commission*.
- 22 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Interim report*, October 2020, p 343.
- 23 Public hearing 8, ‘The experiences of First Nations people with disability and their families in contact with child protection systems’; Public hearing 16, ‘First Nations children with disability in out-of-home care’; Public hearing 25, ‘The operation of the NDIS for First Nations people with disability in remote and very remote communities’.
- 24 See, for example, Public hearing 27, ‘Conditions in detention in the criminal justice system’.
- 25 Now Justice Mellifont of the Supreme Court of Queensland.
- 26 Now Justice Crowley of the Supreme Court of Queensland.
- 27 *Letters Patent* (NSW), 17 April 2019, as amended; *Letters Patent* (Qld), 27 June 2019, as amended; *Letters Patent* (SA), 20 June 2019, as amended; *Letters Patent* (Tas), 20 May 2019, as amended; *Letters Patent* (Vic), 4 June 2019, as amended; *Letters Patent* (WA), 20 August 2019, as amended.

Our vision for an inclusive Australia

Introduction

In this Royal Commission, people with disability, their families and a range of other people shared their dreams and aspirations for an inclusive Australia. These visions were diverse but rested on a common foundation: a future where people with disability live free from violence, abuse, neglect and exploitation; human rights are protected; and individuals live with dignity, equality and respect, can take risks, and develop and fulfil their potential. We heard about these dreams and aspirations in Public hearings, including Public hearing 31, 'Vision for an inclusive Australia', as well as from submissions, responses to issues papers, private sessions, community engagements and research projects.¹

This vision summarises what we learnt from people with disability, their families and supporters about their hopes for the future. Our public hearings, and the information we gathered from other sources, have necessarily focused on violence, abuse, neglect and exploitation. But people with disability have also told us about positive changes that have made their lives better, and their confidence that together we can shape a society which recognises, empowers and values disability as part of human diversity. They rightly insist an inclusive society is better for everyone.

What follows is a sample of what we have heard from people with disability and their families about their visions for the future, drawing out themes that help us to understand what inclusion is all about. We then explore the foundational significance of a human rights approach to preventing and responding to violence, abuse, neglect and exploitation. Finally, we set out critical aspects of an inclusive society, highlighting the importance of listening to the voices, and recognising the leadership, of people with disability.

Visions for the future

To be safe and have your human rights respected

An inclusive future free from violence, abuse, neglect and exploitation was the central theme of the Royal Commission. Ms Peta Stameil, a woman of short stature, told us:

I would like to simply be able to walk down the street without fear of harassment. I do not know if that will ever be possible, but I hope that there can be changes to laws, in education, and through the media and entertainment that go some way towards allowing people of short stature, and other people with disability, to feel safe in the community. I hope my evidence to this Royal Commission will help with that.²

Ms Natalie Wade is a lawyer with disability. She emphasised the importance of upholding the human rights of people with disability:

there are people with disabilities who are currently facing significant, substantial and grave human rights violations and we must ... afford them with legal protection to ensure that they can bring forward actions against those who violate their human rights.

... my vision for Australia into the future ... is that we have a society that promotes and celebrates disability, that we no longer advise pregnant women that they should have abortions when they receive the news that their child may have a disability, that we don't remove children out of disabled families, one where people with disabilities go to work with everyone else and are paid fairly, where children are educated on an equal basis with others.³

'Gracelyn' lives with a disability, has worked in the disability sector and is the parent of a child with a disability. She dreams of a safe future that respects the human rights of Australians with disability. She told us:

I believe that different is not less than. Any and all Australian citizens inherently deserve to have equal human rights. A right to safety, a right to equal access, to be free from abuse, neglect or exploitation of any type. Whether able bodied, or being a person with disability or being a person with any other health impairment.⁴

Dr Samarra Toby is a General Practitioner and locum emergency doctor in regional and remote areas. Her husband, Mr Massey Ruatara, is a full-time carer for their children Arty and Evelyn. They spoke about their vision for an inclusive Australia and aspirations for Arty, a young First Nations person who lives with cognitive disability, to be independent, safe, creative and happy:

We absolutely would want him to have independence, be able to function, you know, be able to do just normal activities of daily living, as we call them in medicine, so shopping and, you know being able to have safe accommodations. When we leave this earth, we really don't know what will happen with our son. We have a massive family network in our First Nations community [who] will look after him and having other family in the same situation, we are currently planning for what that might look like.

We do worry about Arty's vulnerability. He has been assaulted on a number of occasions and, you know, we can't always be there to be there with him because we will leave this earth one day. And so we just – our vision for him and for, you know, all the other little kids like him is to basically be able to be safe and creative and happy. And some of our most amazing things we have in society come from people with Autism, from music, from lawyers, from the surgeon that operates on that brain tumour.⁵

To have disability treated as part of human diversity

An inclusive Australia is one that treats disability as a part of human diversity and understands disability itself as a diverse category.⁶ Ms Margherita Coppolino is a woman of short stature, a lesbian and a first generation Australian, an advocate, and a disability and intersectionality consultant. She said inclusion occurs when ‘the differences of our bodies and minds is understood, embraced and accommodated and celebrated as being completely normal and part of the human condition’.⁷

Summer Farrelly is a 15-year-old disability advocate. She said:

Inclusion looks different to everybody because we’re all different. Inclusion means that everybody can contribute and participate in society as their authentic self without having to change who they are ... Inclusion means that we don’t look at a person based on the risk factors which exist. We look at a person based on the value they provide and the right they have to be their authentic self autonomously.⁸

‘Ashleigh’, an artist with a brain injury, said Australians need to recognise disability as ‘just another part of being human’:⁹

I would love to be recognised as an artist and member of the community first, and a person with disability second. I would also like the meaningful, significant contributions that all people with disability make to society to be better recognised.¹⁰

‘Priya’ lives with invisible disability, including Myalgic Encephalomyelitis / Chronic Fatigue Syndrome (ME/CFS) and other conditions. She said:

I want everyday Australians to know about people with disabilities that are not visible and that you can be disabled and not use a wheelchair. I want the public to know about the stigma and struggles people with disabilities that are not visible face. I believe that when implemented, Australia offers some of the best support for health and disability in the world. However, we need to do better. As Australians we have the power to be world-class leaders in how we treat our most vulnerable people. Let us rise up to the challenge.¹¹

To live, learn, work, play, create and engage in inclusive communities

A critical element of inclusion is the opportunity and entitlement to equality and for people with disability to live, learn, work, play, create and engage alongside people without disability.¹²

‘Claudia’, a gay woman with physical disability, gave an impassioned plea for a safe and secure future in accessible community housing:

What I really want is to never again feel like an inconvenience, to never have to say sorry for being disabled, to never stick out like a sore thumb because the venue I'm visiting is inaccessible ... I never want to feel jealous – jealous – when another disadvantaged person is lucky enough to get a place of their own. I don't want it to be a competition for scarce resources, a survival of the fittest, where the winners are able-bodied young people who can climb a flight of stairs without needing to rest for an hour, or step over the lip of a bathtub without the risk of face planting onto the tiles.

...

Most of all, I want my little brother to hear this in 20 years and be horrified at all of the things I've mentioned, that the discrimination, and marginalisation and invisibilisation of disabled people just seem like a relic from the past, something that would never happen in contemporary Australia, for abuse and neglect and exploitation and violence to be the exception instead of the rule.¹³

The mother of a girl with Down syndrome told us about her vision for her daughter's inclusion in school. She hoped her daughter would have:

the opportunity to do what all other students are doing ... Education's the start. If we don't include kids in the education system, how can we include them in the community, in the workplace. Kids need to be with their – their peers who are then going to be, you know, their workmates or their university colleagues or TAFE colleagues or apprenticeship colleagues. It's really important that my daughter's known in her community and sits alongside her peers in her community.¹⁴

'Isabel' has an intellectual disability and feels frustrated when others express low expectations about her ability to contribute to the community. Her parents, 'Callie' and 'Dominic', told us they hope for a future where she 'is known and belongs' in the community:

Our vision for our daughter is to have all the typical life experiences as that of her peers or siblings. She continues to inspire and educate us about the richness different perspectives can bring to benefit us all. She has much to contribute but is often condemned by low social expectations. The rites of passage assumed to be typical for most children have to be fought for and pursued on a daily basis ... Diversity in all its forms makes Australia intrinsically rich in skills and culture. We all need to be responsible for building an Inclusive Society.¹⁵

Ms Mary Sayers from Children and Young People with Disability Australia said every school should be inclusive and use principles of universal design in shaping curricula and culture. Ms Sayers emphasised the need for families of children both with and without disability to understand all students do better in inclusive schools. She said we could expect all students to flourish if we provide them with appropriate adjustments and support.¹⁶

Ms Natalie Daoud, Ms Andie Dalziell and Ms Liz Gearing gave evidence about the ‘Just Like You’ program operated by Variety – The Children’s Charity NSW/ACT. The program involves guest speakers with disability visiting primary schools to discuss living with a disability and inclusion with students. They described their vision for a future where schools offer inclusive education to all students:

An inclusive education system provides opportunities for learning, friendship and growth within a diverse society which fosters respect, tolerance, understanding and celebrates diversity.¹⁷

Mr Dylan Alcott AO, 2022 Australian of the Year, told us his vision for an inclusive Australia, where governments and people in positions of power make Australia a safer place for people with disability.¹⁸ He challenged Australia ‘to create and build capacity so that people with disability cannot just survive but thrive in their lives and do whatever they want to do’.¹⁹ Mr Alcott discussed the rights of people with disability to choose financially secure work that creates social networks and gives a sense of meaning and purpose.²⁰ He challenged the unconscious bias of employers who presume people with disability ‘can’t do the role’.²¹ He advocates for a future where workplaces are accessible, provide reasonable supports, and employ people with disability not because they’re disabled, but ‘because they’re good’.²²

Mr Oliver Collins gave evidence on barriers to open employment for people with disability. He sadly passed away in 2021. Mr Collins was a lawyer, had a physical disability and sometimes used a wheelchair. He was also a founding member of the Diverse Abilities Network. In his evidence, Mr Collins shared his vision for a future where people with disability can aim high and achieve ‘more’:

Throughout my life, I have felt that there is a certain pressure that people with disability often grow up with in that we are not supposed to aim for the same things ... In order for this to get better, people’s attitudes towards disability need to start modifying so that people with disability won’t always hear ‘no’ – they will hear ‘yes’ or ‘yes, let’s just do it a bit differently’. This will hopefully happen if more people with disability are encouraged to enter the workforce, in whatever capacity they can. As a consequence, there might be more positive stories around and so:

- more people with disability may find that it is possible for them to aim higher and achieve more, with the right attitude; and
- more potential employers of people with disabilities will see the unique and valuable contribution that employees with disabilities can bring to a workforce.²³

Mr Ian Waller is a person with epilepsy who is legally blind and has a guide dog. He told us:

My greatest hope is for a world where people with disability can be treated equally. For me this would mean that I would hear people in my government speaking respectfully about people with disability; I would see people with disability being represented in workplaces, in government, in the NDIS, in all of society; I would feel a part of conversations with people in the community, instead of hearing people talk to my support workers and behaving as if I am invisible; and I would have easy and respectful access to the supports I need that would allow me to participate in, and contribute to, my community in a meaningful way.²⁴

A foster father of two children with fetal alcohol spectrum disorder said his family has experienced the sadness, disappointment and frustration of being excluded from community events. Yet they have also experienced the joy of inclusion. He is 'amazed by the positivity, enjoyment and satisfaction others have been able to derive from the success of inclusion'.²⁵ He emphasised the importance of the presence of people with disability in the community. He also said inclusive education is key to addressing negative attitudes and a lack of understanding about disability.²⁶

Ms Julia Hales is an actor, writer, advocate and woman with Down syndrome. Ms Hales encouraged Australians to open their mind to accept people with disabilities and engage with them in the community.²⁷

To be empowered to have choices and independence

Another key theme in the vision for an inclusive Australia was about people with disability having the support they need to exercise choice and maximise their independence. Inclusion empowers people with disability to be actively involved in and make the decisions that impact them.

Evie Atkins, a student of Bus Stop Films' Accessible Film Studies Program, said their vision is for a future without barriers that prevent people with disability accessing their needs and wants.²⁸ They said:

despite that fact I'm 20, I still feel like a kid. So ... my vision for an inclusive Australia would be basically like a kid ... at a carnival where there's so many options to choose from, like rides and, like, food and stuff, and just simply just going up there, like, doing a simple little process by, like, giving out a ticket and simple, and then – and then getting the experience.²⁹

Historically, families and social systems have afforded people with disability little opportunity to choose the course of their own lives and take risks.³⁰ Today, social and legal systems often continue to perceive people with disability as unable to make decisions and as needing protection from violence, abuse, neglect and exploitation.³¹ The concept of dignity of risk means giving people the right and dignity to take risks they consider reasonable.³² Like everyone else,

people with disability need the opportunity to develop decision-making skills, including the chance to make mistakes and learn from them.³³

Mr John O'Donnell is a proud gender-fluid gay Aboriginal man from the Winda-Mara community with cerebral palsy and an intellectual disability. He gave evidence about parental and state trustee control over his life while under an administration order.³⁴ In describing his vision for the future, he said:

I've lived so much of my life with other people making decisions for me and without any say in those decisions. I would love the opportunity to be more independent and make my own decisions, both big and small.³⁵

Mr O'Donnell hopes for a future where he and others with disability can choose who their friends are, who they have relationships with, where they live and how they spend their money.³⁶

Choice and independence hinge on access to necessary supports and reasonable accommodations, such as interpreters and information in Easy English and languages other than English. Mr O'Donnell also told us people with disability should be supported to build on their skills to become more independent.³⁷

Ms Sherrie Beaver from Expression Australia said she believes an inclusive Australia is one in which Deaf and hard of hearing people, including those who identify as LGBTIQ+, have access to the same information at the same time in both Auslan and English. Accessible information empowers Deaf and hard-of-hearing people to make informed choices.³⁸

We heard that parents and service providers can be risk averse when it comes to the sexuality and intimate relationships of people with intellectual and other disabilities.³⁹ People with disability are capable of, and have a right to, positive sexual experiences. 'Sophie' is a woman with cerebral palsy and left-sided hemiplegia. She gave evidence about restrictions on her choices about dating and sexual relationships while living in a group home. She told us that in the future:

I would love to be able to have people around to my house without having to think or worry about it. And maybe one day my boyfriend and I can live together. I will think about having kids if I meet the right person.⁴⁰

Choice and independence are not only about individual decision-making. They also involve the contribution and leadership of people with disability to the systems and settings that shape their lives.

Ms Coppolino and Dr Paul Harpur, a person with disability and Associate Professor at the T.C. Beirne School of Law, University of Queensland, emphasised the importance of having people with disability in leadership roles and involved in decision-making on boards, in organisations and in all levels of government.⁴¹

Similarly, Ms Mary O’Hagan, Executive Director of the Lived Experience Branch in the Victorian Department of Health, spoke of the importance of people with disability being leaders in their own lives and active agents at all levels of service, agency and bureaucracy.⁴²

The consequences of the loss of choice and control are particularly apparent for First Nations people with disability. Ms Catherine Liddle is the CEO of the Secretariat of National Aboriginal and Islander Child Care (SNAICC). Speaking about First Nations people with disability in out-of-home care, Ms Liddle told us that a key principle for inclusion:

revolves around ensuring that Aboriginal and Torres Strait Islander people and organisations participate in and have control over the decisions that affect their children. That is really critical because it is something that we hear right across the nation, that a lot of decisions are made for our families and for our children without us even being in the room.⁴³

To belong and be respected, valued and able to contribute

People with disability often confront dehumanising attitudes and are treated as ‘different’, ‘other’ and ‘less than’.⁴⁴ Low expectations about what people with disability can do and achieve also shape their experiences in schools, workplaces, the community and other settings. An overarching theme of the evidence and submissions to the Royal Commission is that an inclusive Australia is one where people with disability know that they belong and are respected, valued and able to contribute.

Ricki Spencer, a transgender and First Nations woman with disability, told us:

I would love to be able to leave my home one day without fear of attack or abuse ...

Ultimately, I would love to live in a society where everyone is safe, heard, seen and given a seat at the table. I hope one day that Australian society can grow to understand that our community is made up of all sorts of people. Further, that this understanding leads to a greater degree of respect being given to people who might fall outside of what is considered ‘normal’.⁴⁵

Many contributors to the Royal Commission emphasised the importance of visibility and public representation for enhancing respect and inclusion. For example, Ms Fiona Strahan, a woman of short stature, told us:

Based on all my experiences, as a woman of short stature and as a person who has worked with and got to know many people with disability, I believe that a major factor which contributes to violence and abuse against people with disability is that we do not have sustained, positive public visibility, meaning that our visibility isn’t everywhere, in ordinary and skilled ways ... Increased visibility of people with disability in film, television and in the media is also especially important.⁴⁶

People with disability can feel isolated and excluded when they are not represented appropriately in the media, entertainment and public life. For example, Ms Hales told us that when she was a child watching *Home and Away*, she wondered why no one looked like her.⁴⁷ As an actor and writer, Ms Hales wants to continue to hear and share the stories of other people with disability through her work.⁴⁸

Ms Chloé Hayden is autistic and a disability advocate, motivational speaker, actor, performer, author, influencer and content creator. Her vision for an inclusive Australia is one where we see people with disability in all aspects of society. This visibility includes roles within film and television where disability is not the central or focal part of a character.⁴⁹

Ms Breanna Rae, a student of Bus Stop Films' Accessible Film Studies Program, said her vision for an inclusive Australia 'is disabled people being represented and learning more'.⁵⁰ She wants to be represented in the media along with all her friends, who include First Nations autistic people and transgender autistic people. Ms Rae said it is vital we see people with disability from all walks of life on screen and behind the camera, in roles such as directing and writing. She spoke about the power of representation to change negative attitudes to disability:

We are sitting on top of a gold mine of enriching stories that can change perspectives, and we're scraping away at it with a tooth pick, and there's so much to [be] done.⁵¹

As CEO of Bus Stop Films, Ms Tracey Corbin-Matchett also described her vision of an inclusive Australia as one where we see more people with disability in front of and behind the camera.⁵² Ms Corbin-Matchett has bilateral sensorineural hearing loss, Spina Bifida Occulta and scoliosis. She said there ought to be an understanding that disability is just another way of being. This would prevent people with disability needing to explain their support needs and fight for access and inclusion.⁵³ In her view, an inclusive future is one where 'people with disability will have the rights, capacities and experiences of everyone in the community'.⁵⁴

Respect and inclusion depend on shaping a society where people belong and can contribute. Speak Out Advocacy Tasmania, an advocacy service for people with intellectual and cognitive disability, told us what inclusion means to its members:

Inclusion is

Feeling accepted

Being respected

Being heard in different situations

Having a voice

When you are included

People care about you

You belong

You are wanted

You fit in

You are a part of decisions that are about YOU

Your rights and choices are respected

You feel Empowered

You are safe and feel safe

When the community is inclusive

It is not us and them

We live in the community

We work in the community

We are the community.⁵⁵

Speak Out Tasmania's reference to belonging was a common thread in contributions to the Royal Commission about inclusion. Participants in a research project we commissioned told researchers that belonging and empowerment go together: 'A big thing in belonging is feeling like you've got a voice. Because if you're not heard how can you feel like you belong or are accepted or valued?'⁵⁶

To be culturally safe

Cultural safety is a key theme for the development of an inclusive Australia. It is especially important for First Nations people with disability.⁵⁷

Dr Scott Avery describes the whole-of-life view of disability taken by First Nations communities. It is a view that incorporates the centrality of family, community and connectedness through culture.⁵⁸ He describes this as a 'culture of inclusion', which mitigates the impacts of intersectional inequality.

Ms Cheryl Axleby said cultural safety has many facets. While there is no definitive list, they include:

feeling heard, believed and understood, including in your own language; feeling confident to share your story; being able to seek service without fear of mistreatment, repercussions or misunderstanding of cultural needs; not having to defend your experience of systemic or cultural barriers or discrimination.⁵⁹

Ms Catherine Liddle described the significance of culture and cultural safety for First Nations people with disability to thrive:

So that's our right to our communities, our right to be ... proud of who we are, and a reminder that it is an awesome culture to belong to, and one that has incredible features that enable our families and our children to be strong and proud.⁶⁰

Ms Kathleen O'Kelly-Kennedy and Ms Nikaiya Payne gave evidence about Red Dust Heelers. This grassroots community engagement program supports First Nations communities to increase the participation of young people with disability in sports. The Red Dust Heelers' vision is for all Australians to understand and value First Nations cultures, and for First Nations people with disability to feel they belong in their communities and have access to cultural experiences, education, employment and business.⁶¹

Ms Payne, a First Nations woman from Kakadu and Arnhem Land, who lives with a disability, said her vision for an inclusive Australia is 'we're all treated the same, like despite having a disability, your colour, race, whatever, all the same'.⁶²

Ms O'Kelly-Kennedy is a Paralympian whose vision is to 'see more people feeling like they belong'.⁶³ Ms O'Kelly-Kennedy believes inclusion 'must consider the intersection of many impacts of marginalisation such as cultural background, gender, disability and socio-economic disadvantage'.⁶⁴

The significance of cultural safety for inclusion extends to people with disability from culturally and linguistically diverse backgrounds. 'Trevor' is a gay disabled man with Hong Kong heritage. He described his feelings of separateness and isolation that came from being bullied at school.⁶⁵ Trevor emphasised how it was important for him to belong to a community where he feels accepted for who he is.⁶⁶ Describing his hopes for the future, he said:

I'm a person of-colour who has grown up in a white-dominated society; I'm a person with a disability growing up in an ableist world; I'm a same-sex attracted person who lives in a heteronormative world. I'm also from a low socio-economic background. For me, it has been really important to find my people who accept all the parts of my multi-dimensional identity.⁶⁷

Adopting a human rights approach

The Royal Commission has used a human rights approach in all our work. We emphasise the rights recognised by the *Convention on the Rights of Persons with Disabilities (CRPD)*, ratified by Australia in 2008.⁶⁸ The *CRPD* articulates rights, values and standards that should inform and guide our laws and policies to support the equal treatment of people with disability with others. This *Final report* seeks to translate these human rights into practical and sustainable policies that promote the rights of people with disability to live free from violence, abuse, neglect and exploitation.

Ms Catalina Devandas Aguilar, the former United Nations Special Rapporteur on the rights of persons with disabilities, said:

we need to look deeply at the *Convention on the Rights of Persons with Disabilities*. The Convention brings a complete paradigm shift in the way in which we should address the rights of persons with disabilities, the needs of persons with disabilities. We need to make sure that whatever is being done at the level of public policy, it is done under a human rights framework. That is the only way in which the efforts are going to be sustainable, the efforts are going to be adequate and, more importantly, the efforts are not going to discriminate against persons with disabilities.⁶⁹

The United Nations Special Rapporteur at the time of Public hearing 31, Mr Gerard Quinn, gave evidence that the goal of realising human rights and inclusion is ‘a defining theme of the entire UN *CRPD*. Every right, every obligation, is attuned to the achievement of inclusion’.⁷⁰

The *CRPD*, diversity, personhood and choice

Disability is part of human diversity. Mr Quinn explained the *CRPD* reframes how we think of disability ‘away from excluding someone who does not conform to the norm’ to a society that enables the participation of every person and respect all aspects of their diversity.⁷¹ He said the *CRPD* opens a ‘new default’ way of thinking and behaving. Rather than excluding and alienating people who are disabled and different, it emphasises ‘what we hope and expect from each other, from every citizen, and to get the best from every citizen and to give the best opportunities to every citizen’.⁷²

Mr Quinn stressed the *CRPD* outlines ‘a form of inclusion that takes personhood and choice seriously’.⁷³ This rejects negative and dehumanising attitudes about disability that drive violence, abuse, neglect and exploitation. To emphasise personhood is also to elevate the right and capacity of people with disability to exercise autonomy and choose how they wish to live. It changes the way we approach disability services, which should be less about maintenance, care and protection, and more about ‘autonomy, voice, choice and control – social inclusion’.⁷⁴

Mr Quinn described articles 12 and 19 as ‘bedrock provisions’ of the *CRPD*.⁷⁵ Article 12 is the right to equal recognition before the law, in which people with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.⁷⁶ Article 19 is the equal right of all persons with disabilities to full inclusion and participation in the community.⁷⁷

The *CRPD* and equality

As reflected in the *CRPD*, people with disability have the right to be treated equally to people without disability. To think about equality from a human rights-based approach is to ask, what does a person need to live a life of dignity and respect and achieve inclusion?

Sometimes equality means treating everybody the same way, regardless of their different characteristics, backgrounds and needs.⁷⁸ While ‘equality as sameness’ (or formal equality) may be fair for people with similar characteristics and opportunities, it can result in unequal outcomes for people with disability. Mr Quinn said ‘equality as sameness’ has been used to defend, and even demand, the separate, segregated and discriminatory treatment of people who are different.⁷⁹

The concept of substantive equality appreciates some people may need different treatment to achieve equitable outcomes and protect their human rights. This approach is central to the *CRPD*. Substantive equality openly acknowledges and positively values human difference and takes steps to accommodate it.⁸⁰ It might entail changes to support and empower people in particular circumstances, places and times through the provision of adjustments and supports.

Inclusive equality, another approach developed through the *CRPD*, looks to reshape the way society is structured to ensure people with disability are included and treated with dignity and respect. Rather than focus on the individual, inclusive equality requires major transformation of institutions, organisations and governments. In addition to individual adjustments and supports, inclusive equality seeks widespread social change to address the ‘multi-dimensional disadvantage’ experienced by many people with disability.⁸¹

Critically, inclusive equality cannot be achieved by ‘fixing people with disability’ or forcing a person with disability to accept inaccessible and inadequate environments or services. Further, people with disability should not have to bear the onus of proving or persuading the community, institutions, organisations and governments to include them.⁸²

When people with disability and advocates must ‘make the case’ over and over again for equality – to be included, to have support, to have adjustments, to be accepted as rights holders – it raises the question of whether all Australians are listening and understanding what inclusion and equality mean.

Promoting a more inclusive society

The social transformation needed to make Australia truly inclusive requires us to take account of the history of exclusion that has shaped the settings, systems and daily lives of people with disability through to today. In *Disability in Australia: Shadows, struggles and successes*, Associate Professor Lorna Hallahan traced the history of people with disability, particularly the history of excluding and segregating people with disability from the broader community.⁸³ While noting Australia has undergone changes, Professor Hallahan says too many Australians still experience exclusion and segregation:

People with disability and their close allies can rightly ask of their fellow Australians: do you truly value us as members of this society? The record of exclusion, discrimination and maltreatment, evident across time and into the present, suggests that this question cannot receive an unequivocal 'yes'. Until that time, the history reliably informs us, the struggle for recognition, rights and decent, valued lives by those with disability and their close allies will confront the long exclusionary shadow and its contemporary manifestations.⁸⁴

An inclusive society engages in a continuous process of relationship building, inquiry, consultation, action and re-evaluation to realise the vision of inclusion. As Mr Quinn said, the path to inclusive equality is based on:

stock-taking of where things are at, a clear statement of the end-goals and an understanding of the means, tools, timelines and resources needed to move the dial and an institutional architecture designed to oversee the change.⁸⁵

Working together towards inclusion

Inclusion involves social transformation that enables people with disability to live, learn, work, play, create and engage alongside people without disability. In this respect, as Mr Quinn said, 'there is no room for a segregationist ethic'.⁸⁶ While all Commissioners share this sentiment, they have reached different conclusions on the way in which contemporary Australia realises an inclusive society for people with disability. This is discussed further below.

Inclusion should be everyone's business. Mr Alcott said Australia has demonstrated a 'real thirst' to listen to people with disability and make important social changes, such as implementing the National Disability Insurance Scheme (NDIS).⁸⁷ But while we have made a good start, Mr Alcott said, 'it's time for corporate Australia, government, education departments, big employers, health ... to really commit and invest in getting better'.⁸⁸ He said it is time for people in power 'to really get cracking' and build a safe and inclusive society so 'people with disability cannot just survive but thrive in their lives and do whatever they want to do'.⁸⁹

People with disability told us they have had to become advocates for themselves and others. In multiple forums and situations (including this Royal Commission), they put themselves in the public domain, sharing their personal experiences, to teach, persuade or prove that Australia needs to change to include people with disability.⁹⁰

Advocacy for inclusion can be explicit and implicit. Ms Chloé Hayden told us people with disability are engaging in advocacy when they are in roles or doing things that challenge society's expectations or understanding of disability.⁹¹

It is also crucial that people with disability are empowered to speak publicly about their experiences and perspectives. Responding to evidence from another witness with disability who said she had felt silenced, Evie said that it is 'very, very, very, very, very important' for the community to empower people with autism and other disabilities to speak up.⁹² Evie said when they speak up, they feel like they matter and their views are heard and taken seriously.⁹³

The responsibility to speak up and advocate for change can be tiring. Ms Hayden spoke about advocacy fatigue and the challenge of fighting for change.⁹⁴ People with disability need everyone in Australia to take a more proactive and systemic approach to realising an inclusive society.

Promoting disability leadership

'Nothing About Us Without Us' is the rallying cry of the disability rights movement. It critiques a welfare-based approach to services that treat people with disability as passive and incapable. The welfare approach makes people dependent and vulnerable to the power of others.⁹⁵ The insistence by people with disability that governments and organisations should do 'nothing about us without us' highlights the importance of their inclusion in every aspect of political, social, economic and cultural life.⁹⁶

This was a repeated theme in our public hearings: governments, disability service providers, businesses and community organisations often ignore the expertise of people with disability.⁹⁷ Organisations often assume people with disability do not have leadership capacity, knowledge and skills.⁹⁸ Ms Christina Ryan, CEO of the Disability Leadership Institute, said:

Disabled people have simply not been considered as leaders. We seem to have been left by the wayside when it comes to being considered as people who are able to do leadership.⁹⁹

Ms Ryan observed there are 'very few openly disabled people in positions of leadership, decision-making [and] positions of authority':¹⁰⁰

we only have ... four openly disabled parliamentarians. Most disability service providers ... have few or no disabled people on their boards. These are people in multi-million dollar industries, servicing disabled people, yet they have no one in the boardroom or in the decision-making management teams who are disabled. It's just incredible.¹⁰¹

Ms Angel Dixon OAM, a disability advocate, reminded us 'leadership is a skill [that] not just people in power have'.¹⁰² While the expertise of people with disability is often unrecognised, their leadership can influence all levels of an organisation. Ms Dixon said anyone can be a leader and focused on the importance of people with disability leading 'initiatives and organisations and content and research and anything about us'.¹⁰³ She promoted self-determination and co-design as integral to this process.¹⁰⁴

First Nations people with disability told us about the importance of self-determination, cultural safety and disability expertise in delivering services to First Nations people with disability.¹⁰⁵ Similarly, the best way to design safe and effective services for all people with disability is to provide them with the skills, levers and power needed to determine their own future. We have heard that it is critical to empower people with disability to take up leadership positions, especially in disability services, placing decision-making in the hands of people most affected by the decision.¹⁰⁶

The experiences of people with disability differ based on type of impairment, age, sex, gender, sexual orientation, intersex status, race and ethnicity, and First Nations status. It is critical to recognise the lived expertise of people often excluded from power and decision-making processes.¹⁰⁷

For example, we heard many disability service providers do not include people with intellectual disability in their governance and leadership structures.¹⁰⁸ This failure means governing bodies lack vital insights and perspectives from people with disability. The leadership of people with disability would not alone eliminate violence, abuse, neglect and exploitation. But it can focus attention on ‘ensuring that the needs of clients are being met to the highest standards’.¹⁰⁹

Promoting co-design and co-production

Co-design is the term used to describe the sharing of decision-making power and responsibility.¹¹⁰ A true co-design process involves partnering with people with disability and a commitment to sharing systems of power.¹¹¹ Embedding this approach requires a shift in the mindset of decision-makers and governments.¹¹² A co-design process involves partnering and collaborating with people with disability and, where relevant, family members and support workers. It draws especially on the active involvement of representative organisations of people with disability.¹¹³ Co-design includes each aspect of the design of services, systems, policies, laws and research, and entails developing proposed approaches and alternatives and identifying preferred solutions.¹¹⁴

Co-production is a related term where people with lived experience have the power to influence recommendations and design, and are part of delivery and evaluation.¹¹⁵ In co-design and co-production, people with lived expertise strongly influence and ideally share decision-making and leadership roles in implementation.¹¹⁶

Principles of co-design and co-production can occur on smaller and larger scales. In the context of health care, we heard about the value of collaborative care planning between a person with cognitive disability, their support persons and medical practitioners.¹¹⁷ This enables the person with disability and their family and support persons to be ‘active partners’, to ‘think outside the square’, and exercise greater choice and control over their care and treatment.¹¹⁸ This reflects the principle of subsidiarity, a well-known concept in governance. This principle says decision-making authority should rest at the closest level possible to the people or organisations the decision or action is designed to serve.¹¹⁹

The Victorian Government has applied co-design principles in response to the Royal Commission into Victoria’s Mental Health System.¹²⁰ Reforms included reshaping Victoria’s mental health and well-being system so that people with lived experience of mental illness or psychological distress are central to its design and delivery.¹²¹

Addressing ableism

What is ableism?

People with disability encounter negative attitudes and behaviours throughout their lives. Ableism is the word most commonly used to describe attitudes that motivate harmful or discriminatory behaviour toward people with disability.¹²² Like sexism and racism, ableism is a broad term.¹²³ It is used to describe the experience of people with disability of segregation, isolation, discrimination, prejudice, systemic bias and oppression. Ableism is more than just negative and prejudiced attitudes about people with disability. It occurs when prejudice is accompanied by the power to discriminate against, repress or limit the rights of others.¹²⁴

Ableism identifies attitudes and behaviours that class people with disability as different, less than or inferior to people without disability, incapable of exercising choice and control, and a burden on society.¹²⁵ Thus, while there are multiple complex causes behind the violence, abuse, neglect and exploitation experienced by people with disability, ableism is a fundamental driver.¹²⁶

Ableism and the medical model of disability

Ableist attitudes toward disability are deeply connected to cultural beliefs and practices that see disability as a deficit or departure from a 'norm' or as a health or medical problem requiring treatment or cure. This is commonly referred to as the 'medical model' of disability. The medical model continues to influence how Australia responds to people with disability, particularly seeing people with disability as vulnerable, in need of protection, or different.¹²⁷

In Public hearing 31, Mr Quinn addressed the medical model of disability and its origins:

The medical mission ... is, at its heart, profoundly humane. It is all about measuring deviations from a norm (how our species typically function) and intervening to 'fix' the deviation. The sins of the medical model in the purely medical field were bad enough especially as they were overlaid on top of massive power imbalances. But the real sin of the 'medical model' was the export of these default positions (disability as deviation from a norm, a focus on 'fixing' the person and a resulting objectification of the person) to a wide array of unrelated policy areas such as employment, education, housing, social support, etc. While this wasn't directly the 'fault' of the medical profession, it encoded a similar default position in these outlying policy domains.

Impairment thus defined the person – not the other way around. And our lifeworld (employment, education, transport, etc.) was designed to admit those who conformed most to 'species typical functioning.' The default for others was to be excluded or segregated. And any resulting exclusion or segregation could then be framed as a 'natural outcome' of the reality of the disability – just something that followed ineluctably from your own condition. A very subtle way of 'problematizing' the person.¹²⁸

Mr Quinn told us that under the medical model, traditional concepts of formal equality and ableism together cement the ‘naturalness’ of the exclusion and segregation of people with disability.¹²⁹

The social model of disability is the response to, and rejection of, the medical model. The social model rejects the assumption people with disability are a problem to be fixed or excluded. It insists that the problem is the environments and circumstances in which people find themselves.¹³⁰

As Mr Quinn explained, the social model does not mean impairment is irrelevant – but it is not the primary thing that defines a person with disability. It also means impairment should not define the ‘posture of public policy’.¹³¹ That is, impairment does not justify policies that exclude, segregate and normalise poor life outcomes for people with disability. Mr Quinn suggested asking, ‘how do we create space for you to flourish as a human being and to give back to your community as a human being?’¹³²

Seventeen-year-old Issy Orosz, who identifies as disabled and queer, said:

Inclusion goes hand-in-hand with the social model of disability. If the world understood the social model of disability, which essentially says, I’m not disabled because of my conditions, I’m disabled because the world doesn’t give me the supports that I need, and said, okay, we are going to provide the supports that people need, then it would be inclusion by default.¹³³

While the social model of disability rightly shifts attention away from the individual ‘problem’ of impairment to the problem created by society, it provides little detail on what change is needed to laws and policies to realise inclusion. A human rights approach, which is informed by the social model, provides a ‘roadmap for social transformation’.¹³⁴ This human rights model of disability pushes States Parties to the *CRPD*, such as Australia, toward inclusive equality, by identifying the key structural, legal and policy changes needed.¹³⁵

The impact of ableism

Ableism influences how individuals, communities and society view, value and treat people with disability, including:¹³⁶

- the internalised beliefs a person holds about themselves or others
- in interpersonal relationships and the treatment of people with disability with whom we live, socialise and engage
- the social and cultural norms that implicitly or explicitly condone ableism
- institutional or organisational policies and practices that exclude people with disability from particular settings, such as schools or workplaces
- political and legal structures, the delivery of government services, laws and regulation, design of buildings, products, transport and public infrastructure, and access to public places and technology.

To promote a more inclusive society, Australia must address ableism across all levels.

Australia also needs to acknowledge people with disability are not a homogenous group. We have addressed the concept of ‘intersectionality’ in our work. We recognise intersectional experiences as the complex, cumulative ways multiple forms of discrimination and oppression are experienced by people with disability based on their gender, sex, race, ethnicity, religion, age, LGBTIQ+ status, or other identities.¹³⁷

We heard how women and girls with disability, particularly those who are First Nations, can experience ‘a complete lack of respect ... recognition of who they are ... their inherent worth and what they bring to society’.¹³⁸

A lack of awareness of the human rights of people with disability can also feed in to negative attitudes toward disability. In April 2020, we released an issues paper on rights and attitudes to:

understand what laws, policies, practices and supports are needed to reduce the risk of violence, abuse, neglect and exploitation. A lack of rights awareness among people, organisations and governments and negative attitudes can shape laws, policies and practices that stigmatise and discriminate against people with disability. We want to understand how better rights awareness and positive attitudes towards people with disability can influence laws, policies and practices that reduce risk of exposure to violence, abuse, neglect and exploitation, and lead to more inclusive societies.¹³⁹

Responses to the issues paper made it clear few organisations know, understand or enforce disability rights and relevant laws, or appreciate how ableism impacts behaviours and systems. This lack of rights awareness reinforces ableism and exposes people with disability to increased risk of discrimination, exclusion, isolation and violence, abuse, neglect and exploitation.¹⁴⁰ Even disability service providers can lack rights awareness and a human rights-based understanding of disability.¹⁴¹ Leaders, managers and staff working in service providers may fail to grasp the complexity of issues facing people with disability, especially those from First Nations communities and those with other intersectional identities.¹⁴² People with disability may lack an understanding of their own rights. They usually have a strong desire to know how and where to report on the violence, abuse, neglect and exploitation that they have experienced.¹⁴³

Ableism may also cause, permit or be used to justify treatment that drives violence against, and abuse, neglect or exploitation of, people with disability. Some ableist behaviours are deliberate and intended to exclude, demean or abuse people with disability. Ms Carly Findlay OAM is a writer, public speaker and activist born with a rare skin condition called Ichthyosis. Ms Findlay told us that when she is out in public strangers stare at her.¹⁴⁴ Some people ridicule, demean, taunt and laugh at her.¹⁴⁵ Ms Findlay gave a detailed account of online threats and insults targeting her appearance.¹⁴⁶ Strangers who are often anonymous post comments about her on articles, images and videos, social media platforms, discussion forums and other websites.¹⁴⁷ For example, in 2017, a man tagged Ms Findlay on Twitter, saying ‘Jesus Christ what happened to your face?’ He then sent her an image of someone with a gun to their head with the comment ‘How to cure it really fast’.¹⁴⁸ The abusive comments she receives are often graphic and sexualised.¹⁴⁹

Some behaviours may not be intentionally ableist but lack awareness of the impact on the person with disability. Some treatment may mean to protect a person with disability but has the consequence of denying a person's choice and control, dignity of risk and autonomy.¹⁵⁰ Examples include restrictions on the relational, sexual and reproductive freedoms of people with disability supposedly intended to keep them 'safe' but which diminish their human dignity.¹⁵¹

Changing negative attitudes toward disability

The *CRPD* includes an obligation to raise awareness and combat negative attitudes towards disability through:¹⁵²

- initiating and maintaining effective public awareness campaigns designed to respect the rights and increase positive perception, awareness and skills of all people with disability
- fostering an attitude of respect for the rights of people with disability at all levels of the education system
- encouraging the participation and positive portrayal of people with disability in the media
- promoting awareness-training programmes about the rights of people with disability.

Research we commissioned by the Social Policy Research Centre at the University of New South Wales on *Changing community attitudes to improve inclusion of people with disability* identified two approaches to changing attitudes:¹⁵³

- directly targeting attitude change
- seeking to change behaviour, with attitude change as a secondary outcome.

The research identified five facilitators of attitudinal change:¹⁵⁴

1. the active presence of diverse people with disability across all life domains, such as inclusive schooling, employment and communities
2. leadership by people with disability at the centre, and leadership by organisations and government that highlights the diverse contribution of people with disability
3. targeting multiple levels and multiple types of policy and intervention in a holistic approach to system change
4. long-term approaches with adequate resourcing
5. measuring, monitoring and research to inform decision-making and accountability.

The research suggested the most important interventions are those that create visibility of people with disability and contact between people with and without disability.¹⁵⁵ Seeing people with disability in day-to-day environments can challenge expectations of where people with disability belong. This can 'debunk' prejudices, prompting reflection and challenging the underlying feelings and beliefs. Over time, non-disabled people change their expectations of people with disability, reducing their negative attitudes and behaviours.¹⁵⁶ Ms O'Kelly-Kennedy, Paralympian and co-founder of Red Dust Heelers, told us:

Community attitudes can and do change when there is greater understanding about disability itself, real relationships on-the-ground, and a focus on possibility and opportunity as opposed to deficit or ‘problem’. The challenge is to do this while not ignoring the realities of the barriers and challenges that can be faced by people with disability.¹⁵⁷

Promoting pride, belonging and connection

Disability pride

People with disability can internalise ableism. Several witnesses at public hearings spoke about the importance of how they perceived themselves. They told us learning to be proud of themselves and the disability community helped dissolve feelings of shame, enabled them to live authentically and led to a sense of belonging and inclusion.¹⁵⁸

Ms Chloé Hayden described the impact of her diagnosis of autism at the age of 13 on her sense of self. She and her family were fearful when she received her diagnosis. She said when she ‘googled’ autism, there was not one positive story about autism on the internet. Ms Hayden said autism was consistently represented as something wrong with the person that should be cured if it could be. She criticised the way characters in films such as *Rain Man* and *What’s Eating Gilbert Grape*, as well as Sheldon Cooper (a character in the television show *The Big Bang Theory*), reinforce negative stereotypes about autism.¹⁵⁹

Ms Hayden said her disability is now something she celebrates as an integral part of her identity. If she had a genie who would grant her wishes, she would not ask for her autism to be taken away.¹⁶⁰ Ms Hayden said:

Disability pride and pride in who you are is so important. And it is so important that young people grow up seeing themselves as disabled and not wishing that they could change, but simply existing and understanding that they are supposed to exist.¹⁶¹

Mr Alcott described how he used to hate himself and hate his disability, but is now a proud person with disability. He said disability pride can give people the opportunity to be themselves across different areas of their lives such as education, employment and their social relationships.¹⁶²

Some people with disability use identity-first language (‘disabled person’) as an expression of disability pride.¹⁶³ Other people with disability prefer not to use identity-first language, but express pride in other ways. Children and Young People with Disability Australia told us:

Disability pride is about being proud of ourselves. It’s about learning our history. It’s about knowing that strength and creativity and courage that exists in disabled communities. It’s about knowing that there are disabled communities. That disability is not just an individual experience or just an interaction between the individual and a broader society. There are disabled communities, there is disability culture, there are disabled arts groups, disabled activist groups, disabled people living and creating

spaces together as disabled people, not in spite of disability, but actively, openly and proudly as disabled people.¹⁶⁴

Disability pride may also overlap with other aspects of a person's identity. Ms Sherrie Beaver told us about the work of Expression Australia's Rainbow Project in promoting inclusive events for Deaf queer people within the LGBTIQ+ community.¹⁶⁵ Ms Beaver said ensuring LGBTIQ+ Pride events are inclusive enables Deaf queer people to 'feel a strong sense of pride and identity, to feel empowered and confident to be able to be their authentic selves'.¹⁶⁶

Earlier, we referred to the work of the Red Dust Heelers, who use sport to promote disability awareness and eradicate feelings of shame within First Nations communities.¹⁶⁷ This program brings together volunteers 'united ... in our pride of being people with disabilities'.¹⁶⁸ Ms O'Kelly-Kennedy, one of the co-founders, described the program's impact:

When we worked with Roelands Village, we supported the community to host a wheelchair basketball event that included young people with disability and community members. The local police were invited along with their speed guns and at half time we held a wheelchair race. The community and the local police had a good interaction; the young people who had felt shame about their disability were celebrated; and sport was the vehicle for young people with and without disability to connect and realise 'you are just like me, except you play sport sitting down'.¹⁶⁹

Interpersonal relationships, belonging and connection

Enabling and supporting safe and healthy interpersonal relationships is an integral component to building an inclusive Australia. These may be relationships within families and kinship connections, or with colleagues, peer groups, friendships and intimate partners.

In addition to disability and queer pride, Ms Beaver told us about the importance of social connections for Deaf queer people for building self-identity, peer support and a sense of community. Ms Beaver said creating social connections and relationships can help recognise intersectionality in the Deaf community, and provides access to role models and information sharing.¹⁷⁰

Mr Ruatara and Dr Toby spoke about the importance of family and having cultural connections in Māori and First Nations cultures for their son Arty.¹⁷¹ Mr Ruatara spoke about the close relationships their son Arty has with family members and how those relationships make him feel included.¹⁷²

Peer-based organisations can provide people with similar and diverse impairments opportunities to make friends, learn from each other, develop knowledge and skills, challenge self-stigma, and develop confidence and pride. They also facilitate self and collective advocacy to protect and promote human rights and prevent discrimination.¹⁷³

Mr Bill Cooper and Mr Kyran O'Donnell are a social media duo known as the Brother Boys. Mr Cooper, a talented dancer and self-described prankster who has Down syndrome, and his brother-in-law Mr O'Donnell, a First Nations man, share videos on TikTok which showcase their relationship. Mr O'Donnell said their close relationship has always been normal to them.¹⁷⁴ It wasn't until they gained popularity on TikTok and received comments from people looking in from the outside that they understood they have a unique bond which is 'different, and accepting'. Mr O'Donnell and Mr Cooper wish more people could have connections like theirs.¹⁷⁵ They said 'everyone deserves love'.¹⁷⁶

Reducing and ending segregation

Australia's commitment to a more inclusive community is documented in Australia's Disability Strategy 2021–2031.¹⁷⁷ But many people with disability and their supporters told us we still have a long way to go.¹⁷⁸

There is widespread agreement about the importance of creating an inclusive society, where people with disability live free from violence, abuse, neglect and exploitation; where human rights are protected; and individuals live with dignity, equality and respect and can fulfil their potential.¹⁷⁹

There is general agreement that people with disability have the right to equality and that an inclusive society empowers people with disability to live, learn, work, play, create and engage alongside people without disability.¹⁸⁰ There is also agreement that segregation – in the sense of people with disability being compelled, directly or indirectly, to live, learn, work and socialise in isolation from their non-disabled peers and the community generally – is unacceptable and must cease.

Evidence and information received by the Royal Commission make it clear, however, that perspectives differ as to the meaning of 'segregation' and whether all forms of separation based on disability should necessarily be regarded as segregation and incompatible with the inclusion of people with disability.

What is segregation?

Segregation occurs when people with disability are separated and excluded from places where there are members of the broader community.

However, separation on the basis of disability can take many different forms and have many different objectives. Segregation does not occur in spaces where people with disability choose to come together, share culture and values, seek peer support, or are encouraged and supported to engage with the broader community. These are the same choices available to people without disability.

Redirecting the trajectory toward inclusion

There is a long history, both in Australia and in other countries around the world, of excluding people with disability from mainstream environments and placing them in segregated settings.¹⁸¹ In many of these institutions, people with disability lived as ‘captives of care’, with little choice or control over their life or interaction with the outside world.¹⁸²

The emergence of the disability rights movement in the 1970s and 80s, and the enactment of disability discrimination legislation across Australia, led to efforts to close large residential institutions and make mainstream settings more accessible.¹⁸³ But despite these efforts, many people with disability still spend large portions of their lives in group homes, special segregated education units, Australian Disability Enterprises and day programs.¹⁸⁴

In talking about the medical model of disability, Mr Quinn said segregation is seen as a ‘natural outcome’ when disability is perceived as a ‘deviation from a norm’.¹⁸⁵ Negative and ableist attitudes – which treat people with disability as different to and less than people without disability – steer people toward segregated settings. The impetus for segregation is reinforced by barriers to inclusion and the poor experiences of many people with disability in mainstream environments and organisations.

Mr Quinn described the importance of changing systems and structures that exclude people with disability:

What I’m basically saying is that the huge ship that we’ve constructed over the past 50, 60, 70 years, that’s the ship that’s going to take time to turn around. We’ve got to start because if you don’t start, that ship of services, the paradigm that it encapsulates, encodes an old way of thinking, particularly an exclusionary way of thinking. So, turning that ship around is not going to be easy, but that’s the challenge for every single country in the world, and we can learn from each other how we do this. We can share our experiences. And I think the attitude for the Australian Government, for any government, should be how can I set the standards here and not simply follow them and accelerate the process of change?¹⁸⁶

Making mainstream settings more inclusive

To turn the ‘ship’ around, Australians must begin by changing how we think about disability. We must address the ableism that gives people with disability no choice and results in people entering and remaining in settings where they are isolated from their peers and the general community. There is also a need to make mainstream environments more inclusive.

In submissions following Public hearing 24, ‘The experience of children and young people with disability in different education settings’, Counsel Assisting addressed the long-term impact of making the mainstream more inclusive:

The practical application of a progressive realisation of the right to education means building and embedding inclusive practices in all educational settings. If segregation is incompatible with the principle of inclusive education, then it follows that as inclusive practices are implemented, the utility and purpose of segregated settings will diminish and should over time, end. We stress this is not an exercise of fitting students into mainstream educational settings, rather it is changing the mainstream settings to include all students.¹⁸⁷

For some people with disability, their families, service providers and scholars, the goal of making mainstream environments more inclusive is compatible with the ongoing existence of specialised services. This community argues specialist settings are required to maximise well-being for some people with complex needs. Some people described positive experiences in special/segregated school settings, in contrast with experiences of violence, abuse, and neglect in mainstream schools.¹⁸⁸ They said recognition that people with disability may require or wish to have special services is consistent with principles of substantive equality.¹⁸⁹

Ending segregation

Some people with disability, disabled people's organisations (DPOs), disabled representative organisations (DROs), families, family organisations, service providers and researchers have told us that fixing the mainstream is not enough. They argue segregated settings, in the sense referred to above, are inherently unequal, discriminatory and a breach of human rights.¹⁹⁰ They say 'full and effective participation and inclusion in society for people with disability is dependent on the end of segregation'.¹⁹¹

This community argues segregation is driven by ableism and justified by claims it is in the 'best interests' of both people with and without disability.¹⁹² This perspective sees segregation as sustaining negative attitudes to disability and attitudinal change as depending on ending segregation so that people with disability are present and visible in the community and society.¹⁹³

People coming from this perspective understand violence, abuse, neglect and exploitation occurs in both mainstream and segregated settings. They argue, however, that the mainstream should be made safe and inclusive, enabling people with and without disability to thrive together.¹⁹⁴

The views of our Commissioners

There are diverse views about what it means to make Australia more inclusive. After examining the evidence, our Commissioners have arrived at different conclusions. These reflect the range of views held by the disability community and others.

The Chair and Commissioner Ryan consider separation on the basis of disability for certain purposes need not and should not involve people with disability being isolated from their peers or from the general community. They do not see all separation on the basis of disability,

depending on the nature and purpose of the separation and the degree of interaction with the broader community, as warranting the term 'segregated'. They consider that the separation of people with disability for particular purposes may be consistent with those people interacting with their peers and the broader community on a regular basis.

In her approach, Commissioner Mason has taken into consideration the *United Nations Declaration on the Rights of Indigenous Peoples* and the incompatibility of segregation with inclusion on a case-by-case basis.

Commissioners Bennett, Galbally and McEwin take the view the deliberate and systemic separation of people based on disability constitutes segregation. From their perspective, segregation describes situations where people with disability live, learn, work or socialise in environments designed specifically for people with disability, separate from people without disability. They consider segregating people based on disability to be incompatible with inclusion and believe it is unconscionable that segregation on the basis of disability remains a policy default in Australia in the 21st century. They note Mr Quinn, and legal academics Ms Rosemary Kayess and Ms Therese Sands, said ending segregation was core to the development of the *CRPD*.¹⁹⁵ They note Australia's Disability Strategy 2021–2031 does not directly address the issue of segregation.

All Commissioners regard respect for the inherent dignity, individual autonomy and independence of all people with disability as fundamental to Australia becoming a more inclusive society.

We outline the different perspectives held by Commissioners in Volume 7, *Inclusive education, employment and housing*.

Conclusion

Throughout our work, people with disability clearly, persuasively and passionately described their vision for a more inclusive Australia.¹⁹⁶ While they had varied impairments, backgrounds and perspectives, they share a vision where people with disability live free from violence, abuse, neglect and exploitation; where human rights are protected; and individuals live with dignity, equality and respect and can fulfil their potential. This is a vision of a future where people with and without disability:

- live, learn, work, play, create and engage together in safe and diverse communities
- have the power of choice, independence and the dignity to take risks
- make significant contributions to communities that value their presence and treat them with respect
- are culturally safe and belong in families, communities and peer networks.

Realising an inclusive society is the responsibility of the whole of Australia. Witnesses in public hearings and others who engaged with us emphasised the importance of all Australians hearing the voices of people with disability, learning from their experiences and expertise, and recognising their capacity to be leaders of change.

Attitudinal change is critical in shifting towards a more inclusive society. Everyone in Australia needs to understand people with disability are not a problem to be fixed, managed or hidden away. People with disability are not less than people without disability, incapable or a burden.

On the contrary, people with disability are strong, creative, talented and determined. They have fought long and hard to make Australia a more inclusive society where everyone can flourish. People with disability are a vital part of our diverse society. When that society is shaped to include them, they will thrive.

Endnotes

- 1 The people who shared their experiences with us in private sessions, community engagements, workshops and submissions were not witnesses in the technical sense. They did not take an oath or give an affirmation to contribute formal evidence to this inquiry. The first-hand accounts included in this volume do not represent findings of this Royal Commission. Rather, we acknowledge these personal experiences and the importance of the voices of people with disability being heard.
- 2 Exhibit 28-006, Statement of Peta Stamell, 16 September 2022, at [69].
- 3 Transcript of Natalia Wade, Public hearing 18, 8 November 2021, P-50 [4–7]; P-50 [45–47]–P-51 [1–3].
- 4 Name changed, private session, ‘Gracelyn’.
- 5 Transcript, Samarra Toby, Public hearing 31, 12 December 2022, P-31 [24–37].
- 6 Shane Clifton, *Hierarchies of power: theories and models of disability and their implications for violence, abuse, neglect, and exploitation of people with disability*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2020, p 33.
- 7 Transcript, Margherita Coppolino, Public Hearing 31, 14 December 2022, P-190 [11–13].
- 8 Transcript, Summer Farrelly, Public Hearing 31, 12 December 2022, P-19 [17–19] –P-20 [11–14].
- 9 Exhibit 28-011, ‘Statement of Ashleigh’, 7 September 2022, at [43].
- 10 Exhibit 28-011, ‘Statement of Ashleigh’, 7 September 2022, at [46].
- 11 Name changed, private session, ‘Priya’.
- 12 Submissions of Counsel Assisting the Royal Commission following Public hearing 31, 3 February 2023, p 11 [23].
- 13 Transcript, Claudia, Public hearing 26, 30 August 2022, P-157–158.
- 14 Transcript, AAA XN, Public hearing 2, 4 November 2019, P-35 [25–40].
- 15 Name withheld, Submission, 31 July 2020.
- 16 Submissions of Counsel Assisting the Royal Commission following Public hearing 24, 21 October 2022, p 135 [363].
- 17 Exhibit 31-007, ‘Joint statement of Liz Gearing, Andie Dalziell and Natalie Daoud’, 25 November 2022, at [75].
- 18 Transcript, Dylan Alcott, Public hearing 31, 13 December 2022, P-76 [13–19].
- 19 Transcript, Dylan Alcott, Public hearing 31, 13 December 2022, P-76 [21–22].
- 20 Transcript, Dylan Alcott, Public hearing 31, 13 December 2022, P-64 [14–16].
- 21 Transcript, Dylan Alcott, Public hearing 31, 13 December 2022, P-64 [23–26].
- 22 Transcript, Dylan Alcott, Public hearing 31, 13 December 2022, P-65 [9–10].
- 23 Exhibit 9-01, ‘Statement of Oliver Collins’, 18 November 2020, at [46].
- 24 Ian Waller, Submission, 24 March 2022.
- 25 ‘Personal submission 11’ received as part of the National Organisation for Fetal Alcohol Spectrum Disorders, Submission, 17 February 2021, SUB.001.00845, p 22.
- 26 ‘Personal submission 11’ received as part of the National Organisation for Fetal Alcohol Spectrum Disorders, Submission, 17 February 2021, SUB.001.00845, p 22.
- 27 Transcript, Julia Hales, Public hearing 31, 16 December 2022, P-340 [34–36].
- 28 Transcript, Evelyn Atkins, Public hearing 31, 13 December 2022, P-85 [1–17].
- 29 Transcript, Evelyn Atkins, Public hearing 31, 13 December 2022, P-84 [50]–P-85 [4].
- 30 Christine Bigby, Terry Carney, Shih-Ning Then, Ilan Wiesel, Craig Sinclair, Jacinta Douglas and Julia Duffy, *Diversity, dignity, equity and best practice: a framework for supported decision-making*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, January 2023, p 175.
- 31 Submissions of Counsel Assisting the Royal Commission following Public hearing 30, 25 January 2023, p 11 [18].
- 32 Submissions of Counsel Assisting the Royal Commission following Public hearing 30, 25 January 2023, p 10 [12].
- 33 Independent Advisory Council to the NDIS, Submission in response to *Safeguards and quality issues paper*, 25 March 2021, ISS.001.006000, p 8.
- 34 Exhibit 30-073, ‘Statement of John O’Donnell’, 1 December 2022, at [20].

35 Exhibit 30-073, 'Statement of John O'Donnell', 1 December 2022, at [68–69].

36 Exhibit 30-073, 'Statement of John O'Donnell', 1 December 2022, at [20–67].

37 Submissions of Counsel Assisting the Royal Commission following Public hearing 30, 25 January 2023, p 90 [241]; Transcript, John O'Donnell, Public hearing 30, 23 November 2022, P-283 [23–40].

38 Exhibit 31-010, 'Statement of Sherrie Beaver', 1 December 2022, at [4].

39 Transcript, Jodi Rodgers, Public Hearing 20, 8 December 2021, P-134 [126–146]; Exhibit 20-5, 'Statement of Jodi Rodgers', 16 November 2021 at [76–78].

40 Exhibit 20-001, 'Statement of Sophie', 7 December 2021, at [97].

41 Transcript, Margherita Coppolino, Public hearing 31, 14 December 2022, P-198 [38–43], P-199 [6–14]; Transcript, Paul Harpur, Public hearing 31, 14 December 2022, P-185 [34–45].

42 Transcript, Mary O'Hagan, Public hearing 31, 15 December 2022, P-235 [50]–P-236 [3].

43 Transcript, Catherine Liddle, Public hearing 16, 24 September 2021, P-98 [461].

44 Shane Clifton, *Hierarchies of power: theories and models of disability and their implications for violence, abuse, neglect, and exploitation of people with disability*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2020, pp 15–16.

45 Exhibit 28-015, 'Statement of Ricki Spencer', 14 October 2022, at [52–53].

46 Exhibit 28-004, 'Statement of Fiona Strahan', 12 September 2022, at [41], [45].

47 Transcript, Julia Hales, Public hearing 31, 16 December 2022, P-338 [49]–P-339 [3].

48 Transcript, Julia Hales, Public hearing 31, 16 December 2022, P-339 [38–43].

49 Transcript, Chloé Hayden, Public hearing 31, 12 December 2022, P-42 [1–30].

50 Transcript, Breanna Rae, Public hearing 31, 13 December 2022, P-84 [16–17].

51 Transcript, Breanna Rae, Public hearing 31, 13 December 2022, P-83 [17–19].

52 Transcript, Tracey Corbin-Matchett, Public hearing 31, 13 December 2022, P-98 [26–34].

53 Transcript, Tracey Corbin-Matchett, Public hearing 31, 13 December 2022, P-98 [36–39].

54 Transcript, Tracey Corbin-Matchett, Public hearing 31, 13 December 2022, P-98 [27–29].

55 Speak Out Advocacy Tasmania, Submission in response to *Promoting Inclusion Issues Paper*, 4 June 2021, ISS.001.00668, p 10.

