Australian Government
Department of Social Services

Senate inquiry into 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

Department of Social Services

Submission to the Community Affairs References Committee

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Table of contents

Introduction **3**

Response to Inquiry Terms of Reference **5**

1. Experiences, impact and incidence **5**

Understanding risk and incidence 5

National Abuse and Neglect Hotline 6

Women with Disability 9

2. What needs to be done **12**

What the research tells us 12

DSS grant agreements, programmes and initiatives 13

3. The role of governments **20**

National Disability Agreement 20

National Disability Strategy 2010-2020 (NDS) 21

National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector 21

National Plan to Reduce Violence against Women and their Children 2010-2022 22

National Human Rights Action Plan 23

National Framework for Protecting Australia's Children 23

4. Australia's international obligations **25**

United Nations Convention on the Rights of Persons with Disabilities 25

5. The role of advocacy **27**

6. The National Disability Insurance Scheme and National Quality Framework **29**

Final remarks **30**

Attachment A - DSS funded programmes and services for people with disability **31**

Attachment B - Definitions used by the National Disability Abuse and Neglect Hotline **34**

Introduction

This submission by the Department of Social Services (DSS) provides information about DSS policies and supports for people with disability in Australia, and the quality and safeguards currently in place to prevent, detect and respond to cases of violence, abuse and neglect.

Although the data on this issue is fragmented, there is no doubt the incidence of abuse and neglect of people with disability must continue to be addressed as a priority.

DSS welcomes an inquiry into this critical issue. The timing is useful for DSS as it provides an opportunity to consider the effectiveness of quality frameworks and safeguards within DSS funded programmes, what might change in the short-term and as the National Disability Insurance Scheme (NDIS) rolls-out.

Even more important is the opportunity to acknowledge people's experiences of abuse and neglect and to examine how justice is best delivered for those affected.

DSS aspires to be Australia's pre-eminent social policy agency. DSS provides broad disability policy advice to Government, including advice about the rights of people with disability. In recent years disability policy advice has been a key focus for DSS as we move towards a NDIS. DSS has also taken a leading role in the cross-Government development of a new National Framework for Quality and Safeguards in the NDIS.

While states and territories generally provide most services which directly relate to institutional and residential settings, DSS works collaboratively with states and territories to support people with disability by designing and funding complementary programmes and services and the provision of benefits and payments. DSS also helps to support Australians with mental health issues and we support carers of people with disability or severe medical conditions, or frail aged, through our programmes and services, and benefits and payments for carers.

The full list of DSS funded disability programs and services can be found at **Attachment A.** DSS recognises not all are relevant to institutional and residential settings, however the list provides context to the Commonwealth programmes in the disability policy area.

DSS is committed to improving the detection and prevention of abuse and neglect. This includes examining our current contractual requirements, quality frameworks and other safeguards to identify possible improvements.

DSS has responsibility for policy on women's safety. Important insights on these issues are provided throughout this submission.

Aboriginal and Torres Strait Islander people and Culturally and Linguistically Diverse (CaLD) populations can also respond to violence, abuse and neglect differently. Indigenous Australians may not identify as having a disability in the same way as other Australians. Traditional Indigenous languages have no comparable word for 'disability', suggesting that disability has been accepted as part of the broader human experience.[1] Also, many Indigenous people live in remote locations and this can affect access to services and how, or if, cases of abuse are reported.

[1] First Peoples Disability Network Australia, 2015, *FPDN website*. http://fpdn.org.au/about-us

People with disabilities from CaLD backgrounds may confront many problems including: language difficulties; low utilisation of formal services; lack of information and knowledge about services; and social isolation. There is a lack of reliable data, nationally as well as at state and territory level, on the number of CaLD people with disabilities.[2]

DSS recognises these challenges and makes every effort to consider the unique risks faced by Indigenous Australians and CaLD populations when developing policy, designing programmes and monitoring service provision.

[2] Selepak L., 2008, *Challenges Facing People with Disabilities from Culturally and Linguistically Diverse Backgrounds (CALD)* – Monograph. Retrieved on 22 April 2015 from http://www.disability.wa.gov.au/Global/Publications/About%20us/Count%20me%20in/Research/cald.pdf.

Response to Inquiry Terms of Reference

To aid consideration of the extensive Terms of Reference (ToR), this submission responds to the ToR in thematic groupings.

1. Experiences, impact and incidence

(a) The experiences of people directly or indirectly affected by violence, abuse and neglect perpetrated against people with disability in institutional and residential contexts.

(b) The impact of violence, abuse and neglect on people with disability, their families, advocates, support persons, current and former staff and Australian society as a whole.

(c) The incidence and prevalence of all forms of violence, abuse and neglect perpetrated against people with disability in institutional and residential settings.

Understanding risk and incidence

There is no doubt data collection and reporting on the issues in Australia is problematic. While studies are difficult to compare, due to the differences in the population groups and research methods adopted (French, Dardel & Price-Kelley, 2009)[3], all studies report a high to very high incidence of abuse, neglect and exploitation.

A highly cited Australian study conducted in 1989 surveyed a sample of 158 adults with an intellectual disability in South Australia using questions adapted from the 1983 ABS Victims of Crime Survey. The study found that adults with an intellectual disability were more than twice as likely to be victims of personal crimes as the general adult population, and 10.7 times more likely to be victims of sexual assault in particular (Wilson & Brewer, 1992). Furthermore, the likelihood of victimisation differed according to an individual's living arrangements, such that those people with an intellectual disability that lived in shared residential care or institutional settings were most vulnerable to abuse (Murray and Powell 2008).

Brown and Craft (1992) found that people with learning disabilities have an increased vulnerability to abuse because of their dependence on other people for personal care; an 'imbalance of power' between the carer and the person being cared for; difficulties in communicating; lack of sexual knowledge and assertiveness; and guilt and shame at being disabled[4].

Adults with disability may not all experience the same risk or vulnerability to sexual assault, and nor will the issues and barriers they face be the same (Murray & Powell, 2008)[5]. Adults with disability are not a homogenous group, but rather represent a diverse range of abilities

[3] French, P., Dardel, J. & Price-Kelly, S. (2009). Rights denied: towards a national policy agenda about abuse, neglect and exploitation of persons with cognitive impairment. Retrieved on 12 December 2014 from http://www.pwd.org.au/documents/pubs/RightsDenied2010.pdf

[4] Brown & Craft.1992, *Safeguarding vulnerable adults*. Retrieved on 27 April 2015 from: www.nota.co.uk/Content/Media/.../6Safeguardingvulnerableadults.pdf

[5] Murray, S. & Powell, A., 2008, *Sexual assault and adults with a disability: Enabling recognition, disclosure and a just response.* Retrieved on 12 December 2014 from http://www.aifs.gov.au/acssa/pubs/issue/acssa_issues9.pdf

and potential vulnerabilities. As described above, this is particularly evident for Indigenous and CaLD populations who may perceive disability differently, access different services or respond differently to cases of abuse or neglect.

National Abuse and Neglect Hotline

The National Abuse and Neglect Hotline (the Hotline) is a DSS initiative and its reporting provides an insight into the incidence and types of abuse and neglect being experienced by Australians with disability. It is a nationally accessible service designed to aid reporting of abuse and neglect of people with disability in Commonwealth, State and Territory funded disability services, and to refer the reports appropriately.

The Hotline is not a complaints resolution service or an individual advocacy service. It works with callers to find appropriate ways of dealing with reports of abuse or neglect through a process of referral, including providing information and support, but also direct referrals to the complaints handling mechanisms relevant to the appropriate state and territory, as well as other complaints handling bodies such as the various Ombudsman, Anti-Discrimination Boards and the Complaints Resolution and Referral Service (CRRS).

Data from the Hotline since 2012 is provided below. Caution should be used in interpreting the data. Because it is a referral service, most reports will also be registered by investigating authorities. It should also be remembered that the Hotline is one of many ways to report a case of abuse or neglect and that people may be more inclined to report some types of abuse or neglect compared to others, for example sexual assaults.

DSS believes the number of reports received via the Hotline demonstrates there is a need for such a service.

