

## Chapter 2

### International and national frameworks

2.1 This chapter outlines the various frameworks under which disability services are provided in Australia, including:

- Australia's international law obligations;
- Commonwealth, state and territory roles and responsibilities;
- oversight and complaints reporting mechanisms;
- recent disability-related inquiries and reports; and
- data collection used to establish the extent of violence, abuse and neglect against people with disability.

2.2 Australia's compliance with its international law obligations as they apply to the rights of people with disability (term of reference (f)) is also examined.

#### Australia's international law obligations

2.3 Australia is a party to seven core international human rights treaties—including the Convention on the Rights of Persons with Disabilities (Disability Convention)<sup>1</sup>—and a number of other international instruments that are relevant to the treatment of people with disabilities in Australia.<sup>2</sup>

2.4 This inquiry focuses on specific key articles of the Disability Convention, as this convention generally captures relevant provisions of these other frameworks as they relate to people with disability:

[T]he Disability Convention does not introduce any new human rights but instead seeks to redefine disability and make existing human rights realisable for people with disability by taking account of their experiences and needs and by contesting pervasive medical and individual models of disability which have historically encouraged the discriminatory and paternalistic approaches to rights.<sup>3</sup>

2.5 However, the committee acknowledges the relevance of all international instruments to which Australia is a party. Those instruments will be referred to as necessary throughout this report.

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1 United Nations, Convention on the Rights of Persons with Disabilities (Disability Convention), opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), <http://www.un.org/disabilities/convention/conventionfull.shtml> (accessed 2 October 2015).

2 The international human rights treaties ratified by Australia are listed at: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=AUS&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=AUS&Lang=EN), (accessed 2 October 2015).

3 Dr Linda Steel, School of Law University of Wollongong, *Submission 94*, p.10.

2.6 Some of these instruments are not binding in international law: for example, the United Nations (UN) Declaration on the Rights of Indigenous Peoples, the Declaration on the Elimination of All Forms of Violence Against Women, and the UN Principles for Older Persons. However, this does not mean that those instruments are irrelevant. Professor Hilary Charlesworth, an international law scholar based at the Australian National University, has previously noted:

While General Assembly resolutions are not, strictly speaking, binding, they are increasingly regarded as a source of international law. This is particularly the case when resolutions are couched in terms of obligations of member nations to fulfil their terms. At the very least, resolutions constitute an important statement of the international, community's views and contribute to the formation of customary international law.<sup>4</sup>

2.7 The Law Council of Australia, however, noted that where international instruments are not enacted into domestic law, the realisation of those rights is fragile:

Whilst the ratification of international human rights instruments such as the United Nations Convention of the Rights of People with a Disability (sic) provide a theoretical basis for the understanding and interpretation of human rights for people with disability, it does not make them enforceable. In the absence of domestic legislation implementing such treaties as laws of Australia, the respect for, and translation of, these rights into practice is neither assured nor likely. Therefore it is arguable that Australia fails to meet international obligations regarding rights of persons with disability.<sup>5</sup>

### ***Convention on the Rights of Persons with Disabilities***

2.8 The Disability Convention provides the overarching international framework for the protection, promotion and fulfilment of rights for people with disability, and also aims to promote respect for the inherent dignity of people with disability.<sup>6</sup> It contains general and specific obligations that apply to States Parties. Key articles relevant to the terms of reference for this inquiry include:

- Article 6—Women with disabilities
  - recognises that women and girls with disabilities are vulnerable to multiple forms of discrimination; and

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4 Hilary Charlesworth, 'The Declaration on The Elimination of All Forms of Violence Against Women', *ASIL Insight*, 1994, vol. 3, p. 2, <http://www.law-lib.utoronto.ca/diana/fulltext/char3.htm> (accessed 2 October 2015).

5 Law Council of Australia, *Submission 139*, pp 14-15.

6 The Disabilities Convention is supplemented by an Optional Protocol, which provides a complaint mechanism for individuals who allege a violation of their rights under the Convention. Australia ratified this protocol on 21 August 2009.

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- requires States Parties to take all appropriate measures to ensure that women and girls with disabilities exercise and enjoy the human rights and fundamental freedoms set out in the convention;<sup>7</sup>
  - Article 7—Children with disabilities
    - requires States Parties to take all necessary measures to ensure that children with disabilities fully enjoy all human rights and fundamental freedoms on an equal basis with other children;<sup>8</sup>
  - Article 12—Equal recognition before the law
    - requires States Parties to recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life; and
    - requires States Parties to take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity;<sup>9</sup>
  - Article 13—Access to Justice
    - requires States Parties to ensure effective access to justice for persons with disabilities on an equal basis with others (including promotion of appropriate training for those working in the field of justice administration);
  - Article 16—Freedom from exploitation, violence and abuse
    - requires States Parties to take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects;
    - requires States Parties to take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, for example, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive;
    - States Parties shall ensure that all facilities and program designed to serve persons with disabilities are effectively monitored by independent authorities;

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7 Also see: Convention on the Elimination of All Forms of Discrimination against Women, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx> (accessed 2 October 2015).

8 Also see: Convention on the Rights of the Child, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> (accessed 2 October 2015).

9 Also see: International Covenant on Civil and Political Rights, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (accessed 2 October 2015).

- States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs; and
- States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

2.9 The committee notes that in signing the Disability Convention, Australia made a declaration which gives some direction on how Australia interprets the rights contained in certain articles:

...Australia recognizes that persons with disability enjoy legal capacity on an equal basis with others in all aspects of life. Australia declares its understanding that the Convention allows for fully supported or substituted decision-making arrangements, which provide for decisions to be made on behalf of a person, only where such arrangements are necessary, as a last resort and subject to safeguards;

Australia further declares its understanding that the Convention allows for compulsory assistance or treatment of persons, including measures taken for the treatment of mental disability, where such treatment is necessary, as a last resort and subject to safeguards.<sup>10</sup>

### ***Australia's obligations under the Disability Convention***

2.10 The Disability Convention entered into force on 3 May 2008 and the UN Committee on the Rights of Persons with Disabilities (UN Disability Committee) monitors its implementation by States Parties. Each State party is obliged to submit regular reports to the UN Disability Committee, initially within two years of its ratification of the Disability Convention and thereafter every four years. The UN Disability Committee examines the reports, and makes observations and recommendations.

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10 Disability Convention, *Declarations and Reservations: Australia*, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&lang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en#EndDec) (accessed 13 October 2015).

2.11 In December 2010, Australia submitted its initial report, which was scrutinised by the UN Disability Committee in September 2013.<sup>11</sup> The UN Disability Committee made a number of concluding observations and recommendations, in respect of which Australia is due to respond in its combined second and third report (due in August 2018).<sup>12</sup>

2.12 In general, the UN Disability Committee commended certain initiatives being undertaken by Australia, but expressed concern with Australia's implementation of a number of Disability Convention articles. These concerns included whether Australia was upholding the general obligation to adopt all appropriate measures for the implementation of rights recognised in the Disability Convention (Article 4(1)(a)), and the implementation of specific rights in Articles 6, 12, 13 and 16. For example:

The Committee is concerned at reports of the high incidence of violence against, and sexual abuse of, women with disabilities...the Committee is concerned about the possibility that the regime of substitute decision-making will be maintained and that there is still no detailed and viable framework for supported decision-making in the exercise of legal capacity...the Committee is concerned at the lack of training for judicial officers, legal practitioners and court staff on ensuring access to justice for persons with disabilities, as well as the lack of guidance on access to justice for persons with disabilities.<sup>13</sup>

2.13 The UN Disability Committee also commented on 'reports of high rates of violence perpetrated against women and girls living in institutions and other segregated settings' and recommended:

...that the State party investigate without delay the situations of violence, exploitation and abuse experienced by women and girls with disabilities in institutional settings, and that it take appropriate measures on the findings.<sup>14</sup>

### ***Comments from submitters and witnesses***

2.14 Submitters and witnesses asserted that Australia was not upholding many of its international law obligations, primarily under the Disability Convention, but also under other relevant conventions and instruments.<sup>15</sup>

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11 Committee on the Rights of Persons with Disabilities (UN Disability Committee), *Implementation of the Convention on the Rights of Persons with Disabilities, Initial reports submitted by States parties under article 35 of the Convention, Australia*, UN Doc. CRPD/C/AUS/1, 2010, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAUS%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAUS%2f1&Lang=en) (accessed 2 October 2015).

