



## **Australian Government**

### **Australian Government response to the Senate Community Affairs References Committee report:**

---

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.

2 March 2017

# Introduction

The Australian Government welcomes the opportunity to respond to the final report of the Senate Community Affairs References Committee 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 (CALD) people with disability.

The Inquiry shone a much needed light on the violence, abuse and neglect of people with disability. The report, its findings and recommendations, as well as the work being done in related state based inquiries, will play an important role in developing better ways of preventing, detecting and responding to cases of violence, abuse and neglect of people with disability.

The Australian Government thanks the Committee for its work and recognises Committee members were required to consider some very difficult issues. Most importantly, the Government thanks those individuals and organisations who have contributed to the Inquiry and understands it has been hard for many to recount their experiences.

The Australian Government has carefully considered the findings and recommendations of the Inquiry. All of those who have made submissions and appeared at hearings should be assured their contribution will influence changes to ensure a brighter and safer future for people with disability as the National Disability Insurance Scheme (NDIS) rolls out across Australia.

An NDIS Quality and Safeguarding Framework (the Framework) has been developed through intensive consultation between all governments, people with disability and stakeholders. The Framework is designed to ensure a safe environment and quality supports for all NDIS participants. It seeks to help participants resolve problems quickly, and strengthen the capability of NDIS participants, the workforce and providers to operate in the NDIS market. The Framework was agreed by the Commonwealth and all states and territories at the Council of Australian Governments (COAG) meeting on 9 December 2016. The Framework is expected to be operational for NDIS full scheme. Until this time, existing state and territory quality and safeguarding arrangements apply.

The Australian Government has considered, and responded to, the report's 30 recommendations. The response groups recommendations into five key themes:

1. Quality and Safeguards (recommendations 1, 2, 3, 4, 5, 9, 13 and 18)
2. Justice (recommendations 6, 7, 8, 10, 11, 12 and 30)
3. Advocacy (recommendations 15, 16, 17)
4. Data (recommendations 25, 26, 27, 28, 29)
5. Education (recommendations 19 and 23)

The remaining recommendations are addressed individually at the end of this response (recommendations 14, 20, 21, 22, 24).

# Key themes

## Quality and safeguards

The Australian Government shares the concerns raised in the Inquiry by people with disability, their families and supporters, and disability organisations representing people with disability, regarding violence, abuse and neglect in institutional and residential settings.

The Committee's report, findings and recommendations have provided information about the incidence of abuse in institutional and residential settings, and contributed to raising awareness, and prioritising the development of an appropriate response that will prevent harm, and improve the safety and wellbeing of those considered to be amongst society's most vulnerable.

The findings from this Inquiry will encourage the implementation of increased measures including improvements to regulatory frameworks and safeguards, to prevent the occurrence of violence, abuse and neglect within institutional and residential settings.

### **Royal Commission**

The Committee recommends that a Royal Commission into violence, abuse and neglect of people with disability be called. The Committee noted that it is

“of the view that only a Royal Commission with investigative powers, funded and empowered to visit institutions, could properly conduct an inquiry, and give full weight to the seriousness of this issue.”(pg. 296)

The Australian Government does not agree with this assessment.

Until the full rollout of the NDIS is complete, the states and territories remain responsible for disability services in their jurisdictions including complaints, regulations, quality assurance and law enforcement. The Commonwealth is committed to full rollout of the NDIS and gained invaluable intelligence from each of the NDIS trial sites. This intelligence, along with related inquiries, informed the development of the NDIS Quality and Safeguarding Framework which was agreed to by COAG on 9 December 2016.

In addition to this Inquiry, in the last 12 months there have been two related inquiries into this issue:

1. Reporting and investigation of allegations of abuse in the disability sector by the Victorian Ombudsman; and
2. Inquiry into abuse in disability services by the Parliament of Victoria.

## **Recommendation 1**

*The Committee recommends that a Royal Commission into violence, abuse and neglect of people with disability be called, with terms of reference to be determined in consultation with people with disability, their families and supporters, and disability organisations.*

### **Response to Recommendation 1: Not agreed**

The Australian Government has carefully considered the recommendations and findings outlined in this Inquiry, along with the work being done in state-based inquiries. The Government does not consider that a further inquiry is needed.

The findings from recent inquiries into abuse informed the development of the NDIS Quality and Safeguarding Framework. At the COAG meeting on 9 December 2016 all jurisdictions agreed to the Framework.

The Framework addresses many of the concerns raised in this Inquiry, including minimising the risk of abuse. The Framework encourages service providers to adopt an individualised approach to support in participant plans, and develop better ways to prevent, detect and respond to cases of violence, abuse and neglect. These measures will protect the rights of people with disability and ensure where there is an incidence of abuse and neglect of people with disability it is addressed as a priority.

The Framework has been developed through intensive collaboration between all governments, people with disability and stakeholders, and is designed to ensure a safe environment and quality supports for all NDIS participants. It seeks to help participants resolve problems quickly, and strengthen the capability of NDIS participants, the workforce and providers to operate in the NDIS market.

The Framework outlines the establishment of a new national function for provider registration, as well as national function for handling complaints, including investigating serious incidents, and overseeing the use of restrictive practices.

Worker screening is a shared responsibility, with the states and territories responsible for implementing worker screening checks in their own jurisdictions, and all governments working together to develop national policy and standards. Governments also share responsibility for delivering on their commitment to reducing and eliminating the use of restrictive practices in the NDIS.

## **Recommendation 2**

*The Committee recommends the Australian Government consider the establishment of a national system for reporting and investigating and eliminating violence, abuse and neglect of people with a disability, which should, at a minimum:*

- *be required to work in collaboration with existing state and territory oversight mechanisms;*
- *cover all disability workers, organisations and people with disability, without being restricted to NDIS participants;*

- *include a mandatory incident reporting scheme; and*
- *include a national worker registration scheme with pre-employment screening and an excluded worker register.*

*These elements are best implemented through the establishment of a national, independent, statutory protection watchdog that has broad functions and powers to protect, investigate and enforce findings related to situations of violence, abuse and neglect of people with disability.*

### **Recommendation 3**

*The Committee recommends the Australian Government establish a scheme to ensure national consistency in disability worker training, to include the elements of:*

- *mandatory rights based training to develop core competency skills in recognising and reporting violence, abuse and neglect of people with disability;*
- *review of current training and qualification levels to be conducted in collaboration with people with disability and the disability sector, with a view to increasing requirements;*
- *increased levels of training requirements to work with people with disability who have greater needs or vulnerabilities; and*
- *consideration of the need for an independent training program accreditation agency or body to oversee the scheme.*

### **Recommendation 4**

*The Committee recommends the Australian Government consider establishing a disability worker registration scheme, to include the elements of:*

- *nationally consistent pre-employment screening;*
- *an excluded worker registration scheme, tied to a mandatory incident reporting scheme;*
- *yearly worker registration scheme, with requirements for national criminal checks every five years;*
- *requirements for ongoing professional development; and*
- *a step-up system of registration, which requires increased training and skills to work with people with disability who have increased needs or vulnerabilities.*

*The registration worker scheme will be best overseen by the national disability watchdog.*

### **Recommendation 5**

*The Committee recommends the Australian Government consider establishing a national approach to modify state and territory and Commonwealth service delivery accreditation programs, to:*

- *ensure national consistency in service delivery accreditation programs;*
- *impose stronger requirements for facility and client specific induction training for carers;*
- *impose a mandatory incident reporting requirement tied to ongoing accreditation; and*
- *consider a scheme to impose service delivery standard requirements on management and boards, similar to occupational health and safety schemes.*

*The changes to accreditation schemes will be best overseen by the national disability watchdog.*

### **Recommendation 9**

*The Committee recommends the Australian Government work with state and territory governments on a nationally consistent approach to existing state and territory disability oversight mechanisms, to include;*

- *a clear distinction between dispute resolution and complaints investigation processes;*
- *a requirement that service delivery organisations should not report to funding agencies due to the conflict of interest;*
- *the principle that immediate action be taken on allegations of abuse to ensure the individual's safety;*
- *increased funding for community visitor schemes, with consideration these schemes be professionalised in all jurisdictions and with a mandatory reporting requirement for suspected violence, abuse or neglect; and*
- *greater crossover in oversight and complaints mechanisms between aged care and disability and recognising that over 7000 young people with disability live in aged care facilities, ensure that disability service standards are applicable.*

*A nationally consistent approach to disability oversight mechanisms is best overseen by the national disability watchdog.*

### **Recommendation 13**

*The Committee recommends state and territory and Commonwealth service delivery accreditation programs should be modified to impose additional requirements for positive life outcomes for individual people with disability, rather than a singular focus*

*on the avoidance of negative outcomes. The Committee recommends this work is best overseen by the national disability watchdog*

### **Response to Recommendations 2, 3, 4, 5, 9 and 13: Noted**

The Commonwealth, state and territory governments have committed to establishing robust service quality and safeguarding arrangements for NDIS participants.

