



Australian Federation of  
Disability Organisations

# **Disability Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.**

## **Extract of Final Recommendations**

October 2023

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# Volume 4: Realising the human rights of people with disability

## **Recommendation 4.1 Establish a Disability Rights Act**

The Australian Government should commit to the enactment of a Disability Rights Act and take the necessary steps to introduce the legislation into Parliament and support its enactment. The necessary steps should include consultation with people with disability, disability representative organisations and other key stakeholders.

## **Recommendation 4.2 Objects of the Disability Rights Act**

The objects of the Disability Rights Act should include giving effect to Australia's obligations under, and the general principles set out in, the Convention on the Rights of Persons with Disabilities.

## **Recommendation 4.3 Principles in the Disability Rights Act**

The Disability Rights Act should include a set of guiding principles designed to promote and advance the rights of people with disability in Australia. The Disability Rights Act should require that a person or entity exercising functions under the Act have regard to the principles.

## **Recommendation 4.4 Future review of the Disability Rights Act**

- a. The Australian Government should ensure that a review of the Disability Rights Act is undertaken in consultation with people with disability within five years of the commencement of the Act. The review should include consideration of:
  - how the Act should be improved
  - the effectiveness of compliance mechanisms
  - the availability of appropriate remedies that meet the needs of people with disability
  - whether and how duties in the Act should be extended or applied to additional persons or entities, including private sector providers under the National Disability Insurance Scheme (NDIS).
- b. Commissioners Bennett, Galbally and McEwin alternatively recommend the final point above be considered by the Australian Government as a priority and that these additional duty-holders be included from the commencement of the Act.

## **Recommendation 4.5 The right to non-discrimination and equality before the law**

The Disability Rights Act should recognise all human beings are equal in worth and dignity and every person with disability:

- a. has the right to enjoy their human rights without discrimination (on the ground of disability or on a combination of protected grounds where one of those grounds is disability)
- b. is equal before the law, is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.

#### **Recommendation 4.6 The right to equal recognition before the law**

- a. The Disability Rights Act should recognise that people with disability have the right to recognition as a person before the law. Accordingly, they have the same rights as other members of the community to make decisions that affect their lives to the full extent of their ability to do so.
- b. The Disability Rights Act should recognise:
  - the right of people with disability to access and use supports in making and participating in decisions that affect them, communicating their will and preferences, and developing their decision-making ability
  - the right of people with disability to access and use advocacy services in making and participating in decisions, communicating their will and preferences, and developing their decision-making ability.
- c. The Disability Rights Act should define ‘supports’ broadly.
- d. The Disability Rights Act should require supports for people with disability from First Nations communities and culturally and linguistically diverse backgrounds to be provided in a way that:
  - recognises that cultural, language and other differences may create barriers to providing the supports
  - addresses those barriers and the needs of those people with disability
  - is informed by consultation with their communities.
- e. The definition of ‘advocacy service’ in section 7 of the Disability Services Act 1986 (Cth) should be amended to include a reference to a service that seeks to support people with disability to exercise their rights and freedoms under domestic law, including under the Disability Rights Act. This would be in addition to the existing reference to rights and freedoms under the ‘Disabilities Convention’.

#### **Recommendation 4.7 The right to live free from exploitation, violence and abuse**

The Disability Rights Act should recognise:

- a. people with disability have the right to live free from all forms of exploitation, violence and abuse, including the right to freedom from gender-based violence and abuse
- b. people with disability have the right to accessible information and education on how to avoid, recognise and report exploitation, violence and abuse
- c. people with disability who are victims of any form of exploitation, violence or abuse have the right to:
  - access protection services that promote the health, welfare, dignity and autonomy of such persons
  - access protection services that are sensitive and responsive to the different needs and experiences of people with disability, due to one or more attributes such as sex; gender identity; sexual orientation; ethnicity; language; race; religion, faith or spirituality; socio-economic status; age; neurodiversity; culture; residency status; geographic disadvantage; and experiences of trauma
  - report allegations of exploitation, violence and abuse, with protection from victimisation for making a report.

#### **Recommendation 4.8 The right to liberty and security of person**

The Disability Rights Act should recognise every person with disability has the right to liberty and security of person. In particular, no person with disability may be arbitrarily arrested or detained. No person with disability may be deprived of liberty, except on the grounds and in accordance with the procedures established by law.

#### **Recommendation 4.9 The right to equitable access to health services**

The Disability Rights Act should recognise the right of people with disability to equitable access to health services. This right should include:

- a. the right to the same range, quality and standard of free and affordable health care and programs as people without disability
- b. the right to exercise choice about healthcare options and between available services
- c. the right to access and receive quality health services appropriately adapted or specifically designed to meet the needs of the person with disability
- d. the presumption of legal capacity and provision for supported decision-making
- e. the right to adjustments required to access services and to receive treatment and care (to the extent that a duty-holder is required to provide adjustments in accordance with the *Disability Discrimination Act 1992 (Cth)*)
- f. the right to accessible information
- g. the right of First Nations people with disability to receive health care that is culturally safe and recognises the importance of their personal connection to community and Country
- h. the right to access health services that are safe, sensitive and responsive to the intersectional needs and experiences of the person with disability, noting that intersectional needs and experiences may be due to a variety of attributes, including sex; gender identity; sexual orientation; ethnicity; language; race; religion, faith or spirituality; socio-economic status; age; neurodiversity; culture; residency status; geographic disadvantage; and experiences of trauma
- i. the right to voice opinions and to make complaints about health services.

#### **Recommendation 4.10 Public authority conduct**

- a. The Disability Rights Act should make it unlawful for a 'public authority' to:
  - act in a way that is incompatible with a right in the Disability Rights Act
  - fail to give proper consideration to a right where relevant to the decision being made.
- b. 'Public authority' should be defined to include:
  - a minister of the Australian Government when exercising a statutory power or authority
  - a Commonwealth entity defined in the *Public Governance, Performance and Accountability Act 2013 (Cth)*
  - an official of a Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013 (Cth)*
  - an individual who is employed by, or engaged in assisting, a Commonwealth entity or a staff member of a Commonwealth entity on behalf of the entity or the Commonwealth

- a contracted service provider for the Commonwealth when providing goods or services under a Commonwealth contract, as well as an officer or employee of the contracted service provider for the contract, and someone who provides goods and services for the purposes of the contract
  - an individual who is appointed or engaged as an officer or employee of a federal court or tribunal when acting in an administrative capacity
  - other entities prescribed by regulations as public authorities for the purposes of the Disability Rights Act.
- c. The Disability Rights Act should provide for a mechanism through which a
- d. non-Commonwealth entity could ask the minister to declare that the entity is subject to the obligations of a public authority under the Act and for a register of such entities to be published.

#### **Recommendation 4.11 Consultation with people with disability**

- a. The Disability Rights Act should require Commonwealth entities (as defined in the *Public Governance, Performance and Accountability Act 2013 (Cth)*), in developing and evaluating policies, laws and programs and in planning new initiatives or making major changes to services that are provided to the public, or have a direct and significant impact on the public, to consult with:
- people with disability (including disability representative organisations), recognising the special importance of consulting and actively involving First Nations people with disability in issues that affect them
  - children and young people with disability where appropriate, or representatives of children and young people (including, as relevant, disability representative organisations, the National Children’s Commissioner, the Aboriginal and Torres Strait Islander Social Justice Commissioner or equivalents in the states and territories)
  - families, carers and supporters of people with disability (which could include their representative organisations) on issues that will or could affect families, carers and supporters in their caring role.
- b. The Disability Rights Act should specify the nature of any consultation required and the consequences of a failure to consult.
- c. The Disability Rights Act should provide that the consultation requirement does not give rise to a civil cause of action in any person or organisation.
- d. The *Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)* should be amended, or an accompanying legislative instrument be prepared, requiring statements of compatibility accompanying Bills and legislative instruments to provide information about relevant actions taken by Commonwealth entities to comply with the consultation requirement in the Disability Rights Act.

#### **Recommendation 4.12 Positive duty to promote disability equality and inclusion**

- a. The Disability Rights Act should include a requirement for a Commonwealth entity, in the exercise of its functions, to have due regard to the need to take necessary and proportionate action to advance the policy objectives of equality, inclusion and respect for the dignity of people with disability.

- b. The requirement in a. should include the Commonwealth entity having due regard to the need to:
- ensure equality of rights, opportunities, responsibilities and outcomes between people with disability and other members of the Australian community
  - act consistently with its obligations under *the Disability Discrimination Act 1992 (Cth)*, including the duties recommended in Chapter 4 to:
    - take reasonable and proportionate measures to eliminate all forms of discrimination on the grounds of disability
    - make adjustments for people with disability so they can enjoy their human rights without discrimination, unless it would cause an unjustifiable hardship
  - address barriers that disadvantage people with disability, including barriers compounded by a person with disability's combination of attributes and experiences
  - promote accessibility and universal design, and appropriate remedial action to existing infrastructure
  - address stigma, stereotyping, prejudice, violence, abuse, neglect and exploitation affecting people with disability
  - foster good relations between people with disability and other members of the community.

#### **Recommendation 4.13 The duty to provide an interpreter**

- a. The Disability Rights Act should require Commonwealth entities to provide (arrange and fund) an appropriately trained and credentialed interpreter when required by a person with disability who is accessing or using its services or engaging with its statutory functions. Interpreters may be required in Auslan, First Nations sign languages or spoken languages other than English.
- b. The Disability Rights Act should provide that it is not a breach of the above duty if the relevant Commonwealth entity can demonstrate that:
- there was no appropriately qualified interpreter available after reasonable enquiry
  - the conversation or activity that the interpreter was required for could not reasonably have been undertaken at an alternative time when an interpreter would have been available.