56 JFA Purple Orange, *Examining language and vocabulary used by people living with disability*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October, 2020, p 53.

57 Submissions of Counsel Assisting the Royal Commission following Public hearing 31, 3 February 2023, p 15 [41].

58 Scott Avery, *Culture is inclusion: A narrative of Aboriginal and Torres Strait Islander people with disability*, First Peoples Disability Network Australia, 2018, p 139.

59 Exhibit 11.24.1, Written Statement of Cheryl Axleby, 5 February 2021, STAT.0309.0001.0001, [15].

60 Transcript, Catherine Liddle, Public hearing 16, 24 September 2021, P-46 [42–45].

61 Exhibit 31-009, 'Statement of Kathleen O'Kelly-Kennedy (Co-founder)', 30 November 2022, at [4], [10]; Transcript, Kathleen O'Kelly-Kennedy, Public hearing 31, 14 December 2022, P-158 [42–47].

62 Transcript, Nikaiya Payne, Public hearing 31, 14 December 2022, P-158 [22–23].

63 Transcript, Kathleen O'Kelly-Kennedy, Public hearing 31, 14 December 2022, P-158 [42].

64 Exhibit 31-009, 'Statement of Kathleen O'Kelly-Kennedy', 30 November 2022, at [9].

65 Exhibit 29-014, 'Statement of Trevor', 6 October 2022, at [24], [28–32].

66 Exhibit 29-014, 'Statement of Trevor', 6 October 2022, at [63]; Transcript, 'Trevor' and Kate Eastman (Counsel Assisting), Public hearing 29, 26 October 2022, P-230 [17] – 231 [9].

67 Exhibit 29-014, 'Statement of Trevor', 6 October 2022, at [63].

68 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008).

69 Transcript, Catalina Devandas Aguilar, Public hearing 5, 19 August 2020, P-189 [16–23].

70 Exhibit 31-003, 'Statement of Mr Gerard Quinn', 12 December 2022, p 7.

71 Exhibit 31-003, 'Statement of Mr Gerard Quinn', 12 December 2022, p 4.

72 Transcript, Gerard Quinn, Public hearing 31, 12 December 2022, P-56 [45–47].

73 Exhibit 31-003, 'Statement of Mr Gerard Quinn', 12 December 2022, p 7.

74 Gerard Quinn, *Transformation of services for persons with disabilities: report of the special rapporteur on the rights of Persons with disabilities, A/HRC/52/32*, 52 sess, Agenda Item 3, [21].

75 Exhibit 31-003, 'Statement of Mr Gerard Quinn', 12 December 2022, p 7.

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- 76 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), art 12.
- 77 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), art 19.
- 78 Transcript, Gerard Quinn, Public hearing 31, 12 December 2022, P-50 [22] – P-51 [11].
- 79 Exhibit 31-003, ‘Statement of Mr Gerard Quinn’, 12 December 2022, p 5.
- 80 Exhibit 31-003, ‘Statement of Mr Gerard Quinn’, 12 December 2022, p 5.
- 81 Exhibit 31-003, ‘Statement of Mr Gerard Quinn’, 12 December 2022, p 5.
- 82 Submissions of Counsel Assisting the Royal Commission following Public hearing 31, 3 February 2023, p 28 [86].
- 83 Associate Professor Lorna Hallahan, *Disability in Australia: Shadows, struggles and successes*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, November 2021.
- 84 Associate Professor Lorna Hallahan, *Disability in Australia: Shadows, struggles and successes*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, November 2021, p 105.
- 85 Exhibit 31-003, ‘Statement of Mr Gerard Quinn’, 12 December 2022, p 10.
- 86 Transcript, Gerard Quinn, Public hearing 31, 12 December 2022, P-52 [23].
- 87 Transcript, Dylan Alcott, Public hearing 31, 13 December 2022, P-63 [27–28].
- 88 Transcript, Dylan Alcott, Public hearing 31, 13 December 2022, P-63 [29–32], P-76 [13–19].
- 89 Transcript, Dylan Alcott, Public hearing 31, 13 December 2022, P-76 [13–23].
- 90 For example, Transcript, Chloé Hayden and Simone Fraser (Counsel Assisting), Public hearing 31, 12 December 2022, P-44 [1–14]; Transcript, Evie, Public hearing 31, 13 December 2022, P-82 [40–43]; Transcript, Margherita Coppolino, Public hearing 31, 14 December 2022, P-192 [43–47], P-193 [6–7].
- 91 Transcript, Chloé Hayden and Simone Fraser (Counsel Assisting), Public hearing 31, 12 December 2022, P-44 [1–14].
- 92 Transcript, Evie and Simone Fraser (Counsel Assisting), Public hearing 31, 13 December 2022, P-82 [27–32].
- 93 Transcript, Evie, Public hearing 31, 13 December 2022, P-82 [40–43].
- 94 Transcript, Chloé Hayden, Public hearing 31, 12 December 2022, P-43 [37–43].
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Executive summary

Introduction

Our vision for an inclusive Australia envisages people with disability living free from violence, abuse, neglect and exploitation in a more inclusive society in which human rights are protected and respected. For people with disability in Australia today, this remains a vision rather than a reality.

Our inquiry has shown people with disability continue to experience high rates of violence and abuse, multiple forms of neglect, and sexual and financial exploitation. Violence, abuse, neglect and exploitation are occurring across settings and contexts and throughout different stages of people's lives. Based on their disability, people with disability continue to be excluded from participating in many areas of life.

Significant change is required. This *Final report* provides our recommendations for preventing and responding to violence, abuse, neglect and exploitation and for building a more inclusive society in which the rights of people with disability are respected, protected and fulfilled and respect for their inherent dignity and individual autonomy ensured.

This is the society in which people with disability told us they want to live – it is also the society in which they have a right to live and that all Australians have a role in creating.

Strong focus on human rights

Our inquiry has been framed by the human rights of people with disability. Our strong focus on human rights stemmed from our terms of reference, which expressly recognise people with disability have the 'right to the full and equal enjoyment of all human rights and fundamental freedoms'.¹

The terms of reference specifically refer to the *Convention on the Rights of Persons with Disabilities (CRPD)*, which is the most important human rights treaty for people with disability. The treaty's purpose is to 'promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity'.²

Unique among human rights treaties, article 3 of the *CRPD* contains a set of 'general principles'. These principles, which have informed our work, are:³

- respect for inherent dignity, individual autonomy (including the freedom to make one's own choices), and independence of persons
- non-discrimination

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- full and effective participation and inclusion in society
 - respect for difference and acceptance of persons with disabilities as part of human diversity and humanity
 - equality of opportunity
 - accessibility
 - equality between men and women
 - respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

The work of this inquiry and our recommendations for change are set out in Volumes 2 to 12 of our *Final report*. This Executive summary summarises the contents of these 11 volumes, which constitute the authoritative version of the *Final report*.

About the Royal Commission

Key points

- The Royal Commission was established on 4 April 2019. This marked the culmination of many years of campaigning and advocacy by people with disability and their supporters and advocates. Six Commissioners with diverse backgrounds and experiences were appointed to conduct the inquiry.
- Our terms of reference require us to inquire into what governments, institutions and the community should do to prevent and better protect people with disability from experiencing all forms of violence, abuse, neglect and exploitation across all settings and contexts.
- They also require us to inquire into what should be done to promote a more inclusive society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation. Our terms of reference expressly recognise people with disability have the 'right to the full and equal enjoyment of all human rights and fundamental freedoms'.
- During our inquiry, we held 32 public hearings and two ceremonial sittings; conducted more than 700 engagement activities; received 7,944 submissions and held 1,785 private sessions.
- We adopted a trauma-informed approach to our work. We aimed to safeguard and promote the physical, social, emotional and cultural safety of everyone who engaged with us.

Establishing the Royal Commission

This Royal Commission is the product of tireless and persistent efforts by disability advocates and many others who have long recognised that people with disability in this country are routinely subjected to violence, abuse, neglect and exploitation.⁴

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability was established on 4 April 2019. On that date, the Governor-General of the Commonwealth of Australia issued letters patent under the *Royal Commissions Act 1902* (Cth). Each of the six Australian states subsequently issued letters patent or the equivalent in substantially the same terms. The Royal Commission was therefore conducted, in effect, as seven concurrent commissions of inquiry.

Six Commissioners with diverse backgrounds and experiences were appointed at the beginning of the Royal Commission: the Honourable Ronald Sackville AO QC (Chair); Ms Barbara Bennett PSM; Dr Rhonda Louise Galbally AC; Ms Andrea Jane Mason OAM; Mr Alastair James McEwin; and the Honourable John Francis Ryan AM.

The Royal Commission's establishment marked the culmination of years of campaigning and advocacy by people with disability and disability advocacy organisations. Their campaigns reflected the struggles, values and expectations of many Australians with disability.

Terms of reference

The Royal Commission's terms of reference are extremely broad. They require us to inquire into what governments, institutions and the community should do to prevent and better protect people with disability from experiencing all forms of violence, abuse, neglect and exploitation, across all settings and contexts.

Our terms of reference also require us to inquire into what should be done to promote a more inclusive society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation.

As noted, they recognise that people with disability have the right to the full and equal enjoyment of all human rights and fundamental freedoms, and specifically refer to the *CRPD*.

The terms of reference also emphasise the importance of ensuring people with disability are front and centre of our inquiry. They commit us to consider the multi-layered experiences of people with disability associated with age, sex, gender, gender identity, sexual orientation, intersex status, ethnic origin or race. They also commit us to consider the particular situations of Aboriginal and Torres Strait Islander and culturally and linguistically diverse people with disability.

Conducting our inquiry

To build a comprehensive understanding of the violence, abuse, neglect and exploitation experienced by people with disability, we gathered information through public hearings, community engagements, submissions, responses to issues papers, private sessions, policy work, research and data analysis. We:

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- held 32 public hearings and two ceremonial sittings, in which we heard from 837 witnesses, of whom 209 were people with disability
 - conducted more than 700 activities to engage with people with disability, their families, supporters and representative organisations
 - received 7,944 submissions (as at 17 February 2023) from individuals, research organisations, disability advocacy organisations, peak bodies, government departments and agencies, and professional organisations
 - held 1,785 private sessions.⁵ (A private session is a confidential meeting between an individual and a Commissioner held at the individual's request, in a less formal environment than a public hearing.)

Supporting people who engaged with us

From the outset, we committed to adopting a trauma-informed approach to our work. We aimed to safeguard and promote the physical, social, emotional and cultural safety of everyone who engaged with us. In particular, we sought to ensure people with disability, their families and supporters felt comfortable sharing their experiences with us.

We used various methods and formats to ensure we provided information that was accessible and clear. We referred people who engaged with us, or who were affected by our inquiry, to free, external service providers for independent advocacy, counselling and legal support funded by the Australian Government.

Volume 2, *About the Royal Commission*, describes in detail how we conducted our inquiry.

Nature and extent of violence, abuse, neglect and exploitation

Key points

- There are around 4.4 million people with disability in Australia, or 18 per cent of the total population. Reflecting that disability increases with age, the number of people with disability falls to 2.4 million when we look at people aged under 65 years. This is 12 per cent of this age category.
- Around 35 per cent of First Nations people under 65 had disability in 2018–19, which is nearly three times higher than the general population. Children accounted for almost one-quarter (24 per cent) of all First Nations people with disability.
- As at 31 December 2022, there were 573,342 participants in the NDIS.
- Across all age groups, people with disability experience considerably higher rates of violence than people without disability. People with disability also experience violence more frequently. This is unacceptable.
- Rates of violence are particularly high for:
 - women with psychological or intellectual disability
 - First Nations women with disability
 - young women with disability.
- Neglect of people with disability occurs in multiple forms and across different stages of their lives. We heard of many instances of people being deprived of necessities of life and assistance with daily activities. We also heard of systemic failures to provide an environment for each person to maximise their potential.
- The data on exploitation of people with disability is limited. However, people with disability shared with us experiences of both sexual and financial exploitation by other individuals.

People with disability in Australia

I just want to live a life without harassment and to be treated with respect and dignity.⁶

People with disability are a diverse community. They vary in age, gender, gender identity, race or cultural background, family environment, socioeconomic circumstance, geographic location and the nature of their disability. While many common experiences emerged from this inquiry, people's exposure to and experiences of violence, abuse, neglect and exploitation are influenced by a range of factors and social characteristics. Understanding the experiences of individuals and groups of people with disability, and the settings in which they occur, is critical when making recommendations to prevent and respond to maltreatment and deliver appropriate and targeted services and supports.

In this inquiry, the Royal Commission adopted the same approach to 'disability' and 'people with disability' as the *CRPD*. The *CRPD* describes people with disability as including:

those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.⁷

Number of people with disability in Australia

The best source of data on the number of people with disability in Australia is the Australian Bureau of Statistics 2018 *Survey of Disability, Ageing and Carers (SDAC)*.⁸

According to the *SDAC*, there are around 4.4 million people with disability in Australia, comprising 18 per cent of the total population, or nearly one in five people. Because the Royal Commission into Aged Care Quality and Safety was recently conducted, our inquiry generally focused on people with disability under 65 years of age. There are around 2.4 million people with disability in this age group, comprising 12 per cent of the population under 65 years. The data we present is for people with disability under 65 years of age, unless otherwise stated.

It should be noted the Australian Bureau of Statistics and some other sources we have drawn from define disability differently than the Royal Commission. For example, in the *SDAC*, the Australian Bureau of Statistics defines disability as 'any limitation, restriction or impairment which restricts everyday activities and has lasted, or is likely to last, for at least six months'.⁹

Age and disability

The *SDAC* shows that the older a person the more likely they will have disability:

- 8.2 per cent of children (aged under 18) have disability (approximately 450,000 children)
- 13 per cent of adults aged 18 to 64 have disability (2.0 million adults)
- almost 50 per cent of adults aged 65 and over have disability (1.9 million adults).

Among children with disability:

- there are more boys (61 per cent) than girls (39 per cent)
- more than half have an intellectual disability (56 per cent)
- 56 per cent have what the Australian Bureau of Statistics calls ‘profound’ or ‘severe’ disability.

Adults aged 18 to 64 years with disability are more likely to have a physical disability (65 per cent) than another type of disability. Twenty-four per cent of people with disability in this age group have profound or severe disability.

First Nations, culturally and linguistically diverse and LGBTIQ+ people with disability

Of the individual groups we paid particular attention to:

- According to the Australian Bureau of Statistics *National Aboriginal and Torres Strait Islander Health Survey (NATSIHS)*, around 35 per cent of First Nations people aged under 65 had disability in 2018–19, which is three times higher than the percentage of people with disability in the general population. Children (those aged under 18) accounted for almost one-quarter (24 per cent) of all First Nations people with disability. Among First Nations adults aged 18 to 64, nearly half (45 per cent) had disability.
- *SDAC* data shows 6.6 per cent of people from culturally and linguistically diverse backgrounds under 65 years of age had disability in 2018, according to the limited data available. This is likely to be an underestimate.
- Little information is available on the number of LGBTIQ+ people with disability. The Australian Bureau of Statistics 2014 *General Social Survey* indicates, as at 2014, 30 per cent of people aged 18 and over who identify as gay, lesbian, bisexual or ‘other’ sexual identity had disability.

National Disability Insurance Scheme participants

People have to be under 65 years of age to apply to participate in the National Disability Insurance Scheme (NDIS). The eligibility criteria for the NDIS require a person to have, among other things, a permanent disability resulting in substantially reduced functional capacity and be likely to require support under the NDIS for their lifetime. To qualify for the NDIS, people are therefore likely to have relatively high and complex support needs.

As at 31 December 2022, there were 573,342 participants in the NDIS of whom:

- half were aged 18 years or under
- 61 per cent were male
- 35 per cent had autism
- 17 per cent had intellectual disability.

The diversity of people with disability is examined in detail in Volume 3, *Nature and extent of violence, abuse, neglect and exploitation*.

Interpersonal violence, abuse, neglect and exploitation

I just need people to understand that I'm speaking up because, you know, it's not right. It's not right to do what happened – you know, what he did to me.¹⁰

Interpersonal violence and abuse

Rates of violence and abuse

Across all age groups, a greater proportion of people with disability experience violence than people without disability. People with disability also experience violence more frequently.

Rates of violence are particularly high for:

- women with psychological or intellectual disability
- First Nations women with disability
- young women with disability.

The Australian Bureau of Statistics 2016 *Personal Safety Survey (PSS)* is a national survey about people's experiences of violence and abuse. According to the *PSS*, since the age of 15:

- More than half of people with disability aged 18 to 64 (55 per cent) have experienced physical or sexual violence, compared with 38 per cent of people without disability in this age group.
- Physical assault is the most common type of violence or abuse (experienced by 45 per cent of people with disability and 29 per cent of people without disability).

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- The rate of violence by a domestic partner is much higher for people with disability (21 per cent) than people without disability (9.8 per cent).
 - The rate of sexual assault of people with disability is double that of people without disability (18 per cent compared with 9.1 per cent).

Of people who have experienced violence since age 15, people with disability are more likely than people without disability:

- to experience multiple incidents (76 per cent compared with 62 per cent)
- to know the perpetrator (81 per cent compared with 69 per cent).

People with head injury and psychological or intellectual disability

People with some types of disability experience even higher rates of violence. These groups include:

- people with head injury, stroke and brain damage (73 per cent have experienced violence since age 15)
- people with intellectual disability (67 per cent)
- people with psychological disability (66 per cent).

This compares with 60 per cent of people with sight, hearing or speech impairment and 57 per cent of people with physical disability.

Young adults and children

As noted, a higher proportion of people with disability experience violence than people without disability across all age groups. However, rates for younger adults with disability are much higher than for older adults with disability. Fifteen per cent of young adults aged 18 to 35 experienced violence in the 12 months prior to being surveyed, compared with 5.5 per cent of adults aged 36 to 64.

People with disability are more than twice as likely as people without disability to experience physical or sexual abuse before the age of 15 (23 per cent and 11 per cent respectively).

Women and girls

Women with disability experience all forms of interpersonal violence at higher rates than women without disability. They are:

- more than twice as likely to have experienced sexual abuse before the age of 15
- more likely to have experienced violence by a previous intimate partner since the age of 15.

Compared with men with disability, women with disability are more likely to experience sexual assault, violence and emotional abuse by a domestic partner, as well as stalking. For example, women with disability aged 18 to 64 are more than three times as likely to have experienced sexual assault than men with disability in that age group (29 per cent compared with 7.7 per cent). Women with disability are also more likely to know the perpetrator of violence against them (93 per cent of women with disability compared with 69 per cent of men with disability).

Violence against and abuse of women and girls predominantly occur within family and domestic contexts. Women and girls with disability can be exposed to family and domestic violence outside of relationships with intimate partners, parents, siblings and extended family members in private homes. For example, they can be exposed to violence and abuse by support workers and co-residents in supported accommodation and institutional settings.

Women with psychological or intellectual disability

Women with psychological¹¹ or intellectual disability experience even higher rates of violence:

- 72 per cent of women with psychological or intellectual disability have experienced violence since the age of 15, compared with 54 per cent of women with disability of any type
- 45 per cent of women with psychological or intellectual disability have been sexually assaulted compared with 29 per cent of women with any type of disability.

Women with psychological or intellectual disability are also at particularly high risk of violence perpetrated by domestic partners.

First Nations people with disability

First Nations people with disability experience higher rates of violence and abuse than First Nations people without disability. The Australian Bureau of Statistics *NATSIHS* shows First Nations people with disability are more likely to have experienced physical harm or threats of harm in the previous 12 months than First Nations people without disability (22 per cent compared with 12 per cent).

First Nations women with disability:

- are more likely to be injured by their most recent experience of deliberate physical harm (78 per cent) than First Nations women without disability (63 per cent) and First Nations men with disability (68 per cent)
- are more than twice as likely (53 per cent) than First Nations men with disability (25 per cent) to report that a current or previous intimate partner was the perpetrator of physical harm against them in the previous 12 months.

According to the *NATSIHS*, the most common perpetrator of physical harm against First Nations women with disability is a current or previous intimate partner (53 per cent). For First Nations men with disability, the most common perpetrator is another family member (39 per cent).

Culturally and linguistically diverse people with disability

Limited data is available on the experiences of people with disability from culturally and linguistically diverse backgrounds. The data that is available must be interpreted with caution, given the diversity of this group of people. The limited data suggests:

- culturally and linguistically diverse people with disability aged 18 to 64 experience more violence than those without disability (33 per cent compared with 23 per cent)
- during the first wave of the COVID-19 pandemic, culturally and linguistically diverse women with disability reported higher rates of domestic partner violence including physical or sexual violence (21 per cent) and coercive control (26 per cent) than people from English-speaking backgrounds (16 per cent and 18 per cent, respectively).

LGBTQA+ people with disability

Data from 2014–15 shows people with disability aged 18 to 64 who identify as gay, lesbian, bisexual or another sexual orientation other than heterosexual are almost twice as likely to have experienced physical or threatened violence than those who identify as heterosexual (20 per cent compared with 12 per cent).

In 2019, among LGBTQA+ people with disability (this does not include intersex people due to limited sample size) aged 18 and over, rates of violence and abuse:

- were higher among those with ‘severe’ disability than those with ‘moderate’ or ‘mild’ disability
- varied based on both sexual identity and gender identity.

People with disability who identify as LGBTQA+ reported higher levels of violence and abuse by family members than LGBTQA+ people without disability. These risks are even higher for LGBTQA+ people with ‘severe’ disability (81 per cent reported violence inflicted by family members compared with 55 per cent of LGBTQA+ people without disability).

Violence and abuse in public places

Limited data is available on the extent of violence and abuse people with disability experience when going about their everyday lives in public places. However, it is clear from Public hearing 28, ‘Violence against and abuse of people with disability in public places’, that it can be persistent and pervasive.

In Public hearing 28, people with disability described:

- physical and sexual violence and verbal abuse
- threatening or intimidating behaviour, including being physically blocked and followed

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- microaggressions – that is, apparently minor incidents that cumulatively amount to abuse, including non-consensual filming
 - verbal and sexual abuse and harassment in online forums, including social media, public and private forums and dating sites.

Violent and abusive treatment in public places has a material impact on the health and wellbeing of people with disability. It can cause individuals to modify their behaviours, such as by not going out in public alone and avoiding particular places, activities and people. This includes avoiding travelling on public transport, going to places where alcohol is consumed, and avoiding groups of teenagers and young adults. This has the overall effect of limiting people's lives and reducing their participation in the community.

Interpersonal neglect and exploitation

Neglect

Neglect of people with disability occurs in multiple forms and across different stages of their lives. We heard distressing accounts of severe deprivation, including from a very young age, and of people with disability dying as a result of gross neglect.

The forms of interpersonal neglect we have identified are often connected to or enabled by systemic or service delivery issues and include:

- depriving people of necessities of life
- failing to assist people with daily activities
- preventing or limiting the opportunity for people to develop personal relationships or friendships, or to engage in community activities
- developmental neglect, such as failing to provide an environment for each person to maximise their potential
- failing to prevent people being exposed to the risk of violence, abuse, neglect or exploitation.

There is no nationally representative data source on neglect of people with disability.

Exploitation

People with disability have shared experiences of both sexual and financial exploitation by other individuals with the Royal Commission. However, the data on the interpersonal exploitation of people with disability is also limited.

The Australian Competition and Consumer Commission (ACCC) provided the Royal Commission data under notice on all scams reported to its Scamwatch program between January 2016 and May 2020. The ACCC data shows the average number of people with

disability reporting scams increased each year, from 263 reports per month in 2016 to around 419 per month in 2019. People with disability aged 55 to 64 were most at risk, with 30 per cent of reports of scams from people in that age group.

The types of scams reported by people with and without disability were largely similar but scams against people with disability were more likely to have a serious financial impact.

Volume 3, *Nature and extent of violence, abuse, neglect and exploitation* sets out the interpersonal and other forms of violence, abuse, neglect and exploitation people with disability experience across settings and contexts and over different life stages, and what it costs them and Australian society more broadly. This includes the maltreatment resulting from systemic and structural barriers, practices and failures.

Realising the human rights of people with disability

Key points

- Australia is party to the seven ‘core’ international human rights treaties, including the *Convention on the Rights of Persons with Disabilities (CRPD)*. However, existing measures do not give sufficient effect to Australia’s obligations under the *CRPD* and people with disability are not adequately protected against violence, abuse, neglect and exploitation.
- To translate the international human rights of people with disability into Australian domestic law, the Australian Government should commit to the enactment of an Australian Disability Rights Act (DRA). The DRA should clearly articulate the human rights of people with disability, create appropriate enforcement mechanisms, and provide access to effective remedies when rights are breached.
- The Australian Government should consult closely with people with disability, disability representative organisations and other key stakeholders about the proposed DRA. It should introduce legislation into parliament as soon as possible following this consultation.
- The DRA should include guiding principles designed to promote and advance the human rights of people with disability in Australia. The DRA should impose enforceable duties to give life to the rights it articulates.
- The Commonwealth public sector should be the primary duty-holder under the DRA, with a mechanism for other entities to opt in. Their duties would include to consider and act consistently with disability rights; consult with people with disability; and promote disability equality and inclusion.
- The *Disability Discrimination Act 1992 (Cth)* creates little incentive for employers, schools, service providers and other duty-holders to take active measures to prevent disability discrimination. It should be amended to more effectively promote equality and enhance the right of people with disability to live free from discrimination. These reforms would be complementary to the DRA.

Australia's international human rights obligations

I believe that different is not less than. Any and all Australian citizens inherently deserve to have equal human rights. A right to safety, a right to equal access, to be free from abuse, neglect or exploitation of any type. Whether able bodied, or being a person with disability or being a person with any other health impairment.¹²

Australia is party to the seven core international human rights treaties, including the *CRPD*.¹³ These treaties set out obligations regarding different groups of rights-holders and relate to particular thematic areas. The treaties operate together, reflecting the inter-related, indivisible and interdependent nature of all human rights.

Australia's ratification of these human rights treaties, especially the *CRPD*, is very important for people with disability and wider Australian society. However, expansive domestic legislation giving effect to Australia's obligations under international law has not been enacted, and existing measures have not adequately protected people with disability against violence, abuse, neglect and exploitation.

Convention on the Rights of Persons with Disabilities

As noted, the *CRPD* is the main treaty that sets out Australia's international obligations to take legislative, administrative and other measures to respect, protect and fulfil the human rights of people with disability. It is a hybrid treaty, recognising a range of civil and political rights and economic, social and cultural rights. The *CRPD* includes important principles that have informed our work, as listed in the 'Introduction'.

In Public hearing 31, 'Vision for an inclusive Australia', Mr Gerard Quinn, UN Special Rapporteur on the rights of persons with disabilities, described the paradigm shift represented by the *CRPD*. It reflects the fundamental shift from a medical model of disability (defining people by their impairments) to a social model and human rights model (treating people with disability as rights holders).

Equality

Equality is a bedrock concept of the *CRPD*. The international expert body that oversees the convention, the Committee on the Rights of Persons with Disabilities (CRPD Committee), explains three concepts of equality:

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- ‘formal equality’, which ‘seeks to combat direct discrimination by treating persons in a similar situation similarly’¹⁴
 - ‘substantive equality’, which ‘also seeks to address structural and indirect discrimination and takes into account power relations’¹⁵
 - ‘inclusive equality’, which is a ‘new model of equality developed throughout the Convention’.¹⁶

In Australia, anti-discrimination laws such as the *Disability Discrimination Act 1992 (Cth) (DDA)* are essentially concerned with formal equality, where the focus is generally on treating people the ‘same’ way or achieving the ‘same’ outcomes. However, in practice, taking an approach based on formal equality may entrench inequality because the same treatment is not focused on achieving equal outcomes or providing equal opportunities. In contrast, substantive equality requires particular individuals or groups to be treated differently to achieve equal outcomes or have access to equal opportunities.

The *CRPD* takes this one step further, being fundamentally based on inclusive equality. As outlined in *Our vision for an inclusive Australia*, inclusive equality requires positive action to provide support or make structural changes to create or maintain inclusive settings for people with disability.

The human rights of First Nations people with disability

Although the creation of the *CRPD* was a significant development for people with disability, it does not specifically address the rights of First Nations people with disability. Our work has also been guided by the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*. The rights recognised in the *UNDRIP* include the rights to self-determination, health, respect for and protection of culture, equality and non-discrimination. The *UNDRIP* requires ‘particular attention’ be paid to the ‘rights and special needs’ of indigenous people with disability.¹⁷ This references the issue of intersectionality, which describes how society can respond to a person’s different social characteristics, exposing them to multi-layered or ‘intersecting’ forms of discrimination or disadvantage.

According to the UN Permanent Forum on Indigenous Issues, implementing the *CRPD* in a way that also respects the *UNDRIP* means the measures in the *CRPD* need to be applied:

in a way that is sensitive to the culture and world vision of indigenous peoples in order to best protect the rights of indigenous persons with disabilities.¹⁸

Australia’s implementation of disability rights

Over time, Australian governments have adopted many positive measures to realise the human rights of people with disability, including amending the *DDA* (which was enacted before the *CRPD* was ratified). Implementing the rights recognised in the *CRPD* is not a simple matter of transcribing its articles into domestic legislation. Even so, domestic laws, policies and practices have not given effect to rights recognised in the *CRPD* that are capable of being implemented. For example:

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- Current Commonwealth, state and territory laws give limited legal protection to the rights recognised in the *CRPD* and do not provide effective remedies when *CRPD* rights are breached.
 - While some mechanisms are designed to assess Australia's laws against our international obligations, there is no mechanism to ensure all Australian laws are consistent with the *CRPD*.
 - *CRPD* rights are not sufficiently incorporated into government policies and practices. There are limited requirements for governments and parliaments to consider the rights of people with disability.
 - Contrary to the *CRPD*, people with disability are not sufficiently involved in government decision-making processes and the development of law and policy affecting their rights.

There is also limited awareness and understanding of the rights of people with disability, which contributes to violence, abuse, neglect and exploitation.

In a report prepared for the Royal Commission, *The United Nations Convention on the Rights of Persons with Disabilities: An assessment of Australia's level of compliance*, Emeritus Professor Ron McCallum AO concluded:

there are many rights in the *CRPD* that have not been incorporated into Australian law, and there are still too many Australians with disability who experience discrimination, disadvantage and human rights violations, especially among First Nations peoples.¹⁹

Following Public hearing 18, 'The human rights of people with disability and making the *Convention on the Rights of Persons with Disabilities* a reality in Australian law, policies and practices', Counsel Assisting proposed a finding that:

the Australian Government has not fully implemented the *CRPD* into relevant laws, policies and practices. There presently remains gaps in the implementation of the *CRPD* to protect, promote and ensure the *CRPD* rights to prevent violence, abuse, neglect and exploitation of people with disability in Australia.²⁰

In response, the Australian Government did not accept that Australia had failed to fully implement the *CRPD*, but acknowledged it is:

plainly open to the Royal Commission to find, in the opinion of the Commissioners that there are opportunities for the Australian Government to improve upon the ways in which the *CRPD* has been implemented in Australia, but ... it would be inappropriate to go further and make a finding to the effect of the Proposed Finding.²¹

We regard this as an important acknowledgement that Australia has the opportunity to strengthen implementation of *CRPD* rights.

In our view, the critical question is not whether there are ‘gaps’ in implementing the *CRPD*. A stronger, more comprehensive and transformative legal framework is required to achieve equality and inclusion and advance the human rights of people with disability, including their right to live free from violence, abuse, neglect and exploitation.

Enacting an Australian Disability Rights Act

We recommend the Australian Government commit to the enactment of a Disability Rights Act (DRA) to translate the international human rights of people with disability into domestic Australian law. We propose the Australian Government introduce legislation into parliament as soon as possible, following close consultation with people with disability, disability representative organisations and other key stakeholders.

The objective of the DRA should be to respect, protect and fulfil all rights in the *CRPD*, as well as the rights of First Nations people with disability not specifically articulated in the *CRPD*. These rights should be adapted to be appropriate for the Australian legal context and to ensure they are enforceable in practice.

A key aim of the proposed DRA is to take a preventative approach, so people with disability do not experience violence, abuse, neglect and exploitation – or other breaches of their human rights – in the first place.

(See Volume 4, *Realising the human rights of people with disability* for the definitions of the key terms used when discussing the proposed DRA.)

Objects and principles of the DRA

The DRA should have a clear statement of its objects and purpose. It should include guiding principles designed to promote and advance the human rights of people with disability in Australia, based on the general principles set out in the *CRPD*. The principles should express the key ideas underpinning the DRA in a way that is easy to understand and communicate. The principles should be taken into account by decision-makers applying the DRA’s substantive provisions.

Protecting disability rights through the DRA

The DRA should clearly articulate the human rights of people with disability. The rights and duties we propose for inclusion are designed to implement rights and obligations the *CRPD* recognises, in a way that is practical, workable and capable of effective enforcement in the Australian legal context.

We recommend the DRA protect the rights of people with disability to:

- non-discrimination and equality before the law
- recognition as a person before the law – including the right to access and use supports, such as advocacy services, in making and participating in decisions that affect them, communicating their will and preferences, and developing their decision-making ability
- live free from all forms of exploitation, violence and abuse
- liberty and security
- equitable access to health services.

Through consultation with people with disability and others, the Australian Government may decide to include additional human rights of people with disability in the DRA.

Duties under the DRA

We recommend the following duties be imposed on primary duty-holders under the DRA to give life to the rights articulated in the Act:

- an obligation on ‘public authorities’ to act compatibly with the rights set out in the DRA and to give proper consideration to ‘human rights’ (as defined) when making decisions
- a requirement that ‘Commonwealth entities’ (as defined) consult with people with disability when developing and evaluating policies, laws and programs and planning new initiatives or making major changes to services provided to the public, or have a significant impact on the public
- a duty on Commonwealth entities to promote disability equality and inclusion
- a duty on Commonwealth entities to provide an appropriately trained and credentialed interpreter when required by a person with disability who is accessing or using their services or engaging with their statutory functions
- a duty on Commonwealth entities to ensure their communications are provided in at least two formats accessible to people with disability when publishing public information or consulting or engaging with people with disability
- duties on Commonwealth entities to support implementation of, and compliance with, the DRA, including through disability impact assessments, self-assessment audits on disability inclusion, and transparent reporting.

The primary duty-holder under the DRA is to be the Commonwealth public sector. We also recommend the DRA provide a mechanism for private and community sector entities to voluntarily opt in to having obligations under the Act. This is an initial list of duty-holders, with further expansion to be considered in future.

Future review

The DRA should be reviewed in consultation with people with disability within five years of commencement. The review should consider:

- how the Act should be improved
- the effectiveness of compliance mechanisms
- the availability of appropriate remedies meeting the needs of people with disability.

The review should also consider whether and how duties in the DRA should be extended or applied to additional persons or entities, including private sector providers under the NDIS. The Chair and Commissioners Mason and Ryan who hold this view point out that the issues are complex and cannot be resolved quickly.

Commissioners Bennett, Galbally and McEwin alternatively recommend that this question should not wait for the five-year review. They recommend that, from the outset, the Australian Government should examine, as a priority, how to expand the duty-holders under the DRA to include private sector providers delivering services through the NDIS.

Commissioners Bennett, Galbally and McEwin also consider the DRA should extend to 'neglect' as well as violence, abuse and exploitation. The Chair and Commissioners Mason and Ryan take the view that extending the DRA to include neglect raises complex questions requiring further consideration and consultation.

Remedies and enforcement

Articulating rights and setting standards alone are insufficient to effect real change. The provisions of the DRA need to be capable of being applied and enforced in practice.

The mechanisms we recommend are designed to deliver the key features of an effective system for the enforcement of disability rights:

- Complaint pathways must be clear, accessible, inclusive, efficient and responsive.
- Compliance mechanisms must be expert, timely, strategic and accountable.
- Remedies must be effective and enforceable.

The statutory role of an independent oversight body

First, we recommend an independent oversight body be given statutory functions to support compliance with the DRA. In Volume 5, *Governing for inclusion*, we recommend establishing a new National Disability Commission as an independent statutory authority (also see 'Governing for inclusion' later in this Executive summary).

We recommend the National Disability Commission be given:

- capacity-building functions under the DRA, including conducting research, publishing guidelines, providing advice through voluntary compliance reviews, handling complaints and being able to intervene in appropriate court proceedings
- powers to address non-compliance with the DRA, including conducting inquiries, entering into enforceable undertakings, issuing compliance notices and seeking injunctions to stop or prevent breaches of the DRA.

Access to remedies when disability rights are breached

Second, we recommend that individuals and representative bodies be able to make complaints about breaches of the DRA to the National Disability Commission. The Commission should co-design its complaints mechanism with people with disability. It should:

- draw on the national guideline for accessible and responsive complaint handling and investigative practice, which is to be co-designed with people with disability (as recommended in Volume 11, *Independent oversight and complaint mechanisms*, and discussed later in this Executive summary)
- at a minimum, offer information about the DRA, dispute resolution and referrals to police and other regulatory or oversight bodies.

We also recommend that individuals and representative bodies have standing to bring claims to the Federal Court of Australia or the Federal Circuit and Family Court of Australia about certain contraventions of the DRA by duty-holders. Where the court finds that a person or entity has acted incompatibly with the DRA, it should have the power to grant any relief or remedy it considers just and appropriate, including damages.

Strengthening awareness and understanding of disability rights

Guidance and education about disability rights is an investment in better decision-making by duty-holders and, ultimately, in promoting and protecting the human rights of people with disability in Australia. The best human rights outcomes are achieved when human rights are built into the everyday work of policy making, law making and service delivery, and harm is prevented from occurring in the first place. Providing accessible information, guidance and training about disability rights is an important part of making rights a reality.

We recommend the National Disability Commission have functions to:

- promote understanding and acceptance of the rights of people with disability under the DRA
- develop and provide guidance and educational and training programs on the rights and duties under the DRA

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- co-design and co-deliver training programs and resources with people with disability and with the Australian Human Rights Commission (AHRC), to provide a complete picture of protections under the DRA and the *DDA*.

Protecting disability rights in state and territory laws

Within Australia's federal system of government it is the Australian Government that enters into and ratifies international human rights treaties, including the *CRPD*. Although the states and territories are not parties to the *CRPD*, the provisions of the *CRPD* extend to 'all parts of federal States without any limitations or exceptions'.²² In any event, as a practical matter, implementing Australia's obligations under the *CRPD* requires the participation of state and territory governments. Recognition of disability rights in sectors including public health, public education, public housing, child protection, and corrections requires state and territory legislation, policies and practices to be effective.

We recommend each state and territory establish protections corresponding to those recognised in the DRA within their jurisdiction. We acknowledge the complexity and diversity of the existing legal frameworks and the various oversight mechanisms that exist at the state and territory level. For that reason, we recommend states and territories protect a consistent range of rights similar to those in the DRA, but they adapt the duties and compliance mechanisms to their own legal context and institutional structures.

Strengthening the *Disability Discrimination Act*

When the *DDA* was enacted in 1992, people with disability and their advocates held high expectations it would result in significant change. The Disability Discrimination Bill 1992 (Cth) was described in parliament as:

the vision [for] a fairer Australia where people with disabilities are regarded as equals, with the same rights as all other citizens, with recourse to systems that redress any infringements of their rights.²³

These expectations have not been realised. We recommend amendments to make the *DDA* more effective in promoting equality and enhancing the right of people with disability to live free from discrimination. These reforms would be complementary to the DRA.

Direct and indirect discrimination

The *DDA* applies nationally and operates concurrently with state and territory anti-discrimination laws. Its objects include the elimination of discrimination on the ground of disability and ensuring people with disability have the same rights to equality before the law as the rest of the community.

The *DDA* prohibits unlawful discrimination in certain areas including employment; education; access to premises; provision of goods, services and facilities; provision of accommodation;

and administration of Commonwealth laws and programs. The *DDA* prohibits direct discrimination and indirect discrimination on the ground of disability in these areas. It also includes an obligation to make ‘reasonable adjustments’ to avoid direct and indirect discrimination.²⁴

In addition, the *DDA* establishes the office of the Disability Discrimination Commissioner.

If a person believes they have experienced disability discrimination, they can lodge a complaint with the AHRC, which will inquire into and attempt to conciliate the complaint. If conciliation is unsuccessful, the President of the AHRC terminates the complaint and the complainant may commence proceedings in the Federal Court of Australia or the Federal Circuit and Family Court of Australia. If the claim is successful, the court may make a variety of orders, including an order that the discrimination stop and an order for compensation.

Effectiveness and coverage of the *DDA*

The Australian Government’s combined second and third periodic report to the CRPD Committee contended that the *DDA* and other Commonwealth and state legislation give effect to its obligations under international law to recognise and protect the human rights of people with disability. The Australian Government points out the *DDA* is not the only legislation that gives effect to Australia’s obligations under the *CRPD*.

We accept the *DDA* incorporates elements of the *CRPD* into domestic Australian legislation. We also accept that giving effect to the rights recognised in the *CRPD* is not a simple matter of transcribing its articles into domestic legislation. However, we think more can and should be done.

Amendments are needed to address one of the principal deficiencies of the *DDA*: the protection of a person’s rights depends on that person being prepared to make and pursue a complaint of discrimination. This requires the complainant to have the knowledge and personal resources to pursue the claim, including the risk of an adverse costs order should the matter reach court.

As presently drafted, the *DDA* creates little incentive for employers, schools, service providers and other duty-holders to take active measures to prevent disability discrimination.

Defining discrimination

We recommend simplifying the definitions of direct and indirect discrimination in the *DDA*.

Direct discrimination

Under section 5(1) of the *DDA*, direct discrimination occurs if a person with disability is treated less favourably compared with a person without disability in similar circumstances, and a reason for the treatment is the person’s disability.

Establishing discrimination under section 5(1) requires two steps:

- a comparison of the way a person with disability and a person without disability in similar circumstances were or would be treated, and then
- an inquiry into why the different treatment occurred.

This is known as the ‘comparator test’. The burden lies on the complainant to prove they were treated less favourably than a person without the same disability in similar circumstances, and to prove the different treatment occurred because of the complainant’s disability. We consider the comparator test to be complex and a barrier to people with disability proving they have experienced discrimination.

It should be enough for a person with disability to show they have been treated unfavourably or unfairly, without having to prove a person without the same disability would have been treated more favourably in similar circumstances.

We recommend two changes to the legal test for direct discrimination:

- first, removing the need to prove comparative less favourable treatment
- second, placing the onus on the respondent (the alleged discriminator) to prove on the balance of probabilities that the reason for the treatment was not disability.

Indirect discrimination

Section 6(1) of the *DDA* provides that indirect discrimination occurs when a person with disability is required to comply with a condition or requirement, which they cannot comply with because of their disability, and the condition or requirement disadvantages a person with disability. Indirect discrimination also occurs under section 6(2) when a person fails to provide reasonable adjustments that would enable the person with disability to comply with the condition or requirement.

To avoid a finding of indirect discrimination under the *DDA*, the respondent (the alleged discriminator) must prove the requirement or condition was reasonable in all the circumstances. Even if a condition or requirement is found to be unreasonable, the respondent may still avoid a finding of indirect discrimination by demonstrating that avoiding the discrimination would impose an unjustifiable hardship on the respondent.

We recommend the removal of the reasonableness exemption. This means respondents would only be able to rely on the defence of unjustifiable hardship.

Reasonable adjustments

In its review of the *DDA* in 2004, the Productivity Commission concluded:

the task of eliminating discrimination cannot be adequately addressed in the absence of a duty to make reasonable adjustments. If disability discrimination legislation only went as far as formal equality, it would entrench existing disadvantages.²⁵

The term ‘reasonable adjustment’ itself has been criticised because it suggests the adjustment must be considered ‘reasonable’ or that the respondent must act reasonably when considering whether to make an adjustment. This is not the way the expression has been interpreted by the courts. We recommend removing the word ‘reasonable’ from the *DDA* in every instance where ‘reasonable adjustment’ occurs to better reflect the law and to avoid confusion.

We also recommend the *DDA* impose a stand-alone duty to make adjustments. It should be unlawful for a person to fail or refuse to make an adjustment for a person or group of people with disability, unless making the adjustment would impose an unjustifiable hardship on the person asked to make the adjustment.

Positive duty to eliminate discrimination

Achieving substantive equality requires more than making adjustments for one person. Positive action is required to remove systemic barriers. It means shifting the focus from a reactive model to one of preventing and eliminating systemic barriers for people with disability more broadly.

In its 2004 review, the Productivity Commission described the *DDA* as ‘a largely reactive Act that relies on complaints and conciliation’.²⁶

In its response to the Royal Commission’s *Employment issues paper*, the AHRC recommended the Australian Parliament amend the *DDA* to introduce a positive duty to promote substantive equality and eliminate discrimination.

We recommend the creation of a new positive duty under the *DDA* to take reasonable and proportionate measures to eliminate all forms of discrimination, including harassment and victimisation, on the ground of disability. The duty should apply to all current duty holders under the *DDA*, including public and private sector entities. This recommendation is based on the December 2022 amendments to the *Sex Discrimination Act 1984* (Cth).

Harassment under the *DDA*

The *DDA* makes harassment of a person with disability and their associates unlawful in only three areas: employment or work; the provision of goods, services and facilities; and education.

We consider the *DDA* to be ineffective in addressing the harassment experienced by people with disability. Since April 2000, no case involving a claim of harassment in relation to disability has succeeded under the *DDA*.

There are two reasons for this. First, the existing provisions have been interpreted narrowly. The conduct must be ‘both persistent and harrying’²⁷ or be ‘a series of actions causing vexation and worry’.²⁸ One-off or isolated incidents of harassment do not meet this threshold.

Second, the *DDA* is limited in its application. As noted, it confines protection against harassment to particular contexts. The evidence shows many people with disability experience harassment in a range of places and circumstances not covered by the *DDA*, including public places.

We recommend the *DDA* be amended to make harassment on the ground of disability unlawful. We propose the amendment should be modelled on the current section 18C of the *Racial Discrimination Act 1975* (Cth).

Vilification

Except to the extent the *DDA* addresses discrimination in the form of harassment, it affords no protection to people against vilification based on their disability.

We recommend the *DDA* be amended to prohibit vilification of a person or group of people with disability on the ground of their disability or perceived disability. Vilification should be defined to include behaviour that incites hatred for or threatens violence or serious abuse towards a person or group of people with disability.

Volume 4, *Realising the human rights of people with disability* examines Australia’s human rights obligations and illustrates how a more comprehensive and transformative legal framework is required to achieve equality and inclusion and advance the human rights of people with disability. It includes our recommendations for enacting a Disability Rights Act and strengthening the *DDA*.

Enabling autonomy and access

Key points

- Autonomy is a person's right and freedom to make decisions, control their life and exercise choice. Access means being able to use and interact with information, environments, services and products in a way that suits a person's needs.
- Reform across settings is needed to better enable the autonomy of, and access for, people with disability.
- This includes promoting accessible information and communications, and increasing the number, skills and accessibility of interpreters.
- Supported decision-making should be embedded in guardianship and administration law and practice, and other systems over time, to ensure substitute decision-making only happens as a last resort and in the least restrictive manner.
- Disability advocacy must be funded to meet demand, taking measures to improve the cultural safety of disability advocacy, and enhancing informal supports.
- People with disability face a range of barriers to accessing quality health care. These must be removed by building the capability of the health care workforce, and identifying adaptations and supports required for a person-centred approach.
- All states and territories should have legal frameworks to reduce the use of restrictive practices, with the aim of elimination. This must include taking immediate action to prohibit some practices, including the seclusion of children.
- Non-therapeutic sterilisation of people with disability must be prohibited, unless the person has given their voluntary and informed consent, with support for decision-making if required.

Autonomy and access of people with disability

Support people's ability. Believe their decision-making capability can be grown and developed over time.²⁹

Autonomy is a person's right and freedom to make decisions, control their life and exercise choice. Our terms of reference recognise that people with disability have the right to 'respect for their inherent dignity and individual autonomy'.³⁰

Autonomy is closely related to the concept of ‘access’. People with disability can access environments, facilities, services, products and information if they are able to use and interact with them in a way that responds to their needs.

Accessible information and communications

Despite obligations under international and domestic law, many people with disability in Australia still cannot access information and communications on an equal basis to people without disability. This can mean not being able to understand information from government agencies and service providers and to communicate their views and preferences.

A failure to provide information in accessible formats and to facilitate communication with people with disability can lead to poor health, education and justice outcomes; reduce employment opportunities; and increase the risk of harm during emergencies and natural disasters.

People with disability who may face barriers accessing information and communications include people who are blind or have low vision, people who are d/Deaf or hard of hearing, people who are Deafblind, and people with cognitive disability. First Nations people with disability and people with disability from culturally and linguistically diverse backgrounds may face additional barriers to accessing information and communications.

National plan for accessible information and communications

Australia’s Disability Strategy 2021–2031 (ADS) is the current national disability policy framework (see ‘Governing for inclusion’ later in this Executive summary). It includes a policy priority focused on ensuring ‘information and communication systems are accessible, reliable and responsive’.³¹ But there is no targeted action plan associated with this policy priority. Governments have committed to providing more accessible information and communications through actions associated with other targeted action plans. State and territory disability strategies and inclusion plans also include broad commitments to improving information accessibility.

In 2023, the Australian Government made a commitment the Minister for Communications would develop an Associated Plan under the ADS that will be ‘the vehicle for addressing access to communications technologies’.³² We welcome this commitment. However, we recommend the scope of the Associated Plan be expanded.

The Associated Plan should consider information and communications across a range of contexts and settings, and encompass a broad range of modes of communication, including Easy Read, Easy English, Auslan, live and closed captioning, braille and audio description. It should take into account the needs of particular population groups and include targeted actions to reach people with disability in closed settings, including people in the criminal justice system, supported accommodation, Australian Disability Enterprises (ADEs) and day programs. The Associated Plan should focus, in the first instance, on information and communications about public health and emergencies and natural disasters.

Improving access to interpreters

People with disability may require interpreters to access services and participate in community life. They may miss out on critical supports and services if they are not provided with an appropriately skilled and qualified interpreter when they need one.

People with disability who may need interpreters include members of the Deaf and Deafblind community, First Nations sign language users, and people from culturally and linguistically diverse backgrounds.

Auslan interpreters

Auslan interpreters (including Deafblind interpreters, First Nations sign language interpreters and Deaf interpreters) play an essential role in ensuring accurate information is provided in a range of situations, including in medical, legal, educational and employment settings.

The shortage of appropriately qualified and skilled Auslan interpreters results in many Deaf and Deafblind people not being able to access essential systems, services and supports. We heard about poorer educational and health outcomes resulting from a lack of interpreters, as well as implications for people in the justice system.

We recommend the Australian Government and state and territory governments, through the Disability Reform Ministerial Council, commission the development of a workforce strategy to increase the number of skilled Auslan interpreters. The strategy should be based on a robust demand-supply analysis to quantify the current gaps and shortages in interpreting services.

Spoken language interpreters

Some people with disability require spoken language interpreters to access services, including the NDIS. We recommend ways to increase the understanding, skills and accessibility of spoken language interpreters.

Disability awareness training

Some services support people with disability who require spoken language interpreters. However, spoken language interpreters are not required to complete disability awareness training. Therefore they may not have a full understanding of disability, and may be unfamiliar with disability-specific terminology.

The National Accreditation Authority for Translators and Interpreters (NAATI) sets and maintains national standards for the translating and interpreting sector. We recommend NAATI should require interpreters to complete training in disability awareness before receiving accreditation and as part of their professional development to maintain accreditation.

Access to disability services

Many people with disability from First Nations and culturally and linguistically diverse communities and their families need additional, practical support to access and navigate the NDIS. However, they can find it difficult to access spoken language interpreters to assist.

The National Disability Insurance Agency's (NDIA) Practice Guide – Accessible Communication states all 'participants must be supported to communicate in their preferred method in all their dealings' with the NDIA.³³ The NDIA also has a Practice Guide for Aboriginal and Torres Strait Islander planning support. Both practice guides address arranging and working with interpreters.

We consider further work is needed to ensure the aims of these practice guides are realised. We recommend the NDIA ensure staff are aware of both practice guides as they relate to interpreters. We also recommend the NDIA provide training for staff on how to arrange and work with an interpreter.

Change is needed to ensure registered disability service providers improve access to and use of interpreters for people with disability. We recommend amendments to the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* (Cth) and *National Disability Insurance Scheme (Quality Indicators for the NDIS Practice Standards) Guidelines 2018* (Cth) to include standards and indicators on working effectively with interpreters. The NDIS Quality and Safeguards Commission (NDIS Commission) should also update the NDIS Workforce Capability Framework to explicitly include the skills and understanding needed for working with interpreters.

Support for decision-making

Substitute and supported decision-making

Some people with disability are denied the right to make big or even everyday decisions about their lives. What is referred to as 'substitute decision-making' can prevent people with disability from exercising their autonomy. Substitute decision-making is decision-making by someone on behalf of another person. It takes place because a person is considered to lack capacity to make decisions themselves. Substitute decisions can be made on personal, financial, property and health matters. People with cognitive or psychosocial disability are disproportionately affected by substitute decision-making.

'Supported decision-making' is decision-making with the support of others. It starts from the premise everyone is able to make decisions and should be supported to do so. Article 12 of the *CRPD* recognises the right to support for decision making.

In Australia there is no uniform understanding of or approach to supported decision-making. Under a 'principled' approach, which we adopt, a person is supported to maximise their autonomy in making decisions and a 'representative' decision-maker can only be appointed as a last resort. Where this happens, a person's will and preferences must remain central and be reflected in the representative's decision.

If a person cannot actively participate in decision-making or communicate their will and preferences, the representative makes decisions based on their best interpretation of the person's will and preferences. A person's will and preferences can be over-ridden only when necessary to prevent serious harm. In these very limited circumstances, a representative's decision-making may be guided by the standard of promoting 'personal and social wellbeing'.

Substitute decision-making and guardianship

Public hearing 30, 'Guardianship, substituted and supported decision-making', examined experiences of substitute decision-making and guardianship and administration systems. We heard about the impact substitute decision-making can have on a person's life, including on their freedoms, privacy, right to speak out about their experiences, and connection with family, friends and community.

Guardianship and administration orders are formal orders made by a court or tribunal authorising a person or organisation to make decisions for, act on, and give consent on another person's behalf. Guardians and administrators are generally appointed when a tribunal or court has determined a person does not have the 'capacity' to make a decision and a substitute decision-maker is needed to make that decision on their behalf.

In recent years, the number of orders for guardianship and administration has increased, suggesting they may not always be used as a last resort. Evidence indicates the rollout of the NDIS has increased the number of people under guardianship and administration. Witnesses said the complexity of the NDIS has led to an increased reliance on guardianship.

A new supported decision-making framework

We consider state and territory guardianship and administration legislation should be reformed to recognise and encourage supported decision-making.

The key aspects of the supported decision-making framework we recommend are:

- use of modern language, including the terms 'supporter' and 'representative'
- inclusion of the *CRPD* in the objects of legislation
- a focus on decision-making ability
- introduction of a formal supporter model
- ensuring representatives are appointed only as a last resort
- a new decision-making process for supporters and representatives.

Incorporating key elements of a supported decision-making framework in all guardianship and administration legislation will bring about greater uniformity and consistency in practice across states and territories.

Supported decision-making general principles

We also recommend the Australian Government and state and territory governments adopt uniform national decision-making principles. They are:

- Principle 1 – Recognition of the equal right to make decisions
- Principle 2 – Presumption of decision-making ability
- Principle 3 – Respect for dignity and the right to dignity of risk
- Principle 4 – Recognition of the role of informal supporters and advocates
- Principle 5 – Access to support necessary to communicate and participate in decisions
- Principle 6 – Decisions should be directed by a person’s own will and preferences and rights
- Principle 7 – Inclusion of appropriate and effective safeguards against violence, abuse, neglect and exploitation
- Principle 8 – Co-design, co-production and peer-led design processes
- Principle 9 – Recognition of diverse experiences, identities and needs
- Principle 10 – Entitlement to culturally safe, sensitive and responsive decision-making support.

State and territory guardianship and administration legislation should require anyone exercising powers, carrying out functions or performing duties under the legislation to have regard to the principles. Governments should take steps to review and reform other laws concerning decision-making using the supported decision-making principles as the basis for this reform.

Tribunal proceedings and processes

Maximising participation

It is important for a new supported decision-making framework in guardianship and administration legislation to be complemented by robust tribunal practices and processes that maximise the participation of people with disability in tribunal proceedings.

In June 2019, the Australian Guardianship and Administration Council (AGAC) released ‘Maximising the participation of the person in guardianship proceedings: Guidelines for Australian tribunals’ (Guidelines for tribunals). We recommend AGAC update the Guidelines for tribunals to align with our recommendations on guardianship and supported decision-making. We also recommend state and territory tribunals consider adopting the Guidelines for tribunals so people with disability can participate in tribunal proceedings to the fullest extent.

Public disclosure and confidentiality

Guardianship and administration legislation in all states and territories except the Australian Capital Territory restrict the disclosure or publishing of personal information about people with disability subject to guardianship and administration applications or orders.

Witnesses gave evidence these provisions effectively prevent a person with disability from talking publicly about this aspect of their lives. The provisions create a risk institutions such as hospitals, disability service providers and public guardians and public trustees will be shielded from transparency and accountability because people cannot recount their experiences of tribunal proceedings.

We consider a prohibition on publishing information related to tribunal proceedings should not be the default position. We recommend states and territories amend legislation to allow publication of material related to tribunal proceedings, unless the tribunal makes an order preventing public identification, taking into account the will and preferences of the party in the proceedings.

Education and capacity building

States and territories should ensure the functions of public advocates and public guardians include providing information, education and training on supported decision-making. To complement these efforts, we recommend every state and territory have a statutory body to undertake systemic advocacy to promote supported decision-making.

National standards for public advocates, public guardians and public trustees

The National Standards of Public Guardianship and National Standards for Financial Managers, developed by AGAC, provide guidance on supported decision-making to public advocates, public guardians and public trustees. These national standards do not have any legal basis or binding effect. However, they set out the 'minimum expectations of staff when acting as legal decision-makers on behalf of people with decision-making disabilities'.³⁴

We recommend updating the national standards including to align with our recommended supported decision-making principles and the new supported decision-making framework. The standards should also recognise the importance of ensuring all engagement with First Nations and culturally and linguistically diverse people is culturally safe.

Financial decision-making

Financial independence programs

Evidence to this inquiry suggested a lack of opportunities to develop financial skills is linked with violence against, and abuse, neglect and exploitation of, people under administration order. It can also reduce the likelihood guardianship or administration orders will be revoked.

We also heard how people can enhance their financial management skills by making their own decisions about money, with support as necessary.

People with disability should be given the opportunity to build on their skills so they can be more independent with their money. We recommend establishing or improving financial skills development programs so they are available to all people under orders appointing the public trustee. Improved financial skills can be a pathway out of administration orders.

Public trustee fees and charges

People who have the public trustee appointed through administration orders may be required to pay fees and charges, even though they did not choose the services of the public trustee. These fees can be substantial. A person under an administration order may not be aware they are required to pay, or are paying, these fees and charges. Even after they become aware, they may be unsure of the amounts they are liable for.

Public trustees have discretion to reduce or waive fees for people under certain circumstances, including financial hardship. The extent to which fee relief occurs varies across jurisdictions and is not always readily apparent from publicly available material, such as annual reports.

To improve transparency, we recommend public trustees in each state and territory publish accessible information about the services they provide to people under administration orders and the fees and charges for those services.

We also recommend state and territory governments that have not recently done so arrange a comprehensive review of the fees and charges payable by people under administration orders.

Australia's interpretative declaration

Article 12 of the *CRPD* recognises everyone has the right to make decisions about their life, and should have the necessary support to do so. Australia has made an interpretative declaration outlining its understanding that article 12 allows for:

fully supported or substituted decision-making arrangements, which provide for decisions to be made on behalf of a person, only where such arrangements are necessary, as a last resort and subject to safeguards.³⁵

All Commissioners agree that if the Royal Commission's recommendations are implemented, Australia will be moving towards compliance with article 12 of the *CRPD*. Commissioners take different views on whether the interpretative declaration needs to be withdrawn. The Chair and Commissioner Ryan's view is the interpretative declaration is consistent with both the language of article 12 and our proposed principles and recommendations. Commissioners McEwin, Bennett, Galbally and Mason recommend the Australian Government withdraw the interpretative declaration. They consider doing so will promote legal, policy and practice reform by focusing attention on a principled approach to supported decision-making and the need to centre the human rights of people with disability.

Improving advocacy and informal supports

Disability advocacy means acting, speaking or writing to promote, protect and defend the human rights of people with disability. There are several forms of disability advocacy:

- Self-advocacy is where someone with disability speaks up and represents themselves, sometimes with support and training from community-based groups.
- Individual advocacy is a one-on-one approach, undertaken by a professional advocate, relative, friend or volunteer.
- Systemic advocacy involves working for long-term social change to ensure the collective rights and interests of people with disability are met through legislation, policies and practices.

The role and value of advocacy

The National Disability Advocacy Framework (NDAF) recognises the critical role of advocacy. Under the 2023–2025 NDAF, the Australian Government and state and territory governments have committed to the following objective:

People with disability have access to effective disability advocacy that promotes, protects and ensures their full and equal enjoyment of all human rights, enabling full community participation and inclusion.³⁶

In many public hearings, we heard about the importance of self-advocacy in preventing violence against, and abuse, neglect and exploitation of, people with disability. However, some people with disability may have limited capability to self-advocate. Their personal circumstances or high support needs may mean they require independent advocacy support.

