

Chapter 8

Risk factors and causes

8.1 One of the key terms of reference for this inquiry is to identify the systemic workforce issues that contribute to violence, abuse and neglect of people with disability.¹ However, the evidence presented to the inquiry showed that the causes of violence and abuse go far beyond systemic workforce issues and includes cultural attitudes towards disability:

The APS [Australian Psychological Society] approach to understanding the issue is that there are two key elements. One is about malicious intent and the other is about ignorance and the culture within institutional and residential settings, with the higher use of restrictive practices in Australia than in the [United Kingdom].²

8.2 While there was some evidence presented to this inquiry on the issue of predatory abusers, most submitters focused on sector-wide systemic workforce issues that increased the risk of abuse from carers who simply responded negatively to various factors in the workplace or with the nature of the work. Other evidence has focussed on the culture or practices of individual workplaces which can also increase the risk of violence, abuse or neglect of people with disability:

Data from notifications to my office shows that there are three main factors contributing to violence: firstly, the group home environment, where we see inappropriate placements and, particularly, a lack of alternative accommodation; secondly, workforce issues such as lack of training, insufficient staff, high numbers of casualised staff and a lack of leadership; and, thirdly, cultural issues, particularly tacit acceptance and normalisation of violence and bullying.³

8.3 Broadly, the evidence presented to the inquiry from a range of organisations and individuals suggests the key common causes of violence abuse and neglect are:

- systemic issues—jurisdiction-wide systemic issues that can increase likelihood of abuse or neglect;
- cultural attitudes of de-valuing people with disability;
- individual worker issues—predatory workers, neglectful workers and skills-deficit abuse; and

1 *Terms of Reference (j)*: identifying the systemic workforce issues contributing to the violence, abuse and neglect of people with disability and how these can be addressed.

2 Ms Helen Killmier, Australian Psychological Society, *Committee Hansard*, Melbourne, 30 June 2015, p. 31.

3 Ms Colleen Pearce, Public Advocate, Office of the Public Advocate, Victoria, *Committee Hansard*, Melbourne, 30 June 2015, p. 32.

- individual workplaces—facility practices which can increase likelihood of abuse or neglect.

Systemic issues

8.4 A range of systemic issues that exacerbate or cause violence, abuse or neglect of people with disability were raised with the committee. These included:

- the institutional nature of disability service provision;
- low pay levels of the workforce;
- lack of appropriate pre-employment and ongoing individual worker regulation; and
- current systems of accreditation of service providers.

Institutions

8.5 Evidence was presented to the inquiry that the very nature and model of service delivery—institutions and congregate housing models—created sites where violence, abuse and neglect were almost inevitable outcomes.

Institutions can at times create a culture of power over people who are vulnerable, typically, and who do not have an opportunity for choice.⁴

...

We know from our lived experience and from research we have conducted that congregated or institutionalised models of service increase the risk of abuse, neglect, discrimination and violence. This happens by making people powerless through increased dependence upon human services for basic life needs and decreased meaningful connection to family, friends and community. This institutionalised practice also has the effect of reducing or denying people with lived experience of intellectual disability socially valued roles within family, community and the broader Australian society. We are also deeply concerned about people with lived experience of intellectual disability in institutions being denied access to real independent values-driven advocacy support as well as peer support.⁵

...

JFA Purple Orange's experience highlights that institutionalised residential settings may increase the chances of people being abused because they make people invisible to the community...What makes these services institutional is their practice, where vulnerable people receive services largely away from the eyes of the community, and where the main people in their lives are paid to be there. Violence, abuse and neglect in such settings are difficult to detect, report, investigate and prosecute.⁶

4 Ms Leanne Pearman, Member, Bolshy Divas, *Committee Hansard*, Perth, 10 April 2015, p. 19.

5 Ms Silvana Gant, President and Convenor, Adelaide People First, *Committee Hansard*, Adelaide, 28 August 2015, p. 8.

6 JFA Purple Orange, *Submission 12*, pp. 17-18.

8.6 Service delivery organisations achieve obvious 'economies of scale' by developing congregate housing models where a number of people with disability can reside and/or receive services from the one location, sharing resources and staff. Another significant factor increasing institutional or congregate service delivery settings is the lack of appropriate private or public housing options for people with disability, who might otherwise be able to live semi-independently with carer visits.⁷

Inappropriate placements

8.7 An issue that was raised repeatedly throughout the inquiry was the issue of placements of incompatible residents caused by organisations seeking to streamline services to reduce costs.

We know of several situations where support services bring together two or three individuals who they happen to provide support for and they bring their hours together and have them do an activity where the three of them would not ordinarily get together, would not have anything to do with one another. It suits the service to pull the support hours together so that it works for the support worker. That is what they do—and it should not happen that way. People should not have to be brought together in those circumstances.⁸

[T]here should be no reason for anyone ever trying to seek an intervention order against someone in the same residence. If it is a [Department of Health and Human Services (Victoria)] property, they should be ensuring that people who are actually a danger to each other are not together. They should be ensuring that it is a safe place for the people who live there, and they should be working out what it is that is causing these events to occur. There should never be instances—and there are many—where we have to provide support to somebody to get an intervention order against somebody they live with, because they have no choice but to live there.⁹

8.8 Other submitters pointed to the lack of accommodation options so that people who were not compatible were not required to live together.¹⁰

[The Victorian Advocacy League for Individuals with a Disability (VALID)] also believes that severe underfunding by governments and underinvestment in appropriate housing creates a context where many individuals are required to live in group accommodation with other residents who make their lives unsafe, miserable and intolerable. That this

7 This issue was raised by a number of organisations and individuals, including National Disability Services, Endeavour Foundation, Summer Foundation, Public Advocate of Victoria, Communication Rights Australia, Disability Discrimination Legal Service, among many others.

8 Ms Silvana Gant, *Committee Hansard*, Adelaide, 28 August 2015, p. 12.

9 Ms Naomi Anderson, Casework Lawyer, Villamanta Disability Rights Legal Service Inc., *Committee Hansard*, Melbourne, 30 June 2015, p. 28.

10 Ms Margot Morris, Principal Solicitor, Intellectual Disability Rights Service, *Committee Hansard*, Sydney, 27 August 2015, p. 2.

is tolerated as an acceptable solution to accommodation and support is a form of systemic abuse that would not be acceptable to any other citizens.¹¹

Schools as institutions

8.9 Chapters three and four investigate the treatment of children with disability in schools in detail. What is clear is that the 'mainstreaming' of disability education, where children with disability are integrated into standard public schools, has in some cases resulted in those children losing the specialised staff who are able to recognise and appropriately respond to the needs of children with disability. The outcome for some children has been catastrophic and there are clearly systemic causes that must be addressed:

In the school system there is absolutely no oversight or regulation, and often it is up to school principals, the schoolteacher and specific approaches and cultures within schools. Obviously it underpins a whole area in education where there is a complete lack of training and support for the inclusion of children with disability in schools and what that means.¹²

There is a long list of reasons why that should not happen and there are alternatives that would make it unnecessary to use restraint or seclusion, but the schools are ill resourced or inadequately advised or trained to deal with these matters appropriately...Another issue in relation to schools is there is no independent complaints body, so it is impossible for anyone to get anywhere if they have an issue of that sort in relation to what is happening to their family member, their child, in school. We would recommend that an independent complaints body is urgently required for schools and special schools issues.¹³

Low pay rates

I cannot count the number of people I know who work in the industry who have been clearly good at their jobs but have said, 'I have to leave; I cannot afford to keep doing this.' So they have gone into nursing or they have gone to train to be a paramedic. That is a profound waste. We should not be so undervaluing the services that are provided by good support staff.¹⁴

8.10 Many witnesses cited negative impacts to service delivery of having a low-paid workforce. Of particular concern was that the levels of pay contributed to a transient workforce, exacerbating training issues in an industry where so much of the required skills are gained through years of on-the-job training:

A lot of clients I work with are non-verbal. You understand, after you have been living with them for months and then years, that the blink of an eye

11 Mr David Craig, Project Coordinator, Victorian Advocacy League for Individuals with Disability (VALID), *Committee Hansard*, Melbourne, 30 June 2015, p. 44.