#### **Recommendation 4.14 The duty to provide accessible information**

The Disability Rights Act should provide that a Commonwealth entity must ensure that its communications are provided in at least two formats accessible to people with disability when:

- publishing public information
- consulting or engaging with persons with disability.

#### **Recommendation 4.15 Duties supporting compliance with the Disability Rights Act**

To support compliance with the Disability Rights Act, the Act should require Commonwealth entities to:

- a. report annually on action they have taken to implement their duties under the Disability Rights Act
- b. conduct a disability impact assessment when developing or reviewing any policy or law administered, or program or service provided, by the entity that has a direct and significant impact on the public
- c. undertake a self-assessment audit for disability inclusion at least every four years
- d. publish their specific and measurable objectives to further the aims of the positive duty to promote disability equality and inclusion at least every four years.

#### **Recommendation 4.16 Interpretation of the Disability Rights Act consistently with international human rights**

The Disability Rights Act should require interpretation of the Act to be compatible, as far as possible, with the international human rights treaties to which Australia is a party, including the Convention on the Rights of Persons with Disabilities, and with the United Nations Declaration on the Rights of Indigenous Peoples.

#### **Recommendation 4.17 Limitations on rights**

- a. The Disability Rights Act should require that rights in the Act be subject only to such limitations that are reasonable and justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors (to be specified in the legislation).
- b. The Disability Rights Act should make clear that the right to recognition before the law (see Recommendation 4.6), as an absolute right under international law, is not subject to any limitations.
- c. This issue should be subject to consultation prior to enactment of the Disability Rights Act.

#### **Recommendation 4.18 Functions of the National Disability Commission to support compliance with the Disability Rights Act**

To support compliance with the Disability Rights Act, the Act should provide the National Disability Commission (recommended in Volume 5, Governing for inclusion) with functions and powers to:

- a. promote understanding and acceptance of the rights of people with disability under the Act
- b. undertake research in relation to the rights and duties under the Act
- c. issue guidelines on any matter relating to the Act
- d. review a person or entity's compliance with the Act (or an aspect of the Act) at that person or entity's request
- e. receive complaints or anonymous or confidential reports alleging a contravention of the Act
- f. inquire into and report on any act or practice that may be inconsistent with or contrary to the Act



- g. require the giving of information and the production of documents during the conduct of a formal inquiry
- h. require the examination of witnesses under oath or affirmation during the conduct of a formal inquiry
- i. enter into an enforceable undertaking with a person or entity in relation to compliance with the Act (*engaging Part 6 of the Regulatory Powers (Standard Provisions) Act 2014 (Cth)*)
- j. issue a compliance notice where the National Disability Commission reasonably believes that the relevant person or entity, without reasonable excuse, has failed to comply with the Act
- k. apply to the Federal Court of Australia or the Federal Circuit and Family Court of Australia for enforcement of a compliance notice
- l. apply to the Federal Court of Australia or the Federal Circuit and Family Court of Australia for an injunction (*engaging Part 7 of the Regulatory Powers (Standard Provisions) Act 2014 (Cth)*) to prevent or stop a contravention of the Act
- m. intervene in any proceedings before a court or tribunal that relate to the application or interpretation of the Act.

These functions would be in addition to those recommended for the National Disability Commission in Volume 5, *Governing for inclusion*, and Volume 12, *Beyond the Royal Commission*.

The Australian Government should provide the National Disability Commission with dedicated resources to undertake these functions.

#### **Recommendation 4.19 Co-design a new complaints mechanism for people with disability**

- a. The National Disability Commission should co-design its complaints mechanism under the Disability Rights Act with people with disability, taking into account:
  - the national guideline for accessible and responsive complaint handling and investigative practice to be co-designed with people with disability (recommended in Volume 11, *Independent oversight and complaint mechanisms*)
  - processes to support referrals to police and other regulatory or oversight bodies (noting that Volume 11 recommends a ‘one-stop shop’ independent complaint reporting, referral and support mechanism in each state and territory)
  - key features for effective remedies outlined in this Final report.
- b. Acts, omissions or practices that are unlawful under the Disability Rights Act (with the exception of duties supporting compliance with the Act, such as reporting obligations) should be added to the definition of ‘unlawful discrimination’ under section 3(1) of the *Australian Human Rights Commission Act 1986 (Cth)*. This would enable the Australian Human Rights Commission to offer dispute resolution for relevant Disability Rights Act matters alongside related human rights and discrimination complaints involving a public authority.

#### **Recommendation 4.20 Enabling remedies through the courts**

The Disability Rights Act should establish a standalone cause of action under which:

- a. the following persons can bring a claim to the Federal Court of Australia or the Federal Circuit and Family Court of Australia that a relevant duty-holder has acted

in contravention of the Disability Rights Act (other than compliance with the consultation requirement, notices of the National Disability Commission, duties supporting compliance with the Act such as reporting and self-audit obligations, and the positive duty to promote disability equality and inclusion):

- an aggrieved person on their own behalf; an aggrieved person on behalf of themselves and others who are also aggrieved
  - two or more aggrieved persons on behalf of themselves or others who are also aggrieved (a group claim)
  - a person or disability representative organisation on behalf of one or more aggrieved persons (a representative claim)
- b. where a claim is brought before a court under a. and the court finds that a person or entity has acted incompatibly with the Disability Rights Act, it can make any order it considers just and appropriate, including damages
- c. provisions in relation to costs are aligned with Commonwealth discrimination law, as amended following the 2022–23 review by the Australian Government Attorney-General’s Department.

#### **Recommendation 4.21 Strengthening awareness and understanding of disability rights**

- a. The Disability Rights Act should provide the National Disability Commission with statutory functions to:
- promote understanding and acceptance, and the public discussion, of the rights of people with disability under the Act
  - develop and deliver guidance materials and educational and training programs in relation to the rights and duties under the Act. Guidance should include how the intersectional experiences and identities of people with disability can affect the ways in which rights are limited or promoted in practice.
- b. The National Disability Commission should co-design and co-deliver training programs and resources with people with disability, and with the Australian Human Rights Commission where relevant, to provide a complete picture of human rights protections for people with disability under the Disability Rights Act and the *Disability Discrimination Act 1992 (Cth)*.
- c. The Australian Government should provide the National Disability Commission and the Australian Human Rights Commission with dedicated resources to undertake these roles.

#### **Recommendation 4.22 Strengthening disability rights protection in state and territory laws**

- a. States and territories should enact legislation complementary or equivalent to the Australian Disability Rights Act, taking into account their own legal frameworks.
- b. The Disability Rights Act should provide that the Act is not intended to exclude or limit the operation of a state or territory law that furthers the objectives of the *Convention on the Rights of Persons with Disabilities* and is capable of operating concurrently with the Act.

#### **Recommendation 4.23 Burden of proof in direct discrimination**

The *Disability Discrimination Act 1992 (Cth)* should be amended by inserting new subsections 5(1) and 5(1A). The subsections would read as follows:

- (1) For the purposes of this Act, a person (the alleged discriminator) directly discriminates against another person (the aggrieved person), if the person treats, or proposes to treat, the aggrieved person unfavourably on the ground of the aggrieved person's disability.
- (1A) For the purposes of subsection (1), an alleged discriminator who has treated, or proposes to treat, the aggrieved person unfavourably bears the burden of proving that the treatment or proposed treatment was not on the ground of the aggrieved person's disability.

#### **Recommendation 4.24 Reforming indirect discrimination**

The *Disability Discrimination Act 1992 (Cth)* should be amended by inserting a new subsection 6(3) to substitute existing subsections 6(3) and (4) as follows: 6(3) Subsection (1) or (2) does not apply if avoiding the discrimination would impose an unjustifiable hardship on the alleged discriminator.

#### **Recommendation 4.25 Adjustments**

The *Disability Discrimination Act 1992 (Cth)* should be amended by replacing all references to 'reasonable adjustments' with 'adjustments'.

#### **Recommendation 4.26 Standalone duty to make adjustments**

The *Disability Discrimination Act 1992 (Cth)* should be amended to include the following provision:

Duty to make adjustments

It is unlawful for a person to fail or refuse to make an adjustment for:

- (a) a person with a disability; or
- (b) a group of persons with disability

unless making the adjustment would impose an unjustifiable hardship on the person.

#### **Recommendation 4.27 Positive duty to eliminate disability discrimination**

The *Disability Discrimination Act 1992 (Cth)* should be amended to introduce a positive duty on all duty-holders under the Act to eliminate disability discrimination, harassment and victimisation, based on the December 2022 amendments to the *Sex Discrimination Act 1984 (Cth)*:

Duty to eliminate discrimination on the ground of disability

- (1) A person must take reasonable and proportionate measures to eliminate all forms of discrimination on the ground of disability.
- (2) In determining whether a measure is reasonable and proportionate the following factors must be considered—
  - (a) the size of the person's business or operations;
  - (b) the nature and circumstances of the person's business or operations;
  - (c) the person's resources;

- (d) the person’s business, risk management plans and operational priorities;
- (e) the practicability and the cost of the measures;
- (f) whether the person has a disability action plan;
- (g) nature and extent of the person’s consultation with any person with disability concerned;  
and
- (h) all other relevant facts and circumstances.

Other duties not limited or otherwise affected

(3) This section does not limit, or otherwise affect, a duty that a duty-holder has under:

- (a) the *Work Health and Safety Act 2011 (Cth)*; or
- (b) a law of a State or Territory that deals with work health and safety.