Definitions of the different types of abuse and neglect used by the Hotline can be found at **Attachment B.** It should be noted, while the Hotline has been operating since 2002, this submission only presents data collected since 2012. Earlier data was collected using a different methodology and therefore is not comparable.

Table 1: Type of Abuse and Neglect reported to The National Disability Abuse and Neglect Hotline (July 2012-December 2014)

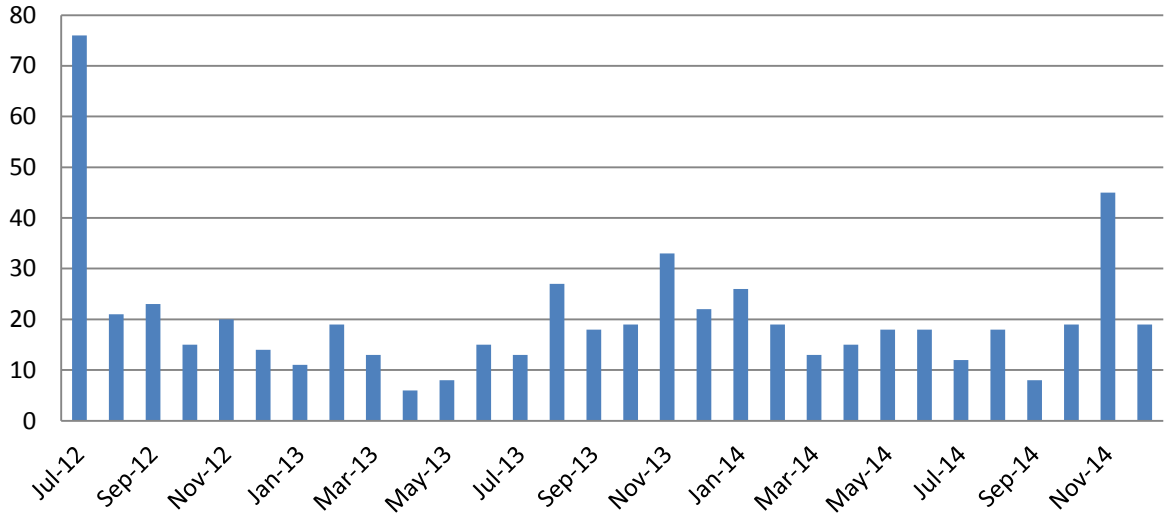
Type of Abuse/Neglect	Jul 2012- June 2013	Jul 2013- June 2014	Jul 2014- Dec 2014	Total	Percentage of total
Physical Neglect	60	55	17	132	15%
Passive Neglect	17	16	4	37	4%
Emotional Neglect	38	29	13	80	9%
Wilful Deprivation	17	9	6	32	4%
Constraint	12	14	7	33	4%
Financial Abuse	22	22	9	53	6%
Physical Abuse	57	61	28	146	16%
Psychological Abuse	65	57	26	148	16%
Sexual Abuse	11	10	7	28	3%
Systemic Abuse	105	73	24	202	23%
Total	404	346	141	891	100%

Note: The higher total reported in this table, compared to the tables below, is due to some callers reporting more than one case of abuse or neglect.

The Hotline data indicates systemic abuse, psychological abuse, physical abuse and physical neglect are the most commonly reported forms of abuse and neglect lodged with the Hotline. This pattern of reporting has remained consistent during the reporting period.

The totals in the table indicate a decrease in the number of reports received via the Hotline, when comparing financial years. To some extent, this can be explained by the fact the 2012 – 2013 figures are inflated by about 70 open cases, carried over from the 2011 – 2012 year. It should not be reasoned that it indicates a reduction in actual rates of abuse or neglect.

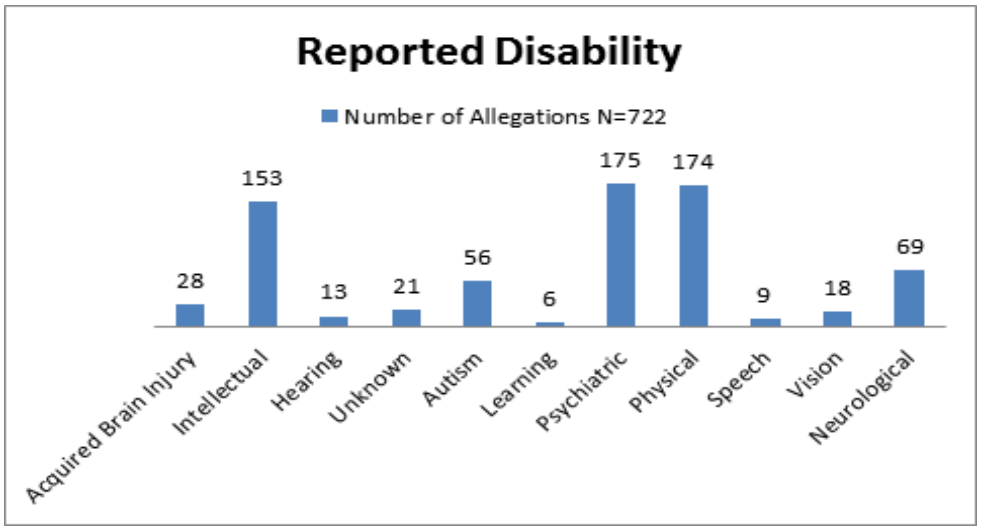
Graph 1: Allegation Referral Flow for the Hotline (July 2012-December 2014)



Graph 1 illustrates that the allegation referral flow for the Hotline, generally, remained steady over the July 2012-December 2014 period. However, spikes in calls to the Hotline are explained as follows:

- in July 2012, as a result of the handover of a large number of open matters by the previous service administrator to the current administrator, WorkFocus Australia;
- in late 2013 when the public awareness campaign, 'Zero Tolerance' was run; and
- in November 2014, coinciding with the Four Corners program "In Our Care", which focused on sexual abuse in disability services.

Graph 2: Hotline complainants by reported disability (July 2012- December 2014)



Graph 2 provides a breakdown of complainant's disability as reported to the Hotline.

Note: The higher total reported in this graph, is due to some callers reporting more than one disability.

Three disabilities dominate as reported primary disability-type accounting for 85% of the total number of target matters received by the Hotline, these are:

- physical;
- psychiatric; and
- intellectual disability.

Table 2: Hotline Client by age (July 2012-June 2014)

Age Group	Jul 2012- Jun 2013	Jul 2013-Jun 2014	Jul 2014- Dec 2014	Total	Percentage of Total
Less than 16	16	7	8	31	5%
16 to 19	8	14	5	27	4%
20 to 24	11	14	12	37	6%
25 to 40	41	57	24	122	20%
41 to 54	58	57	20	135	22%
Over 54	49	46	15	110	18%
Unknown	58	46	37	141	25%
Total	241	241	121	603	100%

Table 2 shows clients by reported age, indicating that people aged 25 years and over account for the majority of allegations received by the Hotline. Specifically, the dominant categories are people aged 25-40 and 41-54.

When comparing data for the 2013-14 financial year, and the 2012-13 financial year, a small increase in the number of allegations made by individuals between the ages of 20 to 24 years old is noted. Data on the July – December 2014 period is provided and while only capturing half of the current financial year, these early numbers suggest that reporting by the 20-24 year old cohort may be on the rise.

Table 3: Hotline Clients identifying as Indigenous or Torres Strait Islander (July 2012-June 2014)

Period	Jul 2012- Jun 2013	Jul 2013-Jun 2014	Jul 2014- Dec 2014	Total	Percentage of Total
Indigenous	8	9	4	21	3%
Non Indigenous	177	187	87	451	76%
Unknown	53	33	19	105	17%
Client unsure	2	1	3	6	1%
Not Disclosed	1	11	8	20	3%
Total	241	241	121	603	100%

The numbers in Table 3 indicates three per cent of Hotline clients identify as Aboriginal or Torres Strait Islander. This is consistent with Australian Bureau of Statistics (ABS) population data.