The Commonwealth and all states and territories agreed to an NDIS Quality and Safeguarding Framework at the COAG meeting on 9 December 2016. The Framework is designed to ensure a safe environment and quality supports for all NDIS participants. It seeks to help participants resolve problems quickly, and strengthen the capability of NDIS participants, the workforce and providers to operate in the NDIS market. The overall objectives of the Framework are to ensure NDIS funded supports:

- uphold the rights of people with disability, including their rights as consumers
- facilitate informed decision making by people with disability
- are effective in achieving person-centred outcomes for people with disability in ways that support and reflect their preferences and expectations
- are safe and fit for purpose
- allow participants to live free from abuse, violence, neglect and exploitation, and
- enable effective monitoring and responses to emerging issues as the NDIS develops.

The Framework is designed to balance the need for appropriate protections that meet governments' duty of care obligations with the need to enable participants to take reasonable risks so they can reach their goals. The aim is to establish a flourishing market that offers people with disability genuine choice and control. The Framework is also designed to support the emerging market-based system in which participants are building their capability to act as informed consumers, the workforce is growing rapidly, and new providers are entering the market.

One of the underpinning principles of the Framework is proportionality and risk responsiveness. This recognises that the risk involved in delivering a support can be affected by the extent to which the participant is at heightened risk of abuse and neglect, and the potential risk associated with the particular type of support. Proportionality forms a component of a risk-responsive regulatory system, which recognises that risk of harm is experienced differently by individuals, and that regulatory tools for mitigating risk must be responsive. The Framework is therefore designed to be risk-responsive and person-centred, with measures tailored to the strengths, needs and circumstances of participants that increase or decrease risks, and the risks inherent in certain types of supports.

An independent body will be established to implement the regulatory components of the Framework. This body will oversee a national system for registering service providers; establish an independent statutory complaints handling function with responsibility for oversight of serious incident reports; and oversee restrictive practices and provide leadership and advice on positive behaviour support.



The Commonwealth will assume responsibility for:

- complaints and serious incidents: investigation, mediation and monitoring complaints, serious incident reports and sanctions for breaches of the NDIS code of conduct;
- registration and regulation of NDIS providers: oversight of the NDIS Practice Standards Scheme and regulatory compliance;
- leadership and advice on positive behaviour support and oversight of the use of restrictive practices with the aim of reducing such practices; and
- mandatory orientation: ensure workers are familiar with the principles underpinning the NDIS and the risks of providing supports, including issues related to abuse and neglect

The NDIS complaints commissioner will receive and support the resolution of complaints about providers of NDIS-funded supports, receive and investigate serious incident reports, and investigate potential breaches of the NDIS code of conduct. The commissioner will refer matters related to non-compliance with provider standards to the NDIS registrar; serious incidents relating to inappropriate or unauthorised use of a restrictive practice, or that indicate unmet behaviour support needs, to the senior practitioner; matters relevant to the risk assessment of individual workers to screening functions; and other matters to relevant authorities (such as the police, consumer affairs agencies and other regulatory bodies) as needed.

The NDIS registrar will have responsibility for registering providers; managing the NDIS practice standards and certification scheme; leading the design and broad policy settings for nationally consistent NDIS worker screening; monitoring provider compliance; and taking action as required. The registrar will also monitor, review and report on the effectiveness of the NDIS market of supports, including anti-competitive conduct and early indicators of risk of thin markets and market failure.

The senior practitioner will oversee approved behaviour support practitioners and providers; provide best practice advice; receive, review and report on provider reports on use of restrictive practices; and follow-up on serious incidents that suggest unmet behaviour support needs. The senior practitioner will refer concerns about worker or provider non-compliance to the NDIS registrar. Approval for the use of restrictive practices will continue to be managed through current state and territory government processes.

Worker screening is a shared responsibility, with the states and territories responsible for implementing worker screening checks in their own jurisdictions, and the Commonwealth responsible for working with all governments to develop national policy and standards. The absence of a positive worker screening check will preclude an individual from working in NDIS services (where checks are required).

A code of conduct will apply to all providers and workers delivering NDIS-funded supports. A code of conduct will help to set expectations for providers and individual workers, shape the behaviour and culture of organisations and workers, and empower consumers in relation to their rights. It will also enable providers and workers who commit an unacceptable breach of the code to be excluded from the NDIS market. The code of conduct will apply to all providers, whether or not they are registered with the NDIS registrar, and all workers delivering NDIS-funded supports,

whether they are operating as sole traders or employed by registered providers, including contractors, sub-contractors or agents.

The states and territories will continue to deliver quality and safeguarding arrangements in their jurisdictions in the transition period until the new quality and safeguarding arrangements are in place for full scheme.

### The National Disability Abuse and Neglect Hotline

Currently, the National Disability Abuse and Neglect Hotline provides an information, referral and support service for people concerned about abuse and neglect of people with disability.

The Hotline was established to provide a nationally-accessible service to report abuse and neglect of people with disability in Commonwealth, state and territory funded disability services, and to refer the reports appropriately. It is not a complaints resolution service or an individual advocacy service.

The Hotline provides a complementary referral service to the complaints handling mechanisms of the relevant state or territory, as well as other complaints handling bodies such as the Ombudsman, Anti-Discrimination Boards and the Complaints Resolution and Referral Service (CRRS). The Hotline works with callers to find appropriate ways of dealing with reports of abuse or neglect through referral, information and support.

When the Hotline receives a report of abuse and neglect that involves a criminal matter the Hotline will encourage the notifier, in the first instance, to contact the police (if they have not done so already), or refer them to the police directly. The Hotline will also encourage the notifier to seek advocacy support and, if the matter falls within a government jurisdiction, refer the matter to the relevant government authority.

### **Recommendation 18**

*The Committee recommends the Australian Government work with state and territory governments to implement a national zero-tolerance approach to eliminate restrictive practice in all service delivery contexts. This would entail:*

- *ensuring the national framework is properly implemented across all jurisdictions, as a mandatory, reviewable and enforceable scheme, with oversight by a qualified senior practitioner and with a mandatory element of positive behaviour support;*
- *a scheme that is not limited to the disability sector, but applies to all places where restrictive practice is used against people with disability; and*
- *imposing requirements for the use of positive behaviour management tools.*

*These policies and guidelines would be guided by the following principles:*

- *Policies and advice need to be available to the general public and linked in with behaviour and discipline policy.*

- *The preferred substitution of positive behavioural management tools such as Applied Behavioural Analysis for 'restrictive practices'.*

### **Response to Recommendation 18: Noted**

The Australian Government notes the recommendations outlined in the Inquiry in relation to restrictive practices. Reducing the use of restrictive practices is consistent with Australia's obligations under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). Australia's initial report on the implementation of the UNCRPD, forwarded in December 2010, noted that state and territory governments were primarily responsible for the protection of persons with disabilities from exploitation, 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 NDIS. However, among the concerns raised was that people with disabilities, particularly those with intellectual impairment or psychosocial disability, are subjected to unregulated behaviour modification or restrictive practices such as chemical, mechanical and physical restraints and seclusion, in various environments, including schools, mental health facilities and hospitals.

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.

The National Disability Strategy 2010-2020 outlines a need to review restrictive legislation and practices from a human rights perspective as an area for future action.

### **Restrictive Practices**

The National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector establishes nationally consistent overarching principles and strategies to guide work in the reduction, and where possible, elimination of the use of restrictive practices in disability services that involve restraint (including physical, mechanical or chemical) or seclusion. Commonwealth, state and territory Disability Ministers endorsed the National Framework on 21 March 2014.

The National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector is an interim step that delivers leadership toward reduction and elimination of the use of restrictive practices.

At the COAG meeting in December 2016, governments agreed to share responsibility for delivering on their commitment to reducing and eliminating the use of restrictive practices in the NDIS under the NDIS Quality and Safeguarding Framework. It was agreed a national Senior Practitioner would be appointed to monitor the use of restrictive practices and provide leadership, supporting the

reduction and elimination of restrictive practices. The states and territories will continue to authorise the use of restrictive practices against legislation and guidelines in each jurisdiction. Prior to the full implementation of the NDIS, the National Disability Insurance Agency (NDIA) will use existing state, territory and Commonwealth quality and safeguarding systems, including the laws and policies currently in place for restrictive practices.

Reducing seclusion and restraint in public mental health services has been a shared goal and investment across all Australian governments over the last decade.

Australian Health Ministers endorsed the *National safety priorities in mental health: a national plan for reducing harm* (the plan) in 2005. The plan identified four national priority areas for action including “reducing use of, and where possible eliminating, restraint and seclusion”. In accordance with the plan, the National Mental Health Seclusion and Restraint Project (2007-09), known as the Beacon Project, was developed to establish demonstration sites as centres of excellence aimed at reducing seclusion and restraint in public mental health facilities.