#### **Recommendation 4.28 Systemic discrimination**

- a. Division 4A (ss 35A–35K) of the *Australian Human Rights Commission Act 1986 (Cth)* should be amended by inserting the words ‘or disability discrimination’ after ‘sex discrimination’ where these words appear.
- b. A reference to ‘disability discrimination’ means any conduct that is unlawful under the *Disability Discrimination Act 1992 (Cth)*.

#### **Recommendation 4.29 Offensive behaviour**

The Disability Discrimination Act 1992 (Cth) should be amended by inserting a new provision:

Section 39A Offensive behaviour because of disability

- (1) It is unlawful for a person (the first person) to do an act, otherwise than in private, if:
  - (a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and
  - (b) the act is done because of the disability of the other person or because some or all of the people in the group have or are perceived by the first person to have a disability.
- (2) For the purposes of subsection (1), an act is taken not to be done in private if it:
  - (a) causes words, sounds, images or writing to be communicated to the public; or
  - (b) is done in a public place; or
  - (c) is done in the sight or hearing of people who are in a public place.
- (3) In this section: public place includes any place to which the public have access as of right or by invitation, whether express or implied and whether or not a charge is made for admission to the place.

#### **Recommendation 4.30 Vilification because of disability**

- a. *The Disability Discrimination Act 1992 (Cth)* should be amended by inserting a new provision as follows:

Section 39C Vilification because of disability

It is unlawful for a person (the first person) to do an act otherwise than in private, if:

- (a) the act involves threats by the first person to perpetrate or encourage violence or serious abuse directed at another person or group of people;
- (b) the act is reasonably likely, in all the circumstances, to incite hatred towards another person or a group of people; and
- (c) the act is done because of the disability of the other person or because some or all of the people in the group have or are perceived by the first person to have a disability.
- (d) States and territories that already have legislation imposing criminal penalties for vilification of people on grounds that do not include disability should extend the legislation to vilification of people on the ground of disability.

#### **Recommendation 4.31 Disability discrimination and migration law**

- a. The Australian Government should initiate a review of the operation of section 52 of the *Migration Act 1958 (Cth)*, insofar as it authorises discrimination against people with disability seeking to enter Australia temporarily or permanently. The review should consider changes to the legislation and migration practices to eliminate or minimise the discrimination.
- b. The review should be conducted with particular reference to the rights recognised by the *Convention on the Rights of Persons with Disabilities* and the Concluding observations on the combined second and third periodic reports of Australia made by the United Nations Committee on the Rights of Persons with Disabilities.

#### **Recommendation 4.32 Unjustifiable hardship**

Section 11 of the *Disability Discrimination Act 1992 (Cth)* should be amended by inserting the new subsections 11(1)(aa), 11(1)(ab) and 11(1)(ab) as follows:

##### Section 11 Unjustifiable hardship

- (1) For the purposes of this Act, in determining whether a hardship that would be imposed on a person (the first person) would be an unjustifiable hardship, all relevant circumstances of the particular case must be taken into account, including the following:
  - (a) the nature of the benefit or detriment likely to accrue to, or to be suffered by, any person concerned;
    - (aa) the nature and extent of the first person's consultations with any person with disability concerned;
    - (ab) the first person's consideration of all available and appropriate alternative measures or actions;
  - (b) the effect of the disability of any person concerned;
  - (c) the financial circumstances, and the estimated amount of expenditure required to be made, by the first person;
  - (d) the availability of financial and other assistance to the first person;
  - (e) any relevant action plans given to the Commission under section 64.

Example: One of the circumstances covered by paragraph (1)(a) is the nature of the benefit or detriment likely to accrue to, or to be suffered by, the community.

(1A) The person relying on unjustifiable hardship must:

- (a) create and retain all documents recording the person's consideration (if any) of each of the factors in subsection (1); and
- (b) provide reasons to the person concerned, if so requested, for contending that unjustifiable hardship existed at the time of the alleged unlawful discrimination.

(2) For the purposes of this Act, the burden of proving that something would impose unjustifiable hardship lies on the person claiming unjustifiable hardship.

#### **Recommendation 4.33 Reference to the *Convention on the Rights of Persons with Disabilities***

The *Disability Discrimination Act 1992 (Cth)* should be amended to insert a new subsection 3(d) as follows:

(d) to give effect to Australia's obligations under the Disabilities Convention.

#### **Recommendation 4.34 Interpretation of the *Disability Discrimination Act 1992 (Cth)***

The *Disability Discrimination Act 1992 (Cth)* should be amended by inserting a new subsection 4(3):

(3) This Act must be interpreted in a way that is beneficial to a person or persons with disability, to the extent it is possible to do so consistently with—

- (a) the objects of this Act
- (b) the Convention
- (c) the Covenant on Civil and Political Rights
- (d) the Disabilities Convention
- (e) the International Covenant on Economic, Social and Cultural Rights.

# Volume 5, Governing for inclusion

## **Recommendation 5.1 Development of a National Disability Agreement**

The Australian Government and state and territory governments should develop a new National Disability Agreement through the Disability Reform Ministerial Council, to be signed by first ministers. The fundamental objective of the Agreement should be to advance equality, inclusion and the rights of people with disability in Australia. The Agreement should provide the framework for intergovernmental collaboration to:

- develop and implement reforms requiring national attention and coordination, including recommendations of this Royal Commission
- implement Australia's Disability Strategy 2021–2031 (ADS) and the National Disability Insurance Scheme (NDIS).

The ADS, NDIS national agreements and policies, and other national disability frameworks should be schedules to the new National Disability Agreement.

The Agreement should clearly set out roles and responsibilities of parties to the Agreement.

The new National Disability Agreement should be developed and finalised by the end of 2024.

## **Recommendation 5.2 Review and update of Australia's Disability Strategy**

The signatories to Australia's Disability Strategy 2021–2031 (ADS) (the Australian Government, state and territory governments and the Australian Local Government Association) should review and update the ADS to ensure it reflects the issues raised and recommendations made by this Royal Commission.

This review and update should:

- consider the ADS and all its implementation mechanisms, including Targeted Action Plans, Engagement Plan, Outcomes Framework, Guiding Principles, reporting arrangements and Data Improvement Plan
- be undertaken in partnership with people with disability and their representative organisations.

An updated ADS should be released by the end of 2024.

## **Recommendation 5.3 Review and update of disability strategies and plans**

State and territory governments should review and update their disability strategies and plans to ensure they reflect the issues raised and recommendations made by this Royal Commission.

These reviews and updates should:

- consider how these strategies and plans align with Australia's Disability Strategy 2021–2031, including outcomes of Recommendation 5.2
- be undertaken in partnership with people with disability and their representative organisations.

The reviews and updates should be completed by mid-2025.

#### **Recommendation 5.4 Review of national agreements, strategies and plans**

The Australian Government and state and territory governments should review national agreements, strategies and plans that affect people with disability. This work should be undertaken through the Disability Reform Ministerial Council in conjunction with other ministerial councils.

Reviews should consider:

- the alignment of national agreements, strategies and plans *with* Australia's Disability Strategy 2021–2031
- how funding allocations should recognise the needs and rights of people with disability
- the inclusion of specific outcome measures related to people with disability
- the development of specific action plans relating to people with disability.

National agreements that should be reviewed include the:

- National Agreement on Closing the Gap
- National Housing and Homelessness Agreement
- National School Reform Agreement
- National Health Reform Agreement
- National Mental Health and Suicide Prevention Agreement
- National Agreement for Skills and Workforce Development.

Other national agreements, strategies and plans to be reviewed should include, but not be limited to, those relating to:

- emergency management, such as those for pandemics and natural disasters
- children and young people, such as the National Framework for Protecting Australia's Children 2021–2031
- employment, education, training and skills, such as the National Workforce Strategy 2022–2027
- legal support, such as *the National Legal Assistance Partnership 2020–2025*
- health services, such as those for preventative health, community health, and mental health
- family and sexual violence, such as the National Plan to End Violence against Women and Children 2022–2032.

The reviews of current agreements, strategies and plans should be completed by the end of 2025.

#### **Recommendation 5.5 Establishment of a National Disability Commission**

The Australian Government should establish the National Disability Commission as an independent statutory body under the Disability Rights Act (see Volume 4). The National Disability Commission should:

- support the realisation of the human rights of people with disability through monitoring and oversight of the Disability Rights Act
- monitor and report on outcomes for people with disability across Australia



- promote best practice and innovative approaches to improving outcomes for people with disability by sharing information across governments, the community sector, the private sector and the broader community.

The Commission should be chaired by a person with disability and comprise a small group of commissioners. The majority of commissioners should be people with disability, and represent the diversity of people with disability.

The National Disability Commission should be established by mid-2025.

In addition to functions proposed in Volume 4 and Volume 12, its functions should include:

- developing an Outcomes for People with Disability report every two years and tabling it in the Australian Parliament. The report should:
  - detail outcomes achieved under Australia’s Disability Strategy 2021–2031 (ADS)
  - provide comparative performance assessments on outcomes for people with disability, including the implementation of the ADS, through traffic light reporting across each jurisdiction
  - analyse data, including outcomes data from National Disability Insurance Scheme reporting and other relevant reporting from the Australian Government and state and territory governments. This includes reporting on jurisdictional disability strategies and plans, and reporting from relevant oversight bodies
  - include the views and experiences of people with disability, as well as those of families and carers of people with disability
  - recommend to governments actions needed to improve outcomes for people with disability.
- promoting and disseminating information, research and evidence on best practice models for – and innovative approaches to – improving outcomes for people with disability. This information should be shared across governments, the nongovernment sector, the private sector and the broader community
- partnering with a diverse range of people with disability, and their families and carers, to develop advice and key reports.

