

Chapter 1

Introduction

Violence against people with disability in institutional and residential settings is Australia's hidden shame...The evidence of this national epidemic is extensive and compelling. It is a deeply shameful blight on our society and can no longer remain ignored and unaddressed.¹

1.1 The issue of violence, abuse or neglect of people with disability was most recently brought to national prominence by an ABC TV Four Corners investigation of Yooralla disability services that aired on 24 November 2014.² The report contained allegations of long-term sexual assaults, physical and psychological abuse and neglect of people with disability, as well as the victimisation of whistleblowers. The allegations were not limited to one carer, nor limited to one facility. The proceeding police investigation found five alleged sexual offenders working for Yooralla as disability carers. Yooralla operates over 70 residential care houses across Victoria.

1.2 The Four Corners report generated broad media and public attention to the issue of violence and abuse of people with disability. On the eve of the ABC TV report airing, the Victorian Government and Opposition both pledged to hold an inquiry into that state's disability sector.

1.3 A range of organisations and disability advocates called for a national inquiry, including former National Disability Commissioner, Mr Graeme Innes, who said he believed there were dozens to hundreds of similar abuse and neglect cases throughout Australia, and that the number of independent group homes would shortly be increasing under the National Disability Insurance Scheme (NDIS) rollout, increasing the need for a better system of independent monitoring.

1.4 A coalition of peak disability advocacy groups renewed the campaign for a national inquiry by writing to the Prime Minister on 20 January 2015.³ The letter was endorsed by over 95 state and territory based disability organisations from around Australia, with over 11,000 signatories to a petition calling for an inquiry. In response, a group of Senators referred the matter on 11 February 2015, to the Senate Community Affairs References Committee (committee) for inquiry and report.

1 Australian Cross Disability Alliance, *Submission 147*, p. 6.

2 ABC TV, Four Corners, "[In Our Care](http://www.abc.net.au/4corners/stories/2014/11/24/4132812.htm)", 24 November 2014, <http://www.abc.net.au/4corners/stories/2014/11/24/4132812.htm>, (accessed 10 November 2015).

3 The coalition included Women With Disabilities Australia, People with Disability Australia, National Ethnic Disability Alliance, First People's Disability Network Australia and United Voices for People with Disabilities. See also: <http://www.nationaldisabilityabuseinquiry.com/>

Commonwealth responsibility for disability standards

1.5 As outlined in further detail in chapter two, the Commonwealth has formally assumed certain responsibilities for disability services from 1 January 2009, under the National Disability Agreement (NDA). Formerly, the Commonwealth's role was primarily one of funding states and territories to deliver services, investing in policy priority initiatives and ensuring that Commonwealth legislation is aligned with the United Nations (UN) Convention on the Rights of Persons with Disabilities (the Disability Convention). However, as a signatory to the Disability Convention, the Australian Government retains ultimate responsibility to ensure that the treatment of people with disability in Australia is compatible with the provisions of the Disability Convention.

1.6 Article 4 of the Disability Convention requires states to 'undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability'.⁴ This article places a positive obligation on the Australian Government to ensure that these rights are not being infringed within its jurisdiction, regardless of the entity inflicting the infringement.

1.7 Article 16 of the Disability Convention requires states to 'ensure that all facilities and programs designed to serve persons with disabilities are effectively monitored by independent authorities'.⁵ This article places a positive obligation on the Australian Government to ensure that disability services monitoring and complaints handling entities are operating in an effective manner to uphold the rights of people with disability.

1.8 Australia acceded to the Optional Protocol to the Disability Convention, which came into force for Australia on 20 September 2009. The Optional Protocol is a separate instrument to the Disability Convention, and gives the UN Committee on the Rights of Persons with Disabilities the power to receive complaints from individuals and groups who believe that their state has breached the Disability Convention after all domestic remedies have been exhausted.

1.9 There are currently nine individual cases/communications against Australia pending under this mechanism.⁶

4 United Nations, Convention on the Rights of Persons with Disabilities, Article 4.1, <http://www.un.org/disabilities/default.asp?id=199>, (accessed 10 September 2015).