To maintain the collaborative approach and momentum from the Beacon Project, states and territories agreed to host ongoing annual National Mental Health Seclusion and Restraint forums. These forums showcase initiatives, report on progress, share lessons with external stakeholders and identify areas for further focus. The most recent forum was held in Melbourne in May 2015.

Since 2008-09, a number of ad-hoc seclusion data collections for specialised mental health public acute hospital services have been conducted by the Australian Health Ministers Advisory Council's (AHMAC) Safety and Quality Partnership Standing Committee (SQPSC) in partnership with the relevant state and territory authorities. More recently, the AHMAC mental health committees have formalised a routine, national seclusion data collection and reporting framework.

The National Mental Health Commission (the Commission) is leading a national project to look at best practice in reducing and eliminating the seclusion and restraint of people with mental health issues and to help identify good practice approaches. The Commission has released *A Case for Change: Position Paper on seclusion, restraint and restrictive practice in mental health* (Position Paper) at the 2015 National Seclusion and Restraint Reduction Forum, based on commissioned research.

## Justice

The Australian Government considers that the justice system should be accessible to all its users, regardless of their ability, gender or race. The Government is committed to improving the accessibility of the Federal civil and criminal justice systems, including through national strategies. The Committee's findings focus on improvements in areas which are principally the responsibility of states and territories. The Government will work cooperatively where possible, and within its jurisdiction, to improve the lives of people with disability in the justice system.

A number of mechanisms are currently in place to address access to justice issues for people with disability. The Strategic Framework for Access to Justice focuses on building community capacity to resolve legal issues without resorting to litigation by increasing access to education, information and support services to assist persons who encounter legal problems, including people with disability. The National Disability Strategy also seeks to ensure that people with disability have their rights promoted, upheld and protected.

The Australian Government also funds independent disability advocacy agencies under the National Disability Advocacy Program to provide support to people with disability with legal issues, and both disability advocacy agencies and Legal Aid Commissions under the NDIS Appeals program to assist NDIS participants and affected others appeal decisions in the Administrative Appeals Tribunal (AAT).

The Australian Government recognises that providing access to legal representation, and ensuring that courts and tribunals are accessible, are essential to providing access to justice. Commonwealth, state and territory governments provide legal assistance for people assessed as being least able to afford legal costs, and some organisations provide particular legal support to people with disability. The new National Partnership Agreement on Legal Assistance Services prioritises funding towards people whose capacity to resolve legal problems may be compromised by circumstances of vulnerability and/or disadvantage. This includes people with a disability or mental illness.

Many Australian courts and tribunals have implemented special measures to improve accessibility for people with disability, such as making adjustments to buildings and using alternative forms of communications, including Australian sign language, written information, and teletypewriters to ensure that proceedings are accessible and inclusive. The Australian Government will continue to consider access to justice initiatives for people with disability in both criminal and civil jurisdictions in areas which fall within the responsibility of the Commonwealth.

The interaction of people with cognitive disability and mental illness with the criminal justice system has been the subject of ongoing review and reform at the Commonwealth, state and territory level. In particular, the Australian Law Reform Commission completed an inquiry into the laws and legal frameworks within the Commonwealth's jurisdiction that deny or diminish the equal recognition of people with disability as persons before the law and their ability to exercise legal capacity. The resulting report made a number of recommendations to amend Commonwealth

laws and legal frameworks, which are currently under consideration by the Government.

### **Recommendation 6**

*The Committee recommends the Australian Government work with state and territory governments on the implementation of initiatives to improve access to justice for people with disability contained in the reports by the Law Reform Commission, Equality, Capacity and Disability in Commonwealth Laws, the Human Rights Commission, Equal Before the Law and Productivity Commission, Access to Justice Arrangements, with particular focus on:*

- *better intervention and support services;*
- *expanded Community Visitor's schemes;*
- *improved witness support services to people with disabilities;*
- *creation of an assessment protocol that assists police, courts, and correctional institutions in identifying people with disabilities. Where identified, a trained officer will provide support;*
- *transparent, effective and culturally appropriate complaints handling procedures;*
- *training for police, lawyers and others in justice in needs of people with disability; and*
- *where a person who has been found unfit to plead is to be held in detention, demonstrate that all reasonable steps have been taken to avoid this outcome, and that person must be held in a place of therapeutic service delivery.*

### **Response to Recommendation 6: Noted**

Legislative powers, training and support services in relation to the administration of criminal justice principally rest with state and territory governments. The Australian Government will continue to consider access to justice initiatives for people with disability in both criminal and civil jurisdictions in areas which fall within the responsibility of the Commonwealth.

Consistent with the independence of the Judiciary from the Executive, the Federal courts are each responsible for their own operation and management. The courts have implemented a number of initiatives to improve access to justice for people with disability. The websites of the Family Court of Australia and Federal Circuit Court of Australia now incorporate information and resources for people with a disability and their carers that will help them navigate the family law system and get the support they need. The courts have established a wide range of standard practices and policies that are specifically aimed to support people with disability. The Family Court is currently developing a Disability Action Plan to ensure all clients, particularly vulnerable and disadvantaged clients, receive the assistance they need to access the Court.

The Australian Government promotes open and transparent processes for handling complaints about court officials and federal judicial officers, both within the courts and in the Parliament. In 2013, legislation was passed which classified the powers of court heads of jurisdiction to handle complaints against judges.

### **Recommendation 7**

*The Committee also recommends that each state and territory implement a Disability Justice Plan.*

### **Response to Recommendation 7: Noted**

The implementation of a Disability Justice Plan is primarily a matter for state and territory governments.

### **Recommendation 8**

*The Committee believes that there is a need for further investigation of access to justice issues, with a focus on:*

- *national implementation of the South Australian model to ensure people with disability are able to provide evidence;*
- *the implementation requirements for supported decision-making;*
- *investigating the potential for the UK system of registered intermediaries;*
- *the access to justice needs of specific groups such as women, children, culturally and linguistically diverse communities and Aboriginal and, Torres Strait Islander peoples; and*
- *the indefinite detention of people with cognitive impairment or psychiatric disabilities.*

### **Response to Recommendation 8: Noted**

The Australian Government will continue to consider how persons with disabilities can be better supported, including accessing support to provide evidence. The Productivity Commission's recommendations into Access to Justice Arrangements are currently informing policy development.

The Australian Government agrees that access to communication support, including access to interpreter services is vital to ensuring that individuals understand their rights and responsibilities and, in particular, matters relating to law and justice.

The Australian Government will continue efforts to improve the way the criminal justice system treats people with mental and/or cognitive disability. A cross-jurisdictional working group has been established to collate data and develop resources for use by jurisdictions in considering how the criminal justice system treats people with mental and/or cognitive disability unfit to plead or found not guilty by reason of mental impairment. The working group will report on its work to the Law, Crime and Community Safety Council in October 2016.

Consistent with the independence of the Federal Courts, it is a matter for each court to determine its own practices. The Australian Government will make the Federal Courts aware of the Report and this recommendation for their consideration.

### **Recommendation 10**

*The Committee recommends that the Australian Government consider driving a nationally consistent move away from substitute decision-making towards supported decision-making models.*

### **Recommendation 11**

*The Committee recommends that the Australian Government work with state and territory governments to consider implementing the recommendations of the Australian Law Reform Commission report *Equality, Capacity and Disability in Commonwealth Laws*, in relation to legal capacity and supported decision-making.*

### **Response to Recommendations 10 and 11: Noted**

The Australian Government will continue to consider how persons with disabilities can be better supported to make decisions. The Australian Law Reform Commission's (ALRC) recommendations are currently informing policy developments across the Commonwealth – including on supported decision making.

### **Recommendation 12**

*The Committee recommends the Australian Government work with state and territory governments to create national consistency in the administration of guardianship laws to ensure:*

- *public advocate and guardianship functions are separate to ensure independent oversight;*
- *mandatory training on supported decision-making for guardians;*
- *a requirement for guardianship to achieve positive outcomes, not just avoiding risk of negative outcomes;*
- *the ability to have nuanced guardianship/decision-making frameworks – to ensure the legal ability of parents to advocate on behalf of adult children without having to establish legal incapacity;*
- *that service delivery organisations or accommodation providers are never given guardianship;*
- *automatic increased oversight where service delivery organisations or accommodation providers recommend families lose guardianship; and*
- *that Aboriginal and Torres Strait Islander peoples' particular circumstances are taken into account in developing guardianship systems.*



### **Response to Recommendation 12: Noted**

Guardianship laws and frameworks are the responsibility of states and territories; however, the Australian Government notes that state and territory guardianship arrangements have been considered by a number of recent Commonwealth inquiries. For example, the ALRC's Equality, Capacity and Disability in Commonwealth Laws report made a number of recommendations regarding guardianship arrangements in the context of capacity and decision-making.