Table 4: Hotline Clients from culturally and linguistically diverse (CaLD) populations (July 2012-June 2014)

Period	Jul 2012- Jun 2013	Jul 2013-Jun 2014	Jul 2014- Dec 2014	Total	Percentage of Total
CALD	60	51	27	138	22%
Not CALD	169	172	87	429	72%
Unknown	0	5	1	6	1%
Not Disclosed	12	13	6	30	5%
Total	241	241	121	603	100%

The data in Table 4 is broadly consistent with ABS population data from the 2011 census, which states that "almost a quarter (24.6 per cent) of Australia's population was born overseas"[6].

The Hotline promotes access for all callers by actively employing people from culturally and linguistically diverse backgrounds such as Spanish, Portuguese, Mandarin, Cantonese and Japanese, and previously, Arabic and Hindi. When appropriate, the Hotline uses the Australian Government Translating and Interpreting Service and covers the cost of those services. 50 per cent of employees at the Hotline are people with disability.

Table 5: Hotline reports by Gender (July 2012-June 2014)

Gender	Number of matters	Percentages of matters
Female	338	56%
Male	241	40%
Unknown	24	4%
Total	603	100%

Table 6 above shows there are more reports relating to abuse or neglect of women recorded via the hotline, than for men.

Women with Disability

The gendered aspect to violence that applies in the general population, also applies to adults with disability. However, according to Clark and Fileborn (2011)[7] from the Australian Centre for the Study of Sexual Assault, while women remain overwhelmingly the victims of sexual violence, men with an intellectual disability do experience greater risk of victimisation than men in the general population.

Recent Australian research from Women with Disabilities Victoria (2014) found:

- women with disabilities experience high levels of family and sexual violence;

[6] Australian Bureau of Statistics, 2011, *CaLD census data*. Retrieved on 22 April 2015 from: http://abs.gov.au/websitedbs/censushome.nsf/home/CO-59

[7] Clark, H. & Fileborn, B. (2011). Responding to women's experiences of sexual assault in institutional and care settings. Retrieved on 12 December 2014 from http://www.aifs.gov.au/acssa/pubs/wrap/wrap10/w10.pdf

- women with disabilities experience the same kinds of violence experienced by other women but also 'disability-based violence';
- gender-based and disability-based discrimination intersect and increase the risk of violence for women with disabilities;
- women with disabilities experience violence from many (usually male) perpetrators; and
- women experience a wide range of violence throughout their lives, in a variety of settings.

Consultations held in 2007, funded by the Australian Government's Domestic and Family Violence and Sexual Assault Initiative through the Office for Women, developed a baseline of beliefs and attitudes towards sexual assault in disability and aged care residential settings in New South Wales. The research estimated that 95 per cent of residents over 40 years of age would have been sexually assaulted given their period of residence in institutional facilities. The findings of these consultations also highlight ambiguity around the notion of consent and the sometimes resultant paternalistic measures taken to prevent residents having relationships with one another, to prevent them from harm.

It is argued by researchers the 'closed' nature of institutions and residential settings prevent public scrutiny, and increase the risk of abuse (Frohmader & Sands, 2014)[8]. In addition, Frohmader and Sands point out, people with disability have a far less chance of being believed when reporting sexual abuse, so most abuse goes unreported.

Overall research suggests women with disability experience violence - particularly family, domestic and sexual violence and violence in institutions - more often than men with disability and more often than women without disability[9]. In addition, they are more vulnerable to being victims of crime - from both strangers and people who are known to them - and yet these crimes are often never reported to law enforcement agencies.

Under the First Action Plan of the National Plan to Reduce Violence against Women and Children 2010-2022 (the National Plan), Women with Disabilities Australia (WWDA) were funded to deliver the 'Stop the Violence Project' (STVP), which asked women with disability about their experiences of violence. The STVP included a national symposium, state-based roundtables and an online national stakeholder survey.

Women's responses to the STVP's surveys and workshops suggest that women with disability are more likely than other women to experience domestic and family violence, and the violence is likely to be more severe, and continue for longer. Women with disability reported they can also face considerable challenges in accessing services and justice. This reflects global studies on the experiences of women and girls with disability affected by violence.

A priority of the Second Action Plan to Reduce Violence against Women and Children is to better understand and respond to diverse experiences of violence, including the experiences of women with disability. Under this priority all Australian governments are working with expert organisations, service providers and advocates to deliver practical actions that improve the safety of women with disability and their children.

[8]Frohmader, C. & Sands, T., 2014, *Fact Sheet: Violence against people with disabilities in institutions and residential settings*. Retrieved on 12 December 2014 from http://www.pwd.org.au/documents/orgdocs/FS-Violence-PWD2014.doc

[9] Women with Disabilities Australia, 2013, *Stop the Violence Improving Service Delivery for Women and Girls with Disabilities*. Retrieved on 25 March 2015 from: http://www.stvp.org.au/

DSS is keen to work with stakeholders, including state and territory governments and other Commonwealth departments, to mitigate the risks of abuse and to improve how service providers and authorities respond to cases when they come to light. To this end, quality and safeguard consultations, facilitated by DSS and designed to inform the NDIS, are currently being held across the country.

2. What needs to be done

(d) The responses to violence, abuse and neglect against people with disability, as well as to whistle blowers, by every organisational level of institutions and residential settings, including governance, risk management and reporting practices.

(h) What should be done to eliminate barriers for responding to violence, abuse and neglect perpetrated against people with disability in institutional and residential settings, including addressing failures in, and barriers to, reporting, investigating and responding to allegations and incidents of violence and abuse?

(i) What needs to be done to protect people with disability from violence, abuse and neglect in institutional and residential settings in the future, including best practice in regards to prevention, effective reporting and responses?

(j) Identifying the systemic workforce issues contributing to the violence, abuse and neglect of people with disability and how these can be addressed.

What the research tells us

Research identifies a range of useful insights into what can be done to better protect and empower people with disability when it comes to preventing, detecting and responding to violence, abuse and neglect. Women with Disabilities Victoria (2014) learned family and friends are key supports for victims of abuse, and when services and organisations tailored their responses to the specific needs of individuals, better outcomes were achieved.

Experts advise that the first person to be told about an alleged sexual assault should take appropriate steps to ensure the allegation is reported to the police, the victim is protected from further harm, and the victim has access to appropriate support services (Office of the Public Advocate Victoria, 2012). Further, the importance of information, education and training for people with disability, and training and education programmes for staff working with people with disability, should not be discounted (French, Dardel & Price-Kelley, 2009).[10]

Murray and Powell (2008)[11] from the Australian Centre for the Study of Sexual Assault suggest the following actions are needed in addressing abuse of people with disability:

- create an environment of sexual violence prevention and enabling disclosure;
- sexuality education for people with disabilities;
- professional development;
- screening of staff;
- coordinated cross-sectoral responses;
- improvements to the criminal justice system;
- improved data collection; and
- further research.

[10]French, P., Dardel, J. & Price-Kelly, S., 2009, *Rights denied: towards a national policy agenda about abuse, neglect and exploitation of persons with cognitive impairment*. Retrieved on 12 December 2014 from http://www.pwd.org.au/documents/pubs/RightsDenied2010.pdf

[11] Murray, S. & Powell, A., 2008, *Sexual assault and adults with a disability: Enabling recognition, disclosure and a just response*. Retrieved on 12 December 2014 from http://www.aifs.gov.au/acssa/pubs/issue/acssa_issues9.pdf

It is also suggested that there is an urgent need for statutory guidelines, which require reporting of adult abuse, and provide protection for bona fide whistle blowers, similar to existing child protection legislation (McCormack, Kavanagh & Caffrey, 2005)[12].

DSS grant agreements, programmes and initiatives

As the Commonwealth Department primarily responsible for disability programmes, DSS has a comprehensive regime of risk management, quality assurance, reporting, monitoring and complaints handling procedures. DSS reviews and updates its policies, procedures, products and practice as part of ongoing operations.

DSS grant agreements

DSS engages third parties to deliver services to people with disability. These contracted service providers must comply with all laws, codes of ethics, regulations or other industry standards relevant to the activity. Grant agreements act as the framework on which DSS is able to articulate measures designed to prevent, detect and respond to violence, abuse and neglect.