12 Ms Therese Sands, Co-Chief Executive Officer, People with Disability Australia, *Committee Hansard*, Sydney, 27 August 2015, p. 36.

13 Ms Deidre Griffiths, Principal Solicitor and Executive Officer, Villamanta Disability Rights Legal Service Inc., *Committee Hansard*, Melbourne, 30 June 2015, p. 25.

14 Ms Rayna Lamb, Coordinator, Women With Disabilities WA Inc., *Committee Hansard*, Perth, 10 April 2015, p. 21.

means something, the twist of a head means something, and the look on a face means something. This cannot be done with people who come here and do the job to fill in time while they are at university, or to fill in time while they are doing other things in their lives. It is okay if they are there with other people, but, if they are there on their own with these people, so many things can go wrong and people can get unintentionally hurt. It is not through malicious damage, it is just ignorance—and we cannot have that. People have to be trained. They have to have understanding.¹⁵

8.11 The transient nature of parts of the workforce was seen to have impacts on the quality of services being delivered, as outlined above, but also on the emotional and psychological well-being of the people being cared for. Multiple witnesses and submitters raised the issue that it is distressing for any person, regardless of disability, to have relative strangers undertaking what are often highly intimate forms of personal care. For people with an intellectual or mental health disability, the disruption to routine can be emotionally traumatising. For these people, their quite normal response to such stimuli is often viewed as 'behaviour of concern' from the carer or service provider, leading to further neglect or abuse in the form of behaviour modification through discipline, restraint or seclusion:

In my experience the majority of the violence and abuse comes from staff attitudes and behaviour, and aggressive patient behaviour is often the result of self defense, against unwanted/unwarranted drugging and the physical violence of electroshock, the rudeness, verbal and emotional aggression, unnecessary use of force and avoidance of any therapeutic contact by staff, as a general and expected way of behaving in the institutional setting.¹⁶

8.12 Discussion of the issue of low wages went beyond simply stating that low wages will result in individual good workers leaving the sector to pursue other employment options, but also highlighted the lack of funding for career development and training, which creates a further sector-wide push factor that encourages a drain on the workforce:

A chronically underfunded service system with poor safeguards will always—and this is the experience in other countries—turn good people into bad carers, because they are unable—through their training, through their development and through their support—to produce the outcomes that people require.¹⁷

Workforce regulation

8.13 Recent media attention on cases of abuse and sexual assault in disability facilities has highlighted the problem of predatory behaviour, whereby abusers choose to work in sectors where they have access to vulnerable people and where the work itself includes a level of physical intimacy that can be exploited for abuse. Evidence has been presented to this inquiry by multiple witnesses that the lack of

15 Mr John Bone, Delegate, United Voice WA, *Committee Hansard*, Perth, 10 April 2015, p. 42.

16 Ms Deidre Oliver, former psychiatric nurse, *Submission 151*, p. 6.

17 Mr Lloyd Williams, National President, Health Services Union, *Committee Hansard*, Sydney, 27 August 2015, p. 9.

sector-wide workforce regulation in the disability services industry has exacerbated the ability of predatory abusers to enter and remain in the disability workforce:

As institutions where children are freely accessible attract paedophiles, institutions where vulnerable, powerless people are to be found, especially when that powerlessness is supported by the most disenfranchising legislation in the land, will attract people who have a need or desire to exercise power. In both situations the outcome will be abuse.¹⁸

8.14 There was a great deal of evidence presented to the inquiry on the benefits of a systemic approach to the regulation of the disability service workforce. This ranged from improving pre-employment screening systems, through to possible registration schemes that would include requirements for ongoing professional development.

8.15 A common problem discussed by many submitters was the issue of workforce pre-employment screening. Ms Sue Ash, Chief Executive Officer of UnitingCare West told the committee:

...our experience at UnitingCare West is that, if you join up your knowledge of the child protection system, the disability system and the aged-care system, there is a line of principles through all of that which are critical to ensuring that the person who is involved in a community service system has the same protections—appropriate, but the same protections—against harm, abuse and neglect at any age and stage, rather than segmenting people with three different systems—or more, to be honest.¹⁹

8.16 UnitingCare West went on to propose that instead of having employment screening that differs by industry, there should instead be a vulnerable persons check that would cover anyone who works with vulnerable people from a range of categories.²⁰

8.17 Mr Lloyd Williams, National President of the Health Services Union pointed out that working with vulnerable people checks should not be viewed as an holistic solution, as they are exclusion schemes which require a person to engage in violence, abuse or neglect before being 'excluded' as an appropriate disability services worker.²¹

8.18 This view was echoed by United Voices for People with Disabilities:

I know the exclusion list was introduced and touted as one of the big things here in Victoria by the previous government as an outcome. It is an after-the-fact solution or outcome. It means somebody has to have actually suffered in the process generally, unless someone knows something about that person. If they do not go through and it is not recorded or there is some

18 Ms Deidre Oliver, former psychiatric nurse, *Submission 151*, p. 6.

19 Ms Sue Ash, Chief Executive Officer, UnitingCare West, *Committee Hansard*, Perth, 10 April 2015, p. 8.

20 Ms Sue Ash, *Committee Hansard*, Perth, 10 April 2015, p. 9.

21 Mr Lloyd Williams, *Committee Hansard*, Sydney, 27 August 2015, p. 12.

process that identifies that they are a threat, a risk or whatever, they do not get on that register.²²

8.19 The reportable incident scheme in New South Wales (NSW), discussed in greater detail in chapter five, includes provisions for an expanded pre-employment screening process that goes far beyond a simple criminal records check, but also reviews any employment related incidents by workers. The scheme has been suggested for replicating nationally for the disability workforce:

[T]he New South Wales system has criminal record checks but also feeds into the screening system the results of our reportable conduct area in the child related employment sphere. And we are talking about substantial numbers of matters. That forms part of the consideration by the children's guardian as to whether somebody should work in child related employment. I can see no reason to not have a national system in place for the reporting of serious incidents, and as a part of the screening system there should be a combination of criminal record checks, information that one might receive from professional associations.²³

8.20 The Health Services Union went further to propose a 'step-up' accreditation scheme, which could act more as a preventative measure, by requiring base level qualifications and requirements for ongoing professional development. Then if an incident occurred, the exclusion provision could be utilised to withdraw someone's accreditation:

From the workforce point of view, we argue that there needs to be a proper risk based accreditation scheme, which does not say that all people have to be accredited at the same level. But the higher the risk of the individual and the higher the vulnerability of an individual, the higher the accreditation standard should be for the person who is going to be working with that individual, including base level qualification and ongoing professional development and understanding of human rights, understanding and being able to identify the signs of abuse and how to deal with those and how to empower someone's life.²⁴

8.21 This is in line with other proposals made to the inquiry, to professionalise the workforce through worker registration schemes with higher levels of training required for working with different needs levels, as well as ongoing professional development.²⁵

22 Peter Cross, President, United Voices for People with Disabilities, *Committee Hansard*, Melbourne, 30 June 2015, p. 47.

23 Mr Steve Kinmond, Community and Disability Services Commissioner and NSW Deputy Ombudsman, *Committee Hansard*, Sydney, 27 August 2015, p. 21.

24 Mr Lloyd Williams, *Committee Hansard*, Sydney, 27 August 2015, p. 12.

25 Similar proposals to expand pre-employment screening into a registration system with differing levels of qualifications and requirements for continuing professional development were proposed by other organisations, including Voices for People with Disabilities, Optia Inc, and NSW Council for Intellectual Disability.

8.22 Evidence presented by the Department of Social Services (DSS) at the Canberra hearing indicated this was an option being considered by DSS in the development of a national quality and safeguards framework for the National Disability Insurance Scheme (NDIS).²⁶

8.23 DSS also cited the *Working with Children Checks Report*²⁷ released on 17 August 2015 by the Royal Commission into Institutional Responses to Child Sexual Abuse. This report proposed minimum standards which should be incorporated into all worker checks, as well as suggesting a deadline on state and territory governments to implement the standards. The report further recommends that the Australian Government should facilitate a national model of working with children checks, improve the intersection of these checks with CrimTrac and make international records more accessible.