12 UN Disability Committee, *Concluding Observations Australia*, UN Doc. CRPD/C/AUS/CO/1, 2013, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAUS%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAUS%2fCO%2f1&Lang=en) (accessed 2 October 2015).

13 UN Disability Committee, *Concluding Observations Australia*, UN Doc. CRPD/C/AUS/CO/1, 2013, pp 2–4.

14 UN Disability Committee, *Concluding Observations Australia*, UN Doc. CRPD/C/AUS/CO/1, 2013, p. 5.

2.15 Australian Lawyers for Human Rights (ALHR) contended:

Australia has breached international human rights obligations as they apply to people with disabilities where those people have been subjected to violence, abuse and neglect in institutional and residential settings...Critically, these people must be free from exploitation, violence and abuse, not be subject to torture or cruel, inhuman or degrading treatment or punishment and have their physical and mental integrity protected.<sup>16</sup>

2.16 ALHR cited a number of ways in which the rights of people with disability in Australia are breached, including, but not limited to:

- people with disability often cannot choose where they live;
- people with disability are often subject to treatment that may constitute torture, or cruel or unusual punishment<sup>17</sup>;
- there is a lack of specific legislation or oversight mechanisms to prevent such treatment;
- women with disability are subjected to more occurrences of violence and restrictive practice in residential settings, and face more obstacles to reporting such occurrences, and
- the lack of appropriate restrictions on compulsory treatments.<sup>18</sup>

In conclusion, ALHR has grave concerns regarding Australia's lack of compliance with international human rights obligations provided in the [Disability Convention]. Compliance can be at best described as poor.<sup>19</sup>

2.17 The Australian Cross Disability Alliance (Disability Alliance) provided extensive evidence in its submission that many of the obligations on States Parties contained in the Disability Convention are not being adequately upheld by Australia. The Disability Alliance further contended that rights contained in other conventions Australia is signatory to are also not being realised by people with disability:

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15 While many submitters alluded to this issue, the following submitters made explicit reference to Australia's international obligations not being met: Families Australia, *Submission 3*; Queensland Aged Disability Advocacy Service, *Submission 30*; Federation of Ethnic Communities Councils of Australia, *Submission 39*; Queensland Advocacy Incorporated, *Submission 43*; Queenslanders with Disability Network, *Submission 52*; Australian Lawyers for Human Rights, *Submission 99*; Deakin University, *Submission 109*; Consumers of Mental Health WA, *Submission 110*; Law Council of Australia, *Submission 139*; Children with Disability Australia, *Submission 144*.

16 Australian Lawyers for Human Rights (ALHR), *Submission 99*, p. 2.

17 As defined by the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

18 *Submission 99*, pp 3-8.

19 *Submission 99*, p. 10.

Significantly, torture and ill-treatment of people with disability, including violence, abuse, exploitation and neglect are frequently subject to commentary in the various concluding observations and recommendations from United Nations (UN) treaty bodies and the Human Rights Council following assessment of Australia's human rights performance.<sup>20</sup>

2.18 The Disability Alliance summarised the UN Disability Committee's 2013 review of Australia's performance in relation to the Disability Convention and found that the UN Disability Committee's key concerns in relation to the following articles were:

- Articles 6 and 16: there is a high incidence of violence against women with disability;
- Article 7: there is no comprehensive national human rights framework for children, including children with disability;
- Article 14: people deemed unfit for trial can be detained indefinitely without trial, there is an over-representation of people with disability in the prison and juvenile justice systems, and Australian law allows for people with disability to be subjected to medical interventions without consent;
- Article 15: people with disability, are subjected to restrictive practices such as chemical, mechanical and physical restraints in a range of settings; and
- Article 17: Australia continues to allow forced sterilisation.<sup>21</sup>

2.19 The ACT Disability Aged Carer and Advocacy Service (ADACAS) agreed that the rights of people with disability were not being upheld in Australia:

The interactions we have had with our clients have highlighted to us the need for greater protection and support of people with a disability in their interactions with various institutions. The rights of people with disability are protected in this regard in the Convention on the Rights of People with Disabilities 2006, which states in Article 16 (1) that:

'States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.'

It is evident from what we see in our work that this protection is not been afforded to people with disabilities.<sup>22</sup>

2.20 Action for More Independence in Disability Accommodation argued that the accommodation restrictions faced by people with disability were also breaches of Australia's Disability Convention obligations and had flow on effects for other rights:

In line with that convention, people with a disability should have the right to a choice of who they live with and where they live and, further, that people with a disability should have the right to good quality housing which is accessible, affordable and

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20 Disability Alliance, *Submission 147*, p. 22.

21 *Submission 147*, pp 22-25.

22 Sonia Di Mezza, ADACAS, *Committee Hansard*, 21 August 2015, Canberra, p. 33.

non-institutional, and the right to live in the community with access to the support they need to participate in the community and have a good life. These have all been signed up to but have not been delivered on, and it is our contention that if more work is done to actually deliver on those convention standards and benchmarks then this will reduce abuse, and that, after all, is what we would hope to achieve.<sup>23</sup>

2.21 ALHR agreed with this position:

Australia is failing to comply with international human rights obligations by operating institutions and offering residential settings which do not allow people to choose who they live with or access services in the community which are responsive to their needs.<sup>24</sup>

2.22 Ms Mary Woodward, a former disability communications intermediary in the United Kingdom, provided evidence that she believed Australia's justice system was not inclusive enough to live up to obligations within the Disability Convention:

I think that, despite the [Disability Convention] our current judicial systems do not provide enough modifications for people with communication difficulties to have a voice in the justice system.<sup>25</sup>

***Committee view***

2.23 The UN Disability Committee has commended certain disability-related initiatives undertaken in Australia, notably the adoption of the National Disability Strategy, introducing the National Disability Insurance Scheme (NDIS), and the Australian Law Reform Commission's (Law Reform Commission) inquiry into disability justice issues.

2.24 However, evidence provided indicates Australia has more to do, to ensure people with disability enjoy full realisation of their rights. The committee finds the evidence suggests that the institutional nature of some service delivery contexts contributes to environments that increase the prevalence of violence, abuse and neglect.

2.25 The committee notes the evidence which indicates Australia has failed to uphold the rights of people with disability across a number of United Nations conventions, not just the Disability Convention.

2.26 The committee particularly notes the UN Disability Committee's comments on the need for improved access to justice for people with disability, more appropriate decision-making frameworks and the need for more protection for women and children with disability. The committee also notes the recommendation for Australia to close residential institutions and develop nationally consistent measures for data collection.

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23 Pauline Williams, Action for More Independence in Disability Accommodation, *Committee Hansard*, 30 June 2015, Melbourne, p. 52.

24 ALHR, *Submission 99*, p. 3.

25 Ms Mary Woodward, *Committee Hansard*, 27 August 2105, Sydney, p. 31.

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## **Commonwealth, state and territory roles and responsibilities**

2.27 Prior to 2009, the Commonwealth had a hands-off role of funding states and territories to deliver disability services. The Australian Government took a more proactive role following the signing of the Disability Convention in 2009 and the development of the NDIS. Currently, the Commonwealth, state and territory governments share responsibility for the provision of disability services in Australia, with the Australian Government taking a lead role in policy development and the enforcement of standards.

2.28 The governments' roles and responsibilities are defined in high-level agreements that have been negotiated in recent years, as governments seek to address the demand for quality services for people with disabilities. Five key initiatives are discussed below:

- National Disability Agreement (NDA);
- National Disability Strategy, 2010–2020 (NDS);
- NDIS (formerly known as DisabilityCare Australia);
- National Plan to Reduce Violence Against Women and their Children 2010-2022 (National Plan); and
- National Framework for the Protection of Australia's Children (Child Protection Framework).