### **Recommendation 5.6 New governance arrangements for disability**

The Australian Government should establish:

- a portfolio responsible for the disability and carers policies and programs currently the responsibility of the Social Services portfolio
- a ministerial position – the Minister for Disability Inclusion – responsible for disability inclusion strategy, policies and programs that are currently under the remit of the Minister for Social Services
- a Department of Disability Equality and Inclusion, responsible for the national disability and carers policies and programs that are currently the responsibility of the Department of Social Services.

People with disability should be recruited to positions within the new department, including into leadership positions.

These new arrangements should be established by the end of 2024.

**Recommendation 5.7 Focal points across jurisdictions to implement the *CRPD***

The Australian Government and state and territory governments should ensure each jurisdiction has a designated focal point for matters relating to implementation of the *Convention on the Rights of Persons with Disabilities (CRPD)*.

At the Australian Government level, this should be the new Department of Disability Equality and Inclusion, alongside the Attorney-General's Department.

Each *CRPD* focal point should include people with disability in leadership positions.

Each jurisdiction should designate focal points by the end of 2024.

# Volume 6, Enabling autonomy and access

## **Recommendation 6.1 A national plan to promote accessible information and communications**

The Australian Government and state and territory governments should develop and agree on an Associated Plan in connection with Australia's Disability Strategy 2021–2031 to improve the accessibility of information and communications for people with disability. The Associated Plan should be co-designed with people with disability and their representative organisations. It should be finalised by the end of 2024.

The Associated Plan should:

- consolidate and build on existing initiatives and commitments by governments
- recognise the diversity of people with disability and the many formats and languages that people may require information to be provided in
- consider the roles of various stakeholders, including the Australian Government, state and territory governments, disability service providers, disability representative organisations and organisations representing people from culturally and linguistically diverse backgrounds
- focus, in the first instance, on information and communications about preparing for and responding to emergencies and natural disasters, and public health
- include targeted actions to ensure access to information and communications for people with disability in the criminal justice system; supported accommodation, including group homes; Australian Disability Enterprises; and day programs
- identify and allocate appropriate funding and resources for delivery
- include mechanisms for review and public reporting of progress made against the Associated Plan.

## **Recommendation 6.2 Increase the number of Auslan interpreters**

The Australian Government and state and territory governments, through the Disability Reform Ministerial Council, should commission the development of a workforce strategy to increase the number and quality of Auslan interpreters.

The strategy should:

- be based on a robust demand-supply analysis to quantify the current gaps and shortages in interpreting services. This includes analysis of qualifications, specialisations, geographic coverage, and the availability and use of face-to-face interpreting and Video Remote Interpreting
- include costed initiatives to:
  - increase the number of Auslan interpreters, including the provision of scholarships and stable ongoing employment opportunities, particularly in under-served areas
  - support specialisations in health, legal and other critical sectors (including minimum qualifications) provide ongoing professional development and industry standards to support a high-quality interpreter workforce
  - increase and retain Auslan interpreters who are First Nations or from culturally and linguistically diverse backgrounds

- raise awareness and promote pathways to becoming an Auslan interpreter. The strategy should be developed by September 2024, and implementation of the strategy should begin by January 2025.

### **Recommendation 6.3 Access to appropriately skilled and qualified interpreters**

The Australian Government, the National Accreditation Authority for Translators and Interpreters (NAATI) and the National Disability Insurance Agency (NDIA) should take steps to ensure people with disability have access to appropriately skilled and qualified interpreters as needed.

#### *Training for interpreters*

NAATI should require interpreters to complete training in disability awareness before receiving accreditation and as part of their ongoing professional development to maintain accreditation.

#### *Interpreters in disability service provision*

The NDIA should:

- ensure staff are aware of the NDIA's Practice Guide on Accessible Communication and the provisions of the Practice Guide for Aboriginal and Torres Strait Islander planning support relating to interpreters and translation
- provide training for staff on how to arrange and work with an interpreter.

The Minister for the National Disability Insurance Scheme (NDIS), in consultation with states and territories, should:

- amend the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018 (Cth)* to introduce a standard on effectively working with interpreters
- amend the *National Disability Insurance Scheme (Quality Indicators for NDIS Practice Standards) Guidelines 2018 (Cth)* to include indicators relevant to the standard on working effectively with interpreters, including that providers have relevant policies and procedures in place.

The NDIS Quality and Safeguards Commission should amend the NDIS Workforce Capability Framework to provide that the Communicate Effectively Core Capability for Advanced Support Work explicitly includes working with interpreters.

### **Recommendation 6.4 Terms and definitions in guardianship and administration legislation**

- a. States and territories should amend their guardianship and administration legislation to:
  - include the terms 'support order', 'support agreement' and 'supported persons'
  - remove the terms 'guardianship order' and 'administration order' or 'financial management order', and replace these with 'representative order'
  - remove the terms 'guardian' and 'administrator' or 'financial manager', and replace these with 'representative'
  - remove the term 'enduring guardian' and replace this with 'enduring representative'
  - remove the terms 'enduring guardianship' and 'enduring power of attorney', and replace these with 'enduring representation agreement'

- remove the terms ‘decision-making capacity’, ‘capacity’ and ‘mental incapacity’, and replace these with ‘decision-making ability’.
- b. The new and replacement terms should be defined consistently with the definitions provided in Table 6.2.11.
- c. States and territories should amend the title of their guardianship and administration legislation to refer to decision-making. For example, ‘Supported and represented decision-making Act’ or ‘Decision-making Act’.

### **Recommendation 6.5 Objects of guardianship and administration legislation**

States and territories should review and reform their guardianship and administration legislation to include a statement of statutory objects which:

- recognises and promotes the rights of people with disability consistent with the *Convention on the Rights of Persons with Disabilities (CRPD)*
- includes the text of article 12 of the *CRPD*
- recognises the role of support to enable people who may require support to make, participate in and implement decisions that affect their lives.

### **Recommendation 6.6 Supported decision-making principles**

- a. States and territories which have not already done so should review and reform their guardianship and administration legislation to include the following supported decision-making principles. The legislation should oblige all persons exercising powers, carrying out functions or performing duties under the legislation to have regard to the principles.

#### *Principle 1 – Recognition of the equal right to make decisions*

All people have an equal right to make decisions that affect their lives and to have those decisions respected.

#### *Principle 2 – Presumption of decision-making ability*

All people must be presumed to be able to make decisions.

#### *Principle 3 – Respect for dignity and dignity of risk*

All people must be treated with dignity and respect and supported to take risks to enable them to live their lives the way they choose, including in their social and intimate relationships.

#### *Principle 4 – Recognition of informal supporters and advocates*

The role of informal supporters, support networks and advocates who provide support for decision-making should be acknowledged and respected.

#### *Principle 5 – Access to support*

People who may require supported decision-making should be provided with equitable access to appropriate support to enable the person, as far as practicable in the circumstances, to:

- make and participate in decisions affecting them
- communicate their will and preferences
- develop their decision-making ability.

#### *Principle 6 – Decisions directed by will and preferences*

The will and preferences of people who may require supported decision-making must direct decisions

that affect their lives.

### **Recommendation 6.7 Decision-making ability**

States and territories should review and reform their guardianship and administration legislation to:

- ensure consistency with Principle 2 in Recommendation 6.6 that all people should be presumed to be able to make decisions
- provide that this presumption cannot be rebutted solely on the basis that a person has a disability
- require that anyone responsible for deciding whether the presumption has been rebutted that a person has decision-making ability for the relevant decision, must consider:
  - the supports available to the person, including the quality of existing support relationships
  - that decision-making ability is specific to the decision being made
  - the nature and complexity of the specific decision to be made
  - the views of the person and, with their consent, the views of family and informal supporters who have significant involvement in the person's life.

### **Recommendation 6.8 Formal supporters**

States and territories should introduce into guardianship and administration legislation provisions to enable statutory and personal appointments of one or more supporters for personal and financial matters, following the approach taken by Victoria in Part 4 of the *Guardianship and Administration Act 2019 (Vic)* and Part 7 of the *Powers of Attorney Act 2014 (Vic)*. This includes provisions on:

- appointment of supporters
- role, powers and duties of supporters
- safeguards in relation to supports
- review and revocation of support agreements and orders.

### **Recommendation 6.9 Representatives as a last resort**

States and territories should review and reform their guardianship and administration legislation to provide that representation orders should be made only as a last resort and in a way that is least restrictive of a person's rights, autonomy and actions, as practicable in the circumstances. The reforms should include:

- a. the repeal of provisions authorising plenary representation orders
- b. a requirement that the relevant tribunal should make an order appointing a representative only if satisfied that:
  - the proposed represented person does not have decision-making ability for one or more decisions
  - the order is necessary, taking into account:
    - the will and preferences of the proposed represented person
    - the availability and suitability of less intrusive and restrictive measures, including formal and informal support arrangements, negotiation and mediation
  - the order will promote the person's personal and social wellbeing

- c. a provision that the tribunal must take into account, in deciding whether a person (other than a public official) is suitable for appointment as a representative:
  - the will and preferences of the proposed represented person
  - the nature of the relationship between the proposed representative and the proposed represented person
  - whether the proposed representative is likely to act honestly, diligently and in good faith
  - whether the proposed representative has or may have a conflict of interest in relation to any of the decisions referred to in the order
- d. a prohibition on a representation order made in the absence of the proposed represented person, unless the tribunal is satisfied that either:
  - the represented person does not wish to attend the hearing in person
  - the personal attendance of the represented person at the hearing is impracticable or cannot reasonably be arranged
- e. a requirement that when considering whether a support or representation order should be made for a First Nations person, the tribunal should take into account:
  - the likely impact of the order on the person's culture, values, beliefs (including religious beliefs) and linguistic environment
  - the likely impact of the order on the person's standing or reputation in their community
  - any other considerations pertaining to the person's culture
- f. provisions on the review and revocation of representation orders, including that:
  - a representation order lapses on the expiration of three years after the date on which it is made, unless the tribunal has specified an expiry date (earlier than three years) in the order or the order is renewed
  - a tribunal must conduct a review of representation order at least once within each three-year period after making the order
  - when reviewing an order, the tribunal should consider:
    - whether the order is still necessary, considering the factors listed in b.
    - whether the representative is still eligible and suitable
    - whether the representative is meeting their responsibilities and carrying out their required functions.