8.24 DSS cited this approach as addressing the issue of 'how you would arrive at an arrangement where there are common national standards, to a point where you can get recognition across jurisdictions'.²⁸

8.25 Some submitters called for an overhaul of the entire disability workforce, to professionalise the sector. The Health Services Union told the committee:

Our fourth recommendation is that the government must commit to professionalising the disability sector by implementing a national risk based registration and accreditation system which requires mandated minimum qualifications and ongoing professional development for certain job roles.²⁹

...

There is no requirement for disability workers to be registered, unlike childcare workers and even unlike crowd-control people who work in hotels and casinos. It beggars belief that to be a crowd controller you must have a minimum qualification and you are registered, but to be a disability support worker you do not need any of these things: just a simple police check will suffice.³⁰

8.26 A number of submitters presented evidence that while there may be a need for additional regulation, a key problem was that existing regulation was not being adequately enforced:

26 Mr Bruce Smith, Branch Manager, National Disability Insurance Scheme, Department of Social Services, *Committee Hansard*, Canberra, 21 August 2015, p. 4.

27 Royal Commission into Institutional Responses to Child Sexual Abuse, *Working with Children Checks Report*, 17 August 2015, pp. 6-8, <http://www.childabuseroyalcommission.gov.au/getattachment/e1550ad2-6159-49cd-9f24-f668e8cc1b0d/Working-With-Children-Checks-Report> (accessed 29 September 2015).

28 Mr Bruce Smith, *Committee Hansard*, Canberra, 21 August 2015, p. 4.

29 Ms Tammy Munro, Lead Organiser, Tasmanian Branch, Health and Community Services Union, *Committee Hansard*, Sydney, 27 August 2015, p. 9.

30 Mr Lloyd Williams, *Committee Hansard*, Sydney, 27 August 2015, p. 8.

We also get a system that has so many rules and regulations to ostensibly protect us and then it ignores those rules and regulations. We do not need any more rules and regulations. We need to follow the ones that exist.³¹

...

It has been our experience that while improvements have occurred, some service providers continue to ignore, discourage or treat allegations of abuse and neglect without due weight.³²

...

An individual advocate repeatedly requested that the service provider send her documents outlining the authorisation for the use of this restrictive practice, but these requests were constantly ignored. It was eventually discovered that the service did not take the issue to the restrictive practices panel, which makes the use of the buckle guard and protective screen a criminal offence.³³

Committee view

8.27 The committee supports the view of many witnesses to this inquiry, that institutional and congregate care models of service delivery are themselves major factors in the prevalence of violence, abuse and neglect of people with disability. There is a clear need for increased funding to address the lack of housing options available to people with disability.

8.28 There are many factors that combine to create a regulatory vacuum in which disability workers operate. This also extends to the quality of disability service delivery at an organisational level.

8.29 Of serious concern to the committee is the lack of workforce regulation that can not only identify and remove predatory or abusive workers, but is also capable of driving an overall improvement in professional standards to address issues of neglect.

Cultural attitudes

8.30 There were broader sector-wide issues raised by submitters as being drivers of violence, abuse and neglect, which went beyond the regulation of disability service delivery. Of particular note were cultural attitudes that devalue people with disability and disability-specific violence—violence that is purported to be an act of disability care.

8.31 Cultural attitudes of devaluing people with disability were cited by many submitters and witnesses as being a major driver of violence, abuse and neglect of people with disability.

8.32 Mrs Joan Broughan noted in her submission:

31 Ms Rayna Lamb, *Committee Hansard*, Perth, 10 April 2015, p. 21.

32 Advocacy Tasmania Inc. *Submission 97*, p. 4.

33 Australian Cross Disability Alliance, *Supplementary Submission 147*, p. 19.

I find it indicative of society's values and attitudes when 3 Greyhound trainers are banned for life and a national inquiry into the sport ensues for cruelty to animals and in the instance of cruelty to people with a disability agencies continue to operate and workers implicated in the non-reporting of abuse continue to work.³⁴

8.33 The issue of devaluing people with disability was put forward by submitters as being a cause of violence and abuse on multiple levels. When individuals devalue people with disability, they are more likely to engage in violence and neglect towards those people. Devaluing people with disability at a cultural level, contributes to institutional barriers to the elimination of violence, abuse or neglect:

At a core level, issues related to violence against people with disability, particularly institutional and legal barriers to recognition of this violence, are related to the cultural devaluation of disability and the extent to which as a society we view people with disability as worthy of inclusion in our communities and, at a very base level, worthy of recognition as human beings and worthy of life.³⁵

8.34 Some submitters questioned an approach to reducing violence, abuse and neglect that focused on the 'vulnerability' of people with disability, without recognising that vulnerability itself is not a cause of abuse:

But we are still talking about national vulnerable persons cards and black lists and other ideas that would impact on the choice and control of people with disability as though those ideas would be a silver bullet that will solve rape, abuse, neglect and murder and as though our vulnerability is the problem rather than a culture that fosters violence, neglect and abuse.³⁶

...

One of the most profound ways that people with disabilities are left vulnerable has nothing to do with our disabilities. Our disabilities do not inherently make us vulnerable. Attitudes towards us, and the value that is placed upon us by society is what makes us vulnerable.³⁷

...

[A]longside making recommendations directed towards reforming specific laws and institutional practices, the Senate Committee should consider making recommendations for contesting and shifting cultural ideas around disability at a fundamental level.³⁸

8.35 Ms Rayna Lamb, Coordinator of Women with Disabilities WA stated that the culture in which people with disability are raised, often does not provide people with

34 Mrs Joan Broughan, *Submission 4*, p. 1.

35 Dr Linda Steele, School of Law University of Wollongong, *Submission 94*, p. 1.

36 Ms Samantha Connor, Researcher, People with Disability WA, *Committee Hansard*, Perth, 10 April 2015, p. 32.

37 Ms Rayna Lamb, *Committee Hansard*, Perth, 10 April 2015, p. 20.

38 *Submission 94*, p. 2.

disability with the skills to advocate on their own behalf, and in some cases to even recognise the abuse or violence perpetrated against them:

A lot of us, particularly people with disabilities who were born in our disabilities, were actually not brought up to stand up for ourselves, so that is what it makes it harder in dealing with potentially abusive or neglectful caregivers.³⁹

8.36 A solution put forward by multiple submitters was that training to reduce the prevalence of violence, abuse and neglect should not only be provided to the potential perpetrators of such actions (carers) but should also improve the skills of people with disability to identify and respond to incidents.

[R]esidents must be trained about what behaviour from paid carers and other residents is okay and what is not, and about what action to take if something is not okay.⁴⁰

[T]he language used in reference to people with disability is often itself inappropriate and as well as constituting abuse, it can reinforce negative stereotypes and act as a barrier to a more inclusive and supportive approach. Mindsets and preconceptions about people with disability and their behaviour can also significantly affect the way in which people with disability are treated. This has been a common problem in the disability services.⁴¹

8.37 Evidence to this inquiry has also discussed a tendency for people with disability to be 'infantilised' by those who wish to protect them from harm. The Hon Ms Kelly Vincent, a member of the South Australian Legislative Council representing the Dignity for Disability Party, argued that this form of overprotection can often have the opposite effect, in that people with disability are 'protected' from acquiring appropriate skills and knowledge they could use to protect themselves from harm, or to report harm when it occurs:

I remain very concerned, for example, about the lack of accessible information about personal safety, including in sexual and romantic relationships, for people with disabilities. Anecdotally, through my professional work and based on my personal experience, it seems to me that people with disabilities are often infantilised and therefore denied access to information and experiences about things such as personal safety in relationships and sex that many of our peers take for granted. I greatly believe in the need for accessible supports and information about these topics for this reason.⁴²

8.38 Deakin University agreed, citing the *Living Safer Sexual Lives: Respectful Relationships* program as an effective violence and abuse prevention program that enables people with disability to recognise what their rights and expectations should

