

LIST OF RECOMMENDATIONS

Recommendation 1

9.11 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.

Recommendation 2

9.12 The committee also recommends that each state and territory implement a Disability Justice Plan.

Recommendation 3

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

- the implementation requirements for supported decision-making;
- investigating the potential for the UK system of registered intermediaries; and
- the indefinite detention of people with cognitive impairment or psychiatric disabilities.

Recommendation 4

9.15 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;

- 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.

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

Recommendation 5

9.18 The committee recommends that the Australian Government drive a nationally consistent move away from substitute decision-making towards supported decision-making models.

Recommendation 6

9.19 The committee recommends that the Australian Government work with state and territory governments to implement 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.

Recommendation 7

9.20 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;
- 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.

Recommendation 8

9.24 The committee recommends that the forthcoming national statement of principles adopt the position that indefinite detention is unacceptable and that state and territory legislation be amended in line with this principle.

- The committee recommends that the LCCSC endorse and adopt the National Principles at its earliest opportunity.

Recommendation 9

9.25 The committee recommends that the LCCSC complete its data collection project at its earliest opportunity.

Recommendation 10

9.27 The committee recommends that the COAG develop and implement a disability screening strategy (including hearing assessments) for all Australian jurisdictions. This screening strategy would apply to all people (adults and minors) who engage with the criminal justice system. The strategy would be applied at multiple points throughout the criminal justice system such as first contact with police, courts, prisons and related facilities.

Recommendation 11

9.29 The committee recommends that the COAG work together to ensure that recently developed tools such as the FASD diagnosis tool are provided as a supported resource to police, courts, legal aid and other related groups.

Recommendation 12

9.31 The committee recommends that the Australian Government, through the COAG, actively encourage support worker programs which assist people with cognitive and psychiatric impairment to engage with and participate in the court process. The Australian Government should work closely with the states and territories to identify suitable programs to be funded for expansion where they are currently being trialled, and establish new programs where they currently do not exist.

Recommendation 13

9.33 The committee recommends that COAG develop a range of culturally appropriate resources for Aboriginal and Torres Strait Islander peoples that can be deployed to service providers, police and the judiciary. These resources will assist the service providers, police and the judiciary to communicate more effectively with Aboriginal and Torres Strait Islander peoples engaged in the criminal justice system.

9.34 The committee recommends that the Australian Government, through COAG, fund a number of Aboriginal and Torres Strait Islander identified support worker positions across a number of population centres, particularly in the NT and WA. This would include positions or funding for signing and translation services.

9.35 The committee recommends that Aboriginal controlled organisations should be resourced to provide specialised and culturally appropriate support to Aboriginal and Torres Strait Islander peoples with cognitive and psychiatric impairments in detention and community care.

Recommendation 14

9.37 The committee recommends that the COAG work together to modify guidelines for police interrogation of Aboriginal and Torres Strait Islander peoples in each state and territory to include a requirement that a hearing assessment be conducted for any Aboriginal and Torres Strait Islander person who is having communication difficulties, irrespective of whether police officers consider that the communication difficulties arise from language and cross-cultural issues.

Recommendation 15

9.40 The committee recommends that the COAG consider an appropriate mechanism for jurisdictions with specialist courts to share their expertise and experience with other jurisdictions.

9.41 The committee recommends that the COAG develop and implement appropriately resourced mobile courts for remote parts of WA and the NT.

Recommendation 16

9.43 The committee recommends that the COAG ensures a consistent legislative approach across all Australian jurisdictions to provide a range of options for the placement of forensic patients beyond unconditional release and prison.

Recommendation 17

9.45 The committee recommends that the COAG ensures a consistent legislative approach with respect to limiting terms for forensic patients in all Australian jurisdictions.

Recommendation 18

9.46 The committee recommends that the COAG works together to cease the use of mandatory sentencing.

Recommendation 19

9.49 The committee recommends that the LCCSC extend its data collection project to identify and quantify the supply shortfall for forensic accommodation placements in secure care facilities and supported accommodation in the community.

Recommendation 20

9.51 The committee recommends that the Australian Government work closely with the NT Government to plan, fund and construct non-prison forensic secure care facilities and the acquisition of supported accommodation options in communities across the NT.

9.52 The committee recommends that the Australian Government work closely with the NT Government to ensure that all forensic facilities are appropriately staffed.

Recommendation 21

9.54 The committee recommends that the COAG ensure that ISPs in all Australian jurisdictions have consistent objectives and are clear on who is responsible for delivery of services, regardless of where a forensic patient is housed.

Recommendation 22

9.56 The committee recommends that the Australian Government work closely with the NT Government to ensure that its ISP (or equivalent) for forensic patients have clear objectives of transitioning a forensic patient from prison to secure care, and where appropriate, from secure care to the community.

Recommendation 23

9.58 The committee recommends that COAG establish a working group:

- to review existing early intervention programs for people with cognitive and/or psychiatric impairment; and
- develop and implement programs which engage with people with cognitive impairment at the youngest appropriate age.

Recommendation 24

9.60 The committee recommends that the COAG develop and implement a series of justice reinvestment projects across the country to showcase the long-term social and economic benefits of justice reinvestment.

Recommendation 25

9.62 The committee recommends that the Joint Standing Committee on the National Disability Insurance Scheme conduct an inquiry into the issue of eligibility and access to the NDIS for people held in prisons and the criminal justice system more broadly.

Recommendation 26

9.64 The committee recommends that the WA and NT Governments transition forensic patients currently held in prison to the relevant secure care forensic facility in each state as a matter of urgency.

Recommendation 27

9.67 The committee recommends that state and territory governments facilitate improved first responses to incidents involving people with cognitive or psychiatric impairment by ensuring:

- Police and ambulance officers are provided with appropriate frontline training to recognise and respond to situations involving cognitive or psychiatric impairment issues.
- Police and ambulance officers are provided with specialist resources, such as state-wide 24/7 access to mental health teams to provide immediate advice during first response incidents.
- Increased funding for health transport to ensure that police resources are not used to transport people for mental health assessments.

Recommendation 28

9.69 The committee recommends that state and territory governments investigate the appropriateness of early intervention mental health treatment, with a specific goal to reduce 'risk-induced' treatment-related detention.

Recommendation 29

9.71 The committee recommends the Australian Government work with state and territory governments to create national consistency in the approach to compulsory treatment orders, to ensure:

- appropriate 'risk of harm' levels are set for assessments that can result in detention for the purposes of therapeutic intervention;
- mandated requirements for 'least restrictive' treatment;
- regular reviews, including assessment of treatment against therapeutic benchmarks; and

- independent oversight.

Recommendation 30

9.73 The committee recommends that state and territory governments consider and implement legislative change to strengthen the effect of supported decision-making tools such as Advance Directives.

Recommendation 31

9.75 The committee recommends the state and territory governments consider adopting elements of the Victorian disability frameworks.

Recommendation 32

9.77 The committee recommends that state and territory governments proactively fund the construction or acquisition of a range of appropriate supported accommodation options across metropolitan and regional locations for people with cognitive and/or psychiatric impairments.