### **Recommendation 6.10 Decision-making process**

States and territories should review and reform their guardianship and administration legislation to include a decision-making process that appointed supporters and representatives are required to follow.

The decision-making process for both supporters and representatives should involve:

- supporting the person to express their will and preferences
- assisting the person to develop their own decision-making ability.

The decision-making process for representatives should also include the following steps and considerations:

- the person's will and preferences must be given effect

- where the person’s current will and preference cannot be determined, the representative must give effect to what they believe the person’s will and preferences are likely to be, based on all the information available
- if it is not possible to determine what the person would likely want, the representative must act to promote and uphold the person’s personal and social wellbeing with the least possible restriction on their dignity and autonomy
- a representative may override the person’s will and preferences only where necessary to prevent serious harm. In these circumstances, the representative must act to promote and uphold the person’s personal and social wellbeing with the least possible restriction on their dignity and autonomy.

#### **Recommendation 6.11 Guidelines on maximising participation**

- a. The Australian Guardianship and Administration Council should update *the Guidelines for Australian Tribunals: Maximising the participation of the Person in guardianship proceedings* to align with our recommendations on guardianship and supported decision-making (see in particular Recommendations 6.4–6.10 and 6.19).
- b. The guardianship division or list in each state and territory tribunal should consider adopting, through practice directions or other appropriate means, the updated *Guidelines for Australian Tribunals: Maximising the participation of the Person in guardianship proceedings*.

#### **Recommendation 6.12 Public disclosure and confidentiality restrictions**

States and territories should amend their guardianship and administration laws or tribunals acts, to:

- repeal provisions prohibiting publication of material identifying a party to the proceedings as the default position
- empower the tribunal to make an order prohibiting publication of material identifying the party to the proceedings, if the circumstances justify such an order, taking into account the will and preferences of that party.

#### **Recommendation 6.13 Information and education on supported decision-making**

- a. States and territories should ensure that, where legislation to this effect is not already in place, the functions of public advocates and public guardians include providing information, education and training on supported decision-making to people requiring supported decision-making and their families, private supporters and representatives (present or prospective), disability service providers, public agencies, the judiciary, tribunal members and legal representatives.
- b. States and territories should ensure that, where legislation to this effect is not already in place, public advocates and public guardians are empowered to provide advice and assistance to people who may require decision-making support, including in relation to applications for support and representation orders.



### **Recommendation 6.14 Systemic advocacy to promote supported decision-making**

States and territories should ensure that, where this is not already the case, a statutory body has a function to undertake systemic advocacy to promote supported decision-making.

This function should include:

- monitoring, investigating, researching, reporting, making recommendations and advising on any aspect of relevant decision-making legislation
- encouraging the development and improvement of programs, services and facilities that promote the autonomy of people with disability
- supporting organisations that undertake advocacy and education on supported decision-making.

### **Recommendation 6.15 Updating the national standards for public advocates, public guardians and public trustees**

Public advocates, public guardians and public trustees, through the Australian Guardianship and Administration Council, should update the National Standards of Public Guardianship and National Standards for Financial Managers to:

- include the supported decision-making principles
- align with reforms to state and territory guardianship and administration legislation that give effect to Recommendations 6.4–6.10
- amend the relevant standards to provide that public officials acting as representatives should have frequent meetings and ongoing, accessible communication with the represented person to get to know the person and develop a trusted relationship. Meetings should take place in line with a represented person's preferences as to format and attendees, wherever practicable
- amend the relevant standards to recognise the importance of ensuring all engagement with First Nations and culturally and linguistically diverse people is culturally safe and responsive and that appropriate training for staff is provided to enable them to do so
- amend the relevant standards to recognise the importance of public officials acting as representatives facilitating connections between a represented person and advocates and informal supporters.

### **Recommendation 6.16 Financial skills development programs**

- a. All public trustees should offer a financial skills development program to people under a representation order appointing the public trustee as a representative. The program should promote financial independence and:
  - be developed in partnership with representative organisations of people with disability, including organisations representing people with intellectual disability, and financial counselling community support organisations
  - incorporate broad eligibility criteria
  - be actively promoted, especially among people entering administration.
- b. Upon successful completion of the program, public trustees should support a person to apply for a review of their order. If a person is not eligible for the

program, the public trustee must advise them of their right to apply to the relevant tribunal for review of their order.

- c. Public trustees should report annually on the number of people who have participated in the program, the number who have completed it and the number who have subsequently transitioned out of administration arrangements.

### **Recommendation 6.17 Transparency of public trustee fees and charges**

Public trustees in each state and territory should:

- publish accessible information about the services they provide to people under administration orders, the fees and charges applicable for those services and the ways in which fees are calculated for each individual
- on appointment, annually and following any significant change to a person's circumstances, send to people under administration orders individualised and accessible information detailing the services they will receive and the fees for those services.

### **Recommendation 6.18 Review of public trustees' fees and charges**

State and territory governments should ensure that public trustees' fees and charges have been independently reviewed since 2019. Where such a review has not been conducted since this time, state and territory governments should arrange a comprehensive review of the fees and charges payable by people under administration orders to the public trustee in their jurisdiction. The reviews should make recommendations to ensure fees and charges are fair and equitable for all people under administration orders.

### **Recommendation 6.19 Data collection on support and representation arrangements**

The Australian Government and states and territories should develop and implement a national approach to collecting and publishing de-identified data on support and representation arrangements, led by the Australian Institute of Health and Welfare.

The national approach should consistently use definitions of 'disability', 'representation' and 'support' arrangements proposed in this Final report, and should employ methodologies which enable reporting on comparisons across jurisdictions and trends over time.

The national approach should include collection and publication of data on:

- numbers of formally appointed representatives and supporters, disaggregated appropriately
- the extent to which people with disability who are the subject of the proceedings participate in the proceedings and the manner in which they participate (for example, in person or via alternative technological means)
- numbers of representative agreements commenced, terminated, revoked, varied or reviewed
- the extent to which people with disability who are the subject of the proceedings are legally represented.

The data should identify, to the greatest extent practicable, types of impairment, age, First Nations people with disability, culturally and linguistically diverse people with disability, LGBTIQ+ people with disability, women with disability and National Disability Insurance Scheme participants.

### **Recommendation 6.20 Interpretative declaration**

Commissioners Bennett, Galbally, Mason and McEwin recommend the Australian Government withdraw its interpretative declaration in relation to article 12 of the *Convention on the Rights of Persons with Disabilities*.

### **Recommendation 6.21 Additional funding for advocacy programs**

- a. For the financial years 2024–25 and 2025–26, the Australian Government should commit additional funding of:
  - \$16.6 million per annum for the National Disability Advocacy Program
  - \$20.3 million per annum for the National Disability Insurance Scheme Appeals Program.

These amounts should be indexed to maintain their value in real terms from year to year.

- b. From 1 July 2026, the Australian Government should ensure long-term and stable funding for national disability advocacy programs to meet demand. This should be informed by improved data in line with Recommendation 6.22.
- c. From at least 1 July 2026, state and territory governments should ensure long-term and stable funding for disability advocacy programs in their jurisdictions to meet demand. This should be informed by improved data in line with Recommendation 6.22.

### **Recommendation 6.22 Improved data collection and reporting on met and unmet demand for disability advocacy**

The Australian Government and state and territory governments should improve data collection and reporting on met and unmet demand for disability advocacy within their jurisdiction.

At a minimum, this data should:

- be collected and published on an annual basis
- include demographic indicators that show geographic location, First Nations and culturally and linguistically diverse status
- identify, where possible, whether a request for disability advocacy is from or concerns a person with disability who lives in supported accommodation or is in prison or juvenile detention.

This data should be collected and reported on an ongoing basis.

The Australian Government and state and territory governments should include data collection and reporting as a priority work area in the Disability Advocacy Work Plan associated with the 2023–2025 National Disability Advocacy Framework, and progress this as part of future National Disability Advocacy Frameworks or equivalents.

The Australian Government and state and territory governments should work together to ensure consistent definitions and methodologies allowing comparisons across jurisdictions and trends over time.

Publication of the data should commence no later than 1 July 2026.

### **Recommendation 6.23 Culturally safe disability advocacy**

The Disability Advocacy Work Plan associated with the 2023–2025 National Disability Advocacy Framework should be amended to include priority work areas on increasing culturally appropriate and accessible advocacy services for people with disability from culturally and linguistically diverse backgrounds and LGBTIQ+ people with disability. Efforts under these priority work areas, and the priority work area on increasing culturally appropriate and accessible advocacy services for First Nations people with disability, should include training led by First Nations, culturally and linguistically diverse and LGBTIQ+ people with disability and their representative organisations.

This work should be progressed as part of future National Disability Advocacy Frameworks or equivalents.