### ***National Disability Agreement***

2.29 In November 2008, the Council of Australian Governments (CoAG) agreed the Intergovernmental Agreement on Federal Financial Relations (Intergovernmental Agreement). This agreement established the overarching framework for the Commonwealth's financial relations with the states and territories, and intends to provide for: increased flexibility in service delivery; a clearer specification of the roles and responsibilities of each level of government; and an improved focus on accountability for better outcomes and service delivery.<sup>26</sup>

### ***Roles and responsibilities***

2.30 Schedule F of the Intergovernmental Agreement sets out six National Agreements that define the objectives, outcomes, outputs, performance indicators and benchmarks, and clarify the roles and responsibilities, that guide governments in service delivery across a particular sector.

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26 Council of Australian Governments (CoAG), Communiqué, Canberra, 29 November 2008, <https://www.coag.gov.au/sites/default/files/2008-29-11.pdf> (accessed 2 October 2015.)

2.31 One of these National Agreements is the NDA that provides for both separate and shared roles and responsibilities from 1 January 2009.<sup>27</sup> The Commonwealth's role is largely financial and includes:

- provision of funds to states and territories, to contribute to the achievement of the objective and outcomes;
- funding disability services delivered by states in accordance with their responsibilities under the agreement for people aged 65 years and over (50 years and over for Aboriginal and Torres Strait Islander peoples);
- where appropriate, investing in initiatives to support nationally agreed policy priorities, in consultation with states and territories; and
- ensuring that Commonwealth legislation is aligned with national priority, reform directions and the Disability Convention.<sup>28</sup>

The states and territories' roles and responsibilities are:

- the provision of disability services (except disability employment services which are provided by the Commonwealth), including:
  - regulation, service quality and assurance;
  - assessment;
  - policy development;
  - service planning; and
  - workforce and sector development;in a manner which most effectively meets the needs of people with disability, their families and carers, consistent with local needs and priorities;
- (except for Victoria and Western Australia) funding and regulating basic community care services for people under the age of 65 years in line with their principal responsibility for delivery of other disability services under the agreement, except Aboriginal and Torres Strait Islander peoples aged 50 years and over for whom the cost of care will be met by the Commonwealth;
- (except for Victoria and Western Australia) funding packaged community and residential aged care delivered under Commonwealth aged care programs for people under the age of 65 years, except Aboriginal and Torres Strait Islander peoples aged 50 years and over;

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27 CoAG, *National Disability Agreement*, November 2008, <http://www.federalfinancialrelations.gov.au/content/npa/disability/national-agreement.pdf> (accessed 2 October 2015).

The shared roles and responsibilities relate to: national policy and reform directions; research; continuity of care; reforms to improve outcomes for Aboriginal and Torres Strait Islander peoples; provision of data; and implementation of commitments under the National Partnership Agreement on Transitioning Responsibilities for Aged Care and Disability Services.

28 CoAG, *National Disability Agreement*, 2008, p. 4.

- ensuring that state and territory legislation and regulations are aligned with the national policy and reform directions; and
- where appropriate, investing in initiatives to support nationally agreed policy priorities, in consultation with the Commonwealth.<sup>29</sup>

#### *Commonwealth funding amounts*

2.32 Under the Intergovernmental Agreement, the Commonwealth committed to ongoing financial support for service delivery (clause 19). For the NDA, this support is provided through general revenue assistance, the NDA Specific Purpose Payment (NDA SPP) (indexed annually in accordance with defined growth factors, currently 3.5 per cent),<sup>30</sup> and National Partnership payments.

2.33 On commencement of the NDA, the Commonwealth committed to total funding of \$5.3 billion over five years for the NDA SPP.<sup>31</sup> In 2015–16 Budget, the Government announced that total funding for the NDA SPP in 2014–15 amounted to \$1.39 billion. The budget provided for \$1.44 billion in 2015–16, with \$4.66 billion in funding over the forward estimates.<sup>32</sup> The division of this funding across states and territories is shown in Figure 2.0 below.

**Figure 2.1: National Disability Agreement Specific Purpose Payments, states and territories, 2014–19.**

#### **National Disability SPP**

\$million	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	Total
2014-15	445.9	346.9	280.2	153.4	99.6	30.3	22.9	14.5	1,393.7
2015-16	459.9	359.3	290.2	160.8	102.3	31.0	23.6	15.1	1,442.2
2016-17	474.6	372.3	300.7	168.7	105.1	31.6	24.5	15.7	1,493.2
2017-18	491.6	387.3	312.8	177.6	108.4	32.4	25.4	16.3	1,551.8
2018-19	510.5	403.8	326.2	187.4	112.1	33.2	26.4	17.0	1,616.7

*Source: Australian Government, Budget measures: budget paper no. 3: 2015–16, 2015, p. 40.*

2.34 It must be noted that although the NDA states that Commonwealth legislation must be aligned with the Disability Convention, it does not require that state and

29 CoAG, *National Disability Agreement*, 2008, p. 5. Under the National Health Reform Agreement, Victoria and Western Australia retain responsibility for basic community care, aged care and disability services, and certain reconciliation arrangements. Accordingly, their responsibilities under the National Disability Agreement are different to other jurisdictions in respect of these areas: Commonwealth of Australia, *National Health Reform Agreement*, 2011, Schedule F, p. 53.

30 Australian Government, *Budget measures: budget paper no. 3: 2015–16*, 2015, p. 10, [http://www.budget.gov.au/2015-16/content/bp3/download/BP3\\_consolidated.pdf](http://www.budget.gov.au/2015-16/content/bp3/download/BP3_consolidated.pdf) (accessed 2 October 2015).

31 CoAG, Communiqué, Canberra, 29 November 2008, p. 2.

32 Australian Government, *Budget measures: budget paper no. 3: 2015–16*, 2015, p. 10, [http://www.budget.gov.au/2015-16/content/bp3/download/BP3\\_consolidated.pdf](http://www.budget.gov.au/2015-16/content/bp3/download/BP3_consolidated.pdf) (accessed 2 October 2015).

territory legislation must be as well. Clearly this creates a potential for key parts of domestic law to fail to meet the requirements of the Disability Convention. Regardless of this, the Commonwealth still retains the overarching obligation to ensure that all treatment of people with disability in Australia is in keeping with the rights enshrined in the Disability Convention, regardless of whether the Commonwealth has explicitly conferred that obligation in a domestic capacity onto the state and territory governments.

### ***National Disability Strategy***

2.35 In February 2011, CoAG endorsed the NDS, a 10 year national plan that aims to improve life for people with disability, their families and carers.<sup>33</sup> It is a collaborative strategy which involves all levels of government. As each level of government has specific roles and responsibilities across a wide range of policies and programs, the NDS focuses on creating a more unified approach:

...this is the first time in Australia that a national strategy articulates long-term goals across a number of key policy areas which impact on people with disability, their families and carers. It also provides leadership for a community-wide shift in attitudes to look beyond the disability.<sup>34</sup>

2.36 The purpose of the NDS is to:

- establish a high level policy framework to give coherence to, and guide government activity across, mainstream and disability-specific areas of public policy;
- drive improved performance of mainstream services in delivering outcomes for people with disability;
- give visibility to disability issues and ensure they are included in the development and implementation of all public policy that impacts on people with disability; and
- provide national leadership toward greater inclusion of people with disability.<sup>35</sup>

2.37 The NDS is structured around six broad policy areas, which align with the principles articulated in Article 3 of the Disability Convention.<sup>36</sup> Under each of these

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33 The National Disability Strategy, 2010–2020 was developed in response to a 2009 National People with Disabilities and Carer Council report, *Shut Out: The Experience of People with Disabilities and their Families in Australia*, [https://www.dss.gov.au/sites/default/files/documents/05\\_2012/nds\\_report.pdf](https://www.dss.gov.au/sites/default/files/documents/05_2012/nds_report.pdf) (accessed 2 October 2015).

34 Commonwealth of Australia, *National Disability Strategy, 2010–20*, 2011, p. 9, [http://www.coag.gov.au/sites/default/files/national\\_disability\\_strategy\\_2010-2020.pdf](http://www.coag.gov.au/sites/default/files/national_disability_strategy_2010-2020.pdf) (accessed 2 October 2015).

35 Commonwealth of Australia, *National Disability Strategy, 2010–20*, 2011, pp 8–9.

36 The six policy areas are: inclusive and accessible communities; rights protection, justice and legislation; economic security; personal and community support; learning and skills; and health and wellbeing.

areas, the desired outcomes and agreed policy directions are identified, together with areas for future action that are prioritised against specific timelines in the implementation plans.<sup>37</sup>

*Policy Area 2—Rights protection, justice and legislation*

2.38 Policy Area 2—Rights protection, justice and legislation aims to promote, uphold and protect the rights of people with disability. It has five policy directions.