Independent advocacy is an essential complement to self-advocacy and family advocacy. It may be required in a range of circumstances – for example, when a specific skill set is needed, in closed settings, or where a person with disability lacks informal supports.

Barriers to advocacy in supported accommodation and other settings

People with disability face unique barriers to accessing disability advocacy if they live in supported accommodation. Group homes, which generally accommodate between four and six long-term residents with disability, can be isolating and can prevent residents from participating in their local communities. Opportunities for building informal support networks can be limited or non-existent, but many people in group homes do not have access to independent advocates. At Public hearing 3, ‘The experience of living in a group home for people with disability’, we heard it can be difficult for group home residents to contact advocacy services, and that staff in group homes can limit residents’ access to information about advocacy. We address this in Volume 10, *Disability services*, and in ‘Disability service providers’ later in this Executive summary.

Advocacy funding

The Australian Government funds disability advocacy organisations through two main programs.

Under the National Disability Advocacy Program, the government funds disability advocacy providers to deliver advocacy support across Australia. The program provides ‘people with disability with access to effective disability advocacy that promotes, protects and ensures their full and equal enjoyment of all human rights enabling community participation’.³⁷ It funds organisations to deliver individual and systemic advocacy. In 2021–22, the program received funding of \$24.8 million.

The NDIS Appeals Program is for people with disability and other people affected by NDIA reviewable decisions. It provides support to people seeking review of these decisions in the Administrative Appeals Tribunal or through other dispute resolution avenues. In 2021–22 it received funding of \$15.4 million.

Many of the issues for which people with disability require advocacy support relate to service systems that are the responsibility of state and territory governments. These include housing, transport, education, child protection and health. States and territories have a critical role in funding advocacy services. However, the certainty and amount of advocacy funding states and territories provide has fluctuated over the past decade.

Additional funding required

In many public hearings, the Royal Commission heard the lack of adequate or consistent funding is a major factor contributing to the unmet demand for disability advocacy. Submissions to the Royal Commission support this evidence.

We commissioned Taylor Fry to estimate the additional funding needed to meet unmet demand for independent advocacy. Based on this independent analysis, we recommend the Australian Government commit additional funding for 2024–25 and 2025–26 of:

- \$16.6 million a year for the National Disability Advocacy Program
- \$20.3 million a year for the NDIS Appeals Program.

Taylor Fry’s analysis notes estimates of future demand for disability advocacy are uncertain due to a lack of data. We therefore also recommend all governments collect and publish data on met and unmet demand for disability advocacy programs to inform future funding allocations.

Cultural safety

The Disability Advocacy Work Plan associated with the 2023–2025 NDAF has a priority work area of ‘increasing culturally appropriate and accessible advocacy services for First Nations people with disability’.³⁸ We welcome this development.

We recommend the work plan be amended to make similar provision for people from culturally and linguistically diverse backgrounds with disability and LGBTIQ+ people with disability.

Informal supports

Informal supports, also known as informal safeguards or natural safeguards, are the social support networks that provide protection for people with disability by increasing connections, relationships and visibility in the wider community. Peer support brings people with disability together to support each other, share experiences and develop skills.

We heard about the critical role of informal supports for people with disability who are experiencing social isolation. Informal supports are particularly important for people in supported accommodation, living alone or experiencing homelessness.

Informal supports are an important part of advocacy. They can build the capacity of a person with disability to self-advocate, while informal supporters can also advocate on behalf of a person with disability. We make recommendations throughout this *Final report* to better recognise and enhance informal supports for people with disability.

Overcoming barriers to health care and treatment

Quality health care is an essential service and a human right in itself. The *CRPD* recognises people with disability have the right to ‘the enjoyment of the highest attainable standard of health without discrimination on the basis of disability’.³⁹ However, our inquiry revealed many people with disability are denied access to health care on an equal basis to people without disability. Data shows people with disability have worse health outcomes and lower life expectancy than people without disability. For example, an estimated 400 deaths each year of people with intellectual disability aged 20 years and above are considered potentially avoidable.⁴⁰

Attitudes and practices that deny or limit people with disability’s access to quality health care include:

- devaluing of their lives and unconscious bias
- attributing symptoms or behaviours to a person’s disability rather than considering them as signs of health problems or conditions unrelated to disability
- failing to listen to people with disability and their families
- failing to provide necessary adaptations and supports.

People with cognitive disability and access to health care

The evidence in Public hearing 4, ‘Health care and services for people with cognitive disability’, demonstrated people with cognitive disability do not enjoy the right to health recognised by the *CRPD*. We found ‘people with cognitive disability have been and continue to be subject to systemic neglect in the Australian health system’.⁴¹

Education and training of health professionals

In Public hearing 4, witnesses proposed further education and training for health professionals as one measure to address the problems we identified. We heard this was important to ensure diagnosis and treatment decisions avoid preconceptions about people with cognitive disability. Training was also needed to improve communication with people with cognitive disability and their families and supporters.

Cognitive disability health capability framework

Our *Report of Public hearing 10: Education and training of health professionals in relation to people with cognitive disability*, recommended the development and implementation of a cognitive disability health capability framework. The capability framework should specify the core knowledge, skills and attributes required to provide quality health care to people with cognitive disability.

The Australian Government Department of Health and Aged Care has confirmed it will address the matters we examined at Public hearing 10 as it implements its National Roadmap for Improving the Health of People with Intellectual Disability (National Roadmap).

In our inquiry, we heard about barriers to health care experienced by people with different types of cognitive disability. This includes people with intellectual disability, acquired brain injury, dementia and some people with autism. However, the National Roadmap has a narrower scope and is limited to intellectual disability.

The National Roadmap also focuses on undergraduate education. We consider the cognitive disability health capability framework should apply to all health practitioner curricula across all training stages, including entry-level and post-graduate programs, in-service training and continuing professional development (CPD).

We recommend the Australian Government Department of Health and Aged Care immediately expand the scope of the work on an intellectual disability health capability framework to address all forms of cognitive disability, to apply at all stages of education and training.

Review of accreditation standards and curriculum

The accreditation standard for a health profession is a standard used to assess whether a program of study provides those who complete it with the knowledge, skills and professional attributes necessary to practice the profession in Australia. In our *Report of Public hearing 10*, we found that unless accreditation standards are revised, there is unlikely to be substantive change to educational curricula to incorporate enhanced training on cognitive disability health.

Since Public hearing 10, some health professional bodies are taking steps to amend accreditation standards and associated professional competencies and curriculum content. To encourage further progress, we reiterate our recommendations from the public hearing that

accreditation authorities for health professions review and amend accreditation standards where necessary to ensure cognitive disability health is sufficiently covered. They should also encourage or mandate education providers to develop specific cognitive disability health curriculum content.

Clinical placements for students and trainees

We heard while student clinical placements are important to prepare graduates to care for people with cognitive disability, there are limited opportunities. Education providers and other experts supported increasing clinical placements.

We recommend the Australian Government Department of Health and Aged Care improve access to clinical placements in disability health services as a priority.

Post-graduate training and continuing professional development

In Public hearing 10, we examined the education and training medical colleges provide relating to specialist qualifications for psychiatrists, physicians, anaesthetists, general practitioners, rural and remote medicine specialists and emergency physicians. Each college provides some training on cognitive disability health. However, the evidence indicated it does not systematically cover the core aptitudes in cognitive disability health.

We also considered training pathways in each medical specialty to become a specialist or develop advanced skills in intellectual or cognitive disability. Better career pathways are needed for aspiring disability specialists.

Public hearing 10 also examined CPD opportunities for health professionals in six professions: medicine, nursing, dentistry and oral health, speech pathology, pharmacy and psychology. The evidence clearly indicated a lack of CPD opportunities in cognitive disability health.

In our *Report of Public hearing 10*, we recommended the development of specialised training content in cognitive disability health and the review of CPD programs. The Royal Australasian College of Physicians, Royal Australian and New Zealand College of Psychiatrists and the Royal Australian College of General Practitioners advised they were reviewing and enhancing curricula and learning resources for specialist trainee and CPD programs to include education on cognitive disability health. Other colleges acknowledged they had more work to do.

Role for specialised disability health and mental health services

Access to specialised intellectual disability health services in Australia varies substantially across jurisdictions. We heard they are most developed in New South Wales. The NSW Intellectual Disability Health Service offers comprehensive health assessment and recommendations for people with intellectual disability who have unresolved complex or chronic health needs that cannot be met through the usual care pathways.

We recommend state and territory governments fund, establish and evaluate specialised health and mental health services for people with cognitive disability to provide specialist assessment and clinical services.

Care coordination

Expert witnesses described how the complexity and fragmentation of the health system disproportionately impacts people with cognitive disability. Continuity of care for people with cognitive disability is often absent at times of transition, such as from paediatric to adult services.

A more coordinated approach is needed to improve access to health care for people with disability. We recommend introducing ‘disability health navigators’ to assist people with cognitive disability and complex health issues to find their way through the health system.

Adaptations and supports

‘Adaptations’ and ‘supports’ refer to the changes and supports people with disability may need to access health care. For example, these could include extra time to process a new environment, or the use of visual aids to overcome communication difficulties.

The National Roadmap recognises ‘when health professionals listen to the needs of people with intellectual disability and make reasonable adjustments when delivering health care, patient experiences and healthcare outcomes are greatly improved’.⁴²

We recommend the Australian Government and state and territory governments, in consultation with people with disability, identify and publish a list of frequently needed adaptations and supports to enable all people with disability to receive high-quality health care.

National health standards, charter and policies

In Volume 4, we recommend the Australian Government legislate a right of people with disability to equitable access to health services as part of our proposed Australian Disability Rights Act. To complement this reform, we recommend the right to equitable access to health services be embedded in key policy instruments of the health system – that is, the national health standards and the charter of rights.

National health standards

The Australian Commission on Safety and Quality in Health Care (ACSQHC) has developed the National Safety and Quality Health Service Standards and the National Safety and Quality Primary and Community Healthcare Standards.

The ACSQHC standards are a key vehicle to drive change in the health sector. They are nationally consistent, informed by extensive consultation and linked to existing regulatory and commissioning frameworks, including health service accreditation. We recommend the ACSQHC revise the standards to provide for the delivery of safe and high-quality health care for people with disability and align them with the proposed right to equitable access to health services in the Disability Rights Act as recommended in Volume 4.

Australian Charter of Healthcare Rights

The Australian Charter of Healthcare Rights describes seven rights of people using the health system: access, safety, respect, information, partnership, privacy, and giving feedback. These rights are significant, but not equivalent to the proposed right to equitable access to health services under the Disability Rights Act.

We recommend the ACSQHC amend the Australian Charter of Healthcare Rights to incorporate the right to equitable access to health services for people with disability and align it with the proposed right in the Disability Rights Act recommended in Volume 4.

Reducing and eliminating restrictive practices

Restrictive practices used on people with disability

This inquiry has shown how people with disability are solely or disproportionately subjected to a number of practices that deny them their autonomy and can affect their health, safety and wellbeing. These include 'restrictive practices', such as seclusion and physical, chemical, mechanical and environmental restraints. People with disability are subjected to restrictive practices in multiple settings.

The use of restrictive practices is regulated at national, state and territory levels in a range of contexts, including disability service provision and health, education and justice settings. There is no single national law on the use of restrictive practices and no nationally agreed definition of a restrictive practice. States and territories regulate different categories of such practices.

For the purposes of this *Final report*, we have defined a 'restrictive practice' as 'any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability'. This is the definition adopted in the *National Disability Insurance Scheme Act 2013* (Cth) (*NDIS Act*).⁴³

Behaviour and restrictive practices

Restrictive practices are often used as a response to behaviour perceived as difficult to control. We use the term 'behaviours of concern' to describe this conduct, but this should not be understood as implying the behaviour is the fault of the person. It is critical to recognise that behaviour is an important way to communicate for people with cognitive disability in particular.

Rates and drivers of use of restrictive practices

People with disability, particularly people with cognitive disability, can be subjected to restrictive practices by NDIS providers, by health care providers, and in settings such as schools, prisons and juvenile detention.

Prevalence of restrictive practices

Data collection and reporting on the use of restrictive practices on people with disability in Australia are poor. This means the use of restrictive practices cannot be properly assessed, monitored over time or compared across settings or jurisdictions.

The NDIS Commission collects data on the use of restrictive practices on NDIS participants by NDIS providers. An ‘unauthorised use’ of a restrictive practice is where use has not been approved under state or territory regulatory frameworks and does not occur in accordance with a behaviour support plan. An ‘authorised use’ is where the relevant state or territory authority has approved use in accordance with a behaviour support plan.

In the 2021–22 reporting period, the NDIS Commission reported:

- 1.4 million unauthorised uses of restrictive practices against 8,830 NDIS participants
- 5.58 million uses of authorised restrictive practices against 8,685 NDIS participants.

Chemical restraints were used more than other forms of unauthorised and authorised restrictive practices.

Systemic drivers of restrictive practices

Systemic drivers of restrictive practices often depend on the settings in which they occur.

Several factors contribute to the regular use of restrictive practices in some group homes. These include a lack of person-centred approaches; incompatibility of residents, who do not choose their co-residents; and workforce issues, such as a lack of resources and inadequate training.

In our *Report of Public hearing 6: Psychotropic medication, behaviour support and behaviours of concern*, we found environmental factors, including lack of choice in accommodation, unsuitable living arrangements and social isolation increased the incidence of behaviours of concern. Living in these conditions can have long-term effects on the health and wellbeing of people with cognitive disability.

In health settings, the sensory environment and past experiences of trauma can lead to ‘increased challenging behaviours or distress’ for some people with disability.⁴⁴

In education settings, behaviours of students with disability can be mischaracterised as wilfully disruptive or naughty. Educators might then respond punitively, rather than attempt to understand or address the underlying cause of the behaviours.

The use of seclusion in detention and forensic mental health settings can become entrenched. People with complex support needs in correctional and forensic facilities may be regularly subjected to seclusion, even when its harmful effects are recognised.

Stronger legal frameworks

Towards consistency of authorisation, review and oversight

Reform is needed to improve the processes for authorising, reviewing and overseeing restrictive practices. We recommend state and territory governments ensure appropriate legal frameworks are in place in disability, health, education and justice settings. The frameworks should provide that a person with disability should not be subjected to restrictive practices, except in accordance with procedures for authorisation, review and oversight established by law.

We further recommend the use of restrictive practices be independently overseen and monitored, and that authorisation decisions be subject to independent review.

The legal framework in each state and territory should reflect that restrictive practices only be authorised and used:

- as a last resort and in response to the risk of harm to the person with disability or others, and only after other strategies, including supported decision-making, have been explored and applied
- as the least restrictive response possible to ensure the safety of the person with disability or others
- to reduce the risk of harm and be proportionate to the potential negative consequence or risk of harm
- for the shortest time possible.

Reducing and eliminating restrictive practices through a Senior Practitioner

A number of states and territories have a Senior Practitioner or Senior Authorising Officer responsible for authorising and monitoring the use of restrictive practices in disability service settings. In its report on the experience of students with disability in Victorian schools, the Victorian Equal Opportunity and Human Rights Commission said:

The role of the Senior Practitioner to monitor the use of restrictive interventions in disability services has made a measurable contribution to the reduction in the use of seclusion and restraint in disability services. This has delivered significant improvements for the human rights and dignity of people with disabilities ...⁴⁵

We recommend states and territories introduce or clarify the role of a Senior Practitioner. The powers and functions of a Senior Practitioner for restrictive practices in disability service provision should include:

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- promoting the reduction and elimination of the use of restrictive practices
 - protecting and promoting the rights of people with disability subjected to restrictive practices
 - developing and providing information, education and advice on restrictive practices
 - considering applications to use restrictive practices in disability service settings and authorising their use
 - developing guidelines and standards on restrictive practices
 - receiving complaints about the use of restrictive practices
 - investigating the use of restrictive practices.

Prohibiting certain restrictive practices

We consider states and territories should take immediate action to prevent the use of certain restrictive practices in disability, health, mental health and education settings:

- In all settings, the seclusion of children should be prohibited.
- For disability services, all states and territories should immediately adopt the Disability Reform Council's agreed list of prohibited practices for NDIS settings.
- In health and education settings, we identify the strongest existing prohibitions on the use of restrictive practices that already exist in each state and territory. We recommend that these should apply in all health and education settings nationwide.

Our recommendations aim to create more consistent protections for people with disability in various settings, no matter where they live in Australia.

Psychotropic medication

Psychotropic medication is the administration of any drug capable of affecting the mind, emotions or behaviour. This category of medication includes antipsychotics, anti-depressants and mood stabilisers. We acknowledge, when prescribed appropriately, psychotropic medication can improve health outcomes. However, it can be difficult to determine whether psychotropic medications have been prescribed to treat mental health conditions or as a chemical restraint to control behaviour. Following Public hearing 6, we found psychotropic medication is overprescribed to people with cognitive disability, particularly as a response to behaviours of concern.

We consider regulation of the prescription of psychotropic medication is failing to adequately protect people with disability. The regulatory regimes seem to assume the distinction between using psychotropic drugs to treat a diagnosed mental health condition and using them as a chemical restraint to address behaviours of concern is clearer than it is in practice. Many medical practitioners do not have the training or experience to make this distinction. Some medical practitioners reject the distinction as impracticable.

In March 2022, the NDIS Commissioner, the CEO of the ACSQHC and the Commissioner of the Aged Care Quality and Safety Commission (ACQSC) released the Joint Statement on the inappropriate use of psychotropic medicines to manage the behaviours of people with disability and older people (Joint Statement). The Joint Statement acknowledged psychotropic medicines are being overprescribed and overused – in particular for older people and people with disability.

The NDIS Commission, ACSQHC and the ACQSC have committed to work together to reduce the inappropriate use of psychotropic medicines by:

- raising awareness of the risks associated with inappropriate use of psychotropic medicines among health care, aged care and disability workforces
- supporting improvements to the availability and quality of behaviour support planning, and preventative and de-escalation strategies
- strengthening understanding about and capacity to consent to, prescribe, dispense, administer and cease the use of psychotropic medicines.

Ongoing data collection and reporting on the use of psychotropic medication against people with disability, particularly cognitive disability, is also essential. We recommend the NDIS Commission, ACSQHC and ACQSC:

- publish joint annual progress reports on implementation of measures under the Joint Statement
- commission an independent evaluation of these measures to determine whether they have reduced the use of psychotropic medicines against people with cognitive disability.

Improving the evidence base

Research

There is limited empirical research on restrictive practices and the experiences of people with disability subjected to them. There is also a need for high-quality research on what works to reduce and eliminate restrictive practices.

We recommend the National Disability Research Partnership (NDRP) commission a longitudinal study of behaviour support planning and other practices aimed at reducing and eliminating restrictive practices. The study should focus on the use of restrictive practices in a range of settings, including disability service provision, health, education and justice settings.

Data collection

To address the limitations and inconsistencies in publicly available data, we recommend the Australian Institute of Health and Welfare work with state and territory governments to develop consistent data definitions and collection methods on restrictive practices across all jurisdictions. Using consistent definitions and collection methods, state and territory governments should collect and publish data on the use of restrictive practices in health, education and justice settings.

Targets and performance indicators

The collection and reporting of data will improve transparency and accountability concerning the use of restrictive practices but will not be enough to effect real change.

Mental health is the only sector with agreed targets and performance indicators to accompany a commitment to reduce and eliminate restrictive practices. However, data on the use of restraint and seclusion in mental health settings is not disaggregated by disability status.

There are no similar targets or performance indicators on reducing and eliminating restrictive practices in education, justice or disability services for people with disability. The collection and publication of better data on the use of restrictive practices must be accompanied by indicators and targets to measure sector-specific performance and drive practice change.

We recommend the Australian Government and state and territory governments establish sector-specific targets and performance indicators to drive the reduction and elimination of restrictive practices over time. This should be at both the national and state and territory level for disability, health, education and justice settings.

Prohibiting non-therapeutic involuntary sterilisation

Our inquiry was told about women and girls with disability being subjected to involuntary sterilisation – that is, irreversible surgery that permanently prevents reproduction, performed without full, free and informed consent.

Reproductive rights are protected under multiple articles of the *CRPD*. As noted, Professor McCallum assessed Australia's compliance with the *CRPD* and concluded:

as a matter of some urgency, the Australian, State and Territory governments [should] amend their laws to forbid non-therapeutic sterilization procedures on girls and boys and on adults with disabilities without their full and free consent.⁴⁶

The legal position in Australia

Involuntary sterilisation of people with disability is legal in Australia in certain circumstances. If the person cannot give consent, the procedure can be performed if authorised by a court or tribunal with appropriate jurisdiction. Following a decision known as *Marion's case*, parents or guardians of a child can only authorise the sterilisation of the child where it is 'therapeutic'. This means infertility is 'a by-product of surgery appropriately carried out' to treat a disease or condition. Sterilisation is non-therapeutic when performed, for example, to manage menstruation or prevent the risk of conception.⁴⁷

Available data and experiences

Data on sterilisation procedures in Australia is limited. AGAC reports on sterilisation, but this is limited to tribunal and board-approved medical procedures on adults with cognitive disability. Between 1 July 2021 and 30 June 2022, 14 adult sterilisations were approved.

Prohibition on sterilisation of people with disability

We recommend the Australian Government and state and territory governments amend or enact laws to prohibit non-therapeutic sterilisation of people with disability, except:

- where there is a threat to the life of the person with disability were the procedure not performed or
- when the person with disability is an adult and has given voluntary and informed consent to the procedure, with support for decision-making if required.

We recommend five-yearly reviews of legislation prohibiting the sterilisation of people with disability. Reviews should include recommendations as appropriate with the aim of strengthening human rights protections for people with disability.

Volume 6, *Enabling autonomy and access* examines and makes recommendations to address inaccessible information and communications; substitute decision-making; barriers to accessing disability advocacy; barriers to health care and treatment; use of restrictive practices; and non-therapeutic involuntary sterilisation.

Inclusive education, employment and housing

Key points

- As for all people, education, employment and housing are of profound importance to people with disability. They are also areas with both ‘mainstream’ settings and services, designed for both people with and without disability, and disability-specific settings and services.
- Mainstream systems must be significantly reformed to remove barriers to people with disability accessing education, employment and housing, to improve outcomes and to enable meaningful inclusion.
- Commissioners have differing views about whether settings exclusively for people with disability should be phased out over time.
- Some Commissioners regard the separation of people with disability from their peers and the community at large as ‘segregation’, and incompatible with an inclusive society and inconsistent with the *Convention on the Rights of Persons with Disabilities*. They consider special/segregated schools, ADEs and group homes and similar accommodation should be phased out over a period of time.
- Other Commissioners consider the choices are not between wholly separated and wholly inclusive settings, but are more nuanced requiring consideration of the specific circumstances in which the physical separation of people with disability takes place. They do not consider a more inclusive society for people with disability and consistency with the *Convention on the Rights of Persons with Disabilities* necessarily requires the phasing out of schools, employment settings or group homes exclusively for people with disability.

Achieving inclusive education, employment and housing

[people with disability] deserve the choice like everybody else to get out there and find employment. And it can be a pretty brutal landscape sometimes for a lot of people to get out there and get those opportunities that they deserve to have the choice and control over their life if they want to work.⁴⁸

Education, employment and housing are all areas of profound importance to people with disability and affect them throughout their lives. They are also areas with both ‘mainstream’ settings and services, that is for people with and without disability, and settings and services for people with disability only. For this reason, we examined them together, in Volume 7, *Inclusive education, employment and housing*.

Our inquiry has shown how both mainstream settings and those where people are separated on the basis of their disability can expose people with disability to various forms of violence, abuse, neglect and exploitation. It has also shown mainstream systems must be significantly reformed, and in some cases transformed, to remove barriers to access for people with disability and to enable their meaningful inclusion.

All Commissioners agree mainstream education needs to be transformed to enable more children and young people to be educated in those settings, with such supports as they require. Commissioners agree the open labour market should become more accessible to people with disability, creating greater opportunities for them to work in open employment and be included within the broader community. Similarly, Commissioners agree there should be a greater range of accommodation available to people with disability and flexibility in how support packages can be used. This would facilitate people with disability exercising choice and control over where they live, and not be limited to group homes or equivalent supported accommodation.

Commissioners have differing views about whether settings exclusively for people with disability should be phased out over time.

Some Commissioners regard the separation of people with disability from their peers and the community at large as ‘segregation’, which is incompatible with an inclusive society. Accordingly, they consider that special/segregated schools, which enrol only students with disability, should be phased out over 28 years and all students, regardless of support needs, should be educated together in mainstream schools (see ‘Phased approach to ceasing special/segregated education’ below).

They consider enterprises that employ only people with disability, usually at less than minimum wages, are segregated settings that should also be phased out over ten years. Similarly, they consider group homes and similar forms of accommodation constitute segregated accommodation and should be phased out over 15 years.

Other Commissioners consider that separate schools, accommodation or employment for people with disability should not necessarily be characterised as ‘segregated’ settings, depending on the particular circumstances. They say the choices are not between wholly separated and wholly inclusive settings, but are more nuanced.

Accordingly they do not consider a more inclusive society for people with disability necessarily requires the phasing out of schools, group homes or employment settings exclusively for people with disability.

The respective positions of Commissioners are summarised below.

Different perspectives on inclusion

Promoting a more inclusive society: Principles and guidelines

Views of the Chair and Commissioner Ryan

We (the Chair and Commissioner Ryan) unequivocally accept that historically the enforced separation and isolation of people with disability resulted in their dehumanisation and exposed them to horrendous levels of violence, abuse, neglect and exploitation. While we agree it is entirely appropriate to describe some current settings for people with disability as ‘segregated’, not all settings exclusively or primarily for people with disability warrant that description. Separation on the basis of disability can take many different forms and have many different objectives.

To determine whether a particular setting should be characterised as ‘segregated’ we consider it is necessary to consider the specific circumstances in which the physical separation of people with disability takes place. These include:

- whether participants are separated from other people for shorter or longer periods
- whether people with disability who live, learn, work or engage in leisure activities in those settings do so in the exercise of a free and informed choice (or, in the case of children, the free and informed choice of parents or guardians)
- whether the participants enjoy regular and significant interaction with their non-disabled peers and the wider community.

Principles and guidelines

Since the terms of reference require us to inquire into what should be done to promote a more inclusive society, we identify principles that should inform the inquiry. These include:

- People with disability should be free to make their own decisions, including where they live, work and learn.
- People with intellectual disability or cognitive impairment should receive the supports they may require to make decisions for themselves.
- Mainstream services or programs should be accessible to people with disability, including by means of adjustments and supports to which they are entitled.
- People with disability should not be isolated from their peers or the broader community and should have the opportunity to engage regularly with their peers and participate in community life.

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- The human rights of people with disability should be protected by law and recognised by the broader community.
 - The services and programs in which people with disability participate should never devalue or dehumanise them.

We rely on these principles to formulate guidelines to address the policy issues in education, employment and housing. The guidelines are:

- No person with disability should be forced against their will (or, in the case of children, against the will of their parents or guardians) into an environment in which they are physically separated on the basis of disability and isolated from their peers or the community at large.
- The barriers that currently prevent people with disability participating fully in mainstream settings should be eliminated so far as feasible.
- Adults with disability should be free to make their own decisions concerning where they live, work, learn, socialise and enjoy leisure time.
- In making choices, people with disability should be assured they will receive the supports and adjustments they are entitled to receive to enable them to participate as fully as practicable in mainstream settings.
- All settings in which people with disability live, work, learn, participate in community activities, socialise and enjoy recreation should be subject to rigorous regulatory oversight and programs designed to prevent people with disability experiencing violence, abuse, neglect and exploitation.
- People with disability should have a range of options available that enable them to freely choose the setting they consider meets their needs and goals and offers them the maximum opportunities for inclusion within the community.

It follows in our view that a more inclusive society may be compatible with settings in which people with disability are separated for part of the time from their peers and the community at large. Whether that is the case – and whether the settings warrant being characterised as segregated – depends on whether the setting is consistent with the principles and guidelines we identify.

Ending segregation: The case for change

Views of Commissioners Bennett, Galbally and McEwin

We three Commissioners have formed the view that segregation describes the deliberate and systemic separation of people with disability to live, learn, work or socialise in environments apart from people without disability. It is enforced through laws, policies, structures, systems and social norms. Segregated settings include special schools and classes, Australian Disability Enterprises (ADEs), group homes and day programs.

What needs to change

The CRPD Committee's *General comment no. 5 and Guidelines on deinstitutionalization* set out the defining elements of institutions. These are:

- a lack of control over day-to-day decisions, and a lack of choice about with whom individuals live
- an obligation to share assistants with others and having no or limited influence over who provides the assistance
- a rigid routine that does not account for personal will and preferences
- identical activities being held in the same place for a group of individuals
- a paternalistic approach to providing services, and supervised living arrangements
- isolation and segregation from those who live an independent life in the community
- a number of people with disability congregated in the same environment.

The CRPD Committee notes that:

States Parties should recognize institutionalization in all its forms as a multiple violation of the rights enshrined in the Convention [on the Rights of Persons with Disabilities].⁴⁹

We three Commissioners have concluded that many or all of these elements of institutionalisation are present in Australia's special or segregated education settings, ADEs, group homes and day programs. As a consequence, we consider that these settings are failing to uphold fundamental human rights for people with disability.

We heard that in segregated settings people with disability have experienced a range of harmful conditions. These include social isolation; denial of autonomy and choice and control, including over day-to-day living and access to services; limited opportunities for personal growth and development; and various forms of violence, abuse, neglect and exploitation. Practices occurring within institutionalised and closed settings with little oversight or public scrutiny can also place people with disability at heightened risk of violence, abuse, neglect and exploitation.

All three Commissioners are clear segregation does not occur in spaces where people with disability choose to come together voluntarily for a common purpose, whether to share culture and values, seek solidarity, provide peer-to-peer support to others who relate to their needs and struggles, or share social justice goals. These are the same choices available to people without disability and they do not limit access to, and full participation in, society on an equal basis with others.

We also heard about the long-term impacts of being segregated from an early age. The 'institutionalisation from cradle to grave' that used to occur in larger institutions has now become the 'segregated pipeline'.⁵⁰

Early and entrenched segregation of people with disability across their life can severely limit their participation in the broader community, and prevent relationships forming between people with and without disability.

Ableism from segregation

When individuals, organisations and governments exclude and segregate people with disability, it renders these individuals 'unseen and unfamiliar'.⁵¹ This generates and perpetuates attitudes, beliefs and behaviours towards disability by reinforcing the belief that people with disability are 'different', 'other' or 'special'.⁵² This is known as 'ableism'.

Phasing out segregation

We three Commissioners hold the view that segregating people with disability for study, work, living and recreation should be systematically phased out entirely. We recommend the Australian Government and state and territory governments develop and implement comprehensive roadmaps for phasing out special schools, ADEs and group homes.

Most importantly, reimagining these systems needs to be done in partnership with people with disability, with their voices at the centre of reforms.

Commissioner Mason has taken into consideration the *UNDRIP* and segregation's incompatibility with inclusion on a case-by-case basis.

Achieving inclusive education

Key points

- Mainstream schools need major reforms to overcome the barriers that prevent students with disability, particularly students with intellectual disability, accessing safe, equal and inclusive education.
- The Australian Government and state and territory governments should develop a 'National Roadmap to Inclusive Education' for students with disability, detailing outcome measures, targets and actions.

Under article 24 of the *CRPD*, Australia has an obligation to recognise the rights of people with disability to education. However, this inquiry has shown that many students with disability continue to be denied access to safe, quality and inclusive education. We agree with the Committee on the Rights of Persons with Disabilities *General comment no. 4* that ensuring the right to inclusive education entails:

- a transformation in culture, policy and practice in educational environments to accommodate the differing requirements and identities of individual students
- a commitment to removing the barriers that impede that possibility.

All Commissioners also accept that inclusive education:

- involves specialist expertise to make reasonable adjustments for students with disability and support them to participate fully in school life
- empowers the leadership and voice of students with disability, while engaging parents and carers in planning and decision making
- builds inclusive attitudes and behaviours among parents, students, teachers and school leadership
- enhances workforce capabilities and changes classroom and extracurricular practices.

Overcoming barriers to safe, quality and inclusive education in mainstream schools

Gatekeeping practices

'Gatekeeping' occurs when schools deny students with disability access to the school of their choice or informally discourage their attendance. There is compelling evidence of gatekeeping occurring in Australia. To prevent this, we recommend:

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- states and territories amend Education Acts (or the equivalent) to create a legal entitlement for students with disability to enrol in a local mainstream school (a local mainstream school is a school that is open to all students who meet geographic and residency criteria, and that does not consider disability status as a precondition to entry)
 - state and territory governments establish an independent review process to enable a parent or supporter to challenge a refusal to enrol a child or young person in a school
 - state and territory educational authorities disseminate clear, accessible material for students with disability and their families on their rights, the obligations of schools, and review processes.

Exclusionary discipline

'Exclusionary discipline' refers to the exclusion of a student from a classroom, extracurricular activities or a school in response to what is perceived as negative or disobedient behaviour. It includes suspensions, exclusions and expulsions.

Throughout our inquiry, we heard evidence and received information about the inappropriate use of exclusionary discipline on students with disability and how this kept them from their classrooms and their peers. Students with disability are far more likely to be suspended than students without disability in government schools in all jurisdictions. Rates are higher again for First Nations students with disability.

We recommend state and territory educational authorities:

- review all regulations, rules and procedures regulating exclusionary discipline to ensure they adopt the principle that:
 - education providers should avoid the use of exclusionary discipline on students with disability, unless it is necessary as a last resort to avert the risk of serious harm to the student, other students or staff
- in considering the use of exclusionary discipline, consider the student's disability, needs and age and particularly the effects on young children
- require steps be taken before exclusion to ensure an individual behaviour plan and reasonable adjustments have been implemented for the student
- include a robust review or appeals process for students with disability and their families or carers and supporters.

Adjustments and supports

Evidence and information before the Royal Commission showed schools often failed to provide students with disability the adjustments and supports necessary to access and participate in all aspects of their education. We concluded the concept of 'reasonable adjustment' under the *DDA* and Education Standards are either poorly understood or inconsistently applied.

We recommend state and territory educational authorities develop guidelines to equip and encourage schools, principals and teachers to comply fully with their statutory obligations to provide adjustments for students with disability.

Participation in the school community

Participation in school is about more than academic learning. It is also about enabling social inclusion in the wider school and local community. Students with disability have a right to feel included as a peer, form firm relationships and friendships, and develop skills for lifelong learning and success.

Throughout the inquiry, we heard that students with disability are excluded from full participation in school activities, such as excursions, sporting events, school assemblies and school camps. We also heard students with disability can feel socially isolated in special/segregated (non-mainstream) and mainstream school settings.

We recommend state and territory school educational authorities, to the maximum extent feasible, facilitate participation by students at special/segregated (non-mainstream) schools in educational, cultural, sporting, recreational and celebratory activities with their peers in mainstream schools.

We also heard evidence that when special/segregated (non-mainstream) schools or education settings are physically located close to or co-located with mainstream schools, this creates opportunities for inclusion. State and territory school educational authorities should, wherever practicable, locate non-mainstream schools within or close to mainstream schools.

Transitions from school to work and study

There is a lack of comprehensive national data about the trajectories of young people with disability after they leave school. The data that is available shows young people with disability have lower rates of educational attainment and labour force participation than young people without disability.

Throughout our inquiry, we heard evidence that schools fail to support students with disability transition from school to further education or employment in the open labour market. Parents and advocates told us students with disability are not given access to work experience, careers counselling or role models and mentors.

The extent to which schools facilitate post-school transition planning and the availability of specialised support for students with disability varies according to state and territory education policies. We recommend all state and territory educational authorities have a dedicated careers guidance and transition support service for students with disability to aid transition from school to further education and open employment.

Communicating with parents and students

Students with disability have a right to have a say in matters affecting them. However, a common theme in evidence was that students with disability and their parents feel school leaders and teachers do not listen to them, communicate with them or consider the student's lived expertise when making critical decisions about the student's education.

We know poor communication is a barrier to achieving substantive equality for students with disability. Conversely, we know open and responsive communication can enhance student outcomes.

To achieve the goal of better communication, we recommend state and territory educational authorities update policies and supporting guidance for schools. The policies and guidance should clearly outline how and when students and parents can expect to receive information, take part in the school community and be involved in decisions affecting a student's educational experience.

The implementation of these policies should involve people with disability and their families and carers. Policies should respect the distinct cultural identities, perspectives and practices of families from First Nations communities, culturally and linguistically diverse communities and the signing Deaf community.

Embedding inclusive education

Systemic changes are required to embed inclusive education for students with disability in mainstream schools.

Inclusive education expertise

Some state and territory education departments have inclusive education units or directorates responsible for advising on policies for inclusive education. We recognise their value and recommend all state and territory educational authorities establish such a unit.

Inclusive education units should contain First Nations expertise for advice on ways to improve access to inclusive and culturally appropriate education for First Nations students with disability.

Workforce capabilities, development and expertise

High-quality teaching by skilled teachers has a positive influence on students' learning outcomes. All students, particularly students with disability, require a student-centred approach to teaching and learning, with lesson content and teaching methods tailored to individual student needs.

Strengthening teaching standards

The Australian Professional Standards for Teachers (APST) describe the key elements of quality teaching. They articulate what teachers are expected to know and be able to do at different career stages.

To embed a human rights-based approach to inclusive education for students with disability, we recommend the Education Ministers Meeting task the Australian Institute for Teaching and School Leadership (AITSL) with reviewing and amending the APST. The review should take into account the knowledge and skills required to teach and support students with disability. To provide guidance on the revised APST, AITSL should also develop an inclusive education capability framework.

Continuing professional development

Continuing professional development is key to developing teachers' skills and competency throughout their career. Teachers must renew their registration periodically with evidence of their continued competency and suitability as against the APST, and their professional development activities.

Greater support and training for teachers are required to develop the skills and expertise to teach students with disability, particularly students with cognitive impairment or intellectual disability. More is needed beyond a voluntary system for ad hoc professional development. We recommend state and territory educational authorities create and implement professional development strategies based on an inclusive education capability framework for principals, teachers, teaching assistants and teachers of deaf children.

Disability expertise

It is essential schools have access to people with specific disability expertise.

We recommend all states and territories employ lead practitioners specialising in inclusive teaching, behavioural support and deaf education. These staff should be shared between groups of schools and across school sectors to build workforce capability in inclusive practices.

Deaf education

Failures in education was a strong theme in evidence relating to the deaf community. Many deaf students experience isolation at school and leave school with poor educational outcomes.

Schools have a critical role in helping deaf students acquire language skills. When school workforces are not appropriately skilled for the task, it has severe repercussions on the language development of deaf students. However, in most jurisdictions, there is no requirement for teachers of deaf students to be accredited interpreters or to have achieved a particular level

of competence in Auslan. We recommend state and territory governments employ skilled and qualified Auslan interpreters.

Data, evidence and building best practice

Improving data on students with disability

The Australian Government and state and territory governments do not routinely collect and report on data that would contribute to a better understanding of the education experiences and outcomes of students with disability. Governments also have limited data to enable them to monitor violence, abuse and neglect experienced by students with disability. This lack of data makes it difficult to develop policy and build the right capabilities to meet different student needs.

We propose the Education Ministers Meeting should commission a national project to develop minimum data requirements for students with disability, building on the Nationally Consistent Collection of Data on School Students with Disability (NCCD). Data is required on:

- the school experiences of students with disability
- school outcomes for students with disability
- progress in addressing barriers to inclusive education.

Data should be disaggregated to understand the demographics, characteristics and type of disability of students with disability.

Inclusive education research

Australia does not have a national repository of research, incorporating international literature, into how to deliver inclusive education. There are also limited supports to translate research into school practices.

The Australian Education Research Organisation (AERO) is a national independent education research body established to give teaching professionals the most up-to-date and relevant education research on effective teaching practices. It is jointly funded by the Australian Government and state and territory governments.

To improve the evidence base for best practice for inclusive education, the Education Ministers Meeting should commission AERO to:

- develop a research program about inclusive education practices, working with teachers, schools, education systems and people with disability
- conduct and coordinate inclusive education research
- support schools to translate research into school practices.

Complaints management

Public hearing witnesses said they faced barriers when raising concerns about their child's experience in educational settings. When problems arise it is important that processes for resolution are clear, fair, efficient and independent. However, not all jurisdictions offer independent complaints management teams, information or supports.

We recommend state and territory governments create or expand independent complaint management offices to help resolve complaints about schools, specifically complaints concerning the treatment of students with disability.

The Australian Government should include new duties and measures relating to complaint management procedures in the *Disability Standards for Education 2005* (Cth). This would help achieve national quality and consistency, and ensure complaint handling processes are student-centric, accessible, efficient, safe and culturally appropriate. State and territory school registration authorities should embed new complaint handling duties in registration requirements for all schools.

Oversight and enforcement of school duties

Registration requirements for schools are part of the regulatory framework for ensuring the quality of education in Australia. In most states and territories, education legislation requires that schools can only be established if they are registered by an authority and comply with minimum operating standards. The exceptions are government schools in the Northern Territory, Western Australia and the Australian Capital Territory, which are established through the exercise of executive authority.

The school registration or accreditation processes can be used to establish baseline expectations of inclusive practices. School registration authorities can continuously monitor rights based outcomes and intervene to enforce compliance. Schools that are denying the rights of students with disability can be identified and non-compliance with their obligations can be resolved through a graduated range of regulatory interventions. These interventions can include public reporting of non-compliance, requiring schools to take certain actions and, ultimately, cancelling a school's registration.

We expect that school registration will be the primary mechanism to strengthen monitoring and enforcement of baseline requirements on schools to prevent violence, abuse and neglect, and provide an inclusive learning environment. The Western Australian, Australian Capital Territory and Northern Territory governments will need to consider an alternative mechanism to enforce mandatory requirements on their government schools, such as ministerial orders or chief executive directions.

Funding for students with disability

Inadequate funding can mean students with disability do not receive the adjustments they need for inclusive education. Some mainstream schools cite funding constraints as a reason to deny the enrolment of, or reasonable adjustments for, students with disability.

The Australian Government bases its recurrent funding for every student at school on the Schooling Resource Standard, which is an estimate of how much total public funding a school needs to meet its students' educational needs. In addition to the Schooling Resource Standard base amount, school funding includes a disability loading that reflects the number of students with disability receiving extra support and the level of support.

In 2018, the Australian Government commissioned the National School Resourcing Board to review the Schooling Resource Standard settings for the loading for students with disability. The review found there is insufficient evidence to determine whether the current loading settings are the most appropriate inputs for the Schooling Resource Standard. It recommended the Australian Government, in collaboration with state and territory governments, develop a strong evidence base to inform a refined costing model for the students with disability loading.

The Australian Government commissioned a report in response to the board's recommendation. As of June 2023, the report, *Student with disability loading settings review*, had yet to be made public. We understand there is ongoing work comparing funding and actual costs of adjustments for individual students with disability.

We recommend the Australian Government and the Education Ministers Meeting:

- refine funding for students with disability in response to the findings of the *Student with disability loading settings review*
- review disability loading settings and total funding for adjustments every five years to ensure the funding allocated bears a close relationship to the actual cost of supporting students with disability in classrooms and to determine appropriate indexation and distribution of funding.

National Roadmap to Inclusive Education

Our recommendations for changes to legislation, policy and practices to provide a safe, quality and inclusive school education for students with disability are consistent with the human rights of students with disability and aim to deliver them substantive and inclusive equality.

The recommendations for inclusive education are wide in scope and will take many years to achieve. All governments will need to work together collaboratively, and individual governments will need to ensure dedicated action.

To guide the implementation of the recommendations, we recommend the Australian Government and state and territory governments, through the Education Ministers Meeting, develop a National Roadmap to Inclusive Education. We also recommend the Education Ministers Meeting, in its 2024 report to National Cabinet, identify the National Roadmap as one of its priorities and include it in its work plan.

Different perspectives on special/segregated or non-mainstream education settings

As has been noted, Commissioners hold different views about whether special/segregated (non-mainstream) schools should be phased out.

Achieving inclusion while phasing out special/segregated education settings

Views of Commissioners Bennett, Galbally and McEwin

We (Commissioners Bennett, Galbally and McEwin) have formed the view that ensuring an inclusive education system requires a phased transition away from segregating students with disability to fully including them in mainstream education settings.

We consider the continued maintenance or expansion of special/segregated education settings is incompatible with Australia's obligations under the *CRPD* and the rights of students with disability. In our view, segregated education stems from, and contributes to, the devaluing of people with disability, which is a root cause of the violence, abuse, neglect and exploitation people with disability experience in education and beyond.

Directly and through their representative organisations, many people with disability and their families told the Royal Commission that segregation on the basis of disability devalues and 'others' students with disability. It also legitimises their devaluing in other spheres of life. Educating children with disability separately from their non-disabled peers in special schools and classes can, for many, be the first step to a lifetime of segregation in employment, housing and community participation.

The Royal Commission heard many stories of educational neglect and negative experiences from people with disability and their families and representative organisations. Despite numerous inquiries at national and state or territory level, as well as recommendations and attempts at improvement over several decades, progress has been limited. The poor experiences and outcomes for students with disability are a damning indictment on the current education systems and the approach of maintaining both mainstream and special/segregated education settings.

Phased approach to ceasing special/segreated education

We consider the need for transformational change is clear. Transformation requires phasing out and ending special/segreated education and ensuring inclusive education systems. This is to ensure that future generations of people with disability are not condemned to a lifetime of segregation.

We acknowledge and accept that transition will take time and recommend timeframes and milestones for the phasing out of special/segreated education settings over a period of 28 years. This transition must occur alongside reforms to mainstream schools that ensure all students with disability can access quality, universally accessible and genuinely inclusive education.

Phasing out special/segreated education settings will allow for preparation and change of education systems to undertake this complex task. It will also allow for grandfathering arrangements for students with disability who are currently enrolled in special/segreated schools and who choose to remain in these settings. This means that no student in that time will be forced to leave a special/segreated school. However, they will be assisted in their transition if they choose to leave.

The proposed milestones for ceasing special/segreated schools and units are set out over a period of 28 years. Key milestones are:

- no new special/segreated schools built, or new special/segreated classes or units included within schools, from 2025
- no new enrolments of children with disability in special/segreated schools from 2032
- no new placements of children with disability in special/segreated units or classes by 2041
- no students with disability in special/segreated schools by 2052.

Recognise milestones in the National Schools Reform Agreement

The National School Reform Agreement is a joint agreement between the Australian Government and state and territory governments. The agreement commits governments to implementing a set of national policy initiatives, with implementation a condition of Australian Government funding to states and territories.

We propose the milestones for phasing out special/segreated schools and units be embedded in the National Schools Reform Agreement, with risks to receiving Australian Government education funding if milestones are not met.

We also recommend the Australian Government design a Transition Fund under the National Schools Reform Agreement from 2028 to provide discrete funding to schools that require additional support in their transition journey.

Achieving inclusion and retaining choice

Views of the Chair and Commissioners Mason and Ryan

We (the Chair and Commissioners Mason and Ryan) do not share the view that it is necessary or appropriate to phase out non-mainstream schools to support inclusive education. We consider there are policy alternatives available to protect children and young people with complex support needs from violence, abuse, neglect and exploitation in all educational settings.

Policy makers do not face a choice between retaining non-mainstream schools whose students are educated in complete isolation from their peers and providing a fully inclusive education in mainstream schools where all students, regardless of the nature of their disability, are taught together. The policy choices are more nuanced and can involve a variety of interactions between students with complex support needs and their peers. All students with disability should receive the best education possible in an environment that fully meets their support needs and encourages their aspirations. That environment should reflect, so far as practicable, free and informed choices made by the students and their families.

Non-mainstream schools (as we prefer to describe them) primarily enrolling students with complex support needs should not and need not operate in a manner that isolates those students from their peers. These schools should ensure regular interaction takes place between their students and students enrolled in mainstream schools and other educational settings. The interaction should include educational, social, sporting, recreational and celebratory activities. We make recommendations to this effect.

Transforming mainstream schools

The vast majority of students with disability, including a significant proportion of students with complex support needs, attend mainstream schools. From our perspective, the important medium- to long-term challenge facing governments and educational authorities is addressing and overcoming the numerous barriers to ensuring that as many students with disability as practicable can receive an inclusive education in mainstream schools.

Transforming mainstream schools in all Australian jurisdictions so that they provide inclusive education for as many students with disability as possible is a long-term project. It will face many obstacles and require a substantial investment of public funds. The evidence indicates many parents of children and young people with complex needs freely choose non-mainstream schools. However, many feel they have no choice because of the failure of mainstream schools to accommodate the needs of their children or provide appropriate supports. As more mainstream schools provide an inclusive education for students with disability, fewer students (and their parents or guardians) will feel they have little choice but to enrol in a non-mainstream school.

A human rights approach

We are taking a human rights approach to our task. All Australian jurisdictions appear to accept that the Australian Government is obliged by article 24 of the *CRPD* to take the necessary measures to progressively realise the right of all students with disability to enrol in mainstream schools. Similarly, all Australian jurisdictions appear to accept that students with disability enrolled in non-mainstream schools, including students with complex support needs, have a right to enjoy as inclusive an environment as possible and be protected from all forms of violence, abuse, neglect and exploitation.

The measures we propose can be summarised as follows:

- (in common with all Commissioners) all Australian governments and educational authorities should address and progressively overcome the barriers to inclusive education in mainstream schools
- all Australian governments and educational authorities should ensure non-mainstream schools enrolling students with disability, including students with complex support needs
 - interact regularly in a variety of contexts with students in mainstream schools
 - encourage their students upon completion of their studies to seek and obtain employment in the open labour market.

The approach we propose has the advantage of respecting the role of parents and guardians of children and young people with complex support needs. It is fundamental in a free society that parents and guardians should be entitled to make decisions in good faith about the education setting that best suits the interests and needs of their children.

First Nations students with disability

First Nations people have engaged with the Royal Commission in relation to education, including about First Nations students with complex support needs. An important conversation in First Nations communities is whether special/segregated (non-mainstream) schools should be regarded as examples of segregation, inclusion or both. Our engagement with First Nations people and organisations revealed a broad range of experiences and perspectives. With one exception, no one advocated or supported the phasing out of non-mainstream schools, however this question was never put to those we engaged with.

For First Nations people with disability, and the First Nations community as a whole, what we have learnt is important is that any phasing out of non-mainstream schools only takes place:

- with their free, prior and informed consent
- in accordance with the principle stated in article 19 of the *United Nations Declaration on the Rights of Indigenous Peoples*.

This has not occurred and would involve a great deal of work, careful thinking and consultation. The First Nations Disability Forum proposed in Volume 9, *First Nations people with disability*, could conduct this consultation.

Achieving inclusive employment

Key points

- People with disability face systemic barriers to obtaining and retaining open employment. Action is needed to:
 - reform the Disability Employment Services program
 - increase opportunities for people with disability in public sector employment
 - leverage the procurement power of governments to encourage inclusive employment practices in the private sector.
- People with disability working in Australian Disability Enterprises (ADEs) often receive far less than the full national minimum wage under the supported wage system. Workers in ADEs should be paid at least 50 per cent of the minimum wage, moving to the full minimum wage by 2034.

The opportunity for a person with disability to work, earn a living and participate as an economic citizen is a key component of an inclusive Australia. It has flow-on effects for the person's ability to access services, support themselves and their family, realise life aspirations and achieve financial security. Article 27 of the *CRPD* recognises:

the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.⁵³

In Australia, however, people with disability participate in the labour force at a substantially lower rate than people without disability. In 2018, 53 per cent of people with disability aged 15 to 64 were in the labour force compared with 84 per cent of people without disability. The labour force participation rate of people with disability has barely changed since 1993, notwithstanding various government strategies, policies and programs over many years.

This inquiry examined the experiences of people with disability seeking employment and working in both:

- 'open' or 'mainstream' employment, that is, work settings where people with and without disability are employed
- Australian Disability Enterprises (ADEs), which focus exclusively on employing people with disability.

Identifying and addressing barriers to open employment

We identified systemic barriers people with disability face to obtaining and retaining open employment. They fall into four main categories:

- attitudinal barriers, such as discriminatory beliefs about, stigmas against and behaviours towards people with disability
- physical and environmental barriers, including inaccessible workplaces or communication methods
- organisational barriers in workplace functions, including failures to make adjustments that workers with disability are entitled to receive
- structural barriers, including government programs, policies and practices that create barriers to employment for people with disability.

Outlined below are the key actions we consider necessary to address these barriers.

Reforming the Disability Employment Service program

The Disability Employment Service (DES) program is the Australian Government's primary program for assisting people with disability to find and retain open employment. It is currently not meeting the needs of people with disability or employers.

The Australian Government has announced that a new DES model will replace the current program from 1 July 2025. In our view, the new model's objective should be to support people with disability entering or transitioning into long-term employment and careers of their choice. The Australian Government should ensure the new model:

- is developed using inclusive design principles and is co-designed with people with disability
- adopts customised employment models as a core component of service provision
- ensures funding arrangements facilitate flexible employment supports and support for DES participants to achieve their employment goals
- removes the assessed work capacity requirement for accessing the program.

The Australian Government should also develop accessible education and training resources for providers of DES to upskill their staff.

Increasing public sector employment for people with disability

Article 27 of the *CRPD* provides that States Parties should take appropriate steps to realise the right to work, including 'to employ persons with disabilities in the public sector'.⁵⁴ Consistent with this, governments across Australia should take steps to increase the employment of people with disability in the public sector.

Targets and linked pathways

The employment of people with disability requires a commitment to recruitment and retention. We recommend the Australian Government and state and territory governments adopt specific and disaggregated targets to increase the proportion in the public sector of:

- employees with disability at entry, graduate and executive levels
- employees with cognitive disability, who are less likely to be employed full-time than people with other types of disability.

We also recommend the Australian Government and state and territory government departments and agencies be required to set a target to ensure a proportion of new public service hires are people with disability. The target should be at least 7 per cent by 2025, increasing to at least 9 per cent by 2030. The Chair and Commissioners Mason and Ryan further propose a sub-target for the employment of people with intellectual disability, to be determined by departments and agencies and published annually.

The merit principle in public sector recruitment

We recommend the Australian Public Service Commission (APSC) incorporate clearer directions in APS training and support materials on applying the merit principle in recruitment. They should specifically address the importance of having a diverse workforce that reflects the community it serves, as the APS Employment Principles also require.

Adjustments and supports

A lack of information about, and access to, adjustments in the workplace is a key organisational barrier people with disability face when looking for work and during their employment. To address this in the public sector, we recommend the APSC lead the development of common principles to underpin policies for providing and managing adjustments. The APSC should also develop an APS-wide adjustment 'passport' to improve the ease with which people with disability can maintain and transfer their adjustments when moving within the APS.

Improve accountability for public sector employment strategies

Public sector employment strategies must include strong accountability measures and provide for ongoing evaluation and reform. We recommend the APSC and state and territory public service commissions report annually on the progress of their public sector disability employment strategies. This should include reporting on progress against overall and disaggregated targets for increasing the percentage of employees with disability.

Using procurement to promote private sector action

As major purchasers of goods and services, governments can exert market pressure through procurement policies and tendering arrangements. The Australian Government and state and territory governments should leverage this power to encourage inclusive employment practices in the private sector. We recommend they adopt procurement policies that:

- favour businesses and entities able to demonstrate they are providing employment opportunities for people with disability in open, inclusive and accessible settings
- require all information and communication technology purchases to comply with the current Australian information and communication technology accessibility standard.

Improving the regulatory environment

Greater regulatory coordination and legislative clarity is also required to support people with disability and employers to understand their rights and obligations.

Regulations related to the inherent requirements of a job, workplace adjustments and safety are interrelated and can be difficult to interpret and apply consistently. We recommend the Australian Government convene a Disability Employment Rights Council to improve coordination, consistency and clarity across regulatory bodies and frameworks. We also recommend legislative amendments, including to:

- ensure the definition of ‘disability’ in the *Fair Work Act 2009* (Cth) is consistent with the *DDA*
- amend the *DDA* to include additional factors that must be taken into account in determining whether a person with disability is able to carry out the inherent requirements of particular work.

We also recommend the functions of the Fair Work Ombudsman be expanded so relevant authorities can refer back to it matters involving an employee with disability.

Reforming Australian Disability Enterprises

Employment in Australian Disability Enterprises

ADEs operate throughout Australia and provide segregated employment for people with moderate to severe disability who need significant support to work. Work performed at ADEs is usually manual, including ‘picking and packing’ and manufacturing. As at April 2022, there were 161 ADEs registered as NDIS providers. In 2020–21, 17,232 NDIS participants (7 per cent) worked in an ADE.

Five key themes emerged in Public hearing 22, ‘The experience of people with disability working in Australian Disability Enterprises’, as outlined below.

Human rights principles and the right to work

An issue before this inquiry was whether having workplaces that primarily employ people with disability is a form of segregation that contravenes the human rights of people with disability under article 27 of the *CRPD*.

Commissioners Bennett, Galbally, Mason and McEwin endorse the view expressed by Mr Gerard Quinn, UN Special Rapporteur on the rights of persons with disabilities, that 'Ending segregation is ... urgent and a key goal of the *CRPD*'.⁵⁵

The Chair and Commissioner Ryan accept ADEs can create a heightened risk of violence and abuse. They also accept ADEs could do considerably more to encourage and support employees with disability to transition into open employment. However, they do not agree article 27 of the *CRPD* precludes people with disability from making a free and informed choice, with such support as is appropriate, to work in an ADE or other setting that exclusively employs people with disability.

The importance and benefits of work for people employed in ADEs

Some witnesses spoke of their or their family member's positive experiences working at ADEs, describing ADEs as friendly and supportive. Some of these witnesses had been in continuous employment with ADEs for a significant period.

Some witnesses who were positive about their work in ADEs at the same time raised concern about their low levels of pay. Others raised concern about the lack of opportunity and support to progress within or transition out of the ADE.

Choice and control in choosing an ADE work setting

For some people with disability, their choice of employment is limited to working in an ADE. Systemic and structural issues relevant to this lack of choice and control include:

- a lack of information and support on transitioning from school to work, and from an ADE to open employment or to another ADE
- the restricted eligibility to access the DES employment program
- the complexity of the NDIS and availability of supports in employment
- concerns about the impact of earnings on Disability Support Pension (DSP) entitlements
- the systemic barriers faced when seeking to transition to open employment.

Violence, abuse, neglect and exploitation in ADEs

All Commissioners share the view that people with disability currently working in ADEs, particularly people with intellectual disability and cognitive impairment, may be at heightened risk of violence, abuse, neglect and exploitation compared with people with similar disability working in open employment with adjustments and supports. Commissioners accept that if ADEs continue to operate, measures must be taken to eliminate that risk as far as possible.

Commissioners Bennett, Galbally, Mason and McEwin further consider that segregation is inherently harmful and closed settings, including ADEs, definitively increase the risk of violence, abuse, neglect and exploitation. These four Commissioners consider that ADEs should, over time, phase out segregated employment practices and structures.

The Chair and Commissioner Ryan consider the evidence is inconsistent with any suggestion that a person working in an ADE will necessarily be exposed to violence, abuse, neglect or exploitation. Consistently with the principles and guidelines they formulate, they consider ADEs, depending on how they function, do not necessarily warrant the description 'segregated'.

The payment of subminimum wages

The *Supported Employment Services Award 2020* (Cth) permits the use of designated wage assessment tools to assess the productivity of employees with disability. Employees are paid a percentage of the full award wage based on their assessed productivity level. Most employees with disability working in ADEs are paid below the Australian minimum wage. Subminimum wages can also be paid in open employment, where permitted by the relevant award or enterprise agreement.

The vast majority of workers in ADEs receive the DSP. The Australian Government argues that this entitlement must be taken into account when assessing whether the payment of subminimum wages can be justified.

In our view, despite the availability of the DSP, paying subminimum wages to people with disability is inconsistent with the principles of inherent dignity and respect for difference and human diversity that underpin the *CRPD*. Our vision of an inclusive Australia is one where human rights are protected and people with disability live with dignity, equality and respect and fulfil their potential. Steps should be taken to achieve this vision by moving away over time from paying wages substantially below the national minimum wage to people with disability.

Recommendations on ADEs and subminimum wages

The Australian Government should develop a transition plan to support people with disability working in ADEs to move to more inclusive, open employment options. The plan should incorporate:

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- action to increase employment opportunities in open and inclusive settings for people with disability, including by the NDIS adopting an ‘open employment first’ approach in the next iteration of the Participant Employment Strategy
 - the option for people with disability to continue working in ADEs, with strong and appropriate safeguards, if that is their free and informed choice (Commissioners Bennett, Galbally, Mason and McEwin support this until ADEs are phased out)
 - improved information for people with disability about employment supports, opportunities in other settings, wages and the DSP.

All Commissioners recommend the Australian Government raise subminimum wages for people with disability in three stages:

- in the first stage, subminimum wages for people with disability should increase to at least 50 per cent of the minimum wage. The Australian Government should subsidise any difference between an employee with disability’s wage and 50 per cent of the minimum wage from implementation until 2034
- in the second stage, after five years of operation, the Disability Reform Ministerial Council should review the impact of the increase in subminimum wages
- in the third stage, the Australian Government should use the review results to develop a model and pathway to lift minimum wages payable to employees with disability to 100 per cent of the minimum wage by 2034.