5 United Nations, Convention on the Rights of Persons with Disabilities, Article 6.3, (accessed 10 September 2015).

6 Of the nine pending cases, seven cases relate to the indefinite detention of persons with an intellectual impairment, two relate to the lack of Auslan interpretation for jurors and the last case relates to the denial of a working visa for medical reasons. United Nations, Committee on the Rights of Persons with Disabilities, *Table of pending cases*, <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Tablependingcases.aspx>, (accessed 10 September 2015).

1.10 Australia is also a signatory to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child. The Disability Convention captures relevant provisions of these other frameworks as they relate to people with disability.

The committee's area of interest

1.11 The committee has a long-standing interest in the delivery of disability services as part of its portfolio coverage of Health, Social Services and Human Services. The committee's most recent relevant inquiries have focused on aspects of disability service delivery to specific disability sectors. These inquiries have included:

- Adequacy of existing residential care arrangements available for young people with severe physical, mental or intellectual disabilities in Australia (June 2015);
- Prevalence of different types of speech, language and communication disorders and speech pathology services in Australia (September 2014); and
- Care and management of younger and older Australians living with dementia and behavioural and psychiatric symptoms of dementia (March 2014).⁷

1.12 The committee has also inquired into the practice of the forced sterilisation of people with disability and people aging with a disability.⁸

1.13 In this report, the committee examines the issue of violence, abuse and neglect of people with disability from a whole of issue perspective. The committee examines the causes of violence, abuse and neglect of people with disability, what happens when individuals or their carers try to report abuse either to the service delivery entity or through more formal mechanisms, and what was the response to the reporting. The committee examines primary ways that violence, abuse and neglect can be eliminated and how to improve rates of reporting and responses to reporting via systemic changes. The committee also examines secondary mechanisms that can support systemic change, such as education programs, workforce improvements and advocacy programs.

7 Senate Community Affairs References Committee, *Completed inquiries and reports*, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/completed_inquiries (accessed 14 September 2015).

8 Senate Community Affairs References Committee, *Involuntary or coerced sterilisation of people with disabilities in Australia*, October 2013 and *Inquiry into Planning Options and Services for People Ageing with a Disability*, July 2011, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/2010-13, (accessed 14 September 2015).

Establishment of the inquiry

1.14 On 11 February 2015, the Senate referred an inquiry into violence, abuse and neglect against people with disability to the committee for inquiry and report by 24 June 2015. In order to properly respond to the volume of evidence submitted to the inquiry, a series of extensions were granted by the Senate, with a final reporting date of 25 November 2015.

Focus of the inquiry

1.15 The terms of reference for this inquiry were made deliberately broad, to ensure the inquiry was able to look holistically at the issue of violence, abuse and neglect of people with disability, which has many intersecting causes and impacts. However, the terms of reference do constrain the inquiry to acts of violence, abuse and neglect that occur within the disability service setting. While the committee is aware that violence, abuse and neglect of people with disability is prevalent in the community and is well worth an inquiry itself, the causes and policy settings to address the issue are distinct from such acts perpetrated within a disability service context.

1.16 The terms of reference include a definition of the disability service settings relevant to this inquiry, and also provides a definition of violence.

Terms of reference

1. 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, with particular reference to:
 - 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;
 - d. the responses to violence, abuse and neglect against people with disability, as well as to whistleblowers, by every organisational level of institutions and residential settings, including governance, risk management and reporting practices;
 - 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;

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- f. Australia's compliance with its international obligations as they apply to the rights of people with disability;
 - g. role and challenges of formal and informal disability advocacy in preventing and responding to violence, abuse and neglect against people with disability;
 - 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;
 - k. the role of the Commonwealth, states and territories in preventing violence and abuse against people with disability;
 - 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; and
 - 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.

That for this inquiry:

- a. 'institutional and residential settings' is broadly defined to include the types of institutions that people with disability often experience, including, but not restricted to: residential institutions; boarding houses; group homes; workplaces; respite care services; day centres; recreation programs; mental health facilities; hostels; supported accommodation; prisons; schools; out-of-home care; special schools; boarding schools; school buses; hospitals; juvenile justice facilities; disability services; and aged care facilities; and
- b. 'violence, abuse and neglect' is broadly understood to include, but is not limited to: domestic, family and interpersonal violence; physical and sexual violence and abuse; psychological or emotional harm and abuse; constraints and restrictive practices; forced treatments and interventions; humiliation and harassment; financial abuse; violations of privacy; systemic abuse; physical and emotional neglect; passive neglect; and wilful deprivation.