39 Ms Rayna Lamb, *Committee Hansard*, Perth, 10 April 2015, p. 23.

40 Ms Margot Morris, *Committee Hansard*, Sydney, 27 August 2015, p. 2.

41 Queensland Advocacy Incorporated, *Submission 43*, p. 3.

42 Ms Kelly Vincent, *Committee Hansard*, Adelaide, 28 August 2015, p. 56.

be with regard to sexual and physical violence and abuse. This program has also helped people with disability who have experienced abuse or violence to engage with mainstream services such as law enforcement to assert these rights when they are infringed.⁴³

8.39 Other submitters made similar arguments. Mr David Craig from VALID cited the impact of infantilising people with disability can be 'protecting' people from life-learning experiences that are otherwise taken for granted by the non-disabled community:

Finally, it is important that governments endeavour to take abuse and neglect of people with disabilities seriously but in this process not create regulatory prisons for people who have disabilities and have the adverse effect of limiting the kinds of freedoms and liberty that are taken for granted by all citizens. The dignity of risk and living a life with normal ups and downs has been a victim of obsessive commitment to risk-averse management of disability supports. Prevention of abuse and neglect should not become a reason for neglecting the human right to pursue an ordinary life as set out under the United Nations Convention on the Rights of Persons with Disabilities.⁴⁴

8.40 Another serious issue raised by multiple submitters is the culture of an 'expectation of violence.' The NSW Disability Network Forum (DNF) submitted that in the disability sector there is an expectation of violence perpetrated by people with disability, which then justified a response which would itself be deemed as violent if done in a non-clinical setting:

DNF members have observed a culture of expected violence existing in both institutions and residential homes, cloaked as "challenging behaviors". It is common for people with disability in these settings to be labeled as violent, and both witness and be the victim of violence.⁴⁵

Committee view

8.41 Cultural attitudes are hard to shift and will take a long-term concerted effort from all stakeholders, with a lead role taken by government. What is clearly a necessary and achievable first step is to drive a cultural change within the disability service sector by ensuring rights-based training for all disability workers.

8.42 However, the most important cultural shift should be driven by people with disability themselves. This can be achieved through rights-based, self-advocacy training that informs all people with disability about their human rights, their legal rights and their value as members of the Australian community no matter where they live. A mobilised and informed community of people with disability, able to speak and act on their own behalf as much as possible, is clearly a key part of providing comprehensive protection against acts of violence, abuse and neglect.

43 Deakin University, *Submission 109*, p. 8.

44 Mr David Craig, *Committee Hansard*, Melbourne, 30 June 2015, p. 44.

45 NSW Disability Network Forum, *Submission 55*, p. 11.

Individual worker issues

8.43 Evidence presented to this inquiry shows there are a diverse range of issues that can increase the chances of individual workers engaging in neglectful or abusive work practices. Identified key causes include a lack of training to develop necessary disability-specific skills and a lack of values based training, combined with low wages that drive down skill levels on an industry-wide basis. The issue of predatory workers was seen by submitters as a significant problem. Proposed solutions, including systemic worker and workplace regulation, are discussed later in this chapter in the section on systemic issues.

Lack of training

8.44 Evidence was presented to the inquiry from a range of sources, which indicated that a key cause of abuse and neglect was a lack of training provided to carers. This ranged from vocational disability-carer training, to training provided by facilities on the needs of specific individuals to be cared for at that location. Ms Sharon Richards, Acting Chief Executive Officer of Advocare, told the committee that training is a key component of reducing incidents of abuse and neglect:

...if you have staff who are better trained and more stable, they will recognise behaviours and deal with them before they actually get out of hand.⁴⁶

Entry-level training

8.45 The issue of what is an appropriate level of vocational training for disability service workers was one where there was not a broad consensus view among witnesses. Some argued the key need was to improve the level of disability-specific skills provided in certificate-level training, while others argued that it was more important to provide values-based training to ensure the rights of people with disability are recognised.

8.46 Ms Rayna Lamb highlighted the difficulties she experienced in finding staff who recognised her as the employer and would defer to her as the decision-maker:

If someone has a certificate IV in disability, it just means that they were able to parrot the right stuff to get that piece of paper. It does not mean they have the right attitudes. You cannot teach respect. You can learn respect, but you cannot sit in a classroom and run down a checklist. I do not need someone with a cert IV. I need someone who will do what they are told, who will understand that this is my house and this is my life and that they are not there to patronise me; they are there to work for me, and I am their employer.⁴⁷

46 Ms Sharon Richards, Acting Chief Executive Officer, Advocare, *Committee Hansard*, Perth, 10 April 2015, p. 3.

47 Ms Rayna Lamb, *Committee Hansard*, Perth, 10 April 2015, p. 22.

8.47 This view was echoed by the Keely family, who discussed the importance of being able to hire the right 'fit' for a role that involved highly personal care without being limited to the training certification level that a person held.⁴⁸

8.48 The issue of values-based training was raised by other witnesses as an important protective mechanism to identify and respond to incidents of abuse, and to improve overall service delivery:

Quality support services require workers who have necessary skills to recognise indicators of abuse, know how to appropriately respond to suspected malpractice and are supported and encouraged to raise concerns without fear of being persecuted or targeted by their employer.⁴⁹

8.49 This view was echoed by the South Australian Principal Community Visitor, who proposed 'protective behaviour training for staff and especially residents who should also receive a statement of rights about what they should expect from a residential service that complies with service standards.'⁵⁰

8.50 United Voice WA, a union representing the disability sector workforce, raised concerns that under the expected workforce expansion from the NDIS 'it is essential that systemic workforce issues, particularly attraction and retention issues, are adequately addressed to ensure that the provision of quality support services remains sustainable into the future.' This issue of NDIS impacts on workforce expansion is discussed in greater detail in chapter nine.⁵¹

Ongoing professional development

8.51 Many witnesses argued for the need for ongoing professional development and training to ensure that after entering the disability workforce, individual carers were required to maintain up-to-date skills and knowledge. United Voice WA recommended that ongoing professional training should include education to recognise and respond to indicators of violence, abuse and neglect 'acknowledging that a stable and quality workforce of professionally trained, qualified and dedicated workers is a vital safeguard for people with disability from abuse, violence and neglect'.⁵² The issue of ongoing professional development is discussed in greater detail later in this chapter, in conjunction with discussion of a possible registration scheme for disability service workers.

Facility training

8.52 Witnesses' discussion of appropriate training was not limited to the issue of individuals gaining the vocational skills and knowledge required to enter the

48 Ms Gina Keely and Mr Ben Keely, *Committee in-camera Hansard*, Perth, 10 April 2015.

49 Ms Kelly Shay, Assistant Secretary, United Voice WA, *Committee Hansard*, 10 April 2015, p. 40. This issue was also raised by Aine Healy, Executive Director, Advocacy, New South Wales Council for Intellectual Disability, *Committee Hansard*, Sydney, 27 August 2015, p. 6.

50 South Australian Community Visitor Scheme, *Submission 16*, p. 5.

51 Ms Kelly Shay, *Committee Hansard*, Perth, 10 April 2015, p. 40.

52 Ms Wanita McDade, Delegate, United Voice WA, *Committee Hansard*, Perth, 10 April 2015, p. 41.

workforce. The issue of facility-specific training was also raised by many witnesses and submitters as a key factor that can contribute to abuse and neglect. Evidence presented to the inquiry highlighted the importance of service providers acting proactively to understand the needs of the people they provide services to, in order to better target the training provided to staff.