In February 2016, the Australian Government directed the ALRC to conduct an inquiry into laws and frameworks that seek to safeguard and protect older persons from abuse. The terms of reference for this inquiry include the consideration of the interaction between Commonwealth, state and territory laws, including guardianship laws, as well as the recommendations of the ALRC's previous report on Equality, Capacity and Disability in Commonwealth Laws. This inquiry is due to conclude in May 2017.

### **Recommendation 30**

*The Committee recommends the Commonwealth review the reports of the United Nations Committee on the Rights of Persons with Disabilities, with a view to giving effect to recommendations that would improve Australia's adherence to the human rights obligations that have been voluntarily undertaken.*

### **Response to Recommendation 30: Noted**

In accordance with usual practice, Australia's response to the Concluding Observations will form the basis of Australia's next report under the UNCRPD, due to the Committee in 2018.

## Advocacy

The Australian Government acknowledges the important role advocacy plays in safeguarding people with disability from abuse and neglect.

The National Disability Advocacy Framework (NDAF) is the overarching policy document agreed by all jurisdictions that defines advocacy and how it is delivered across Australia, including within the National Disability Advocacy Program (NDAP). A review of NDAF was commissioned by the Disability Reform Council (DRC) in 2015.

A public consultation was run during July-August 2015, as part of the NDAF review process, with 133 submissions received from a wide variety of organisations. The most commonly-cited views about the NDAF and future shape of advocacy were:

- the desire to maintain the independence of advocacy service providers;
- the importance of maintaining access to advocacy for people who do not receive Individually-Funded Plans under the NDIS; and
- the need to increase resourcing for advocacy due to increasing demand.

A range of changes to the NDAF have been considered, the most important of which are adaptations to reflect the NDIS environment. The Department of Social Services worked with state and territory governments to gain agreement to these changes. A revised NDAF was provided to the DRC at the end of 2016.

The proposed changes to NDAF include greater recognition of:

- the need for respect for diversity and the potential for multiple and intersectional disadvantage;
- the role of family, carers and friends in advocacy; and
- different types of advocacy, including informal advocacy, statutory advocacy and decision-making supports.

### **National Disability Advocacy Program (NDAP)**

NDAP provides people with disability access to effective disability advocacy that promotes, protects and ensures their full and equal enjoyment of all human rights. The Australian Government funds 58 agencies to provide disability advocacy through the NDAP, under the provisions of the *Disability Services Act 1986*.

The Commonwealth has made a commitment that NDAP will continue, though it will have to adapt to the NDIS policy environment. A review of NDAP is currently underway and a number of issues affecting NDAP are under consideration by the Department of Social Services. These include an increase in demand stemming from the NDIS rollout; coverage of different client groups such as young people in nursing homes; culturally and linguistically diverse, Indigenous and rural and remote people

needing advocacy; adequacy of funding and the effectiveness of the funding model; and the effectiveness of systemic advocacy. The Department of Social Services will consider the issues the Committee raised in the Inquiry as it progresses through this work.

### **Advocacy and the NDIS**

Several major policy areas of the NDIS are under development, including the Information, Linkages and Capacity-Building (ILC) Commissioning Framework and the NDIS Quality and Safeguarding Framework. These areas of work are interdependent of advocacy and NDAP. When complete, these areas of work will inform how the NDIS will complement programs such as NDAP, through individual capacity building and decisions supports.

ILC has the capacity to fund information and capacity building activities that would support the development of informal advocacy. ILC funding will be distributed through open grants rounds. Organisations will have to apply to deliver ILC activities.

ILC will roll out gradually, with the full budget available in 2019/20. Each state and territory will transition to ILC at a point that makes sense in relation to its broader transition to the NDIS. Information about transition, including when ILC will commence in each jurisdiction and what funding arrangements will be put in place ahead of this, was released by the NDIA in late 2016. The first jurisdiction to commence ILC will be the Australian Capital Territory on 1 July 2017.

In 2016, the Department of Social Services funded Disability Advocacy Network Australia (DANA) to prepare NDAP organisations for changes expected under the NDIS. The advocacy sector previously saw itself as placed outside of the NDIS and had not participated in any provider readiness projects. Recent decisions by the Disability Reform Council mean that organisations providing advocacy may also be able to provide related supports under the NDIS.

Through the project DANA:

- assisted NDAP organisations to adapt to the NDIS environment as potential NDIS registered providers;
- identified key barriers for NDAP organisations to engage with the NDIS, such as potential conflict of interest or an organisation's financial system not being prepared for individual funding models and invoicing;
- assessed existing resources, such as Sector Development Fund projects, to assist organisations to become providers, then made recommendations and assisted them to access the most appropriate resources;
- developed and modified resources, where necessary, to suit NDAP organisations; and
- provided advice and training to advocacy agencies on issues such as business models, service delivery and governance.

## **NDIS Appeals Program**

The NDIS Appeals Program (NDIS Appeals), formerly known as the External Merits Review–Support Component or EMR-SC, provides general advocacy supports and legal advocacy to assist people with disability to take decisions of the NDIA to the AAT. The aim of NDIS Appeals is to ensure that NDIA decisions are fair and robust. NDIS Appeals is delivered by NDAP organisations and Legal Aid Commissions in locations where the NDIS has commenced operating.

NDIS Appeals support persons are available to assist all applicants to navigate the process of the AAT review of NDIS decisions. There may be some cases dealing with complex or novel legal issues that have a legitimate need for legal services. Recognising this, NDIS Appeals also provides funding to legal aid commissions in each state, through memoranda of understanding.

Operation of NDIS Appeals is being rolled out in other locations in line with the NDIS rollout timetable. The future delivery of NDIS Appeals services is under consideration.

## **State and territory advocacy services**

All states and territories, other than South Australia, currently provide advocacy services of some kind (the South Australian Government ceased funding disability advocacy in 2007 and NDAP is the only source on independent disability advocacy in the state). As disability supports move to a national framework, there are likely to be some changes to state and territory based activity. The Commonwealth will continue discussions with the states and territories about the funding of advocacy services. This will be carefully and jointly monitored to ensure adequate support is available.

## **Recommendation 15**

*The Committee recommends all levels of government acknowledge the vital role that formal and informal advocacy plays in addressing violence, abuse and neglect of people with disability, by considering:*

- *increased training for people with disability to recognise violence, abuse and neglect so they can self-report;*
- *government service contracts to include provisions to enforce access to facilities for advocates, requirement for self-advocacy programs;*
- *further consideration of the Victorian Self Advocacy Resource Unit, with a view to roll out across other states and territories;*
- *funded advocacy programs to include training for informal advocates;*
- *states and territories not to reduce advocacy funding with the rollout of the NDIS.*

### **Response to Recommendation 15: Noted**

The Australian Government notes this recommendation, and acknowledges the important role advocacy plays in safeguarding people with disability from abuse and neglect. The Government has made a commitment to continue funding independent advocacy through the NDAP. The Australian Government has also recently revised the National Disability Advocacy Framework (NDAF), which sets out the principles by which advocacy is conducted.

Capacity building activities can be funded through Individually-Funded Plans or through Information, Linkages and Capacity-Building (ILC). NDAP agencies may also have some involvement in such activities.

The Self Advocacy Resource Unit (SARU) model is under consideration as part of the NDAP review process.

Many NDAP agencies also provide training for informal advocates either on an individual or group basis and this is likely to continue.

State and territory-funded advocacy services are a matter for the relevant jurisdiction. The Commonwealth will continue discussions with jurisdictions to ensure the continued provision of appropriate services.

### **Recommendation 16**

*The Committee recommends the National Disability Advocacy Program implement the following recommendations:*

- *significant investment to National Disability Advocacy Program funded advocates, to deliver equitable access and representation of issues and to match the increased demand for advocacy anticipated under the NDIS;*
- *undertake a review to ensure delivered advocacy is appropriately spread across service types and complaint types, to ensure the most vulnerable are receiving advocacy;*
- *increase funding for self-advocacy programs;*
- *ensure that current model of funding peak bodies does not inadvertently result in the closure of smaller specialist or local advocacy organisations.*
- *Improved coordination between the National Disability Advocacy Program and the National Aged Care Advocacy Program.*

### **Response to Recommendation 16: Noted**

The Australian Government has made a commitment to continuing funding for NDAP.

The resourcing of advocacy is under consideration as part of the ongoing NDAP review work. The coverage of advocacy services, both in terms of client groups and geography, is also being considered.

The support of self-advocacy is covered by NDAP and the NDIS as well as some states and territories.

The role and relationship of peak bodies to advocacy organisations is under consideration in the NDAP review work.

The Department of Social Services continues to work with Aged Care (previously as part of the Department of Social Services and now as part of the Department of Health) in regards to improving the coordination and alignment of disability and aged care advocacy programs.