Additional recommendations: A roadmap for inclusive employment

Views of Commissioners Bennett, Galbally, Mason and McEwin

On the basis of Australia’s obligations under international law, we four Commissioners recommend the Australian Government develop and implement a National Inclusive Employment Roadmap to transform ADEs by 2034. This roadmap should be centred on principles including:

- equal access for people with disability to all opportunities for employment
- increased availability of jobs for people with disability, especially in the public sector (including the payment of full minimum wages), non-government organisations that receive government grants, and private companies that receive government procurement contracts
- availability of evidence-based supports to facilitate job readiness, participation and ongoing development, particularly for people with intellectual disability.

The roadmap should address:

- reforming ADEs to operate in accordance with a social firm model

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- the establishment of a grant based Structural Adjustment Fund to support increases in the minimum wage and achieve transformation targets in ADEs
 - support for people with disability to transition to open employment through programs such as the NDIS School Leaver Employment Supports program.

Government procurement rules should be amended to give preference to enterprises that pay employees with disability at least the full minimum wage (in advance of the recommendation to raise all subminimum wages to the full minimum wage by 2034).

Views of the Chair and Commissioner Ryan

We (the Chair and Commissioner Ryan) share the aspirations underlying the four Commissioners' additional recommendations. However, we do not agree with all their reasoning. We support most of the proposals put forward by the four Commissioners, but we consider workplaces exclusively for people with disability may have a continuing, albeit diminishing, role in providing employment opportunities, especially for people with intellectual disabilities or cognitive impairments. We also have concerns that recommending the public sector pay full wages to people with disability in advance of 2034 will act as a disincentive to their employment. It is also unclear which employers would be likely to satisfy the procurement policy criteria and which people with disability would likely benefit.

Achieving inclusive homes and living

Key points

- People with disability face multiple barriers to securing accessible, appropriate and safe housing.
- Some people with disability have little choice but to remain in substandard accommodation, such as boarding houses, with limited occupancy rights and oversight. Some experience chronic homelessness. People can be exposed to violence, abuse, neglect and exploitation in these settings.
- Current practices in group homes can deny people with disability their autonomy, choice and control.
- Reforms are required to:
 - increase supply of accessible and adaptive housing for people with disability
 - increase tenancy and occupancy protections for people with disability
 - improve regulatory oversight of supported accommodation
 - improve responses to homelessness.
- People with disability in group homes can be exposed to various forms of violence, abuse, neglect and exploitation. We strongly support the adoption of more inclusive and alternative models of housing for people with disability.

A home is central to a person's dignity, autonomy, independence and wellbeing and a fundamental human right. A person's home is the place where they should be safe, secure and able to choose how to live their daily life. It is also critical to participating in other areas of life, for example, to obtaining and maintaining employment and to accessing necessary support.

People with disability face considerable barriers to accessing safe, secure and inclusive housing. People with disability are denied choice and control over where and with whom they live; fall into homelessness; and are exposed to violence abuse, neglect and exploitation in a variety of living arrangements.

Effective housing and disability policy frameworks

People with disability are conspicuously absent from national housing and homelessness policy frameworks. The Australian Government has recently announced two new national housing priorities that provide opportunities to increase the focus on people with disability: a National Housing and Homelessness Plan, and a Housing Supply and Affordability Council.

We recommend both the proposed National Housing and Homelessness Plan and the National Housing Supply and Affordability Council include people with disability as a priority group in developing reforms. We also recommend the Australian Government include homelessness as a policy priority in the Inclusive Homes and Communities outcome area of Australia's Disability Strategy (ADS).

Barriers to accessing housing

People with disability face multiple barriers to accessing safe, secure and inclusive housing. These include design barriers and a lack of social housing and crisis accommodation.

Livable Housing Design Guidelines

The Livable Housing Design Guidelines (Design Guidelines) help governments and the building industry understand how to improve accessibility in housing by incorporating universal design principles into new housing design and construction. The Design Guidelines set out three performance levels: silver, gold and platinum.

The National Construction Code 2022 has been amended to include liveable housing design requirements, including minimum accessibility requirements. The Australian Building Codes Board (ABCB) has also published two technical standards for accessible housing:

- the mandatory Livable Housing Design Standard, adapted from the Design Guidelines silver level requirements that focus on basic structural and spatial elements that ensure the future flexibility and adaptability of a home
- the voluntary Livable Housing Design Standard, adapted from the Design Guidelines gold level requirements that focus on providing people who use wheelchairs with suitable homes or homes that require fewer and more affordable modifications.

Only New South Wales and Western Australia have not committed to adopting the mandatory Livable Housing Design Standard for residential housing and apartments. We recommend they do so.

Improving access to social housing

Accessing suitable social housing can be a difficult and protracted process for many Australians, with demand exceeding supply. The barriers can be higher still for people with disability. We received information about experiences of long wait times, a mismatch between accessibility needs and the housing offered, and barriers to obtaining modifications.

We recommend state and territory governments commit to increasing the supply of accessible and adaptive housing for people with disability by adopting the voluntary Livable Housing Design Standard for all new social housing construction.

We also recommend that state and territory governments develop and implement accessible and inclusive processes for allocating and modifying social housing for people with disability.

Crisis and emergency housing and accommodation

The lack of accessible crisis and emergency housing fails people with disability at a time when they are experiencing significant risk and need. It increases their risk of homelessness and exposes them to serious harm. It can also mean they come into contact with the criminal justice system as a result of being homeless. An audit of crisis accommodation should be conducted to determine the housing required to meet the needs of people with disability and set targets for new crisis housing construction and refurbishment to meet the voluntary Livable Housing Design Standard.

Reforms to improve housing security

Secure occupancy is particularly important for people with disability. It can facilitate social participation and inclusion, access to education and employment opportunities, and the ability to make adjustments to the home. There can be serious consequences, including homelessness, when people lose the right to occupy particular premises.

A person's housing security depends on the kind of accommodation and the nature of their right to or interest in the premises occupied. Kinds of accommodation include:

- a person's own home
- private rental accommodation
- social housing
- boarding houses
- specialist accommodation such as group homes, supported residential services and NDIS-funded Specialist Disability Accommodation (SDA).

Given these different types of accommodation, recommendations for reform must address legal frameworks that are not uniform and are often complex.

Tenancy reforms

Replace no-grounds evictions with reasonable grounds

The right to terminate tenancies without grounds has long been considered to contribute to housing instability. Losing their rented home can put people with disability at risk of homelessness, particularly people with intellectual disability or other cognitive impairment.

Legislation in Victoria, Queensland and Tasmania restricts the right of landlords to terminate a residential lease without demonstrating a reason for doing so. We recommend legislation in all Australian jurisdictions require a landlord of private sector premises to demonstrate a good reason for terminating any tenancy of residential accommodation.

Consider disability in discretion to terminate

A lease of residential premises is frequently ended by the tenant's breach of the agreement. Even in the case of a breach, legislation generally confers a discretion on civil and administrative tribunals in certain circumstances to decline to make an order terminating the lease.

In our view, state and territory legislation should expressly empower the relevant tribunal to take into account whether the tenant or co-occupant has a disability and the nature of that disability in determining whether it is just or reasonable to make an order for possession of premises. This should also apply to legislation governing social housing tenancies.

Non-tenancy reforms

Boarding house-style accommodation

Residents of boarding or rooming houses have significantly fewer rights than tenants because they are expressly excluded from the residential tenancies legislation.

In New South Wales, the rights and obligations of a proprietor and a resident of boarding houses are governed by 'occupancy principles'.⁵⁶ These include a resident's right to know the rules of the boarding house before moving in and the right not to be evicted without reasonable written notice.

The rights of people with disability residing in boarding and rooming houses would be enhanced by extending the occupancy principles in the *Boarding Houses Act 2012* (NSW) to all Australian jurisdictions. We recommend all jurisdictions introduce occupancy principles to cover boarding and rooming houses.

Specialist Disability Accommodation under the NDIS

People living in supported accommodation, such as group homes, are particularly vulnerable due to their limited security of tenure. A high proportion of people living in supported accommodation are people with intellectual disability or cognitive impairment. It is important the occupancy rights of NDIS participants who live in group homes are recognised and protected by legislation.

Victoria has extended the cover of its residential tenancies legislation to this type of accommodation. Part 12A of the *Residential Tenancies Act 1997* (Vic) regulates the relationship between an accommodation provider and a resident of SDA. The rights conferred on SDA residents by Part 12A go considerably beyond the protection afforded to boarders and in some respects beyond the protections afforded to tenants under the legislation.

We recommend all jurisdictions enact legislation modelled on Part 12A of the *Residential Tenancies Act 1997* (Vic).

Lack of safety in supported residential services and their equivalents

There is a lack of safety, safeguards and adequate supports for people with disability living in supported residential services (SRS) in Victoria. SRS are a form of boarding house-style supported accommodation. Residents include people with varied and complex support needs due to disability, mental ill health or age-related conditions.

We heard evidence the complex needs of residents living in SRS are not being adequately met. We also heard staff often have minimal experience and training. The regulatory regime for SRS has been largely ineffective until recently.

There are supported accommodation services similar to SRS in New South Wales, South Australia and Queensland. The regulatory, oversight and monitoring frameworks for these SRS equivalents are complex, and vary across jurisdictions. We recommend all minimum standards and monitoring and oversight frameworks for SRS and their equivalents be reviewed and strengthened in each jurisdiction.

Preventing and responding to homelessness

Throughout our inquiry, we heard accounts of people with disability who have experienced homelessness. A common theme was the failure of services to help them avoid this occurring. In particular, we heard how people with disability can leave mainstream services or systems, such as health facilities or places of detention, and become homeless because of the lack of coordination between different services.

The Australian Government and state and territory governments should commit to a policy of 'no leaving into homelessness' for people with disability. We recommend a lead agency be designated in each Australian jurisdiction to provide this support and system navigation for people with disability.

As discussed earlier, the Australian Government is developing a National Housing and Homelessness Plan. In developing the National Plan, we recommend the Australian Government, working with state and territory governments:

- review the adequacy of funding for homelessness, particularly for people with disability and complex needs
- identify people with disability, particularly people with intellectual disability or cognitive impairment, as a discrete cohort for intensive homelessness support
- expand pathways and support for people with disability out of homelessness
- consider establishing free, independent legal advice and advocacy services for people with disability experiencing homelessness.

The future of group homes

The Royal Commission heard evidence across a range of public hearings that current practices in group homes can fail to keep people with disability safe. They also deny people with disability the power to exercise choice and control, including over where and with whom they live; and deny them opportunities to develop and build their capacity.

This section outlines reforms to expand the choice and availability of alternatives to group homes.

Improving access to alternative housing options

Increasing alternative housing options

Without making sufficient alternative housing options available, people with disability may have no choice but to live in group homes.

The NDIA's Home and Living Demonstration Projects, launched in 2021, invest in designing, implementing and evaluating innovative projects that support the provision of Supported Independent Living (SIL). (SIL is for people with higher support needs who need some level of help at home all the time.) The NDIA should expand the Home and Living Demonstration Projects with additional rounds from 2024. These rounds should explore diverse market mechanisms for sustainable housing. They should also include independent evaluation and dissemination of best practice to bring these models to scale.

Funding reform to address inflexible NDIS plans

Greater flexibility in funding for NDIS participants is vital for increasing access to alternative housing options beyond group homes. In particular, this relates to the operation of SIL and SDA funding where the administrative and pricing mechanisms support access to living in the group home model in favour of access to other inclusive housing options.

We recommend reform of NDIS participant funding models to provide greater flexibility.

Strengthening and supporting transitions to alternative forms of housing

We heard of the critical need to provide greater practical support to NDIS participants to transition to individualised living arrangements in which they have choice and control over with whom they live and how their support is delivered.

To address barriers for people wanting to exit group homes, we recommend the NDIA develop clear and supportive transition pathways. These should include:

- an assessment of a person's housing needs and preference

-
- an individual transition plan
 - access to independent advocacy and a support coordinator to facilitate the transition.

Phasing out group homes

All Commissioners agree major improvements are needed in the practices of group homes. However, Commissioners differ in their views about the future role of group homes.

A roadmap to phase out group homes

Views of Commissioners Bennett, Galbally, Mason and McEwin

We four Commissioners have concluded the limitations group homes place on the lives of people with disability and the deprivations and exposure to harm that can be experienced in these settings are an infringement of fundamental human rights. Consequently, we believe group homes must be systematically phased out.

We recommend the Australian Government and state and territory governments develop and implement a comprehensive roadmap to phase out group homes within the next 15 years. We recognise some people with disability will choose to remain in their group home and they should be supported in their choice.

Phasing out group homes within a generational timeframe

View of Commissioner Ryan

I agree a clear commitment and a comprehensive plan is required from Australian governments to phase out group homes. However, I believe this change needs to be implemented carefully within a generational timeframe. The Australian Government and state and territory governments should commit to phasing out group homes in stages, starting with ceasing the construction of new ones and prioritising existing residents to move into smaller group homes over time on request, subject to need.

Phasing out group homes while retaining choice

View of the Chair

Making more flexible and innovative accommodation options available to people with disability, which all Commissioners support, will necessarily be a gradual and long-term undertaking, requiring very substantial resources. As that process unfolds, the likelihood is that fewer people with disability will choose to enter group homes and more residents of group homes will choose to move to alternative supported accommodation.

The first general principle stated in article 3 of the *CRPD* is ‘Respect for inherent dignity, individual autonomy, including the freedom to make one’s own choices, and independence of persons’.⁵⁷ Consistent with that general principle, a person with disability should retain the ability to make a free and informed choice to live in a group home provided appropriate safeguards are in place.

Volume 7, *Inclusive education, employment and housing* provides our recommendations for building inclusive education, employment and housing settings and preventing violence against, and abuse, neglect and exploitation of, people with disability where they learn, work and live.

Criminal justice and people with disability

Key points

- People with disability, particularly those with cognitive disabilities, are significantly over-represented at all stages of the criminal justice system. This over-representation reflects the disadvantages experienced by many people with disability.
- The over-representation of First Nations people with cognitive disability in custody, particularly in youth detention, is a largely hidden national crisis.
- Australia has international obligations to take appropriate legislative, administrative and other systemic measures to promote the human rights of people with disability, including those in the criminal justice system.
- Children with disability in youth detention have complex needs and are likely to have experienced multiple traumas. They are exposed to an increased risk of violence, abuse, neglect and exploitation while in detention. Placing children with disability in detention, especially children with cognitive disability, increases the chances they will become enmeshed in the criminal justice system. The age of criminal responsibility should be raised to 14, in line with international accepted standards, to avoid this.
- Staff and officials should receive ongoing disability awareness training and support to identify disability. In youth detention centres, this should extend to the needs and experiences of children with disability.
- The risk of indefinite detention for forensic patients is unacceptable. Laws providing for indefinite detention must be repealed.
- The responsibilities of the NDIS and the criminal justice system to provide supports for people with disability need to be clarified. Greater flexibility is required to support transition planning for people with disability leaving custodial settings.

Over-representation in the criminal justice system

I've been in the system since I was a little kid. I'm looking for a way out.⁵⁸

People with disability, particularly those with cognitive disabilities, are significantly over-represented at all stages of the criminal justice system, from police contact and arrest, through to court processes and correctional settings.

Particular groups of people with disability are even more likely to have contact with the criminal justice system. These include First Nations people with cognitive disability; women with disability experiencing violence; and people with co-occurring cognitive disability, psychosocial disability and other disabilities such as hearing impairments. The over-representation of First Nations people with cognitive disability in custody, particularly in youth detention, is a largely hidden national crisis.

People with disability also come into contact with the justice system at high rates as victims of crime.

This section describes what we learnt about the treatment of people with disability in the criminal justice system in Australia. We use term 'the criminal justice system' to refer collectively to the criminal justice systems of the Commonwealth, the states and the territories.

Criminalisation of disability

The disproportionate rate of imprisonment of people with disability is not the result of any inherent causal relationship between disability and crime. Rather, it reflects the disadvantages experienced by many people with disability, such as poverty, disrupted family backgrounds, family violence and other forms of abuse, unstable housing and homelessness.

People with disability can be 'funnelled' into police management and the criminal justice system in their adult years.⁵⁹ This typically happens when a person has experienced serious mental ill-health or a breakdown in social connections, compounded by other impairments. Those with complex needs are 'captured' early by the criminal justice system.⁶⁰

People with disability, particularly cognitive disability, are also exposed to frequent and intense policing. This is especially the case for First Nations people. Research on police interactions and responses to people with disability indicates that First Nations people with cognitive disability who come to police attention are 'more likely to be investigated, charged and remanded in custody than First Nations people without cognitive disability'.⁶¹

The right to humane treatment in criminal justice settings

Treatment of people with disability in criminal justice settings

In our public hearings, witnesses gave evidence about poor conditions for people with disability in adult prisons and youth detention centres. We heard about accessibility and communication issues; untreated medical and psychological conditions; a lack of appropriate mental health care and social workers; and negative staff attitudes. We heard about excessive lockdowns of detention centres and isolation practices, resulting in solitary confinement of prisoners and detainees. We heard that prisoners with cognitive disability are susceptible to exploitation by other prisoners, including sexual exploitation. We also heard about the humiliation experienced by people with disability in custody.

Australia's human rights obligations

Convention on the Rights of Persons with Disabilities

Under the *CRPD*, Australia is obligated to protect people with disability, including those in the criminal justice system, from all forms of exploitation, violence and abuse.

- Article 13 requires States Parties to ensure effective access to justice for people with disability, on an equal basis with others.
- Article 14(2) requires States Parties to ensure that where people with disability are deprived of their liberty, they are to be treated in compliance with the objectives and principles of the *CRPD*, including by the provision of reasonable accommodations.

State and territory governments have primary responsibility for court systems and correctional centres. We recommend, consistent with article 14(2) of the *CRPD*, all corrective services and youth justice agencies should provide people with disability with the disability supports they require to place them in the same position, so far as feasible, as other people in custody.

Convention on the Rights of the Child

Under article 40(1) of the *Convention on the Rights of the Child (CRC)*, Australia is required to:

recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth ... and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.⁶²

Article 23 of the *CRC* and *General comment No. 9 (2006) on the rights of children with disabilities* specifically set out States Parties' obligations to provide assistance and support to children with disability, including the treatment of children who have infringed the law as described in article 40.⁶³

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

In 2017, the Australian Government ratified the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT). OPCAT imposes obligations on Australia to monitor places where people are, or may be, deprived of their liberty. States Parties to the agreement are required to establish an independent monitoring mechanism, known as a National Preventive Mechanism (NPM), to inspect all places of detention.

Despite ratifying OPCAT, Australia does not comply with its requirements to establish NPMs. At the time of writing, the three largest jurisdictions – New South Wales, Victoria and Queensland – had not nominated bodies to perform NPM functions. We recommend all states and territories urgently establish these independent monitoring bodies and ensure their scope includes places of detention where people with disability are deprived of their liberty.

It is clearly important that each NPM has expertise to identify the needs of people with disability in places of detention. To gain this expertise, it is essential each NPM engages with disability organisations and obtains the views of prisoners and detainees with disability.

To support this, we recommend the Australian Government, in consultation with the state and territory governments, develop a human rights education and training strategy that includes disability awareness training for NPMs, detention authorities and their staff.

Youth detention

Youth detention is intended to provide a secure environment for the detention and rehabilitation of children accused or convicted of criminal offending. State and territory governments owe children in youth detention a duty of care that includes protecting them against violence, abuse, neglect and exploitation. Article 37(c) of the *CRC* requires States Parties to ensure ‘every child deprived of liberty shall be treated with humanity and respect ... and in a manner which takes into account the needs of persons of his or her age’.⁶⁴

Under state and territory legislation, as well as international law, children and young people (to whom we refer collectively as ‘children’) should be detained only as a last resort and for the shortest appropriate period.

Children with disability in youth detention

Children in youth detention have complex needs and are likely to have suffered multiple traumas, such as childhood abuse and neglect, socioeconomic disadvantage, family violence, and poor educational opportunities. While in detention, children with disability are exposed to an increased risk of violence, abuse, neglect and exploitation.

There is no comprehensive national source of data about the number of children with disability in youth detention. However, a study by the NSW Bureau of Crime Statistics and Research used linked Australian Government and state government data collections to examine the proportion of people with disability in New South Wales who offend and the proportion of offenders who have disability. The data shows young people with disability are over-represented in the youth justice system:

- More than two in five young people with sentenced custodial episodes in New South Wales between 1 January 2009 and 31 December 2018 had disability.
- Around half of the young offenders with disability (just over 51 per cent) had cognitive disability.
- Almost 70 per cent of young offenders with disability had psychosocial disability.

While the proportion of children in youth detention has decreased in recent years, the proportion of children with cognitive disability in detention remains high.

Factors such as being older when first engaging with disability-related services, greater remoteness of residence and frequency of contact with the child protection system are strongly associated with the likelihood a young person with disability will have contact with the criminal justice system before the age of 18.

Children with disability at Banksia Hill Detention Centre

Since at least 2013, the Inspector of Custodial Services of Western Australia has drawn attention to the use of inappropriate confinement practices at Banksia Hill youth detention centre. The Inspector has repeatedly recommended the state's Department of Justice introduce an operational philosophy based on rehabilitation and a trauma-informed approach to the treatment of children in detention.

In March 2022, the Inspector published a report to the Western Australian Parliament in which he stated Banksia Hill was no longer fit for purpose as a youth detention centre. He described the treatment of detainees in solitary confinement as cruel, inhuman or degrading. He also drew attention to the fact a high proportion of the children detained at Banksia Hill have disability. Several court judgments in 2022, including of the Supreme Court of Western Australia, reflect the Inspector's concerns.

In Public hearing 27, 'Conditions in detention in the criminal justice system', we heard from people with disability who had been detained at Banksia Hill and legal practitioners whose clients are detained there. They spoke of solitary confinement practices and degrading conditions for detainees. We found:

- Children, including many with disability, have been subjected on a regular basis to confinement in their cells in contravention of their entitlements to out-of-cell time under the *Young Offenders Act 1994* (WA).

-
- Children with disability in detention in Western Australia have been subjected to confinement for 22 hours or more a day without meaningful human contact. This amounts to solitary confinement.
 - The treatment of children in detention in Western Australia, including those with disability, does not meet our international obligations, including under the *CRPD* and the *CRC*.

Prohibiting solitary confinement

No jurisdiction currently prohibits isolation amounting to solitary confinement for children. Solitary confinement – the practice of locking children in their cells for 22 or more hours a day – has been used in most state and territory juvenile detention centres.

Solitary confinement can have severe, long-term and irreversible effects on a child's health and wellbeing, including their physical and psychological health and social and educational development. Solitary confinement exacerbates the difficulties experienced by children in detention who have cognitive impairment and brain injuries.

Isolation amounting to solitary confinement is often imposed on children as a consequence of operational decisions to lockdown a detention centre because of a lack of staff. This is unacceptable. It is the duty of state and territory governments to properly staff their youth detention facilities so the rights of children deprived of their liberty are upheld.

We recommend state and territory youth justice legislation be amended to prohibit the use or practice of solitary confinement and to clearly define safeguards applying to isolation or seclusion of children with disability.

For this prohibition of solitary confinement to be effective, other changes are needed. These include significant improvements in disability screening processes, particularly for First Nations people. We recommend state and territory governments ensure timely screening and expert assessment are available for children with cognitive disability involved in the criminal justice system to ensure they receive appropriate supports, including therapeutic and other interventions.

Improving conditions for children with disability in detention

Training custodial and other staff

We recommend all state and territory governments ensure staff and officials in youth detention centres receive appropriate training and support about the needs and experiences of children with disability. This includes training and support on trauma-informed care and culturally appropriate approaches.

Measures for the Western Australian Department of Justice

In our view, the failure of the Department of Justice of Western Australian over many years to adequately staff the Banksia Hill Detention Centre has been an important factor in the decisions to impose rolling lockdowns. We recommend the department immediately review its youth justice staffing and recruitment model to ensure sufficient, suitably trained staff are available to supervise children and young people to minimise lockdowns and prevent the solitary confinement of detainees.

Related to this is our recommendation the Department of Justice of Western Australia implement a youth detention operating philosophy and service model to manage detainees with disability in a therapeutic, trauma-informed and culturally competent way. The service model should be developed in conjunction with people with disability and First Nations people.

The rights of people found unfit to be tried

Some people with cognitive disability who face serious criminal charges may be found either 'unfit to be tried' or 'not guilty on the basis of mental impairment'. In some jurisdictions the equivalent of a finding of unfitness to be tried is a finding that the accused is 'unfit to plead'. We refer to people who are the subjects of such findings as 'forensic patients'.

Risk of indefinite detention

Each state and territory in Australia has its own regime to determine the issue of fitness to be tried and the consequences of a finding that an accused is not fit to be tried. The regimes are intended to protect people with disability, particularly those with cognitive disability and mental health conditions. However, in practice, the regimes can deny people with disability the right to exercise legal capacity and expose them to long-term detention.

Forensic patients can be at risk of indefinite detention, meaning no date is fixed for their release. This can lead to a period of detention longer than if they had been convicted and sentenced in an ordinary criminal trial. Prolonged detention places forensic patients at risk of violence, abuse and neglect and experiencing cumulative trauma.

In Australia there have been many calls for law reform to end the indefinite detention of people with cognitive and psychiatric impairments.

The forensic system

In Public hearing 11, 'The experiences of people with cognitive disability in the criminal justice system', we heard deeply troubling evidence about the treatment of two First Nations people, 'Winmartie' and 'Melanie', who were found unfit to stand trial. They were detained in forensic facilities in the Northern Territory and New South Wales, respectively. They were subjected to restrictive practices, including long-term seclusion, and in Winmartie's case chemical restraint.

Both Melanie and Winmartie's experiences show how some people with disability remain in detention well beyond the period they would have served in prison had they been convicted of the criminal offences for which they were initially charged.

They also show how without proper support, treatment and step-down accommodation, a forensic patient can be prevented from transitioning to less secure environments. Step-down accommodation provides an intermediate level of support and supervision between prison or a forensic hospital and independent living in the community.

Ending indefinite detention

In 2015, the Law, Crime and Community Safety Council (now the Standing Council of Attorneys-General) established a working group to develop the National Statement of Principles Relating to Persons Unfit to Plead or Found Not Guilty by Reason of Cognitive or Mental Health Impairment (National Principles). The National Principles are a non-binding, best-practice guide for jurisdictions. They do not state that indefinite detention is unacceptable.

We recommend the Australian Government, together with state and territory governments, review the National Principles through the Standing Council of Attorneys-General. The National Principles should be revised to include the following:

- Indefinite detention is unacceptable and laws providing for it should be repealed.
- Where an order for detention is made, there should be a maximum term of detention nominated beyond which the person cannot be detained (a 'limiting term').
- The limiting term should not exceed the court's assessment of the sentence it would have imposed on the defendant had the person been found guilty of the offence in an ordinary trial of criminal proceedings.
- In hearings conducted to determine a person's fitness to stand trial or to plead, the court must consider whether it can modify the trial process or ensure assistance is provided to facilitate the person's understanding and effective participation in the proceedings. This includes any cultural or other trauma-informed supports a First Nations person may need to ensure they can participate in a fair trial and understand the proceedings.

The Commonwealth, states and territories should amend their legislation on fitness to stand trial to align with the revised National Principles.

We also recommend the Australian Government and state and territory governments provide step-down options for the placement of people in the forensic system to facilitate their progressive transition to less restrictive environments. This includes medium and low secure and community-based accommodation options.

Screening, assessing and identifying disability

Importance of screening and identification

The true number of people with disability in the criminal justice system cannot be determined, in part because of an absence of consistent and comprehensive screening practices.

Screening usually involves a series of questions or tests that are administered when a person is first admitted to a prison or detention centre to identify a disability or the possibility of a disability. A person may then be referred for more detailed assessment if the screen reveals a possible disability. Assessment generally involves a more detailed process involving appropriate professionals and in-depth testing.

Screening may have an immediate benefit by identifying the person's support needs while in prison or detention, as well as longer term benefits by identifying the supports and services they require upon release from custody.

Inadequate screening and identification processes

In its 2014 report, *Equal before the law: Towards Disability Justice Strategies*, the AHRC found there was 'widespread difficulty identifying disability and responding to it appropriately' in the context of police, courts and corrections.⁶⁵ This means necessary supports and adjustments are not provided.

There are no national standards or minimum requirements for screening for disability. The type of information sought and the procedures used to identify disability vary between the states and territories.

National practice guidelines

To improve processes for screening and identifying disability in custodial settings, we recommend state and territory corrective services and youth justice agencies develop national practice guidelines and policies.

National practice guidelines would promote consistent approaches between jurisdictions. They would provide a benchmark for corrective and justice health agencies to evaluate their own disability screening and identification policies and procedures. Implementing the guidelines would increase the likelihood appropriate supports are made available to people with disability.

People with disability, including with lived experience of the criminal justice system, and people with expertise in cognitive disability should be involved in designing the national practice guidelines and approaches to their implementation.

State and territory governments should ensure that policies and practices concerning screening, identification and diagnosis of disability of people in custody are consistent with the national practice guidelines.

In several public hearings, we heard evidence about the inappropriateness of using standardised screening tools developed for Western cultures on First Nations people. There is a clear need to improve the cultural safety of current screening processes across Australia. We recommend state and territory governments engage First Nations organisations, including Aboriginal Community Controlled Health Organisations, to provide culturally safe disability screening and assessment services for First Nations prisoners and detainees.

The NDIS and criminal justice

State and territory governments are responsible for funding and providing supports and services to people with disability through their criminal justice systems. The Australian Government, through the NDIA, funds supports for participants in the NDIS who are in contact with the criminal justice system.

NDIS Rules and the Applied Principles and Tables of Support

When making decisions about supports for participants, the NDIA must have regard to the *National Disability Insurance Scheme (Supports for Participants) Rules 2013 (NDIS Rules)*. The *NDIS Rules* set out three areas of responsibility for participants in contact with the criminal justice system:

- supports for a person not in custody (for example, a person on bail or on parole)
- supports for a person in custody
- transition supports, which facilitate the person's transition from the custodial setting to the community.

The *NDIS Rules* state that the NDIS is not responsible for a number of supports, including the day-to-day care and support needs of a person in custody. The application of the *NDIS Rules* has proven to be complex where responsibilities between the Australian Government and state and territory governments are unclear, shared or intersect.

The *NDIS Rules* are supported by the Applied Principles and Tables of Support (APTOS), a set of principles agreed by the Australian Government and state and territory governments to further define the funding and delivery responsibilities of the NDIS and other service systems, including justice. The APTOS Justice Table specifies the only supports funded by the NDIS for people in custodial settings are those required due to the impact of the person's impairment on their functional capacity, and are additional to reasonable adjustments.

The APTOS Justice Table also states that for people with disability in custody, the state and territory governments are responsible, among other things, for interventions to reduce criminal behaviour that are 'not clearly a direct consequence' of disability ('criminogenic supports').

The distinction between disability-related and criminogenic supports can be unclear. The Australian Government has acknowledged this distinction can be difficult to draw in complex cases.

Addressing interface issues

The Australian Government and state and territory governments have taken steps to clarify respective responsibilities of the NDIS and the criminal justice system. However, the confusion around responsibilities to provide support has not been adequately resolved. This is particularly around support for people with disability with complex needs, for whom the delineation between disability and criminogenic needs may be difficult to determine.

We recommend the Australian Government and state and territory governments, through the Disability Reform Ministerial Council:

- review the *NDIS Rules* and the APTOS to align and provide clear parameters in determining which supports will be funded by the NDIS for participants involved in the criminal justice system
- resolve issues related to the interface between the NDIS and the criminal justice system, particularly the distinction between criminogenic-related supports and disability-related supports
- where such issues cannot be resolved, agree on a mechanism for joint funding of individual supports.

Access to NDIS-funded transition supports

We heard that the NDIA has adopted a restrictive approach towards its responsibility to provide transition supports for people being released from prison. The evidence shows the importance of well-timed and adequate transition planning and supports for people in custody and detention settings. Providing these mitigates the risks of people with disability being drawn back into the criminal justice system due to a lack of support.

The Australian Government told us in practice approval for transition funding in an NDIS participant's plan 'typically occurs when a release date is advised to the NDIA'.⁶⁶ Greater flexibility is required to support transition planning for people in custodial settings. Most importantly, the timing of planning for transition supports should not risk a person having to stay in custody longer than necessary while supports are arranged or risk a person not having appropriate supports available after their release.

To improve transition planning, we recommend the NDIA issue guidelines stating expressly that a release date is not a precondition for approving funding for transitional supports for participants in custody.

Improving data collection

No jurisdiction in Australia, with the partial exception of New South Wales, comprehensively collects or publishes data that records the number of people with disability in criminal justice systems or the disability types of people in custodial settings. Nor do we have data

disaggregated for intersectional characteristics such as First Nations status, culturally and linguistically diverse status, gender and type of disability.

The lack of complete, consistent and disaggregated data about people with disability in the criminal justice system has serious implications. These include limitations on:

- the ability to identify and plan for the disability support needs of the prison population
- evaluations of programs, services and policies offered in custodial settings, because they fail to identify and consider their use by, relevance to, and efficacy for people with disability
- assessment of diversionary programs
- evaluation of the practical effect of legislative changes.

All states and territories should commit to cooperation and consistency in data collection in the criminal justice system, which should be informed by the recommendations on data consistency in Volume 12, *Beyond the Royal Commission*.

Police responses to people with disability

Adequacy of police responses

People with disability come into contact with the police as alleged offenders and as victims of or witnesses to crime. Some people with disability reported positive experiences with police officers and how they were supported as victims of crime. But not all experiences with police were positive. In particular, we were told women and girls with disability often had negative experiences of making reports to police about domestic, family and sexual violence.

We commissioned a report, *Police responses to people with disability (Police responses report)*, by researchers at the University of New South Wales. The report concluded that while some individual police adopt good practices, police forces generally have not formulated systemic approaches to engaging with people with disability.

We recommend the Australian Government and state and territory governments collaborate with people with disability in the co-design, implementation and evaluation of strategies to improve police responses to people with disability.

Implementing an alternative reporting pathway

The *Police responses* report identified the barriers faced by people with disability who are victims or witnesses of crime to coming forward to police and being believed. The report found police responses were often inadequate because people coming forward could not give a clear account of what occurred, and consequently were often dismissed as either substance affected or as wasting police time.

Public hearing 28 examined the feasibility and availability of alternative pathways for people with disability to report incidents or crimes to police. We heard about third-party reporting systems, which were described as ‘almost a liaison between police and targeted communities’.⁶⁷ Under these systems, somebody can report an incident of violence and receive support from people who know and understand the kinds of violence people are subjected to. The victim then decides whether they want the third party to report the incident to police or make an information-only report to police without any further investigation.

We recommend the Australian Government and state and territory governments introduce an alternative reporting pathway for people with disability to report crimes to police.

Police disability liaison officers

The deployment of specialist disability liaison officers or units can assist in overcoming mistrust of police. For example:

- South Australia Police has introduced Gay and Lesbian Liaison Officers to help build the LGBTIQ+ community’s trust
- NSW Police Force has introduced dedicated specialist liaison officers known as Aged Crime Prevention Officers. They provide support to victims who have reported crimes; assist any investigating officers; and liaise with other agencies.

We recommend all police services introduce adequate numbers of dedicated disability liaison officer positions.

Legal obligations of police in the provision of services

The prohibition against discrimination in service delivery in section 24 of the *DDA* does not cover the interaction between police and people with disability suspected of committing an offence.

We consider the police should be accountable if they discriminate against a person with disability, particularly where a person’s right to liberty and security of the person are concerned or when in police custody. In addition to proposed amendments to the *DDA* outlined earlier in ‘Strengthening the *Disability Discrimination Act*’, we recommend the *DDA* be amended to include ‘services provided by police officers in the course of performing policing duties and powers’ in the definition of ‘services’ in section 4.

Diversion from the criminal justice system

‘Diversion’ is the formal and informal practices that seek to minimise an accused person’s involvement with the criminal justice system. The aim of diversion is to provide the necessary social, structural and therapeutic support to people with cognitive disability to reduce the likelihood that they will reoffend and become entrenched in a system that is ill-equipped to address their needs. Diversion recognises cognitive disability can result in reduced culpability, making ‘the application of traditional criminal law processes unfair or inappropriate’.⁶⁸

The *Police responses* report found people with cognitive disability are significantly more likely than people without disability to enter the criminal justice system at an early age, and then become trapped in a cycle of low-level offending. This points to a need for more opportunities for diversion particularly of people with cognitive disability at all stages of the criminal justice process.

Benefits of diversion

Participants in diversion programs are less likely to re-offend and re-appear before the courts and more likely to access NDIS supports. Engaging with diversion programs can also dramatically increase a person's wellbeing. These programs make a positive difference to people's experiences in the criminal justice system, especially because participants can avoid the stigma and trauma associated with conviction and a custodial sentence.

Diversion programs can be successful in supporting and rehabilitating people with cognitive disability who would otherwise be convicted and given a custodial sentence. However, research suggests 'appropriate diversionary measures, both at the time of initial police contact and at court, are still underutilised, not available, or not effective due to the lack of appropriate community supports and services'.⁶⁹

We recommend state and territory governments fund court-based diversion programs for people with cognitive disability charged with offences that can be heard in local or magistrates' courts. The programs should:

- be accessible and culturally appropriate, particularly in regional and remote areas
- provide support for people to access the NDIS
- connect people to appropriate education, housing, employment and other services.

Raising the age of criminal responsibility

Children with disability are particularly at risk of violence and abuse in detention and may be denied adequate health care, education and other services. During 2018–19, 49,180 young offenders aged 10 to 17 years were charged with an offence in Australia. Of these, 8,353 were between 10 and 13 years old.

A draft report prepared for the Age of Criminal Responsibility Working Group for the Standing Council of Attorneys-General in 2020 examined the negative effects of detention for a child aged 10 to 13. The report was not specifically concerned with children with disability, but identified detention as increasing 'a child's risk of depression, suicide and self-harm'.⁷⁰ The draft report concluded remanding or sentencing a child to detention 'creates life-long negative outcomes'.⁷¹

In Australia, the general position under common law is that children are criminally responsible for their behaviour if they are aged 10 years or over. For children aged between 10 and 14, there is a rebuttable presumption of *doli incapax*, meaning the child is considered incapable

of having criminal intent. The prosecution must therefore prove the child understood that their actions were wrong.

Properly applied, the principle of *doli incapax* can prevent unnecessary detention of children. However, research indicates that in practice, this principle 'has limited capacity to protect children under the age of 14 years'.⁷²

The earlier a child with or without disability comes into contact with the justice system, the more prolonged their involvement is likely to be, and the greater their likelihood of chronic, long-term offending. Placing children in detention, especially children with cognitive disability, increases the chances that they will become enmeshed in the criminal justice system. The most effective way of preventing very young children from 'a potential trajectory within the youth justice system' and from experiencing the trauma of detention is to raise the minimum age of criminal responsibility.⁷³

Raising the minimum age of criminal responsibility to 14 would bring Australia into line with an internationally accepted standard. We recommend states and territories that have not already done so introduce legislation raising the minimum age of criminal responsibility to 14.

Disability and family violence law and policy

Family and domestic violence

Women with disability experience similarly high rates of violence overall to men with disability, but the types of violence they experience tend to be different. Women with disability are much more likely to experience sexual assault, violence and emotional abuse perpetrated by a domestic partner, or stalking.

Evidence and accounts of the nature of violence and abuse towards women with disability suggest they are targeted by a wider range of perpetrators than people without disability, and also in a wider range of settings. They are subjected to:

- violence, abuse, neglect and exploitation by intimate partners who are also carers
- violence and abuse by family members, co-residents or support workers
- abusers using specific forms of violence that target their disability-related needs or adjustments, such as controlling their access to mobility or communication aids and medication.

Laws and policies addressing violence and abuse should include and respond to these experiences. However, frequently they do not.

National Plan to End Violence Against Women and Children

The National Plan to End Violence Against Women and Children 2022–2032 (National Plan) was released in October 2022. It sets Australia’s policy framework and guides future action on preventing and responding to violence against women, with a goal of ‘ending gender-based violence in one generation’.⁷⁴

The National Plan recognises ‘violence against women and girls with disability tends to occur more frequently, over a longer period of time, and across a wider range of settings’.⁷⁵ It also acknowledges the ‘additional ableist drivers’ and the unique forms of violence experienced by women with disability.⁷⁶ It commits to building capacity in response services ‘to better understand and identify violence in all its forms against ... women with disability, including in institutions’.⁷⁷ However, the National Plan does not identify specific actions to address the drivers of violence against women and girls with disability, the specific experiences of violence against women and girls with disability, or the dearth of accessible supports.

We recommend the Australian Government and state and territory governments develop a five-year Action Plan for Women and Children With Disability to accompany the National Plan to End Violence against Women and Children 2022–2032. The Action Plan should:

- be developed by and for women with disability
- prioritise cohorts at greatest risk of violence, including women with cognitive and psychosocial disability
- recognise the greater range of relationships and settings in which domestic, family, and sexual violence against women and girls with disability can occur
- coordinate with other relevant plans and strategies, in particular the forthcoming Aboriginal and Torres Strait Islander Action Plan and the ADS.

Family and domestic violence in law and policy

Australian laws and policy frameworks do not adopt a uniform definition of gender based violence, violence against women or family and domestic violence. The National Plan recognises varied definitions of gender-based violence as a ‘whole-of-system issue’ and commits to further work ‘with states and territories in areas where we do not yet have consistent national definitions’.⁷⁸ It states that nationally consistent definitions are needed as the basis of ‘program design, public and private sector policies, as well as legislation across states and territories’.⁷⁹

Gaps in existing laws broadly relate to:

- definitions that do not cover all domestic relationships people with disability may have, such as with support workers, co-residents, and guardians and administrators
- particular settings, for example violence in group homes, respite services or boarding houses

-
- behaviour people with disability experience, such as withholding personal supports or interfering with assistive devices, that constitutes family or domestic violence and abuse.

The absence of a nationally consistent definition of family and domestic violence has direct consequences for the legal protections and supports available to women and girls with disability when they experience family and domestic violence. Inconsistencies and gaps in legal protections for people with disability can have a direct impact on policy, funding and service responses.

In working towards nationally consistent, inclusive definitions of gender-based violence under the National Plan, we recommend states and territories amend their legislative definitions of family and domestic violence to include:

- all relationships in which people with disability experience family and domestic violence, including but not limited to carer and support worker relationships
- disability-based violence and abuse
- all domestic settings, including but not limited to supported accommodation such as group homes, respite centres and boarding houses.

Volume 8, *Criminal justice and people with disability* examines and makes recommendations to address the over-representation of people with disability in the criminal justice system and their experiences of maltreatment once in the system.

First Nations people with disability

Key points

- First Nations people with disability are uniquely marginalised in Australia.
- The experiences of First Nations people with disability cannot be separated from the ongoing impacts of colonisation, intergenerational trauma and racism experienced by First Nations people more generally.
- Due to a complex history of trauma, stigma and shame, First Nations people can be reluctant to identify with disability.
- Significant change is required to dismantle the barriers many First Nations people with disability face to accessing culturally safe and quality services and supports.
- Reforms are needed to address the over-representation of First Nations people in the child protection system and the criminal justice system.
- Barriers to accessing the NDIS in remote areas have resulted in neglect of First Nations people with disability. The NDIA should consult on culturally appropriate assessment and consider modifying eligibility criteria in some circumstances. It should also increase the number and coverage of culturally safe services for First Nations communities through long-term investment and a flexible approach to funding.
- To address systemic policy and service delivery failures, reforms required include:
 - establishing a First Nations disability forum
 - improving the Disability Sector Strengthening Plan
 - developing disability-inclusive cultural safety standards for service delivery
 - investing in the First Nations disability workforce.

The experiences of First Nations people with disability

I have often felt that I represent the three demographic groups in Australian society that are treated worst. I am First Nations, I am a woman and I have a disability. I have felt the impact and burden of all three of these things that are part of who I am.⁸⁰

Our terms of reference directed us to examine the specific experiences of violence against, and abuse, neglect and exploitation of, First Nations people with disability. We understood this as a direction to recognise the unique histories, cultures and associations with land, family, language and lore First Nations peoples hold. We also understood it to be a direction to consider the unique and cumulative forms of disadvantage First Nations people with disability face.

We recognise the First Nations disability community has many voices. Consequently, we sought the views of and engaged with a wide range of independent organisations, community groups and individuals to give us a broad picture of the intersectional experiences of First Nations people with disability.

The impact of colonisation on First Nations people with disability

Prior to colonisation, First Nations people with disability were included in social and cultural life and had responsibilities as part of First Nations communities. Disability was just 'part of the human experience'.⁸¹

The cataclysmic impact of European colonisation on First Nations people is well known. The experiences of First Nations people with disability cannot be separated from the ongoing impacts of colonisation, intergenerational trauma and institutional racism experienced by First Nations people more generally.

Understanding rights within a First Nations framework

Our work was informed by human rights relevant to First Nations peoples as a distinct cultural group, as well as their rights as individuals with disability. We were guided by the *CRPD* and the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*.

More recently, the Uluru Statement from the Heart developed a position on Indigenous constitutional recognition based on self-determination. We heard a commitment to such reform is an essential precondition for the safety and wellbeing of First Nations people with disability.

Disability: 'Not a word we use'

First Nations peoples' understanding of disability does not easily align with Western concepts of disability, particularly the tendency to focus on individual impairment over collective wellbeing. Many First Nations people with disability prefer a cultural model centred on inclusion. This recognises that inclusive participation in culture and community has a positive impact on social health and wellbeing, and moderates the harm of inequalities experienced in daily life.

The reluctance of some First Nations people with disability to identify with disability has a complex history. It is about more than cultural differences between First Nations and non-Indigenous people. It is also a product of stigma and shame about disability resulting from colonisation, trauma and discriminatory treatment. This creates formidable barriers to accessing disability supports and services.

Ensuring cultural safety

First Nations people with disability have emphasised the importance of culture, Country, kin and community in safeguarding them from experiences of violence, abuse, neglect and exploitation.

We understand cultural safety as an outcome that respects, supports and empowers the cultural rights, identity, values, beliefs and expectations of First Nations peoples while providing quality services that meet their needs.

First Nations people with disability have identified a lack of culturally safe disability services and supports across almost every system they encounter. Denial of or limited access to safe, inclusive, quality services and supports results in continued neglect of First Nations people with disability.

Child protection

We considered the experiences of First Nations people with disability and their families in contact with child protection systems, including out-of-home care. The gross over-representation of First Nations families in these systems across Australia is well established and has been the subject of past inquiries.

First Nations people with disability shared the cycle of intergenerational trauma and the devastating effects on connections with family, culture and Country. First Nations people with disability drew links between child removal and later contact with the criminal justice system, experiences of family and domestic violence, and poor education and health outcomes.

When First Nations children with disability are removed from Country and placed in care, continued contact with family, community and return visits to Country can be infrequent. This causes distress and a loss of connection to culture, harming both children and their families.

The need for a First Nations approach

Exercising the right to self-determination and culture protects First Nations families and children with disability from unwarranted intervention and trauma. We look at four ways to support this in child protection systems.

First, First Nations Community Controlled Organisations should be involved at all stages of child protection systems.

Second, assessment and diagnosis should be culturally safe. Parenting capacity assessments based on Western concepts of parenting are not culturally appropriate and do not consider the cultural strengths of First Nations peoples, their families and communities. We recommend state and territory governments should work with First Nations child protection services, peak bodies and First Nations people with disability to co-design clear principles and guidelines for parenting capacity assessments for First Nations parents with disability.

Third, First Nations children should have access to appropriate screening in out-of-home care. Currently, First Nations children are entering or in out-of-home care with undiagnosed disability and remain undiagnosed while there. Despite the critical need for culturally appropriate disability assessment of First Nations children in out-of-home care, few culturally and linguistically appropriate assessment tools are available.

The Ages and Stages Questionnaire – Talking about Raising Aboriginal Kids (ASQ–TRAK) is a culturally adapted developmental screening tool designed to identify developmental issues in First Nations children in Australia. It screens across five domains of development: communication, gross motor, fine motor, problem solving and personal-social. A particular benefit of ASQ–TRAK is it is able to be used by people other than doctors, such as trained First Nations staff in community controlled health organisations. This in turn enables a culturally safe assessment.

We recommend all First Nations children up to five years of age going into out-of-home care are screened using the ASQ–TRAK. Where a child is identified as vulnerable on two or more of the five domains of development, that child should be supported by an application for an Early Childhood Early Intervention plan.

The fourth way to support First Nations parents and children is through early intervention. A lack of early support for First Nations parents and children with disability can contribute to contact with child protection systems, particularly in remote areas. We consider child protection authorities should be required to provide information to First Nations parents and families on where and how they can access support.

Criminal justice

Throughout our inquiry, First Nations people with disability raised concerns about their interactions with police and corrections personnel, as well as conditions in adult prisons and youth detention centres. We heard about racist and ableist attitudes towards First Nations people with disability, physical violence against them, and use of physical and chemical restraints. We identified the hidden national crisis of the high proportion of First Nations people with cognitive disability in custody, particularly youth detention.

Culture is healing

The importance of culture and its healing nature for First Nations people is undeniable. We were told this repeatedly by First Nations people with disability who had contact with criminal justice systems.

We learnt cultural support can help First Nations people with disability achieve better outcomes during and after engagement with criminal justice systems. We also learnt about the importance of culture in reducing contact with the criminal justice system. We heard about the importance of having staff in prisons, juvenile detention centres and forensic units who are trained to work with First Nations people with complex needs. And we heard about the valuable work First Nation-led organisations do supporting people to transition into the community.

It is critical First Nations people receive cultural support while in criminal justice settings. We recommend state and territory governments review the effectiveness of their strategies directed to ensuring the cultural safety of First Nations people with disability in these settings.

The unmet potential of the NDIS for First Nations people

The operation of the NDIS in remote and very remote communities

The NDIS model relies on a competitive marketplace 'where participants can use their NDIS plans to purchase the supports and services that best meet their needs'.⁸² 'Thin markets' exist where there is a gap between the needs of First Nations participants in remote communities and the services available.

A lack of services limits the choice and control of First Nations people with disability in remote communities. It may also mean they are more reliant on family members and First Nations Community Controlled Organisations to provide disability services. Where this is not possible, they are required to move off Country. Many said having to move off Country to receive services has a significant impact on their wellbeing and that of their families.

Barriers to accessing the NDIS

First Nations people often experience difficulties applying to the NDIS and obtaining evidence to support applications. We consider the NDIA should work in partnership with First Nations disability and health organisations to improve the availability of culturally appropriate assessments. It should also consider how NDIS eligibility criteria may need to be modified in circumstances where First Nations people have difficulties accessing culturally safe and appropriate assessments or lack sufficient documentation.

The complexity of the NDIS has impeded First Nations people's access to the scheme and to disability supports in remote communities. We heard that much of the information distributed was culturally inappropriate and incomprehensible.

The cultural, language and literacy barriers faced by First Nations NDIS participants in remote communities limit their ability to exercise choice and control. Simplifying educational material, as well as improving the cultural competency of NDIA staff and increasing access to interpreters, would address many of these barriers.

There is an inherent tension between the preference of many First Nations communities for a holistic, family-centred approach to service delivery and the NDIS model, which has a more transactional approach focusing on individual plans and goals. The Australian Government accepted that further work is required 'to make the design and operation of the NDIS more flexible to better support First Nations people with disability in remote communities'.⁸³

Community connector programs

The NDIA runs community connector programs to support people with disability in remote communities to access and navigate the NDIS.

We recommend the NDIA increase the number and coverage of community connector programs for First Nations people with disability in remote areas. The programs should be community-led and delivered. There must be adequate long-term funding for the programs and organisations delivering them, with sufficient training for staff.

Challenges to delivering services in remote communities

There are substantial challenges associated with delivering services in remote communities. These create risks to ongoing service provision by existing providers and barriers to market entry for new providers.

The NDIS Pricing Arrangements and Price Limits sometimes do not provide for the high costs associated with service delivery in remote communities. The complexity of the registration process, costs of administration and overheads create barriers to establishing new First Nations service providers.

We heard the cultural competence and safety of mainstream NDIS providers is ‘very minimal’⁸⁴ and the limited availability of culturally safe NDIS services compounds the issue of thin markets.

In December 2019, the Disability Reform Council agreed to:

a more flexible approach to address market challenges ... recognising a ‘one-size-fits-all’ approach to delivering the NDIS is not suitable to address market gaps faced by certain geographic locations, particular cohorts or disability support types.⁸⁵

This led to the NDIS Thin Markets Project, an initiative led by the NDIA, the Australian Government Department of Social Services, and state and territory governments.

The NDIA has developed three interventions to address market challenges: market facilitation, coordinated funding proposals and direct commissioning. An evaluation concluded there is limited evidence of their effectiveness in addressing the significant barriers to accessing and utilising the NDIS in remote communities. The mixed outcome reinforces the need for locally based solutions and a reduced reliance on market-based models in regions where this is ineffective or impractical.

A community-based approach and alternative funding models

NDIS participants in remote areas do not have consistent access to quality and culturally safe disability services and supports. For this reason, First Nations people with disability have been and continue to be subjected to systemic neglect by the NDIS.

The Australian Government accepted Counsel Assisting's submission following Public hearing 25, 'The operation of the NDIS for First Nations people with disability in remote and very remote communities' that a purely market-based approach is insufficient to overcome the structural barriers that impact First Nations people's access to, and utilisation of, the NDIS in remote communities. Further, it accepted that where market-based interventions are insufficient to address such challenges, 'more direct interventions may be required, such as through direct commissioning or integration with other government services'.⁸⁶

In response to Counsel Assisting submissions, the Australian Government acknowledged the importance of investing in local First Nations organisations and workforces in remote communities. It also acknowledged the need for place-based solutions in remote service delivery, working closely with participants to access, engage or commission the supports needed.

Ultimately, a ground-up approach requires long-term investment and a flexible approach to funding in remote communities. We have identified six ways to support this approach.

The community controlled sector and block funding

Block-funding the community controlled sector may be key to achieving sustainable improvements to the NDIS and enabling First Nations communities to develop solutions for themselves.

The term 'block funding' is often associated with the dominant funding model for disability services that existed prior to the NDIS. Under this model, governments funded service providers directly. Block funding arrangements are still used by the NDIA and the Australian Government Department of Social Services. They involve providing specific supports to NDIS participants through a contract between the government and a service provider. Block funding does not replace individualised funding but wraps around 'to complement and support the operation of the NDIS'.⁸⁷

We recommend the NDIA should provide block funding for First Nations Community Controlled Organisations to flexibly deliver supports and services to First Nations people with disability.

Cultural safety in the NDIS and cultural competency of NDIA staff

First Nations people in remote communities described a lack of cultural safety when engaging with the NDIS and NDIA employees. Witnesses spoke about NDIA planners having limited understanding of the importance of Country, culture and community.

At present, NDIA staff complete a mandatory e-learning module focused on the importance of First Nations cultural diversity. However, several witnesses said cultural expertise and safety must go beyond a standard training course and be fostered throughout all levels of the NDIA.

Local NDIA staff enhance cultural safety, reduce barriers by breaking down language and cultural differences, and are better able to provide practical assistance.

Access to interpreters is essential to help participants understand the NDIS and make decisions about their plans. Interpreters also help ensure cultural safety for First Nations participants.

Participation in cultural life

Participation in cultural life is essential to social and emotional wellbeing for First Nations people with disability. The objects and general principles of the *NDIS Act*, which guide the operation of the NDIS, refer to supporting people with disability to participate in social and economic life. We recommend the *NDIS Act* be amended to also refer to participation in cultural life, to ensure this is considered of equal importance to social and economic participation for First Nations people with disability.

Funding for cultural supports and return to Country

The term ‘return to Country’ refers to First Nations people travelling back to their Country on a temporary or permanent basis. This may occur after participants have moved to urban centres to access disability support services.

Return to Country trips are important for performing cultural obligations and practices, participating in Sorry Business, and connecting with Country, culture and community. These trips are vital for social and emotional wellbeing.

The NDIA is co-designing a new policy with First Nations people and key stakeholders to ensure there is a consistent approach to return to Country funding. We support this initiative and recommend the NDIA, in consultation with the First Nations Advisory Council (which provides advice to the NDIA):

- create a new line item in the Pricing Arrangements recognising cultural supports and return to Country trips
- develop guidelines for NDIA staff on including cultural supports and return to Country trips as reasonable and necessary supports in plans.

Role of family members

In the absence of local First Nations-led disability services, First Nations family members often provide care to those with disability. While some First Nations people with disability prefer family to support them rather than ‘strangers’ the issues can be complex, particularly in relation to funding. There may be a risk of exploitation, and measures are needed to ensure transparency, safety and security for people with disability who receive support from family members.

These concerns are significant, but the reality is many remote communities have few or no disability services. Family members currently fill the gap, often without training, support, oversight or respite.

The *NDIS Act* allows the NDIA to fund family members to provide supports in ‘exceptional circumstances’. However, it does not provide specific guidance about how the exceptional circumstances criterion applies to First Nations families in remote areas. We recommend the NDIA, the First Nations Advisory Council and First Nations Community Controlled Organisations should co-design policy guidelines on funding for First Nations family members to provide supports to participants in remote communities.

An inclusive NDIA Board

During Public hearing 25, witnesses called for First Nations representation on the NDIA Board. We agree section 127 of the *NDIS Act* should be amended to provide that the NDIA Board must include at least one First Nations person at all times.

The case for structural reform

Policy frameworks and service delivery often fail to respond to the distinct needs of First Nations people with disability. Government policy making and funding do not address the double disadvantage at the intersection of racism and ableism experienced by First Nations people with disability.⁸⁸ Agencies and departments often operate in silos, unaware of each other’s actions and approaches. A fractured approach across service systems results in a lack of coordination and gaps in responsibility.

As a consequence, the needs of First Nations people with disability are often overlooked, ignored or forgotten. During a number of our public hearings, witnesses described how the invisibility of First Nations people with disability has resulted in systemic neglect and lack of accountability. We make recommendations to address these issues.

A First Nations Disability Forum

We recommend the Australian Government and state and territory governments support the establishment of a First Nations Disability Forum. The Forum’s purpose would be to address the lack of diverse voices of First Nations people with disability across key areas funded by the Australian Government and state and territory governments. As a community-led organisation, it would drive policy and service reforms, ensuring culturally safe and appropriate responses for First Nations people with disability.

The Forum would be a platform for First Nations community controlled sector organisations to collaborate with First Nations people with disability. It should consist of representatives of the First Peoples Disability Network, First Nations Community Controlled Organisations, Aboriginal and Torres Strait Islander peak bodies and First Nations people with disability.

The Forum should be supported by a First Nations disability investment fund.

Building on the Disability Sector Strengthening Plan

On 26 August 2022, the Coalition of Aboriginal and Torres Strait Islander Peak Organisations and all levels of Australian governments agreed in principle to the Disability Sector Strengthening Plan (DSSP). The DSSP is a key commitment under the National Agreement on Closing the Gap's Priority Reform Two: Building the Community-Controlled Sector. The DSSP's overall objectives are to strengthen the community controlled disability sector and improve outcomes for First Nations people with disability.

The in-principle agreement to the DSSP is an important step forward. It attempts to align the complex policy landscape for First Nations people with disability. It is responsive to the need for better coordination across the National Agreement on Closing the Gap and the ADS to drive national action and improve outcomes with and for First Nations people with disability.

While the DSSP is an important step, we believe there are ways it could be strengthened. At present, it does not commit any party to resources or actions 'not already announced' but is framed as a resource to assist with prioritisation, partnership and negotiation.⁸⁹ It runs only until 2025.

We recommend that the parties to the National Agreement on Closing the Gap commit to releasing a revised DSSP that has:

- agreed priority areas, determined through consultation with the community controlled sector
- a commitment to future funding and longer timeframes
- agreed timeframes for delivering actions and achieving outcomes
- annual reporting requirements for governments to improve transparency and accountability.

The First Nations Disability Forum should have the capacity to direct funding under the DSSP.

Ensuring culturally safe and responsive services

We consistently heard about the need to invest in the development of culturally appropriate and safe disability services for First Nations people. Improving cultural safety can occur through increasing support for community controlled organisations to provide services and through increasing cultural safety in mainstream service providers.

A commitment to cultural safety in mainstream services must be robust and based on genuine engagement with First Nations people and their culture. It should not be a box ticking exercise.⁹⁰ Cultural safety must not be just about undertaking one-off training, but a commitment to fundamental shifts within organisational cultures and mindsets.

We recommend the Australian Government in partnership with the First Nations Disability Forum develop disability-inclusive cultural safety standards for the provision of services for First Nations people with disability. Disability service providers that support and have

a responsibility for First Nations people with disability, including in the health, criminal justice and early childhood sectors, should incorporate these disability-inclusive cultural safety standards in their practices and organisations. The NDIA should implement the cultural safety standards to improve its own cultural competency through improved training for NDIA staff.

Growing the First Nations disability workforce

DSSP actions for a First Nations disability workforce

The DSSP recognises that ‘a dedicated and identified Aboriginal and Torres Strait Islander workforce’ is an essential element of a strong sector. The current workforce data, while not comprehensive, suggests the First Nations disability workforce is ‘either emerging or limited’.⁹¹ It also notes that existing employment and workforce strategies at national or state and territory levels do not focus on the community controlled disability workforce.

The DSSP contains actions and outcomes intended to strengthen a dedicated First Nations disability workforce for the community controlled disability sector. These should be built upon through sustained commitment to develop a skilled First Nations disability workforce. These arrangements should be negotiated through the First Nations Disability Forum.