- Policy Direction 3: People with disability have access to justice  
Effective access to justice for people with disability on an equal basis with others requires appropriate strategies, including aids and equipment, to facilitate their effective participation in all legal proceedings. Greater awareness is needed by the judiciary, legal professionals and court staff of disability issues.
- Policy Direction 4: People with disability to be safe from violence, exploitation and neglect  
There is a range of evidence which suggests that people with disability are more vulnerable to violence, exploitation and neglect. People with disability fare worse in institutional contexts where violence may be more common. People with disability are more likely to be victims of crime and there are also indications that women face increased risk.
- Policy Direction 5: More effective responses from the criminal justice system to people with disability who have complex needs or heightened vulnerabilities.  
People with disability who have complex needs, multiple disability and multiple forms of disadvantage face even greater obstacles within the justice system. There is an over-representation of people with an intellectual disability both as victims and offenders in the criminal justice system. Significant rates of acquired brain injury are found among male and female prisoners. Research into intellectual disability and acquired brain injury has demonstrated the presence of co-morbidities with mental illness and substance abuse. This complex profile indicates the need for a specialist response.

2.39 Future action areas identified for Policy Area 2—such as improving the reach and effectiveness of complaints mechanisms, and ensuring supported decision-making safeguards are in place, including accountability of guardianship and substitute decision-makers—are discussed in more detail in chapters four, five, and six.<sup>38</sup>

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37 There will be three implementation plans: *Laying the Groundwork 2011–2014*; *Driving Action 2015–2018*; and *Measuring Progress 2019–2020* (only the first has been released).

38 Commonwealth of Australia, *National Disability Strategy, 2010–20*, 2011, p. 41 (especially 2.6– 2.7, 2.9 and 2.11–12).

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*Comments from submitters and witnesses*

2.40 While some submitters and witnesses to this inquiry cited provisions within the NDS as containing general standards that disability services should adhere to, few submitters provided any critical analysis of the NDS itself, with the following exceptions.

2.41 Adelaide People First commented on the lack of strategic implementation:

Another challenge is ensuring the [NDS] is implemented. The [NDS] has barely rated a mention by anyone with influence since the 2013 Federal Election. The Federal Coalition Government has only barely mentioned the [NDS] they haven't explained what it or its purpose in implementing a holistic approach to disability policy reform. No one in the broader community even knows of its existence or its purpose.<sup>39</sup>

2.42 First People's Disability Network Australia agreed that implementation of the NDS had stalled:

I could not agree more that the [NDS] is something that needs to be reinvigorated and needs a mechanism to oversee it.<sup>40</sup>

2.43 Families Australia and Children with Disability Australia commented that the NDS did not adequately address the needs of children and young people with disability.<sup>41</sup>

***Committee view***

2.44 The committee is concerned that there appears to be a lack of continued focus on the NDS. The committee is of the view the NDS should be updated to bring the framework into line with other relevant protective instruments, together with a renewed focus on implementation.

***National Disability Insurance Scheme***

2.45 Following release of the NDS, governments focussed on developing a strategic framework for implementing and evaluating the strategy.<sup>42</sup> In addition, the Australian Government requested the Productivity Commission (PC) to inquire into a long-term disability care and support scheme:

The Productivity Commission inquiry will examine the feasibility, costs and benefits of replacing the current system of disability services with a

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39 Adelaide People First, *Submission 116*, p. 30.

40 Mr Damien Grffis, Chief Executive Officer, First Peoples Disability Network Australia; Australian Cross Disability Alliance, *Committee Hansard*, Sydney, 27 August 2015, p. 49.

41 Families Australia, *Submission 3*, p. 3 and Children with Disability Australia, *Submission 144*, pp 35-36.

42 See: Standing Council of Community and Disability Services on the National Disability Strategy, *The National Disability Strategy 2010–2020 Report to COAG 2012*, 2012, <https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/national-disability-strategy-2010-2020-report-to-coag-2012> (accessed 2 October 2015).

new approach which provides long-term essential care and support for people with severe or profound disabilities however acquired.<sup>43</sup>

*Productivity Commission report*

2.46 In August 2011, the PC released its report *Disability Care and Support*.<sup>44</sup> The PC found:

The current disability support system is underfunded, unfair, fragmented and inefficient, and gives people with a disability little choice and no certainty of access to appropriate supports.

There should be a new national scheme—the National Disability Insurance Scheme (NDIS)—that provides insurance cover for all Australians in the event of significant disability.<sup>45</sup>

2.47 CoAG promptly agreed with the need for a major reform of disability services through a NDIS and Australian governments immediately began collaborative efforts to develop the scheme.<sup>46</sup>

2.48 Introduction of the NDIS commenced in two stages at five launch sites: in Tasmania, South Australia, the Barwon area of Victoria, and the Hunter area of New South Wales (1 July 2013); and the Australian Capital Territory, the Barkly region of the Northern Territory, and the Perth Hills area of Western Australia (1 July 2014).<sup>47</sup>

2.49 The full roll out of the scheme will occur progressively in New South Wales, Victoria, Queensland, South Australia, Tasmania and the Northern Territory from 1 July 2016.<sup>48</sup> In the Australian Capital Territory, people with disability are

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43 The Hon Kevin Rudd MP, Prime Minister, the Hon Nick Sherry MP, Assistant Treasurer, the Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon Bill Shorten MP, Parliamentary Secretary for Disabilities and Children's Services, 'Australian Government to consider new approaches to disability', Joint media release No. 093, 23 November 2009, <https://www.dss.gov.au/our-responsibilities/disability-and-carers/program-services/government-international/national-disability-strategy-2010-2020-report-to-coag-2012> (accessed 2 October 2015).

44 Productivity Commission (PC), *Disability Care and Support*, Report No. 54, Canberra, 31 July 2011, <http://www.pc.gov.au/inquiries/completed/disability-support/report> (accessed 2 October 2015).

45 PC, *Disability Care and Support*, Report No. 54, Volume 1, Canberra, 31 July 2011, p. 2.

46 CoAG, Communiqué, Canberra, 19 August 2011, <http://www.coag.gov.au/node/76> (accessed 2 October 2015).

47 National Disability Insurance Scheme (NDIS), *Our Sites*, <http://www.ndis.gov.au/about-us/our-sites> (accessed 2 October 2015.)

48 NDIS, *Our Sites*, <http://www.ndis.gov.au/about-us/our-sites>, accessed 2 October 2015. Western Australia has not yet signed up to the scheme as it is trialling the National Disability Insurance Scheme My Way model in two locations (Lower South West and Cockburn–Kwinana): <http://disability.wa.gov.au/wa-ndis-my-way/wa-ndis-my-way/> (accessed 5 November 2015).

transitioning into the NDIS based on their date of birth or their academic year (for school age children), in accordance with a flexible timetable.<sup>49</sup>

2.50 Chapter nine examines the challenges and opportunities presented by the NDIS rollout in reducing violence, abuse and neglect against people with disability.

### ***National Plan to Reduce Violence against Women and their Children***

2.51 In February 2011, the Australian Government announced the National Plan, a 12 year strategy endorsed by the Commonwealth, states and territories, to reduce violence against women and children.<sup>50</sup> There will be four three-year action plans, two of which have been released: the First Action Plan: Building a Strong Foundation 2010–2013 (First Action Plan); and the Second Action Plan: Moving Ahead 2013–2016 (Second Action Plan).<sup>51</sup>

#### *First Action Plan: Building a Strong Foundation 2010–2013*

2.52 The First Action Plan established the groundwork for the National Plan—'the strategic projects and actions that will drive results over the longer term while implementing high-priority actions in the short term'.<sup>52</sup> Each jurisdiction developed its own implementation plan to reflect its priorities and all jurisdictions collaborated on four joint priorities: Building Primary Prevention Capacity; Enhancing Service Delivery; Strengthening Justice Responses; and Building the Evidence Base. For example, all jurisdictions agreed to work toward development of a comprehensive National Data Collection and Reporting Framework, to be in place by 2022.<sup>53</sup>

2.53 Key initiatives of the First Action Plan included establishment of Australia's National Research Organisation for Women's Safety and 1800RESPECT, Australia's first national professional telephone and online counselling service for women experiencing, or at risk of, domestic and family violence and sexual assault.