### **Recommendation 17**

*The Committee recommends of the Government consider the following when rolling out the National Disability Insurance Scheme (NDIS):*

- *an urgent roll out of capacity-building and advocacy support for individuals undertaking negotiations for self-directed disability support;*
- *increased training for NDIS planners around intellectual impairment and guidelines on when to require decision-making support;*
- *further investigation of whether the current NDIS unit pricing will have an impact on incidents of violence, abuse or neglect.*
- *NDIS quality and safeguarding framework must ensure a zero-tolerance approach to restrictive practice, and be tied to the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector; and*
- *amendment of the Quality and Safeguarding Framework to include advocacy as a key component to reduce and address incidents of violence, abuse and neglect.*

### **Response to Recommendation 17: Noted**

Decision-making supports are available as funded supports, and are often provided by disability advocacy agencies funded through NDAP.

All NDIS participants are able to access advocates or other informal supports for all interactions with the NDIA. The NDIA recognises, and appreciates, that some participants need additional support to engage with the NDIS, articulate their needs and to achieve their goals. The NDIA has built working relationships with both state and national advocacy networks and also works closely with statutory authorities such as the Office of the Public Advocate to ensure participants have access to advocacy support.

The NDIA is exploring ways to build the capacity for decision-making of people with cognitive impairment, particularly those who do not have formal and/or informal support networks.

In South Australia, the NDIA is working with representatives and self-advocacy groups to support the development of local resources and engagement strategies for people living with intellectual disability. The South Australian youth advisory group meets regularly to provide feedback and inform engagement strategies for young people entering the scheme. Additionally, during the NDIA trial, South Australia staff met regularly with Express Yourself, which is a peer support and advocacy group for people with intellectual disability, to receive advice on engagement and access to the scheme to inform continual improvement.

The training the NDIA delivers to its staff on the participant pathway seeks to achieve the right balance between the right of people with disability to choose to participate in activities involving risk and their safety. This approach has been endorsed by the Independent Advisory Council.

Participant pathway training includes the identification of risk including but not limited to assistance required for decision making support. Assistance can include direct support and support to build participant capacity. This training includes case studies as a learning tool. In August 2016 the NDIA introduced the Technical Advisory Team to provide support for NDIA decision making and operational policy guidance. Staff across the NDIA can access this team for expert advice and support as required.

NDIS pricing should not negatively impact incidents of violence, abuse or neglect for Scheme participants. To ensure the NDIS delivers sustainable value for participants and the community, prices are set at levels that allow efficient providers to recover their costs of service delivery. Costs that are incurred to meet quality and safeguards requirements (e.g. staff training) are part of the efficient cost base for providers, and the NDIA takes account of these costs when calculating price levels.

The National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector delivers leadership toward reduction of the use of restrictive practices. This Framework's principles of reducing and eliminating restrictive practices will be reflected in the Commonwealth's regulatory response for full scheme. These responsibilities will include the establishment of a senior practitioner function to provide leadership and guidance on the use of positive behaviour supports and monitor the use of restrictive practices for NDIS participants with complex behavioural needs. States and territories will retain responsibility for the authorisation of restrictive practices in their jurisdictions. Until the new NDIS quality and safeguarding arrangements are implemented, jurisdictions have agreed they are responsible for quality and safeguarding arrangements. This includes appropriate restrictive practice laws and policies in jurisdictions.

Through NDAP, advocacy will remain accessible to all people with disability, regardless of whether they are eligible for the NDIS. NDAP will continue to be reviewed to ensure it is complementary to the supports and safeguards made available through the NDIS.

## Data

The Committee has noted there are no nationally consistent data sets available to describe the extent of violence, abuse and neglect of people with disability. The Committee's report highlights the importance of formally recognising and quantifying the extent of violence, abuse and neglect of people with disability, with such data being essential to guide policy development to eliminate instances of violence, abuse and neglect against people with disability.

The Committee's report cited a number of national data collections and recommended actions to improve the quality and availability of relevant data from these collections. The collections referenced by the Committee fall broadly into two categories:

- population-based survey data, which assist in the monitoring and evaluation of the population, community planning, research and analysis; and
- administrative data sources, such as those produced as a by-product of service provision or by the administration of the police, criminal courts and corrections agencies, which can assist in understanding the characteristics of, and circumstances faced, by the people that the data are about.

Both population-based surveys and administrative data sources face significant challenges in the collection and reporting of information on smaller sub-populations. Population-based sample surveys are usually designed to cover a broad range of topics for the population of interest. By their nature, sample surveys are less-able to accurately count less frequently occurring, but none-the-less important, phenomena. When the topic-of-interest occurs less-frequently, significant increases in the sample size of a survey may be required to provide statistically reliable estimates of prevalence, which in turn can be costly. Meeting confidential obligations also pose challenges in preparing outputs from such collections for publication. In order to protect the privacy of survey respondents, characteristics that occur less-frequently (which have potential for identifying individuals) may need to be suppressed in the output from such surveys.

The Australian Bureau of Statistics (ABS) compiles a wide-ranging set of information on people with disability in Australia, with the triennial Survey of Disability, Ageing and Carers (SDAC) providing the most comprehensive source of information on people with disability in Australia. This population survey is conducted with significant funding support from the Commonwealth, state and territory governments. It is used to measure the prevalence of disability in Australia, the need for support of older people and those with disability, and provide a demographic and socio-economic profile of people with disability, older people and carers compared to the general population. The scope of the Survey includes people living in private and non-private dwellings (including cared accommodation). In addition to SDAC, a short disability module is included in most ABS social surveys. The ABS also collects information on need for assistance in the Census of Population and Housing.

Three surveys were of specific interest to this Inquiry - the Personal Safety Survey (PSS), the National Aboriginal and Torres Strait Islander Social Survey (NATSISS)



and the SDAC. These three population surveys are all designed around different population groups of interest. In each of these surveys, the requirement for an interview to be conducted in private to maximise respondent safety and confidentiality may limit the participation of those respondents with some forms of disability. Factors such as their ability to communicate or to be alone with the interviewer introduce barriers to participation. In some cases persons with a disability may require a proxy to respond or interpret on their behalf.

The Committee also referenced several administrative data sources that may assist in informing the extent and nature of violence, abuse and neglect of people with disability. Data from such service-based collections needs to be interpreted with care, as it reflects only those people who are the recipients of a service. The Committee's report cited several such collections, and recommended enhancements to them, these were:

- data collected through the administration of the National Disability Abuse and Neglect Hotline, operated by the Department of Social Services. This Hotline allows callers to report abuse or neglect against both government-funded and private organisations.
- the annual collation, analysis and publication of child protection data jointly funded by the Australian Institute of Health and Welfare (AIHW) and the state and territory departments responsible for child protection. These data are drawn from state and territory child protection administrative data systems in accordance with nationally agreed definitions and technical specifications, known as the Child Protection National Minimum Data Sets. These data sets, by definition, include all data items that states and territories have agreed to provide to the AIHW for national child protection reporting. Data from these data sets are analysed and published annually in the AIHW's *Child protection Australia* series of reports.

The Australian Government notes there are a range of data sources available to inform the community about people with disability, their service-use and wellbeing, with the full utilisation of many of these data sources still to be fully realised. There is currently cross-government commitment to a work program which will expand and enhance the use of public sector data, with leadership for such work headed by Department of the Prime Minister and Cabinet. This work should see increased efficiencies in the use of public sector data, with greater value being extracted from available data.

The Australian Government also notes work underway to understand data needs on violence against women from culturally and linguistically diverse backgrounds and women with disability (amongst other priority sub-populations) through alternative mechanisms. On 7 August 2015 the Minister for Social Services, the Hon Scott Morrison MP, announced funding of \$160,000 for the Diversity Data project. The project, currently being undertaken by Australia's National Research Organisation for Women's Safety (ANROWS), will review existing knowledge about how culturally and linguistically diverse women, Indigenous women and women with disability

experience violence, identify key gaps in data and consider options to improve data collection for these groups in the future.

### **Recommendation 25**

*The Committee recommends that the Australian Bureau of Statistics ensures all of its surveys are inclusive of people with disability. The committee further recommends that the Australian Government commits additional funding to ensure the triennial survey of Disability, Ageing and Carers and the Personal Safety Survey include the collection of data on the prevalence of violence, abuse and neglect against people with disability. This data should include the following information:*

- *age;*
- *gender;*
- *type of disability;*
- *place of residence;*
- *cultural background; and*
- *whether the violence, abuse and neglect has been reported to an authority.*

### **Response to Recommendation 25: Noted**

The Australian Bureau of Statistics supports the inclusion of persons with disability in all ABS surveys. Household interviewers are trained to follow procedures in the collection of data to ensure that persons with disability are not excluded from participation in surveys, such as through the use of interpreters for sign-language.