8.53 Ms Sue Ash described a research project her organisation conducted, that showed 70 per cent of its clients self-identified as having mental health issues, even though only 30 per cent of UnitingCare services were specific to people with mental health conditions:

The implications for us were that we up-ended our staff training. We now have compulsory mental health training for all of our staff because it is about equipping people to be able to work with people safely. We do occupational safety and health training as well, but that was coming out of understanding the needs and the situation of our clients and then equipping our staff to be able to work that way.⁵³

8.54 The danger that this kind of high quality facility-provided training may no longer being accessible for individual carers under the NDIS was raised by United Voice WA:

They [service providers] are saying that, with the use of the NDIS, the individualised funding model, they will move away from the training that they currently provide. Some of our major providers actually provide some good training—not cert III and cert IV level, which they do not mandate, but some very good on-the-job training which is specific to the clients they mostly care for. They provide things such as 'buddyships' and other things which are part of their union collective agreements to ensure that there is a greater level of training for staff, especially for new staff as they come into the field. We have been told that will cease to exist. As soon as they can possibly stop running it, they will stop running it.⁵⁴

8.55 Other witnesses discussed the variable quality of facility-specific training given to incoming carers, pointing to an over-reliance on individual service provider organisations to ensure that each carer had adequate intake training:

My own experience as a support worker has varied completely, including not being able to work with clients until I have done training in giving medication, behaviour management et cetera, and being buddied up until that was done, and that was quite comprehensive...I have also been put into situations where I have not been briefed on working with the clients and I have had a five-minute changeover and been expected to work with people. So there are massive variances.⁵⁵

53 Ms Sue Ash, *Committee Hansard*, Perth, 10 April 2015, p. 10.

54 Ms Kelly Shay, *Committee Hansard*, Perth, 10 April 2015, p. 45.

55 Ms Aine Healy, Executive Director, Advocacy, New South Wales Council for Intellectual Disability, *Committee Hansard*, Sydney, 27 August 2015, p. 6. The issue of workers being 'thrown in the deep end' was echoed by many other submitters. See *Submissions 1, 9, 17, 22, 42, 69, 70, and 150*.

8.56 This experience of staff being 'thrown in the deep end' by facilities was repeated by other witnesses:

I was asked by an employment agency to work a sleepover shift for a community services organisation housing five men with intellectual disability, mental health issues and severe behaviours of concern. I clearly specified that I was not confident working with people with behaviours of concern and was told, 'You will be okay. Just read their files and don't do anything outside of their routine.'...As staff were leaving, they told me not to leave my sleepover room until the morning staff member arrived because, if I did so, I would be in danger of being raped or assaulted. I felt very vulnerable and afraid, and I was very concerned for the welfare of the residents that I would not be able to assist if a problem arose during the night. I read the clients' files with the sleepover room door locked, feeling very uneasy. All but one resident had severe behaviours of concern which had resulted in the past in injuries against staff and fellow residents.⁵⁶

...

In Tasmania I have worked in disability for 10 years now and I have received a certain amount of training but I have to work with lots of staff who are not trained at all. They get a tiny bit of training. We were even sent into the houses where there was a staff member on who had probably just done a buddy shift and then they were expected to train the other buddy that had just come on and then look after clients, and I am talking about clients with high needs and challenging behaviours.⁵⁷

8.57 Other submitters emphasised the need for facility-level training to include rights-based training, and not simply focus on disability service delivery:

Once selected, it is important that staff be given training in relation to the client's rights in relation to freedom from abuse, including the right to respect, dignity, choice and control, and how to recognise and report abuse. The effect of this training should be evaluated by consulting with residents and their families (where appropriate) and observing staff interaction with residents.⁵⁸

Committee view

8.58 It is clear from evidence presented to the inquiry that there is a diverse range of factors that can impact on the quality of care provided by individual disability service workers. Accordingly, while there is no single solution, it is clear that improving vocational and workplace training—both of which should include skills-based and rights-based elements—would significantly reduce the levels of

56 Ms Heidi Egarter, Member, Health and Community Services Union, *Committee Hansard*, Sydney, 27 August 2015, p. 9.

57 Mr Paul Steele, Delegate, Health and Community Services Union, *Committee Hansard*, Sydney, 27 August 2015, p. 9.

58 NSW Disability Network Forum, *Submission 55*, p. 12.

violence, abuse and neglect of people with disability in institutional and residential care settings.

Individual workplace issues

8.59 Evidence presented to the inquiry showed that issues specific to individual workplaces and organisations had an enormous impact on whether individual workers went on to commit acts of violence, abuse or neglect. These workplace issues included chronic understaffing, a high use of casual staff, lack of gender-appropriate practice, as well as inappropriate risk-management and workplace culture leading to a suppression of reporting incidents or potential abusers not being removed from workplaces:

At an organisational level, with individuals who work with people who have disability, staff are crucial to reducing the incidence of restrictive practice. High workloads, staff mental health and staff suffering from burnout are associated with high rates and use of restrictive practice, and the stigma about people with disability and the perception that restraint is necessary due to diagnosis. Better supervision and management support can lead to use of least restrictive practice, if not no restrictive practice. Support for better self-care by staff is critical. Supervision of staff is critical.⁵⁹

Understaffed

8.60 The issue of staffing levels was raised by a number of submitters to the inquiry, who presented evidence that staffing levels can lead to neglect through lack of appropriate resources, or violence and abuse through worker frustration and stress. Advocare told the inquiry that low staffing levels can lead to neglect through a lack of time to provide appropriate monitoring. Ms Sharon Richards said:

Or at night time, if you only have one staff member on in a house or in a cottage, consequently, this woman was crawling around on a floor for basically the whole night and banging and bruising into things because nobody had actually gone to check on her. But, again, if you only have one person, they may be busy with somebody else.⁶⁰

8.61 Advocare also discussed the impact that inadequate staffing levels can have on the level of frustration in staff, increasing the chances of abuse. Advocare identified a case where a woman was alleged to have bruising caused by being struck repeatedly on the head with a buzzer:

Again, without wanting to excuse the behaviour, if the person is ringing the buzzer continually through the night, there is only you on and there is nothing you can do for them or do not believe there is anything you can do for them, there will be a frustration level put in there.⁶¹

59 Ms Helen Killmier, *Committee Hansard*, Melbourne, 30 June 2015, p. 31.

60 Ms Sharon Richards, *Committee Hansard*, Perth, 10 April 2015, p. 2.

61 Ms Sharon Richards, *Committee Hansard*, Perth, 10 April 2015, pp 2-3.

8.62 Ms Julie Pianto, a parent advocate, provided extensive evidence to the inquiry around staffing shortages in her son's residential care facility which resulted in sub-standard care which put his life at risk:

...I also think that it was unacceptable that I was told that staffing shortages were unavoidable and that was one of the reasons why Christopher was put at risk. I think, from my business life—when I was able to work—that managing that situation is part of what your responsibilities are, to make sure that people are not put at risk.⁶²

Cost reduction

8.63 Witnesses pointed to the desire of commercial disability service operators to run cost-effective services in order to maximise profits. This often meant that individualised needs were neglected by the service provider, unless they could streamline such services through co-location in order to reduce unit costs.

8.64 Ms Lamb pointed out cost-saving measures taken by facilities that resulted in impacts such as residents being forced to eat and sleep at inappropriate times, and losing basic decision-making power:

Managers and staff of organisations, nursing homes and institutions would never tolerate having to go to bed a six o'clock in the evening. They would never tolerate being told what time they can get out of bed. They would never tolerate not having control over what they eat and when they eat. Yet we still have to live like this. This is what leaves us vulnerable—the fact that our control has been taken away from us.⁶³

8.65 Evidence from service providers did not specifically address the issue of whether seeking cost-reductions in service delivery created greater potential for abuse or neglect. However, the committee received evidence from service providers that they followed a 'client centred approach':

We support the rights of all clients to make informed decisions and choices, without interference, about how they live their life.⁶⁴

...

Endeavour Foundation has a detailed decision making policy and procedure developed by the Community and Advocacy Support Unit to assist staff members in services to understand and the importance of decision making in a person centred approach to service delivery.⁶⁵

...

62 Ms Julie Pianto, *Committee Hansard*, Canberra, 21 August 2015, p. 19.

63 Ms Rayna Lamb, *Committee Hansard*, Perth, 10 April 2015, p. 20.

64 Optia Inc., *Submission 19*, p. 3.

65 Endeavour Foundation, *Submission 27*, p. 9.

[W]e work closely with our clients, and their families, to understand individual needs, preferences and goals and deliver our services in a way that allows individuals to achieve what they want to achieve.⁶⁶

8.66 The committee notes that such an approach would place the needs of clients at the centre of all decision-making. However, evidence submitted to the inquiry showed that in many cases this approach is not being adhered to, leading to instances of neglect.