DSS' policy is that persons (including sub-contractors and volunteers) who are working with, or are in contact with, Vulnerable Persons are to be appropriately screened for that purpose. Vulnerable Persons for this purpose means

a) a Child or Children; or
b) an individual aged 18 years and above who is or may be, unable to take care of themselves, or is unable to protect themselves against harm or exploitation by reason of age, illness, trauma or disability, or any other reason.

The purpose of the DSS policy is to ensure any grant recipient in contact with Vulnerable Persons is aware of DSS' requirements and expectations in managing the funded activity.

The onus is on the grant recipient to undertake appropriate checks and clearances and they must not deploy, redeploy or engage a person where the police check for that person states they have a serious, criminal or court record.

The Terms and Conditions of the DSS Comprehensive Grant Agreement state that organisations do not have to conduct a police check in a jurisdiction where a Working with Children check (or equivalent) is required.

As indicated in the clause and policy, DSS has broadly incorporated all Commonwealth and state and territory laws that may prohibit the person from working with children and vulnerable persons. The onus is on everyone (Departmental staff, grant recipients, members of the public etc.) to report to relevant authorities any suspected breach of any law in relation to the care of vulnerable persons.

[12] McCormack, B., Kavanagh, D., Caffrey, S. & Power, A., 2005, *Investigating sexual abuse: Findings of a 15-year longitudinal study.* Retrieved on 12 December 2014 from http://search.ebscohost.com/login.aspx?direct=true&db=pbh&AN=17802294&site=ehost-live

DSS aged care subsidies

There are compulsory reporting provisions under the *Aged Care Act 1997*. Commonwealth Government subsidised providers must report suspicions or allegations of assaults to local police and DSS. A reportable assault is:

- unreasonable use of force on a resident, ranging from deliberate and violent physical attacks on residents to the use of unwarranted physical force; and
- unlawful sexual contact, meaning any sexual contact with residents where there has been no consent.

Reportable assaults are reported to DSS through the Aged Care Complaints Scheme (Complaints Scheme) which monitors:

- whether, following a reportable assault, the approved provider has taken appropriate remedial action to support the affected resident/s and minimise any further risk, noting these are only allegations; and
- whether an approved provider has complied with its mandatory reporting requirements.

Where the incident involves a resident with a previously diagnosed cognitive or mental impairment, the requirement to report does not apply when the following conditions are met:

- the resident alleged or suspected of committing an assault had a **documented clinical assessment** of mental or cognitive impairment prior to the alleged assault taking place, **and**
- the service provider **develops, documents and implements** strategies to manage the behaviour of the resident **within 24 hours** of suspecting or receiving an allegation of an assault.

With the exception of aged care, there are no other mandatory reporting requirements to DSS with respect to the Vulnerable Persons policy. The grant recipient is bound by the agreement to advise of any issue that may delay, stop or adversely affect the funded activity. In cases with these types of offences, the grant recipient would need to advise DSS that an offence has been committed and also advise what action has been taken as a result. They must not provide the full details to DSS.

The first port-of-call for managing an offence would be with law enforcement agencies. In the past where accusations of any form of abuse have come to DSS, the person or organisation reporting has been told to report the incident to the police, as the accusation could result in criminal charges. DSS cannot interfere with law enforcement processes.

Grant recipients take responsibility for the staff they engage to undertake the funded activity. They must also act on any information they receive in regards to inappropriate actions of staff and are required to do so under the grant agreement.

DSS encourages grant recipients to maintain appropriate complaints mechanisms and whistleblower provisions that are:

- consistent with Australian Standards on complaints handling and whistleblower provisions (AS ISO 10002-2006 and AS 8004-2003);
- flexible enough to encourage clients and staff to raise issues/concerns;
- managed effectively and in a timely manner; and
- supported by documented policies and procedures.

In relation to aged care, DSS has police check requirements to protect the health, safety and wellbeing of vulnerable aged care recipients. Police checks are intended to complement robust recruitment practices and are part of a provider's responsibility to ensure all staff and volunteers are suitable to provide care to the aged.

For Commonwealth funded aged care services under the *Aged Care Act 1997* (the Act), police checks requirements are legislated under the Act and associated Principles. Providers have a responsibility under the Act to be aware of, and comply with, the police check provisions. The Australian Aged Care Quality Agency (the Quality Agency) monitors compliance with the police check requirements.

The Act and associated Principles require police certificates, not more than three years old, to be held by:

- all staff over the age of 16 who have, or are reasonably likely to have, access to care recipients. This includes key personnel, staff employed or contracted to provide services to care recipient including nurses, kitchen, cleaning, laundry, garden and office personnel; and
- volunteers who have unsupervised access to care recipients.

Providers are legally bound under the Act not to allow a person to become, or continue as, a staff member or volunteer if their police certificate records a precluding offence. The offences that preclude a person from working in aged care are:

- a conviction for murder or sexual assault; or
- a conviction of, and sentence to imprisonment for, any other form of assault.

Any person with a conviction for a precluding offence must not be employed, contracted, hired, retained, or accepted as an unsupervised volunteer in an aged care service subsidised by the Commonwealth.

The precluding offence definitions are deliberately broad to account for the effect different jurisdictional law has on the accepted terminology for a type of offence. Murder and all forms of sexual assault are considered suitably serious to warrant absolute preclusion from employment; and the reference to being sentenced to imprisonment for any other form of assault is intended to preclude only the more serious forms of physical assault.

Providers are responsible for ensuring policies and procedures are in place to assess police certificates that record convictions for offences not considered precluding under the Act. Any decision regarding the employment of a person with any recorded convictions must be rigorous, defensible and transparent.

Providers must take reasonable measures to require each member of staff and volunteers to notify them if they are convicted of a precluding offence in the three year period between obtaining and renewing their police check. If a staff member or volunteer has been convicted of a precluding offence they must not be allowed to continue as a staff member or volunteer.

Police checks are only valid at the point-in-time they are done. These checks rely on the conviction of the person concerned and there is no way to pick up unconvicted offenders. Registers of offenders are not publically available in some states/territories. There is a case for developing a national screening regime for persons working with vulnerable people as opposed to the inconsistent ones currently available.

DSS funded disability programmes

The Commonwealth's primary responsibility in relation to disability programmes is employment services for people with disability. This was decided as part of the first Commonwealth-State Disability Agreement in 1991.

Beyond employment assistance, DSS supports a range of disability related programmes, including the National Disability Advocacy Program (NDAP). NDAP provides people with disability access to advocacy services designed to promote, protect and ensure full and equal enjoyment of all human rights, enabling community participation. DSS programme descriptions and links are at **Attachment A**

The introduction of the Commonwealth Disability Services Act (DSA) (1986) enshrined principles and objectives for disability service delivery into legislation. Disability employment and advocacy programmes are subject to the DSA (1986). Service providers funded via these programmes are legislatively and contractually obliged to:

- maintain certification under the National Standards for Disability Services[13] or the Advocacy Standards 2012[14];
- provide services in-line with the Principles and Objectives of the DSA[15]; and
- provide services in line with the Comprehensive Grant Agreement Terms and Conditions, clause 19 - 'Working with Vulnerable Persons'[16].

A Quality Strategy for disability employment programmes was introduced in 2002 and for Advocacy programmes in July 2012. These independent, third party quality assurance processes are designed to ensure government is funding quality employment and advocacy services, which address the needs and choices of people with disability.

In December 2013, all Australian jurisdictions endorsed a revised set of National Standards for Disability Services (NSDS). The revised standards were passed by the Australian Senate in mid-2014 via the *Disability Services Act (National Standards for Disability Services) Determination 2014* and are now applicable to all DES and ADE providers. DSS funded advocacy services will transition to the NSDS during 2015.