Conduct of inquiry

1.17 The committee advertised the inquiry in *The Australian* on 15 April 2015. Details of the inquiry were placed on the committee's website and the committee wrote to 140 organisations, inviting submissions by 10 April 2015, which was later extended to 29 May 2015. Submissions continued to be accepted after that date. The committee received over 160 submissions. A list of the individuals and organisations that made submissions to the inquiry is provided at Appendix 1.

1.18 A total of six public hearings were held in Perth on 1 April 2015, Melbourne on 30 June 2015, Canberra on 21 August 2015, Sydney on 27 August 2015, Adelaide on 28 August 2015 and in Brisbane on 16 October 2015. Organisations from Tasmania were invited to participate in the Melbourne hearing, and organisations from the Northern Territory were invited to hearings in South Australia and Brisbane. Transcripts of hearings are available on the committee's website⁹ and a list of the witnesses who gave evidence at the hearings is provided at Appendix 2.

Acknowledgements

1.19 The committee thanks those individuals and organisations who contributed to the inquiry, particularly those who provided evidence of their lived experience of violence, abuse or neglect of themselves or their loved ones.

1.20 The committee is grateful for the cooperation of Commonwealth, state and territory government departments in providing assistance to address this significant national issue.

Accessibility

1.21 The committee commissioned an easy English version of the terms of reference of the inquiry, as well as an easy English guide to how to make a submission. Each guide was made available in a PDF version and a version compatible with communication devices. The guides were published on the website as well as distributed to the disability advocacy network, with advocates encouraged to forward widely throughout their distribution lists. Advocacy organisations provided positive feedback on this initiative, both informally and formally to the committee.¹⁰

1.22 The committee investigated options to allow submissions to be made as audio or video submissions for those unable to provide a written submission. This option was announced via the inquiry website and by email to the disability advocacy network. No audio or video submissions were received.

9 Senate Community Affairs References Committee, *Past public hearings and transcripts*, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Public_Hearings, (accessed 18 September 2015).

10 Ms Mary Mallet, Chief Executive Officer, Disability Advocacy Network Australia, *Committee Hansard*, Canberra, 21 August 2015, p.15.

The structure of the report

1.23 This report has 10 chapters, broken down by theme rather than closely following the terms of reference.

- Chapter two outlines Australia's obligations to people with disability under various international human rights instruments. Chapter two then outlines the frameworks of how disability services are provided, including relevant commonwealth disability agreements which define the different Commonwealth, state and territory roles in funding, policy development and service provision. Chapter two also gives a brief overview of the recent national, state or territory disability-related inquiries and reports.
- Chapter three examines lived experience of violence, abuse and neglect, covering the experiences of people with disability as well as the experiences of family and friends who advocated on their behalf. Chapter three also looks at the prevalence of violence, abuse and neglect of people with disability and issues around data collection.
- Chapter four investigates therapeutic and other disability practice that would be seen in any other area of service as unlawful loss of personal rights or even as acts of violence. This chapter considers issues such as loss of legal capacity, restrictive practice and guardianship.
- Chapter five examines the different legal and policy frameworks for reporting and investigating violence, abuse and neglect, from informal in-service reporting through to investigations by external government bodies such as ombudsmen or commissioners.
- Chapter six explores the issue of access to justice for people with disability, and the barriers they face in reporting and providing evidence of crimes.
- Chapter seven looks at workforce and other systemic issues that increase the risk of violence, abuse or neglect, and examines workplace and systemic changes that could reduce the risk factors.
- Chapter eight examines the important role of informal and formal advocacy in reducing levels of, and responding to, individual acts of violence, abuse or neglect.
- Chapter nine looks at the challenges and opportunities presented by the rollout of the NDIS in reducing violence, abuse and neglect against people with disability.
- Chapter ten draws together the committee conclusions made throughout the report, to present a comprehensive road map for policy and law makers to reduce the prevalence and impact of violence, abuse and neglect of people with disability in institutional and residential settings.

1.24 References to the committee Hansard are to the proof Hansard – page numbers may vary between the proof and official transcript.