Casual staff

8.67 Many submitters pointed to the reliance on casual staff to fill permanent positions. This had multiple negative impacts, not least that many casual staff were not given proper induction training for the individuals they were caring for. In some cases, this had a devastating effect on the quality of care provided:

Staff often have little choice about the situations they find themselves in, when it comes to casual employment especially. This poses a grave danger to the vulnerable people whom we work with and places staff at risk also. At times, a service may have residents with high care needs and staff with minimal or no training beyond basic induction. Induction is often three to five days of very intense information, and staff report absorbing little to no information from that session. I am aware of a young lady with a severe intellectual disability who was attended to by two casual workers at a high staff turnover facility. Instead of hoisting her, they carried her, one holding her legs and the other at the shoulders. Due to her rigidity and her condition, this resulted in both femurs being completely broken. This horrific scenario, I believe, could have been avoided through better education and a better staffing match.⁶⁷

8.68 The issue of the use of casual staff was also raised by a parent of a Yooralla resident, who claimed the use of casual staff was both dangerous and caused emotional distress to residents:

On many occasions two barely trained agency/casual staff who had never worked at the house before were on shift together with six adults with extremely complex support needs, including one resident with the complexities of being fed with a Percutaneous Endoscopic Gastrostomy (PEG) feeding tube. The high levels of anxiety to residents of being constantly confronted by complete strangers was evident. Given the constant strangers in the house we families were additionally extremely concerned about abuse and neglect.⁶⁸

8.69 Box 8.1 highlights the tragic consequences that systemic staffing problems and reliance on casual staff can have on people with disability with specific needs, and the importance of ensuring that staff are familiar with the needs of individual clients.

66 E.W. Tipping Foundation, *response to Submission 9*, p. 1.

67 Ms Heidi Egarter, *Committee Hansard*, Sydney, 27 August 2015, p. 10.30

68 Ms Sandra Guy, *Submission 70*, p. 3.

Box 8.1: Case study – Ms Stephanie June Fry

In August 2011, Ms Stephanie June Fry, a resident at an ACT government-run disability group home, choked to death when casual staff failed to heed warnings about her specific needs.

According to a *Canberra Times* investigation in November 2015, on the day of Ms Fry's death, the group home supervisor was absent and three casual workers from labour-hire firms were on duty. Ms Fry's file contained clear warnings that she required supervision while eating, that if she 'gets the chance she will gorge until she chokes and dies' and was not to be given bread. The new staff did not heed these warnings or complete a handover checklist to ensure they read the file. Ms Fry was found choking in the bathroom on sandwiches she had eaten while unsupervised. She was rushed to hospital but later died.

According to the *Canberra Times*, Ms Fry's family had previously warned the ACT government about the home's high staff turnover, noting that it was 'causing communication breakdowns and distress to Ms Fry'.

A spokesperson for the Community Service Directorate noted:

Ms Fry's death is not indicative of systemic failings but does represent a grave error for which we apologise... We have made significant changes to the way we ensure staff have the information they need to properly support people with disability in group homes.

However, the *Canberra Times* suggested that Ms Fry's death was due to the same systemic failings identified by the 2001 inquiry into the disability sector by former ACT Supreme Court Justice John Gallop which included 'high staff turnover, inadequate worker induction processes, and a reliance on unsupervised casual staff unfamiliar with residents' needs'. Despite the inquiry and consequent reforms, a number of former disability support workers suggested that the staffing problems highlighted by Ms Fry's death still exist.

Source: Christopher Knaus, 'Systemic failings saw disabled woman choke to death after staff miss warnings', *Canberra Times*, 18 November 2015, <http://www.canberratimes.com.au/act-news/systemic-failings-saw-disabled-woman-choke-to-death-after-staff-miss-warnings-20151007-gk3bml.html> (accessed 19 November 2015).

8.70 Evidence presented to the inquiry indicated that the casualisation of the disability workforce, and the likelihood it will increase under the NDIS, is a key contributor to abuse and neglect of people with disability. In discussing the rollout of the NDIS, Dr Ken Baker, Chief Executive of National Disability Services, told the inquiry:

There is also a risk, I think, that the casualisation of the workforce will increase—and we know that there is an association between high workforce turnover, in the context of workforce shortages, and the prevalence of abuse and neglect.⁶⁹

⁶⁹ Dr Ken Baker, Chief Executive, National Disability Services, *Committee Hansard*, Canberra, 21 August 2015, p. 21.

Gender-based abuse and neglect

8.71 A lack of workplace policies and practices to address the targeting of women with disability by perpetrators, has been raised by submitters as increasing the risk that these women will experience violence, abuse or neglect in institutions or residential care settings:

Women and girls with disabilities living in institutional settings are also more socially isolated than those living in the community, and experience greater challenges in communicating and protecting themselves owing to their impairments. Therefore, the opportunities for abusers to take advantage of those to whom they provide assistance for daily care (such as showering, toileting, dressing etc) and transportation are considerably raised.⁷⁰

8.72 The issue of gender appropriate staff was raised by witnesses citing a number of cases. Ms Samantha Connor discussed a case where a family request that a 12 year old girl not be showered by male carers was dismissed by the service provider as a breach of internal policy:

On one occasion Abbie's sister came to the house and discovered a male support worker with his hand under the doona which Abbie was sitting under. Abbie was wearing only a crop top and had no underwear on. Abbie was not able to give evidence to the police and continued being showered and dressed by male caregivers. After this incident, no staff were changed or stood down. Her parents were told that it was DSC [Disability Services Commission] policy that men can shower girls and the only thing they could do was go in as a family and stand over her whilst a male support worker showered her. So, from the age of 12 to 15, she was showered by men. The ratio was something like two women to six men who were staffing the accommodation.⁷¹

8.73 The family later suspected the young girl of being sexually abused by male carers, but she was unable to provide sufficient evidence to the police due to her communication difficulties.⁷²

8.74 Ms Marion Bright, a parent advocate, outlined a similar situation, where the inappropriate use of male staff for young female residents for overnight shifts increased the risk of sexual abuse through creating opportunities for predators:

Regarding the system, [Department of Human Services (DHS)] are culpable. So are Melbacc. They left her there alone overnight with a male agent. When I watched the Yooralla scandal and exposé in December, I was devastated. I thought, 'You bastards, DHS! You knew about leaving vulnerable clients alone overnight with male carers, and you've done that to my daughter. How dare you!'⁷³

70 Women with Disabilities Victoria, *Submission 53*, p. 21.

71 *Committee Hansard*, Perth, 10 April 2015, p. 32.

72 Ms Samantha Connor, *Committee Hansard*, Perth, 10 April 2015, p. 32.

73 Ms Marion Bright, *Committee Hansard*, Melbourne, 30 June 2015, p. 29.

8.75 Evidence presented to this inquiry of gender-based issues also offered examples of organisational exploitation of female residents.

We also know of women with disabilities who have no choice but to live in congregate living situations where privacy consists of pin-up boards to give privacy in bedrooms. Other women are being showered by male support workers in male bathrooms because it is convenient for the support worker to do the person at that particular time. Other supported residential facilities have sex rosters. These rosters are designed to help manage the behaviour of male residents. It is also a method women use to barter for things such as money, cigarettes and even food, because most of the limited welfare payments have been taken as rent and associated costs.⁷⁴

...