These revised standards better reflect contemporary organisational practices, modernise the language and concepts, emphasise outcomes for service users, and focus on human rights, including within Standard One – Rights; and particularly to the subject of this inquiry Standard 1.5:

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[13] Commonwealth of Australia, 2013, *National Standards for Disability Services*. Accessed on 16 March 2015 from: https://www.dss.gov.au/our-responsibilities/disability-and-carers/standards-and-quality-assurance/national-standards-for-disability-services

[14] Commonwealth of Australia, 2012. *Disability Advocacy Standards and Key Performance Indicators*. Accessed on 16 March 2015 from: https://www.dss.gov.au/our-responsibilities/disability-and-carers/standards-and-quality-assurance/disability-services-standards-advocacy-standards-2012

[15] Commonwealth of Australia, 1986, *Disability Services Act 1986*. Accessed on 16 March 2015 from: http://www.comlaw.gov.au/Details/F2009B00030

[16]Commonwealth of Australia, 2011, *Australian Governments – Terms and Conditions – Working with Vulnerable People*. Accessed on 16 March 2015 from: https://www.dss.gov.au/about-the-department/doing-business-with-dss/vulnerable-persons-police-checks-and-criminal-offences#3

The service has preventative measures in place to ensure that individuals are free from discrimination, exploitation, abuse, harm, neglect and violence.[17]

If a quality auditor suspects or discovers evidence of abuse or neglect they are required, by the relevant procedure, to treat the report as a 'notifiable issue' and immediately report it to DSS for action.

Recently reported incidents of abuse have been used as an opportunity to further review operations of the quality strategy for the employment and advocacy programmes. The review found that although the strategy was mostly sound, there was some room for improvements and change. For example:

- Strengthen training for auditors – DSS has developed training for Quality Assurance (QA) auditors who work with people with disability and their service providers. DSS has committed to further strengthening the component of the training that deals with abuse and neglect issues.
- DSS input into QA audits – Although the audits are independent of DSS, it is important that relevant information, known to DSS (particularly if it involves abuse), is provided to auditors. DSS are working with, Certifying Bodies and the Joint Accreditation System of Australia and New Zealand (JAS-ANZ - the government-appointed accreditation body for Australia and New Zealand) to ensure this is being done whenever appropriate.
- Auditor rotation – To avoid auditors becoming too familiar with service provider organisations, DSS has proposed a change to the auditing procedure. The proposal will require a different lead auditor be engaged at each recertification audit. Implementation of this change is currently being discussed with JAS-ANZ and certifying bodies.

An important component of the Quality Strategy is complaints and referrals. Operating since July 2002, the Complaints Resolution and Referral Service (CRRS) is an independent avenue of complaint for users of Commonwealth-funded disability employment and advocacy services.

It is used when complaints cannot be resolved internally and/or service users feel they cannot use a service provider's internal complaints mechanism. Complaints are managed by the CRRS with reference to the appropriate quality standard.

The CRRS operates through a free call hotline, which is run in conjunction with the National Disability Abuse and Neglect Hotline (discussed above). DSS has been working with the administrators of the CRRS and the Hotline to review current policies, procedures and data collection and reporting. As a result of the review, minor amendments to work-flow of calls and call transfer practices were changed to ensure that callers talk to the right people as quickly as possible. The Hotline Policies and Procedures are available at: http://www.disabilityhotline.net.au/resources/.

DSS funds supports for people impacted by mental illness under the Community Mental Health (CMH) Activity. The CMH Activity provides accessible, responsive, high-quality and integrated community-based mental health services that improve the capacity of individuals,

[17] Commonwealth of Australia, 2013, *National Standards for Disability Services*. Accessed on 16 March 2015 from: https://www.dss.gov.au/our-responsibilities/disability-and-carers/standards-and-quality-assurance/national-standards-for-disability-services

families and carers to manage the impacts of mental illness on their lives and improve their overall well-being.

There are clear intersections between the activities under CMH and the Senate Inquiry. People whose lives are severely impacted by mental illness are more frequently exposed to violence, abuse and discrimination. The impact of these experiences can, in turn, lead to the development of mental health issues and/or exacerbate existing mental illness.

DSS also funds two early intervention programmes for children up to seven years of age with disability:

- the Helping Children with Autism (HCWA) package; and
- the Better Start for Children with Disability (Better Start) initiative.

These programmes provide up to $12,000 for eligible families to assist with the cost of early intervention. They also provide a range of supports such as Early Days Workshops, PlayConnect Playgroups, Autism Specific Early Learning and Care Centres and access to disability specific online content through the Raising Children Network.

Given the age of these children, most would be living in their family's care and, therefore, less likely, than other sectors of the disability community to be in institutional or residential settings. Nevertheless, because of their age and disability, they are still at risk of exposure to abuse, neglect and trauma, especially if their disability is impacted by mental illness, intellectually impairment or developmental delay.

Service providers for CMH and early intervention programmes are monitored through grant agreements which include regular reporting. The grant agreements also require service providers to ensure they work to overcome access barriers for especially vulnerable groups such as Indigenous Australians and people from CaLD backgrounds.

DSS initiatives to prevent abuse and neglect

Apart from DSS disability programmes, there are other DSS initiatives that are specifically targeted at preventing abuse and neglect of people with disability:

Disability Ideas Informing Practice (DiiP)

Since 2013, DSS has funded an online community of practice for ADEs and other stakeholders to discuss, share and learn about disability employment. Its intent is to act as a clearinghouse for recent and relevant research, and as a hub for discussion about key issues in the disability sector.

In late 2014, a specific online space for the topic of abuse and neglect was added to DiiP. It includes resources such as journal articles and practical tools. A webinar about abuse prevention and detection was hosted via the DiiP site on 5 March 2015, and was fully subscribed. To view the DiiP site see http://www.diip.com.au/themes/abuse-and-neglect.

Information products

There are products available to service providers on the DSS website about people with disability protecting themselves from and reporting abuse.

When I'm at work: Stopping abuse – Fact Sheet - This fact sheet is designed to inform and educate workers with disability about their human rights, how to recognise abuse, what to do about it and who can help[18].

When I'm at work: Stopping abuse (Power Point presentation – Easy English) - This resource contains the same information as the Fact Sheet but assists trainers deliver it to workers with a disability[19].

These products have been updated and are part of a broad range of information products developed in 2008. The products are designed to help service users and providers improve outcomes, particularly those working in the Australian Disability Enterprises sector[20].

DSS Complaints Management Process

DSS' complaints management arrangements aim to provide DSS clients with an accessible process that handles complaints about DSS or a DSS funded service provider in a timely, professional and consistent manner. The information obtained from these complaints helps DSS improve customer service and administrative processes.

In cases where it is suspected the law has been broken or an offence has occurred, DSS encourages complainants, including whistle blowers, to contact law enforcement agencies as the first point of contact. Where DSS receives accusations of a breach of the grant agreement, information is dealt with through the formal complaints process and in consultation with the relevant areas of DSS.

A separate complaints mechanism operates for recipients of aged care services. The Complaints Scheme provides a free service for anyone to raise concerns about aged care services subsidised by the Australian Government. In cases where suspected or alleged abuse has occurred, the Scheme will direct providers to fulfil their obligations under the Act by reporting the matter to the police for their investigation in addition to meeting their obligations to care recipients under the aged care legislation.

[18] A copy of the fact sheet is available at https://www.dss.gov.au/sites/default/files/documents/01_2015/when_im_at_work_-_stopping_abuse_-_fact_sheet_0.pdf

[19] A copy of the Powerpoint presentation is available at https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/for-employers/when-im-at-work-stopping-abuse-power-point-presentation-easy-english

[20] The full set of information products is available at http://resources.fahcsia.gov.au/ConsumerTrainingSupportProducts/default.htm

3. The role of governments

(e) The different legal, regulatory, policy, governance and data collection frameworks and practices across the Commonwealth, states and territories to address and prevent violence, abuse and neglect against people with disability.

(k) The role of the Commonwealth, states and territories in preventing violence and abuse against people with disability.

All governments play a role in protecting Australians with disability. There are considerable challenges in setting policy and designing programmes and safeguards, that harmonise the work of the different levels of government while not infringing on the rights of people with disability or creating unnecessary red-tape. These issues are addressed in the design of the National Disability Strategy (NDS), the 10-year national policy framework for improving life for Australians with disability (details on following page). They are also currently being considered as part of the National Disability Insurance Scheme (NDIS) quality and safeguards development.

Government, at all levels, refer and respond to a variety of legislation and policy documents when designing programmes for people with disability. The plans, agreements, strategies and papers, summarised below, guide efforts to detect, prevent and respond to incidents of violence, abuse and neglect of people with disability.