Key concepts

Defining disability

1.25 The terms of reference for this inquiry do not provide a definition of disability. The committee has relied on the definition in Article 1 of the Disability Convention:

Persons with disabilities include 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.¹¹

1.26 The UN *Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities* provides a more extensive definition, stressing that the impact of disability is not caused by a disability itself, but in the intersection of an impairment which 'in the face of various negative attitudes or physical obstacles, may prevent those persons from participating fully in society'.¹²

1.27 The committee has kept this extended definition in mind when assessing the evidence put forward during the inquiry. It is particularly relevant to the issue of reporting and prosecuting acts of violence, abuse and neglect of people with disability, where the disability is often seen by the justice system as an insurmountable barrier to gathering credible evidence on which to prosecute an offence.

Defining violence, abuse or neglect

1.28 The terms of reference provide a definition of violence. This definition was developed in collaboration with key experts within the disability sector to ensure that all aspects of violence, abuse and neglect relevant to people with disability were captured.

1.29 Although the terms of reference limit the locations relevant to this inquiry to places of institutional or residential care, such as residential institutions, boarding houses, group homes, schools, aged-care facilities etc., the definition of violence includes domestic, family and interpersonal violence. This is to reflect situations where such acts of violence occur within institutional or residential care settings, and the care provider does not live up to their duty of care in protecting their vulnerable clients against such acts of violence, abuse or neglect, regardless of who is the perpetrator.

Numbers of people with disability

1.30 Just under one in five people (4.2 million people or 18.5 per cent of Australians) reported having a disability in 2012. For those people with disability, 3.7 million (88 per cent) had a specific limitation or restriction that meant they were

11 United Nations, Convention on the Rights of Persons with Disabilities, Article 1, <http://www.un.org/disabilities/default.asp?id=199> (accessed 10 September 2015).

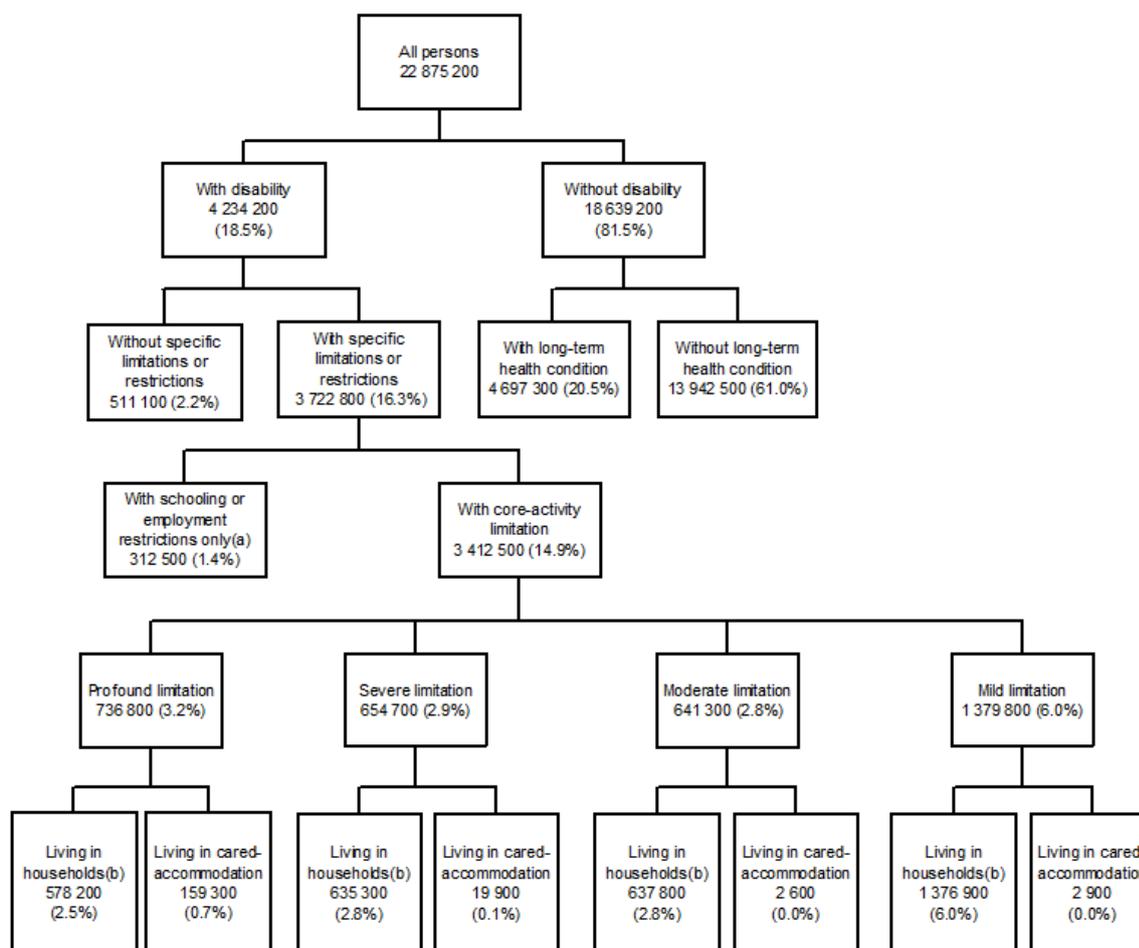
12 United Nations, *Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities, Chapter One: Overview*, <http://www.un.org/disabilities/default.asp?id=212>, (accessed 10 September 2015).