#### *Stop the Violence project*

2.54 In addition, Women With Disabilities Australia (WWDA) was funded to investigate and promote ways to support better practice and improvements in service delivery and government responses, to improve the quality of life for women and girls

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49 NDIS, *NDIS in the ACT*, <http://www.ndis.gov.au/about-us/our-sites> (accessed 2 October 2015).

50 The Hon Robert McClelland MP, Attorney-General, and the Hon Kate Ellis MP, Minister for the Status of Women, 'National Plan to Reduce Violence Against Women and Children', joint media release, 15 February 2011, <http://kateellis.com.au/newsroom/443/> (accessed 2 October 2015).

51 The Action Plans due for future release are the *Third Action Plan: Promising Results 2016–2019* and the *Fourth Action Plan: Turning the Corner 2019–2022*.

52 Commonwealth of Australia, *First Action Plan: Building a Strong Foundation 2010–2013*, 2012, p. 7, [https://www.dss.gov.au/sites/default/files/documents/07\\_2014/first\\_action\\_plan\\_1.pdf](https://www.dss.gov.au/sites/default/files/documents/07_2014/first_action_plan_1.pdf) (accessed 2 October 2015).

53 Commonwealth of Australia, *First Action Plan: Building a Strong Foundation 2010–2013*, 2012, p. 27.

with disabilities experiencing or at risk of violence (*Stop the Violence* project).<sup>54</sup> A Project Steering Group oversaw the project which examined in detail:

...the prevalence and nature of violence against women and girls with disability as well as the responses and services available for addressing such violence. This included the particular susceptibility of Aboriginal and Torres Strait Islander women with disability, and women with disability who are of culturally and linguistically diverse background, and women with disability who are of diverse sexual orientation, gender identity or intersex.<sup>55</sup>

2.55 In October 2013, the Project Steering Group hosted a high-level, cross-sector National Symposium. In its *Report of the Proceedings and Outcomes*, WWDA identified six key thematic areas and two possible future mechanisms to support the development of good policy and the provision of good practice in service provision:

- Area 1—Information education and capacity building for women and girls with disabilities;
- Area 2—Awareness raising for the broader community;
- Area 3—Education and training for service providers;
- Area 4—Service sector development and reform;
- Area 5—Legislation, national agreements and policy frameworks;
- Area 6—Evidence gathering, research and development;
- Area 7—Establishment and development of a Virtual Centre for the Prevention of Violence Against Women and Girls with Disabilities; and
- Area 8—Establishment of a National Women with Disabilities Expert Panel on the Prevention of Violence Against Women and Girls with Disabilities.<sup>56</sup>

2.56 The outcomes of the National Symposium informed the development of the Second Action Plan.<sup>57</sup>

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54 Women With Disabilities Australia (WWDA), *About Us*, Stop the Violence website, <http://www.stvp.org.au/about.htm>, accessed 29 September 2015. Also see: Commonwealth of Australia, *Second Action Plan: Moving Ahead 2013–2016*, 2013, p. 54, [https://www.dss.gov.au/sites/default/files/documents/09\\_2014/dss012\\_14\\_book\\_tagged\\_reduce\\_d.pdf](https://www.dss.gov.au/sites/default/files/documents/09_2014/dss012_14_book_tagged_reduce_d.pdf) (accessed 2 October 2015).

55 Australian Human Rights Commission (AHRC), *Submission 57*, p. 2.

56 WWDA, *Report of the Proceedings and Outcomes, National Symposium on Violence Against Women and Girls with Disabilities*, Sydney, 25 October 2013, pp 22-30, <http://www.stvp.org.au/documents/STVP%20Outcomes%20Paper.pdf> (accessed 2 October 2015).

57 Commonwealth of Australia, *Second Action Plan: Moving Ahead 2013–2016*, 2013, p. 54.

*Second Action Plan: Moving Ahead 2013–2016*

2.57 The Second Action Plan channels government efforts toward ongoing and new priorities, and further engages sectors, groups and communities.<sup>58</sup> There are five national priorities:

- Driving whole of community action to prevent violence;
- Understanding diverse experiences of violence;
- Supporting innovative services and integrated systems;
- Improving perpetrator interventions; and
- Continuing to build the evidence base.

Twenty-six practical actions are identified, with the plan noting:

These actions are designed to drive national improvements and most involve efforts of all governments. They will not all necessarily be progressed by all jurisdictions, or in the same way. Jurisdictions will focus on local priorities and delivery approaches.<sup>59</sup>

2.58 Under National Priority Two: Understanding diverse experiences of violence, Action 12 specifically focuses on tailoring responses to meet the needs of women with disability:

Under the Second Action Plan, governments will work with expert organisations, including Women With Disabilities Australia to prioritise and implement key outcomes from the Stop the Violence project. This will include:

- bringing together and disseminating good practice information on preventing violence against women with disability;
- training for frontline workers to recognise and prevent violence against women and children with disability; and
- providing accessible information and support in National Plan communications.<sup>60</sup>

2.59 The Second Action Plan will be independently evaluated in 2016–2017, with a key question regarding the effectiveness of the National Plan in engaging with and supporting women with diverse experiences or who are more vulnerable to violence (such as women with disability).<sup>61</sup>

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58 Commonwealth of Australia, *Second Action Plan: Moving Ahead 2013–2016*, 2013, p. 11.

59 Commonwealth of Australia, *Second Action Plan: Moving Ahead 2013–2016*, 2013, p. 11.

60 WWDA, Report of the Proceedings and Outcomes, National Symposium on Violence Against Women and Girls with Disabilities, Sydney, 25 October 2013, p. 28.

61 Health Outcomes International, *National Plan to Reduce Violence against Women and their Children 2010–2022, Evaluation Plan*, 3 June 2014, pp 12 and 17, [https://www.dss.gov.au/sites/default/files/documents/06\\_2014/evaluation\\_plan.pdf](https://www.dss.gov.au/sites/default/files/documents/06_2014/evaluation_plan.pdf) (accessed 2 October 2015).

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### *National Framework for the Protection of Australia's Children*

2.60 In April 2009, CoAG released the Child Protection Framework which aims to ensure that Australia's children and young people are safe and well.<sup>62</sup> To achieve this high-level outcome, governments and the non-government sector committed to achieving a substantial and sustained reduction in child abuse and neglect in Australia over time. The Child Protection Framework identifies the following six supporting outcomes:

- children live in safe and supportive families and communities;
- children and families access adequate support to promote safety and intervene early;
- risk factors for child abuse and neglect are addressed;
- children who have been abused or neglected receive the support and care they need for their safety and wellbeing;
- Aboriginal and Torres Strait Islander children are supported and safe in their families and communities; and
- child sexual abuse and exploitation is prevented and survivors receive adequate support.<sup>63</sup>

2.61 Ms Carolyn Frohmader, Executive Director of WWDA, commented:

So you have these national frameworks and policy frameworks... Then over here we have the National Plan to Reduce Violence against Women and their Children. Then we have the National Framework for Protecting Australia's Children. The National Disability Strategy is not connected to the national violence plan. The national violence plan is only focused on intimate partner violence, and does not include institutional settings. The way the National Disability Strategy addresses violence against people with disabilities is to say 'make sure we implement the national plan to prevent violence against women'.<sup>64</sup>

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62 CoAG, Communiqué, Hobart, 30 April 2009, <https://www.coag.gov.au/sites/default/files/2009-04-30.pdf> (accessed 2 October 2015).

CoAG, *Protecting Children is Everyone's Business, National Framework for the Protection of Australia's Children 2009–2020*, 2009, [https://www.coag.gov.au/sites/default/files/child\\_protection\\_framework.pdf](https://www.coag.gov.au/sites/default/files/child_protection_framework.pdf) (accessed 2 October 2015).

63 CoAG, *Protecting Children is Everyone's Business, National Framework for the Protection of Australia's Children 2009–2020*, 2009, p. 11.

64 *Committee Hansard*, Sydney, 27 August 2015, p. 40.