National Disability Agreement

The National Disability Agreement (NDA) is a high-level agreement between the Commonwealth, states and territories. It sets out clear roles and responsibilities for funding the delivery of disability services in a manner that contributes to an enhanced quality of life for people with disability and carers.

Prior to the full national rollout of the NDIS, it is largely the role of the state and territory governments to deliver specialist disability services. However, the Commonwealth has responsibility for disability employment services.

The NDA states, at clause 18 (a) (i), that:

> 18. All state and territory governments are responsible for:
> (a) the provision of disability services (except disability employment services), including:
> (i) regulation, service quality and assurance;

The NDA also states that:

- Across all policy and reform directions consideration will be given to strategies specific to Indigenous Australians, those from culturally and linguistically diverse backgrounds, and those living in regional, rural and remote communities; and
- The Commonwealth undertakes responsibility for ensuring that Commonwealth legislation is aligned with national priority, reform directions and the United Nations Convention on the Rights of Persons with Disabilities.

More information and a copy of the agreement are available at: http://www.federalfinancialrelations.gov.au/content/national_agreements.aspx.

National Disability Strategy 2010-2020 (NDS)

Following national consultation and a report (SHUT OUT: The Experience of People with Disabilities and their Families in Australia[21]); the governments of Australia committed to the NDS; a unified, national approach to improving the lives of people with disability. Chapter Two of the strategy describes five policy directions and 12 areas for action related to protecting the rights of, and ensuring justice for, people with disability.

A central outcome of the NDS is to ensure that the rights of people with disability are 'promoted, upheld and protected'.

This outcome includes relevant areas for action such as:

- promote awareness and acceptance of the rights of people with disability;
- develop strategies to reduce violence, abuse and neglect of people with disability;
- improve the reach and effectiveness of all complaint mechanisms; and
- ensure people with disability have every opportunity to be active participants in the civic life of the community – as jurors, board members and elected representatives.

The Strategy seeks to drive a more inclusive approach to the design of policies, programmes and infrastructure so that people with disability can participate in all areas of Australian life. It is also an important mechanism to ensure the principles underpinning the UN Convention on the Rights of Persons with Disabilities are incorporated into all policies, services and programmes affecting people with disability, their families and carers.

While the Strategy seeks to improve the lives of all Australians with disability, it recognises that people with disability have specific needs based on their personal circumstances, including the type and level of support required, gender, age, education, sexuality, and ethnic or cultural background. In particular, it recognises that gender can significantly impact on the experience of disability, and women and girls with disability often face different challenges by reason of their gender.

More information about the NDS is at: https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/national-disability-strategy

National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector

Commonwealth, state and territory disability ministers endorsed the 'National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector' (the Framework) at the Disability Reform Council meeting on 21 March 2014. The Framework focuses on the reduction of the use of restrictive practices in disability services that involve restraint (including physical, mechanical or chemical) or seclusion.
The Framework will also play an important role in enabling all Australian Governments to have a consistent approach to reducing and eliminating restrictive practices. The Framework outlines key principles to guide work in this area and core strategies to reduce the use of restrictive practices in the disability service sector.

[21] Commonwealth of Australia, 2009, *SHUT OUT: The Experience of People with Disabilities and their Families in Australia.* National Disability Strategy Consultation Report
Accessed on 9 March, 2015 from: https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/shut-out-the-experience-of-people-with-disabilities-and-their-families-in-australia

In developing the Framework broad consultation was undertaken, including with people with disability, their families and carers, disability and carer organisations, advocacy groups, service providers, human rights organisations, medical and allied health professionals, and other stakeholders.

Jurisdictional reporting on the progress of the Framework's implementation will occur on a biennial basis. The Framework is an interim measure delivering leadership towards the reduction of the use of restrictive practices, which will then be taken forward into the NDIS quality and safeguards framework to be implemented in the longer term.

More information about the Framework is at: https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/national-framework-for-reducing-and-eliminating-the-use-of-restrictive-practices-in-the-disability-service-sector.

National Plan to Reduce Violence against Women and their Children 2010-2022

The Commonwealth Government has worked with state and territory governments to develop and deliver the National Plan to Reduce Violence against Women and Children 2010-2022 (the National Plan). The National Plan aims to achieve a significant and sustained reduction in violence against women and their children and has a particular focus on domestic and family violence and sexual assault.

The Commonwealth Government is funding a range of national initiatives under the National Plan, which are focused on preventing violence against women and their children, including violence against women with disability. These include:

- Our Watch – an organisation established by the Commonwealth in partnership with Victorian, South Australian and Northern Territory governments to challenge gender inequality and attitudes towards violence against women and their children, through community engagement, primary prevention and advocacy;
- The Line - social marketing campaign to engage young people to discuss and consider issues relating to violence and what is acceptable in a relationship;
- White Ribbon - a unique primary prevention campaign aiming to prevent and reduce violence against women and girls through working directly with men, encouraging men and boys to take positive action to create change; and
- working with states and territories to develop guidelines to strengthen and support the delivery of high quality and effective respectful relationships programmes in schools and other community settings.

The National Plan is being delivered through four, three-year Action Plans. This enables a long-term approach that builds over time, develops and takes account of new evidence, with the flexibility to respond to emerging issues.

Under the First Action Plan (2010-2013), the Commonwealth provided funding through DSS for Women with Disabilities Australia (WWDA) to deliver the Stop the Violence Project (STVP) over 18 months in 2012 and 2013. In the STVP, WWDA asked women with disability about their experience of violence and identified, investigated and promoted ways to improve services that help prevent violence against people with disability, and respond to women with disability experiencing, or at risk of, experiencing violence.

The STVP convened a National Summit of people with disability, their representatives and experts in the field, and conducted surveys of women with disability about their experiences of violence.

The report and recommendations of the STVP can be found at http://www.stvp.org.au/.

On 27 June 2014, the Prime Minister, the Hon. Tony Abbott MP, launched the Second Action Plan of the National Plan, announcing the Commonwealth has allocated more than $100 million, over four years, to reduce violence against women and their children.

The Second Action Plan (2013-2016) has a strong focus on better understanding and responding to people's diverse experiences of violence, including for people with disability. It also includes initiatives to help better identify, support and respond to women with disability experiencing, or at risk of, family and domestic violence and sexual assault. Under the Second Action Plan, governments have committed to work with expert organisations such as WWDA to prioritise and implement key outcomes of the STVP. This will include: bringing together, and disseminating good practice information on preventing violence against women with disability; training for frontline workers to recognise and prevent violence against women and children with disability; and providing accessible information and support in National Plan communications.

The Second Action Plan also commits to building the national evidence base on violence against people with disability, including on which policy and service interventions are effective in preventing and responding to this violence. In October 2014, Australia's National Research Organisation for Women's Safety (ANROWS) launched its Research Programme 2014-16. The programme includes research that will provide better knowledge about the services available to women and girls with disability experiencing violence.
More information about the National Plan is at: https://www.dss.gov.au/our-responsibilities/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022.

National Human Rights Action Plan

An important action under the NDS is to monitor and ensure compliance with international human rights obligations. The Australian Government's National Human Rights Action Plan (NHRAP) ensures that human rights for all people, including those with disability, are protected. The plan identifies a number of specific actions for people with disability including, for example, working with state and territory governments to clarify and improve laws and practices governing the sterilisation of women and girls with disability.

More information about the NHRAP is at: https://www.humanrights.gov.au/national-human-rights-action-plan.

National Framework for Protecting Australia's Children

The National Framework for Protecting Australia's Children 2009-2020 (the National Framework), endorsed by the Council of Australian Governments in April 2009, is an ambitious, long-term approach to ensuring the safety and wellbeing of Australia's children, and aims to deliver a substantial and sustained reduction in levels of child abuse and neglect over time.

The National Framework represents the highest level of collaboration between Commonwealth, state and territory governments and non-government organisations, through the Coalition of Organisations Committed to the Safety and Wellbeing of Australia's Children, to ensure Australia's children and young people are safe and well. It includes high-level and other supporting outcomes and actions, which are being delivered through a series of three-year action plans.

More information about the National Framework is at https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business.

4. Australia's international obligations

(f) Australia's compliance with its international obligations as they apply to the rights of people with disability.

