

LIST OF RECOMMENDATIONS

A Royal Commission

Recommendation 1

10.10 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.

National disability complaints mechanism

Recommendation 2

10.16 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.

10.17 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.

National workforce and workplace regulation

Recommendation 3

10.26 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

10.27 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.

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

Recommendation 5

10.29 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.

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

Access to justice

Recommendation 6

10.32 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 7

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

Recommendation 8

10.34 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.

State and Territory reporting and investigating

Recommendation 9

10.38 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.

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

The right to self-determination

Recommendation 10

10.41 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

10.44 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.

Recommendation 12

10.45 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.

The right to risk

Recommendation 13

10.48 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.

Counselling and support services

Recommendation 14

10.50 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.

Advocacy

Recommendation 15

10.52 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.

Recommendation 16

10.53 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.

National Disability Insurance Scheme

Recommendation 17

10.55 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.

Restrictive practice

Recommendation 18

10.58 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'.

Recommendation 19

10.59 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.

Housing options

Recommendation 20

10.62 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.

Recommendation 21

10.63 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.

Recommendation 22

10.64 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.

Schools

Recommendation 23

10.66 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.

Recognition of disability in protective policy

Recommendation 24

10.68 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;
- the *National Framework for Protecting Australia's Children* must be updated to address the specific needs of children with disability, and
- in order to put effect to these frameworks, there must be increased funding to support women with disability escaping domestic violence.

Data

Recommendation 25

10.74 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.

Recommendation 26

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

Recommendation 27

10.77 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.

Recommendation 28

10.78 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.

Recommendation 29

10.79 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.

International Human Rights

Recommendation 30

10.80 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.