**Committee view**

2.62 The Committee notes with some concern, the evidence provided that there is a lack of cross-over with various national policies and approaches that are relevant to women and children with disability. The committee is concerned that there does not appear to be provision for follow-up evaluations of how those policies are being implemented, or their effectiveness. Of particular concern is the lack of inclusion of the specific needs of women and children with disability within mainstream protective frameworks.

**Oversight and complaints reporting mechanisms**

2.63 As indicated throughout this chapter, there are a number of international and national policy frameworks that seek to safeguard the rights of people with disability. Each of these inter-related frameworks has its own review and reporting mechanisms. However, the states and territories are most often responsible for the provision of disability services in Australia. Accordingly, each jurisdiction has its own policy and legal frameworks that are not necessarily consistent or clear.

2.64 Evidence to the inquiry indicated that the existing oversight and complaints reporting mechanisms vary considerably state-to-state. Disability advocates and people with disability described mechanisms that are complicated and inadequate in terms of access and enforceable outcomes.

2.65 Chapter four presents a detailed examination of the legal and policy frameworks for reporting and investigating violence, abuse and neglect of people with disability.

**Recent disability-related inquiries and reports**

2.66 In recent years, along with the increased government focus on disability policy and service delivery, there have been a number of disability-related inquiries. These inquiries have focussed on matters such as the vulnerability of people with disabilities to violence, abuse or neglect, the ability of people with disabilities to access the criminal justice system, and safeguards within the disability services sector. This section of the report highlights a few of these inquiries.

- Parliament of Victoria

In August 2015, the Family and Community Development Committee tabled its interim report in the *Inquiry into Abuse in Disability Services*. Stage 1 of the inquiry examined Victoria's regulation of the disability services system, and made eight recommendations on the proposed NDIS quality and safeguarding framework.<sup>65</sup> The final reporting date is 1 March 2016 and will examine what safeguards are required in Victoria prior to the transition to the NDIS.

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65 Parliament of Victoria, Family and Community Development Committee, *Inquiry into Abuse in Disability Services*, August 2015, [http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/58th/Abuse\\_in\\_disability\\_services/FCDC\\_58-01\\_Interim\\_Report\\_-\\_Abuse\\_in\\_Disability\\_Services.pdf](http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/58th/Abuse_in_disability_services/FCDC_58-01_Interim_Report_-_Abuse_in_Disability_Services.pdf) (accessed 2 October 2015).

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- Victorian Ombudsman

In June 2015, the Victorian Ombudsman tabled the Phase 1 report in the *Investigation into disability abuse reporting*. The report examined the effectiveness of statutory oversight in Victoria, and concluded that, despite areas of good practice, the arrangements are 'fragmented, complicated and confusing, even to those who work in the field'. Consequently, the system is failing to provide coherent and consistent protection to people with disabilities.<sup>66</sup> Phase 2 will report late in 2015 and will look in greater depth at the process for reporting and investigating abuse, drawing on lived experiences.

- Australian Human Rights Commission (AHRC)

In February 2014, the AHRC presented its report, *Equal before the law: towards disability justice strategies*. The AHRC found that access to justice in the criminal justice system for people with disability who need communication supports, or who have complex and multiple support needs, is a 'significant problem in every jurisdiction in Australia', and recommended that each jurisdiction develop an 'holistic, over-arching' disability justice strategy.<sup>67</sup> The committee notes that South Australia is the only jurisdiction so far to implement a disability justice strategy consistent with this recommendation (discussed in detail in chapter 6), and the Queensland Department of Justice and Attorney-General is in the process of implementing a disability service plan.<sup>68</sup>

- Victorian Equal Opportunity and Human Rights Commission (VEOHRC)

VEOHRC's report titled *Beyond doubt: the experiences of people with disabilities reporting crime* stated that, in Victoria, people with disability are routinely denied access to justice and safety, as the criminal justice system is ill-equipped to meet their needs. The report identified some significant and complex barriers to the reporting of crime, noting that people with disability

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66 Victorian Ombudsman, *Reporting and investigation of allegations of abuse in the disability sectors: Phase 1—the effectiveness of statutory oversight*, June 2015, <https://www.ombudsman.vic.gov.au/Investigations/Investigation-into-disability-abuse-reporting> (accessed 2 October 2015).

67 AHRC, *Equal before the law: towards disability justice strategies*, February 2014, p. 1, <https://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law> (accessed 2 October 2015).

68 See: Additional information, *Department of Justice and Attorney-General Disability Service Plan 2014-16: Year one progress report*, from Queensland Department of Justice and Attorney-General, received 12 October 2015.

fear that they will not be believed, or will be seen as lacking credibility, when a crime is reported to police.<sup>69</sup>

- Law Reform Commission

The inquiry into *Equality, Capacity and Disability in Commonwealth Laws* examined Commonwealth laws and legal frameworks that deny, or diminish, the equal recognition of people with disability as persons before the law and their ability to exercise legal capacity. The Law Reform Commission noted that most laws relating to legal capacity are entrenched in state law and considered that the Commonwealth could model the principles of individual autonomy and independence, as a template for state and territory reform.<sup>70</sup>

- Royal Commission into Institutional Responses to Child Sexual Abuse (RC)

The 2014 *Interim Report* stated that children with disabilities are more vulnerable to sexual abuse than children without disabilities, and are often segregated, to varying degrees, from the mainstream community for long periods, which increases the risk of abuse. The RC commented that pre-employment screening is an important first step in preventing abuse but screening is not consistent across Australia.<sup>71</sup> Further, governments do not

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69 Victorian Equal Opportunity and Human Rights Commission, *Beyond Doubt: the experiences of people with disabilities reporting crime*, July 2014, pp 6–9, <http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/reports/item/894-beyond-doubt-the-experiences-of-people-with-disabilities-reporting-crime> (accessed 2 October 2015). The report addressed a number of recommendations to the Victorian Government, Victoria Police, the Department of Justice and others.

70 Australian Law Reform Commission (ALRC), *Equality, Capacity and Disability in Commonwealth Laws*, ALRC Report 124, August 2014, <http://www.alrc.gov.au/inquiries/legal-barriers-people-disability> (accessed 2 October 2015).

71 Royal Commission into Institutional Responses to Child Sexual Abuse, *Interim Report, Volume 1 2014*, 2014, pp 8 and 112–113, <http://www.childabuseroyalcommission.gov.au/getattachment/7014dd2f-3832-465e-9345-6e3f94dd40eb/Volume-1> (accessed 2 October 30 September 2015).

agree on whether a national system is appropriate or feasible.<sup>72</sup> In August 2015, the RC recommended that states and territories make legislative amendments to implement a series of standards identified in its working with children check report, and that the Commonwealth facilitate a national model for working with children checks.<sup>73</sup>

- People with Disability Australia (PWDA)

*Rights Denied: Towards a national policy agenda about abuse, neglect and exploitation of persons with cognitive impairment* was a 2009 research study that investigated the barriers encountered by people with cognitive disabilities, which prevented, or inhibited, realisation of the human right to freedom from abuse, neglect and exploitation, and the attainment of appropriate remedies for the violation of these rights.<sup>74</sup>

2.67 Chapters five and six examine specific aspects of, and recommendations in, these reports, as well as the committee's views on the need for a national approach to improving access to justice for people with disability.

### **Data on violence, abuse and neglect**

2.68 The committee notes that there are currently no nationally consistent data sets available to describe the extent of violence, abuse and neglect of people with disability. This raises two fundamental problems. First, there is overwhelming anecdotal evidence of violence, abuse and neglect of people with disability—made in submissions and during public hearings to this inquiry. There is a need to formally recognise and quantify the extent of this abuse. The second issue is that the absence of

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72 In December 2010, COAG Community and Disability Services Ministers established a working group to develop a nationally consistent approach to Working with Children Checks in response to an action item under the *National Framework for Protecting Australia's Children 2009-2020*. The position paper prepared by the working group in 2011 noted that legislative reform and alignment of screening practices as a stand-alone measure 'does not afford sufficient protection to children' and would require 'substantial investment of resources to bring the data and related information management mechanisms into line'. Rather than nationally harmonised legislation, the working group favoured 'a national commitment to ongoing checking, consistent risk management strategies at the organisational level and communication strategies that make it simpler to find out what is allowed when working or volunteering in another jurisdiction'. Consistent with this position, in its annual report on the Framework to COAG in 2011-12, DSS noted that jurisdictions have 'undertaken a range of reforms and implemented program revisions on an individual basis'. See: Department of Social Services, 'Position Paper: Toward a Nationally Consistent Approach to Working with Children Checks', June 2011, <https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/a-nationally-consistent-approach-to-working-with-children-checks-2011> (accessed 20 November 2015).