United Nations Convention on the Rights of Persons with Disabilities

On 17 July 2008, Australia became one of the first western nations to ratify the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), and acceded to the Optional Protocol to the Convention on 20 September 2009.

Under Article 16 of the UNCRPD, laws and administrative measures must guarantee freedom from exploitation, violence and abuse. In case of abuse, states shall promote the recovery, rehabilitation and reintegration of the victim and investigate the abuse.

Australia's initial report on the implementation of the UNCRPD, which was forwarded to the UN in December 2010, referred to relevant Commonwealth Government initiatives such as the National Disability Abuse and Neglect Hotline.

However, the report also noted that state and territory governments were primarily responsible for the protection of persons with disabilities from exploitation, violence and abuse. The states and territories had a range of measures in place that provide protection to persons with disabilities, and recognised the particular vulnerability of women and children with disabilities to violence and abuse.

Australia's implementation of the UNCRPD was considered by the UN Committee on the Rights of Persons With Disabilities in September 2013 at the Committee's 10th Session in Geneva.

The Committee's Concluding Observations on the Initial Report of Australia released on 6 October 2013, commended Australia for many actions including the adoption of the National Disability Strategy 2010-2020 and the introduction of the National Disability Insurance Scheme.

However, the Committee was concerned at reports of the high rates of violence perpetrated against women and girls living in institutions and other segregated settings, and recommended an investigation, without delay, into situations of violence, exploitation and abuse experienced by women and girls with disabilities in institutional settings, and to take appropriate measures on the findings.

The Commonwealth Government is strongly committed to a significant and sustained reduction in violence against women and their children, including women with disability, and there are a range of national initiatives being funded under the National Plan (see information discussed on page 23). The Committee has requested that Australia submit its combined second and third periodic reports by 17 July 2018, and to include therein information on the implementation of the Concluding Observations.

As the designated joint focal points for Australia, the Attorney-General's Department (AGD) (as lead) and DSS (in consultation with other Australian Government Departments), will examine the recommendations more closely and provide advice to Government.

DSS anticipates this Senate inquiry will also produce findings and result in recommendations to government about violence and abuse against women and girls with disabilities in institutions.

The National Disability Strategy (described on page 21) will help Australia fulfil its obligations under the Convention by establishing a framework to promote, protect and monitor the implementation of the Convention as required under article 33(2), and will contribute to meeting Australia's reporting responsibilities under Article 35(1).

For more information about Australia's response to the United Nations Convention on the Rights of Persons with Disabilities see https://www.ag.gov.au/RightsAndProtections/HumanRights/Pages/UnitedNationsConventionontherightsofpersonswithdisabilities.aspx.

5. The role of advocacy

(g) Role and challenges of formal and informal disability advocacy in preventing and responding to violence, abuse and neglect against people with disability.

The views, ideas and advice provided by people with disability are critical to ensuring that the Government's policies, programmes and legislation meet the needs of people with disability.

Disability advocacy plays an important role in raising awareness of, and responding to, violence, abuse and neglect against people with disability. The Government recognise this and has made a commitment to ensure the voices of all people with disability are represented.

In February 2015, funding was announced to five organisations. They will work independently on behalf of their members, and collaborate on national and common issues as the National Cross-Disability Alliance (the Alliance), focusing on improving the lives of all people with disability. The Alliance will provide the Government with practical advice to help improve policies and legislation impacting people with disability across Australia. The organisations involved are:

- People with Disability Australia;
- Children with Disability Australia;
- First Peoples Disability Network;
- National Ethnic Disability Alliance; and
- Women with Disabilities Australia.

Members of the Alliance recently wrote to the Prime Minister, requesting an independent National Inquiry into violence and abuse perpetrated against people with disability in institutional and residential settings in Australia. The Council is also working with the DSS – NDIS Group on consultations about the NDIS quality and safeguards framework.

These new arrangements complement the National Disability Advocacy Program (NDAP). The NDAP funds agencies to provide advocacy that works to uphold the rights and interests of people with all types of disabilities, by addressing instances of discrimination, abuse and neglect. This can be on a one-to-one basis, with families, by addressing legal aspects or through systemic advocacy. In 2014-15, around $16.5 million will be offered under the programme to 59 organisations operating across Australia.

The Commonwealth, with states and territories, is working through the elements of advocacy that will be funded by the NDIS and how it will align with services delivered under NDAP. DSS funds other Sector Peak Bodies. Organisations funded under this activity, such as National Disability Services, contribute to Australian Government policy relating to volunteering, community services and the welfare sector through the provision of submissions and providing advice on current and emerging issues. They also communicate information to the community about Australian Government policies, programmes and services.

The National Aged Care Advocacy Program is funded by the Australian Government under the *Aged Care Act 1997* and provides free, confidential advocacy support and information to consumers or potential consumers of Australian Government subsidised Home Care Packages and residential aged care services.

There are nine community-based NACAP organisations operating nationally, one in each state and territory, and two in the Northern Territory. In 2013–14, the NACAPs received an additional 20 per cent in funding to June 2015 to meet an identified unmet demand for advocacy services, particularly in rural and regional areas of Australia. On top of individual advocacy services, NACAP organisations also provide information and education to aged care recipients and approved providers on the rights and responsibilities of care recipients. In 2013–14, services under the NACAP undertook more than 3,400 advocacy cases, handled more than 4,400 general enquiries, and provided over 1,400 face-to-face education sessions.

The Australian Government is currently undertaking a review of Commonwealth aged care advocacy services.

The review is being undertaken to inform the Commonwealth on how individual advocacy services can best support aged care consumers to:

- effectively interact with the aged care system;
- better transition between service types; and
- be empowered to apply informed decision making and actively exercise choice.

The outcomes will present options to inform the Department's design of a nationally consistent, end to end aged care advocacy service model, focussed on individual advocacy support and aimed at protecting consumer rights.

6. The National Disability Insurance Scheme and National Quality Framework

(l) The challenges that arise from moving towards an individualised funding arrangement, like the National Disability Insurance Scheme, including the capacity of service providers to identify, respond to and prevent instances of violence, abuse and neglect against people with disability.

(m) What elements are required in a national quality framework that can safeguard people with disability from violence, abuse and neglect in institutional and residential settings.

The *National Disability Insurance Scheme Act 2013*, notes in its general principles:

> People with disability have the same right as other members of Australian society to respect for their worth and dignity and to live free from abuse, neglect and exploitation.[22]

The NDIS will fundamentally shift the way supports for people with disability are delivered in Australia. The direct funding relationship between governments and service providers will be gone, so too will the quality and safeguard frameworks linked to those grant agreements. This shift provides a timely opportunity to review current protections against abuse and neglect.

Existing arrangements for quality and safeguarding are based on grant agreements between governments and providers of supports. The NDIS, by contrast, funds individual participants who make choices about their own supports. This creates the need for a new quality and safeguarding framework because people with disability themselves will make judgments and decisions about the quality of providers. The NDIS quality and safeguards framework will help ensure NDIS supports are safe, while still allowing people to take reasonable risks to achieve goals.

Commonwealth, state and territory governments are working together with the National Disability Insurance Agency (NDIA) to develop a national system of quality and safeguards for participants in the NDIS when it is fully implemented. Governments are committed to establishing a system that contains robust safeguards to ensure quality support for people with disability.

On 16 February 2015, the Disability Reform Council released a consultation paper on quality and safeguarding in the NDIS. The consultation paper "Proposal for a National Disability Insurance Scheme Quality and Safeguards Framework" addresses a range of quality and safeguarding issues, including registration requirements for providers, employee screening, complaints handling, oversight, self-management and restrictive practices.

[22] Commonwealth of Australia, 2013, *National Disability Insurance Scheme Act 2013 (Cth*), Chapter 1, part 2, section 4(6). Accessed on 9 March, 2015 from: http://www.comlaw.gov.au/Details/C2013A00020/Html/Text#_Toc352761868

During the consultation period, which closed on 30 April, public forums were held in capital cities and a number of regional centres. There were also targeted workshops with hard-to-reach groups including people with intellectual disability, Indigenous people with disability, women with disability, and people with acquired brain injury. DSS has received more than 200 submissions and approximately 600 questionnaires. The consultation paper, public submissions and other information are available at: engage.dss.gov.au.