Funding a First Nations disability workforce

Investment in a First Nations disability workforce is key to addressing current service gaps. Given their role, geographic distribution and the trust they enjoy within communities, First Nations Community Controlled Organisations provide a platform from which this workforce can be built.

A local, community-led approach is required to understand needs and the best ways to support the First Nations disability workforce. Parties to the DSSP should ensure appropriate funding is provided in the First Nations Disability Fund to build disability specific expertise into existing community controlled organisations. The Australian Government and state and territory governments should contribute to the fund, which should be distributed via the First Nations Disability Forum.

Need for a local workforce in remote areas

We heard there is a significant shortage of suitably skilled First Nations workers and locally based employees, especially in remote areas. Building a local workforce is needed to increase availability of culturally safe disability services and reduce the need for participants to move off Country to access services. The evidence overwhelmingly supported Aboriginal Community Controlled Organisations and Aboriginal Community Controlled Health Organisations having a central role in local workforce development.

In response to Counsel Assisting submissions following Public hearing 25, the Australian Government recognised that workforce availability, training and staff accommodation have affected service delivery for First Nations people in remote communities. The Australian Government emphasised its commitment to ‘the development of a comprehensive NDIS Workforce Strategy to ensure all NDIS participants can access the supports they need’.⁹²

We recommend the First Nations Disability Forum and parties to the DSSP collaborate to develop a strategy to develop First Nations local workforces in remote communities.

Volume 9, *First Nations people with disability* examines and makes recommendations to address the specific experiences of violence against, and abuse, neglect and exploitation of, First Nations people with disability.

Disability services

Key points

- We heard harrowing evidence about violence, abuse, neglect and exploitation occurring in, or in connection with, the delivery of disability services. This primarily related to supported accommodation.
- The risks of exposure to violence, abuse, neglect and exploitation increase when people with disability are isolated and deprived of choice and control over the services they receive, and have limited capacity to raise concerns about the design, delivery, quality and safety of essential services and supports.
- Self-advocacy skills and access to independent advocacy are integral to safe, quality service provision and day to day choice and control. The NDIA should develop a program to connect NDIS participants living in supported accommodation with independent advocacy services.
- The governance and leadership of organisations providing disability services influence how they embed a human rights culture and identify and manage risk, including the risk of maltreatment of the people receiving their services.
- Disability service providers need robust and transparent policies and procedures to detect and respond to violence, abuse, neglect and exploitation. These should support people with disability, their families and advocates, as well as service provider staff, to raise concerns, make complaints and report incidents.
- Skilled and capable disability support workers are crucial to providing safe and high quality services. Career pathways, including remuneration commensurate with skills, experience and expertise, will assist with workforce retention.
- Rigorous disability support worker screening and recruitment processes, as well as effective training and supervision of workers, are also needed to prevent violence, abuse, neglect and exploitation. A national disability support worker registration scheme is recommended to support workforce development.
- A market approach to disability services has not worked for everyone. Urgent discussions are required between governments to develop provider of last resort schemes to meet the needs of people with disability unable to access adequate or appropriate disability supports.

Disability service providers

While my new place isn't perfect, it is so much better. For the most part I'm respected, and that is all I was asking for. The support actually is set up for me and it's a place of my own.⁹³

The term 'disability service provider' encompasses the range of individuals and organisations that deliver disability services. Disability services are those used specifically by people with disability. They are distinct from the 'mainstream' or 'generic' services all people use over the course of their lives, such as education, health care, transport, employment or accommodation services.

Service providers may be government or non-government, including for-profit and not-for-profit organisations. Some are small, supporting a single person with disability, while others are large, with thousands of workers and operating in multiple states and territories. Some offer multiple different types of services, while others focus on one particular form of support. In the second quarter of 2022–23, there were 151,629 providers of NDIS-funded disability services. Not all disability service providers are NDIS service providers.

Experience of violence, abuse, neglect and exploitation in disability services

We heard harrowing evidence from people with disability and their family members about both episodic and routine violence, abuse, neglect and exploitation occurring in, or in connection with, the delivery of disability services. It occurred in people's homes, in places where people go to receive disability services – such as day programs – and when services are provided in the community.

The risks of exposure to violence, abuse, neglect and exploitation increase when people with disability are isolated, dependent, and deprived of choice and control over the services they receive and where and how they are delivered. The risks also increase when people with disability have limited capacity to raise concerns about the design, delivery, quality and safety of essential services and supports.

Much of the evidence we examined in public hearings relates to people with disability living in supported accommodation operated by medium to large disability service providers. A significant proportion of this cohort live with intellectual disability and communication barriers. In the context of shared supported accommodation such as group homes, this can heighten their risk of exposure to violence, abuse, neglect and exploitation.

What we heard about violence, abuse, neglect and exploitation in disability services was broadly consistent with the findings of the January 2023 report on an Own Motion Inquiry conducted by the NDIS Commission, which focused on supported accommodation.

When people with disability require daily living supports and personal care, the relationship with support workers and service providers requires considerable trust and confidence. This is especially the case for people with disability who may be isolated or living in separate settings. Support workers and service providers hold significant power within these relationships, notwithstanding the move towards greater choice and control for people with disability through the NDIS.

Preventing violence, abuse, neglect and exploitation

Embedding human rights

Disability service providers have an important role to play in respecting, protecting and fulfilling the rights of people with disability. A commitment to a human rights approach means ensuring, so far as practicable, those who lead, manage and work in service providers understand:

- the nature and scope of the human rights of people with disability
- how their decisions and practices impair or enhance a person's rights
- how to incorporate respect for human rights in practice at all levels of service provision on a day-to-day basis.

In the course of our inquiry we heard about occasions when a human rights approach was not applied in decision-making about the delivery of services to people with disability. This raises issues about the effectiveness or effective application of current tools, resources and training on human rights.

We recommend the NDIS Commission develop a capacity building program to support disability service providers to embed human rights in the design and delivery of their services. The program should be co-designed with people with disability, disability organisations and member-led First Nations Community Controlled Organisations.

Exercising choice and control

One object of the legislation establishing the NDIS is to give effect to Australia's obligations under the *CRPD* by enabling people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports. This is reflected in NDIS rules, policy and practice standards.

Despite this, the choice and control of people with disability who are NDIS participants can be restricted or inhibited while accessing and receiving disability services.

The role of support coordinators

Under the NDIS, support coordinators can assist NDIS participants with choice and control over the services they receive. However, not all NDIS participants have funding, or enough funding, for support coordination in their NDIS plans. We recommend the NDIA ensure that NDIS participants identified as being at heightened risk of violence, abuse, neglect or exploitation, particularly those living in supported accommodation, have funding for support coordination included in their NDIS plans.

Risks can arise from conflicts of interest when a participant's support coordinator is employed by a provider that delivers multiple services. Support coordinators might only present information to participants about the services offered by their own organisation. This limits choice and control and places organisational interests above participants' interests.

We recommend the Australian Government, in consultation with states and territories, create or amend an NDIS rule to make clear that it is not appropriate for a provider of support coordination to be the provider of any other funded supports in an NDIS participant's plan. Exceptions may be required, including where there are few alternative service options or where access to culturally appropriate or specialised services is limited.

There are considerable variations in quality and capability between individual support coordinators and potential gaps in monitoring the effectiveness of support coordination services. We recommend the NDIS Commission examine the quality and consistency of support coordination.

Independent advocacy

Building self-advocacy skills and increasing access to robust independent advocacy are integral to safe, quality service provision and day-to-day choice and control. In closed settings, such as group homes, independent advocacy can be an important safeguard, but there are barriers to accessing advocates. This is due to a lack of awareness about disability advocacy and structural and organisational barriers within group homes, as well as shortages of available advocacy services. We recommend the NDIA develop a program to connect NDIS participants living in supported accommodation with independent advocacy services.

Choice and control over how services are delivered

The risks of violence against, and abuse and neglect of, people with disability in shared living environments, such as group homes, are increased when people have little or no choice and control over where and with whom they live. We acknowledge that facilitating choice and control is not a simple process. However, we consider all service providers should take steps to ensure the views and wishes of the people with disability using their services are at the forefront of decision-making about service delivery.

At public hearings we heard about failures by disability service providers to give clients choice and control over important aspects of the services they received. These included their personal care, their daily activities and the contents of their service agreements.

While the NDIA does not require written service agreements between NDIS participants and service providers (except for Specialist Disability Accommodation supports), it does recommend the parties enter written agreements ‘so participants and providers are clear about what each party has agreed to’.⁹⁴ (Specialist Disability Accommodation funding covers building and maintenance costs for specialist housing.) People with disability cannot exercise choice in relation to the services they receive unless they have a realistic opportunity to review, understand and discuss service agreements.

Supported decision-making in disability services

In May 2023, the NDIA released the NDIS Supported Decision Making Policy and the NDIS Supported Decision Making Implementation Plan to improve the way people with disability are supported to make decisions in the NDIS. These documents do not provide enough detail about how service providers can improve daily supported decision-making practices. We consider the Policy and Implementation Plan would be strengthened by:

- amending the NDIS Quality Indicators to include a greater focus on supported decision-making for everyday life decisions, including what services participants receive, in what way, and by whom
- the NDIS Commission developing a practice guide for service providers about supported decision-making, based on the supported decision-making principles outlined earlier in ‘Support for decision-making’.

Disability service provider governance

Broadly, governance refers to the structures, systems and processes in place to manage an organisation. Governance is often centred around the leadership and decision-making processes of an organisation and the frameworks and rules underpinning the way it is expected to operate.

The governance and leadership of disability services dictate organisational culture and practice. They influence how providers embed a human rights culture and identify and manage risk, including the risk of violence against, and abuse, neglect and exploitation of, the people receiving their services.

Deficiencies in governance and leadership can lead to insufficient oversight and inadequate management and responses to risk.

Good governance practices bring transparency and accountability to decision-making and decision-makers. Investment in disability leadership and meaningful engagement with people with disability also strengthens transparency and accountability.

The disability workforce

Without assistance from workers who are trusted, skilled, experienced and supported, the safety and quality of the services received by people with disability can be compromised. In its *Own Motion Inquiry* report, the NDIS Commission observed that ‘the attitude and aptitude of the workforce drives a high number of the issues evident in group settings’.⁹⁵

Robust disability support worker screening and recruitment processes are needed to prevent violence, abuse, neglect and exploitation. Deficiencies or gaps in support worker training can lead to maltreatment and inadequate responses when violence or abuse occur.

Additionally, support workers must be actively supervised and supported by disability service providers. We support efforts to strengthen the quality of training and supervision provided to frontline support workers, including those using ‘Active Support’, to empower people with intellectual disability living in supported accommodation settings.⁹⁶

We also welcome the Australian Government’s examination of ‘ways to build a more responsive, supportive and sustainable market and workforce’ in the NDIS Review.⁹⁷

Responding to violence, abuse, neglect and exploitation in disability services

Service providers need robust and transparent policies and procedures to detect and respond to violence, abuse, neglect and exploitation. These should support people with disability, their families and advocates, as well as service provider staff, to raise concerns, make complaints and report incidents.

Managing concerns and complaints

People with disability and their family members often find service provider complaints processes confusing or ineffective to address and resolve their concerns and complaints. People with disability and their supporters have expressed frustration, confusion, disappointment and fear about the responses of service providers to complaints or feedback.

Service providers should be aware of and address the barriers people face when raising concerns and complaints or reporting incidents. These include:

- inaccessible policies and processes for making a complaint
- a lack of options for raising concerns
- fear of not being believed or not being treated seriously
- delays in responding to feedback or concerns
- fear of being victimised as a consequence of raising a concern or making a complaint

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- not being consulted about or involved in the handling of the concern or complaint
 - concern about loss of privacy and autonomy
 - belief that the service provider will not respond or take action, and that nothing will change.

We have identified measures to strengthen complaints management, including:

- creating a dedicated team or individual, separate from those delivering services, to engage service users and their support networks about the quality of services provided and ensure feedback and complaints are dealt with appropriately
- prioritising complaints involving or alleging risk to a service user when assessing and classifying the seriousness of complaints
- establishing lines of communication and encouraging everyone to speak up when something does not seem right
- keeping records of all complaints and how they are concluded or resolved
- developing organisational cultures that encourage and welcome feedback, concerns and complaints
- reinforcing the value of regular feedback from service users and their support networks across the organisation.

Support workers and their managers should also have access to reliable incident reporting systems, and be trained to use them. Providers should implement processes to monitor incident reporting and the quality of service delivery.

Responding to incidents and complaints

We received evidence of service providers responding inadequately to incidents, concerns or complaints. In some cases, staff responsible for incident reporting or complaints handling had not followed policies and procedures. In other instances, the policies and procedures fell short, or oversight by senior managers was lacking.

Poor communication between service providers and people with disability or their families or supporters following complaints or incidents was a common theme across our service provider hearings. In matters involving suspicion or allegations of violence, abuse, neglect or exploitation, poor communication can compound feelings of distrust and anxiety.

Providers need to actively involve people with disability and their families or supporters in the process of investigating or finding solutions to issues or concerns raised. Without active engagement, important information may be lost, the effects of the underlying issue or event exacerbated and trust between providers and service recipients damaged.

Service providers should align their policies and practices with elements of best practice identified in our report. This includes taking an integrated and holistic approach to supporting

the health, safety and wellbeing of their service users following an incident and in the long term. It requires an assessment of individual needs and preferences, the nature and impact of the incident, and the effect of any investigation or court process.

Providers should also use investigations as a tool for understanding how and why an incident has occurred and to identify ways to mitigate future risks. Investigations provide an opportunity for people who have been harmed to be heard and their experiences acknowledged. Through investigations, providers should put in place preventative measures, identify what action they need to take and offer redress to people affected.

Service providers should ensure their processes recognise that people respond to and deal with experiences of trauma in different ways. Worker training should also recognise and respond to the different needs of people they work with during complaint or incident processes and investigations.

Redress

Several NDIS service providers we investigated did not provide any form of redress to people who experienced violence, abuse, neglect or exploitation while in their care. Service providers should provide for redress in their policies and procedures when people for whom they are responsible experience violence, abuse, neglect and exploitation. The policies and procedures should require a flexible and constructive approach to engagement to ensure the person who has experienced violence, abuse, neglect or exploitation receives support to access an independent advocate.

A range of redress options should be available. This includes apologies, compensation, reimbursement of fees, credits for services and other practical remedies or supports that respond to the needs of a person with disability who has experienced harm.

To ensure redress is offered to NDIS participants where appropriate, we recommend the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018 (Cth) (Incident Management Rules)* and the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018 (Cth) (Complaints Rules)* be amended. The NDIS Commission should be given power to require NDIS service providers to consider redress and forms of support when it forms the view that the service provider bears responsibility for the violence, abuse, neglect or exploitation experienced by an NDIS participant.

Strengthening the disability workforce

Disability support workers who are skilled and capable of meeting the individual support needs of people with disability are crucial to the provision of safe, high quality services. However, there is a shortage of disability support workers across Australia and recruiting and retaining a suitably skilled workforce continues to be a significant challenge for service provider organisations.

The crisis in the disability workforce has been driven both by the growth of the sector and the

large numbers of workers who are leaving the industry. Worker stress due to the insecure nature of their employment, low pay, concerns about having the skills and time to complete all aspects of their jobs within paid working hours, and undervaluing of disability support work contribute to these workforce shortages.

National disability support worker registration scheme

Creating a more established and recognised career pathway for people entering the disability support sector will assist with workforce retention. This requires levels of remuneration commensurate with the development of skills, experience and expertise. We consider a national disability support worker registration scheme could help achieve this through a framework to professionalise and stabilise the disability workforce.

One of the main benefits of a worker registration scheme is that it ‘promotes professionalisation of the disability workforce and is key to driving increased quality of services’.⁹⁸ Registration can attract workers to the sector and promote respect and recognition for the important work they do. In a national disability support worker registration scheme, registration and accreditation standards should be set to ‘lift knowledge and capability of the workforce and professionalise the sector’.⁹⁹

An effective national disability support worker registration scheme can encourage capable workers to enter and remain in the sector. It can also enhance the overall safety and quality of disability services provided. Disability support worker registration will need to be mandatory if it is to achieve these goals.

The details of the proposed disability support worker registration scheme require careful consideration, including which workers are covered by the scheme, who administers it and how it is administered. Strategies are also required to minimise regulatory duplication, burdens on disability support workers and barriers to First Nations workers.

We recommend the Australian Government establish a national disability support worker registration scheme. Consultation about the scope and elements of the scheme should include people with disability, disability organisations, support workers and their representative bodies, disability service providers and state and territory governments.

Remuneration and working conditions

To increase the viability of disability support work as a career path and to retain workers in the industry for longer, remuneration of disability support workers should be reconsidered.

The *Social, Community, Home Care and Disability Services Industry Award (SCHADS Award)* regulates the ‘social and community services’ and the ‘home care’ sectors. This includes most of the disability support workforce, along with other workers. Employees working in the social and community services sector are referred to as Schedule B employees. Those working in the home care sector are referred to as Schedule E employees and are generally paid less

than Schedule B employees.

The minimum pay rates for Schedule E employees engaged in aged care services recently increased following a review by the Fair Work Commission. They consequently receive 15 per cent more than disability support workers paid under Schedule E. In our view, there does not appear to be a rational basis for this distinction. We consider there would be benefit in a review of the *SCHADS Award* to ensure it reflects contemporary expectations of disability support work. We recommend relevant parties consider an application to the Fair Work Commission.

Addressing market failures and providers of last resort

The NDIS has led to an unprecedented growth in funding and demand for disability services and supports. Some parts of the NDIS market have flourished, responding to the demand for new services with new and innovative support options.

However, significant gaps in the market remain. Some services are unavailable in parts of the country while in other areas the notion of choice remains illusory due to limited providers delivering services. The introduction of the NDIS has created a situation in which there is no clearly identified, or identifiable, provider of last resort for a person with disability, including for people who are homeless or at risk of homelessness.

We recommend the Australian Government urgently engage with state and territory governments about funding and arrangements for a provider of last resort scheme. The scheme should be designed to address:

- thin markets, particularly for First Nations people with disability in remote or very remote areas
- access to services for people in crisis situations
- access to case management for people with disability at heightened risk of violence, abuse, neglect and exploitation.

Part A of Volume 10, *Disability services* examines violence, abuse, neglect and exploitation occurring in, or in connection with, the delivery of disability services to people with disability.

NDIS Quality and Safeguards Commission

Key points

- The fundamental purpose of the NDIS Quality and Safeguards Commission (NDIS Commission) is to improve the quality and safety of supports and services funded through the NDIS.
- The number of complaints and reportable incidents reported to the NDIS Commission is continually rising. Greater focus on people with disability at heightened risk of abuse is required.
- The NDIS Commission should:
 - strengthen its monitoring, compliance and enforcement activities
 - build sector capacity to prevent and respond to violence, abuse, neglect and exploitation
 - improve data and intelligence, and information sharing systems
 - improve access to behaviour support practitioners
 - enhance provider registration and audit processes
 - make it easier for people with disability to complain.

The primary responsibility for preventing and responding to violence, abuse, neglect and exploitation in the provision of disability services lies with the relevant service providers. However, many of the levers for promoting this responsibility and ensuring it is met rest with the NDIS Quality and Safeguards Commission (NDIS Commission). Established in July 2018, the NDIS Commission's fundamental purpose is to improve the quality and safety of NDIS supports and services.

Reportable incidents

The NDIS reportable incident scheme provides independent oversight of serious incidents. The scheme imposes enforceable obligations on registered providers to notify and appropriately respond to serious incidents and allows the NDIS Commission to conduct impartial assessments of how these obligations are carried out.

Process and procedural issues

We are concerned about the efficacy of current reporting practices given the immense volume of notifications the NDIS Commission receives. In 2021–22, the NDIS Commission received 1,438,931 notifications of reportable incidents. With its current resources, the NDIS Commission is not able to assess and respond to matters or intervene in a timely way.

The NDIS Commission's reportable incidents processes can be lengthy and involve poor levels of communication with providers, people with disability and their families. We were told about perceptions of inaction and a lack of attentiveness once a matter is reported. We recommend the NDIS Commission increases its feedback to providers about the quality of their incident handling. It should also improve the accessibility of the online portal for providers to report incidents.

Controlling volume to focus on risk

The NDIS Commission's workload is high and its resources are finite. Its resource allocation needs to reflect the risk or impact of maltreatment on people with disability. We consider it both appropriate and necessary for the NDIS Commission to have access to 'class or kind' determinations to manage the volume of reportable incidents it receives more effectively.

Class or kind determinations allow oversight bodies to exempt certain providers from notifying less serious types of incidents where they have demonstrated a satisfactory level of competence in managing and investigating incidents. These processes would also allow greater focus on matters and on individuals identified as being at greater risk of violence, abuse, neglect and exploitation.

Improving provider safeguarding practices

The NDIS Commission has a critical role in ensuring adequate guidance is developed to improve the safeguarding practices of NDIS providers. We recommend:

- The NDIS Commission should develop model complaint and incident management policies in conjunction with people with disability and the disability sector to promote sector-wide consistency and quality.
- The NDIS Commissioner should issue a guideline on accessible and responsive complaint handling and investigative practice that upholds the rights of people with disability, and is co-designed with the disability sector.

Complaints

Complaints management and resolution is a core function of the NDIS Commission. An accessible and well-understood complaint management system is a key mechanism for reporting, recording, investigating and preventing violence against, and abuse, neglect and exploitation of, people with disability. We heard repeatedly of the risk to people with disability when NDIS providers do not take complaints seriously or handle them properly. This risk is compounded if the NDIS Commission does not take adequate action to address poor responses from providers.

Improving NDIS complaint processes

Timeframes and communication with parties to a complaint

Two common concerns raised in public hearings and submissions about the NDIS Commission's complaint handling processes were its inadequate communication with parties to a complaint and delays in resolving complaints.

The NDIS Commission's complaint handling procedures should:

- ensure complainants are updated appropriately throughout key stages of the complaint process and their expectations managed
- ensure triage, prioritisation and streamlining models include clearly defined risk categories, timeframes and procedures for handling complaints
- establish realistic and achievable metrics for measuring performance against timeframes.

Requiring providers to conduct investigations

The NDIS Commissioner can undertake a range of actions under the *Complaints Rules* as part of a resolution process, but cannot require a provider to conduct an investigation into a complaint. We recommend that the NDIS Commissioner should have power to compel a provider to conduct an investigation into a complaint. The provider should be required to involve the person with disability in the investigation and resolution of the complaint. The NDIS Commissioner should consult with the person to ascertain whether the complaint was satisfactorily addressed before deciding to finalise a matter.

Making complaints processes accessible

It should be easy for people to make a complaint to the NDIS Commission. A simple and accessible process is particularly important for people with disability with greater support or more complex communication needs.

Steps to improve the accessibility of the NDIS Commission's complaint processes should include:

- making information simple and easy to navigate
- adopting a 'no wrong door approach'
- accommodating people's preferred means of communication and making other adjustments as needed
- assisting people to secure advocacy and other supports.

Provider registration

Provider registration is a critical safeguard for people with disability. NDIS providers should be encouraged to register with the NDIS Commission.

A significant proportion of providers operate without being registered due to the cost and regulatory burden associated with registration. The availability of unregistered providers is seen by many people with disability as a key element of the principle of choice and control that underpins the NDIS. This reflects the shortage of experienced and qualified disability support workers and allied health professionals.

We acknowledge that imposing additional regulatory obligations on unregistered providers could have unintended consequences on the supply of support workers and the choice and control of people with disability. Any decision to change the existing regulatory obligations of unregistered providers should therefore be informed by the views of people with disability and their supporters, advocates and disability rights organisations.

However, we also consider limited regulation and oversight of unregistered providers can pose safety risks to people with disability. We recommend the NDIS Commission conduct a comprehensive review of the provider registration process to:

- simplify the process for smaller providers seeking to renew their registration
- improve the portal system and online registration application forms
- remove any duplication of requirements for cohorts of practitioners or organisations working within multiple schemes and recognise other forms of accreditation
- identify areas where there are workforce shortages or thin provider markets
- encourage the use of easier and more cost-effective certification audit processes.

To inform the understanding of the unregistered provider market, the NDIS Commission should collect and publish data on trends and risks.

Behaviour support

The NDIS Commission has primary responsibility for regulating the use of restrictive practices and the implementation of positive behaviour support by NDIS providers.

Behaviour support focuses on developing individualised strategies that are responsive to the needs of a person with disability in a way that reduces and eliminates the need for the use of regulated restrictive practices. A 'Positive behaviour support plan' (PBSP) is a document to address the needs of a person with disability identified as having behaviours of concern. It should be prepared in consultation with the person, their family and carers.

Accessing quality behaviour support

The NDIS Commission is responsible for determining the suitability of NDIS behaviour support practitioners. However, we have identified:

- problems with the quality of PBSPs and deficiencies in the development process
- poor implementation of PBSPs
- inadequate qualifications and expertise of NDIS behaviour support practitioners
- problems with the NDIS Commission's monitoring of the quality of PBSPs.

The shortage of suitably qualified and experienced behaviour support practitioners, particularly in rural and remote areas, is a key concern and a major contributing factor to problems with PBSPs.

To improve access to behaviour support practitioners, the NDIS Commission should:

- provide incentives to deliver behaviour support services, including in regional and remote areas in which 'thin markets' operate
- form a partnership with First Nations leaders from the disability and employment services sectors and develop a recruitment strategy targeting First Nations people
- explore with stakeholders the merits of an 'on-the-job' professional development and accreditation model for behaviour support practitioners
- create a publicly accessible list of all individual behaviour support practitioners.

Compliance and investigations

A core function of the NDIS Commissioner is ensuring NDIS providers comply with statutory requirements. We heard from people with disability and their representatives that the NDIS Commission:

- is not sufficiently active in monitoring the NDIS sector
- is reluctant to use its compliance and enforcement powers or take regulatory action against NDIS providers who are not meeting their obligations.

There appears to be wide support for the NDIS Commissioner adopting a more active approach to monitoring, and a stronger approach to compliance and enforcement.

Strengthening monitoring and compliance

Now that the NDIS Commission is in its fifth year of operation, we recommend it review its approach to compliance and enforcement. It should consider:

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- transitioning its primary compliance approach from educational and capacity building strategies to stronger compliance and enforcement activities, where appropriate
 - increasing its face-to-face engagement with participants who are at greater risk of experiencing violence, abuse, neglect and exploitation, and site visits to speak with providers and workers
 - increasing the use of its enforcement powers and monitoring tools in relation to NDIS providers that:
 - have a history of non-compliance or repeatedly fail to meet their obligations to provide safe, quality supports and services
 - have demonstrated a disregard for the safety of people with disability
 - have caused serious harm to a person or people with disability.

Data and intelligence

Disaggregated data and operational data

The NDIS Commission publishes a range of data about the numbers and types of the complaints and reportable incidents notifications it receives. However, generally speaking it does not publish disaggregated data and information about its operations, or routinely provide an analysis of data to inform the disability sector about trends and systemic issues.

For example, it does not publish demographic data about people with disability involved in a complaint or incident. Data on reportable incidents and complaints does not identify different types of maltreatment, such as verbal abuse, physical abuse, sexual abuse, emotional abuse or financial exploitation.

We recommend the NDIS Commission collect and publish disaggregated data about complaints, reportable incidents and behaviour support.

Reporting information about investigation outcomes and the actions taken in relation to reportable incidents would give a more complete picture of the disability service sector's overall approach to responding to incidents of abuse. We recommend the reporting requirements in the *Incident Management Rules* be amended to enable provider investigation outcome data to be routinely collected from NDIS providers.

The NDIS Commission should have a stronger focus on publicly reporting compliance and enforcement outcomes. This should include data on breaches, systemic issues and outcomes of complaints and reportable incidents to better inform the public and deter non-compliance. We recommend it collect and publish additional operational performance data relating to complaints, reportable incidents, compliance and enforcement.

Establishing a robust intelligence function

Strengthening intelligence capacity

Given the multifaceted nature of the NDIS Commission's safeguarding functions, we recommend it establish a dedicated intelligence unit to complement its existing data analytics and market oversight functions.

The need for such a unit will increase as the NDIS Commission's intelligence sources improve and the NDIS market continues to expand, with the volume of incoming reports and intelligence likely to escalate. The intelligence function should deliver strategic briefings that inform operational decisions to commence targeted and proactive monitoring, educational, compliance and enforcement activities.

Sharing risk-related information

Inadequate information sharing arrangements and legislative provisions are restricting the NDIS Commission and other bodies from readily exchanging information critical to safeguarding people with disability.

While an individual's privacy must be considered when disclosing information, this should not prevent the sharing of information to promote the safety of people with disability who may be at risk. The information disclosure framework should be amended to allow the sharing of information between the NDIS Commission and a wider range of state and territory safeguarding bodies. This can be done by prescribing such bodies in the manner authorised by the *NDIS Act*.

Engagement and capacity building

Engagement and capacity building are effective regulatory strategies that support providers to comply with their obligations. These strategies are particularly important for NDIS providers operating in an environment where relatively new laws and obligations are in place.

Enhancing provider practice and compliance

NDIS providers who gave evidence at Public hearing 32, 'Service providers revisited' were clear there is a strong appetite to collaborate and share information, experiences and examples of good practice and innovative safeguarding and service models across the disability sector. We recommend the NDIS Commission enhance its engagement and capacity building activities with NDIS providers by:

- routinely sharing data analysis and insights from its oversight activities with NDIS providers to promote improvements in the quality and safety of services

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- facilitating regular industry forums and communities of practice to raise and address critical safeguarding practice issues and share best practice
 - expanding its training offerings to NDIS providers, particularly in relation to fulfilling their obligations to recognise, report and investigate incidents and deal appropriately with complaints
 - developing a training and resources hub for use by people with disability and their supporters, as well as the NDIS provider workforce.

Reaching First Nations people with disability

Many First Nations people with disability are still unclear about the role of the NDIS Commission, which can deter them from making complaints. We recommend the NDIS Commission establish a dedicated First Nations Unit to develop its engagement with and understanding of the issues facing First Nations NDIS participants, particularly in regional and remote communities.

Worker screening

An effective worker screening system relies on oversight bodies and providers to share, receive and act upon information that indicates safety risks for people with disability. The NDIS worker screening check commenced in 2021 and brought disability worker screening into a nationally consistent framework. However, we heard there are no nationally consistent information sharing provisions for workers who operate across different jurisdictions or different schemes. We also heard the NDIS Commission could enhance the information it shared with worker screening units.

We recommend the NDIS Commission consult with state and territory worker screening units about developing a national operational framework to enhance the information it shares with worker screening units. As part of the upcoming NDIS worker screening review, we also recommend the Australian Government consider the adequacy of information sharing arrangements regarding the ability of the NDIS Commission and worker screening units to obtain and share relevant risk-related information (such as misconduct and disciplinary investigation outcomes) held by other bodies.

Part B of Volume 10, *Disability services* examines and makes recommendations to strengthen the NDIS Commission's monitoring, compliance and enforcement activities.

Independent oversight and complaint mechanisms

Key points

- Violence against, and abuse, neglect and exploitation of, people with disability occur in multiple settings, including public places and domestic and family contexts. Additional independent oversight and complaint pathways are needed.
- Violence, abuse, neglect and exploitation towards people with disability are likely to be under-reported. Barriers to reporting include an existing complaints system that is too complex to participate in without appropriate assistance and support.
- All states and territories should introduce adult safeguarding laws. A related agency should administer information and referral, advice and support, coordination, investigation, public reporting and community education functions.
- Each state and territory should have an independent one-stop shop providing information and advice about reporting violence or abuse towards a person with disability. This one-stop shop should link people to advocacy and other services.
- Community visitors independently monitor services and facilities provided to people with disability and assist with resolving issues or complaints. There should be a nationally consistent approach to their roles and functions. States and territories should urgently implement a community visitors scheme if they do not have one.
- Compared with the general population, many Australians with disability are much more likely to have a 'potentially avoidable death' before the age of 65. All states and territories should have a disability death review scheme to systemically review, understand and address the factors that contribute to these outcomes.
- Nationally consistent reportable conduct schemes should operate in all states and territories to help prevent and respond to abuse against all children. These schemes should include disability service providers that deliver supports or services to children with disability, including NDIS providers.

Addressing gaps and barriers

I felt that nothing was happening. I was making complaints, I was talking to people, I was trying to get somewhere, but I think they call it the deafening silence. When they answered, they said they would ring, they never rang. It would go ages. I didn't know what was happening, I didn't know where to go.¹⁰⁰

Throughout our inquiry we heard about difficulties reporting violence against, and abuse, neglect and exploitation of, people with disability regardless of where it occurred. In addition to gaps in avenues for making complaints, a significant barrier for many people was the complexity of the existing complaints processes.

Failing to tackle barriers to reporting has many repercussions. Violence against, and abuse, neglect and exploitation of, people with disability will continue to be under-reported, and people with disability will not get the support they need. Under-reporting also conceals the full extent of the problem and limits the evidence base to inform well-targeted and effective public policy responses.

In the previous section, we examined the role of the NDIS Commission in the complaints process. However, not all people with disability are NDIS participants. Violence against, and abuse, neglect and exploitation of, people with disability occurs in multiple settings including public places and domestic and family contexts. For these reasons, additional independent oversight and complaint pathways are necessary.

Adult safeguarding

There have long been statutory mechanisms, however imperfect, for responding to violence against and abuse of children in the community but the same cannot be said for adults who are at risk, including adults with disability. In submissions following Public hearing 28, Counsel Assisting identified a need for 'alternative reporting pathways' for people with disability who may be reluctant to report public incidents of violence and abuse to police.¹⁰¹

In 2017 the Australian Law Reform Commission recommended adult safeguarding laws be introduced to address elder abuse. Safeguarding laws have since been enacted in South Australia and New South Wales. In these states, designated bodies receive, assess and investigate allegations of abuse against people with disability and older people, and take safeguarding action where necessary. It is clear that these bodies are meeting a significant level of need.

We recommend all states and territories enact adult safeguarding laws. Such laws should empower an independent, appropriately resourced body to administer functions including information and referral, advice and support coordination, investigation, public reporting, and community education.

The role of adult safeguarding functions should be articulated in a national adult safeguarding framework. The framework should provide common definitions and a mandate for each state and territory adult safeguarding body to systematically collect, analyse and publicly report data about violence against, and abuse, neglect and exploitation of, adults with disability in family and community settings, including private homes and public places.

Independent complaint reporting, referral and support

The setting in which violence or abuse occurs influences whether it is likely to be reported. This is especially the case if the conduct does not rise to the level of a criminal offence, or the person with disability does not want or is unable to report it to police or the responsible organisation. Complaint handling, regulatory and investigative bodies each have their own responsibilities and powers, making their processes difficult for people with disability or their supporters to navigate. Frustrating and exhausting complaint processes and inadequate access to advocacy support are further disincentives to pursuing complaints.

We heard strong arguments in favour of removing the burden from individuals of navigating where to complain, while respecting their dignity and empowering them to participate. We accept the importance of establishing a third-party reporting pathway that is clear, safe and readily accessible.

We recommend each state and territory should have an independent and accessible service anyone can contact for advice and information about their options for reporting violence against or abuse of a person with disability. This service should be well publicised and a 'one-stop shop'.

The proposed mechanism would differ from existing services, such as the National Disability Abuse and Neglect Hotline, in important ways. It would provide 'warm referrals' to appropriate complaint bodies, including police, and link people with local advocacy and other services that can support them to participate in the complaint process. (A warm referral involves contacting an organisation or service for or with the person, rather than just providing contact information.)

Organisations have a responsibility to have complaint handling systems and processes in place that are accessible and responsive to people with disability, regardless of the existence of any independent complaint reporting, referral and support mechanism. We recommend the development of universal guidelines to support organisations to implement appropriate complaint handling systems and processes. In particular, there is a need for guidance about how to handle more serious complaints about violence, abuse and neglect, including how to conduct investigations in a trauma-informed way.

The Commonwealth Ombudsman should lead this project, in collaboration with the NDIS Commission, other oversight bodies and people with disability and their representative organisations.

Community visitor schemes

Community visitors are appointed to independently monitor services and facilities used by people with disability. They also have a role in resolving issues or complaints. Community visitors promote and protect the rights and wellbeing of people with disability by identifying issues people with disability may not otherwise raise. They also provide an early warning system to prevent abuse and neglect, as well as an escalation pathway for issues to be addressed.

All states and territories, apart from Western Australia and Tasmania, have established and administer a community visitors scheme. The specific functions and powers differ among jurisdictions but, in general, community visitors can enter and inspect services without notice, inspect documentation relating to the operation of a service and talk privately with residents. We recommend states and territories should urgently implement community visitors schemes for people with disability, if they have not done so already.

Community visitors can be an especially important safeguard for people who have limited or no access to natural supports or safeguards. This includes people who are at elevated risk of poor outcomes, such as those living in boarding house style accommodation. For these reasons, the *NDIS Act* and the NDIS Quality and Safeguarding Framework should be amended to formally recognise community visitors as a safeguard for people with disability.

Currently, the roles and functions of community visitor schemes operating in the states and territories are inconsistent. A nationally consistent approach is needed, including a common definition of 'visitable services'. At a minimum, the scope of the community visitors scheme role should allow community visitors to visit people living in supported accommodation and licensed boarding houses, whether or not delivered by NDIS providers.

Agreed standards and quality indicators for monitoring services and facilities are also needed. The Australian Government and state and territory governments should enter into a national agreement specifying how community visitor schemes and the NDIS Commission should cooperate and share information to discharge effectively their different but related visiting, compliance, monitoring and investigation functions.

Disability death review schemes

Compared with the general population, many Australians with disability – especially people with intellectual disability and/or those living in supported accommodation – are much more likely to have a 'potentially avoidable death' and die before the age of 65.¹⁰²

Systemic reviews of deaths aim to identify trends or factors contributing to the deaths within particular groups of people and recommend actions to prevent or reduce mortality. To do this, they review available information about individuals who have died.

Until 2022, when the function was removed, the NSW Ombudsman was required to review the deaths of people with disability living in supported accommodation and assisted boarding houses. Since the introduction of the NDIS in Victoria, the Disability Service Commissioner's role to review the deaths of people using disability services has substantially diminished. These changes have created a regrettable oversight gap in New South Wales and Victoria. No other state or territory has a disability death review scheme.

Leading experts have recommended each state and territory should establish disability death review schemes. These schemes should monitor and examine reviewable deaths and formulate recommendations about policies and practices to prevent or reduce deaths.

The schemes should be nationally consistent and operate in conjunction with the NDIS Commission's separate yet related function to oversee reportable incidents, including incidents involving the deaths of NDIS participants.

Reportable conduct schemes

In 2017, the Royal Commission into Institutional Responses to Child Sexual Abuse found reportable conduct schemes are a best practice model for overseeing organisations' handling of child abuse allegations against employees. It recommended all states and territories establish nationally consistent reportable conduct schemes, modelled on the existing approach in New South Wales.

Reportable conduct schemes require heads of specified organisations to notify an independent oversight body of allegations of reportable conduct involving their employees, investigate the allegation and report the outcome. These organisations may include government and non-government schools, out-of-home care providers, health services, juvenile justice, disability services and religious bodies.

Queensland, South Australia and the Northern Territory are yet to establish reportable conduct schemes in response to the recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse. There are also inconsistencies between the schemes that do exist, including different definitions of reportable conduct.

For organisations covered by the schemes, limited guidance is available about responding to allegations concerning maltreatment of children with disability. Some NDIS providers fall under the jurisdiction of both the NDIS Commission and the reportable conduct scheme in their state or territory. In these circumstances, there can be a lack of clarity about how the scheme operators and the NDIS Commission should work together to ensure consistency and reduce duplication.

We recommend states and territories that have not established a reportable conduct scheme do so urgently. All states and territories should ensure disability service providers that deliver supports or services to children with disability, including NDIS providers, are included in their reportable conduct schemes.

Volume 11, *Independent oversight and complaint mechanisms* examines and makes recommendations to address the need for additional independent oversight and complaint pathways to prevent and respond to violence against, and abuse, neglect and exploitation of, people with disability.

Governing for inclusion

Key points

- The complexity and scale of disability policy and reform in Australia requires focused and increased capacity across governments. A new National Disability Agreement between the Australian Government and state and territory governments is required to strengthen coordination and collaboration.
- Australia's Disability Strategy 2021–2031, the current national disability policy framework, should be reviewed to consider the issues raised during the Royal Commission and the recommendations made in this *Final report*.
- To improve accountability, an independent statutory body, the National Disability Commission, should be established to undertake robust monitoring and reporting of outcomes for people with disability.
- The National Disability Commission would also support the realisation of the human rights of people with disability through monitoring and oversight of the Disability Rights Act.
- National disability leadership should be strengthened through greater focus and dedicated skills and capabilities. We recommend establishing:
 - an Australian Government portfolio with responsibility for disability policies and programs
 - a ministerial position, the Minister for Disability Inclusion
 - a Department of Disability Equality and Inclusion that has responsibility for national disability and carers policies and programs, including those currently the responsibility of the Department of Social Services.

Strengthening national disability policy and strategy

... there must be a deeper level of intentionality, a stock-taking of where things are at, a clear statement of the end-goals and an understanding of the means, tools, timelines and resources needed to move the dial and an institutional architecture designed to oversee the change. Most of all, those directly affected should be involved in co-producing any future plan for progressive achievement.¹⁰³

National Disability Insurance Scheme

The National Disability Insurance Scheme (NDIS) is the most significant reform affecting people with disability to have been introduced in Australia. Its progressive implementation began in 2013, with full roll out completed in 2020. Many agreements and policies support the NDIS's implementation, including those establishing shared governance arrangements between the Australian Government and state and territory governments.

The NDIS provides funding to eligible people with a permanent and significant disability so they can access reasonable and necessary supports and services through individual support plans. Critical to its success is increased and equitable access for all people with disability to mainstream services and community supports. This includes services provided by all governments. However, there continues to be confusion over the roles and responsibilities of the NDIS and those of mainstream services.

The Australian Government's independent review of the NDIS is due to report in October 2023. As part of its terms of reference, the review is looking at 'improving the interaction between the NDIS and other significant related policies and systems, including mainstream services delivered by the Australian Government, the states and territories, local government, and the community sector'.¹⁰⁴

Given the NDIS review is underway we have not made recommendations on these issues. Nevertheless, it is critical that national disability policy and strategic arrangements ensure governments meet their obligations to provide inclusive and accessible mainstream services.

National Disability Agreement

The National Disability Agreement is the intergovernmental agreement between the Australian Government and state and territory governments relating to disability policy and the provision of services. It 'provides the national framework and key areas of reform for the provision of government support to services for people with disabilities'.¹⁰⁵

In its 2019 review of the National Disability Agreement, the Productivity Commission concluded it was no longer fit for purpose and had a weak influence on policy. The current version is out of date, particularly because it does not reflect the implementation of the NDIS.

The 2019 review identified the unnecessary complexity of the differing national disability policy and strategy arrangements, and the lack of a clear link between them. It found this risks confusion and reduced accountability for improving outcomes for people with disability. We agree with the Productivity Commission's conclusion that an 'overarching disability agreement' is needed to clarify the relationships between the policy and strategy arrangements and promote greater accountability.¹⁰⁶

To achieve this, we recommend the Australian Government and state and territory governments, through the Disability Reform Ministerial Council, develop a new National Disability Agreement to provide the framework for collaboration. The Agreement should provide the framework for:

- developing and implementing reforms requiring national attention and coordination, including the recommendations of this Royal Commission
- implementing the NDIS and Australia's Disability Strategy 2021–2031 (see below).

Australia's Disability Strategy

Australia's Disability Strategy 2021–2031 (ADS) is focused on seven outcome areas: Employment and Financial Security; Inclusive Homes and Communities; Safety, Rights and Justice; Personal and Community Support; Education and Learning; Health and Wellbeing; and Community Attitudes.

The ADS is relatively new, and it is difficult to assess its effectiveness on outcomes for people with disability. But we have identified two issues concerning its implementation that raise questions about the ability of governments to take coordinated national action.

The first issue concerns the Targeted Action Plans that support the implementation of the ADS. These are directed at employment, community attitudes, early childhood, safety, and emergency management. Further Targeted Action Plans will be developed over the course of the ADS.

Many initiatives in the current Targeted Action Plans focus on particular jurisdictions and on programs that have been in place for some time. This approach is limited and fragmented. Greater national co-ordination is required.

A second issue is whether the ADS will advance the rights of people with disability in accordance with its aspiration to 'play an important role in protecting, promoting and realising the human rights of people with disability'.¹⁰⁷

The realisation of human rights is not consistently addressed throughout the ADS structure. For example, Policy Priority 4 under the outcome area Safety, Rights and Justice is: 'the rights of people with disability are promoted, upheld and protected'.¹⁰⁸ But no Targeted Action Plan addresses human rights. It is therefore difficult to see what actions, if any, are targeted at realising human rights.

Governments have committed to reviewing the ADS following the release of this *Final report*. We recommend the ADS be reviewed and updated to reflect the issues we raise and recommendations we make. This review should:

- consider the ADS and all its implementation mechanisms, including Targeted Action Plans, Guiding Principles, reporting arrangements and the Data Improvement Plan, Engagement Plan and Outcomes Framework
- examine how the ADS can more effectively address all forms of equality and build a human rights approach based on the *CRPD* (and other significant international human rights obligations)
- be conducted in partnership with people with disability and their representative organisations.

In addition to reviewing and updating the ADS, all jurisdictions should ensure their disability plans and strategies adequately reflect the issues raised and recommendations made in this *Final report*. They should ensure governments are working together and in partnership with people with disability and their representative organisations to deliver national outcomes.

Coordinating disability policy and other policy areas

Like all Australians, people with disability use a range of different services and systems, including health, education and housing. Policy and practice across different issues and service systems should take into account the different experiences of people with disability, including their experiences of discrimination and disadvantage.

The aim of national strategies and plans is to direct governments to address identified issues and priorities in a coordinated way. Intergovernmental agreements, although not legally binding, express the commitment of the Australian Government and state and territory governments to work together to achieve particular objectives or goals. Combined, they provide crucial strategic direction to guide government and community actions.

A fractured approach to strategies and plans across service systems can lead to uncoordinated efforts and gaps in responsibility. National agreements and strategies on issues such as health, education, housing and Closing the Gap should be aligned with the ADS and the recommended new National Disability Agreement.

The Australian Government and state and territory governments should review national agreements, strategies and plans that affect people with disability. This work should be undertaken through the Disability Reform Ministerial Council in conjunction with other ministerial councils.

Reforming national disability governance

Monitoring and reporting to influence actions

Effective monitoring and reporting arrangements provide valuable information about what is working well and what is not, and influence government actions and priorities. Transparent reporting and monitoring mechanisms help hold governments to account. Introducing more independent reporting and monitoring systems can also play a significant role in helping to improve outcomes for people with disability.

We recommend a new National Disability Commission be established. The National Disability Commission should be an independent statutory body led by people with disability. Its role, functions and powers should be set out in the Disability Rights Act we recommend be enacted.

A key function of the National Disability Commission will be to monitor and report on the implementation of our recommendations. This will complement the Commission's responsibility for monitoring and oversight of the Disability Rights Act and on outcomes for people with disability. The Commission should prepare a biennial report, for tabling in the Australian Parliament, focusing on what is and is not working across jurisdictions.

The National Disability Commission should share information and promote research on best practice and innovative approaches to improve outcomes for people with disability. It should engage closely with people with disability and disability representative organisations and work directly with the community to ensure the diverse voices of people with disability are represented in its work.

Australian Government disability leadership arrangements

Although responsibilities for services supporting or affecting people with disability are delivered and managed at various levels of government, the Australian Government has a critical role in coordinating and driving national disability priorities. This includes primary responsibility for delivering the NDIS, and a central role in developing and progressing the ADS.

We are concerned about the location of disability policy responsibilities within the Australian Government. The Australia's Disability Strategy branch is the central disability policy and implementation unit. It is part of the Australian Government Department of Social Services (DSS), whose responsibilities include social security payments and delivery; housing and homelessness policy; and other policies and programs relating to individuals, families, children and communities. DSS sits in the Social Services portfolio, which has a broad and complex remit. At the time of writing this report, the Social Services portfolio includes one department, five portfolio bodies and four ministers.

In our view, maintaining responsibility for disability policy and programs within DSS and that portfolio limits the Australian Government's ability to concentrate on the measures necessary to advance equality, inclusion and the rights of people with disability.

We recommend changes to Australian Government portfolio, ministerial and departmental structures governing disability policy. The Australian Government should establish:

- a new portfolio specifically responsible for disability. This would give disability equality, inclusion and human rights the status and attention required to drive reforms and change practices and attitudes.
- a dedicated, senior ministerial position responsible for national leadership on disability issues, policies and programs. This position, the Minister for Disability Inclusion, would take on the disability related responsibilities currently in the remit of the Minister for Social Services.
- a new Department of Disability Equality and Inclusion, dedicated to improving outcomes for people with disability. It would be responsible for the national disability and carers policies and programs that are currently the responsibility of the DSS.

In addition to the Department of Disability Equality and Inclusion, the new portfolio would include the National Disability Insurance Agency (NDIA), the NDIS Quality and Safeguards Commission and the recommended new National Disability Commission.

National implementation of disability rights

Ensuring national governance arrangements can drive actions across different levels of governments is critical to successfully implementing the *CRPD* in Australia.

Article 33(1) of the *CRPD* requires States Parties to designate one or more focal points within government for matters relating to its implementation. There are opportunities to strengthen focal point arrangements, at both the Australian Government and state and territory government levels, to improve coordination and better implement the *CRPD* in Australia.

At the Australian Government level, we recommend the new Department of Disability Equality and Inclusion be the designated *CRPD* focal point and coordination mechanism, alongside the Attorney-General's Department.

We also recommend each state and territory government designate *CRPD* focal points.

Volume 5, *Governing for inclusion* examines and makes recommendations to strengthen national disability policy, strategy and governance arrangements involving the Australian Government and state and territory governments.

Beyond the Royal Commission

Key points

- The last volume of our *Final report* recommends key steps for implementing and monitoring the recommendations of the Royal Commission:
 - the Australian Government and state and territory governments should each publish a written response to the *Final report* by 31 March 2024
 - the Disability Reform Ministerial Council should oversee the implementation of our recommendations
 - the independent National Disability Commission should provide an annual assessment on the implementation of our recommendations, and evaluate their effectiveness.
- High quality data and research are important for measuring the effectiveness of policy and holding governments and organisations to account. Ways to improve the evidence base for disability policy and services include:
 - a nationally consistent approach to collecting disability information
 - improved data collection about people with disability in closed and segregated settings, with communication support needs, and groups with intersecting and multiple disadvantage.
- Conducting a royal commission can prompt significant changes to legislation, policy and attitudes. Some of the key impacts this Royal Commission has had during its term include:
 - improved access to COVID-19 vaccinations
 - initiatives to improve the health care of people with cognitive disability
 - measures to tackle violence against women and girls with disability.
- We acknowledge our work is built on the long term advocacy of people with disability and their supporters to improve the lives of people with disability.

Delivering change

Implementation is one important measure of the effectiveness of inquiries.¹⁰⁹

In this *Final report*, we make a range of recommendations designed to achieve significant change for people with disability. If implemented, they will help prevent violence against, and abuse, neglect and exploitation of, people with disability. They will also embed the human rights of people with disability in government policy and practices to ensure respect for their inherent dignity and individual autonomy.

In Volume 12, *Beyond the Royal Commission*, we recommend four steps for responding to, implementing and monitoring our recommendations.

First, we recommend the Australian Government and each state and territory government consider and publicly respond to our recommendations within six months of receiving our *Final report*. People with disability, their supporters and representative organisations have been at the centre of our work and have invested a great deal in the Royal Commission. They rightly expect governments to respond in a timely manner to our recommendations. The Australian Government and state and territory governments should table their responses in their respective parliaments.

In their responses, governments should indicate whether the recommendations are accepted, rejected or subject to further consideration. They should include a plan for how the accepted recommendations will be implemented, the reasons for rejecting any recommendations, and a timeframe for any further consideration required.

Second, the Disability Reform Ministerial Council should oversee the implementation of our recommendations. As noted, the Disability Reform Ministerial Council is the current ministerial intergovernmental forum for disability issues. Its members include Australian Government and state and territory government ministers responsible for disability policy.

Improving outcomes for people with disability requires action at all levels of government, in the private sector and in the community. Governments will need to collaborate with each other and particularly with disability organisations and people with disability to implement our recommendations. The Disability Reform Ministerial Council should be a single coordination point and provide a forum for governments to address implementation issues and risks.

Third, the new independent National Disability Commission we recommend should assess the progress on implementing our recommendations across each jurisdiction. Starting in 2025, it should deliver an annual report of its findings to the Australian Parliament.

People with disability must play an essential role in monitoring and reporting on the implementation of our recommendations. This is in line with the obligations imposed by article 33 of the *CRPD*. The National Disability Commission should engage closely with people with disability when reporting on the recommendations.

The fourth step will be understanding whether implementation of our recommendations has led to significant and measurable change for people with disability over time. We recommend the National Disability Commission undertakes formal process and outcome evaluations of the effectiveness of the Royal Commission's recommendations. These should be conducted five and 10 years after the delivery of this *Final report*, with evaluation reports tabled in the Australian Parliament.

Building the policy evidence

We had difficulty obtaining reliable and useful data and research in multiple areas of our inquiry. High quality data and research are important for understanding the violence, abuse, neglect and exploitation people with disability experience. They are also necessary for developing good policy and holding governments and organisations to account. We identify four important ways to improve the collection and analysis of data about the experiences of people with disability.

First, we propose the Australian Government and state and territory governments develop and implement a nationally consistent approach to collecting disability information.

At present data about people with disability is dispersed across many datasets, with at least nine different definitions of 'disability'. This reduces our ability to understand and respond to the experiences of people with disability. The data collected is difficult to interpret and compare. This limits our ability to monitor progress towards social inclusion for people with disability.

A nationally consistent approach will require developing a uniform set of questions that can be asked of individuals to identify disability. They should be asked when individuals use services or when they respond to population surveys.

Second, we recommend wider adoption of a disability 'flag' across data collections for mainstream services. Flags are based on responses to survey and other questions and help to identify particular groups of interest, such as people with disability.

In addition to the challenges of inconsistent definitions of disability, we encountered difficulties in understanding the nature and extent of people with disability's experiences accessing health care, education, housing, community and other services. This is because people with disability are not always identified as having disability when they access services. Wider adoption of a disability flag would lead to a better understanding of the experiences of people with disability, particularly across different services.

Third, as part of Australia's Disability Strategy Data Improvement Plan, strategies should be developed to improve data collection about people with disability. We recommend extending the collection of disability data to:

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- include groups of people with disability who are particularly at risk of violence, abuse, neglect and exploitation. This includes people in closed and segregated settings and those with communication support needs
 - improve data on type of impairment
 - enhance data on women, children and young people and First Nations, culturally and linguistically diverse and LGBTIQ+ people with disability.

Fourth, we propose establishing the National Disability Data Asset (NDDA) as a national resource for linked data across service systems. Data linkage connects de-identified data across datasets to tell a ‘much more powerful story than is possible from individual data sources in isolation’.¹¹⁰ It helps create a comprehensive picture of the experiences of people with disability.

We acknowledge the Australian Government’s commitment to fund an extension of the NDDA. However, it is important the Australian Government and state and territory governments commit to guaranteeing the long-term future of the NDDA. Funding should reflect the importance of the NDDA as a tool for evidence-based policy making and service design across all areas affecting the health, safety and wellbeing of people with disability.

We also look at the current state of disability research in Australia and our research agenda. The Australian Government’s National Disability Research Partnership (NDRP) is the primary vehicle for developing a more coordinated approach to funding and undertaking disability research.

We know further research is needed to deepen the understanding of the diverse experiences of people with disability. We support the continuing funding of the NDRP as a means of developing an inclusive disability research program, addressing research gaps, and building an evidence base for policy and research in Australia. The NDRP recognises it will need to consider the Royal Commission’s findings and the research gaps we have identified.

Our impact

For more than four years, the Royal Commission examined the violence, abuse, neglect and exploitation experienced by people with disability in Australia.

The evidence given at public hearings, the findings and recommendations in Commissioners’ reports on those hearings, and the many public activities of the Royal Commission have encouraged governments, regulatory agencies, service providers, businesses and others to address the issues we have identified. This has led to significant improvements during the term of our inquiry in policies, programs and practices designed to protect people with disability from violence, abuse, neglect and exploitation and to promote a more inclusive society.

These impacts cover a wide range of areas, including:

- changes to education policies on suspension and exclusion of students with disability
- initiatives to improve the health care of people with cognitive disability
- measures to tackle violence against women and girls with disability.

We recognise our work was not conducted in isolation, but built on the long-term advocacy of people with disability and their supporters to improve the lives of people with disability.

Responding to COVID-19

As the COVID-19 pandemic escalated during 2020 and 2021, the Royal Commission urged governments, businesses and the community to take swift and effective action to protect people with disability. We sought responses to our concerns about the timely access of people with disability to information, health care and vaccinations, as well as to essential services, food and nutrition. The Royal Commission acted as a communication channel between people with disability and governments to ensure people with disability were not left behind.

We held two public hearings during 2020 and 2021 to address significant concerns about how governments were responding to people with disability during the pandemic. We made recommendations to improve the Australian Government's planning and response to the COVID-19 pandemic and people with disability's access to COVID-19 vaccinations.

Volume 12, *Beyond the Royal Commission* makes recommendations for responding to, implementing and monitoring the recommendations of this Royal Commission.

Endnotes

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- 6 Exhibit 29-15, ‘Statement of ‘Mr Rahman’’, 21 October 2022, at [36].
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Recommendations

Volume 4, Realising the human rights of people with disability

An Australian law to recognise the human rights of people with disability

Recommendation 4.1 Establish a Disability Rights Act

The Australian Government should commit to the enactment of a Disability Rights Act and take the necessary steps to introduce the legislation into Parliament and support its enactment. The necessary steps should include consultation with people with disability, disability representative organisations and other key stakeholders.

Recommendation 4.2 Objects of the Disability Rights Act

The objects of the Disability Rights Act should include giving effect to Australia's obligations under, and the general principles set out in, the *Convention on the Rights of Persons with Disabilities*.

Recommendation 4.3 Principles in the Disability Rights Act

The Disability Rights Act should include a set of guiding principles designed to promote and advance the rights of people with disability in Australia. The Disability Rights Act should require that a person or entity exercising functions under the Act have regard to the principles.

Recommendation 4.4 Future review of the Disability Rights Act

- a. The Australian Government should ensure that a review of the Disability Rights Act is undertaken in consultation with people with disability within five years of the commencement of the Act. The review should include consideration of:
 - how the Act should be improved
 - the effectiveness of compliance mechanisms
 - the availability of appropriate remedies that meet the needs of people with disability

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- whether and how duties in the Act should be extended or applied to additional persons or entities, including private sector providers under the National Disability Insurance Scheme (NDIS).
 - b. Commissioners Bennett, Galbally and McEwin alternatively recommend the final point above be considered by the Australian Government as a priority and that these additional duty-holders be included from the commencement of the Act.

Protecting disability rights through the Disability Rights Act

Recommendation 4.5 The right to non-discrimination and equality before the law

The Disability Rights Act should recognise all human beings are equal in worth and dignity and every person with disability:

- a. has the right to enjoy their human rights without discrimination (on the ground of disability or on a combination of protected grounds where one of those grounds is disability)
- b. is equal before the law, is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.

Recommendation 4.6 The right to equal recognition before the law

- a. The Disability Rights Act should recognise that people with disability have the right to recognition as a person before the law. Accordingly, they have the same rights as other members of the community to make decisions that affect their lives to the full extent of their ability to do so.
- b. The Disability Rights Act should recognise:
 - the right of people with disability to access and use supports in making and participating in decisions that affect them, communicating their will and preferences, and developing their decision-making ability
 - the right of people with disability to access and use advocacy services in making and participating in decisions, communicating their will and preferences, and developing their decision-making ability.
- c. The Disability Rights Act should define 'supports' broadly.
- d. The Disability Rights Act should require supports for people with disability from First Nations communities and culturally and linguistically diverse backgrounds to be provided in a way that:

- recognises that cultural, language and other differences may create barriers to providing the supports
 - addresses those barriers and the needs of those people with disability
 - is informed by consultation with their communities.
- e. The definition of ‘advocacy service’ in section 7 of the *Disability Services Act 1986* (Cth) should be amended to include a reference to a service that seeks to support people with disability to exercise their rights and freedoms under domestic law, including under the Disability Rights Act. This would be in addition to the existing reference to rights and freedoms under the ‘Disabilities Convention’.

Recommendation 4.7 The right to live free from exploitation, violence and abuse

The Disability Rights Act should recognise:

- a. people with disability have the right to live free from all forms of exploitation, violence and abuse, including the right to freedom from gender-based violence and abuse
- b. people with disability have the right to accessible information and education on how to avoid, recognise and report exploitation, violence and abuse
- c. people with disability who are victims of any form of exploitation, violence or abuse have the right to:
 - access protection services that promote the health, welfare, dignity and autonomy of such persons
 - access protection services that are sensitive and responsive to the different needs and experiences of people with disability, due to one or more attributes such as sex; gender identity; sexual orientation; ethnicity; language; race; religion, faith or spirituality; socio-economic status; age; neurodiversity; culture; residency status; geographic disadvantage; and experiences of trauma
 - report allegations of exploitation, violence and abuse, with protection from victimisation for making a report.