In general, when other options to assist persons with disability to respond to ABS surveys are not available, the ABS will allow other members of the household/the respondent's carer to respond on their behalf (a practice referred to as a 'proxy-respondent').

This, of course, can introduce challenges related to the full participation of people with disability, when the topic of interest is sensitive in nature. The topic of violence, abuse and neglect presents such a challenge.

The ABS Survey of Disability, Ageing and Carers collects all demographic information recommended by the Committee across households and non-private dwellings. The importance of the SDAC has been widely acknowledged, and the Australian Government and state and territory governments have together committed significant funds to ensure this survey is run three-yearly.

The ABS has commenced negotiations with government partners for funding of the 2018 SDAC. As there are challenges in obtaining sensitive information where a proxy respondent is required to respond on behalf of a person with a disability, such as for those people with a profound or severe communication limitation, it may not be feasible to collect information about violence, abuse and neglect against people with

disability in the 2018 SDAC. Subject to resourcing, the ABS can investigate the feasibility of collecting this information in future collections.

The ABS' 2012 Personal Safety Survey did not separately identify Aboriginal and Torres Strait Islander people in survey outputs, but Indigenous status will be collected in the 2016 survey. However, increasing the overall sample size of the PSS is not likely to deliver representative data on the experience of violence for some subgroups. Further, the resource investment needed to ensure sufficient sample for such reporting is prohibitive.

There are a variety of challenges in obtaining high quality and complete evidence for subgroups of the Australian population, including people with a disability and those from culturally and linguistically diverse backgrounds, through this survey. There are significant practical barriers, for example, in the collection of data in very remote Indigenous communities and non-private dwellings such as nursing homes or other disability care settings. As with most ABS household surveys, people who usually reside in non-private dwellings such as cared-accommodation are outside the scope of the PSS. Furthermore, due to the primacy of respondent safety considerations in the PSS, interviews are not conducted with respondents who require the assistance of another person to communicate with the interviewer. Given such challenges, the PSS is likely to continue to under represent people with disability, in particular those in cared-accommodation.

Other proposed demographic characteristics, as recommended by the Committee for collection in the SDAC and PSS are typically collected in all ABS social surveys.

The ABS Transformation Program, underway over the five years from 2015, involves a major redesign of our statistical collections. It will provide the ability to capture emerging information requirements, as well as enhancing the information available for smaller sub-populations, such as people with disability, from within surveys or through accessing and integrating administrative data sources. Notwithstanding these opportunities, respondent safety, privacy and the provision of adequate and appropriate support are particularly challenging considerations in collecting information about violence, abuse and neglect among people with disability and particularly in a cared-accommodation context.

### **Recommendation 26**

*The Committee recommends that the National Disability Strategy Progress Report should include specific data on Aboriginal and Torres Strait Islander peoples with disability.*

### **Response to Recommendation 26: Noted**

The National Disability Strategy's first high-level biennial progress report was delivered to COAG December 2015. This report details specific implementation achievements of COAG partners and the extent to which the Strategy has driven reform in the design and delivery of mainstream services. It makes use of national trend indicator data, and includes the views of people with disability and their representative organisations. Specific data relating to Aboriginal and Torres Strait

Islander people with disability is included in the report where possible, particularly in regard to labour force participation, income and access to disability services.

As noted in the report, disaggregated data by Indigenous status, CALD, sex and age was sought for each indicator. However, due to insufficient sample sizes and data collection limitations, reliable disaggregated data was not available for many indicators. The ABS will continue to contribute to government discussions on improving survey designs to obtain high quality estimates on Aboriginal and Torres Strait Islander peoples with disability.

### **Recommendation 27**

*The Committee recommends that the Department of Social Services publish data relating to the National Disability Abuse and Neglect Hotline on its website every six months. This data should include the following information:*

- *age;*
- *gender;*
- *cultural background;*
- *type of disability;*
- *number of complaints;*
- *number of complaints resolved;*
- *timeliness of resolution; and*
- *systemic trends in relation to abuse and neglect.*

### **Response to Recommendation 27: Agree**

The Department of Social Services aims to publish reports relating to the National Disability Abuse and Neglect Hotline (the Hotline) on the departmental website. The reports will comprise data collected by the Hotline and will, where possible, include:

- age
- gender
- type of disability
- number of complaints
- number of complaints closed
- timeliness of closure; and
- systemic trends in relation to abuse and neglect.

The Hotline can only capture data that is provided by the caller. In some instances the caller may be a third party and unable to provide specific details

Cultural background details are not provided due to inexact data. For example, people may not disclose their cultural background, third party callers make assumptions which cannot be relied on; or the information is simply not known.

Timeliness of resolution details is not reported, as the resolution may be undertaken by a third party who is not required to report back to the Hotline. However, case closure dates, where available, which may be reported as timeliness of closure, noting that these do not include the follow up action by other parties after the Hotline has completed its involvement.

It should be noted that the National Disability Abuse and Neglect Hotline is one of many avenues for reporting allegations of abuse and neglect of people with disability. Such allegations may be reported to other authorities or bodies at a local, state and/or federal level and these will not be reflected in a report from the Hotline. As such, the extent of alleged abuse and neglect of people with disability cannot be determined from a report based on calls received by the Hotline.

**Recommendation 28:** *The Committee recommends that the Australian Institute of Health and Welfare's annual report Child Protection in Australia should disaggregate data on the basis of disability.*

#### **Response to Recommendation 28: Agree in principle**

The importance of publishing data disaggregated by disability status to inform policy-making and evaluation of service delivery is recognised by the AIHW and continues to be an AIHW priority for the *Child Protection Australia* series of reports. Progress in this area is subject to the availability of data of sufficient quality and coverage to allow meaningful inclusion in the report (see the response to recommendation 29).

#### **Recommendation 29**

*The Committee recommends that finalisation of the Child Protection National Minimum Data Sets should be prioritised as this additional data will be a useful addition to policy makers and service providers in this area.*

#### **Response to Recommendation 29: Agree in principle**

The Child Protection National Minimum Data Set currently includes a disability status item for children in out-of-home care, and most jurisdictions collect these data in their administrative systems. Further improvements to the coverage are required, particularly for several jurisdictions where the disability status data supplied to the AIHW consists entirely of 'not stated' responses.

Each year, the AIHW works in close consultation with states and territories to enable improvements to priority data items, and AIHW will continue to actively promote improved disability status reporting in these consultations. The most comprehensive solution to improved reporting of disability status would involve the adoption of the Standardised Disability Flag. Developed by the AIHW in 2012–13, the Flag is grounded in the International Classification of Functioning, Disability and Health, and

is designed for use in administrative data collections to demarcate the client population into people with and without disability. An additional data item, which would be relevant to the child protection collection, captures whether a person has a specific education restriction.

## Education

The Australian Government is committed to supporting a quality education system that enables every student, including students with disability, to achieve high quality education outcomes.

Over the past decade there has been significant systemic reform in the education of students with disability with a major shift from deficit models of disability towards more inclusive approaches across all education sectors. This reform can be attributed to the introduction of a suite of policy and funding initiatives across all levels of government in the education sector as well as reform and initiatives which address broader social policy issues.

Australia's commitment to supporting students with disability is reflected in the Disability Standards for Education 2005 (the Standards), under the *Disability Discrimination Act 1992*. The Australian Government decision to implement the Standards was a key catalyst for improved support for students with disabilities.

The Standards clarify the obligations of education and training providers and seek to ensure that students with disability can access and participate in education on the same basis as other students. The Standards apply to enrolment; participation; curriculum development, accreditation and delivery; student support services; and elimination of harassment and victimisation.

The Australian Government is investing a record level of recurrent school funding that is growing from \$16.1 billion in 2016 to \$20.2 billion in 2020. This means that total funding of \$73.9 billion will be provided to government and non-government schools over the period 2016–17 to 2019–20.

From 2018 the Australian Government aims to have school funding arrangements that are affordable, include a contribution for every student and are needs-based, transparent and easy to understand as well as predictable and fair.

Importantly, funding will be used to drive real reforms that ensure all children have the support they need to succeed no matter what school they go to or where it is located.

Another key initiative is the Nationally Consistent Collection of Data on School Students with Disability (NCCD). The NCCD is the result of years of collaborative effort by all Australian governments and the non-government sector. National data is collected annually to identify the number of school students with disability and the level of reasonable educational adjustment provided for them.

The NCCD was progressively implemented in Australian schools from 2013, with almost all schools participating for at least the second time in 2016. The results of the 2015 NCCD were published on the Education Council website in December 2016. Improving the quality of the data collected through the NCCD is an iterative process. It will take time to embed understanding of the collection model and ensure accuracy and consistency of assessment across all Australian schools.

The Australian Government will work with states, territories and the non-government sector to deliver on the evidence-based priority reforms set out in *Quality Schools, Quality Outcomes*.