The next stage of work is to develop a COAG decision Regulation Impact Statement (RIS) which will be considered by Commonwealth, State and Territory Ministers in late 2015. The COAG decision RIS, will include a report on the consultations, and will set out proposals on the key elements of a National Framework for Quality and Safeguards in the NDIS.

A national aged care quality framework is in place to promote the safety, health and well-being of aged care recipients and includes:

- comprehensive quality standards service providers are required to meet;
- assessment and monitoring of these standards by the Australian Aged Care Quality Agency (Quality Agency), including through announced and unannounced visits;
- the Aged Care Complaints Scheme (the Scheme);
- DSS' strong compliance powers, including sanctions, where regulatory obligations are not met; and
- independent review of the Scheme's and Quality Agency's processes.

Recent enhancements to the regulatory framework include development of quality indicators, which will assist consumers in making informed choices in relation to aged care.

Final remarks

DSS is of the view that more work needs to be done on the policy and practice required to better safeguard people with disability from abuse and neglect. To this end, the development of an effective quality and safeguards framework for the NDIS is critical.

DSS recognises that improving systems is only part of an effective response. Perpetrators of these abuses and crimes will seek to circumvent systemic safeguards. The great challenge is developing and maintaining effective safeguards without creating unnecessary red-tape. As always, this is a difficult balance, requiring the cooperation of all jurisdictions to avoid duplication, while addressing any gaps that could be exploited.

In developing effective safeguards within DSS programmes, DSS is conscious the vast majority of service users are adults. Adults with disability must be supported to make decisions about their own lives wherever possible. Safeguards must take account of this while reducing the risk to individuals from abuse, violence and neglect.

While systems and frameworks are important, cultural shifts within the sector are critical to ensuring safety for vulnerable people with disability. DSS looks forward to the inquiry report and using it to strengthen the existing protections and inform the development of safeguards under the NDIS.

Attachment A - DSS funded programmes and services for people with disability

- Accessible Cinema in Australia - The Cinema Access Implementation Plan has provided improved access to cinemas for deaf or hearing impaired, blind or vision impaired people.
- Australian Disability Parking Scheme - The Australian Disability Parking Scheme helps eligible people park nearer to their destination.
- Better Start for Children with Disability initiative - The Better Start for Children with Disability (Better Start) initiative aims to assist eligible children with developmental disabilities to access funding for early treatment, diagnostic and management services.
- Disability Investment Group - The Australian Government has established a Disability Investment Group to explore innovative funding ideas from the private sector that will help people with disability and their families' access greater support and plan for the future.
- Employment for People with Disability - The Australian Government is committed to ensuring people with disability receive opportunities to reach their potential through participating in the community and the workforce.
- External Merits Review - The External Merits – Support Component provides funding for support services to assist applicants in navigating the process of Administrative Appeals Tribunal review of National Disability Insurance Agency decisions.
- Family Mental Health Support Services - This service provides improved mental health outcomes for children and young people, and their families.
- Helping Children with Autism - This package is for support and services for children with Autism Spectrum Disorders. It includes support for parents, families, carers and children from diverse cultural, linguistic and Indigenous backgrounds and living in rural and remote areas.
- Increasing Accessibility Library Initiative - The Increasing Accessibility Library Initiative provides people with print disability access to playback devices from selected public libraries across the country. The playback devices will allow them to access print material in a digital format.
- International Day of People with Disability (IDPwD) - IDPwD is a United Nations sanctioned day that occurs annually on 3 December and celebrates and recognises the achievements, contributions and abilities of people with disability.
- Leaders for Tomorrow - Leaders for Tomorrow is a new national program which aims to develop the leadership capacity of people with disability.
- National Auslan Interpreter Booking and Payment Service (NABS) - The National Auslan Interpreter Booking Service provides accredited Auslan (Australian Sign Language) interpreters to deaf Auslan users free of charge when they attend private medical consultations.

- National Companion Card - The National Companion Card scheme enables eligible people with disability to participate at venues and activities without incurring the cost of a second ticket for their attendant carer.
- National Disability Advocacy Program - The National Disability Advocacy Program (NDAP) funds organisations to provide advocacy support to people with disability that promotes, protects and ensures their full and equal enjoyment of all human rights, enabling community participation.
- National Disability Insurance Scheme - The National Disability Insurance Scheme (NDIS) supports people with a permanent and significant disability that affects their ability to take part in everyday activities.
- National Disability Conference Initiative - Funding is provided each year to eligible conference organisers to enable them to support the attendance of people with disability at disability-focused conferences.
- National Information Program - The Information Program provides a national database with information on accessible accommodation services and events for people with disability.
- Outside School Hours Care for Teenagers with Disability - This program (formerly known as the Extra Support for Children with Disability Program) is an Australian Government initiative to increase outside school hour's care and holiday care for teenagers with disability aged from 12 to 18 years.
- Personal Helpers and Mentors - This service provides increased opportunities for recovery for people aged 16 years and over whose lives are severely affected by mental illness. This service helps participants to overcome social isolation and increase their connections to the community.
- Postal Concessions for the Blind Program - The PCB Program enables blind people and eligible organisations that service the needs of blind people, to send eligible material through Australia Post. The Department reimburses Australia Post for the postage costs of eligible material.
- Print Disability Services - The Department funds four print disability service providers to produce digital masters of printed material. The digital masters can easily be converted into the alternate format of choice for people with print disability.
- Remote Hearing and Vision Services for Children - The Australian Government announced on Wednesday 1 February 2012 funding of up to $4.9m over three years for the Remote Hearing and Vision Services for Children program.
- Wage assessments in Australian Disability Enterprises - The Australian Government has a number of strategies in place to support the employment of people with disability and to assist them to reach their social and economic potential.

- Targeted Community Care (Mental Health) Program - This Program provides assistance to people with mental illness and their families and carers to manage the impacts of mental illness on their lives and improve their overall wellbeing.
- Younger People with Disability in Residential Aged Care Initiative - Council of Australian Governments (COAG) agreed to initiate a new program to reduce the numbers of younger people with disability living in nursing homes throughout Australia.

Attachment B - Definitions used by the National Disability Abuse and Neglect Hotline

Forms of Abuse that the Hotline staff can assist with include (but are not limited to):

Physical abuse: Any non-accidental physical injury or injuries to a child or adult. This includes inflicting pain of any sort or causing bruises, fractures, burns, electric shock, or any unpleasant sensation.

Sexual abuse: Any sexual contact between an adult and child 16 years of age and younger; or any sexual activity with an adult who is unable to understand, has not given consent, is threatened, coerced or forced to engage in sexual behaviour.

Psychological or emotional abuse: Verbal assaults, threats of maltreatment, harassment, humiliation or intimidation, or failure to interact with a person or to acknowledge that person's existence. This may also include denying cultural or religious needs and preferences.

Constraints and restrictive practices: Restraining or isolating an adult for reasons other than medical necessity or the absence of a less restrictive alternative to prevent self-harm. This may include the use of chemical or physical means or the denial of basic human rights or choices such as religious freedom, freedom of association, access to property or resources or freedom of movement.

Financial abuse: The improper use of another person's assets or the use or withholding of another person's resources.

Legal or civil abuse: Denial of access to justice or legal systems that are available to other citizens.

Systemic abuse: Failure to recognise, provide or attempt to provide adequate or appropriate services, including services that are appropriate to that person's age, gender, culture, needs or preferences.

Forms of Neglect include (but are not limited to):

Physical neglect: Failure to provide adequate food, shelter, clothing, protection, supervision and medical and dental care, or to place persons at undue risk through unsafe environments or practices.

Passive neglect: A caregiver's failure to provide or wilful withholding of the necessities of

life including food, clothing, shelter or medical care.

Wilful deprivation: Wilfully denying a person who, because of age, health or disability, requires medication or medical care, shelter, food, therapeutic devices or other physical assistance - thereby exposing that person to risk of physical, mental or emotional harm.

Emotional neglect: The failure to provide the nurturance or stimulation needed for the social, intellectual and emotional growth or well being of an adult or child.