Recommendation 4.8 The right to liberty and security of person

The Disability Rights Act should recognise every person with disability has the right to liberty and security of person. In particular, no person with disability may be arbitrarily arrested or detained. No person with disability may be deprived of liberty, except on the grounds and in accordance with the procedures established by law.

Recommendation 4.9 The right to equitable access to health services

The Disability Rights Act should recognise the right of people with disability to equitable access to health services. This right should include:

- a. the right to the same range, quality and standard of free and affordable health care and programs as people without disability
- b. the right to exercise choice about healthcare options and between available services
- c. the right to access and receive quality health services appropriately adapted or specifically designed to meet the needs of the person with disability
- d. the presumption of legal capacity and provision for supported decision-making
- e. the right to adjustments required to access services and to receive treatment and care (to the extent that a duty-holder is required to provide adjustments in accordance with the *Disability Discrimination Act 1992 (Cth)*)
- f. the right to accessible information
- g. the right of First Nations people with disability to receive health care that is culturally safe and recognises the importance of their personal connection to community and Country
- h. the right to access health services that are safe, sensitive and responsive to the intersectional needs and experiences of the person with disability, noting that intersectional needs and experiences may be due to a variety of attributes, including sex; gender identity; sexual orientation; ethnicity; language; race; religion, faith or spirituality; socio-economic status; age; neurodiversity; culture; residency status; geographic disadvantage; and experiences of trauma
- i. the right to voice opinions and to make complaints about health services.

Duties under the Disability Rights Act

Recommendation 4.10 Public authority conduct

- a. The Disability Rights Act should make it unlawful for a 'public authority' to:
 - act in a way that is incompatible with a right in the Disability Rights Act
 - fail to give proper consideration to a right where relevant to the decision being made.

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- b. 'Public authority' should be defined to include:
- a minister of the Australian Government when exercising a statutory power or authority
 - a Commonwealth entity defined in the *Public Governance, Performance and Accountability Act 2013* (Cth)
 - an official of a Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013* (Cth)
 - an individual who is employed by, or engaged in assisting, a Commonwealth entity or a staff member of a Commonwealth entity on behalf of the entity or the Commonwealth
 - a contracted service provider for the Commonwealth when providing goods or services under a Commonwealth contract, as well as an officer or employee of the contracted service provider for the contract, and someone who provides goods and services for the purposes of the contract
 - an individual who is appointed or engaged as an officer or employee of a federal court or tribunal when acting in an administrative capacity
 - other entities prescribed by regulations as public authorities for the purposes of the Disability Rights Act.
- c. The Disability Rights Act should provide for a mechanism through which a non-Commonwealth entity could ask the minister to declare that the entity is subject to the obligations of a public authority under the Act and for a register of such entities to be published.

Recommendation 4.11 Consultation with people with disability

- a. The Disability Rights Act should require Commonwealth entities (as defined in the *Public Governance, Performance and Accountability Act 2013* (Cth)), in developing and evaluating policies, laws and programs and in planning new initiatives or making major changes to services that are provided to the public, or have a direct and significant impact on the public, to consult with:
- people with disability (including disability representative organisations), recognising the special importance of consulting and actively involving First Nations people with disability in issues that affect them
 - children and young people with disability where appropriate, or representatives of children and young people (including, as relevant, disability representative organisations, the National Children's Commissioner, the Aboriginal and Torres Strait Islander Social Justice Commissioner or equivalents in the states and territories)

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- families, carers and supporters of people with disability (which could include their representative organisations) on issues that will or could affect families, carers and supporters in their caring role.
 - b. The Disability Rights Act should specify the nature of any consultation required and the consequences of a failure to consult.
 - c. The Disability Rights Act should provide that the consultation requirement does not give rise to a civil cause of action in any person or organisation.
 - d. *The Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) should be amended, or an accompanying legislative instrument be prepared, requiring statements of compatibility accompanying Bills and legislative instruments to provide information about relevant actions taken by Commonwealth entities to comply with the consultation requirement in the Disability Rights Act.

Recommendation 4.12 Positive duty to promote disability equality and inclusion

- a. The Disability Rights Act should include a requirement for a Commonwealth entity, in the exercise of its functions, to have due regard to the need to take necessary and proportionate action to advance the policy objectives of equality, inclusion and respect for the dignity of people with disability.
- b. The requirement in a. should include the Commonwealth entity having due regard to the need to:
 - ensure equality of rights, opportunities, responsibilities and outcomes between people with disability and other members of the Australian community
 - act consistently with its obligations under the *Disability Discrimination Act 1992* (Cth), including the duties recommended in Chapter 4 to:
 - take reasonable and proportionate measures to eliminate all forms of discrimination on the grounds of disability
 - make adjustments for people with disability so they can enjoy their human rights without discrimination, unless it would cause an unjustifiable hardship
 - address barriers that disadvantage people with disability, including barriers compounded by a person with disability's combination of attributes and experiences
 - promote accessibility and universal design, and appropriate remedial action to existing infrastructure

- address stigma, stereotyping, prejudice, violence, abuse, neglect and exploitation affecting people with disability
- foster good relations between people with disability and other members of the community.

Recommendation 4.13 The duty to provide an interpreter

- a. The Disability Rights Act should require Commonwealth entities to provide (arrange and fund) an appropriately trained and credentialed interpreter when required by a person with disability who is accessing or using its services or engaging with its statutory functions. Interpreters may be required in Auslan, First Nations sign languages or spoken languages other than English.
- b. The Disability Rights Act should provide that it is not a breach of the above duty if the relevant Commonwealth entity can demonstrate that:
 - there was no appropriately qualified interpreter available after reasonable enquiry
 - the conversation or activity that the interpreter was required for could not reasonably have been undertaken at an alternative time when an interpreter would have been available.

Recommendation 4.14 The duty to provide accessible information

The Disability Rights Act should provide that a Commonwealth entity must ensure that its communications are provided in at least two formats accessible to people with disability when:

- publishing public information
- consulting or engaging with persons with disability.

Recommendation 4.15 Duties supporting compliance with the Disability Rights Act

To support compliance with the Disability Rights Act, the Act should require Commonwealth entities to:

- a. report annually on action they have taken to implement their duties under the Disability Rights Act
- b. conduct a disability impact assessment when developing or reviewing any policy or law administered, or program or service provided, by the entity that has a direct and significant impact on the public

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- c. undertake a self-assessment audit for disability inclusion at least every four years
 - d. publish their specific and measurable objectives to further the aims of the positive duty to promote disability equality and inclusion at least every four years.

Interpretation of the Disability Rights Act

Recommendation 4.16 Interpretation of the Disability Rights Act consistently with international human rights

The Disability Rights Act should require interpretation of the Act to be compatible, as far as possible, with the international human rights treaties to which Australia is a party, including the *Convention on the Rights of Persons with Disabilities*, and with the *United Nations Declaration on the Rights of Indigenous Peoples*.

Ensuring any limitations on disability rights are appropriate

Recommendation 4.17 Limitations on rights

- a. The Disability Rights Act should require that rights in the Act be subject only to such limitations that are reasonable and justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors (to be specified in the legislation).
- b. The Disability Rights Act should make clear that the right to recognition before the law (see Recommendation 4.6), as an absolute right under international law, is not subject to any limitations.
- c. This issue should be subject to consultation prior to enactment of the Disability Rights Act.

Remedies and enforcement under the Disability Rights Acts

Recommendation 4.18 Functions of the National Disability Commission to support compliance with the Disability Rights Act

To support compliance with the Disability Rights Act, the Act should provide the National Disability Commission (recommended in Volume 5, *Governing for inclusion*) with functions and powers to:

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- a. promote understanding and acceptance of the rights of people with disability under the Act
 - b. undertake research in relation to the rights and duties under the Act
 - c. issue guidelines on any matter relating to the Act
 - d. review a person or entity's compliance with the Act (or an aspect of the Act) at that person or entity's request
 - e. receive complaints or anonymous or confidential reports alleging a contravention of the Act
 - f. inquire into and report on any act or practice that may be inconsistent with or contrary to the Act
 - g. require the giving of information and the production of documents during the conduct of a formal inquiry
 - h. require the examination of witnesses under oath or affirmation during the conduct of a formal inquiry
 - i. enter into an enforceable undertaking with a person or entity in relation to compliance with the Act (engaging Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014* (Cth))
 - j. issue a compliance notice where the National Disability Commission reasonably believes that the relevant person or entity, without reasonable excuse, has failed to comply with the Act
 - k. apply to the Federal Court of Australia or the Federal Circuit and Family Court of Australia for enforcement of a compliance notice
 - l. apply to the Federal Court of Australia or the Federal Circuit and Family Court of Australia for an injunction (engaging Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014* (Cth)) to prevent or stop a contravention of the Act
 - m. intervene in any proceedings before a court or tribunal that relate to the application or interpretation of the Act.

These functions would be in addition to those recommended for the National Disability Commission in Volume 5, *Governing for inclusion*, and Volume 12, *Beyond the Royal Commission*.

The Australian Government should provide the National Disability Commission with dedicated resources to undertake these functions.

Recommendation 4.19 Co-design a new complaints mechanism for people with disability

- a. The National Disability Commission should co-design its complaints mechanism under the Disability Rights Act with people with disability, taking into account:
 - the national guideline for accessible and responsive complaint handling and investigative practice to be co-designed with people with disability (recommended in Volume 11, *Independent oversight and complaint mechanisms*)
 - processes to support referrals to police and other regulatory or oversight bodies (noting that Volume 11 recommends a ‘one-stop shop’ independent complaint reporting, referral and support mechanism in each state and territory)
 - key features for effective remedies outlined in this *Final report*.
- b. Acts, omissions or practices that are unlawful under the Disability Rights Act (with the exception of duties supporting compliance with the Act, such as reporting obligations) should be added to the definition of ‘unlawful discrimination’ under section 3(1) of the *Australian Human Rights Commission Act 1986* (Cth). This would enable the Australian Human Rights Commission to offer dispute resolution for relevant Disability Rights Act matters alongside related human rights and discrimination complaints involving a public authority.

Recommendation 4.20 Enabling remedies through the courts

The Disability Rights Act should establish a standalone cause of action under which:

- a. the following persons can bring a claim to the Federal Court of Australia or the Federal Circuit and Family Court of Australia that a relevant duty-holder has acted in contravention of the Disability Rights Act (other than compliance with the consultation requirement, notices of the National Disability Commission, duties supporting compliance with the Act such as reporting and self-audit obligations, and the positive duty to promote disability equality and inclusion):
 - an aggrieved person on their own behalf; an aggrieved person on behalf of themselves and others who are also aggrieved
 - two or more aggrieved persons on behalf of themselves or others who are also aggrieved (a group claim)
 - a person or disability representative organisation on behalf of one or more aggrieved persons (a representative claim)
- b. where a claim is brought before a court under a. and the court finds that a person or entity has acted incompatibly with the Disability Rights Act, it can make any order it considers just and appropriate, including damages

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- c. provisions in relation to costs are aligned with Commonwealth discrimination law, as amended following the 2022–23 review by the Australian Government Attorney-General’s Department.

Strengthening awareness and understanding of disability rights

Recommendation 4.21 Strengthening awareness and understanding of disability rights

- a. The Disability Rights Act should provide the National Disability Commission with statutory functions to:
- promote understanding and acceptance, and the public discussion, of the rights of people with disability under the Act
 - develop and deliver guidance materials and educational and training programs in relation to the rights and duties under the Act. Guidance should include how the intersectional experiences and identities of people with disability can affect the ways in which rights are limited or promoted in practice.
- b. The National Disability Commission should co-design and co-deliver training programs and resources with people with disability, and with the Australian Human Rights Commission where relevant, to provide a complete picture of human rights protections for people with disability under the Disability Rights Act and the *Disability Discrimination Act 1992* (Cth).
- c. The Australian Government should provide the National Disability Commission and the Australian Human Rights Commission with dedicated resources to undertake these roles.

Disability rights protection in state and territory laws

Recommendation 4.22 Strengthening disability rights protection in state and territory laws

- a. States and territories should enact legislation complementary or equivalent to the Australian Disability Rights Act, taking into account their own legal frameworks.
- b. The Disability Rights Act should provide that the Act is not intended to exclude or limit the operation of a state or territory law that furthers the objectives of the *Convention on the Rights of Persons with Disabilities* and is capable of operating concurrently with the Act.

Strengthening the *Disability Discrimination Act*

Recommendation 4.23 Burden of proof in direct discrimination

The *Disability Discrimination Act 1992* (Cth) should be amended by inserting new subsections 5(1) and 5(1A). The subsections would read as follows:

(1) For the purposes of this Act, a person (the **alleged discriminator**) directly discriminates against another person (the **aggrieved person**), if the person treats, or proposes to treat, the aggrieved person unfavourably on the ground of the aggrieved person's disability.

(1A) For the purposes of subsection (1), an alleged discriminator who has treated, or proposes to treat, the aggrieved person unfavourably bears the burden of proving that the treatment or proposed treatment was not on the ground of the aggrieved person's disability.

Recommendation 4.24 Reforming indirect discrimination

The *Disability Discrimination Act 1992* (Cth) should be amended by inserting a new subsection 6(3) to substitute existing subsections 6(3) and (4) as follows:

6(3) Subsection (1) or (2) does not apply if avoiding the discrimination would impose an unjustifiable hardship on the alleged discriminator.

Recommendation 4.25 Adjustments

The *Disability Discrimination Act 1992* (Cth) should be amended by replacing all references to 'reasonable adjustments' with 'adjustments'.

Recommendation 4.26 Standalone duty to make adjustments

The *Disability Discrimination Act 1992* (Cth) should be amended to include the following provision:

Duty to make adjustments

It is unlawful for a person to fail or refuse to make an adjustment for:

- (a) a person with a disability; or
- (b) a group of persons with disability

unless making the adjustment would impose an unjustifiable hardship on the person.

Recommendation 4.27 Positive duty to eliminate disability discrimination

The *Disability Discrimination Act 1992* (Cth) should be amended to introduce a positive duty on all duty-holders under the Act to eliminate disability discrimination, harassment and victimisation, based on the December 2022 amendments to the *Sex Discrimination Act 1984* (Cth):

Duty to eliminate discrimination on the ground of disability

(1) A person must take reasonable and proportionate measures to eliminate all forms of discrimination on the ground of disability.

(2) In determining whether a measure is reasonable and proportionate the following factors must be considered—

- (a) the size of the person's business or operations;
- (b) the nature and circumstances of the person's business or operations;
- (c) the person's resources;
- (d) the person's business, risk management plans and operational priorities;
- (e) the practicability and the cost of the measures;
- (f) whether the person has a disability action plan;
- (g) nature and extent of the person's consultation with any person with disability concerned; and
- (h) all other relevant facts and circumstances.

Other duties not limited or otherwise affected

(3) This section does not limit, or otherwise affect, a duty that a duty-holder has under:

- (a) the *Work Health and Safety Act 2011* (Cth); or
- (b) a law of a State or Territory that deals with work health and safety.

Recommendation 4.28 Systemic discrimination

- a. Division 4A (ss 35A–35K) of the *Australian Human Rights Commission Act 1986* (Cth) should be amended by inserting the words 'or disability discrimination' after 'sex discrimination' where these words appear.
- b. A reference to 'disability discrimination' means any conduct that is unlawful under the *Disability Discrimination Act 1992* (Cth).

Recommendation 4.29 Offensive behaviour

The *Disability Discrimination Act 1992* (Cth) should be amended by inserting a new provision:

Section 39A Offensive behaviour because of disability

(1) It is unlawful for a person (the *first person*) to do an act, otherwise than in private, if:

- (a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and
- (b) the act is done because of the disability of the other person or because some or all of the people in the group have or are perceived by the first person to have a disability.

(2) For the purposes of subsection (1), an act is taken not to be done in private if it:

- (a) causes words, sounds, images or writing to be communicated to the public; or
- (b) is done in a public place; or
- (c) is done in the sight or hearing of people who are in a public place.

(3) In this section:

public place includes any place to which the public have access as of right or by invitation, whether express or implied and whether or not a charge is made for admission to the place.

Recommendation 4.30 Vilification because of disability

a. The *Disability Discrimination Act 1992* (Cth) should be amended by inserting a new provision as follows:

Section 39C Vilification because of disability

It is unlawful for a person (the *first person*) to do an act otherwise than in private, if:

- (a) the act involves threats by the first person to perpetrate or encourage violence or serious abuse directed at another person or group of people;
- (b) the act is reasonably likely, in all the circumstances, to incite hatred towards another person or a group of people; and
- (c) the act is done because of the disability of the other person or because some or all of the people in the group have or are perceived by the first person to have a disability.

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- b. States and territories that already have legislation imposing criminal penalties for vilification of people on grounds that do not include disability should extend the legislation to vilification of people on the ground of disability.

Recommendation 4.31 Disability discrimination and migration law

- a. The Australian Government should initiate a review of the operation of section 52 of the *Disability Discrimination Act 1992* (Cth), insofar as it authorises discrimination against people with disability seeking to enter Australia temporarily or permanently. The review should consider changes to the legislation and migration practices to eliminate or minimise the discrimination.
- b. The review should be conducted with particular reference to the rights recognised by the *Convention on the Rights of Persons with Disabilities* and the *Concluding observations on the combined second and third periodic reports of Australia* made by the United Nations Committee on the Rights of Persons with Disabilities.

Recommendation 4.32 Unjustifiable hardship

Section 11 of the *Disability Discrimination Act 1992* (Cth) should be amended by inserting the new subsections 11(1)(aa), 11(1)(ab) and 11(1A) as follows:

11 Unjustifiable hardship

(1) For the purposes of this Act, in determining whether a hardship that would be imposed on a person (the *first person*) would be an *unjustifiable hardship*, all relevant circumstances of the particular case must be taken into account, including the following:

(a) the nature of the benefit or detriment likely to accrue to, or to be suffered by, any person concerned;

(aa) the nature and extent of the first person's consultations with any person with disability concerned;

(ab) the first person's consideration of all available and appropriate alternative measures or actions;

(b) the effect of the disability of any person concerned;

(c) the financial circumstances, and the estimated amount of expenditure required to be made, by the first person;

(d) the availability of financial and other assistance to the first person;

(e) any relevant action plans given to the Commission under section 64.

Example: One of the circumstances covered by paragraph (1)(a) is the nature of the benefit or detriment likely to accrue to, or to be suffered by, the community.

(1A) The person relying on unjustifiable hardship must:

(a) create and retain all documents recording the person's consideration (if any) of each of the factors in subsection (1); and

(b) provide reasons to the person concerned, if so requested, for contending that unjustifiable hardship existed at the time of the alleged unlawful discrimination.

(2) For the purposes of this Act, the burden of proving that something would impose unjustifiable hardship lies on the person claiming unjustifiable hardship.

Recommendation 4.33 Reference to the *Convention on the Rights of Persons with Disabilities*

The *Disability Discrimination Act 1992* (Cth) should be amended to insert a new subsection 3(d) as follows:

(d) to give effect to Australia's obligations under the Disabilities Convention.

Recommendation 4.34 Interpretation of the *Disability Discrimination Act 1992* (Cth)

The *Disability Discrimination Act 1992* (Cth) should be amended by inserting a new subsection 4(3):

(3) This Act must be interpreted in a way that is beneficial to a person or persons with disability, to the extent it is possible to do so consistently with—

(a) the objects of this Act

(b) the Convention

(c) the Covenant on Civil and Political Rights

(d) the Disabilities Convention

(e) the International Covenant on Economic, Social and Cultural Rights.

Volume 5, Governing for inclusion

A new National Disability Agreement

Recommendation 5.1 Development of a National Disability Agreement

The Australian Government and state and territory governments should develop a new National Disability Agreement through the Disability Reform Ministerial Council, to be signed by first ministers. The fundamental objective of the Agreement should be to advance equality, inclusion and the rights of people with disability in Australia.

The Agreement should provide the framework for intergovernmental collaboration to:

- develop and implement reforms requiring national attention and coordination, including recommendations of this Royal Commission
- implement Australia's Disability Strategy 2021–2031 (ADS) and the National Disability Insurance Scheme (NDIS).

The ADS, NDIS national agreements and policies, and other national disability frameworks should be schedules to the new National Disability Agreement.

The Agreement should clearly set out roles and responsibilities of parties to the Agreement.

The new National Disability Agreement should be developed and finalised by the end of 2024.

Aligning Australia's Disability Strategy

Recommendation 5.2 Review and update of Australia's Disability Strategy

The signatories to Australia's Disability Strategy 2021–2031 (ADS) (the Australian Government, state and territory governments and the Australian Local Government Association) should review and update the ADS to ensure it reflects the issues raised and recommendations made by this Royal Commission.

This review and update should:

- consider the ADS and all its implementation mechanisms, including Targeted Action Plans, Engagement Plan, Outcomes Framework, Guiding Principles, reporting arrangements and Data Improvement Plan
- be undertaken in partnership with people with disability and their representative organisations.

An updated ADS should be released by the end of 2024.

State and territory governments disability strategies and plans

Recommendation 5.3 Review and update of disability strategies and plans

State and territory governments should review and update their disability strategies and plans to ensure they reflect the issues raised and recommendations made by this Royal Commission.

These reviews and updates should:

- consider how these strategies and plans align with Australia's Disability Strategy 2021–2031, including outcomes of Recommendation 5.2
- be undertaken in partnership with people with disability and their representative organisations.

The reviews and updates should be completed by mid-2025.

National agreements and strategies

Recommendation 5.4 Review of national agreements, strategies and plans

The Australian Government and state and territory governments, should review national agreements, strategies and plans that affect people with disability. This work should be undertaken through the Disability Reform Ministerial Council in conjunction with other ministerial councils.

Reviews should consider:

- the alignment of national agreements, strategies and plans with Australia's Disability Strategy 2021–2031
- how funding allocations should recognise the needs and rights of people with disability
- the inclusion of specific outcome measures related to people with disability
- the development of specific action plans relating to people with disability.

National agreements that should be reviewed include the:

- National Agreement on Closing the Gap
- National Housing and Homelessness Agreement
- National School Reform Agreement
- National Health Reform Agreement

- National Mental Health and Suicide Prevention Agreement
- National Agreement for Skills and Workforce Development.

Other national agreements, strategies and plans to be reviewed should include, but not be limited to, those relating to:

- emergency management, such as those for pandemics and natural disasters
- children and young people, such as the National Framework for Protecting Australia’s Children 2021–2031
- employment, education, training and skills, such as the National Workforce Strategy 2022–2027
- legal support, such as the National Legal Assistance Partnership 2020–2025
- health services, such as those for preventative health, community health, and mental health
- family and sexual violence, such as the National Plan to End Violence against Women and Children 2022–2032.

The reviews of current agreements, strategies and plans should be completed by the end of 2025.

Establishing a National Disability Commission

Recommendation 5.5 Establishment of a National Disability Commission

The Australian Government should establish the National Disability Commission as an independent statutory body under the Disability Rights Act (see Volume 4). The National Disability Commission should:

- support the realisation of the human rights of people with disability through monitoring and oversight of the Disability Rights Act
- monitor and report on outcomes for people with disability across Australia
- promote best practice and innovative approaches to improving outcomes for people with disability by sharing information across governments, the community sector, the private sector and the broader community.

The Commission should be chaired by a person with disability and comprise a small group of commissioners. The majority of commissioners should be people with disability, and represent the diversity of people with disability.

The National Disability Commission should be established by mid-2025.

In addition to functions proposed in Volume 4 and Volume 12, its functions should include:

- developing an Outcomes for People with Disability report every two years and tabling it in the Australian Parliament. The report should:
 - detail outcomes achieved under Australia’s Disability Strategy 2021–2031 (ADS)
 - provide comparative performance assessments on outcomes for people with disability, including the implementation of the ADS, through traffic light reporting across each jurisdiction
 - analyse data, including outcomes data from National Disability Insurance Scheme reporting and other relevant reporting from the Australian Government and state and territory governments. This includes reporting on jurisdictional disability strategies and plans, and reporting from relevant oversight bodies
 - include the views and experiences of people with disability, as well as those of families and carers of people with disability
 - recommend to governments actions needed to improve outcomes for people with disability.
- promoting and disseminating information, research and evidence on best practice models for – and innovative approaches to – improving outcomes for people with disability. This information should be shared across governments, the non-government sector, the private sector and the broader community
- partnering with a diverse range of people with disability, and their families and carers, to develop advice and key reports.

Australian Government governance arrangements for disability

Recommendation 5.6 New governance arrangements for disability

The Australian Government should establish:

- a portfolio responsible for the disability and carers policies and programs currently the responsibility of the Social Services portfolio
- a ministerial position – the Minister for Disability Inclusion – responsible for disability inclusion strategy, policies and programs that are currently under the remit of the Minister for Social Services

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- a Department of Disability Equality and Inclusion, responsible for the national disability and carers policies and programs that are currently the responsibility of the Department of Social Services.

People with disability should be recruited to positions within the new department, including into leadership positions.

These new arrangements should be established by the end of 2024.

Implementation of the *CRPD*

Recommendation 5.7 Focal points across jurisdictions to implement the *CRPD*

The Australian Government and state and territory governments should ensure each jurisdiction has a designated focal point for matters relating to implementation of the *Convention on the Rights of Persons with Disabilities (CRPD)*.

At the Australian Government level, this should be the new Department of Disability Equality and Inclusion, alongside the Attorney-General's Department.

Each *CRPD* focal point should include people with disability in leadership positions.

Each jurisdiction should designate focal points by the end of 2024.

Volume 6, Enabling autonomy and access

Accessible information and communications

Recommendation 6.1 A national plan to promote accessible information and communications

The Australian Government and state and territory governments should develop and agree on an Associated Plan in connection with Australia's Disability Strategy 2021–2031 to improve the accessibility of information and communications for people with disability. The Associated Plan should be co-designed with people with disability and their representative organisations. It should be finalised by the end of 2024.

The Associated Plan should:

- consolidate and build on existing initiatives and commitments by governments
- recognise the diversity of people with disability and the many formats and languages that people may require information to be provided in

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- consider the roles of various stakeholders, including the Australian Government, state and territory governments, disability service providers, disability representative organisations and organisations representing people from culturally and linguistically diverse backgrounds
 - focus, in the first instance, on information and communications about preparing for and responding to emergencies and natural disasters, and public health
 - include targeted actions to ensure access to information and communications for people with disability in the criminal justice system; supported accommodation, including group homes; Australian Disability Enterprises; and day programs
 - identify and allocate appropriate funding and resources for delivery
 - include mechanisms for review and public reporting of progress made against the Associated Plan.

Recommendation 6.2 Increase the number of Auslan interpreters

The Australian Government and state and territory governments, through the Disability Reform Ministerial Council, should commission the development of a workforce strategy to increase the number and quality of Auslan interpreters.

The strategy should:

- be based on a robust demand-supply analysis to quantify the current gaps and shortages in interpreting services. This includes analysis of qualifications, specialisations, geographic coverage, and the availability and use of face-to-face interpreting and Video Remote Interpreting
- include costed initiatives to:
 - increase the number of Auslan interpreters, including the provision of scholarships and stable ongoing employment opportunities, particularly in under-serviced areas
 - support specialisations in health, legal and other critical sectors (including minimum qualifications)
 - provide ongoing professional development and industry standards to support a high-quality interpreter workforce
 - increase and retain Auslan interpreters who are First Nations or from culturally and linguistically diverse backgrounds
 - raise awareness and promote pathways to becoming an Auslan interpreter.

The strategy should be developed by September 2024, and implementation of the strategy should begin by January 2025.

Recommendation 6.3 Access to appropriately skilled and qualified interpreters

The Australian Government, the National Accreditation Authority for Translators and Interpreters (NAATI) and the National Disability Insurance Agency (NDIA) should take steps to ensure people with disability have access to appropriately skilled and qualified interpreters as needed.

Training for interpreters

NAATI should require interpreters to complete training in disability awareness before receiving accreditation and as part of their ongoing professional development to maintain accreditation.

Interpreters in disability service provision

The NDIA should:

- ensure staff are aware of the NDIA's Practice Guide on Accessible Communication and the provisions of the Practice Guide for Aboriginal and Torres Strait Islander planning support relating to interpreters and translation
- provide training for staff on how to arrange and work with an interpreter.

The Minister for the National Disability Insurance Scheme (NDIS), in consultation with states and territories, should:

- amend the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* (Cth) to introduce a standard on effectively working with interpreters
- amend the *National Disability Insurance Scheme (Quality Indicators for NDIS Practice Standards) Guidelines 2018* (Cth) to include indicators relevant to the standard on working effectively with interpreters, including that providers have relevant policies and procedures in place.

The NDIS Quality and Safeguards Commission should amend the NDIS Workforce Capability Framework to provide that the Communicate Effectively Core Capability for Advanced Support Work explicitly includes working with interpreters.

A new supported decision-making framework

Recommendation 6.4 Terms and definitions in guardianship and administration legislation

- a. States and territories should amend their guardianship and administration legislation to:
 - include the terms ‘support order’, ‘support agreement’ and ‘supported persons’
 - remove the terms ‘guardianship order’ and ‘administration order’ or ‘financial management order’, and replace these with ‘representative order’
 - remove the terms ‘guardian’ and ‘administrator’ or ‘financial manager’, and replace these with ‘representative’
 - remove the term ‘enduring guardian’ and replace this with ‘enduring representative’
 - remove the terms ‘enduring guardianship’ and ‘enduring power of attorney’, and replace these with ‘enduring representation agreement’
 - remove the terms ‘decision-making capacity’, ‘capacity’ and ‘mental incapacity’, and replace these with ‘decision-making ability’.
- b. The new and replacement terms should be defined consistently with the definitions provided in Table 6.2.11.
- c. States and territories should amend the title of their guardianship and administration legislation to refer to decision-making. For example, ‘Supported and represented decision-making Act’ or ‘Decision-making Act’.

Recommendation 6.5 Objects of guardianship and administration legislation

States and territories should review and reform their guardianship and administration legislation to include a statement of statutory objects which:

- recognises and promotes the rights of people with disability consistent with the *Convention on the Rights of Persons with Disabilities (CRPD)*
- includes the text of article 12 of the *CRPD*
- recognises the role of support to enable people who may require support to make, participate in and implement decisions that affect their lives.

Recommendation 6.6 Supported decision-making principles

- a. States and territories which have not already done so should review and reform their guardianship and administration legislation to include the following supported decision-making principles. The legislation should oblige all persons exercising powers, carrying out functions or performing duties under the legislation to have regard to the principles.

Principle 1 – Recognition of the equal right to make decisions

All people have an equal right to make decisions that affect their lives and to have those decisions respected.

Principle 2 – Presumption of decision-making ability

All people must be presumed to be able to make decisions.

Principle 3 – Respect for dignity and dignity of risk

All people must be treated with dignity and respect and supported to take risks to enable them to live their lives the way they choose, including in their social and intimate relationships.

Principle 4 – Recognition of informal supporters and advocates

The role of informal supporters, support networks and advocates who provide support for decision-making should be acknowledged and respected.

Principle 5 – Access to support

People who may require supported decision-making should be provided with equitable access to appropriate support to enable the person, as far as practicable in the circumstances, to:

- make and participate in decisions affecting them
- communicate their will and preferences
- develop their decision-making ability.

Principle 6 – Decisions directed by will and preferences

The will and preferences of people who may require supported decision-making must direct decisions that affect their lives.

Principle 7 – Inclusion of safeguards

There must be appropriate and effective safeguards where people may require supported decision-making, including to prevent abuse and undue influence.

Principle 8 – Co-designed processes

People with disability, in particular people with cognitive disability, their supporters and representative organisations, should be involved in the development and delivery of policies and practices on supported decision-making.

Principle 9 – Recognition of diversity

The diverse experiences, identities and needs of people who may require supported decision-making must be actively considered.

Principle 10 – Cultural safety

First Nations people and cultural and linguistically diverse people with disability are entitled to supported decision-making that is culturally safe, sensitive and responsive. This includes recognising the importance of maintaining a person's cultural and linguistic environment and set of values.

- b. The Australian Government and state and territory governments should also take steps to review and reform other laws concerning individual decision-making to give legislative effect to the supported decision-making principles.

Recommendation 6.7 Decision-making ability

States and territories should review and reform their guardianship and administration legislation to:

- ensure consistency with Principle 2 in Recommendation 6.6 that all people should be presumed to be able to make decisions
- provide that this presumption cannot be rebutted solely on the basis that a person has a disability
- require that anyone responsible for deciding whether the presumption has been rebutted that a person has decision-making ability for the relevant decision, must consider:
 - the supports available to the person, including the quality of existing support relationships
 - that decision-making ability is specific to the decision being made
 - the nature and complexity of the specific decision to be made
 - the views of the person and, with their consent, the views of family and informal supporters who have significant involvement in the person's life.

Recommendation 6.8 Formal supporters

States and territories should introduce into guardianship and administration legislation provisions to enable statutory and personal appointments of one or more supporters for personal and financial matters, following the approach taken by Victoria in Part 4 of the *Guardianship and Administration Act 2019* (Vic) and Part 7 of the *Powers of Attorney Act 2014* (Vic). This includes provisions on:

- appointment of supporters
- role, powers and duties of supporters
- safeguards in relation to supports
- review and revocation of support agreements and orders.

Recommendation 6.9 Representatives as a last resort

States and territories should review and reform their guardianship and administration legislation to provide that representation orders should be made only as a last resort and in a way that is least restrictive of a person's rights, autonomy and actions, as practicable in the circumstances. The reforms should include:

- a. the repeal of provisions authorising plenary representation orders
- b. a requirement that the relevant tribunal should make an order appointing a representative only if satisfied that:
 - the proposed represented person does not have decision-making ability for one or more decisions
 - the order is necessary, taking into account:
 - the will and preferences of the proposed represented person
 - the availability and suitability of less intrusive and restrictive measures, including formal and informal support arrangements, negotiation and mediation
 - the order will promote the person's personal and social wellbeing
- c. a provision that the tribunal must take into account, in deciding whether a person (other than a public official) is suitable for appointment as a representative:
 - the will and preferences of the proposed represented person
 - the nature of the relationship between the proposed representative and the proposed represented person
 - whether the proposed representative is likely to act honestly, diligently and in good faith

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- whether the proposed representative has or may have a conflict of interest in relation to any of the decisions referred to in the order
- d. a prohibition on a representation order made in the absence of the proposed represented person, unless the tribunal is satisfied that either:
- the represented person does not wish to attend the hearing in person
 - the personal attendance of the represented person at the hearing is impracticable or cannot reasonably be arranged
- e. a requirement that when considering whether a support or representation order should be made for a First Nations person, the tribunal should take into account:
- the likely impact of the order on the person’s culture, values, beliefs (including religious beliefs) and linguistic environment
 - the likely impact of the order on the person’s standing or reputation in their community
 - any other considerations pertaining to the person’s culture
- f. provisions on the review and revocation of representation orders, including that:
- a representation order lapses on the expiration of three years after the date on which it is made, unless the tribunal has specified an expiry date (earlier than three years) in the order or the order is renewed
 - a tribunal must conduct a review of representation order at least once within each three-year period after making the order
 - when reviewing an order, the tribunal should consider:
 - whether the order is still necessary, considering the factors listed in b.
 - whether the representative is still eligible and suitable
 - whether the representative is meeting their responsibilities and carrying out their required functions.

Recommendation 6.10 Decision-making process

States and territories should review and reform their guardianship and administration legislation to include a decision-making process that appointed supporters and representatives are required to follow.

The decision-making process for both supporters and representatives should involve:

- supporting the person to express their will and preferences
- assisting the person to develop their own decision-making ability.

The decision-making process for representatives should also include the following steps and considerations:

- the person's will and preferences must be given effect
- where the person's current will and preference cannot be determined, the representative must give effect to what they believe the person's will and preferences are likely to be, based on all the information available
- if it is not possible to determine what the person would likely want, the representative must act to promote and uphold the person's personal and social wellbeing with the least possible restriction on their dignity and autonomy
- a representative may override the person's will and preferences only where necessary to prevent serious harm. In these circumstances, the representative must act to promote and uphold the person's personal and social wellbeing with the least possible restriction on their dignity and autonomy.

Tribunal proceedings and processes

Recommendation 6.11 Guidelines on maximising participation

- a. The Australian Guardianship and Administration Council should update the *Guidelines for Australian Tribunals: Maximising the participation of the Person in guardianship proceedings* to align with our recommendations on guardianship and supported decision-making (see in particular Recommendations 6.4–6.10 and 6.19).
- b. The guardianship division or list in each state and territory tribunal should consider adopting, through practice directions or other appropriate means, the updated *Guidelines for Australian Tribunals: Maximising the participation of the Person in guardianship proceedings*.

Recommendation 6.12 Public disclosure and confidentiality restrictions

States and territories should amend their guardianship and administration laws or tribunals acts, to:

- repeal provisions prohibiting publication of material identifying a party to the proceedings as the default position
- empower the tribunal to make an order prohibiting publication of material identifying the party to the proceedings, if the circumstances justify such an order, taking into account the will and preferences of that party.

Education and capacity building for supported decision-making

Recommendation 6.13 Information and education on supported decision-making

- a. States and territories should ensure that, where legislation to this effect is not already in place, the functions of public advocates and public guardians include providing information, education and training on supported decision-making to people requiring supported decision-making and their families, private supporters and representatives (present or prospective), disability service providers, public agencies, the judiciary, tribunal members and legal representatives.
- b. States and territories should ensure that, where legislation to this effect is not already in place, public advocates and public guardians are empowered to provide advice and assistance to people who may require decision-making support, including in relation to applications for support and representation orders.

Recommendation 6.14 Systemic advocacy to promote supported decision-making

States and territories should ensure that, where this is not already the case, a statutory body has a function to undertake systemic advocacy to promote supported decision-making. This function should include:

- monitoring, investigating, researching, reporting, making recommendations and advising on any aspect of relevant decision-making legislation
- encouraging the development and improvement of programs, services and facilities that promote the autonomy of people with disability
- supporting organisations that undertake advocacy and education on supported decision-making.

Standards for public advocates, guardians and trustees

Recommendation 6.15 Updating the national standards for public advocates, public guardians and public trustees

Public advocates, public guardians and public trustees, through the Australian Guardianship and Administration Council, should update the *National Standards of Public Guardianship* and *National Standards for Financial Managers* to:

- include the supported decision-making principles

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- align with reforms to state and territory guardianship and administration legislation that give effect to Recommendations 6.4–6.10
 - amend the relevant standards to provide that public officials acting as representatives should have frequent meetings and ongoing, accessible communication with the represented person to get to know the person and develop a trusted relationship. Meetings should take place in line with a represented person's preferences as to format and attendees, wherever practicable
 - amend the relevant standards to recognise the importance of ensuring all engagement with First Nations and culturally and linguistically diverse people is culturally safe and responsive and that appropriate training for staff is provided to enable them to do so
 - amend the relevant standards to recognise the importance of public officials acting as representatives facilitating connections between a represented person and advocates and informal supporters.

Financial decision-making

Recommendation 6.16 Financial skills development programs

- a. All public trustees should offer a financial skills development program to people under a representation order appointing the public trustee as a representative. The program should promote financial independence and:
 - be developed in partnership with representative organisations of people with disability, including organisations representing people with intellectual disability, and financial counselling community support organisations
 - incorporate broad eligibility criteria
 - be actively promoted, especially among people entering administration.
- b. Upon successful completion of the program, public trustees should support a person to apply for a review of their order. If a person is not eligible for the program, the public trustee must advise them of their right to apply to the relevant tribunal for review of their order.
- c. Public trustees should report annually on the number of people who have participated in the program, the number who have completed it and the number who have subsequently transitioned out of administration arrangements.

Recommendation 6.17 Transparency of public trustee fees and charges

Public trustees in each state and territory should:

- publish accessible information about the services they provide to people under administration orders, the fees and charges applicable for those services and the ways in which fees are calculated for each individual
- on appointment, annually and following any significant change to a person's circumstances, send to people under administration orders individualised and accessible information detailing the services they will receive and the fees for those services.

Recommendation 6.18 Review of public trustees' fees and charges

State and territory governments should ensure that public trustees' fees and charges have been independently reviewed since 2019. Where such a review has not been conducted since this time, state and territory governments should arrange a comprehensive review of the fees and charges payable by people under administration orders to the public trustee in their jurisdiction. The reviews should make recommendations to ensure fees and charges are fair and equitable for all people under administration orders.

Data collection and reporting

Recommendation 6.19 Data collection on support and representation arrangements

The Australian Government and states and territories should develop and implement a national approach to collecting and publishing de-identified data on support and representation arrangements, led by the Australian Institute of Health and Welfare.

The national approach should consistently use definitions of 'disability', 'representation' and 'support' arrangements proposed in this *Final report*, and should employ methodologies which enable reporting on comparisons across jurisdictions and trends over time.

The national approach should include collection and publication of data on:

- numbers of formally appointed representatives and supporters, disaggregated appropriately
- the extent to which people with disability who are the subject of the proceedings participate in the proceedings and the manner in which they participate (for

example, in person or via alternative technological means)

- numbers of representative agreements commenced, terminated, revoked, varied or reviewed
- the extent to which people with disability who are the subject of the proceedings are legally represented.

The data should identify, to the greatest extent practicable, types of impairment, age, First Nations people with disability, culturally and linguistically diverse people with disability, LGBTIQ+ people with disability, women with disability and National Disability Insurance Scheme participants.

Australia's interpretative declaration in relation to article 12

Recommendation 6.20 Interpretative declaration

Commissioners Bennett, Galbally, Mason and McEwin recommend the Australian Government withdraw its interpretative declaration in relation to article 12 of the *Convention on the Rights of Persons with Disabilities*.

Advocacy funding

Recommendation 6.21 Additional funding for advocacy programs

a. For the financial years 2024–25 and 2025–26, the Australian Government should commit additional funding of:

- \$16.6 million per annum for the National Disability Advocacy Program
- \$20.3 million per annum for the National Disability Insurance Scheme Appeals Program.

These amounts should be indexed to maintain their value in real terms from year to year.

- b. From 1 July 2026, the Australian Government should ensure long-term and stable funding for national disability advocacy programs to meet demand. This should be informed by improved data in line with Recommendation 6.22.
- c. From at least 1 July 2026, state and territory governments should ensure long-term and stable funding for disability advocacy programs in their jurisdictions to meet demand. This should be informed by improved data in line with Recommendation 6.22.

Data collection to inform future funding

Recommendation 6.22 Improved data collection and reporting on met and unmet demand for disability advocacy

The Australian Government and state and territory governments should improve data collection and reporting on met and unmet demand for disability advocacy within their jurisdiction.

At a minimum, this data should:

- be collected and published on an annual basis
- include demographic indicators that show geographic location, First Nations and culturally and linguistically diverse status
- identify, where possible, whether a request for disability advocacy is from or concerns a person with disability who lives in supported accommodation or is in prison or juvenile detention.

This data should be collected and reported on an ongoing basis.

The Australian Government and state and territory governments should include data collection and reporting as a priority work area in the Disability Advocacy Work Plan associated with the 2023–2025 National Disability Advocacy Framework, and progress this as part of future National Disability Advocacy Frameworks or equivalents.

The Australian Government and state and territory governments should work together to ensure consistent definitions and methodologies allowing comparisons across jurisdictions and trends over time.

Publication of the data should commence no later than 1 July 2026.

Cultural safety

Recommendation 6.23 Culturally safe disability advocacy

The Disability Advocacy Work Plan associated with the 2023–2025 National Disability Advocacy Framework should be amended to include priority work areas on increasing culturally appropriate and accessible advocacy services for people with disability from culturally and linguistically diverse backgrounds and LGBTIQ+ people with disability. Efforts under these priority work areas, and the priority work area on increasing culturally appropriate and accessible advocacy services for First Nations people with disability, should include training led by First Nations, culturally and linguistically diverse and LGBTIQ+ people with disability and their representative organisations.

This work should be progressed as part of future National Disability Advocacy Frameworks or equivalents.

Cognitive disability health capability framework

Recommendation 6.24 Improve implementation planning and coordination for the cognitive disability health capability framework

The Australian Government Department of Health and Aged Care should:

- expand the role of the Intellectual Disability Education and Training Expert Advisory Group to develop an implementation plan for the cognitive disability health capability framework, including key steps for embedding the capabilities from the framework in curricula in education and training programs for health practitioners across all training stages
- develop a monitoring and evaluation framework to coordinate and measure delivery of the expanded capability framework and its implementation.

Recommendation 6.25 Expand the scope of health workforce capability development to include all forms of cognitive disability at all stages of education and training

The Australian Government Department of Health and Aged Care should:

- immediately expand the scope of the work on an intellectual disability health capability framework and associated resources to address all forms of cognitive disability, to apply at all stages of education and training. This expansion should include autism-specific content, and address specific healthcare issues for people with learning disability, dementia and acquired brain injury.
- allocate additional funding to support the expanded scope of health workforce capability development.

Recommendation 6.26 Expand the role of the Health Ministers Meeting to monitor health workforce capability development

The Health Ministers Meeting should expand its role in monitoring progress of the intellectual disability health capability framework to encompass the expanded capability framework proposed in Recommendation 6.25. This should include annual reporting to the Health Ministers Meeting on the progress of actions.

Review of accreditation standards and curriculum

Recommendation 6.27 Establish regular progress reporting by accreditation authorities

Accreditation authorities for registered health professions and the peak professional bodies for non-registered health professions should:

- a. review and amend accreditation standards and evidence requirements where necessary to address whether cognitive disability health is sufficiently covered. If it is not, they should amend their accreditation standards or evidence requirements (as the case may be) accordingly
- b. encourage or mandate education providers to develop specific cognitive disability health curriculum content and deliver such content using inclusive teaching practices, involving people with cognitive disability where possible
- c. report annually to the Australian Government Department of Health and Aged Care on their progress in implementing this recommendation. Where accreditation authorities have only recently undertaken their five-yearly review, annual reporting should include progress on implementation planning to address this recommendation pending the next scheduled review.

Clinical placements for students and trainees

Recommendation 6.28 Improve access to clinical placements in disability health services

The Australian Government Department of Health and Aged Care should include improved access to clinical placements in disability health services as an immediate priority, including by:

- exploring increased opportunities for student learning and development in cognitive disability health, including as part of interprofessional teams, with education providers and clinical placement providers.
- considering mechanisms to enhance funded supervised clinical and work-based training placements to train students in providing quality health care to people with cognitive disability. This should include enhanced financial support for clinical placement and supervision in community settings.

Post graduate training and continuing professional development

Recommendation 6.29 Improve specialist training and continuing professional development in cognitive disability health care

- a. The Royal Australasian College of Physicians, Royal Australian and New Zealand College of Psychiatrists, Australian and New Zealand College of Anaesthetists, Royal Australian College of General Practitioners, Australasian College of Emergency Medicine and Australian College of Rural and Remote Medicine should each:
 - develop specialised training content in cognitive disability health for different areas of specialisation, building on the capability framework and the core set of learning resources, so that future specialists can develop skills and competencies in cognitive disability health
 - expand and promote pathways for sub-speciality training in cognitive disability health.
- b. These groups, as well as the Australian Dental Association and professional bodies responsible for continuing professional development (CPD) in the nursing and allied health professions should each:
 - review CPD programs in their respective health discipline or specialty to determine whether CPD for the provision of health care to people with cognitive disability, including intellectual and/or developmental disabilities, should be enhanced
 - promote the development of CPD opportunities on the provision of health care to people with cognitive disability, including intellectual and/or developmental disabilities
 - raise awareness of such CPD opportunities among members.
- c. The Australian Government Department of Health and Aged Care should reprioritise the National Roadmap for Improving the Health of People with Intellectual Disability action to embed training and CPD within all specialist training programs from a medium-term action (four to six years), to a short-term action (one to three years).

National Centre of Excellence in Intellectual Disability Health

Recommendation 6.30 Expand the scope of the National Centre of Excellence in Intellectual Disability Health

The Australian Government Department of Health and Aged Care should expand the remit of the National Centre of Excellence in Intellectual Disability Health to include autism and other forms of cognitive impairment.

National health standards, charter and policies

Recommendation 6.31 Embed the right to equitable access to health services in key policy instruments

- a. The Australian Commission on Safety and Quality in Health Care should:
 - amend the Australian Charter of Healthcare Rights to incorporate the right to equitable access to health services for people with disability and align with the scope of this proposed right in the Disability Rights Act recommended in Volume 4, *Realising the human rights of people with disability*
 - review and revise the National Safety and Quality Health Service Standards and the National Safety and Quality Primary and Community Healthcare Standards to provide for the delivery of safe and high-quality health care for people with disability and align with the scope of the proposed right to equitable access to health services in the Disability Rights Act recommended in Volume 4
 - as part of this review, consider how the national standards support equal access to health services for people with disability throughout life, including (but not limited to) prevention and health promotion, diagnosis and early intervention and rehabilitation services.
- b. The Australian Government Department of Health and Aged Care and state and territory counterparts should review all policies and protocols to ensure people with disability are permitted to be accompanied by a support person in any health setting. This should apply at all times, including when in-person healthcare restrictions are in place, such as during COVID-19.

Adaptations and supports

Recommendation 6.32 Increase capacity to provide supports and adaptations through improved guidance, funding and accessible information

The Australian Government and state and territory governments, in consultation with people with disability, should:

- a. identify and publish a list of frequently needed adaptations and supports (including communication supports) to enable people with disability to receive high-quality health care in all publicly funded settings. Adaptations and supports may need to be tailored to individual needs and additional supports may be required. These should include:
 - environmental modifications and aids to reduce sensory loads, such as dimmer lighting, reduced background noise and noise-cancelling headphones
 - preparatory action to familiarise the person with disability with clinical environments, such as hospital tours and animated videos
 - different modes of service delivery, such as home visits, and taking a forward-looking approach to minimise distress associated with certain procedures – for instance, taking extra blood to reduce the need for additional blood draws, or undertaking multiple procedures at once if sedation is required to decrease the number of hospital visits
 - novel and flexible approaches to pre-medication, including sedation, to reduce distress and anxiety before critical medical procedures.
- b. review hospital (admitted and non-admitted care) and primary health care funding models to ensure these adaptations and supports can be implemented in all relevant settings.
- c. disseminate information about the provision of adaptations and supports in a range of accessible formats.

Specialised services

Recommendation 6.33 Develop specialised health and mental health services for people with cognitive disability

State and territory governments should establish and fund specialised health and mental health services for people with cognitive disability to provide:

- specialist assessment and clinical services, including preventive medicine, for people with cognitive disability and complex or chronic health and mental health needs
- training and support for health providers to build their capacity to provide safe, high-quality health care to people with cognitive disability.

These services should be delivered through a model that includes:

- specialist roles and multi-disciplinary teams embedded in local health service delivery
- statewide specialised services that can be accessed by people with cognitive disability and health professionals regardless of their location
- participation in a national network of specialised disability health and mental health services
- evaluation of the impact of specialised services and publication of evaluation findings.

Planning to implement specialised services in each jurisdiction should begin as soon as practicable and take into account existing services and needs in each jurisdiction. These changes should be introduced by September 2026.

Navigating the health system

Recommendation 6.34 Introduce disability health navigators to support navigation of health care for people with disability

Through the Health Ministers Meeting, the Australian Government and state and territory governments should:

- a. jointly fund a national workforce of 'disability health navigators' to support people with cognitive disability and complex health needs access health services and to embed safe, accessible and inclusive practice in everyday health service provision

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- b. develop a national evaluation framework to assess the impact of disability health navigators and share lessons learned across jurisdictions. Evaluation findings should be published.

Stronger legal frameworks for restrictive practices

Recommendation 6.35 Legal frameworks for the authorisation, review and oversight of restrictive practices

- a. States and territories should ensure appropriate legal frameworks are in place in disability, health, education and justice settings, which provide that a person with disability should not be subjected to restrictive practices, except in accordance with procedures for authorisation, review and oversight established by law.
- b. The legal frameworks should incorporate the following requirements, appropriately adapted to sector-specific contexts:
 - Restrictive practices should only be used:
 - as a last resort, in response to a serious risk of harm to a person with disability or others, and only after other strategies, including supported decision-making, have been explored and applied
 - as the least restrictive response possible to ensure the safety of the person with disability or others
 - to the extent necessary to reduce the risk of harm and proportionate to the potential negative consequences from the use of restrictive practices
 - for the shortest time possible.
 - Decisions to authorise restrictive practices should be subject to independent review.
 - The use of restrictive practices should be subject to independent oversight and monitoring.
- c. The legal frameworks should set out the powers and functions of a Senior Practitioner for restrictive practices in disability service provision (or equivalent authority). These powers and functions should include:
 - promoting the reduction and elimination of the use of restrictive practices
 - protecting and promoting the rights of people with disability subjected to restrictive practices
 - developing and providing information, education and advice on restrictive practices to people with disability, their families and supporters, and the broader community

- considering applications to use restrictive practices in disability service settings and authorising their use according to procedures consistent with the Draft Principles for Consistent Authorisation
- developing guidelines and standards, and providing expert advice, on restrictive practices and behaviour support planning
- receiving complaints about the use of restrictive practices and the quality of behaviour support planning
- investigating the use of restrictive practices and the quality of behaviour support planning, either in response to complaints or of its own motion
- acting in response to complaints and investigations where appropriate.

Recommendation 6.36 Immediate action to provide that certain restrictive practices must not be used

State and territory governments should immediately:

- Adopt the list of prohibited forms of restrictive practices agreed by the former Disability Reform Council in 2019 and provide that the use of seclusion on children and young people is not permitted in disability service settings.
- Provide that the following are not permitted in health and mental health settings:
 - using seclusion and restraint as a means to reduce behaviours not associated with immediate risk of harm
 - using seclusion and restraint as a form of discipline, punishment or threat
 - restrictive practices that involve or include deliberate infliction of pain to secure compliance
 - using prone or supine holds, using any restraint intended to restrict or affect respiratory or digestive function, or forcing a person's head down to their chest
 - secluding a person who is also mechanically restrained
 - secluding a person who is actively self-harming or suicidal
 - using metal handcuffs or hard manacles as a form of mechanical restraint (unless under police or other custodial supervision while in the health facility)
 - vest restraints for older people
 - neck holds
 - drugs, or higher doses of drugs, that create continuous sedation to manage behaviour
 - seclusion of children and young people.

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- Provide that the following are not permitted in education settings:
 - the use of restrictive practices:
 - as a form of discipline, punishment or threat
 - as a means of coercion or retaliation
 - in response to property destruction
 - for reasons of convenience
 - life threatening physical restraints, including physical restraints that restrict a student's breathing or harm the student by:
 - covering the student's mouth or nose, or in any way restricting breathing
 - taking the student to the ground into the prone or supine position
 - causing hyperextension or hyperflexion of joints
 - applying pressure to the neck, back, chest or joints
 - deliberately applying pain to gain compliance
 - causing the student to fall
 - having a person sit or kneel on the student
 - chemical restraints
 - mechanical restraints
 - clinical holding:
 - as a behaviour support strategy
 - to enforce the compliance of a student in undertaking personal care that is non-urgent and does not present a risk to the student
 - to punish a student
 - denial of key needs, such as food and water.

Reporting and evaluation of key measures for psychotropic medication

Recommendation 6.37 Data collection and public reporting on psychotropic medication

The NDIS Quality and Safeguards Commission, the Australian Commission on Safety and Quality in Health Care and the Aged Care Quality and Safety Commission should:

- publish joint annual progress reports on implementation of measures under the Joint statement on the inappropriate use of psychotropic medicines to manage the behaviours of people with disability and older people
- commission an independent evaluation of these measures to determine whether they have resulted in a reduction in the use of psychotropic medicines against people with cognitive disability. The evaluation should be co-designed with people with cognitive disability and their representative organisations and its results should be publicly reported.

Restrictive practices research and data

Recommendation 6.38 Strengthening the evidence base on reducing and eliminating restrictive practices

The National Disability Research Partnership should commission a longitudinal study of the impact of positive behaviour support and other strategies to reduce and eliminate restrictive practices. This study should:

- be co-designed with people with disability and relevant experts and professionals from the disability, health, education and justice sectors, to ensure the findings are relevant across a range of settings
- include the experiences and identify the intersecting needs of a broad range of people with disability, such as First Nations people with disability, LGBTIQ+ people with disability, and culturally and linguistically diverse people with disability.

Upon completion, the findings of the study should be made publicly available. Interim findings should be published at regular intervals.

Recommendation 6.39 Improving collection and reporting of restrictive practices data

The Australian Institute of Health and Welfare should work with state and territory governments to develop consistent data definitions and collection methods on restrictive practices across all jurisdictions, and align reporting periods. These definitions and collection methods should be finalised by the end of 2024.

Using consistent definitions and collection methods, state and territory governments should collect and publish data on the use of restrictive practices in health, education and justice settings. This data should be collected and published on an annual basis, with publication commencing by the end of 2025 at the latest. Data should identify, to the greatest extent practicable:

- restraint type, including chemical, physical, mechanical, environmental and seclusion
- disability status
- types of impairment
- age
- gender
- First Nations people
- culturally and linguistically diverse people
- people who identify as LGBTIQ+.

Targets and performance indicators

Recommendation 6.40 Targets and performance indicators to drive the reduction and elimination of restrictive practices

The Australian Government and state and territory governments should establish sector-specific targets and performance indicators to drive the reduction and elimination of restrictive practices over time. This should be at both the national and state and territory levels for disability, health, education and justice settings. These targets and performance indicators should be established by 1 July 2025 at the latest.

Involuntary sterilisation

Recommendation 6.41 Legislative prohibition of non-therapeutic sterilisation

- a. All jurisdictions should amend or enact legislation prohibiting non-therapeutic procedures resulting in permanent sterilisation of people with disability, except where:
 - there is a threat to the life of the person with disability were the procedure not performed or

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- the person with disability is an adult and has given voluntary and informed consent to the procedure, with support for decision-making if required.
- b. All jurisdictions should amend or enact legislation in accordance with paragraph a. by the end of 2024.
- c. The Australian Guardianship and Administrative Council (AGAC) should expand its annual collation and publication of data on the sterilisation of people with disability. This data should include the number of applications, reasons for applications, reasons for the outcomes of applications and the number of approvals to conduct a sterilisation procedure.

Where this does not already occur, the data should be collected and provided to AGAC annually by:

- the Federal Circuit and Family Court of Australia
- state and territory superior courts
- state and territory guardianship and administration bodies.

The data should be de-identified, as appropriate. It should be disaggregated, to the greatest extent possible, by:

- disability status
 - types of impairment
 - age
 - gender
 - First Nations people
 - culturally and linguistically diverse people
 - people who identify as LGBTIQ+.
- d. A review of legislation enacted or amended according to paragraph a. of this recommendation should be conducted every five years, in light of the data published according to paragraph c. This review should aim to strengthen protections for people with disability and avoid consequences which hamper reproductive autonomy.

Volume 7, Inclusive education, employment and housing

Part A: Inclusive education

Overcoming barriers to safe, quality and inclusive education

Recommendation 7.1 Provide equal access to mainstream education and enrolment

States and territories should amend education Acts (or the equivalent) to:

- create a legal entitlement for students with disability to enrol in a local mainstream school
- provide that the right to enrolment is subject only to ‘unjustifiable hardship’ in the sense used in the *Disability Discrimination Act 1992* (Cth).

State and territory governments should take the following actions to prevent gatekeeping in mainstream schools:

- maintain a central record of decisions on enrolment refusal or cancellation and provide an annual report to the responsible minister for education on trends and any additional actions required to address barriers
- establish an independent review process to enable a parent or supporter of a child or young person with disability to challenge a refusal to enrol the child or young person in a school.

State and territory educational authorities should disseminate clear, accessible, transparent material for students with disability and their families on their rights, the obligations of schools relating to applications to attend a local school, and review processes.

Recommendation 7.2 Prevent the inappropriate use of exclusionary discipline against students with disability

State and territory educational authorities should review all regulations, rules, procedures and other instruments regulating exclusionary discipline to ensure they:

- adopt the principle that education providers:
 - should avoid the use of exclusionary discipline on students with disability unless exclusion is necessary as a last resort to avert the risk of serious harm to the student, other students or staff

- in considering the use of exclusionary discipline, consider the student's disability, needs and age, and the particular effects of exclusionary discipline for young children
- require steps to be taken before exclusion to ensure an individual behaviour plan and reasonable adjustments have been implemented for the student, including consultation with the student and their family, carers or supporters.
- include a duty for principals to report the repeated use of exclusionary discipline involving a student with disability to an escalation point within educational authorities for independent case management
- include a robust review or appeals process for students with disability and their families or carers and supporters
- ensure students with disability have access to educational materials appropriate to their educational and behavioural needs while subject to exclusionary discipline
- support students with disability to re-engage in education post exclusion.

State and territory educational authorities should review provisions governing the registration of non-government schools to impose obligations relating to exclusionary discipline in the non-government sector that are commensurate with those of the government sector.

Section 22(2)(b) of the *Disability Discrimination Act 1992* (Cth) should be amended to cover 'suspension and exclusion' as well as expulsions.