73 Royal Commission into Institutional Responses to Child Sexual Abuse, *Working with Children Checks Report*, 17 August 2015, p. 6, <https://www.childabuseroyalcommission.gov.au/policy-and-research/working-with-children-checks> (accessed 20 November 2015).

74 P French et al, *Rights Denied: Towards a national policy agenda about abuse, neglect and exploitation of persons with cognitive impairment*, People with Disability Australia, 2009, <http://www.pwd.org.au/documents/pubs/RightsDenied2010.doc> (accessed 2 October 2015).

official nationally consistent data sets in itself is a critical roadblock to these issues being addressed. Nationally consistent data on this issue is an essential element to guide long-term policy development to eliminate instances of violence, abuse and neglect against people with disability.

2.69 In a summary paper entitled *The nature and extent of sexual assault and abuse in Australia*, the Australian Institute of Family Studies notes that there 'is no standard national data collection that includes the experiences of sexual violence amongst adults with a disability'. This paper was only able to identify two findings that shed some light on the extent of this issue. First, and most startlingly, is that 'women with intellectual disability are 50–90 per cent more likely to be subjected to a sexual assault than women in the general population'. Second, in 2007 the Victorian Police found that over 25 per cent of all sexual assault victims identified as having a disability.<sup>75</sup>

2.70 The two main surveys conducted by the Australian Bureau of Statistics (ABS) on disability do not collect data on violence, abuse or neglect:

Despite being the major national data collection regarding the status and experiences of adults with a disability, the ABS Survey of Disability, Ageing and Carers, does not invite participants to report on their experiences of violence or abuse. Similarly, the ABS (2006) Personal Safety Survey report, which specifically investigates experiences of violence, does not identify the disability status of participants, and the International Violence Against Women Survey...specifically excluded women with an illness or disability from the sample for the survey.<sup>76</sup>

This is despite evidence that 'approximately 20 per cent of Australian women, and 6 per cent of men, will experience sexual violence in their lifetime'.<sup>77</sup>

2.71 PWDA also noted the shortcomings of these two surveys and also the General Social Survey conducted by the ABS:

The Australian Bureau of Statistics (ABS) Personal Safety Survey (PSS), generally understood to be the most accurate source of national data about prevalence of violence, does not disaggregate by disability, Indigenous status or mental illness, and only recruits those currently residing in private dwellings, excluding institutional residential settings. It also excludes those who might require some form of communication support—such as some people with intellectual disability, some Deaf people, some people with hearing impairment, and people from culturally and linguistically diverse backgrounds. Additionally, it frames its questions around intimate partner

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75 Australian Institute of Family Studies, *The nature and extent of sexual assault and abuse in Australia*, 2012, <http://www3.aifs.gov.au/acssa/pubs/sheets/rs5/>, (accessed 29 September 2015).

76 Dr Suellen Murray and Dr Anastasia Powell, 'Sexual assault and adults with a disability: Enabling recognition, disclosure and a just response', Issue No. 9/2008, AIFS, <http://www3.aifs.gov.au/acssa/pubs/issue/i9.html>, (accessed 29 September 2015).

77 Dr Suellen Murray and Dr Anastasia Powell, 'Sexual assault and adults with a disability: Enabling recognition, disclosure and a just response', Issue No. 9/2008, AIFS.

violence, thus excluding the relationships in which people with disability experience violence.

Similarly, although the General Social Survey (GSS) does disaggregate by disability status, it also excludes institutional residential settings. The Disability, Ageing and Carers (DAC) survey does not address any issues around violence, abuse or neglect, and relies on carers answering on behalf of people with disability. In all cases, these surveys exclude those who live in remote areas, which means that Aboriginal and Torres Strait Islander people with disability living in these areas (a cohort who may be at particular risk) are excluded from the data.<sup>78</sup>

2.72 In correspondence to the committee, the ABS noted that it is currently undergoing a 'major redesign of [its] statistical collections, methods, products and services' in order to 'extract greater value from all available data'. The ABS highlighted that it is collaborating closely with a range of government agencies and non-government entities on a range of projects. The committee is most interested in the potential for the National Centre for Longitudinal Data to commence a longitudinal study of people with disability. Part of this study could focus on the prevalence of violence perpetrated against people with disability.<sup>79</sup>

2.73 In the most recent PSS (2012), a disability descriptor question was included; however, this data did not include people living in institutional care or differentiate between physical or sexual violence. It is the committee's view that there is a fundamental need to disaggregate this data further. The ABS also noted that the 2014–15 National Aboriginal and Torres Strait Islander Social Survey is currently collecting information on whether a person is living with a disability with these statistics being made available from April 2016.<sup>80</sup> Whilst the committee reserves its judgement on the adequacy of these statistics, it commends the ABS on these preliminary steps to collect data that disaggregates on the basis of disability.

2.74 The Australian Institute of Health and Welfare compiles an annual report titled *Child Protection Australia*. This publication contains data and analysis on notifications and substantiations of child abuse and neglect within the child protection system. Currently this report does not disaggregate data on the basis of disability. The committee understands that one of the objectives of the Child Protection National

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78 People with Disability Australia Incorporated, *Submission 77*, p. 2.

79 Answers to questions on notice, received from Australian Bureau of Statistics (ABS) on 11 November 2015, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect/Additional\\_Documents](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Additional_Documents) (accessed 11 November 2015). See also: Department of Social Services, *National Centre for Longitudinal Data*, 23 October 2015, <https://www.dss.gov.au/about-the-department/national-centre-for-longitudinal-data> (accessed 11 November 2015).

80 Answers to questions on notice, received from Australian Bureau of Statistics (ABS) on 11 November 2015.

Minimum Data Sets (CP NMDS) is to 'allow reporting in identified priorities areas (such as disability, cultural and linguistic diversity and locality)'.<sup>81</sup>

***Committee view***

2.75 The committee considers that finalisation of the CP NMDS should be prioritised as this additional data will be a useful addition to policy makers and service providers in this area.

2.76 Another dataset that may be helpful in better understanding this issue is held by the National Disability Abuse and Neglect Hotline. This hotline is operated through the Department of Social Services (DSS) with its purpose being to allow callers to report abuse or neglect against both government-funded and private organisations. The hotline refers the caller to the most appropriate body to help resolve the complaint or allegation.<sup>82</sup> Evidence to the committee suggests that data collected by this service is not being made available to the community:

The national disability abuse hotline, which now has carriage under the CRRS [Complaints Resolution and Referral Service], I think, with People with Disability Australia, data does not go anywhere. The data goes to government and you are not able to FOI that data...

It is not available via FOI. I know that a number of people have tried it.<sup>83</sup>

2.77 In its submission to the inquiry, DSS provided a breakdown of the types of calls it has received since 2012. In the period July 2012 to June 2013, there were 404 complaints received by the hotline and 346 during July 2013 to June 2014. The most prevalent complaints were systemic abuse (23 per cent), physical abuse (16 per cent), psychological abuse (16 per cent), physical neglect (15 per cent) and emotional neglect (nine per cent). Although this helps to begin to understand the extent of violence, abuse and neglect that is perpetuated against people with disability, the submission noted:

It should also be remembered that the Hotline is one of many ways to report a case of abuse or neglect and that people may be more inclined to report some types of abuse or neglect compared to others, for example sexual assaults.<sup>84</sup>

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81 Australian Institute of Health and Welfare, *A new approach to national child protection data: implementation of the Child Protection National Minimum Data Set*, Child Welfare Series No. 59, 2014, p. 4, <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129548810> (accessed 6 October 2015).

82 National Disability Abuse and Neglect Hotline, <http://www.disabilityhotline.net.au/about-the-hotline/> (accessed 29 September 2015).