### **Recommendation 6.24 Improve implementation planning and coordination for the cognitive disability health capability framework**

The Australian Government Department of Health and Aged Care should:

- expand the role of the Intellectual Disability Education and Training Expert Advisory Group to develop an implementation plan for the cognitive disability health capability framework, including key steps for embedding the capabilities from the framework in curricula in education and training programs for health practitioners across all training stages
- develop a monitoring and evaluation framework to coordinate and measure delivery of the expanded capability framework and its implementation.

### **Recommendation 6.25 Expand the scope of health workforce capability development to include all forms of cognitive disability at all stages of education and training**

The Australian Government Department of Health and Aged Care should:

- immediately expand the scope of the work on an intellectual disability health capability framework and associated resources to address all forms of cognitive disability, to apply at all stages of education and training. This expansion should include autism-specific content, and address specific healthcare issues for people with learning disability, dementia and acquired brain injury.
- allocate additional funding to support the expanded scope of health workforce capability development.

### **Recommendation 6.26 Expand the role of the Health Ministers Meeting to monitor health workforce capability development**

The Health Ministers Meeting should expand its role in monitoring progress of the intellectual disability health capability framework to encompass the expanded capability framework proposed in Recommendation 6.25. This should include annual reporting to the Health Ministers Meeting on the

progress of actions.

### **Recommendation 6.27 Establish regular progress reporting by accreditation authorities**

Accreditation authorities for registered health professions and the peak professional bodies for non-registered health professions should:

- a. review and amend accreditation standards and evidence requirements where necessary to address whether cognitive disability health is sufficiently covered. If it is not, they should amend their accreditation standards or evidence requirements (as the case may be) accordingly
- b. encourage or mandate education providers to develop specific cognitive disability health curriculum content and deliver such content using inclusive teaching practices, involving people with cognitive disability where possible
- c. report annually to the Australian Government Department of Health and Aged Care on their progress in implementing this recommendation. Where accreditation authorities have only recently undertaken their five-yearly review, annual reporting should include progress on implementation planning to address this recommendation pending the next scheduled review.

### **Recommendation 6.28 Improve access to clinical placements in disability health services**

The Australian Government Department of Health and Aged Care should include improved access to clinical placements in disability health services as an immediate priority, including by:

- exploring increased opportunities for student learning and development in cognitive disability health, including as part of interprofessional teams, with education providers and clinical placement providers.
- considering mechanisms to enhance funded supervised clinical and work-based training placements to train students in providing quality health care to people with cognitive disability. This should include enhanced financial support for clinical placement and supervision in community settings.

### **Recommendation 6.29 Improve specialist training and continuing professional development in cognitive disability health care**

- a. The Royal Australasian College of Physicians, Royal Australian and New Zealand College of Psychiatrists, Australian and New Zealand College of Anaesthetists, Royal Australian College of General Practitioners, Australasian College of Emergency Medicine and Australian College of Rural and Remote Medicine should each:
  - develop specialised training content in cognitive disability health for different areas of specialisation, building on the capability framework and the core set of learning resources, so that future specialists can develop skills and competencies in cognitive disability health
  - expand and promote pathways for sub-speciality training in cognitive disability health.
- b. These groups, as well as the Australian Dental Association and professional bodies responsible for continuing professional development (CPD) in the nursing and allied health professions should each:

- review CPD programs in their respective health discipline or specialty to determine whether CPD for the provision of health care to people with cognitive disability, including intellectual and/or developmental disabilities, should be enhanced
  - promote the development of CPD opportunities on the provision of health care to people with cognitive disability, including intellectual and/or developmental disabilities
  - raise awareness of such CPD opportunities among members.
- c. The Australian Government Department of Health and Aged Care should reprioritise the National Roadmap for Improving the Health of People with Intellectual Disability action to embed training and CPD within all specialist training programs from a medium-term action (four to six years), to a short-term action (one to three years).

**Recommendation 6.30 Expand the scope of the National Centre of Excellence in Intellectual Disability Health**

The Australian Government Department of Health and Aged Care should expand the remit of the National Centre of Excellence in Intellectual Disability Health to include autism and other forms of cognitive impairment.

**Recommendation 6.31 Embed the right to equitable access to health services in key policy instruments**

- a. The Australian Commission on Safety and Quality in Health Care should:
- amend the Australian Charter of Healthcare Rights to incorporate the right to equitable access to health services for people with disability and align with the scope of this proposed right in the Disability Rights Act recommended in Volume 4, Realising the human rights of people with disability
  - review and revise the National Safety and Quality Health Service Standards and the National Safety and Quality Primary and Community Healthcare Standards to provide for the delivery of safe and high-quality health care for people with disability and align with the scope of the proposed right to equitable access to health services in the Disability Rights Act recommended in Volume 4
  - as part of this review, consider how the national standards support equal access to health services for people with disability throughout life, including (but not limited to) prevention and health promotion, diagnosis and early intervention and rehabilitation services.
- b. The Australian Government Department of Health and Aged Care and state and territory counterparts should review all policies and protocols to ensure people with disability are permitted to be accompanied by a support person in any health setting. This should apply at all times, including when in-person healthcare restrictions are in place, such as during COVID-19.

**Recommendation 6.32 Increase capacity to provide supports and adaptations through improved guidance, funding and accessible information**

The Australian Government and state and territory governments, in consultation with people with disability, should:

- a. identify and publish a list of frequently needed adaptations and supports (including communication supports) to enable people with disability to receive high-quality health care in all publicly funded settings. Adaptations and supports may need to be tailored to individual needs and additional supports may be required. These should include:
  - environmental modifications and aids to reduce sensory loads, such as dimmer lighting, reduced background noise and noise-cancelling headphones
  - preparatory action to familiarise the person with disability with clinical environments, such as hospital tours and animated videos
  - different modes of service delivery, such as home visits, and taking a forward-looking approach to minimise distress associated with certain procedures – for instance, taking extra blood to reduce the need for additional blood draws, or undertaking multiple procedures at once if sedation is required to decrease the number of hospital visits
  - novel and flexible approaches to pre-medication, including sedation, to reduce distress and anxiety before critical medical procedures.
- b. review hospital (admitted and non-admitted care) and primary health care funding models to ensure these adaptations and supports can be implemented in all relevant settings.
- c. disseminate information about the provision of adaptations and supports in a range of accessible formats.

### **Recommendation 6.33 Develop specialised health and mental health services for people with cognitive disability**

State and territory governments should establish and fund specialised health and mental health services for people with cognitive disability to provide:

- specialist assessment and clinical services, including preventive medicine, for people with cognitive disability and complex or chronic health and mental health needs
- training and support for health providers to build their capacity to provide safe, high-quality health care to people with cognitive disability.

These services should be delivered through a model that includes:

- specialist roles and multi-disciplinary teams embedded in local health service delivery
- state-wide specialised services that can be accessed by people with cognitive disability and health professionals regardless of their location
- participation in a national network of specialised disability health and mental health services
- evaluation of the impact of specialised services and publication of evaluation findings.

Planning to implement specialised services in each jurisdiction should begin as soon as practicable and take into account existing services and needs in each jurisdiction.



These changes should be introduced by September 2026.

**Recommendation 6.34 Introduce disability health navigators to support navigation of health care for people with disability**

Through the Health Ministers Meeting, the Australian Government and state and territory governments should:

- a. jointly fund a national workforce of ‘disability health navigators’ to support people with cognitive disability and complex health needs access health services and to embed safe, accessible and inclusive practice in everyday health service provision
- b. develop a national evaluation framework to assess the impact of disability health navigators and share lessons learned across jurisdictions. Evaluation findings should be published.

**Recommendation 6.35 Legal frameworks for the authorisation, review and oversight of restrictive practices**

- a. States and territories should ensure appropriate legal frameworks are in place in disability, health, education and justice settings, which provide that a person with disability should not be subjected to restrictive practices, except in accordance with procedures for authorisation, review and oversight established by law.
- b. The legal frameworks should incorporate the following requirements, appropriately adapted to sector-specific contexts:
  - Restrictive practices should only be used:
    - as a last resort, in response to a serious risk of harm to a person with disability or others, and only after other strategies, including supported decision-making, have been explored and applied
    - as the least restrictive response possible to ensure the safety of the person with disability or others
    - to the extent necessary to reduce the risk of harm and proportionate to the potential negative consequences from the use of restrictive practices
    - for the shortest time possible.
  - Decisions to authorise restrictive practices should be subject to independent review.
  - The use of restrictive practices should be subject to independent oversight and monitoring.
- c. The legal frameworks should set out the powers and functions of a Senior Practitioner for restrictive practices in disability service provision (or equivalent authority). These powers and functions should include:
  - promoting the reduction and elimination of the use of restrictive practices
  - protecting and promoting the rights of people with disability subjected to restrictive practices
  - developing and providing information, education and advice on restrictive practices to people with disability, their families and supporters, and the broader community
  - considering applications to use restrictive practices in disability service settings and authorising their use according to procedures consistent with the Draft Principles for Consistent Authorisation



- developing guidelines and standards, and providing expert advice, on restrictive practices and behaviour support planning
- receiving complaints about the use of restrictive practices and the quality of behaviour support planning
- investigating the use of restrictive practices and the quality of behaviour support planning, either in response to complaints or of its own motion
- acting in response to complaints and investigations where appropriate.