It is important to highlight that under Australia's federal system of government, states and territories have constitutional responsibility for schooling. State and territory education authorities, along with non-government education authorities, accordingly have responsibility for the day to day delivery of school education, the governance of schools and employment of teachers and other school staff. States and territories accredit teacher training courses and register all teachers. They also have responsibility for the registration and regulation of all government and non-government schools. States and territories and non-government education authorities oversee the delivery of education to students with disability, including local policies and practices regarding access and inclusion.

While the Australian Government does not have direct responsibility for school education, it plays a critical role in providing national policy leadership, helping to set national priorities and identifying gaps where national action is required. In relation to funding, the Australian Government makes a contribution for students with disability; however, the majority of funding for students with disability in schools is the responsibility of states and territories.

#### **Recommendation 19**

*The Committee believes that the use of restrictive practice against children must be eliminated as a national priority. The Committee recommends the Australian Government work with state and territory governments to implement a zero-tolerance approach to restrictive practice in a schools context, which should include:*

- *the principle that restrictive practice must not form a part of a behaviour management plan;*
- *written behaviour management plans must be agreed to by the student, their parents, the school and a Principal Practice Leader or Senior Practitioner (or similar position) within the state education department;*
- *that parents must be notified should there be an instance of emergency restrictive practice being used;*
- *specialist support be made available by the state education department to guide and support teachers, students and families through the understanding and implementation of these new policies; and*
- *a compulsory unit of training should be developed and delivered to all principals, teachers and teachers' aides to ensure that these new policies are clearly understood and implemented. This training should be made available to interested students and families.*



### **Response to Recommendation 19: Noted**

As outlined in response to Recommendation 18, reducing the use of restrictive practices is consistent with Australia's obligations under the United Nations Convention of Rights for Persons with Disabilities.

The Australian Government is committed to continuing to improve support for students with disability in schools and will continue to collaborate with state and territory government and non-government education authorities to identify opportunities to expand and strengthen work already underway.

In this context, it should be noted that a number of states and territories have recently conducted, or are in the process, of conducting their own reviews relating to schooling for students with disability (Victoria, Australian Capital Territory, New South Wales and Queensland), which include consideration of these issues.

The Australian Government notes there has been significant progress in recent years in ensuring that teachers have the appropriate skills and understanding to effectively meet the learning needs of all students, including those with disability.

The Australian Professional Standards for Teachers make explicit the elements of high quality teaching. A national approach to the accreditation of initial teacher education has been in place in Australia since 2013, with revised national accreditation standards and procedures agreed by Education Ministers in December 2015. Both the Professional Standards and accreditation standards and procedures include elements to support the participation and learning of students with disability.

### **Recommendation 23**

*The Committee recommends the Australian Government work in collaboration with the states and territories to address the needs of children and young people with disability in schools to:*

- *establish a national program to address bullying of students with disability;*
- *ensure that schools are adequately funded to provide for the needs of students with disability, and ensure schools must spend this funding on those students, not merge it into the mainstream budget;*
- *ensure adequate funding for improved disability school transport, with a maximum school transport time limit to limit the travel time of students with a disability;*
- *develop a national requirement that schools may not exclude students with disability from school activities, purely on the basis of the student's disability; and*
- *ensure that all disability oversight systems must include schools.*

## **Response to Recommendation 23: Noted**

### **Bullying**

State and territory government and non-government school authorities are responsible for ensuring that appropriate measures specific to the individual school community's needs are in place so that students can learn in safe and supportive school environments. The Australian Government will continue to collaborate with school authorities in supporting schools to create safe and supportive environments through the development of national frameworks and initiatives such as the National Safe Schools Framework (NSSF) and the Student Wellbeing Hub (the Hub).

The NSSF is a national, ministerially agreed high level framework that was comprehensively reviewed and subsequently endorsed by all Education Ministers in 2010. The NSSF guides and supports school communities to ensure safe, supportive and respectful learning and teaching environments that promote student wellbeing.

To support the implementation of the NSSF, a suite of resources was developed to assist school communities and is available on the Student Wellbeing Hub (the Hub) at [www.studentwellbeinghub.edu.au](http://www.studentwellbeinghub.edu.au).

The Hub provides a comprehensive and high quality range of information and resources on safe school and student wellbeing issues for teachers, students, parents, specialist professionals and pre-service teachers. The Hub includes some specific resources and links on supporting students with disability.

### **Funding**

The Australian Government strongly believes that funding should be directed where it is needed most, recognising the different costs of educating particular groups of children, including students with disability.

Commencing in 2014, all Australian schools are funded in accordance with the *Australian Education Act 2013*. Funding is determined with reference to a base amount plus specific loadings to target identified student and school need and subject to transition arrangements.

Over the period 2014 to 2017, more than \$5.2 billion is attributed to the loading for students with disability. This includes over \$1.4 billion in 2016 and almost \$1.5 billion in 2017.

In addition, in the 2016–17 Budget the Australian Government announced that it would provide \$118.2 million over two years in additional support for school students with a disability, targeted to those schools with the greatest need. This funding is based on national NCCD data for each sector, in recognition that the quality of the NCCD data at school level is still evolving.

While the Australian Government provides substantial funding, for government and non-government schools, including the funding loading for students with disability, the majority of funding for schools comes from states and territories who contribute approximately two-thirds of total public funding. Recurrent funding under the *Australian Education Act 2013* can be used flexibly by schools and systems to

provide programmes and services to best meet the educational needs of their students.

### Transport

Arrangements for transport for students with disability currently vary across states and territories. Once the national rollout of the NDIS is completed, it is expected that the NDIA will be responsible for transport to and from school. During the phased-implementation of the NDIS, the NDIA is working with states and territories to ensure students receive appropriate transport assistance.

### Inclusion of Students with Disability in school activities

Under the Disability Standards for Education 2005, schools cannot exclude students with disability from school activities purely on the basis of the student's disability, unless there is a clear case of unjustifiable hardship. This includes school excursions/camps, school discos and any other activities organised by the school during school hours or after hours. Further information on the Standards is available at [www.education.gov.au/disability-standards-education](http://www.education.gov.au/disability-standards-education).

### Complaints and oversight of schools

Complaints under the Disability Standards for Education 2005 can be reported to the Australian Human Rights Commission, which is an independent statutory authority. It has the power to investigate and attempt to conciliate complaints of disability discrimination under the *Disability Discrimination Act 1992*, including the Standards.

As acknowledged in the Senate Inquiry report (Table 5.2), there are already a range of complaints and investigation/dispute resolution bodies available for people with disability. For families who have complaints against their school, the recommended process is that the matter be addressed at the school level initially, and if there is no resolution, it can be escalated to the appropriate state or territory education authority. If there is still no satisfactory resolution, complaints can be raised with the state or territory anti-discrimination board or ombudsman, or the Australian Human Rights Commission. Families of students with disability are able to access these bodies for support and advice based on the nature of their complaint.

## Other recommendations

### Recommendation 14

*The Committee recommends all levels of government provide increased funding for support and counselling services. This should be to create specialist disability counselling services where required, as well as to mainstream organisations so they may meet the needs of people with disability.*

#### **Response to Recommendation 14: Noted**

The Australian Government notes this recommendation and is committed to ensuring that all Australians, including people with disability, have equitable access to the support and services they need.

There are a range of existing services which are readily accessible to people with disability across Australia. This includes support and counselling services funded by the Australian Government under the Families and Children Activity, which provides early intervention and prevention support to families, children, and young people. While these services are not specialist disability support services, organisations are required to ensure their sensitivity and accessibility to any people who face a real or perceived barrier to receiving assistance on the basis of a range of factors, including disability.

In 2015-16, the Australian Government invested over \$65 million in annual funding to deliver Family and Relationship Services (FaRS) through 83 providers across 504 outlets. These services aim to strengthen family relationships, prevent breakdown, and ensure the wellbeing and safety of children through the provision of broad-based counselling and education to families of different forms and sizes. The FaRS Program Guidelines provide that, in delivering these services, priority should be given to particularly vulnerable groups, including families experiencing any form of disadvantage or vulnerability. Selected FaRS providers deliver services to families where a family member with disability is living at home, including support with family relationship issues, living with disability and planning for the future.

The Department of Social Services also requires funded organisations to comply with relevant legislation, including the *Disability Discrimination Act 1992*, which protects against discrimination based on disability. Service providers must ensure that diversity is not a barrier for people engaging with government and accessing those services to which they are entitled.

### Recommendation 20

*The Committee recommends the Australian Government work with state and territory governments to consider the principle that there should be no enforced shared accommodation for people with disability.*

#### **Response to Recommendation 20: Agree in principle**

The Australian Government supports this recommendation in-principle.