JFA Purple Orange has been told of emotionally abusive situations in some institutional settings arising from lack of privacy. For example, some settings have no doors on bathrooms, and some women have no choice about being showered in men's bathrooms as staff do not have the time to wait until the women's bathroom is available.⁷⁵

Workplace culture

8.76 The issue of workplace culture being a leading factor in creating environments of potential abuse was discussed by a number of submitters. Ms Carolyn Frohmader, Executive Director of Women with Disabilities Australia, pointed out the disconnect between the purported culture presented by service delivery organisations, and her experience of the service standards provided by those organisations:

One of the difficulties I have had in reading some of the submissions to this inquiry, is that the content of the submissions from some service providers simply does not reconcile with what I see and what I know happens in those services.⁷⁶

8.77 The committee believes it is important to note that every service provider organisation who submitted evidence to the inquiry discussed the protective culture they have developed to reduce incidents of violence, abuse and neglect, through training and support for their workforce and through self-advocacy training and support for facility residents to recognise and report such incidents:

We are invested in removing barriers to inclusion for all people with disability. This includes barriers to speaking out and barriers to justice.

Northcott⁷⁷

74 Ms Margie Charlesworth, Convenor, Women with Disabilities South Australia, *Committee Hansard*, Adelaide, 28 August 2015, p. 13.

75 JFA Purple Orange, *Submission 12*, p. 19.

76 Ms Carolyn Frohmader, Executive Director, Women with Disabilities Australia, *Committee Hansard*, Sydney, 27 August 2015, p. 40.

77 Ms Hilary Smith, Business Development and Partnerships Coordinator, Northcott, *Committee Hansard*, 27 August 2015, p. 26.

Yooralla engaged additional expertise to help lead and maintain a rights based service culture that would empower clients to be self-directing, with the ability to advocate for themselves to the maximum extent possible.

Yooralla⁷⁸

We also recognise clients might need support to speak out about issues. That is why we encourage the development of self-advocacy, access to independent advocates and operate our client voice program.

Optia Inc.⁷⁹

8.78 However, despite many organisations discussing the importance of 'self-advocacy' and 'self-empowerment' of people with disability, the committee is disappointed to note that most of these organisations did not appear to proactively promote the opportunity to make a submission to this inquiry to their staff or clients, nor did they appear to offer support to their client base to make submissions.⁸⁰ It is telling that organisations drafted submissions from the perspective of facility managers, and no organisation invited to speak at an inquiry hearing brought with them either lived experience witnesses to speak on their own behalf, or any members of the residents' self-advocacy groups facilitated by service delivery organisations.

8.79 Similar to the evidence provided by Ms Frohmader, Ms Silvana Gant, President and Convenor of Adelaide People First told the committee that her advocacy group experienced instances where statements on service standards made by organisations did not match up with the services actually delivered:

Services are really good at using language to make it look like they do what they do not actually do. Our group has heard language like 'person centred thinking' or 'person centred planning' for most of the last three decades—it was individualised service planning before it was person centred planning. We do not see any evidence that particularly medium to large disability service providers are actually doing that. The main reason for that is that they are still continuing to provide congregated models of service across all aspects of life. It is not just where people live; it is where they work, what they do with their free time, and it is across the lifespan from childhood through to the grave effectively.⁸¹

8.80 In assessing the disparity between statements of positive corporate culture versus evidence of corporate practice on the ground, the committee notes the statements made by Yooralla regarding the past incidents of sexual assault and abuse suffered by Yooralla residents:

On behalf of Yooralla, I apologise sincerely for the occasions of abuse that occurred within our organisation. We are very sorry and deeply regret what occurred. We are sorry for the impact that these incidents have had and are

78 Yooralla, *Submission 146*, pp 2-3.

79 Optia Inc. *Submission 19*, p. 1.

80 With the exception of Northcott, which did encourage people to whom they provide services to make submissions to the inquiry.

81 Ms Silvana Gant, *Committee Hansard*, Adelaide, 28 August 2015, p. 10.

having on the lives of the victims, their families and the members of the community.⁸²

8.81 However, the committee notes the evidence of Ms Jules Anderson, the Yooralla resident who was repeatedly sexually assaulted and abused by a Yooralla care worker who has since been charged and found guilty of the assaults. Ms Anderson told the inquiry she has repeatedly asked to be moved from the room in which the assaults occurred, with no agreement from Yooralla to do so. Ms Anderson has described her very deep distress at being forced to remain living in the bedroom where she was repeatedly raped, and has also discussed the post-investigation culture of Yooralla management:

I went to a finance meeting about rent going up and whatever. The fact is they do not care about us. When I went there, there was the manager of our house and a person further up. He did not even introduce himself to me, and that was my first meeting with any of the new management. And they want us to give them a second chance. It is as little as that. I had to say, 'And you are? And you are?' and he still would not say. In the end, he said, 'I'm [REDACTED],' but he had plenty of chances to say something, and I walked out of that meeting in tears because I could not believe how little respect or response I got. And yet I have heard so many different things about this. I went in there with an open mind. Like I am today, I was feeling a bit like, 'Am I really here? Am I really going to do this?' And that was the response I got. Nothing. He knew my name before I knew his.⁸³

Reporting failures

8.82 A longer discussion of systemic improvements to reporting frameworks can be found in chapter five. However, evidence presented to this inquiry showed there is a widespread problem with organisation-level incident reporting, caused by a lack of adequate training and reporting procedures, and in some cases by organisations actively discouraging incident reporting. The workplace culture whereby incidents are not appropriately reported and followed up, itself creates a situation where even more abuse can occur:

It is significant that some organisations have operating rules that require reporting to management instead of informing police of a criminal or suspected criminal act or a matter of neglect or abuse. This allows organisations to inhibit the actions of concerned staff in reporting matters to the authorities and to hide mistreatment of illegal activity to protect the organisation, quietly moving any dangerous workers who then abuse people in other services.⁸⁴

8.83 Multiple submitters presented evidence that when they reported incidents to the service delivery organisation, they were discouraged from making reports by being told they were the only ones who were complaining:

82 Dr Sherene Devanesen, Chief Executive Officer, Yooralla, *Committee Hansard*, Melbourne, 30 June 2015, p. 1.

83 Ms Jules Anderson, *Committee in-camera Hansard*, Melbourne, 30 June 2015, p. 17.

84 Mr Milton Keynes, *Submission 6*, p. 2.

When I made complaints to the centre about anything I was always made to feel and sometimes told that I was the only parent who had a problem with the centre. During a meeting with management that included many parents I discovered that this was not true and many of the things I had complained about had been complained about by most if not all of the other parents, caregivers and guardians.⁸⁵

8.84 Other evidence highlighted a workplace culture focused on hiding, rather than dealing with incidents of violence, abuse or neglect:

I have known of workers who have stood up in advocacy of clients who have disabilities. They have been pretty much told, by their management, 'We're just going to shove that underneath the rug. We're not going to do anything about it.' When they stand up for a person with a disability, they get victimised. It is inexcusable.⁸⁶

8.85 This issue has also been highlighted in research conducted by the Intellectual Disability Rights Service, which surveyed the experiences of people with disability, their family members and friends, disability service staff, independent disability advocates and others:

Key lessons that we learnt regarding disability workers were (1) workers must have adequate expert support when they are working with residents who have challenging behaviours; (2) workers need better training to recognise and respond to indicators that a person with disability may be experiencing abuse; (3) there must be protection for whistleblowers; and (4) management must support front-line staff in finding solutions to abusive situations.⁸⁷

Abusers not removed

8.86 Many family members and advocates presented evidence to the inquiry of situations where they alerted organisations of 'red-flag' behaviours of individual workers. Where those warning signs were ignored, those staff members went on to abuse or neglect the people they were caring for.

8.87 In many cases present to this inquiry, workers were simply moved to another facility to care for other vulnerable residents:

Upon investigation, Client IJ had been frequently sworn at using offensive language by one particular support worker as well as being pushed and shoved and told she was useless and ought to be put out of her misery. We devised a communication aid for the client who communicated these complaints to us by blinking. As a result we lodged a complaint with management but the only action taken was to transfer the worker to another Group Home.⁸⁸

...