**Recommendation 6.36 Immediate action to provide that certain restrictive practices must not be used**

State and territory governments should immediately:

- Adopt the list of prohibited forms of restrictive practices agreed by the former Disability Reform Council in 2019 and provide that the use of seclusion on children and young people is not permitted in disability service settings.
- Provide that the following are not permitted in health and mental health settings:
  - using seclusion and restraint as a means to reduce behaviours not associated with immediate risk of harm
  - using seclusion and restraint as a form of discipline, punishment or threat
  - restrictive practices that involve or include deliberate infliction of pain to secure compliance
  - using prone or supine holds, using any restraint intended to restrict or affect respiratory or digestive function, or forcing a person's head down to their chest
  - secluding a person who is also mechanically restrained
  - secluding a person who is actively self-harming or suicidal
  - using metal handcuffs or hard manacles as a form of mechanical restraint (unless under police or other custodial supervision while in the health facility)
  - vest restraints for older people
  - neck holds
  - drugs, or higher doses of drugs, that create continuous sedation to manage behaviour
  - seclusion of children and young people.
- Provide that the following are not permitted in education settings:
  - the use of restrictive practices:
    - as a form of discipline, punishment or threat
    - as a means of coercion or retaliation
    - in response to property destruction
    - for reasons of convenience
    - life threatening physical restraints, including physical restraints that restrict a student's breathing or harm the student by:
      - covering the student's mouth or nose, or in any way restricting breathing
      - taking the student to the ground into the prone or supine position
      - causing hyperextension or hyperflexion of joints
      - applying pressure to the neck, back, chest or joints
      - deliberately applying pain to gain compliance
      - causing the student to fall

- having a person sit or kneel on the student
- chemical restraints
- mechanical restraints
- clinical holding:
  - as a behaviour support strategy
  - to enforce the compliance of a student in undertaking personal care that is non-urgent and does not present a risk to the student
  - to punish a student
- denial of key needs, such as food and water.

### **Recommendation 6.37 Data collection and public reporting on psychotropic medication**

The NDIS Quality and Safeguards Commission, the Australian Commission on Safety and Quality in Health Care and the Aged Care Quality and Safety Commission should:

- publish joint annual progress reports on implementation of measures under the Joint statement on the inappropriate use of psychotropic medicines to manage the behaviours of people with disability and older people
- commission an independent evaluation of these measures to determine whether they have resulted in a reduction in the use of psychotropic medicines against people with cognitive disability. The evaluation should be co-designed with people with cognitive disability and their representative organisations and its results should be publicly reported.

### **Recommendation 6.38 Strengthening the evidence base on reducing and eliminating restrictive practices**

The National Disability Research Partnership should commission a longitudinal study of the impact of positive behaviour support and other strategies to reduce and eliminate restrictive practices. This study should:

- be co-designed with people with disability and relevant experts and professionals from the disability, health, education and justice sectors, to ensure the findings are relevant across a range of settings
- include the experiences and identify the intersecting needs of a broad range of people with disability, such as First Nations people with disability, LGBTIQ+ people with disability, and culturally and linguistically diverse people with disability.

Upon completion, the findings of the study should be made publicly available. Interim findings should be published at regular intervals.

### **Recommendation 6.39 Improving collection and reporting of restrictive practices data**

The Australian Institute of Health and Welfare should work with state and territory governments to develop consistent data definitions and collection methods on restrictive practices across all jurisdictions, and align reporting periods. These definitions and collection methods should be finalised by the end of 2024.

Using consistent definitions and collection methods, state and territory governments should collect and publish data on the use of restrictive practices in health, education and justice settings. This data

should be collected and published on an annual basis, with publication commencing by the end of 2025 at the latest. Data should identify, to the greatest extent practicable:

- restraint type, including chemical, physical, mechanical, environmental and seclusion
- disability status
- types of impairment
- age
- gender
- First Nations people
- culturally and linguistically diverse people
- people who identify as LGBTIQ+.

#### **Recommendation 6.40 Targets and performance indicators to drive the reduction and elimination of restrictive practices**

The Australian Government and state and territory governments should establish sector-specific targets and performance indicators to drive the reduction and elimination of restrictive practices over time. This should be at both the national and state and territory levels for disability, health, education and justice settings. These targets and performance indicators should be established by 1 July 2025 at the latest.

#### **Recommendation 6.41 Legislative prohibition of non-therapeutic sterilisation**

- a. All jurisdictions should amend or enact legislation prohibiting non-therapeutic procedures resulting in permanent sterilisation of people with disability, except where:
  - there is a threat to the life of the person with disability were the procedure not performed or
  - the person with disability is an adult and has given voluntary and informed consent to the procedure, with support for decision-making if required.
- b. All jurisdictions should amend or enact legislation in accordance with paragraph a. by the end of 2024.
- c. The Australian Guardianship and Administrative Council (AGAC) should expand its annual collation and publication of data on the sterilisation of people with disability. This data should include the number of applications, reasons for applications, reasons for the outcomes of applications and the number of approvals to conduct a sterilisation procedure. Where this does not already occur, the data should be collected and provided to AGAC annually by:
  - the Federal Circuit and Family Court of Australia
  - state and territory superior courts
  - state and territory guardianship and administration bodies.
  - The data should be de-identified, as appropriate. It should be disaggregated, to the greatest extent possible, by:
    - disability status
    - types of impairment
    - age
    - gender
    - First Nations people

- culturally and linguistically diverse people
  - people who identify as LGBTIQ+.
- d. A review of legislation enacted or amended according to paragraph a. of this recommendation should be conducted every five years, in light of the data published according to paragraph c. This review should aim to strengthen protections for people with disability and avoid consequences which hamper reproductive autonomy.

# Volume 7: Inclusive education, employment and housing

## Part A: Inclusive education

### **Recommendation 7.1 Provide equal access to mainstream education and enrolment**

States and territories should amend education Acts (or the equivalent) to:

- create a legal entitlement for students with disability to enrol in a local mainstream school
- provide that the right to enrolment is subject only to ‘unjustifiable hardship’ in the sense used in the *Disability Discrimination Act 1992 (Cth)*.

State and territory governments should take the following actions to prevent gatekeeping in mainstream schools:

- maintain a central record of decisions on enrolment refusal or cancellation and provide an annual report to the responsible minister for education on trends and any additional actions required to address barriers
- establish an independent review process to enable a parent or supporter of a child or young person with disability to challenge a refusal to enrol the child or young person in a school.

State and territory educational authorities should disseminate clear, accessible, transparent material for students with disability and their families on their rights, the obligations of schools relating to applications to attend a local school, and review processes.

### **Recommendation 7.2 Prevent the inappropriate use of exclusionary discipline against students with disability**

State and territory educational authorities should review all regulations, rules, procedures and other instruments regulating exclusionary discipline to ensure they:

- adopt the principle that education providers:
  - should avoid the use of exclusionary discipline on students with disability unless exclusion is necessary as a last resort to avert the risk of serious harm to the student, other students or staff
  - in considering the use of exclusionary discipline, consider the student’s disability, needs and age, and the particular effects of exclusionary discipline for young children
  - require steps to be taken before exclusion to ensure an individual behaviour plan and reasonable adjustments have been implemented for the student, including consultation with the student and their family, carers or supporters.
- include a duty for principals to report the repeated use of exclusionary discipline involving a student with disability to an escalation point within educational authorities for independent case management
- include a robust review or appeals process for students with disability and their families or carers and supporters
- ensure students with disability have access to educational materials appropriate to their educational and behavioural needs while subject to exclusionary discipline

- support students with disability to re-engage in education post exclusion. State and territory educational authorities should review provisions governing the registration of non-government schools to impose obligations relating to exclusionary discipline in the non-government sector that are commensurate with those of the government sector.

Section 22(2)(b) of the *Disability Discrimination Act 1992 (Cth)* should be amended to cover 'suspension and exclusion' as well as expulsions.

### **Recommendation 7.3 Improve policies and procedures on the provision of reasonable adjustments to students with disability**

- a. State and territory educational authorities should develop and make available in accessible form:
  - guidelines to enable schools, principals and teachers to comply with their statutory obligations to provide adjustments for children and young people with disability
  - guidelines addressing the relationship between the statutory duty to provide adjustments and duties of care imposed on educational authorities, schools, principals, teachers and staff, such as those imposed by occupational health and safety legislation and the general law
  - guidelines addressing the processes for identifying, planning, implementing and evaluating adjustments required for individual students with disability
  - guidelines explaining the nature and content of the obligation under the *Disability Standards for Education 2005 (Cth)* (Education Standards) to consult with students with disability and their parents, carers and supporters
  - information explaining the sources of funding for providing supports to students with disability and the procedures governing the allocation of funds for that purpose
  - requirements for schools and principals to keep records and to report on the provision of adjustments for individual students with disability
  - guidelines for developing individual learning plans for students with disability, including requirements for keeping records on the learning program for each student and for making the records available to parents, carers and supporters
  - guidelines for ensuring equal access to consent, relationships and sexuality education for students with disability through learning resources, including for neurodiverse students and LGBTIQ+ students.
- b. State and territory educational authorities should ensure that education providers have greater access to tools and resources to:
  - assist principals and teachers to adapt the curriculum and teaching and assessment practices to enable diverse learners, especially those with complex communication or support needs, to participate in learning experiences on the same basis as students without disability enrolled in the same course (subject to the unjustifiable hardship qualification in the *Disability Discrimination Act 1992 (Cth)*)
  - support culturally safe adjustments to teaching strategies for particular students with disability, such as First Nations students and students from culturally and linguistically diverse communities.

- c. The Australian Government, through the responsible minister, should consider whether the Education Standards should be amended to address the proposals in a. and b.. However, any such consideration should not delay state and territory educational authorities implementing a. and b..