The Australian Government recognises the importance of ensuring that people with disability are provided with appropriate, safe and secure accommodation. The introduction of the NDIS provides people with disability more flexibility to seek accommodation that is appropriate to their needs, through a variety of supports to assist them to find and maintain housing. For example, NDIS participants can seek assistance with navigating rental markets, tenancy obligations and short-term transitional accommodation. Additionally, for those with very high needs, the NDIS may be able to provide funding for specialist disability accommodation support.

In addition, the *National Disability Insurance Scheme Act 2013* includes, as one of its objects, “to promote the provision of high quality and innovative supports that enable people with disability to maximise independent lifestyles and full inclusion in the community” (s.3 (1) (g)). The Act also provides assurance that the NDIS will “respect the interests of people with disability in exercising choice and control about matters that affect them” (s.17A (3) (a)).

### **Recommendation 21**

*The Committee encourages increased resources for public and social housing for people with disability, including models where people with disability may choose to cohabitate with other people with a disability or abled people. The goal being to achieve a move away from institutions and forced congregate housing models.*

### **Response to Recommendation 21: Noted**

In 2016-17 the Commonwealth will provide jurisdictions with around \$1.3 billion under the National Affordable Housing Agreement (NAHA) to support the provision of housing assistance. State and territory governments, however, have sole responsibility for decisions on funding allocations, service delivery and determining the type and location of services that receive funding.

In 2016-17 the Commonwealth will also provide around \$4.5 billion in Commonwealth Rent Assistance to assist around 1.3 million individuals and families in the private rental market. Many of these individuals and families live in community housing.

The Commonwealth announced the Specialist Disability Accommodation Initiative (SDAI) on 8 December 2015. Under the SDAI that the Commonwealth will provide up to \$10 million to help complete, modify or fit-out disability housing projects that would otherwise be delayed, or not delivered. Projects funded under the SDAI have a particular focus on people currently housed in inappropriate accommodation and those with ageing carers who are in need of a long-term, sustainable arrangement.

The Disability Reform Council has also endorsed the Specialist Disability Accommodation Pricing and Payments Framework to guide the approach to specialist disability accommodation in the NDIS for participants who are assessed as requiring specialist disability accommodation. The Framework outlines how benchmark prices for specialist disability accommodation will be developed by the NDIA, and provides guidance on for whom and under which circumstances specialist disability accommodation will be provided. It is anticipated that the framework will

result in a competitive price that attracts market players to supply new and appropriate dwelling stock.

#### **Recommendation 22**

*The Committee recommends all accommodation and service delivery funding agreements should have a mandatory gender-sensitivity requirement, particularly that people with disability must have a choice as to the gender of who provides intimate forms of care.*

#### **Response to Recommendation 22: Noted**

The Australian Government notes this recommendation in the context of the fundamental change in service delivery model for accommodation support services with the introduction of the NDIS. Under this model providers will not be subject to funding agreements but will compete for individualised funding in a market-based environment.

The Australian Government recognises the importance of ensuring that people with disability are provided with appropriate, safe and secure accommodation and service provision. In the NDIS people with permanent and significant disability will work to develop their own personal plan for support, based on their goals and aspirations and their individual needs. The Scheme will empower people with disability to engage as equal partners in decisions that will affect their lives - including having choice over the types of support they want, how these are delivered, and by whom. This is supported through the *National Disability Insurance Scheme Act 2013*, which provides assurance that the NDIS will “respect the interests of people with disability in exercising choice and control about matters that affect them” (s.17A (3) (a)).

#### **Recommendation 24**

*The Committee recommends that the Australian Government consider amending the following protective policies to include the specific needs of people with disability, to ensure that people with disability are afforded the full range of rights protections that are available to people without disability:*

- *the National Disability Strategy must be updated to refer to the specific needs of children and young people, must address violence, abuse or neglect of people with disability and should be linked to domestic violence frameworks;*
- *the National Plan to Reduce Violence against Women and their Children must be updated to include institutional and disability accommodation settings; and*
- *the National Framework for Protecting Australia's Children must be updated to address the specific needs of children with disability.*

*In order to put effect to these frameworks, there must be increased funding to support women with disability escaping domestic violence.”*

#### **Response to Recommendation 24: Agree in principle**

The Australian Government supports this recommendation in principle.

The Australian Government recognises that domestic and family violence and sexual assault do not occur in isolation from other challenges faced by individuals and communities and that it is important to draw linkages between related national reforms to create a comprehensive response to reducing violence against women and their children, including people with disability. These include linkages with:

- the National Disability Strategy, which provides a 10-year national policy framework for all levels of government to improve the lives of people with disability, including psychosocial disability;
- the National Plan to Reduce Violence against Women and their Children 2010 – 2022 (the National Plan); and
- the National Framework (the National Framework) for Protecting Australia's Children 2009-2020, a long-term, national approach to help protect all Australian children.

The Australian Government works closely with states and territory governments in the development in the above policies and associated Action Plans.

#### National Disability Strategy 2010-2020

The National Disability Strategy 2010-2020 represents a whole-of-government commitment to support all Australians with disability, including children and young people, their families and carers to achieve a shared vision for a fully inclusive Australian society. One of the central outcomes of the Strategy is to ensure that people with disability have their rights promoted, upheld and protected. Key actions under this outcome focus on developing strategies to reduce violence, abuse and neglect of people with disability. In particular, the Strategy seeks to ensure that the implementation of the National Plan and the National Framework remain priority actions to improve the safety and wellbeing of women and children with disability.

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

The National Plan was released in February 2011. It brings together the efforts of Commonwealth, state and territory governments and the community to make a significant and sustained reduction in violence against women and their children.

The National Plan is being delivered through a series of four three-year Action Plans. The First Action Plan 2010-2013 laid a strong foundation for change by establishing critical, national infrastructure and the Second Action Plan 2013 – 2016 has a strong focus on understanding diverse experiences of violence and supporting the development of innovative and integrated services. The Third Action Plan 2016-2019 was released in late 2016 and builds on the work of the First and Second Action Plans.

Whilst the Australian Government recognises that women experience many types of violence, in a number of different settings, the National Plan targets two main types of violence: domestic and family violence and sexual assault, based on advice from the National Council to Reduce Violence against Women and their Children. Domestic violence is defined as acts of violence that occur between people who

have, or have had, an intimate relationship; and family violence refers to violence between family members. The definition of sexual assault under the National Plan does not specify the relationship between the perpetrator and the victim. A specific focus on violence that occurs within institutional and disability accommodation settings is not within remit of the National Plan.

Available research shows that women with disability experience higher levels of domestic violence, family violence and sexual assault than other women and that violence is likely to be more severe and continue for longer periods. Women with disability who experience violence can also face barriers when trying to access support and justice.

Under the First Action Plan, the Stop the Violence Project (STVP) led by Women with Disabilities Australia was established to investigate and promote ways to improve access to and responses by services for women with disability experiencing or at risk of violence.

Under the Second Action Plan 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, including improved access to information and support.

Under the Third Action Plan there will be an increased focus on building our understanding of the types of violence experienced by women with disability, the settings where it occurs and who the perpetrators are. There will also be an increased focus on disability workforce development and enhanced service responses to ensure there is improved recognition of violence against women with disability and that services respond effectively.

The initiatives within the National Plan and its Action Plans focused on reducing violence against women with disability complement the work being undertaken in the National Disability Strategy and the National Framework. Collectively, these national strategies address all forms of violence perpetrated against women with disability and their children across all of the settings where it occurs.

#### National Framework for Protecting Australia's Children

Endorsed by COAG in April 2009, the National Framework represents a coordinated national approach to improve the safety and wellbeing of Australia's children.

The Australian Government, state and territory governments and the non-government sector are working together to implement the National Framework through a series of three-year action plans that identify specific actions, responsibilities and timeframes for implementation.

The Third Action Plan 2015-2018 of the National Framework was released in December 2015. Consultations were held between March and June 2015 across all states and territories, with representatives from peak organisations, service providers, government agencies and researchers.



A focused consultation workshop for families impacted by disability was also held to ensure the development of the Third Action Plan considered and responded to the specific needs of children, young people and families living with disability.

The implementation of the Third Action Plan will prioritise efforts on prevention and early intervention and highlight action on critical areas of children's wellbeing, including children and young people living with disability.

The new plan focuses on three strategies:

- early intervention with a focus on the early years, particularly the first 1000 days for a child;
- helping young people in out-of-home care to thrive in adulthood; and
- organisations responding better to children and young people to keep them safe.

One of the activities to be implemented under the Third Action Plan 2015-18 is a review of the COAG National Framework: Creating Safe Environments for Children – Organisations, Employees and Volunteers (2005). This review will provide a more comprehensive and cohesive national approach to strengthening the capacity of organisations and systems to increase child safety, including for children with disability.

Recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse will also be considered as part of the review of the COAG National Framework: Creating Safe Environments for Children-Organisations, Employees and Volunteers (2005).