Recommendation 7.3 Improve policies and procedures on the provision of reasonable adjustments to students with disability

- a. State and territory educational authorities should develop and make available in accessible form:
 - guidelines to enable schools, principals and teachers to comply with their statutory obligations to provide adjustments for children and young people with disability
 - guidelines addressing the relationship between the statutory duty to provide adjustments and duties of care imposed on educational authorities, schools, principals, teachers and staff, such as those imposed by occupational health and safety legislation and the general law
 - guidelines addressing the processes for identifying, planning, implementing and evaluating adjustments required for individual students with disability

- guidelines explaining the nature and content of the obligation under the *Disability Standards for Education 2005 (Cth) (Education Standards)* to consult with students with disability and their parents, carers and supporters
 - information explaining the sources of funding for providing supports to students with disability and the procedures governing the allocation of funds for that purpose
 - requirements for schools and principals to keep records and to report on the provision of adjustments for individual students with disability
 - guidelines for developing individual learning plans for students with disability, including requirements for keeping records on the learning program for each student and for making the records available to parents, carers and supporters
 - guidelines for ensuring equal access to consent, relationships and sexuality education for students with disability through learning resources, including for neurodiverse students and LGBTIQ+ students.
- b. State and territory educational authorities should ensure that education providers have greater access to tools and resources to:
- assist principals and teachers to adapt the curriculum and teaching and assessment practices to enable diverse learners, especially those with complex communication or support needs, to participate in learning experiences on the same basis as students without disability enrolled in the same course (subject to the unjustifiable hardship qualification in the *Disability Discrimination Act 1992 (Cth)*)
 - support culturally safe adjustments to teaching strategies for particular students with disability, such as First Nations students and students from culturally and linguistically diverse communities.
- c. The Australian Government, through the responsible minister, should consider whether the *Education Standards* should be amended to address the proposals in a. and b.. However, any such consideration should not delay state and territory educational authorities implementing a. and b..

Recommendation 7.4 Participation in school communities

State and territory school educational authorities should:

- wherever practicable, locate any new non-mainstream schools and, over time, relocate existing non-mainstream schools within or in close proximity to mainstream schools
- facilitate, to the maximum extent feasible, participation by individual students and groups of students enrolled in non-mainstream schools in educational, cultural,

sporting, recreational and celebratory activities with their peers (whether with or without disability) enrolled in mainstream schools

- create partnerships between mainstream and non-mainstream schools as a means of encouraging and arranging regular interchange between students enrolled in each setting.

Recommendation 7.5 Careers guidance and transition support services

State and territory educational authorities should implement a careers guidance and transition support service for students with disability to aid transition from all educational institutions to further education and/or open employment. The service should:

- commence transition planning in year 9 in collaboration with students, their parents and carers to help students define and articulate their goals and aspirations beyond school
- take into account the diversity of students with disability, including students with higher levels of support needs, First Nations students and students from culturally and linguistically diverse backgrounds
- provide students with disability and their families access to clear and accessible information and resources about future study options and labour market opportunities
- provide students with opportunities to undertake work experience in open employment aligned with their goals and interests
- provide linkages to further education providers, employment service providers and government services (including the National Disability Coordination Officer Program, the National Disability Insurance Scheme (NDIS) School Leaver Employment Support, Disability Employment Services, and NDIS Local Area Coordinators).

Recommendation 7.6 Student and parental communication and relationships

- a. State and territory educational authorities should update their policies and guidance for schools to support the implementation and continuous improvement of requirements for student and parental communication and relationships.

These should:

- include clear, accessible material for students with disability and their families on their rights and school obligations
- target decision-making for individual students and at the whole-of-school-level
- cover applications to attend a local school and address how students and parents should expect to be involved in decision making, adjustments and complaints handling and informal resolution processes

- indicate types of decisions that require formal parental agreement, such as approaches to behaviour management
 - be co-designed with people with disability and their families.
- b. State and territory educational authorities should develop material similar to that outlined in a. specifically for First Nations students with disability in consultation with First Nations students with disability, parents and kinship carers. The cultural diversity and understanding of disability in Aboriginal and Torres Strait Islander cultures should be considered in this process.
 - c. School principals should work with their governing bodies and school communities to establish local school policies, procedures and practices to enable students with disability and their parents, carers and advocates to fully and effectively take part in the school community and decisions that affect a student's educational experience.
 - d. In undertaking c., school principals should consult with First Nations parents and kinship carers and consider the cultural diversity and understanding of disability in Aboriginal and Torres Strait Islander cultures.
 - e. The Australian Government, through the responsible minister, should consider updating the *Disability Standards for Education 2005 (Cth)* to:
 - ensure students with disability can participate as fully as possible in an age-appropriate manner in decision making concerning their educational programs and the adjustments they require
 - entitle parents, supporters and carers of students with disability to be assisted by schools or principals on decisions relating to school-wide adjustments to facilities and classroom practices of particular significance to students with disability.

Embedding inclusive education

Recommendation 7.7 Inclusive education units and First Nations expertise

- a. State and territory educational authorities should establish inclusive education units within the relevant departments. These units should provide:
 - advice to educational authorities, educational institutions and principals on inclusive education issues and policies, and on funding priorities
 - resources and advice to schools and teachers about implementing inclusive education.

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- b. Educational authorities should ensure that inclusive education units contain First Nations expertise to allow them to take actions required to improve access to inclusive and culturally appropriate education for First Nations students with disability.

Recommendation 7.8 Workforce capabilities, expertise and development

Knowledge and skills

- a. The Education Ministers Meeting should commission the Australian Institute for Teaching and School Leadership (AITSL) to review and amend the Australian Professional Standards for Teachers (APST) to embed a human rights based approach to inclusive education for students with disability across teachers' careers.
- b. To provide guidance for teachers on the revised APST, the Education Ministers Meeting should instruct AITSL to develop an inclusive education capability framework, setting out the knowledge, skills and attitudes to deliver inclusive education.

Continuing professional development

- c. State and territory educational authorities should create and implement professional development strategies based on an inclusive education capability framework for principals, teachers, teaching assistants and teachers of deaf children.

Disability expertise and skills shortages

- d. The Education Ministers Meeting should expand the National Teacher Workforce Action Plan to identify actions that can strengthen initial teacher education in inclusive education and attract and retain people with disability and others with expertise in delivering inclusive education.
- e. State and territory governments should increase access to expertise in inclusive education in government schools by:
- employing lead practitioners specialising in inclusive teaching, behavioural support and deaf education to work across schools in a regional catchment to initiate and lead activities that focus on improving educational opportunities for students with disability, including by establishing inclusive learning environments that meet the needs of students
 - employing skilled and qualified Auslan interpreters
 - setting employment targets for people with disability in government schools and working with all school sectors in their jurisdiction to increase disability employment.

Recommendation 7.9 Data, evidence and building best practice

Data development and collection

- a. The Education Ministers Meeting should:
 - commission a national project to develop data definitions and data collection methods to enable consistent and comparable reporting on educational experiences and outcomes of students with disability
 - ensure data and information (as detailed at the Appendix and disaggregated by Nationally Consistent Collection of Data on School Students with Disability (NCCD) category, gender, age, stage of schooling, First Nations students, students from culturally and linguistically diverse backgrounds and LGBTIQA+ status) is collected by state and territory departments on:
 - student experiences
 - school outcomes for students with disability
 - progress in addressing barriers to inclusive education practices.
- b. State and territory governments should enhance data systems and processes to enable all schools to submit at least the minimum data required in the prescribed format.
- c. State and territory school registration authorities should:
 - embed data requirements set by the Education Ministers Meeting in registration requirements for all schools in their jurisdiction
 - require parents registering children with disability for home schooling with the state or territory school regulator to submit standardised information about their child's educational, social and behavioural progress and support needs to improve understanding of students with disability who are being home schooled and their outcomes.

Monitoring and reporting

- d. State and territory education departments should annually report jurisdictional data to the Education Ministers Meeting on minimum data requirements for students with disability. Based on the jurisdictional data, the Education Ministers Meeting should monitor and publicly report annually on:
 - the educational experiences of students with disability
 - outcomes of students with disability
 - progress in addressing barriers to inclusive education practices.

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- e. To improve reporting of disability data, the Education Ministers Meeting should:
- publish school-level NCCD student numbers (by adjustment level) on the My School website, having due regard for privacy issues
 - commission the Australian Curriculum Assessment and Reporting Authority to work with states and territories on data collection requirements to enable reporting on National Assessments Program – Literacy and Numeracy results for students with disability
 - include broader school workforce characteristics and information about workforce shortages in state and territory and Australian Government annual inclusive education reporting.

Improving the evidence base

- f. To improve the evidence base for best practice for inclusive education, the Education Ministers Meeting should commission the Australian Education Research Organisation to:
- develop a research program about inclusive education practices, working with teachers, schools, education systems and people with disability
 - conduct and coordinate inclusive education research
 - support schools to translate research into school practices.

Recommendation 7.10 Complaint management

- a. State and territory governments should create or expand existing complaint management offices that operate within educational authorities at arm's length from schools to help resolve complaints about schools, specifically complaints concerning the treatment of students with disability. These offices should be empowered to:
- provide students and parents with information about their rights and options when managing complaints
 - request information and conduct conciliations, connecting families with advocacy support and specialist disability expertise where needed
 - initiate a formal investigation if a complaint is serious or otherwise indicates systemic issues
 - support and assist the complainant in referring matters to the appropriate regulator or independent oversight body if a complaint cannot be effectively resolved
 - work with schools to analyse complaints and regularly report on how education systems might improve to reduce future complaints

- work with school principals to ensure school policies are student-centric, accessible, efficient, safe, trauma-informed and culturally appropriate.
- b. The Australian Government should include new duties and measures relating to complaint management procedures in the *Disability Standards for Education 2005 (Cth) (Education Standards)* to help achieve national quality and consistency, and ensure complaint handling processes are student-centric, accessible, efficient, safe, trauma-informed and culturally appropriate.
 - c. State and territory school registration authorities should embed new complaint handling duties and measures for compliance, as defined in the *Education Standards*, in registration requirements for all schools in their jurisdiction as a basis to monitor and enforce compliance.
 - d. School principals should ensure their school-level operating policies and procedures for handling complaints:
 - satisfy the *Education Standards* requirements
 - are student-centric, accessible, efficient, safe, trauma-informed and culturally appropriate
 - are observed in practice.

Recommendation 7.11 Stronger oversight and enforcement of school duties

- a. State and territory governments should strengthen the enforcement of inclusive education practices by expanding school registration requirements to include:
 - school enrolment policies (see Recommendation 7.1)
 - procedures to ensure members of the school workforce understand their obligations and are supported to access professional development (see Recommendation 7.8)
 - procedures to collect, analyse and report on complaints and the use of restrictive practices and exclusionary discipline (see Recommendations 7.2 and 7.10)
 - reporting on the use of funding for students with disability (see Recommendation 7.12).
- b. State and territory school registration authorities should monitor compliance with these requirements through cyclical reviews of schools and out-of-cycle reviews in response to individual complaints (or complaint trends) or other information that indicates possible non-compliance with regulatory requirements.
- c. The Western Australian, Australian Capital Territory and Northern Territory governments should identify appropriate mechanisms to ensure government schools in their jurisdictions are subject to these mandatory obligations, with appropriate monitoring, compliance and enforcement.

Recommendation 7.12 Improving funding

- a. The Australian Government should work with the Education Ministers Meeting to refine the Nationally Consistent Collection of Data on School Students with Disability (NCCD) levels of adjustments and associated funding for students with disability in response to the findings of the *Student with disability loading settings review*.
- b. The Australian Government and the Education Ministers Meeting should review disability loading settings and total funding for adjustments every five years to ensure the funding allocated bears a close relationship to the actual cost of supporting students with disability in classrooms and to determine appropriate indexation and distribution of funding.
- c. State and territory governments should ensure they are using a disability funding model based on strengths and needs that aligns with enhanced NCCD levels of adjustment and Australian Government needs-based funding arrangements to enable students with disability to access and participate in education on an equal basis to their peers.
- d. State and territory education departments should improve transparency on the use of disability funding in the government school sector by:
 - developing a methodology and reporting template to record the use of all sources of school funding against defined categories of adjustments and support for students with disability
 - applying this methodology and template to record expenditure on services and staff commissioned by the department on behalf of schools for students with disability
 - publicly reporting on how the needs of students with disability are being met from all available resources, with early priority given to capturing the use of disability-specific loadings and other disability-specific program funding.
- e. State and territory school registration authorities should require schools to complete the funding template mentioned at d. and submit the template to the relevant state or territory education department

Recommendation 7.13 National Roadmap to Inclusive Education

- a. The Education Ministers Meeting should publicly release a 'National Roadmap to Inclusive Education' for students with disability. The roadmap should:
 - detail the outcome measures, targets, actions and milestones for delivering the Royal Commission's recommendations for inclusive education
 - provide public transparency on how the recommendations will be implemented and progress tracked and publicly reported.

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- b. State and territory education ministers should report annually to the Education Ministers Meeting on progress against agreed milestones and associated outcome performance measures in the roadmap. Annual progress reports should outline actions to overcome identified barriers to progress and be publicly released.
 - c. The Education Ministers Meeting should identify the National Roadmap to Inclusive Education in its 2024 report to National Cabinet as one of its priorities and include it in its workplan.

Achieving inclusion while phasing out special/segreated education settings

Recommendation 7.14 Phasing out and ending special/segreated education

Commissioners Bennett, Galbally and McEwin recommend:

- a. The Australian Government and state and territory governments should recognise that inclusive education as required by article 24 of the *Convention on the Rights of Persons with Disabilities* is not compatible with sustaining special/segreated education as a long-term feature of education systems in Australia.
- b. As part of the National School Reform Agreement 2025–2029, the Education Ministers Meeting should agree to:
 - the phasing out of special/segreated education
 - no new special/segreated schools being built or new special/segreated classes or units being included within schools from 2025
 - a process for work on milestones and activities related to ceasing special/segreated education by all jurisdictions.
- c. As part of the National School Reform Agreement 2030–2034, the Education Ministers Meeting should agree to milestones for phasing out and ending special/segreated education settings and financial penalties for failing to meet these milestones, including:
 - no new enrolments of students with disability in special/segreated schools from 2032
 - no new placements of students with disability in special/segreated units or classes from 2041
 - no students remaining in special/segreated schools by the end of 2051.

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- d. The Education Ministers Meeting should update the Roadmap to Inclusive Education and Australia's Disability Strategy to incorporate the milestones and actions to phase out and end special/segregated education settings included in the National School Reform Agreement 2030–2034.
 - e. The Australian Government should consider the design of a 'Transition Fund' under the National School Reform Agreement from 2028 to provide discrete funding to schools that require additional support as part of their transition journey, with clear performance and reporting requirements.
 - f. Consistent with phasing out and ending special/segregated education, states and territories should implement the following recommendations:
 - when no students are in special/segregated schools, the sunsetting of:
 - measures to prevent gatekeeping (see Recommendation 7.1)
 - provisions to facilitate the engagement of students with disability enrolled in special/segregated schools with students and activities of mainstream schools (see Recommendation 7.4)
 - to prevent stigmatisation and segregation of students with disability, ensure the careers guidance and transition support program for students with disability (see Recommendation 7.5):
 - is delivered alongside careers guidance for students without disability
 - has clear rules that no student with disability can be referred to work experience or employment through Australian Disability Enterprises.

Achieving inclusion and retaining choice

Recommendation 7.15 An alternative approach

The Chair and Commissioners Mason and Ryan recommend:

- a. State and territory educational authorities should implement the following measures:
 - wherever practicable locate new non-mainstream schools (that is, schools that enrol exclusively or primarily children and young people with complex support needs) and relocate existing non-mainstream schools within or in close proximity to mainstream schools
 - create partnerships between mainstream and non-mainstream schools as a means of encouraging and arranging regular interchange between groups of students enrolled in the schools

- facilitate to the maximum extent feasible participation by individual students and groups of students enrolled in non-mainstream schools in educational, cultural, sporting, recreational and celebratory activities with their peers in partnership with mainstream schools and other educational institutions
 - arrange for students in non-mainstream schools, where practicable, to participate in classes and educational activities with their peers in mainstream schools
 - establish programs for students enrolled in mainstream schools to participate in activities with their peers in non-mainstream schools
 - provide, where appropriate, for concurrent enrolment for individual students in both mainstream and non-mainstream schools
 - assist non-mainstream schools to facilitate where appropriate, the transition of students with disability, particularly those with complex support needs, to mainstream schools, whether on a full-time or part-time basis
 - provide assistance to mainstream and non-mainstream schools in understanding the strengths and skills of students with disability for post-school transition, including assistance in planning and preparing for further study and training
 - ensure non-mainstream schools encourage and support students with disability completing their education to seek and obtain employment in the open labour market, rather than in Australian Disability Enterprises or similar environments.
- b. The National Disability Commission (see Recommendation 5.5) should conduct or arrange for a comprehensive review of progress towards providing inclusive education for children and young people with complex support needs. The review's assessment should include the matters we have identified.

Part B: Inclusive employment

Reforming the Disability Employment Service Program

Recommendation 7.16 Priorities for inclusion in the new Disability Employment Services model

The Australian Government Department of Social Services should ensure that the design of the new Disability Employment Services model:

- is developed using inclusive design principles, and co-designed by people with disability who are employed as paid members of the design team

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- adopts customised employment models as a core component of service provision
 - ensures funding arrangements facilitate flexible employment supports, such as customised employment, and support the progress of Disability Employment Services participants in achieving employment goals and long-term employment outcomes
 - considers options to remove the requirement for a person to have a minimum future work capacity of eight hours a week in order to access the Disability Employment Services program, to facilitate access for all people with disability to the new model.

Recommendation 7.17 Develop education and training resources for Disability Employment Services staff

The Australian Government Department of Social Services should develop a suite of accessible education and training resources for providers of Disability Employment Services to upskill their staff.

Resources should be co-designed by people with disability and involve consultation with advocates, employers and Disability Employment Services providers.

Resources should address the gaps we have identified, including in:

- disability awareness
- cultural competence
- human rights
- customised employment
- employer engagement
- Disability Employment Services guidelines and procedures.

Increasing public sector employment for people with disability

Recommendation 7.18 Establish specific and disaggregated targets for disability employment in the public sector

The Australian Government and state and territory governments should adopt specific and disaggregated targets to increase the proportion in the public sector of:

- employees with disability at entry and graduate levels
- employees with disability at executive levels
- employees with cognitive disability.

Public sector targets should be supported by:

- clear employment pathways into the relevant public services for each target cohort
- measures and programs to support the recruitment and progression of each target cohort
- provision of appropriate supports.

The Australian Public Service Commission and state and territory public service commissions should ensure these targets contribute to their existing overall employment targets for people with disability.

Recommendation 7.19 Establish specific disability employment targets for new public service hires in agencies and departments

The Australian Government and state and territory government departments and agencies should be required to set a target to ensure that a proportion of new public service hires to their respective workforce are people with disability.

The target should be at least 7 per cent by 2025.

The target should increase to at least 9 per cent by 2030.

Recommendation 7.20 Clarify the application of the merit principle in public sector recruitment

The Australian Public Service Commission should incorporate clearer directions in Australian Public Service training and support on applying the merit principle in recruitment. Training and support materials should:

- specifically address the importance of having a diverse public sector workforce that reflects the community it serves
- provide guidance in considering the need for diversity in the application of the merit principle in recruitment.

Recommendation 7.21 Introduce consistent adjustment principles and adjustment passports

The Australian Public Service Commission should:

- a. lead the development of common principles to underpin adjustment policies for providing and managing adjustments in the public sector. This should occur in partnership with state and territory public service commissions. The principles should be used to inform Australian Government and state and territory government department policies and procedures on adjustments. The principles should include:

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- clear and accessible processes for staff to request adjustments
 - timeframes for implementing adjustments and a process for review and seeking feedback on adjustments
 - clear and accessible processes for making and responding to complaints relating to adjustments (including complaints about refusal to provide an adjustment)
 - clear policies on handling and sharing information about a person's disability or adjustments
 - referrals to internal and external supports in relation to requesting and managing adjustments
 - requirements to collect data on applications for, and the implementation of, adjustments.
- b. develop an Australian Public Service-wide adjustment passport to improve the ease with which people with disability can maintain and transfer their adjustments when moving within the Australian Public Service.

Recommendation 7.22 Public reporting on public sector disability employment strategies and targets

The Australian Public Service Commission and state and territory public service commissions should report annually on the progress of their public sector disability employment strategies, including progress against overall and disaggregated targets for increasing the percentage of employees with disability. These reports should be published and made available in accessible formats.

Promoting accessibility through procurement policies

Recommendation 7.23 Strengthen disability employment procurement policies

The Australian Government and state and territory governments should adopt procurement policies that:

- a. favour businesses and entities able to demonstrate, in accordance with published criteria, they are providing employment opportunities for people with disability in open, inclusive and accessible settings, including people with intellectual disability or cognitive impairments.

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- b. require all information and communication technology purchases to comply with the current Australian information and communication technology (ICT) accessibility standard (AS EN 301 549:2020 – Accessibility requirements for ICT products and services).

Improving the regulatory environment

Recommendation 7.24 Convene a Disability Employment Rights Council

The Australian Government should convene a Disability Employment Rights Council to improve coordination, consistency and clarity across regulatory bodies and frameworks to improve outcomes for people with disability in employment.

Recommendation 7.25 Amend the *Fair Work Act 2009* (Cth)

The *Fair Work Act 2009* (Cth) should be amended to:

- a. ensure the definition of ‘disability’ is consistent with the *Disability Discrimination Act 1992* (Cth)
- b. remove the words ‘physical and mental’ preceding ‘disability’ in sections 351 and 772.

Recommendation 7.26 Amend the *Disability Discrimination Act 1992* (Cth)

Section 21A of the *Disability Discrimination Act 1992* (Cth) should be amended to expand the factors to be considered in determining whether a prospective or existing employee would be able to carry out the inherent requirements of a particular role.

These factors include the:

- nature and extent of any adjustments made
- extent of consultation with any person with disability concerned.

Recommendation 7.27 Enable a Fair Work Ombudsman referral mechanism

The Australian Government should expand the functions of the Fair Work Ombudsman to allow a matter involving an employee with disability to be referred back to the Fair Work Ombudsman by relevant authorities if they:

- consider a complaint may be best addressed by the Fair Work Ombudsman
- have the complainant’s consent to do so.

The referral mechanism should be available in instances where a matter was initially referred by the Fair Work Ombudsman to a relevant authority.

Supporting transitions to inclusive employment

Recommendation 7.28 Improve information about wages and the Disability Support Pension

The Australian Government should fund Disability Representative Organisations to deliver an information campaign for employees with disability in Australian Disability Enterprises. This campaign should provide information about:

- open employment, including wage conditions
- how receipt of the Disability Support Pension (DSP) interacts with a person's wages, including –
 - assistance with financial literacy materials
 - supports for individuals to calculate how changes to their DSP or wages impact their overall income and financial situation
- options for a person to suspend their DSP if they are earning above the threshold
- who to contact to ask questions or obtain further information.

This information should be available in a range of accessible formats.

Recommendation 7.29 Embed an 'open employment first' approach in the NDIS Participant Employment Strategy

Following the conclusion of the NDIS Participant Employment Strategy in 2023, the National Disability Insurance Scheme (NDIS) should adopt an 'open employment first' approach in the next iteration of the strategy. The strategy should:

- ensure the development of employment goals in participants' NDIS plans considers employment in open and integrated employment settings as a first option
- provide training for Local Area Coordinators, National Disability Insurance Agency planners and support coordinators to build knowledge, resources and capacity to encourage participants to –
 - develop employment goals in open and integrated employment settings as a first option
 - identify appropriate supports available to achieve open employment goals
- establish a target to increase the proportion of participants in open and integrated employment settings

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- build the knowledge and capacity of NDIS employment support providers to assist participants to –
 - transition from Australian Disability Enterprises to open and integrated employment settings
 - provide ongoing support in open and integrated employment settings.

Recommendation 7.30 Support the transition to inclusive employment

The Australian Government Department of Social Services should develop a plan to support people with disability working in Australian Disability Enterprises (ADEs) to move to inclusive, open employment options in a range of settings.

The plan should incorporate:

- the option for people with disability to continue working in ADEs, with strong and appropriate safeguards, if that is their free and informed choice. Commissioners Bennett, Galbally, Mason and McEwin provide a recommendation to phase out ADEs by 2034 (Recommendation 7.32). They support this element of Recommendation 7.30 until ADEs are phased out
- action to increase employment opportunities in open and inclusive settings for people with disability (linking with Recommendation 7.29)
- improved information for people with disability about employment supports, opportunities in other settings, wages and the Disability Support Pension (linking with Recommendation 7.28)
- active consultation with people with disability, Disability Representative Organisations and Disabled People's Organisations Australia, and the adoption of inclusive design principles in developing and implementing the plan
- the Australian Government working with industry to support people with disability to access more inclusive, open employment options and to transform their segregated employment services to a more comprehensive service offering
- improved collaboration between the National Disability Insurance Scheme and Disability Employment Services to ensure different employment services work cohesively to deliver supports for people with intellectual disability and others.

Raising subminimum wages

Recommendation 7.31 Raise subminimum wages

- a. The Australian Government should introduce a scheme to ensure that employees with disability are paid at least half the minimum wage. The scheme should include:
 - revision of the productivity-based wages calculation to accommodate the move to a new minimum amount of 50 per cent of the current minimum wage
 - a provision for the Australian Government to subsidise employers for the difference between the wages payable under the relevant award or enterprise agreement and the new minimum wage until 2034.
- b. A review of the scheme should be undertaken by the Disability Reform Ministerial Council after five years of operation.
- c. The Australian Government should use the results of the review to develop a model and pathway to lift minimum wages payable to employees with disability to 100 per cent of the minimum wage by 2034.

A roadmap for inclusive employment

Recommendation 7.32 End segregated employment by 2034

- a. Commissioners Bennett, Galbally, Mason and McEwin recommend the Australian Government Department of Social Services should develop and implement a National Inclusive Employment Roadmap to transform Australian Disability Enterprises (ADEs) and eliminate subminimum wages for people with disability by 2034.
- b. The National Inclusive Employment Roadmap should be centred on the following principles:
 - equal access for people with disability to all opportunities for employment, starting with the Australian Public Service and state and territory public services
 - increased availability of jobs for people with disability, especially in:
 - Australian and state and territory public services supported by the payment of full minimum wages to all employees, consistent with the public sector acting as a model employer. This recommendation would operate in advance of Recommendation 7.31 to raise all subminimum wages to the full minimum wage by 2034

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- non-government organisations that receive government grants
 - private companies that receive government procurement contracts
 - availability of evidence-based supports to facilitate job readiness, participation and ongoing development, particularly for people with intellectual disability
 - better pathways to work for people with disability
 - as set out in Recommendation 7.31, lifting wages to 50 per cent of the minimum wage, with all people with disability moving to the full minimum wage by 2034 (noting our expectation that the public sector, as a model employer, will pay full minimum wages to employees with disability before that time)
 - governance and accountability for system change.
- c. The National Inclusive Employment Roadmap should address:
- the reform of ADEs to operate in accordance with the social firm model, providing open workplaces in which employees with disability can receive support in an integrated setting to undertake work tasks, develop skills and transition to further open employment
 - the establishment of a grant-based Structural Adjustment Fund to support increases in the minimum wage and achieve transformation targets in ADEs
 - support for people with disability to transition to open employment through programs such as the School Leaver Employment Supports program.
- d. To support the National Inclusive Employment Roadmap as ADEs transform into social firms, government procurement rules should also be amended to give preference to enterprises that can demonstrate they provide employment opportunities to people with disability in open, inclusive and accessible settings and pay employees with disability at least the full minimum wage at the time of the procurement process (this recommendation would operate in advance of the general recommendation to raise all subminimum wages to the full minimum wage by 2034).
- e. The implementation of the National Inclusive Employment Roadmap should be monitored by the Disability Reform Ministerial Council.

Part C: Inclusive housing

Effective housing and disability policy frameworks

Recommendation 7.33 Prioritise people with disability in key national housing and homelessness approaches

- a. The Australian Government should, in collaboration with state and territory governments, expressly identify people with disability in key housing-related agreements and planning including the:
 - National Housing and Homelessness Agreement (NHHA), which should include people with disability as a priority group of housing and homelessness reforms
 - proposed National Housing and Homelessness Plan, which should include people with disability as a priority group, and include the measurement and evaluation of outcomes for people with disability
 - National Housing Supply and Affordability Council, which should include people with disability as a priority group in the development of housing supply and affordability policy advice, data collection and reporting.
- b. All state and territory governments should include people with disability in housing and homelessness strategies, policies and action plans developed under the NHHA. This should include people with disability as a priority group, and the monitoring and evaluation of implementation and outcomes for people with disability.

Recommendation 7.34 Include homelessness in Australia's Disability Strategy

The Australian Government should increase the focus on homelessness in Australia's Disability Strategy by:

- a. ensuring consultations concerning, and reviews of, Australia's Disability Strategy include people with disability at risk of experiencing homelessness and their representative organisations
- b. expressly including homelessness as a policy priority within the 'Inclusive Homes and Communities' key outcomes.

Housing accessibility

Recommendation 7.35 Increase the availability and supply of accessible and adaptive housing for people with disability through the National Construction Code

State and territory governments should commit to increasing the availability and supply of accessible and adaptive housing for people with disability by:

- a. immediately adopting the mandatory Australian Building Codes Board (ABCB) Livable Housing Design Standard for all new dwellings if they have not done so already, and developing a plan for the full implementation of the standard, including timeframes and outcomes measures
- b. adopting the voluntary ABCB Livable Housing Design Standard for all new social housing construction
- c. auditing the demand for, and accessibility of, current crisis housing (including domestic family violence shelters and refuges, and natural disaster crisis accommodation) to –
 - determine the appropriate amount, location and cost of crisis housing required to meet the needs of people with disability
 - set appropriate targets for new crisis housing construction and refurbishment that meet the voluntary ABCB Livable Housing Design Standard.

Recommendation 7.36 Improve social housing operational policy and processes

State and territory governments should develop and implement accessible and inclusive processes for allocating and modifying social housing for people with disability, including by:

- a. reviewing and amending application processes to:
 - identify whether applicants have a disability or accessibility needs, including those relating to communication, housing and access to community/support networks and services
 - put processes in place to update this information as needs change
- b. reviewing, amending and publishing (in accessible formats) housing allocation and 'reasonable offer' policies and procedures to ensure these can be easily understood and do not disadvantage people with disability seeking particular adjustments or modifications, or people who decline housing for accessibility reasons

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- c. reviewing, amending and publishing (in accessible formats) housing modification policies. The policies should clearly articulate who is responsible for organising and funding housing modifications, expected timeframes, and contacts for following up and raising concerns.

Tenancy and other forms of occupancy

Recommendation 7.37 Increase tenancy and occupancy protections for people with disability

States and territories should review legislation governing the tenancy and occupancy rights of people with disability and adopt the best regulatory and legislative models currently in force, including:

- a. in the case of tenancies –
- enacting legislation to replace landlords’ ‘no-grounds’ termination rights with ‘reasonable grounds’ as currently specified in Victoria, Queensland and Tasmania
 - for both social housing and private housing tenancies, where a tribunal has discretion whether or not to order termination of the tenancy or that the tenant give up possession, empowering the tribunal to take the tenant’s or a co-occupier’s disability and the nature of that disability into account.
- b. in the case of non-tenancy accommodation –
- adopting the provisions included in the *Residential Tenancies Act 1997* (Vic) Part 12A to protect residents of Specialist Disability Accommodation (SDA) under the National Disability Insurance Scheme
 - introducing ‘occupancy principles’ similar to those under the *Boarding Houses Act 2012* (NSW), to cover all non-SDA housing, such as assisted boarding houses in New South Wales and supported residential services in Victoria
 - extending these occupancy principles to cover ‘general boarding houses’ in New South Wales and unsupported boarding and rooming houses in other jurisdictions where many people with disability live. This reform should include conferring jurisdiction on the appropriate tribunal to resolve disputes, particularly in relation to eviction
 - in hearing disputes about eviction, tribunals be required when determining whether to make an eviction order to consider the occupant’s disability, the nature of that disability, the possibility of retaliatory eviction, and the likelihood of finding suitable alternative accommodation.

Safety in supported residential services and their equivalents

Recommendation 7.38 Minimum service standards and monitoring and oversight of supported residential services and their equivalents

This recommendation applies to state and territory government entities responsible for regulating privately operated and government-funded board and lodging-type supported accommodation services – including supported residential services (SRS) (in Victoria), assisted boarding houses (in New South Wales), Level 3 residential centres (Queensland), and supported residential facilities (SRF) (in South Australia). The entities should develop and implement minimum service and accommodation standards, strengthen oversight mechanisms, and increase service-level monitoring activities and compliance action, as follows:

- a. Minimum standards should require all SRS providers and their equivalents in other jurisdictions to –
 - develop support plans for each resident, covering personal care, financial management, medication management, and the use of restrictive practices
 - keep up-to-date records of how services are delivered in line with support plans, to allow regulatory bodies to more effectively monitor the quality of supports and services by regulatory bodies
 - establish clear complaint management processes, including how complaints are reported to the central registration body, and a feedback loop for residents, their family and advocates
 - guarantee access to independent advocacy services through advocacy organisations and community visitor schemes
 - support residents to access independent advocacy services focused on identifying alternative, longer term accommodation options in recognition of the transitional nature of these services.
- b. Monitoring and oversight mechanisms for SRS and their equivalents in other jurisdictions should –
 - require central registration for all SRS and equivalent services with the relevant state or territory department responsible for SRS standards require all SRS and their equivalents to undergo an initial audit when seeking registration, as well as ongoing audits (minimum yearly) for

monitoring and compliance with all minimum standards. Audits should include direct engagement with people with disability residing in SRS and their equivalents, and should be undertaken centrally by the responsible state or territory department

- establish procedures to monitor services in response to complaints and incidents, including when and how the relevant state or territory department will undertake investigations
 - establish compliance activities in response to audit results and investigations following complaints and incidents, including when registration will be impacted
 - include the specific rights of community visitor programs to attend and report on standards within SRS and their equivalents
 - be developed in consultation with other regulatory systems to identify and close regulatory gaps between schemes and settings including SRS, the National Disability Insurance Scheme, and in aged care and mental health services.
- c. Regulatory entities should have adequate powers to enforce all standards. Up-to-date records of infringements, enforcement action and remedies should be maintained centrally. The regulatory entities should notify substantiated infringements by providers to other oversight bodies with responsibilities for those providers, including the NDIS Quality and Safeguards Commission.
- d. States and territories should consider whether these recommendations should be implemented in relation to other forms of marginal accommodation for people with disability, including general boarding houses and caravan parks.

Preventing and responding to homelessness

Recommendation 7.39 Preventing homelessness when people with disability transition from service or institutional settings

The Australian Government (including the National Disability Insurance Agency (NDIA)) and state and territory governments should commit to a policy of 'no leaving into homelessness' for people with disability.

The Australian Government (including the NDIA) and state and territory governments should establish or nominate a lead agency with responsibility for planning and coordinating the transition of people with disability from service or institutional settings (including health services, mental health services, correctional facilities, and out-of-home care) directly into safe and appropriate housing.

The lead agency should be the NDIA when the person is a National Disability Insurance Scheme (NDIS) participant (consistent with the role of the NDIS under Applied Principles and Tables of Support). If the person is not an NDIS participant, the lead agency should be the agency responsible for the service or institutional setting at the time the person leaves.

The role of the lead agency should include:

- developing and implementing individual plans for people with disability leaving service or institutional settings to identify housing, services and supports for a successful transition into secure housing
- ensuring supports can be put in place before a person with disability leaves the service or institutional setting
- coordinating the implementation of the plan until the person with disability has successfully transitioned to safe and appropriate housing.

Recommendation 7.40 Address homelessness for people with disability in the National Housing and Homelessness Plan

In developing the National Housing and Homelessness Plan, the Australian Government, working with state and territory governments, should:

- a. identify people with disability, particularly people with intellectual disability or cognitive impairment, as a discrete cohort or cohorts for intensive homelessness support, recognising their needs, circumstances and diversity
- b. review the adequacy of funding for homelessness, with particular regard to the cost of providing more intensive homelessness support for people with disability and complex needs, and current levels of unmet demand
- c. expand pathways and support for people with disability out of homelessness, including through Housing First programs
- d. consider establishing free, independent legal advice and advocacy services for people with disability experiencing homelessness to help them navigate the different homelessness supports to which they are entitled at state or territory and Australian Government levels.

Improving group homes

Recommendation 7.41 Group home reform

The NDIS Quality and Safeguards Commission should prioritise the implementation of the Own Motion Inquiry into Aspects of Supported Accommodation – Action Plan (the Action Plan) and expand actions to include:

- a. a specific review of mechanisms to transition away from allowing the same provider to provide Supported Independent Living and Specialist Disability Accommodation services, with interim arrangements to strengthen oversight to address and monitor conflicts of interest (under Action 8)
- b. strengthening how disability providers implement models of practice, such as Active Supports, to ensure that people with disability living in group homes are actively supported to have opportunities for greater social interaction and community participation and inclusion (under Action 2)
- c. developing an implementation plan for the Action Plan, with –
 - explicit timeframes for delivery
 - annual reporting on progress and outcomes to the Disability Reform Ministerial Council.

Access to alternative housing options

Recommendation 7.42 Improve access to alternative housing options

The National Disability Insurance Agency (NDIA) should work with the Australian Government, and state and territory governments, to expand alternative housing options and support for people with disability to access and transition to these options through a proactive market enablement strategy. This should include:

- a. an increase in innovative housing options, such as by –
 - expanding the NDIA Home and Living Demonstration Projects with additional rounds from 2024. These rounds should –
 - focus on exploring diverse market mechanisms for sustainable housing models
 - include ongoing extensive and independent evaluation and dissemination of emerging best practice to help bring new models to scale
 - establishing a policy unit to co-design, guide and influence the development and implementation of more contemporary accommodation models

- conducting comprehensive market research to assess market demand and understand National Disability Insurance Scheme (NDIS) participants' housing preferences to inform state and local governments, housing authorities and developers, and drive innovation.
- b. reform of NDIS participant funding models, including Supported Independent Living, Specialist Disability Accommodation and Individualised Living Options to provide greater flexibility. In particular, this flexibility should ensure that administrative and pricing mechanisms do not favour group home living over other models of inclusive housing.
- c. development of clear and supportive transition pathways that provide access to advice, advocacy and support for people with disability to understand and explore their housing options, make decisions about transitioning to the housing of their choice, and receive support for that transition. This should include –
- an individualised assessment of a person's housing needs and preferences, with the option for this to be regularly updated
 - an update of a person's NDIS plan to include specific support, including capacity building to support the decision to transition to more independent living
 - where a person is interested in changing housing, the development of an individual transition plan that identifies current available and emerging alternative housing options, beyond the offerings of their current provider
 - access to independent advocacy and an independent support coordinator to provide support for and facilitate the transition.
- d. prioritisation of the implementation of the NDIA Home and Living Framework, including –
- establishing explicit timeframes for its implementation that recognise the urgency of these reforms, in relation to realising the rights of people with disability under the *Convention on the Rights of Persons with Disabilities*
 - continuing work with the disability community to identify key outcomes and measures, and developing a comprehensive monitoring and evaluation plan to measure and report on progress
 - ensuring the chosen approaches address the key elements set out above in this recommendation, including –
 - providing a dedicated pathway for participants with a current or anticipated high need for home and living supports
 - ensuring participants taking this pathway have appropriate and timely support to explore and design individualised home and living solutions that work for them.

Phasing out group homes

Recommendation 7.43 A roadmap to phase out group homes within 15 years

Commissioners Bennett, Galbally, Mason and McEwin recommend the Australian Government and state and territory governments develop and implement a comprehensive roadmap to phase out group homes within the next 15 years. This roadmap should address delivering inclusive housing supply to meet demand, transition support for people with disability, and implementation planning for phasing out group homes. It should include:

- a. delivery of inclusive housing supply to meet demand, by –
 - undertaking a comprehensive assessment of existing service demand (including people with disability who are currently living in group homes and current unmet needs) and projected service demand (forecasted demand for supported accommodation over the next 30 years)
 - assessing projected supply of alternative housing to inform planning for the transition of people out of group homes, including conducting a stocktake of existing disability housing assets that may be repurposed or used to increase the supply of inclusive housing
 - piloting alternative housing models with increased investment to roll out successful models in line with supply and demand modelling to meet future housing needs for people with disability (see also Recommendation 7.42).
- b. a review of the current Specialist Disability Accommodation (SDA) Pricing and Payments Framework to ensure it remains fit for purpose, focusing on ensuring that –
 - a data-driven approach is used to direct investment where it has the greatest benefit for participants and the National Disability Insurance Scheme (NDIS)
 - NDIS funding for specialist accommodation is directed to those participants with significant functional impairment or high support needs for whom specialised housing would deliver a measurable benefit
 - the needs of people with disability for affordable and accessible housing are prioritised by state and territory governments
 - prices are set to encourage development of best practice examples of SDA.
- c. transition support for people currently living in group homes, including through –
 - a transition pathway that provides access to advice, advocacy and support for people with disability to understand and explore their housing options, make decisions about transitioning to the housing of their choice, and receive support for that transition (see also Recommendation 7.42)

- interim improvements in group home oversight and practices to ensure that people with disability living in group homes are safe and have greater choice and control during this transition period (see also Recommendation 7.41)
 - grandfathering arrangements for those people who wish to stay in their group home, including consideration of additional financial support to maintain financially viable group home arrangements where necessary
- d. implementation planning undertaken through co-design with people with disability and the disability community, including –
- a specific timeframe for ceasing construction of any new group homes (within the next two years)
 - a specific timeframe for ceasing placement of new residents in group homes (within five years)
 - a specific timeframe for completing transition of those residents who wish to move from group homes to alternative housing options (within 15 years)
 - development of an outcomes-based evaluation framework, tool and processes to track short-, medium- and long-term outcomes across the roadmap, and build an understanding of emerging best practice.

Recommendation 7.44 A roadmap to phase out group homes over a generational timeframe

Commissioner Ryan recommends the Australian Government and state and territory governments commit to phasing out group homes in stages. This commitment should include:

- a. immediate commitments to reduce the reliance on group homes, including –
- not approving new four- to six-bedroom group home models for Specialist Disability Accommodation
 - only allowing new National Disability Insurance Scheme participants to enter group home accommodation as a last resort
 - prioritising moving existing residents of group homes to move into smaller groups over time on request, subject to need
- b. development of a staged approach to phasing out group homes, including consideration of housing availability, transition logistics and financial impacts.

Annual progress and outcomes should be reported to the Disability Reform Ministerial Council.

Volume 8, Criminal justice and people with disability

The right to humane treatment in criminal justice settings

Recommendation 8.1 Conditions in custody for people with disability

State and territory governments should uphold the rights of people with disability who are in custody. Consistent with article 14 of the *Convention on the Rights of Persons with Disabilities*, all corrective service and youth justice agencies should provide people with disability with the disability supports they require to place them in the same position, so far as feasible, as other people in custody.

Recommendation 8.2 Disability awareness in *OPCAT* monitoring

In implementing the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, the Australian Government, in consultation with the state and territory governments, should support the development of a human rights education and training strategy that includes disability awareness training for National Preventive Mechanisms (NPMs), detention authorities and their staff. NPMs should:

- engage with disability organisations about the needs of people with disability in places of detention
- obtain training and education for their staff on the types of disability and needs of people with disability in places of detention, including the impact of intersectional disadvantage
- obtain the views of people with disability in places of detention by directly engaging with them about their experiences in places of detention
- have effective mechanisms for obtaining the views of people with disability in places of detention.

Children with disability in youth detention

Recommendation 8.3 Prohibiting solitary confinement in youth detention

States and territories should:

- a. introduce legislation to prohibit solitary confinement in youth justice settings (being the enforced isolation or segregation for any purpose of a child or young person for 22 or more hours in any day)

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- b. introduce legislation to prohibit the use of isolation (however described) in youth detention centres as punishment in any circumstance
 - c. review legislation, policy and procedures to ensure children with disability are not subjected to isolation practices amounting to solitary confinement
 - d. ensure legislation authorising isolation (including lockdowns) in youth detention centres provides for its use:
 - as a temporary response to behaviour that poses a serious and immediate risk of harm to an individual
 - as a last resort after all other measures to address risk have been exhausted
 - for a period that must not exceed a specified number of hours in any day
 - e. ensure legislation authorising isolation (including lockdowns) in youth detention centres provides at a minimum the following protections for children with disability:
 - a requirement to take into account the child's disability needs before any isolation period is authorised
 - meaningful human contact during the period of isolation
 - access to the community equivalent standard of health care, including mental health services during the period of isolation
 - regular review of the order and circumstances authorising isolation
 - the creation and keeping of detailed records relevant to the period of isolation and the provision of a copy of such records to the relevant body with independent oversight of places of detention (such as the Inspector of Custodial Services).

Recommendation 8.4 Screening and assessment for disability in youth detention

State and territory governments should ensure timely screening and expert assessment are available for individual children with cognitive disability involved in the criminal justice system (including, but not limited to, detention settings) and that they receive appropriate responses, including therapeutic and other interventions.

Recommendation 8.5 Disability training for staff in youth detention

State and territory governments should ensure staff and officials in youth detention centres at all levels receive appropriate initial and ongoing training and support in relation to the needs and experiences of children with disability. This includes training and support on trauma-informed care and culturally appropriate and gender responsive approaches to children with disability in detention.

Recommendation 8.6 Western Australia youth detention staff retention

The Department of Justice of Western Australia should immediately review its youth justice staffing and recruitment model to ensure sufficient, suitably trained staff are available to supervise children and young people to minimise lockdowns and prevent the solitary confinement of detainees. This should include developing and implementing a recruitment and retention strategy that:

- addresses high staff attrition rates in youth detention
- promotes representation at senior management level of staff with disability and First Nations backgrounds
- includes measures to help staff access mental health support.

Recommendation 8.7 Western Australia youth detention operating philosophy

The Department of Justice of Western Australia (through the Corrective Services Division) should:

- immediately cease confinement practices at youth detention centres amounting to solitary confinement of children with disability
- ensure decisions leading to the isolation of children with disability are made in conformity with legal requirements
- implement a new operating philosophy and service model to manage detainees with disability in a therapeutic, non-punitive, non-adversarial, trauma-informed and culturally competent way
- ensure the operating philosophy and implementation plan are developed in conjunction with people with disability and First Nations people
- release a clear timeline for publication of its new operating philosophy and service model for youth detention in Western Australia and the associated implementation plan
- raise awareness at every level of staff in the youth detention centres concerning the support needs of people with cognitive disability and foster respect for the rights of people with disability
- ensure lawyers representing detained clients are allowed adequate time and assured of confidentiality at youth detention centres to take instructions, especially where their clients have cognitive disability.

Recommendation 8.8 *Inspector of Custodial Services Act 2003 (WA)*

The Western Australian Government should introduce and support legislation amending the *Inspector of Custodial Services Act 2003 (WA)* to provide the Inspector with a discretion to demand a response from the department or other relevant agency, within a specified time, to recommendations of the Inspector included in a report to Parliament. This should include the steps (if any) taken by the agency in response to the recommendations and an explanation of why steps have not been taken (if that be the case).

The rights of people found unfit to be tried and indefinite detention

Recommendation 8.9 Use of seclusion in New South Wales Justice Health and Forensic Mental Health Network

The New South Wales Government should review existing policy regarding the use of seclusion for adults with cognitive disability in the Justice Health and Forensic Mental Health Network, including the use of clearly designated authorisation and mandatory clinical and administrative review.

Recommendation 8.10 Transition from custodial supervision in the Northern Territory

The Northern Territory Government should provide supported step-down accommodation in community-based settings for people with disability subject to custodial supervision orders.

Recommendation 8.11 Information for courts and legal practitioners

The Commonwealth, state and territory criminal justice systems should provide information about seeking or making adjustments and supports and services for people with disability, and the circumstances in which they may be required. This information should be made available to judicial officers, legal practitioners and court staff, including through practice notes or bench books.

Recommendation 8.12 Implementation of the *National Principles*

The Australian Government, together with state and territory governments, should review the *National Statement of Principles Relating to Persons Unfit to Plead or Not Guilty by Reason of Cognitive or Mental Health Impairment (National Principles)* through the Standing Council of Attorneys-General.

The *National Principles* should be revised to include the following:

- Indefinite detention is unacceptable and laws providing for it should be repealed.
- Where an order for detention is made, there should be a maximum term of detention nominated beyond which the person cannot be detained (a 'limiting term').
- The limiting term should not exceed the court's assessment of the sentence it would have imposed on the defendant had the person been found guilty of the offence in an ordinary trial of criminal proceedings.
- In hearings conducted to determine a person's fitness to stand trial or to plead, the court must consider whether it can modify the trial process or ensure assistance is provided to facilitate the defendant's understanding and effective participation in the proceedings. This includes any cultural or other trauma-informed supports a First Nations defendant may need to ensure the defendant can participate in a fair trial and understand the proceedings.

The Standing Council of Attorneys-General should agree to a timetable for implementation of reforms identified in the review of the *National Principles*.

The Commonwealth, states and territories should amend their legislation on fitness to stand trial to align with the revised *National Principles*.

The Australian Government, and state and territory governments, should build their capacity to provide step-down options, including medium and low secure and community-based accommodation options, for the placement of people in the forensic system to facilitate their progressive transition to less restrictive environments.

Recommendation 8.13 Data about people detained in forensic systems

The Australian Government and state and territory governments should support legislation requiring the annual collection and publication of data relating to people found unfit to plead or not guilty by reason of cognitive or mental health impairment. The data collected should include:

- the number of people under forensic orders in their jurisdiction
- the number of people under orders for detention and the numbers subject to:
 - indefinite periods of detention
 - limiting terms (or equivalent)
 - orders extending their order for detention
- the number of people under orders for detention by sex, disability, disability type and First Nations status

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- the number of such people detained in:
 - an adult correctional facility
 - a youth detention facility
 - a forensic mental health or forensic disability facility
 - a general psychiatric unit.

Screening, assessing and identifying disability in custody

Recommendation 8.14 National practice guidelines for screening in custody

State and territory corrective services, youth justice agencies and justice health agencies, through the Corrective Services Administration Council and equivalent youth justice bodies, should develop national practice guidelines and policies relating to screening for disability and identification of support needs in custody. People with disability, including with lived experience of the criminal justice system, and people with expertise in cognitive disability should be involved in the design of the guidelines and contribute to the approaches to implementation. The guidelines and policies should:

- explain the essential elements of screening and assessment for people with disability, including a trauma-informed approach to identifying disability and the person's needs
- reduce reliance upon self-disclosure as the primary means of disability identification following admission of a person with disability to custody
- require screening upon reception into custody or shortly thereafter both for prisoners and detainees who have been sentenced and for those on remand
- promote the consistent collection of data and its use to inform system-wide responses
- encourage the development and use of culturally safe disability screening tools that address the particular needs of First Nations people with disability
- encourage the development and use of disability screening tools that are culturally appropriate for people with disability from culturally and linguistically diverse communities
- encourage investment in initial and ongoing training, education and support of staff about disability identification and awareness
- encourage collaborative practices including the engagement of clinicians to conduct assessments to identify the support needs of a person with disability in custody

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- require the identification of a disability or impairment to be matched with appropriate support while in custody
 - promote the use of screening outcomes to develop plans for prisoners and detainees transitioning to the community
 - contribute to appropriate information sharing among agencies including court-based assessments and reports.

Recommendation 8.15 Policies and practices on screening, identifying and diagnosing disability in custody

State and territory governments should ensure that policies and practices concerning screening, identification and diagnosis of disability in respect of people with disability in custody are consistent with the national practice guidelines.

Recommendation 8.16 Support by First Nations organisations to people in custody

State and territory corrective service and youth justice agencies and justice health agencies should engage First Nations organisations, including Aboriginal Community Controlled Health Organisations, to provide culturally safe disability screening and assessment services for First Nations prisoners and detainees.

The NDIS and criminal justice interface

Recommendation 8.17 NDIS Applied Principles and Tables of Support concerning the justice system

Through the Disability Reform Ministerial Council, the Australian Government and state and territory governments should:

- review the *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Cth) and the Applied Principles and Tables of Support (APTOS) and operational guidelines to align and provide clear parameters in determining which supports will be funded by the National Disability Insurance Scheme (NDIS) for participants involved in the criminal justice system
- resolve issues related to the interface between the NDIS and the criminal justice system, particularly the distinction between ‘criminogenic-related supports’ and ‘disability-related supports’
- where such issues cannot be resolved, agree on a mechanism for joint-funding of individual supports.

Proposed amendments to the *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Cth) and the APTOS should be agreed by National Cabinet.

Recommendation 8.18 Timing of NDIA-funded transition supports

The National Disability Insurance Agency (NDIA) should issue guidelines stating expressly that a release date is not a precondition for approving funding for transitional supports for participants in custody. The NDIA's Justice Operational Guidelines and internal practice guides should be amended to make this clear.

Police responses to people with disability

Recommendation 8.19 Amendment of the *Disability Discrimination Act 1992* (Cth) to cover police provision of 'services'

The *Disability Discrimination Act 1992* (Cth) should be amended to expressly include 'services provided by police officers in the course of performing policing duties and powers' in the definition of 'services' in section 4.

Recommendation 8.20 Improving police responses to people with disability

The Australian Government and state and territory governments and police services should collaborate with people with disability in the co-design, implementation and evaluation of strategies to improve police responses to people with disability.

All police services should introduce adequate numbers of dedicated disability liaison officers.

The Australian Government and state and territory governments should introduce an alternative reporting pathway for people with disability to report crimes to police.

Diversion from the criminal justice system

Recommendation 8.21 Diversion of people with cognitive disability from criminal proceedings

The New South Wales, South Australian, Victorian and Western Australian governments should review and fund their existing court-based diversion programs for people with cognitive disability charged with offences that can be heard in local or magistrates' courts to ensure the programs:

- are accessible and culturally appropriate, particularly in regional and remote areas

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- provide support for defendants to access the National Disability Insurance Scheme (NDIS)
 - satisfy service needs, including connecting defendants to appropriate education, housing, employment and other services.

The Australian Capital Territory, Northern Territory, Queensland and Tasmanian governments should develop and fund court-based diversion programs for people with disability charged with summary offences in local or magistrates' courts which:

- are accessible and culturally appropriate, particularly in regional and remote areas
- provide support for defendants to access the NDIS
- satisfy service needs, including connecting defendants to appropriate education, housing, employment and other services.

All states and territories should commission independent evaluations of their diversion programs. Any evaluation should assess and, where feasible, quantify economic and social benefits for both individual defendants and the community as a whole.

Raising the age of criminal responsibility

Recommendation 8.22 Age of criminal responsibility

States and territories that have not already done so should introduce legislation to raise the minimum age of criminal responsibility to 14.

Recommendation 8.23 Action plan to end violence against women and children with disability

The Australian Government and state and territory governments should develop a five-year Action Plan for Women and Children with Disability to accompany the National Plan to End Violence against Women and Children 2022–2032. The Action Plan should:

- be developed by and for women with disability
- prioritise cohorts at greatest risk of violence
- coordinate with other relevant plans and strategies, in particular the forthcoming Aboriginal and Torres Strait Islander Action Plan and Australia's Disability Strategy 2021–2031.

The Action Plan should include comprehensive actions and investment to address violence experienced by women and children with disability across the focus areas of:

- prevention
- early intervention
- response
- recovery and healing.

Recommendation 8.24 Disability-inclusive definition of family and domestic violence

In working towards nationally consistent, inclusive definitions of gender-based violence under the National Plan to End Violence against Women and Children 2022–2032, states and territories should amend their legislative definitions of family and domestic violence to include:

- all relationships in which people with disability experience family and domestic violence, including but not limited to carer and support worker relationships
- disability-based violence and abuse
- all domestic settings, including but not limited to supported accommodation such as group homes, respite centres and boarding houses.

The *Family Law Act 1975* (Cth) and any relevant state and territory laws should also be amended consistently with this recommendation.

Volume 9, First Nations people with disability

Child protection

Recommendation 9.1 Culturally appropriate parenting capacity assessments

State and territory governments should work with First Nations child protection services, peak bodies and First Nations people with disability to co-design clear principles and guidelines for parenting capacity assessments for First Nations parents with disability in their jurisdiction, to ensure assessments are culturally appropriate. The principles and guidelines should include:

- best practice standards of cultural competence for practitioners conducting parenting capacity assessments of First Nations parents with disability

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- guidance to assist practitioners conducting parenting capacity assessments of First Nations parents with disability to identify and address assessment test errors that may result from an insufficient understanding of how cultural factors affect assessments of parenting capacity
 - a requirement that practitioners conducting parenting capacity assessments of First Nations parents with disability complete mandatory training to implement best practice standards of cultural competence, using testing tools that are culturally appropriate and disability appropriate
 - establishing a review process to ensure the design and implementation of these standards is consistent across states and territories.

Recommendation 9.2 Ages and Stages Questionnaire-Talking about Raising Aboriginal Kids (ASQ-TRAK)

State and territory governments should ensure all First Nations children up to five years of age coming into out-of-home care are screened using the culturally adapted developmental screening Ages and Stages Questionnaire-Talking about Raising Aboriginal Kids (ASQ-TRAK) tool. Children who are vulnerable in two or more of the five domains of communication, gross motor, fine motor, problem solving, and personal-social should be supported by an application for an Early Childhood Early Intervention plan.

Cultural safety in criminal justice settings

Recommendation 9.3 Cultural safety of First Nations people in criminal justice settings

By the end of 2024, state and territory governments should review the effectiveness of their strategies, if any, directed to providing and ensuring the cultural safety of First Nations people with disability in criminal justice settings and in doing so take into consideration what the Royal Commission has heard about that issue.

The review findings and recommendations should be made public.

The unmet potential of the NDIS for First Nations people with disability

Recommendation 9.4 Expand community connector programs

The National Disability Insurance Agency should increase the number and coverage of the community connector programs for First Nations people with disability in remote areas. The implementation of the programs should be community-led and delivered. This expansion must be accompanied by adequate long-term funding for the programs and organisations delivering the programs, with sufficient training for staff delivering the programs.

In regions where English is not the preferred language for First Nations people, the programs should focus on recruiting staff who speak local languages.

A community-based approach and alternative funding models

Recommendation 9.5 Block funding the community-controlled sector

The National Disability Insurance Agency (NDIA) should provide block funding for First Nations Community Controlled Organisations to flexibly deliver supports and services to First Nations people with disability. This could include funding for:

- respite or accommodation in connection with their plan or disability services
- cultural supports to maintain or improve health and wellbeing
- essential supports such as food, bedding and clothing
- supports that enable access to therapy, such as transport and fuel
- translation or other services to build understanding around disability and the National Disability Insurance Scheme
- other matters as agreed by the NDIA and First Nations Community Controlled Organisations.

Recommendation 9.6 National Disability Insurance Agency Board

Section 127 of the *National Disability Insurance Scheme Act 2013* (Cth) should be amended to provide that the National Disability Insurance Agency Board must include at least one First Nations person at all times.

Recommendation 9.7 Participation in cultural life

Sections 3, 4 and 17A of the *National Disability Insurance Scheme Act 2013* (Cth) should be amended to refer to participation in cultural life, in addition to participation in social and economic life.

Recommendation 9.8 Return to Country

In consultation with the First Nations Advisory Council, the National Disability Insurance Agency (NDIA) should:

- create a new line item in the Pricing Arrangements recognising cultural supports and return to Country trips
- develop guidelines for NDIA staff on including cultural supports and return to Country trips as reasonable and necessary supports in plans
- educate First Nations participants about the availability of cultural supports and return to Country trips included in their plans.

Recommendation 9.9 Criteria for funding family supports

The National Disability Insurance Agency (NDIA), the First Nations Advisory Council and First Nations Community Controlled Organisations should co-design policy guidelines on funding for First Nations family members to provide supports to participants in remote communities. Any policy guidelines should consider:

- the risk of financial exploitation, the need for a regulatory framework and oversight, and whether a similar approach would apply to non-First Nations carers in remote communities in similar situations
- the availability of suitable services, including culturally safe services
- training for NDIA staff on how to apply the policy guidelines, including how staff can support family to apply to be paid for the care provided
- building awareness of the circumstances in which participants and their families can apply to be paid
- how to build the capacity of family and community members to become part of the local workforce, such as trained support or community workers, which may include connecting family members with a First Nations Community Controlled Organisation.

Elevating First Nations disability policy

Recommendation 9.10 First Nations Disability Forum

The Australian Government and state and territory governments should support the establishment of a First Nations Disability Forum to lead further development and implementation of the Disability Sector Strengthening Plan (DSSP) by the end of March 2024. The Forum should consist of representatives of:

- First Peoples Disability Network
- First Nations Community Controlled Organisations
- both Aboriginal and Torres Strait Islander peak bodies
- First Nations people with disability.

The Forum should be supported by a First Nations disability investment fund, with the purpose of:

- supporting the operation of, and participation in, the Forum
- implementing the DSSP
- developing the First Nations Disability Workforce.

The Forum should have the capacity to direct funding under the DSSP to:

- enable First Nations people with disability to provide advice and guidance from their lived experience to the Forum
- enable community-controlled organisations to develop their capacity to design and deliver disability-specific services and supports
- enable community-controlled organisations to work with other organisations to drive national leadership in disability policy and services reform
- enable community-controlled organisations to deliver on specific priority areas as identified in the DSSP
- enable the participation of community-controlled organisations not engaged in the Coalition of Aboriginal Peaks process
- support First Nations community-based organisations across the health, criminal justice and early childhood sectors to improve workforce disability competency to ensure First Nations people with disability receive appropriate disability support
- take into consideration the recommendations of the Royal Commission.

The Forum should develop and implement a strategy, supported by the First Nations disability investment fund, to build disability-specific expertise into First Nations Community Controlled Organisations.