83 Ms Samantha Connor, Researcher, People with Disabilities WA, *Committee Hansard*, Perth, 10 April 2015, p. 34.

84 Department of Social Services, *Submission 104*, p. 6.

2.78 Despite providing some data to the committee in its submission, Mr James Christian from DSS acknowledged that the department is selective in what hotline data is released and who it is released to:

I note that some submissions to the committee have called on DSS to share data collected by the National Disability Abuse and Neglect Hotline, a service funded by DSS. DSS recognises that collecting meaningful data on this issue is a challenge and we are keen to do what we can to be part of the solution. To this end, our submission includes data from the hotline, and I trust this has been helpful in your deliberations. DSS does not routinely publish the hotline data, but we have released data to researchers in the past and will continue to consider on a case-by-case basis as we receive those requests. The hotline data has some limitations that must be considered carefully each time it is used.<sup>85</sup>

2.79 The UN Disability Committee has commented on the issue of data collection in Australia, and regretted 'the low level of disaggregated data collected on persons with disabilities and reported publicly' and the 'little data on the specific situation of women and girls with disability', in particular those who identified as Aboriginal and Torres Strait Islander peoples.<sup>86</sup> It recommended that Australia:

...develop nationally consistent measures for data collection and public reporting of disaggregated data across the full range of obligations provided for in the [Convention on the Rights of People with Disabilities], and that all data be disaggregated by age, gender, type of disability, place of residence and cultural background.<sup>87</sup>

2.80 The UN Disability Committee made similar comments with respect to the situation of children with disability in child protection data and 'the paucity of information on children with disabilities, in particular indigenous children, alternative care for children with disabilities and children with disabilities living in remote or rural areas'.<sup>88</sup> Accordingly, it recommended that Australia:

...systematically collect, analyse and disseminate data, disaggregated by gender, age and disability, on the status of children, including any form of abuse and violence against children...[and] commission and fund a comprehensive assessment of the situation of children with disabilities in order to establish a baseline of disaggregated data against which future progress towards the implementation of the [Convention on the Rights of People with Disabilities] can be measured.<sup>89</sup>

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85 Mr James Christian PSM, Group Manager, Disability Employment and Carers, Department of Social Services, *Committee Hansard*, Canberra, 21 August 2015, p. 1.

86 Disability Convention (CRPD/C/AUS/CO/1), p. 7, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAUS%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAUS%2fCO%2f1&Lang=en) (accessed 8 September 2015).

87 Disability Convention (CRPD/C/AUS/CO/1), p. 7.

88 Disability Convention (CRPD/C/AUS/CO/1), p. 8.

89 Disability Convention (CRPD/C/AUS/CO/1), p. 8.

2.81 A key initiative of the NDS was the introduction of a periodic report using trend data to track national progress for people with disability in Australia.<sup>90</sup> The first National Disability Strategy Progress Report was presented to CoAG in 2014.

2.82 The committee is particularly concerned by the lack of specific data on Aboriginal and Torres Strait Islander people with disability. The AHRC submitted that Aboriginal and Torres Strait Islander peoples are significantly affected by disability compared with the non-Indigenous population and noted that Aboriginal and Torres Strait Islander peoples with disability experience higher rates of exploitation, violence and abuse.<sup>91</sup>

2.83 In its 2013 study on indigenous persons with disability, the UN Permanent Forum on Indigenous Issues found that violence against indigenous women and girls with disability occurs in schools, at home, in residential institutions and in disability services.<sup>92</sup> The study found that available research on Indigenous people with disability:

...shows a serious gap in the implementation and enjoyment of a wide range of rights, ranging from self-determination and individual autonomy to access to justice, education, language, culture and integrity of the person. There are significant unmet needs and rights that are not being addressed, of which gaps in access to health, life expectancy, educational qualifications, income, safety of the person and participation in decision-making are just a few examples.<sup>93</sup>

2.84 The committee is also concerned by the higher rates of self-harm and suicide amongst young people with disability. In 2014, the National Children's Commissioner, Ms Megan Mitchell, in the *Children's Rights Report 2014*, stated that children and young people with disability can be disproportionately affected by intentional self-harm and suicidal behaviour:

A US study found that 30–64 per cent of children and young people with an intellectual disability develop comorbid mental health disorders, a rate of around 3-4 times that of their peers, including higher rates of depression, anxiety and psychosis. Children and young people with co-occurring chronic physical and mental health conditions are also said to have higher probabilities of self-harm, suicidal ideation, and suicide attempts when

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90 Commonwealth of Australia, *National Disability Strategy, 2010–20*, 2011, p. 69, [https://www.dss.gov.au/sites/default/files/documents/05\\_2012/national\\_disability\\_strategy\\_2010\\_2020.pdf](https://www.dss.gov.au/sites/default/files/documents/05_2012/national_disability_strategy_2010_2020.pdf) (accessed 12 October 2015).

91 Human Rights Commission, *Submission 57*, p. 3.

92 *Submission 57*, p. 3.

93 UN Permanent Forum on Indigenous Issues, *Study on the situation of indigenous persons with disabilities, with a particular focus on challenges faced with regard to the full enjoyment of human rights and inclusion in development*, E/C.19/2013/6, 5 February 2013, pp 15–16, <http://www.un.org/disabilities/documents/ecosoc/e.c.19.2013.6.pdf> (accessed 24 September 2015).

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compared with healthy peers. Research also suggests an association between chronic pain and suicidality in children and young people.<sup>94</sup>

2.85 The AHRC echoed this view and in its submission recommended that further research be conducted to validate a link between institutional and residential settings and intentional self-harm and suicidal behaviour.<sup>95</sup>

***Committee view***

2.86 The committee concurs with the proposition that where data is collected, it must be in a manner that is 'inclusive of all people with disability'.<sup>96</sup> Methodologies that exclude people with disability on the basis of where they live—for example, those in residential or institutional settings, or in regional or remote locations—or how interviews are conducted—for example, asking a carer to speak on behalf of a person with disability—is clearly inappropriate. Exclusion of people with disability from the statistics through the omission of a disability identifier question is also not appropriate.

2.87 It is the committee's position that where data exists, it should be made available, albeit in a way that takes into consideration any personal identifiers. It is also the committee's position that where there is an absence of data, that it should be a priority for that data to be collected so that the quantum of violence, abuse and neglect against people with disability can be fully understood.

2.88 The committee supports the view of PWDA that the lack of data on this issue undermines the capacity for evidence-based policy development. This will impact some of the key NDIS policies, such as the quality and safeguards framework which is currently under development. The role of the NDIS quality and safeguards mechanism will be discussed further in chapter nine.

2.89 The committee agrees with the AHRC's suggestion that the collection and publication of disaggregated data could be incorporated into the NDS reports, and provide a foundation for the development of future implementation plans.<sup>97</sup>

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94 Human Rights Commission, *Children's Rights Report 2014*, 2014, p. 61, [https://www.humanrights.gov.au/sites/default/files/document/publication/Children%27s%20Rights%20Report%202014\\_2.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/Children%27s%20Rights%20Report%202014_2.pdf), (accessed 9 September 2015).

95 Human Rights Commission, *Submission 57*, p. 3.

96 People with Disability Australia Incorporated, *Submission 77*, p. 3.

97 *Submission 57*, p. 2.

***Concluding committee view***

2.90 A number of expert inquiries and reports have been published in recent years, each looking into specific aspects of disability service provision and the realisation of rights for people with disability.

2.91 Many of the recommendations from those inquiries and reports were put forward as being fundamental to the realisation of rights for people with disability, and essential to Australia meeting its obligations under the Disability Convention and other relevant human rights instruments.

2.92 The committee remains concerned that there is no timetable from relevant levels of government for the implementation of these essential measures, and therefore no foreseeable timetable for Australia fully adhering to the Disability Convention. The impact this has had on violence, abuse and neglect of people with disability is highlighted in following chapters of this report.

2.93 The committee also remains concerned with Australia's declaration regarding reservations on key articles of the Disability Convention.

2.94 The committee is further concerned that key recommendations of the UN Disability Committee are not being appropriately implemented into Australian law and practice.

2.95 The committee is also concerned with the lack of reliable statistical data available for policy development to eliminate violence, abuse and neglect of people with disability. The use of passive and active exclusion of people with disability from the statistical record of our country means that issues of violence, abuse and neglect continue to remain out-of-sight and out-of-mind.