limited in the core activities of self-care, mobility or communication, or restricted in schooling or employment¹³ (see Figure 1.0 below).

1.31 Almost one in five people with disability (19 per cent or 813,900 people) reported a mental or behavioural disorder as the long-term health condition causing them the most problems. This included 5.6 per cent with intellectual and developmental disorders, 3.8 per cent with depression and mood affective disorders and 2.1 per cent with dementia and Alzheimer's disease.¹⁴

13 Australian Bureau of Statistics (ABS), *Survey of Disability, Ageing and Carers, Australia: Summary of Findings, Disability Characteristics*, cat. no. 4430.0, ABS, Canberra 2012. See: <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/3A5561E876CDAC73CA257C210011AB9B?opendocument>

14 ABS, *Survey of Disability, Ageing and Carers, Australia: Summary of Findings, Disability Long-Term Health Conditions*, ABS, Canberra, 2012.

Figure 1.1: All Persons, Disability status and living arrangements

Note:

- estimates have been rounded to the nearest one-hundred persons.
- due to rounding and the effect of perturbation the sum of sub-totals may not equal totals.

(a) Excludes people with a disability who have both a core-activity limitation and a schooling or employment restriction.

(b) 'Living in households' comprises all private dwellings and non-private dwellings apart from cared-accommodation.

Source: ABS, [Survey of Disability, Ageing and Carers, Australia: Summary of Findings, Disability Characteristics](#), ABS, Canberra, 2012.

Gender

1.32 Overall, in 2012, there continued to be a smaller proportion of males with disability than females (18 per cent compared with 19 per cent). This difference was most pronounced in older age groups for those with a profound or severe core activity limitation (40 per cent for females compared to 26 per cent for males 75 years and over). The other notable difference between males and females was that more boys than girls in the age group five to 14 years had disability (11.2 per cent compared with 6.2 per cent).¹⁵

15 ABS, [Survey of Disability, Ageing and Carers, Australia: Summary of Findings, Disability Characteristics](#), ABS, Canberra, 2012.

ATSI and CALD communities

1.33 Aboriginal and Torres Strait Islander peoples experience higher rates of disability than do other Australians. After taking into account age differences between the Indigenous and non-Indigenous populations, the rate of disability among Aboriginal and Torres Strait Islander peoples is almost twice as high as that among non-Indigenous people.¹⁶

1.34 People from culturally and linguistically diverse backgrounds—in particular newly arrived migrants such as refugees and special humanitarian entrants—can be particularly vulnerable. Those with disability are likely to experience multiple disadvantages. Lack of accessible information, communication difficulties or cultural sensitivities and differences can create barriers to services and support.¹⁷

Location

1.35 There are differences in disability prevalence across Australia's states and territories, due in part to the differing age structures. In 2012, Tasmania had the highest prevalence of disability, with a quarter of that state's population living with disability, compared with 16 per cent in Western Australia or the Australian Capital Territory and 12 per cent in the Northern Territory. The proportion of the population living with disability increases considerably with age. Tasmania also had the highest proportion of people aged 65 years and over with disability (55 per cent), while the Australian Capital Territory had the lowest proportion (44 per cent).¹⁸

1.36 Overall, there is a smaller proportion of people living with disability in Australia's major cities than in regional areas (17 per cent and 22 per cent, respectively).¹⁹

Older people

1.37 In 2012, of the population of older Australians with disability, most lived in a private dwelling (85 per cent) and needed some form of assistance (56 per cent) with one or more activities of daily life²⁰. While the majority of older people with disability

16 Council of Australian Governments (CoAG), *National Disability Strategy 2010-2020*, February 2011, p. 14. See: https://www.coag.gov.au/sites/default/files/national_disability_strategy_2010-2020.pdf (accessed March 2015).