Recommendation 9.11 Building on the Disability Sector Strengthening Plan

Parties to the National Agreement on Closing the Gap should commit to releasing a revised Disability Sector Strengthening Plan (DSSP) in partnership with the First Nations Disability Forum by the end September of 2024. The revised DSSP should have:

- agreed priority areas, determined through consultation with the community-controlled sector under the guidance of First People's Disability Network
- a commitment to future funding and longer timeframes
- agreed timeframes for delivering actions and achieving outcomes
- annual reporting requirements for government parties to the National Agreement on Closing the Gap.

Ensuring culturally safe and responsive services

Recommendation 9.12 Disability-inclusive cultural safety standards

The Australian Government in partnership with the First Nations Disability Forum should develop disability-inclusive cultural safety standards for the provision of services for First Nations people with disability.

Disability service providers that support and have a responsibility for First Nations people with disability, including in the health, criminal justice and early childhood sectors, should incorporate these disability-inclusive cultural safety standards in their practices and organisations.

Growing the First Nations disability workforce

Recommendation 9.13 Remote workforce development

The First Nations Disability Forum and parties to the Disability Sector Strengthening Plan (DSSP) should collaborate to develop a strategy to develop First Nations local workforces in remote communities. The strategy should consider:

- funding for community-level assessments to determine:
 - existing infrastructure and resources
 - the capacity and willingness of the First Nations community-controlled sector to support local workforce development
 - the level of demand within the community

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- that allocation of funding for local workforce development should include funding to build the capacity of family members to provide care
 - the strategy should be co-developed and co-implemented with First Nations Community Controlled Organisations, noting their capacity, expertise and willingness to be involved. The involvement of First Nations Community Controlled Organisations must be adequately supported and funded.

Volume 10, Disability services

Part A: Disability service providers

Embedding human rights in the design and delivery of disability services

Recommendation 10.1 Embedding human rights

The NDIS Quality and Safeguards Commission (NDIS Commission) should commission a capacity-building program to support disability service providers to embed human rights in the design and delivery of their services. The program should be co-designed with people with disability, disabled people's organisations, disability representative organisations including member-led First Nations Community Controlled Organisations, and peak bodies.

The program should:

- develop opportunities for dialogue between providers and people with disability to address challenges and share promising practices
- develop tools, resources and training packages that reflect the diversity of people with disability and disability service providers across Australia
- focus on practical, implementable strategies that lead to better outcomes for people with disability
- be grounded in the principles of the *Convention on the Rights of Persons with Disabilities*, and reflect our findings, the NDIS Review, and the NDIS Commission's own motion inquiries and recent Safeguarding Policy Implementation Plan
- enable providers to prepare for, or demonstrate compliance with, current and future legislative and registration requirements associated with the rights of people with disability. This includes responsibilities under the *Disability Discrimination Act 1992* (Cth) and the Disability Rights Act (if enacted).

The National Disability Insurance Agency, and state and territory governments involved in providing, regulating or conducting oversight of disability services not funded under the National Disability Insurance Scheme, should actively participate in all stages of the program.

The program should begin by 1 July 2025.

The role of support coordinators and independent advocates

Recommendation 10.2 Independent support coordination

To address potential conflicts of interest, the Minister for the National Disability Insurance Scheme (NDIS) should, in consultation with states and territories, create or amend an NDIS Rule to make clear that it is not appropriate for a provider of support coordination to be the provider of any other funded supports in an NDIS participant's plan.

Exceptions to the Rule should be developed in consultation with people with disability, disabled people's organisations, disability representative organisations including member-led First Nations Community Controlled Organisations, and peak bodies.

Exceptions may include situations where there are limited alternative service options for NDIS participants due to thin disability service markets, or where there are limited culturally appropriate or specialised services available.

Recommendation 10.3 Adequate support coordination

The National Disability Insurance Agency should ensure that participants in the National Disability Insurance Scheme (NDIS) identified as being at heightened risk of violence, abuse, neglect or exploitation, particularly those living in supported accommodation, have funding for support coordination included in their NDIS plans.

Funding for support coordination should reflect the NDIS participant's support and communication needs. Funding for hours of support coordination should also be sufficient to facilitate face-to-face contact at least monthly.

NDIS participant plans should be updated by 30 September 2025.

Recommendation 10.4 Quality of support coordination

The NDIS Quality and Safeguards Commission should examine the quality and consistency of support coordination, with a particular focus on National Disability Insurance Scheme participants who:

- live in remote and very remote locations
- are First Nations people with disability
- are culturally and linguistically diverse
- are navigating state or territory housing, health or criminal justice systems
- are experiencing housing insecurity or homelessness
- are living in supported accommodation
- are attending day programs or working in Australian Disability Enterprises.

The examination may be part of the proposed own motion inquiry on support coordination.

Recommendation 10.5 Advocacy

- a. The National Disability Insurance Agency (NDIA) should develop a program to connect National Disability Insurance Scheme (NDIS) participants living in supported accommodation with an appropriate disability advocacy organisation. The program should be co-designed with people with disability, disabled people's organisations, disability representative organisations including member-led First Nations Community Controlled Organisations, and peak bodies.

The program should:

- promote advocacy in the course of NDIS planning processes
- increase awareness of the role of advocacy in disability services among NDIS participants and their families and supporters
- strengthen advocacy referral processes when participants and their families and supporters raise concerns, make complaints or report incidents
- foster relationships between NDIS participants, their families and supporters, and disability advocacy organisations
- strengthen collaboration between disability service providers and disability advocacy organisations to enable advocates to maintain periodic contact with people with disability so they can identify potential or emerging issues.

The program should commence by January 2025.

Following an evaluation of the program's impact and outcomes, the NDIA should consider expanding the program to reach other groups of people with disability who are identified as being at heightened risk of violence, abuse, neglect or exploitation.

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- b. The NDIS Quality and Safeguards Commission, when reviewing complaints and reportable incidents, should also actively promote the value of independent advocacy for NDIS participants identified as being at heightened risk of violence, abuse, neglect or exploitation, and/or those who live in supported accommodation.

Choice and control over how services are delivered

Recommendation 10.6 Supported decision-making in disability services

The NDIS Quality and Safeguards Commissioner should amend the *National Disability Insurance Scheme (Quality Indicators for NDIS Practice Standards) Guidelines 2018* (Cth) to reflect that each participant:

- is entitled to support to make everyday life decisions including what services they receive, in what way and from whom
- has opportunities to make decisions about their goals and aspirations
- is supported to develop their decision-making skills
- is supported to communicate their will and preferences
- has the right to choose their own supporter.

Amendments should be completed by 30 June 2025.

Recommendation 10.7 Practical guidance on supported decision-making

The NDIS Quality and Safeguards Commission should co-design – with people with disability, disabled people’s organisations, disability representative organisations including member-led First Nations Community Controlled Organisations, and peak bodies – a practice guide on supported decision-making for service providers. This should be consistent with the NDIS Supported Decision Making Policy and the supported decision-making principles outlined in Recommendation 6.6.

Encouraging workers to enter and remain in the disability support sector

Recommendation 10.8 A national disability support worker registration scheme

The Australian Government should establish a national disability support worker registration scheme by 1 July 2028.

Consultation about the scope and elements of the national disability support worker registration scheme should begin as soon as possible. The consultations should include people with disability, disabled people's organisations, disability representative organisations including member-led First Nations Community Controlled Organisations, support workers and their representative bodies, disability service providers, state and territory governments, and peak and regulatory bodies.

The design of the scheme should consider:

- the definition of 'disability support worker'
- a code of conduct and minimum standards for registered disability support workers, including support coordinators
- mandating the NDIS Worker Screening Check for all disability support workers
- recognition and accreditation of workers' qualifications, experience, capabilities and skills
- continuing professional development requirements for disability support workers
- automatic registration for disability support workers who are registered with other relevant professional bodies
- a First Nations workforce pathway to address barriers to First Nations workers entering the sector
- an accessible portal to enable people with disability and their supporters to view the profiles and registration status of disability support workers
- portable training and leave entitlements.

Recommendation 10.9 The Social, Community, Home Care and Disability Services Industry Award

Organisations entitled to represent the industrial interests of members of the disability support workforce covered by the Social, Community, Home Care and Disability Services (SCHADS) Industry Award 2010, along with the Australian Government and employers, should consider a joint application to vary the modern award in accordance with section 158 of the *Fair Work Act 2009* (Cth).

This would seek to ensure equal remuneration of workers for work of equal or comparable value in accordance with section 302 of the *Fair Work Act 2009* (Cth), paying particular attention to employers' continued use of Schedule E and the 'work value' of contemporary disability support work.

Provider of last resort scheme

Recommendation 10.10 Provider of last resort

The Australian Government should urgently engage with state and territory governments about funding and arrangements for a provider of last resort scheme. It should also consult with people with disability, disabled people's organisations, disability representative organisations including member-led First Nations Community Controlled Organisations, and peak bodies about how such a scheme could operate.

The scheme should be designed to address:

- failed or thin markets, particularly for First Nations people with disability in remote or very remote areas, and consider the use of block funding to guarantee service provision in those communities
- access to services for:
 - people in crisis situations
 - people at risk of losing their accommodation and disability services
 - people whose needs cannot be adequately met by existing services
- access to case management for people with disability at heightened risk of violence, abuse, neglect or exploitation
- clarity about which agency has the lead coordinating role.

The Australian Government should put forward a proposal for discussion to the Disability Reform Ministers Council in 2024.

Part B: NDIS Quality and Safeguards Commission

Improving oversight processes

Recommendation 10.11 Internal procedures for monitoring reportable incidents

The NDIS Quality and Safeguards Commission should improve its internal procedures for monitoring reportable incidents, paying particular attention to:

- a. communicating feedback about the quality of providers' handling of incidents
- b. seeking clarification from providers, National Disability Insurance Scheme participants and their families when deficiencies or evidentiary gaps are identified, particularly where participants have been harmed or are at immediate risk of harm
- c. the efficiency of the online portal used by providers to report incidents.

Controlling volume of reportable incidents to focus on risk

Recommendation 10.12 Introduction of class or kind determinations

The Minister for the National Disability Insurance Scheme should, in consultation with states and territories, amend the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018* (Cth) to:

- a. introduce 'class or kind' determinations exempting certain registered providers from notifying less serious types or categories of reportable incidents where they have demonstrated a satisfactory level of competence in managing and investigating incidents
- b. enable the NDIS Quality and Safeguards Commission to conduct audits to assess compliance with class or kind determinations.

Engaging suitably skilled investigators

Recommendation 10.13 Creating an independent investigators panel

The NDIS Quality and Safeguards Commission (NDIS Commission) should establish a panel of independent investigators with strong credentials in relation to safeguarding, human rights and investigative practice. The NDIS Commission should seek regular feedback from providers about the quality of independent investigators' work.

Improving provider safeguarding practices

Recommendation 10.14 Developing model policies and procedures

The NDIS Quality and Safeguards Commission should develop model procedures for National Disability Insurance Scheme (NDIS) providers, including:

- a. for frontline workers about recognising and reporting incidents, with clear definitions around what incidents must be reported and when
- b. for incident management incorporating guidance on undertaking causal reviews of incidents and preventive action, as well as implementing wider system improvements
- c. for complaints articulating person-centred approaches for managing and resolving complaints and providing feedback, and requiring supports for a participant who needs to participate in a complaints process
- d. that address the need to consider the impact or harm caused to a participant and provide guidance on forms of redress that should be offered to people with disability involved in incidents and complaints.

These procedures should be developed in consultation with people with disability, family members, advocates and NDIS providers.

Recommendation 10.15 Complaint handling and investigative practice guideline

- a. The NDIS Quality and Safeguards Commissioner should issue a guideline, by notifiable instrument, addressing accessible and responsive complaint handling and investigative practice. The guideline should:
 - outline the core components of an accessible and responsive complaint handling and investigative practice involving people with disability, consistent with Recommendation 11.5
 - be co-designed by people with disability and their representative organisations and involve consultation with National Disability Insurance Scheme (NDIS) provider representatives.
- b. The Minister for the NDIS should, in consultation with states and territories, amend the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018* (Cth) and *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018* (Cth) to include recognition of, and a requirement for compliance with, the guideline.

Recommendation 10.16 Requirement to consider redress

- a. The Minister for the National Disability Insurance Scheme (NDIS) should, in consultation with states and territories, amend the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018 (Cth)* and *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018 (Cth)* to include a requirement for NDIS providers to consider redress and forms of support to an NDIS participant where the NDIS Quality and Safeguards Commission (NDIS Commission) forms the view that the service provider bears responsibility for the violence, abuse, neglect or exploitation experienced by the NDIS participant.
- b. The NDIS Commission should:
 - provide practical advice on suitable forms of redress when making the guideline on accessible and responsive complaint handling and investigative practice (see Recommendation 10.15)
 - consider whether it has power to incorporate in enforceable undertakings a requirement that service providers afford redress to NDIS participants in appropriate cases. If not, it should seek the necessary powers and be prepared to use them where appropriate.

Recommendation 10.17 Access to safeguarding indicators and expertise

In developing and publishing guidance about best practice governance models for National Disability Insurance Scheme (NDIS) providers, the NDIS Quality and Safeguards Commission should:

- a. include safeguarding indicators for use by NDIS providers based on the sample indicators outlined in Table 10.8.3
- b. provide guidance encouraging governing bodies of NDIS providers to have regular access to specialist safeguarding advice in considering issues arising from complaints and incidents.

Improving complaint processes

Recommendation 10.18 Improved complaint handling procedures and responses

The NDIS Quality and Safeguards Commission should:

- a. ensure complainants are updated appropriately throughout key stages of the complaint process and their expectations managed
- b. ensure triage and streamlining models effectively prioritise complaints requiring a more immediate response
- c. clearly define risk categories, timeframes and procedures for handling these complaints
- d. establish realistic and achievable metrics for measuring its performance with respect to timeframes.

Recommendation 10.19 Requirement to investigate certain complaints

The Minister for the National Disability Insurance Scheme should, in consultation with states and territories, amend the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018* (Cth) to empower the NDIS Quality and Safeguards Commission to require a provider to carry out an investigation into a complaint and report on its contact with the complainant and its findings.

Recommendation 10.20 Making complaint processes accessible

The NDIS Quality and Safeguards Commission should further enhance the accessibility of its complaint handling processes, having regard to the following steps:

- a. making information simple and easy to navigate
- b. adopting a 'no wrong door' approach
- c. accommodating people's preferred means of communication and making other adjustments as needed
- d. assisting people to secure advocacy and other supports
- e. identifying people at risk of abuse
- f. implementing a strategy for 'hard to reach' groups
- g. ensuring complainants are involved in complaint processes and when this is not possible, recording the reasons for their non-involvement
- h. examining whether providers are supporting people with disability to access advocates when they make a complaint and where providers conduct investigations.

Provider registration

Recommendation 10.21 Registration and audit process

- a. To enhance the registration process, the NDIS Quality and Safeguards Commission (NDIS Commission) should:
 - develop and implement a framework for sharing relevant information with quality auditors
 - conduct a comprehensive review of the provider registration process focused on:
 - simplifying the process for smaller providers seeking to renew their registration
 - improving the NDIS Commission's operating system (COS) portal and online application forms used to submit registration applications
 - removing any duplication of requirements for cohorts of practitioners or organisations working within multiple schemes and for recognising other forms of accreditation

- identifying areas where there are workforce shortages or ‘thin provider markets’, and encouraging the use of easier and more cost-effective certification audit processes in these areas
 - assessing whether the number of approved quality auditors accredited for remote auditing and assessment should be increased
 - collect and publish de-identified data about quality audit outcomes to inform best practice
 - alert quality auditors to known systemic issues across the NDIS provider market.
- b. The Minister for the National Disability Insurance Scheme should, in consultation with states and territories, amend the *National Disability Insurance Scheme (Protection and Disclosure of Information—Commissioner) Rules 2018* (Cth) to clarify the NDIS Commission is able to share relevant information with quality auditors.

Recommendation 10.22 Strengthened regulatory requirements

- a. The Minister for the National Disability Insurance Scheme should, in consultation with states and territories, amend the Core Module of the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* (Cth) to issue further standards that address complaint handling and incident management.
- b. The NDIS Quality and Safeguards Commissioner should amend the Core Module of the *National Disability Insurance Scheme (Quality Indicators for NDIS Practice Standards) Guidelines 2018* (Cth) to strengthen the requirements relating to complaints and incidents (see Table 10.10.2), accountable governance (see Table 10.10.3), and worker capacity and training (see Table 10.10.4).

Recommendation 10.23 Publishing data about the unregistered provider market

The NDIS Quality and Safeguards Commission (NDIS Commission) should collect and publish data relating to trends and risks identified within the unregistered provider market, including a breakdown of:

- the number of complaints received involving unregistered providers
- quality and safety issues identified by the NDIS Commission through its oversight of complaints in relation to unregistered providers
- the number of compliance matters and investigations commenced by the NDIS Commission in relation to unregistered providers

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- the number of unregistered providers involved in contraventions identified by the NDIS Commission and the type of breach identified
 - the number and type of compliance and enforcement actions taken in relation to unregistered providers
 - the number of workers engaged by unregistered providers involved in complaints, compliance matters or investigations without a worker screening clearance at the time of the alleged conduct or issue.

Behaviour support

Recommendation 10.24 Improved access to behaviour support practitioners

The NDIS Quality and Safeguards Commission should, by December 2024, improve access to behaviour support practitioners by:

- a. providing incentives for practitioners and National Disability Insurance Scheme providers to provide behaviour support services, including in regional and remote areas in which 'thin markets' operate
- b. forming a partnership with First Nations leaders from the disability and employment services sectors to develop a recruitment strategy targeting First Nations people and others with experience in working with First Nations communities to address behaviour support shortages in regional and remote areas
- c. exploring with behaviour support practitioners, service providers and people with disability, the merits of an 'on-the-job' professional development and accreditation model for behaviour support practitioners
- d. creating a publicly accessible list of all individual behaviour support practitioners.

Strengthening monitoring, compliance and enforcement

Recommendation 10.25 Strengthened monitoring, compliance and enforcement

The NDIS Quality and Safeguards Commission should review its compliance and enforcement policy and in doing so have regard to:

- a. where appropriate, transitioning its primary compliance approach from educational and capacity building strategies to stronger compliance and enforcement activities

-
- b. increasing its face-to-face engagement with National Disability Insurance Scheme (NDIS) participants who are at greater risk of experiencing violence, abuse, neglect and exploitation, and site visits to speak with providers and workers
 - c. increasing the use of its enforcement powers and monitoring tools in relation to NDIS providers that:
 - have a history of non-compliance or repeatedly fail to meet their obligations to provide safe and quality supports and services
 - have demonstrated a disregard for the safety of people with disability
 - have caused serious harm to a person or people with disability
 - d. the availability of enforceable undertakings and compliance notices to address non-compliance by NDIS providers.

Enhancing data and intelligence

Recommendation 10.26 Expanded data reporting and publication

- a. In addition to data currently published, the NDIS Quality and Safeguards Commission should publish in quarterly activity reports and annual reports:
 - ‘disaggregated data’ relating to complaints, reportable incidents and behaviour support, having regard to suggested data in Table 10.13.1
 - a comprehensive analysis of data trends, identifying systemic issues relating to the quality and safety of National Disability Insurance Scheme (NDIS) supports and services
 - ‘operational performance data’ relating to complaints, reportable incidents, compliance and enforcement, having regard to the suggestions in Table 10.13.2.
- b. The Minister for the NDIS should, in consultation with states and territories, amend the reporting requirements in the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018* (Cth) to enable provider investigation outcome data to be collected on a routine basis from NDIS providers.

Recommendation 10.27 Strengthened intelligence capacity

The NDIS Quality and Safeguards Commission (NDIS Commission) should establish a dedicated intelligence unit within the NDIS Commission to enhance its capacity to collect intelligence, identify and respond to higher risk participants, take action relating to providers where necessary and identify systemic issues.

Recommendation 10.28 Information sharing between prescribed bodies

- a. The Minister for the National Disability Insurance Scheme (NDIS) should, in consultation with states and territories, amend the *National Disability Insurance Scheme (Protection and Disclosure of Information—Commissioner) Rules 2018* (Cth) to include safeguarding bodies with the type of functions described in Table 10.13.3 as ‘prescribed bodies’ for the purposes of section 67A(1)(db) of the *National Disability Insurance Scheme Act 2013* (Cth).
- b. States and territories should introduce legislative and administrative arrangements that would allow prescribed bodies in each jurisdiction to exchange risk-related information with the NDIS Quality and Safeguards Commission, where the exchange of information will promote the safety of NDIS participants who may be at risk of experiencing violence, abuse, neglect or exploitation.

Engagement and capacity building

Recommendation 10.29 Establishing a First Nations Unit

The NDIS Quality and Safeguards Commission should establish a dedicated First Nations Unit to develop its engagement with and understanding of the issues facing First Nations participants in the National Disability Insurance Scheme, particularly in regional and remote communities.

Recommendation 10.30 Engagement and capacity building activities

The NDIS Quality and Safeguards Commission should enhance its engagement and capacity building activities with National Disability Insurance Scheme (NDIS) providers by:

- a. routinely sharing data analysis and insights from its oversight activities with NDIS providers to promote improvements in the quality and safety of services
- b. facilitating regular industry forums and communities of practice to raise and address critical safeguarding practice issues and share best practice
- c. expanding its training offerings to NDIS providers, particularly in relation to fulfilling their obligations to recognise, report and investigate incidents and deal appropriately with complaints
- d. developing a training and resources hub for use by people with disability and their supporters, as well as the NDIS provider workforce.

Worker screening

Recommendation 10.31 Continuous monitoring of criminal charges

The Australian Government and state and territory governments should amend the Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme to clarify the role of the Australian Federal Police (or other national bodies) in monitoring new charges relating to disability support workers who hold a clearance, and sharing information with state and territory worker screening units.

Recommendation 10.32 Operational framework to guide worker screening

The NDIS Quality and Safeguards Commission (NDIS Commission) should, in consultation with state and territory worker screening units, develop an operational framework to guide the efficient and effective provision of information to worker screening units to inform their assessments. In doing so, it should establish criteria to inform the provision of initial monitoring advice to screening bodies to promote consistency and help better inform initial screening actions. Such advice could include:

- date of the incident
- duration of alleged conduct (if applicable)
- description, nature and circumstances of the matter
- whether the police are involved (noting that the screening unit will only be alerted via the monitoring system at the point at which charges are laid)
- critical information relating to the available evidence (for example, an investigation report from an employer)
- relevant information relating to the NDIS Commission's oversight of the matter (for example, whether the matter is open, closed, substantiated or not and whether further outcomes are pending).

Recommendation 10.33 Reviewing information sharing arrangements

As part of the National Disability Insurance Scheme worker screening review, the Australian Government, and state and territory governments, should consider the adequacy of information sharing arrangements with regard to:

- a. the ability of worker screening units to obtain relevant risk-related information from bodies outside of their operating jurisdiction to inform their assessments
- b. the ability of the NDIS Quality and Safeguards Commission and worker screening units to obtain and share relevant risk-related information (such as misconduct and disciplinary investigation outcomes) held by other safeguarding and complaint handling bodies to inform worker screening decisions.

Volume 11, Independent oversight and complaint mechanisms

National consistency in adult safeguarding

Recommendation 11.1 Nationally consistent adult safeguarding functions

States and territories should each:

- a. introduce legislation to establish nationally consistent adult safeguarding functions, including:
 - definitions of ‘adult with disability’, ‘violence’, ‘abuse’, ‘neglect’, and ‘exploitation’
 - at a minimum, the principles, functions and powers outlined in Table 11.1.1
 - data collection and public reporting, including demographic data (for example, relating to First Nations, culturally and linguistically diverse, and LGBTIQ+ people with disability)
 - a mechanism to review the legislation after a reasonable period to examine its efficacy.
- b. ensure adult safeguarding functions are operated by adequately resourced independent statutory bodies
- c. develop a National Adult Safeguarding Framework led by the appointed adult safeguarding bodies
- d. consider whether to co-locate the adult safeguarding function with the ‘one-stop shop’ independent complaint reporting, referral and support mechanism (see Recommendation 11.3).

Recommendation 11.2 An integrated national adult safeguarding framework

The Australian Government should incorporate the National Adult Safeguarding Framework proposed in Recommendation 11.1 into the Safety Targeted Action Plan within Australia’s Disability Strategy or another suitable authorising document.

Independent complaint reporting, referral and support

Recommendation 11.3 ‘One-stop shop’ complaint reporting, referral and support

States and territories should each establish or maintain an independent ‘one-stop shop’ complaint reporting, referral and support mechanism to receive reports of violence, abuse, neglect and exploitation of people with disability. This mechanism should perform the following functions:

- a. receive complaints or reports from anyone concerned about violence, abuse, neglect and exploitation involving a person with disability in any setting
- b. provide advice and information to people with disability, representative organisations and other interested parties about appropriate reporting options
- c. with a person’s consent:
 - make warm referrals to appropriate complaints bodies
 - make warm referrals to advocacy and other services who can support them in the complaint process
- d. refer ‘third party’ reports to police, including anonymous reports
- e. collect, analyse and publicly report annual data on complaints and reports received and on referrals.

The mechanism should be co-designed with people with disability to ensure entry points are accessible to and effective for people with a range of abilities, language and communication needs.

The mechanism should be placed, if possible, within an existing independent organisation which has appropriate expertise and relationships with services to perform its functions.

Recommendation 11.4 Creating accessible complaint pathways

The Australian Government should work with states and territories to establish a national 1800 number, website and other accessible reporting tools to direct people to the independent complaint and referral mechanism in their state or territory.

Guidelines for inclusive and responsive complaint handling

Recommendation 11.5 Complaint handling and investigative practice guidelines

The Commonwealth Ombudsman should lead a co-design process with the NDIS Quality and Safeguards Commission, state and territory ombudsmen and other bodies with complaint handling and investigation expertise, to develop guidelines for organisations on implementing complaint handling systems that are accessible and responsive to people with disability. The guidelines should reflect the ten core components:

- creating a rights-focused complaints culture
- encouraging people with disability and others to speak up
- making adjustments to enable participation
- supporting the person with disability, their family and others in complaint processes
- respecting complexity, diversity and cultural difference
- providing clear information about how to complain and multiple pathways to complain
- working respectfully and effectively alongside police
- conducting safe and inclusive investigations that are trauma-informed
- providing tailored outcomes and redress
- using complaints data to drive continuous improvement in service provision and complaint handling.

Achieving *OPCAT* compliance

Recommendation 11.6 Enshrining key provisions of *OPCAT* in legislation

The Australian Government should revisit the Australian Human Rights Commission's recommendation and introduce legislation enshrining the key provisions of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)* and facilitate the national coordination of Australia's *OPCAT* response.

Recommendation 11.7 Resourcing and wider definition of places of detention

The Australian Government and state and territory governments should:

- a. agree to provide resources to enable National Preventive Mechanism bodies in all jurisdictions to fulfil the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment's* core functions, including the 'preventive package'
- b. enact legislation incorporating a broader definition of 'places of detention' to enable all places where people with disability may be deprived of their liberty to be monitored by National Preventive Mechanism bodies.

Recommendation 11.8 Legislating National Preventive Mechanisms

All state and territory governments should introduce legislation to establish the functions of their National Preventive Mechanism bodies and facilitate inspections by the United Nations Subcommittee on the Prevention of Torture.

Recommendation 11.9 Designating National Preventive Mechanism bodies

The governments of New South Wales, Victoria and Queensland should designate National Preventive Mechanism bodies in their jurisdictions.

Recommendation 11.10 Improved consistency and coordination

The Commonwealth Ombudsman should:

- a. ensure the OPCAT Advisory Group includes people with disability
- b. lead work with the National Preventive Mechanism Network to:
 - develop a consistent methodology for determining National Preventive Mechanism inspection priorities
 - implement a coordinated approach to prioritising inspections of places of detention that pose a high risk to people with disability, focusing on particular practices affecting people with disability across detention settings
 - develop and adopt common disability inspection standards for use in all jurisdictions
 - commit to nationally consistent collection and reporting of data about monitoring places of detention.

Recommendation 11.11 Disability inclusive approach to implementing *OPCAT*

National Preventive Mechanism (NPM) bodies in all Australian jurisdictions should implement their functions in a disability-inclusive way by:

- enabling people with disability in places of detention to share information and experiences with the NPM using a variety of communication forms
- ensuring staff participate in ongoing education and training about the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, human rights and issues affecting people with disability in places of detention
- ensuring staff conducting NPM inspections have the skills and experience to provide reasonable adjustments, communication supports and supported decision-making to people with disability when required
- involving people with disability in the inspection of places of detention
- collecting and publishing data about people with disability in places of detention, aligned with disability inspection standards.

Community visitor schemes

Recommendation 11.12 Nationally consistent community visitor schemes

States and territories should:

- a. urgently implement community visitor schemes (CVS) for people with disability, if they have not done so already
- b. ensure CVS are resourced to conduct frequent visits to individuals who may be at elevated risk of abuse or harm
- c. agree to make CVS nationally consistent regarding people with disability, including in relation to:
 - the scope of schemes (who community visitors should visit)
 - powers to visit people with disability, inspect records and provide information to other relevant bodies
 - common monitoring standards
 - the type of data that CVS should capture and report on

-
- d. as a priority, define the scope of CVS with reference to:
- ‘visitable services’
 - mechanisms for identifying factors that may place a person with disability at increased risk of violence, abuse, neglect or exploitation
- e. ensure CVS legislation enables relevant information to be shared between CVS, the NDIS Quality and Safeguards Commission and the National Disability Insurance Agency.

Recommendation 11.13 Integration of community visitor schemes with the NDIS

- a. The Commonwealth should amend the *National Disability Insurance Scheme Act 2013* (Cth) to formally recognise community visitor schemes (CVS) as a safeguard for people with disability and provide the authorising environment for information-sharing between the NDIS Quality and Safeguards Commission (NDIS Commission) and CVS.
- b. The Australian Government should:
- enter into a national agreement with states and territories that commits CVS and the NDIS Commission to:
 - sharing relevant information to effectively exercise their respective functions
 - developing common standards for guiding the work of CVS relating to people with disability.
 - update the NDIS Quality and Safeguarding Framework to formally recognise the important safeguarding role played by CVS.

Disability death review schemes

Recommendation 11.14 Establishing disability death review schemes

States and territories should establish and appropriately resource disability death review schemes. These schemes should include:

- a. functions to:
- receive, assess and record ‘reviewable deaths’ of people with disability, as defined in recommendation 11.15
 - monitor and review reviewable deaths

-
- formulate recommendations about policies and practices to prevent or reduce reviewable deaths
 - maintain a register of reviewable deaths
 - formulate strategies to reduce or remove potentially avoidable risk factors for reviewable deaths
 - establish and support the work of an expert advisory committee

b. powers to:

- scrutinise systems for reporting reviewable deaths
- undertake detailed reviews of information relating to reviewable deaths
- conduct own motion investigations into individual or groups of deaths
- analyse data on the causes of reviewable deaths to identify patterns and trends
- consult with, and obtain information from, any person or body with relevant information or appropriate expertise
- invite and consider information from the deceased person's family or guardian or advocate when reviewing and/or investigating a death
- notify the NDIS Quality and Safeguards Commission of matters relevant to the exercise of its functions
- refer identified concerns about conduct or service provision to relevant regulatory bodies for their consideration and appropriate action
- publish reports periodically on systemic findings and recommendations arising from all reviewable deaths
- make a special report to the relevant state or territory parliament about any matter that the scheme operator considers to be in the public interest.

Recommendation 11.15 Disability death review scheme requirements

States and territories should ensure legislation establishing disability death review schemes:

a. defines 'reviewable deaths' to include:

- deaths subject to mandatory notification
- deaths that a person or body with legitimate interest requests a scheme to review

-
- b. requires deaths that are subject to a mandatory notification requirement include the death of a person with disability:
- living in supported accommodation at the time of their death
 - residing in a licensed boarding house (or equivalent) at the time of their death
 - residing in custody or in an acute health facility at the time of their death (after the disability death review scheme has operated for a period).

Recommendation 11.16 National agreement on disability death reviews

The Australian Government and state and territory governments should enter into a national agreement that:

- a. reflects the functions, powers and definitions outlined in recommendations 11.14 and 11.15
- b. defines the respective roles of state and territory death review schemes and the NDIS Quality and Safeguards Commission (NDIS Commission) in relation to the deaths of people with disability
- c. articulates the relationship between the functions of the disability death review schemes and the NDIS Commission and ensures the appropriate operational processes are in place to facilitate this
- d. provides for information sharing between the death review schemes and the NDIS Commission
- e. commits to nationally consistent disability death data collection and reporting requirements, and the inclusion of disability death data within the proposed National Disability Data Asset.

Reportable conduct schemes

Recommendation 11.17 Nationally consistent reportable conduct schemes

States and territories should:

- a. establish reportable conduct schemes, where not already in place, in accordance with Recommendation 7.9 of the Royal Commission into Institutional Responses to Child Sexual Abuse and make public their intended timeframe for doing so
- b. take action to harmonise their reportable conduct schemes

c. introduce or amend existing legislation to:

- ensure disability service providers that deliver supports or services to children with disability, including NDIS providers, are included in their reportable conduct scheme
- include 'ill-treatment' in the definition of reportable conduct
- enable reportable conduct scheme operators to adopt a common definition of disability
- require reportable conduct scheme operators to collect and publicly report consistent data about reportable conduct notifications and outcomes relating to children with disability.

Recommendation 11.18 Dual oversight of reportable conduct and incidents

State and territory reportable conduct scheme operators and the NDIS Quality and Safeguards Commission should:

- a. jointly develop guiding principles to support the efficient and effective handling of reportable incidents that are also allegations of reportable conduct
- b. develop broadly consistent guidance material to assist organisations to better understand key issues relevant to notifying, managing and investigating allegations of reportable conduct and incidents involving children with disability.

Volume 12, Beyond the Royal Commission

Government responses to *Final report* recommendations

Recommendation 12.1 Government responses to the *Final report*

The Australian Government and state and territory governments should each publish a written response to the Royal Commission's *Final report* by 31 March 2024. Their responses should indicate whether the recommendations are accepted, rejected or subject to further consideration. They should include a plan for how the accepted recommendations will be implemented, the reasons for rejecting any recommendations, and a timeframe for any further consideration required.

The Australian Government and state and territory governments should table their responses in their respective parliaments and legislative assemblies.

Recommendation 12.2 Implementation of the *Final report* recommendations

The Disability Reform Ministerial Council should oversee the implementation of the Royal Commission's recommendations across the Australian Government and state and territory governments.

The Australian Government and each state and territory government should report to the Disability Reform Ministerial Council every six months. Their reports should detail the implementation status of each recommendation and raise any issues and risks.

In its 2024 report to National Cabinet, the Disability Reform Ministerial Council should identify the implementation of the Royal Commission's recommendations as one of its priorities and include it in its workplan.

Recommendation 12.3 Progress reporting on implementation of recommendations

Commencing in 2025, the National Disability Commission should table an annual report in the Australian Parliament reporting on the progress of the Australian Government and state and territory governments in implementing the recommendations of the Royal Commission.

The report should compare progress across jurisdictions.

(For details of the National Disability Commission, see Volume 5, *Governing for inclusion*, Recommendation 5.5.)

Evaluating implementation and effectiveness in improving outcomes

Recommendation 12.4 Evaluation of effectiveness in improving outcomes

The National Disability Commission should lead independent evaluations of the implementation of the Royal Commission's recommendations and their effectiveness in improving outcomes for people with disability. The evaluations should examine barriers to and drivers of effective implementation, and suggest measures for improvement.

The evaluations should be conducted five and 10 years after the delivery of the *Final report*, with reports tabled in the Australian Parliament.

Improving the collection of disability data

Recommendation 12.5 A nationally consistent approach to data collection

The Australian Government and state and territory governments, through the Disability Reform Ministerial Council, should address the lack of consistent disability data by developing a nationally consistent approach to collecting disability information.

By December 2024, the Australian Government and state and territory governments should agree to a core set of questions to identify disability status to be used across all mainstream services and population surveys. This should be led by the Australian Bureau of Statistics and the Australian Institute for Health and Welfare. The questions should be co-designed with people with disability and their representative organisations, and with First Nations subject matter experts.

Recommendation 12.6 Disability flags in data collection for mainstream services

The Australian Government and state and territory governments, through the Disability Reform Ministerial Council, should address the lack of available disability data by implementing disability flags in data collections for key mainstream services.

By June 2025, the Australian Government and state and territory governments should publish an implementation plan outlining how the core set of questions will be integrated into data collections of priority mainstream services. This should be led by the Australian Bureau of Statistics and the Australian Institute for Health and Welfare.

Recommendation 12.7 Improving disability data collection

The Australian Government and state and territory governments should support a strategy, led by the Australian Bureau of Statistics and the Australian Institute of Health and Welfare, to extend disability data collection:

- a. to include people with disability in closed and segregated settings and those with communication support needs
- b. to improve data on types of impairment
- c. to improve data for intersectional analysis by enhancing data on women with disability; children and young people with disability; and First Nations, culturally and linguistically diverse, and LGBTIQ+ people with disability.

This strategy should form part of the Australia's Disability Strategy 2021–2031 Data Improvement Plan.

The National Disability Data Asset

Recommendation 12.8 Long-term support for the National Disability Data Asset

The Australian Government and state and territory governments, through the Disability Reform Ministerial Council, should commit to long-term support to the National Disability Data Asset (NDDA).

All governments should:

- a. by June 2024, commit to continuing funding to establish the NDDA as a national resource for longitudinal analysis of linked data across service systems
- b. commit to publishing an annual statistical summary of the analyses of the NDDA's linked data. This should focus on data insights not available from other sources and provide transparency on projects underway. All reported data should be disaggregated as far as possible to enable intersectional analysis
- c. by December 2024, commence specific data projects using the NDDA that:
 - identify the factors that put people with disability at greatest risk of violence, abuse, neglect or exploitation
 - demonstrate the outcomes and experiences of people with disability transitioning between systems, including:
 - education and employment, child protection and justice systems, and housing and health
 - the National Disability Insurance Scheme and mainstream services
 - evaluate the accuracy of disability status collection in various service settings.

Glossary

The way we use language can be powerful. The Royal Commission aimed to use current and respectful terminology, mindful that respectful language can promote awareness, inclusion and empowerment.

People with disability are the experts when it comes to language in this area. We acknowledge that individuals have their own preferences about how they use language. In deciding on the terms the Royal Commission used, we were guided by the definitions and principles in the *Convention on the Rights of Persons with Disabilities* and have consulted with disability experts. We have taken care to recognise diversity in the terms we used.

The definitions here are not strict legal definitions, but reflect the Royal Commission's understanding of key terms in the context of addressing disability issues and for the purposes of this report. Our understanding of language in this area grew as we continued to listen to what people with disability told us about language and their experiences.

Key terms

ableism

Ableism refers to attitudes and behaviours that label people with disability as different, less than or inferior to people without disability, incapable of exercising choice and control and a burden on society.

Aboriginal Community Controlled Organisations

An incorporated Aboriginal or Torres Strait Islander organisation that is initiated by, based in and governed by a local First Nations community to deliver holistic, culturally appropriate services to the community that controls it. We also use the term First Nations Community Controlled Organisation.

Aboriginal Community Controlled Health Organisations

A primary health care service that is operated by a local Aboriginal community to deliver holistic, comprehensive and culturally appropriate health care to the community that controls it, through a locally elected board of management.

abuse

Acts or omissions causing or likely to cause direct or indirect harm to a person or group of people with disability. Abuse can occur as a single incident or repeated incidents or a pattern of behaviour over a period of time.

accessible

Environments, facilities, services, products and information that people are able to use and interact with in a way that suits their needs.

adjustments

Necessary and appropriate individualised adaptations, modifications or supports to remove or minimise barriers to or enable a person with disability's participation and inclusion in society. See also 'reasonable adjustment'.

advocacy

Disability advocacy refers to acting, speaking or writing to promote, protect and defend the rights and interests of people with disability, including human rights.

assistive devices and technologies

Devices and technologies designed, made, or adapted to assist people with disability to participate in activities more independently. Examples include wheelchairs, prostheses, hearing aids, visual aids, screen readers and specialised computer software and hardware.

audio description

An accessibility measure that is an audio narration of what is appearing visually on a stage or screen for people who are blind or have low vision. During gaps in dialogue, the narration describes visual elements such as scenes, settings, actions and costumes.

augmented and alternative communication

Methods of communication personalised to enable the participation of a person who may experience barriers to spoken communication. They include unaided forms, such as eye contact, gestures, facial expression, vocalisations and sign language, and aided forms that use devices, such as a speech generating device, to communicate.

Auslan

The name for Australian Sign Language and the main language of Australia's Deaf community.

Australian Disability Enterprise (ADE)

Generally a not-for-profit organisation that provides employment for people with moderate to high support needs who need significant support to work.

autonomy

A person's right and freedom to make decisions, control their life and exercise choice.

block funding

Funding that is provided through a contract between governments and disability service providers. It is generally fixed-term funding given to organisations to deliver an agreed amount or type of service for specific cohorts or in specific geographical areas.

braille

A tactile alphabet for people who are blind, d/Deafblind or who have low vision. It uses raised dots that are interpreted through touch.

capacity building supports

Supports and services that help NDIS participants build independence. They may relate to social, community and civic participation, employment, relationships, health and wellbeing, choice and control, lifelong learning and daily activity. They may also include support coordination services.

capital supports

Higher-cost pieces of assistive technology, equipment, or home or vehicle modifications for which NDIS participants can receive funding.

captioning

The act of converting audio content into text. This can be used in a range of environments, such as for television/streaming broadcast, live event or webcast. While subtitles only contain dialogue, captions identify music, sound effects, background sounds and non-verbal content, such as whether a speaker has an accent.

care and support workforce

A collective term for the paid workers who provide a range of essential services across Australia's aged care, disability support and veteran care systems.

carer

Someone who provides supports to a person with disability on an unpaid basis, often a family member. Some legislation refers to 'carers' and some people with disability prefer the term over 'support person'.

cognitive disability

Cognitive disability arises from the interaction between a person with cognitive impairment and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.

‘Cognitive impairment’ is an umbrella term encompassing actual or perceived differences in cognition, including concentration, processing, remembering, or communicating information, learning, awareness, and/or decision-making.

People with cognitive disability may include, but are not limited to, people with intellectual disability, learning disability, dementia or acquired brain injuries, and some people with autism.

community settings

Places or surroundings that are not associated with organisations or service providers. Examples include private homes and public spaces.

community visitor schemes

Community visitors (also known as ‘Official Community Visitors’, ‘Official Visitors’ or ‘Official Visitors Disability’ depending on the jurisdiction) are appointed individuals who visit people living in prescribed accommodation to independently monitor the services and facilities provided and assist with resolving issues or complaints. All states and territories except Western Australia and Tasmania have a community visitor scheme (CVS) for people with disability.

complaint

Disclosure, concern, grievance, information or allegation about violence against, or abuse, neglect or exploitation of, a person with disability. A complaint may give rise to a report of unlawful conduct (see ‘report’).

complaint body

An agency that has a function to receive, handle, investigate and resolve complaints.

complaint mechanism

The system used by an organisation to respond to a complaint. A complaint mechanism can be internal to an organisation or may also involve complaints to external authorities, such as referrals to police and notifications to regulatory bodies responsible for overseeing and monitoring complaints involving reportable incidents or reportable conduct.

core supports

Supports and services that help participants in the National Disability Insurance Scheme (NDIS) with everyday activities and disability-related needs in categories such as daily activities, consumables, community participation and transport.

co-design

A design process where stakeholders are equal partners and take leadership roles in the design of products, services, systems, policies, laws and research.

co-production

An extension of 'co-design', where stakeholders are involved in the decision-making, implementation and evaluation of products, services, systems, policies, laws and research.

cultural safety

An outcome that respects, supports and empowers the cultural rights, identity, values, beliefs and expectations of First Nations peoples while providing quality services that meet their needs.

culturally and linguistically diverse

This broad term describes communities with diverse languages, ethnic backgrounds, nationalities, traditions, societal structures and religions. This includes people with a different heritage or linguistic background than dominant Australian culture and language, people with dual heritage, and people who are migrants and refugees. Some members of the Deaf community and other Auslan users also identify as members of a cultural minority.

Deaf

'Deaf' (with a capital 'D') is used to describe people who use sign language such as Auslan to communicate, and who identify culturally as members of the signing Deaf community.

deaf

The word 'deaf' (with a lower case 'd') is a broader term than Deaf (with a capital 'D'). It is used to describe the physical condition of not hearing, and also to describe people who are physically deaf but do not identify as members of the signing Deaf community. See also 'hard of hearing / hearing impaired'.

d/Deafblind

The term 'd/Deafblind' refers to people who have some hearing and vision and people who are totally deaf and blind. The most common forms of communication used by people who are d/Deafblind in Australia are:

- speech, oral and aural communication
- sign language including a variety of ways of receiving sign language such as close range, visual frame and tactile, hand-over hand signing
- d/Deafblind fingerspelling.

decision-making ability

The ability of a person to make a particular decision with the provision of relevant and appropriate support at a time when a decision needs to be made.

digital platforms

Businesses that provide online services, including connecting support workers with participants in the National Disability Insurance Scheme (NDIS). They are also referred to as 'platform providers'.

dignity of risk

Affording a person the right and dignity to take risks.

disability

An evolving concept that results from the interaction between a person with impairment(s) and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.

disability advocacy organisation

An organisation that provides disability advocacy to people with disability in order to promote, protect and ensure their full and equal enjoyment of all human rights. This includes organisations funded under the Australian Government's National Disability Advocacy Program.

disability representative organisation (DRO)

A peak organisation providing systemic advocacy and representation for people with disability.

disability sector

Collective term to describe disability service providers and workers, disability peak and advocacy bodies, disabled people's organisations (DPOs), disability representative organisations (DROs) and others involved in or affected by how disability services are designed and delivered.

disabled people's organisation (DPO)

An organisation where the majority of members, as well as those on the governing body, are people with disability.

disability services

Services that people with disability use because of their disability. Disability services are not offered or provided to the general public.

disability service provider

Individuals and government and non-government (including for profit and not-for-profit) organisations that provide disability services.

disability support workforce

A collective term for paid workers who provide direct and indirect support to people with disability, including for daily living. They may be employees, contractors or self-employed.

Easy Read

Easy Read format is a way of presenting written information to make it easier to understand. It typically uses simple words, short sentences, accessible fonts and layouts, and images or photos to assist in illustrating the information.

exclusionary discipline

Actions by an educational authority or educational institution that results in the withdrawal of education or training from students with disability, including suspensions and expulsions.

exploitation

Taking or attempting to take improper advantage of a person or group of people with disability for benefit, advantage or gratification, including taking physical, sexual, financial or economic advantage.

family and domestic violence and abuse

Family and domestic violence is violence, abuse, neglect and exploitation that takes place in intimate relationships, in families, or in other domestic relationships such as with workers, carers, co-residents or housemates. Family violence is the preferred term in First Nations communities, and includes the extended kinship networks in which violence can occur. Women are more likely to experience family and domestic violence, and it can be characterised by coercive control, which is repeated behaviour that isolates, and denies someone their autonomy and independence.

First Nations peoples

The Aboriginal people of mainland Australia, Tasmania and other islands off the continent, and the people of the Torres Strait Islands. This term reflects the social and governance structures and systems in place prior to colonisation.

Where people we engaged with identified themselves as either 'Aboriginal' or 'Torres Strait Islander' or referred to themselves by reference to their language group, we have respected their personal choices.

gatekeeping

Formally or informally preventing or discouraging, other than for a lawful and proper reason, a child or young person from applying to, or enrolling in, an educational institution.

group home

A house that accommodates a number of people with disability as their residential home. The term 'group home' may also refer collectively to both the physical accommodation and provision of specialist disability supports to residents in the home.

guardian

Someone who is appointed under a guardianship order to make decisions about another person's health care, finances, accommodation, services, relationships or some other personal matters.

hard of hearing / hearing impaired

The terms 'hard of hearing' and 'hearing impaired' describe people who are unable to hear, have some hearing or become deaf later in life, and whose communication mode is usually speech. The choice between these two terms usually depends on personal preference. People who are hearing impaired or hard of hearing may rely on hearing assistance devices (such as hearing aids or cochlear implants), lip reading and captions, and some may learn Auslan as a second language later. See 'Deaf', 'deaf'.

impairment

An impairment is a condition or attribute of a person, for example a condition that means a person cannot see. An impairment, in interaction with attitudinal, environmental and social barriers, may result in a disability. See 'disability'.

indefinite detention

The detention of an individual without a specific release date.

informal supports

The social support networks that provide protection for people with disability by increasing connections, relationships and visibility in the wider community.

intersectionality

A societal response to different social characteristics that expose a person or group of people to multi-layered or 'intersecting' forms of discrimination or disadvantage. This can include responses to characteristics such as age, disability, First Nations status, race, gender, gender identity or sexual orientation.

investigation

A fact-finding process that commences after a complaint has been received. Information is gathered, assessed and weighed up in order to establish the facts and make findings. An investigation may be conducted internally by the organisation or service provider that has received the complaint, or by an external investigator appointed to do so on their behalf. An investigation may also be conducted by a regulatory or oversight body. Police may conduct an investigation if a complaint or report raises criminal allegations.

legal capacity

A person's decisions and actions being recognised and respected by the law. It refers to both legal standing (the ability to hold rights and duties, and to be recognised as a legal person) and legal agency (the ability to exercise these rights and duties and to perform acts with legal effects).

letters patent

An official document issued to establish a royal commission. The letters patent contain terms of reference that define the scope of the inquiry.

local area coordinators (LACs)

Local organisations working in partnership with the National Disability Insurance Agency to help people with disability and their families and carers access and navigate the National Disability Insurance Scheme (NDIS).

LGBTIQA+

An internationally recognised acronym used to describe lesbian, gay, bisexual, trans and gender diverse, intersex, queer, questioning and asexual people and communities.

mainstream services

Services provided to the Australian public whether or not they have a disability, for example, health care and education.

market

Supply of disability supports, Specialist Disability Accommodation (SDA) housing, and allied health services under the National Disability Insurance Scheme (NDIS) to meet demand from participants.

medical model of disability

A deficit approach that views impairment or disability as an individual inadequacy that must be fixed or remediated.

mobility aids

Tools and technologies that can assist people with disability to be more mobile and independent. Mobility aids include wheelchairs, scooters, walkers, canes (including white canes), guide dogs, crutches and prosthetic devices.

National Disability Data Asset (NDDA)

The National Disability Data Asset (NDDA) comprises linked, deidentified data about people with disability from multiple Australian Government and state and territory government services and agencies over time. It is being developed to better use data to understand the experiences of people with disability.

National Disability Insurance Agency (NDIA)

The statutory agency responsible for implementing and managing the National Disability Insurance Scheme (NDIS).

National Disability Insurance Scheme (NDIS)

Scheme established by the *National Disability Insurance Scheme Act 2013* (Cth) to provide funding directly to eligible people with disability for supports and services.

Nationally Consistent Collection of Data on School Students with Disability (NCCD)

An annual collection of information about Australian school students with disability. The *Australian Education Regulation 2013* (Cth) requires all schools to report the data collected for the NCCD to the Australian Government on an annual basis.

NDIS participant

A person with disability who meets the access criteria set out in the *National Disability Insurance Scheme Act 2013* (Cth) to become a participant in the National Disability Insurance Scheme (NDIS).

NDIS plan

A written plan that sets out an NDIS participant's goals and the supports needed to achieve those goals. The plan is based on a participant's disability support needs and includes information about NDIS funding and how it can be used.

NDIS provider

A person or entity who provides supports or services to NDIS participants. We use this term in accordance with the meaning set out in section 9 of the *National Disability Insurance Scheme Act 2013* (Cth).

NDIS Quality and Safeguards Commission (NDIS Commission)

The statutory agency established to oversee and monitor the quality and safety of NDIS supports and services pursuant to the *National Disability Insurance Scheme Act 2013* (Cth).

neglect

The failure to provide for the physical, emotional, social and cultural wellbeing and development of a person or group of people with disability.

open employment

‘Open’ or ‘mainstream’ employment settings refer to work settings where people with and without disability are employed.

oversight body

An independent agency that has a statutory responsibility to ‘watch over’ a particular group of organisations and hold them to account in relation to specific functions, such as handling complaints or responding to reportable allegations or incidents.

physical disability

Physical disability arises from the interaction between a person with physical impairment and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.

A physical impairment is an impairment that affects a person’s mobility, dexterity or speech.

psychosocial disability

Psychosocial disability arises from the interaction between a person with a long-term mental health condition (that may be episodic) and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.

public place

Real and virtual spaces in the community where people spend their time. They include destinations (such as parks, playgrounds, shops and entertainment venues), pathways (such as streets, shopping centres, public transport and transport hubs) and online platforms (including blogs, dating sites, video-sharing platforms, social media and messaging services).

reasonable accommodation

Article 2 of the *Convention on the Rights of Persons with Disabilities* defines reasonable accommodation as ‘necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms’.

reasonable adjustment

The *Disability Discrimination Act 1992* (Cth) s 4(1) defines an adjustment to be made by a person as a reasonable adjustment 'unless making the adjustment would impose an unjustifiable hardship on the person'.

redress

The actions taken to remedy or rectify a wrong. Redress may be provided to an affected person after a complaint is substantiated. Types of redress may include an apology, counselling or medical treatment, financial compensation (for example, an ex-gratia payment or damages awarded by a court) or a change to a system, policy or process.

registered provider

A person or provider of supports registered as a provider with the NDIS Quality and Safeguards Commission.

regulator / regulatory body

An agency that has a legislative function to regulate a particular group of organisations with respect to the delivery of particular services or programs. For example, the NSW Office of the Children's Guardian regulates the provision of out-of-home care and the NDIS Quality and Safeguards Commission regulates NDIS service providers.

report

A formal notification of violence against, or abuse, neglect or exploitation of, a person with disability. An internal report may be made by a person working for an organisation (for example, an incident report), or by a service recipient of an organisation or a person acting on their behalf. An external report may be made by an individual or a service provider to a statutory authority (for example, police or the NDIS Quality and Safeguards Commission).

reportable conduct

Conduct towards, against or in the presence of a child including sexual abuse, sexual misconduct, physical abuse, neglect, ill-treatment and psychological harm. The definition of reportable conduct is included in the operating legislation for the reportable conduct scheme in each state or territory.

reportable conduct schemes

Schemes that require the heads of relevant organisations to notify an independent oversight body of allegations of reportable conduct involving their employees. The organisations must investigate the allegation, make a finding and report the outcome to the oversight body. Most states and territories now have a reportable conduct scheme.

response

A formal reaction from an organisation to a complaint. At a minimum, it consists of advice to the complainant about the outcome of the action taken, if any, in response to a complaint. A response may include conducting an investigation (see ‘investigation’) and/or providing redress (see ‘redress’).

restrictive practice

Any action, approach or intervention that has the effect of limiting the rights or freedom of movement of a person. Restrictive practices include physical restraints, chemical restraints, mechanical restraints, environmental restraints and seclusion.

safeguarding

Taking action to protect a person with disability from violence, abuse, neglect or exploitation. The term encompasses both a preventative and reactive response. The term is not intended to imply any element of coercion or to undermine the autonomy of a person with disability.

segregation

Circumstances where people with disability live, learn, work or socialise in environments designed specifically to cater for people with disability, separate from people without disability. Segregation occurs when people with disability are separated and excluded from the places where the community lives, works, socialises or learns because of the person’s disability.

Segregation does not occur in spaces where people with disability choose to come together, share culture and values, seek support for their individual needs, or are encouraged and supported to engage with the broader community. These are the same choices available to people without disability.

sensory disability

Sensory disability arises from the interaction between a person with sensory impairment and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.

A sensory impairment affects a person's ability to see, hear, touch, smell, have spatial awareness or otherwise be aware of and perceive the world around them.

Specialist Disability Accommodation (SDA)

A type of National Disability Insurance Scheme (NDIS) funding in a participant's plan for specialist housing. SDA funding is paid directly to SDA providers to cover building and maintenance costs.

subminimum wage / supported wage

A wage paid to a person with disability that is below the national minimum wage and is determined by a wage assessment tool or by reference to the special national minimum wage.

substitute decision-making

A range of processes and regimes that involve a person making decisions on another person's behalf. Substitute decision-making includes appointments of guardians, administrators and financial managers to make certain decisions on another person's behalf.

support

Actions, practices, strategies or resources that promote the participation and inclusion of a person or people with disability in society.

support coordination

An intermediary service designed to assist NDIS participants to make the best use of their NDIS funding. There are three levels of support coordination: support connection, coordination of supports, and specialist support coordination.

support person / support worker

Someone who provides supports to a person with disability. This may be a family member, friend, or a person contracted for paid or voluntary work. If a person is contracted as a paid or formal voluntary worker, we refer to them as a 'support worker'.

supported accommodation

A type of service that provides housing, care and support.

supported decision-making

Processes and approaches that assist people to make a decision, including by giving them the tools they need to make the decision for themselves. Supported decision-making does not mean deciding for or on behalf of another person.

supported employment

Ongoing assistance provided by support workers and managers for employees working in Australian Disability Enterprises (ADEs) or other settings to complete work tasks. Supports provided to people with disability in ADEs and other settings to help them work are called 'supported employment services', as defined in the *Disability Services Act 1986* (Cth).

Supported Independent Living (SIL)

A type of National Disability Insurance Scheme (NDIS) funding for home and living supports. Supported Independent Living (SIL) is for people with higher support needs who need some level of help at home all the time.

terms of reference

The Royal Commission's terms of reference are the nature and scope of our inquiry, as set out in the letters patent. See 'letters patent'.

trauma

The lasting adverse impacts that may arise when a person has lived through an event, series of events, or set of circumstances that is experienced as physically or psychologically harmful or life threatening.

trauma-informed

Frameworks and strategies to ensure that the practices, policies and culture of an organisation and its staff understand, recognise and respond to the effects of trauma and minimise, as far as possible, the risk that people may be re-traumatised.

unregistered provider

A provider of disability services that is not registered with the NDIS Quality and Safeguards Commission. An unregistered provider can support plan-managed NDIS participants and self-managed NDIS participants.

violence

The use or threatened use of force or the unjust use of power that causes or is likely to cause harm or fear of harm to a person or group of people with disability.

will and preferences

'Will' means larger life goals, such as political perspectives, emotional and spiritual development, and gender and sexual identity. 'Preferences' means choices regarding day-to-day activities, aesthetic preferences, and similar.

Acronyms and abbreviations

ABCB – Australian Building Codes Board

AC – Companion of the Order of Australia

ACCC – Australian Competition and Consumer Commission

ACQSC – Aged Care Quality and Safety Commission

ACSQHC – Australian Commission on Safety and Quality in Health Care

ADE – Australian Disability Enterprise

ADS – Australia’s Disability Strategy 2021–2031

AERO – Australian Education Research Organisation

AGAC – Australian Guardianship and Administration Council

AHRC – Australian Human Rights Commission

AITSL – Australian Institute for Teaching and School Leadership

AM – Member of the Order of Australia

AO – Officer of the Order of Australia

APSC – Australian Public Service Commission

APST – Australian Professional Standards for Teachers

APTOS – Applied Principles and Tables of Support

ASQ-TRAK – Ages and Stages Questionnaire – Talking about Raising Aboriginal Kids

CPD – continuing professional development

CRC – Convention on the Rights of the Child

CRPD – Convention on the Rights of Persons with Disabilities

CRPD Committee – Committee on the Rights of Persons with Disabilities

Cth – Commonwealth

DDA – Disability Discrimination Act 1992 (Cth)

DES – Disability Employment Service

Design Guidelines – Livable Housing Design Guidelines

DRA – Disability Rights Act

DSP – Disability Support Pension

DSSP – Disability Sector Strengthening Plan

Guidelines for Tribunals – Guidelines for Australian Tribunals: Maximising the Participation of the Person in Guardianship Proceedings

Joint Statement – Joint Statement on the inappropriate use of psychotropic medicines to manage the behaviours of people with disability and older people

LGBTIQ+ – Lesbian, Gay, Bisexual, Transgender, Intersex, Queer/Questioning, Asexual

NAATI – National Accreditation Authority for Translators and Interpreters

National Plan – National Plan to End Violence Against Women and Children 2022–2032

National Principles – National Statement of Principles Relating to Persons Unfit to Plead or Found Not Guilty by Reason of Cognitive or Mental Health Impairment

National Roadmap – National Roadmap for Improving the Health of People with Intellectual Disability

NATSIHS – National Aboriginal and Torres Strait Islander Health Survey

NCCD – Nationally Consistent Collection of Data on School Students with Disability

NDAF – National Disability Advocacy Framework

NDDA – National Disability Data Asset

NDIA – National Disability Insurance Agency

NDIS – National Disability Insurance Scheme

NDIS Act – National Disability Insurance Scheme Act 2013 (Cth)

NDIS Commission – NDIS Quality and Safeguards Commission

NDRP – National Disability Research Partnership

NPM – National Preventive Mechanism

OAM – Medal of the Order of Australia

OPCAT – Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

PBSP – Positive behaviour support plan

PSM – Public Service Medal

PSS – Personal Safety Survey

QC – Queen’s Counsel

SCHADS Award – Social, Community, Home Care and Disability Services Industry Award

SDA – Specialist Disability Accommodation

SDAC – Survey of Disability, Ageing and Carers

SIL – Supported Independent Living

SRS – supported residential services

UN – United Nations

UNDRIP – United Nations Declaration on the Rights of Indigenous Peoples







Royal Commission
into Violence, Abuse, Neglect and
Exploitation of People with Disability