85 Ms Cheryl McDonnell, *Submission 37*, p. 12.

86 Ms Wanita McDade, *Committee Hansard*, Perth, 10 April 2015, p. 42.

87 Ms Margot Morris, *Committee Hansard*, Melbourne, 27 August 2015, p. 2.

88 Disability Justice Advocacy Inc., *Submission 14*, p. 4.

Staff accused of abuse were often left in their positions or moved to another part of the service.⁸⁹

8.88 Children with Disability Australia noted that in many cases, organisations justified their lack of action to address systemic issues on the basis they had solved the problem by moving the abuser from the location:

Frequently, organisations appeal to the notion that abuse has only occurred due to the presence of malicious individuals within the organisation. This is often referred to as the 'bad apples' argument. It is suggested that because the offending individual has been removed or disciplined, no further action is required. This deflects focus away from the systemic factors that contribute to abuse occurring, including poor governance, a lack of managerial accountability and a discriminatory organisational culture.⁹⁰

Risk management

8.89 A key issue discussed by multiple witnesses, is unintended negative consequences resulting from organisations adopting an overly conservative risk management approach to reducing the potential numbers of reportable incidents. Evidence presented to the inquiry suggests that this approach can have the inverse effect of increasing the chances of abuse or neglect, through the denial of opportunity for positive experience. Professor Richard Bruggeman, a disability expert who is also the South Australian Disability Senior Practitioner, submitted that the bias of organisations is to prevent things they can be sued for, and 'duty of care' is often regularly referenced as a reason to prevent learning due to its inherent risks. Professor Bruggeman further submitted that the current system of regulation and accreditation exacerbates this approach, as it focuses on ensuring bad things do not happen, but does not enforce good outcomes such as developmental opportunity and personal sovereignty.⁹¹

8.90 The Villamanta Disability Rights service contended that risk management undertaken by organisations does not acknowledge the very real fact that abusive predators and neglectful staff are a fact of life and will continue to occur, and organisations must be appropriately vigilant to that risk:

What does risk management do? It contemplates and acknowledges the potential critical event, and that is one very clear issue that we confront here: every single time an event of abuse or violence et cetera is raised, there is the disbelief, the shock, the horror. We cannot operate from a place where we do not expect it to happen...

In this instance, where we are talking about abuse perpetuated by people, not natural disasters or mechanical failures, the presence of a robust plan that is visible, consistent and known actually provides a deterrent. If everybody is working together and everybody knows how the situation

89 Intellectual Disability Rights Service, *Submission 128 Attachment 1*, p. 3.

90 Children with Disability Australia, *Submission 144*, p. 22.

91 Professor Richard Bruggeman, *Submission 7*.

will be handled there is actually a deterrent to that kind of behaviour simply because you know what the protective mechanisms are.⁹²

8.91 The Endeavour Foundation submitted that another cultural reason that organisations respond inappropriately to abuse is the level of discomfort it can create:

It must also be noted that for an organisation to speak of abuse so openly is uncomfortable. It is uncomfortable for managers, staff, volunteers and Board Directors to acknowledge that allegations of abuse occur in the organisation of which they are a part.⁹³

8.92 Professor Bruggeman outlined to the inquiry that the 'risk-management' approaches by facilities to control the behaviour of residents actually exacerbated behaviours and led to further instances of abuse:

At the top we have our seclusion, physical restraint, chemical restraint and mechanical restraint—locking up, tying up or drugging people—and at the bottom I have these things which I have called organisational restraint, whereby individuals' wishes, goals and interests are not fulfilled—and often not even sought—due to roster restrictions, work allocations, risk aversion, management decisions, smooth running of households, management staff's lack of training and development, and old-fashioned lack of interest. My theory is: get rid of that stuff at the bottom and we will reduce the stuff at the top. I have to say that, if I were in a group home and I were bored senseless every day and I could not make any decisions and I did not have any language to communicate and tell people how cruel, nasty and bastard-like they were being, I would be lashing out too, and then of course I would get zapped with some drugs or sent into my room. The same thing occurs with abuse. At the bottom we have that lack of interest, and of course that flows through to those more obvious types of abuse that we are more aware of.⁹⁴

8.93 Ms Cheryl McDonnell echoed the view that a lack of opportunity was itself a form of neglect, and made an eloquent submission to the inquiry which detailed her advocacy with care providers to her daughter over the past five years. In particular, Ms McDonnell wrote of the rights that people with disability have, just like anyone else, to live fulfilling lives:

It is my belief that Terri has a right to continue learning new skills, developing to her full potential. She is not a burden to be carried, nor is she broken in need of fixing, nor is she to be pitied. She is indeed a whole human being with a full and interesting life. She has a developing skill set, an ability to continue learning, that with the right support and assistance she can expand and grow her skills, abilities and her understanding as she moves through the world and through life.⁹⁵

92 Ms Naomi Anderson, *Committee Hansard*, Melbourne, 30 June 2015, pp. 27-28.

93 Endeavour Foundation, *Submission 27*, p. 6.

94 Professor Richard Bruggeman, *Committee Hansard*, Adelaide, 28 August 2015, p. 31.

95 Ms Cheryl McDonnell, *Submission 37*, p. 10.

8.94 Mr David Bowen, Chief Executive of the National Disability Insurance Agency, suggested that this issue could be addressed by changing the accreditation schemes for disability service providers to require measurable positive outcomes for individuals:

...I also think there has been quite a significant failure of the regulatory systems that exist. Part of it is because of the way accreditation systems have been structured around service delivery...The nature of those accreditation systems also is that they are predominantly—in fact, overwhelmingly—focused upon process measures. To get accreditation, which usually involves some follow-up audit, it is an audit of service providers' processes with very little focus on the outcome for the individual and hardly ever any inquiry of the person who is at the centre of this, the person for whom these accreditation systems are set up. There is very little opportunity for them ever to have any input or for their feedback to be taken into account in that audit and accreditation processes.

My very strong suggestion for quality and safeguards is to move away from those service provider accreditation systems to a risk based one around the individuals.⁹⁶

Board-level responsibility

8.95 The issue of vesting responsibility for the safety and well-being of disability service recipients was raised in different hearings. At the first hearing in Perth, Ms Connor quoted Mr Alan Blackwood from the Young People in Nursing Homes Alliance, who cited occupational health and safety (OHS) systems which place responsibility for workplace safety with boards and management, with civil and criminal sanctions for breaches of OHS duty of up to \$600,000 in fines or five years' imprisonment for serious breaches as leading to changes of behaviour of directors and companies:

It is telling that, like all company directors in Australia, board directors and senior officers of disability organisations have legislated liability for breaches of financial, corporate and OHS regulations, but face no comparable liability or established sanctions for serious breaches in their duty of care to clients. This is what we need to fix.⁹⁷

8.96 This idea was also raised during subsequent hearings, and in other submissions. Mr Milton Keynes proposed that it should be an offence for an organisation 'to instruct staff to not notify authorities, or otherwise prevent them from doing so, and a further offence to take to take action against staff for making a notification'.⁹⁸

8.97 Professor Bruggeman suggested such a scheme to enforce duty of care could be expanded to include where positive outcomes were not achieved:

96 Mr David Bowen, Chief Executive Officer, National Disability Insurance Agency, *Committee Hansard*, Melbourne, 30 June 2015, pp. 38-39.

97 *Committee Hansard*, Perth, 10 April 2015, p. 33.

98 *Submission 6*, p. 2.

If you live in a group home and the staff are negligent and you have your leg broken, you can sue them. If you live in a group home and the staff are negligent in that they never give you skills and in 10 years time you have no skills when you might have been doing your own cooking and your own cleaning and your own ironing and perhaps living in your own flat, they do not get sued for that.⁹⁹

Concluding committee view

8.98 The committee is very concerned that evidence presented to this inquiry shows that too often approaches taken by organisations in response to instances of abuse or neglect do not adequately address the incident. Some responses could be considered a further abuse of the victim, while others can significantly increase the chances of such incidents recurring.

8.99 It is hard to imagine that any other industry which intimately touches the lives of so many Australians would be allowed to operate with such a dearth of appropriate risk-management to protect and enhance the lives of vulnerable people.

8.100 While individual organisations have the ultimate responsibility to select and institute practices to eliminate harm, there is evidence to the committee that suggests a need for systemic or legislative responses which provide sanctions against organisations which do not appropriately live up to that responsibility.

99 *Committee Hansard*, Adelaide, 28 August 2015, p. 32.