17 CoAG, [National Disability Strategy 2010-2020](#), February 2011, p. 14.

18 ABS, *Survey of Disability, Ageing and Carers, Australia: Summary of Findings, Disability Characteristics*, ABS, Canberra, 2012, <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/3A5561E876CDAC73CA257C210011AB9B?opendocument> (accessed March 2015).

19 ABS, *Survey of Disability, Ageing and Carers, Australia: Summary of Findings, Disability Characteristics*, ABS, Canberra, 2012.

20 ABS, *Survey of Disability, Ageing and Carers, Australia: Summary of Findings, Disability Assistance*, ABS, Canberra, 2012.

lived with others, there were around 61,300 older people with a profound core activity limitation living alone in a private dwelling in 2012.²¹

1.38 In 2012, around 1.4 million older people needed assistance with at least one activity because of disability or age (42 per cent). Assistance was most commonly needed for health care tasks (25 per cent) and property maintenance (23 per cent). Of those people with disability, living in households, older people were more likely to report that their need for assistance had been met in full than those aged under 65 years (64 per cent compared with 58 per cent), while 5.8 per cent of those aged under 65 reported their needs were not being met at all.

Prevalence of violence, abuse and neglect

1.39 There are no definitive statistics on the prevalence of violence, abuse and neglect specific to people with disability, let alone broken down into place of residence such as institutional settings versus private residences. What is known through various studies, discussed in further detail in chapter two, is that the rate of violence and abuse of people with disability is far higher than for people without disability, and that issues of neglect are higher for people who require assistance with the provision of basic living needs.

1.40 The National Disability Strategy reports:

There is a range of evidence which suggests that people with disability are more vulnerable to violence, exploitation and neglect. People with disability fare worse in institutional contexts where violence may be more common. People with disability are more likely to be victims of crime and there are also indications that women face increased risk.

- 18 per cent of people with a disability report being victims of physical or threatened violence compared to 10 per cent without.
- The National Police Research Unit at Flinders University studied 174 people with an intellectual disability and found that they were 10 times more likely to have experienced abuse than non-disabled people.
- A recent US study found that women with disabilities were 37.3 per cent more likely than women without a disability (20.6 per cent) to report experiencing some form of intimate partner violence. 19.7 per cent of women with disabilities reported a history of unwanted sex compared to 8.2 per cent of women without a disability.²²

1.41 The Australian Cross Disability Alliance wrote:

21 ABS, *Survey of Disability, Ageing and Carers, Australia: Summary of Findings, Older People*, ABS, Canberra, 2012.

22 CoAG, National Disability Strategy 2010-2020, February 2011, pp 38-39, https://www.coag.gov.au/sites/default/files/national_disability_strategy_2010-2020.pdf (accessed July 2015)

It is almost impossible, in a written Submission, to do justice to the magnitude of the issue of violence against people with disability in institutional and residential settings in Australia. It is also impossible in a written Submission, to articulate the life-long pain and suffering endured by people with disability who have experienced and who continue to experience violence, abuse, exploitation and neglect in these settings.²³

Committee View

1.40 In preparing this inquiry report, the committee echoes the above sentiment expressed by the disability advocacy sector peak body, the Australian Cross Disability Alliance. It has been a challenging task for this inquiry to adequately capture the scale of the epidemic of violence, abuse and neglect of people with disability and the toll this epidemic has had on individuals and their families. The committee acknowledges the vast body of evidence presented by all submitters and witnesses. Although the final report can only present a small portion of the individual experiences, every individual account of suffering and pain has helped the committee to a greater understanding of the nature and scale of the problem to be addressed. In the words of one witness to the inquiry:

We bear witness to the stories and Australia's shame.²⁴

23 Australian Cross Disability Alliance, *Submission 147*, p. 6.

24 Ms Peta Green, Bolshy Divas, *Committee Hansard*, Perth, 10 April 2015, p. 11.