#### **Recommendation 7.4 Participation in school communities**

State and territory school educational authorities should:

- wherever practicable, locate any new non-mainstream schools and, over time, relocate existing non-mainstream schools within or in close proximity to mainstream schools
- facilitate, to the maximum extent feasible, participation by individual students and groups of students enrolled in non-mainstream schools in educational, cultural, sporting, recreational and celebratory activities with their peers (whether with or without disability) enrolled in mainstream schools
- create partnerships between mainstream and non-mainstream schools as a means of encouraging and arranging regular interchange between students enrolled in each setting.

#### **Recommendation 7.5 Careers guidance and transition support services**

State and territory educational authorities should implement a careers guidance and transition support service for students with disability to aid transition from all educational institutions to further education and/or open employment. The service should:

- commence transition planning in year 9 in collaboration with students, their parents and carers to help students define and articulate their goals and aspirations beyond school
- take into account the diversity of students with disability, including students with higher levels of support needs, First Nations students and students from culturally and linguistically diverse backgrounds
- provide students with disability and their families access to clear and accessible information and resources about future study options and labour market opportunities
- provide students with opportunities to undertake work experience in open employment aligned with their goals and interests
- provide linkages to further education providers, employment service providers and government services (including the National Disability Coordination Officer Program, the National Disability Insurance Scheme (NDIS) School Leaver Employment Support, Disability Employment Services, and NDIS Local Area Coordinators).

#### **Recommendation 7.6 Student and parental communication and relationships**

- a. State and territory educational authorities should update their policies and guidance for schools to support the implementation and continuous improvement of requirements for student and parental communication and relationships.

These should:

- include clear, accessible material for students with disability and their families on their rights and school obligations
  - target decision-making for individual students and at the whole-of-school-level
  - cover applications to attend a local school and address how students and parents should expect to be involved in decision making, adjustments and complaints handling and informal resolution processes
  - indicate types of decisions that require formal parental agreement, such as approaches to behaviour management
  - be co-designed with people with disability and their families.
- b. State and territory educational authorities should develop material similar to that outlined in a. specifically for First Nations students with disability in consultation with First Nations students with disability, parents and kinship carers. The cultural diversity and understanding of disability in Aboriginal and Torres Strait Islander cultures should be considered in this process.
- c. School principals should work with their governing bodies and school communities to establish local school policies, procedures and practices to enable students with disability and their parents, carers and advocates to fully and effectively take part in the school community and decisions that affect a student's educational experience.
- d. In undertaking c., school principals should consult with First Nations parents and kinship carers and consider the cultural diversity and understanding of disability in Aboriginal and Torres Strait Islander cultures.
- e. The Australian Government, through the responsible minister, should consider updating the *Disability Standards for Education 2005 (Cth)* to:
- ensure students with disability can participate as fully as possible in an age-appropriate manner in decision making concerning their educational programs and the adjustments they require
  - entitle parents, supporters and carers of students with disability to be assisted by schools or principals on decisions relating to school-wide adjustments to facilities and classroom practices of particular significance to students with disability.

#### **Recommendation 7.7 Inclusive education units and First Nations expertise**

- a. State and territory educational authorities should establish inclusive education units within the relevant departments. These units should provide:
- advice to educational authorities, educational institutions and principals on inclusive education issues and policies, and on funding priorities
  - resources and advice to schools and teachers about implementing inclusive education.
- b. Educational authorities should ensure that inclusive education units contain First Nations expertise to allow them to take actions required to improve access to inclusive and culturally appropriate education for First Nations students with disability.



## **Recommendation 7.8 Workforce capabilities, expertise and development**

### *Knowledge and skills*

- a. The Education Ministers Meeting should commission the Australian Institute for Teaching and School Leadership (AITSL) to review and amend the Australian Professional Standards for Teachers (APST) to embed a human rights based approach to inclusive education for students with disability across teachers' careers.
- b. To provide guidance for teachers on the revised APST, the Education Ministers Meeting should instruct AITSL to develop an inclusive education capability framework, setting out the knowledge, skills and attitudes to deliver inclusive education.

### *Continuing professional development*

- c. State and territory educational authorities should create and implement professional development strategies based on an inclusive education capability framework for principals, teachers, teaching assistants and teachers of Deaf children.

### *Disability expertise and skills shortages*

- d. The Education Ministers Meeting should expand the National Teacher Workforce Action Plan to identify actions that can strengthen initial teacher education in inclusive education and attract and retain people with disability and others with expertise in delivering inclusive education.
- e. State and territory governments should increase access to expertise in inclusive education in government schools by:
  - employing lead practitioners specialising in inclusive teaching, behavioural support and deaf education to work across schools in a regional catchment to initiate and lead activities that focus on improving educational opportunities for students with disability, including by establishing inclusive learning environments that meet the needs of students
  - employing skilled and qualified Auslan interpreters
  - setting employment targets for people with disability in government schools and working with all school sectors in their jurisdiction to increase disability employment.

## **Recommendation 7.9 Data, evidence and building best practice**

### *Data development and collection*

- a. The Education Ministers Meeting should:
  - commission a national project to develop data definitions and data collection methods to enable consistent and comparable reporting on educational experiences and outcomes of students with disability
  - ensure data and information (as detailed at the Appendix and disaggregated by Nationally Consistent Collection of Data on School Students with Disability (NCCD) category, gender, age, stage of schooling, First Nations students, students from culturally and linguistically diverse backgrounds and LGBTIQ+ status) is collected by state and territory departments on:
    - student experiences
    - school outcomes for students with disability

- progress in addressing barriers to inclusive education practices.
- b. State and territory governments should enhance data systems and processes to enable all schools to submit at least the minimum data required in the prescribed format.
- c. State and territory school registration authorities should:
  - embed data requirements set by the Education Ministers Meeting in registration requirements for all schools in their jurisdiction
  - require parents registering children with disability for home schooling with the state or territory school regulator to submit standardised information about their child’s educational, social and behavioural progress and support needs to improve understanding of students with disability who are being home schooled and their outcomes.

*Monitoring and reporting*

- d. State and territory education departments should annually report jurisdictional data to the Education Ministers Meeting on minimum data requirements for students with disability. Based on the jurisdictional data, the Education Ministers Meeting should monitor and publicly report annually on:
  - the educational experiences of students with disability
  - outcomes of students with disability
  - progress in addressing barriers to inclusive education practices.
- e. To improve reporting of disability data, the Education Ministers Meeting should:
  - publish school-level NCCD student numbers (by adjustment level) on the My School website, having due regard for privacy issues
  - commission the Australian Curriculum Assessment and Reporting Authority to work with states and territories on data collection requirements to enable reporting on National Assessments Program – Literacy and Numeracy results for students with disability
  - include broader school workforce characteristics and information about workforce shortages in state and territory and Australian Government annual inclusive education reporting.

*Improving the evidence base*

- f. To improve the evidence base for best practice for inclusive education, the Education Ministers Meeting should commission the Australian Education Research Organisation to:
  - develop a research program about inclusive education practices, working with teachers, schools, education systems and people with disability
  - conduct and coordinate inclusive education research
  - support schools to translate research into school practices.

**Recommendation 7.10 Complaint management**

- a. State and territory governments should create or expand existing complaint management offices that operate within educational authorities at arm’s length from schools to help resolve complaints about schools, specifically complaints concerning the treatment of students with disability. These offices should be empowered to:

- provide students and parents with information about their rights and options when managing complaints
  - request information and conduct conciliations, connecting families with advocacy support and specialist disability expertise where needed
  - initiate a formal investigation if a complaint is serious or otherwise indicates systemic issues
  - support and assist the complainant in referring matters to the appropriate regulator or independent oversight body if a complaint cannot be effectively resolved
  - work with schools to analyse complaints and regularly report on how education systems might improve to reduce future complaints
  - work with school principals to ensure school policies are student-centric, accessible, efficient, safe, trauma-informed and culturally appropriate.
- b. The Australian Government should include new duties and measures relating to complaint management procedures in the *Disability Standards for Education 2005 (Cth) (Education Standards)* to help achieve national quality and consistency, and ensure complaint handling processes are student-centric, accessible, efficient, safe, trauma-informed and culturally appropriate.
- c. State and territory school registration authorities should embed new complaint handling duties and measures for compliance, as defined in the *Education Standards*, in registration requirements for all schools in their jurisdiction as a basis to monitor and enforce compliance.
- d. School principals should ensure their school-level operating policies and procedures for handling complaints:
- satisfy the *Education Standards* requirements
  - are student-centric, accessible, efficient, safe, trauma-informed and culturally appropriate
  - are observed in practice.

### **Recommendation 7.11 Stronger oversight and enforcement of school duties**

- a. State and territory governments should strengthen the enforcement of inclusive education practices by expanding school registration requirements to include:
- school enrolment policies (see Recommendation 7.1)
  - procedures to ensure members of the school workforce understand their obligations and are supported to access professional development (see Recommendation 7.8)
  - procedures to collect, analyse and report on complaints and the use of restrictive practices and exclusionary discipline (see Recommendations 7.2 and 7.10)
  - reporting on the use of funding for students with disability (see Recommendation 7.12).
- b. State and territory school registration authorities should monitor compliance with these requirements through cyclical reviews of schools and out-of-cycle reviews in response to individual complaints (or complaint trends) or other information that indicates possible non-compliance with regulatory requirements.
- c. The Western Australian, Australian Capital Territory and Northern Territory governments should identify appropriate mechanisms to ensure government schools in their jurisdictions are subject to these mandatory obligations, with

appropriate monitoring, compliance and enforcement.

### **Recommendation 7.12 Improving funding**

- a. The Australian Government should work with the Education Ministers Meeting to refine the Nationally Consistent Collection of Data on School Students with Disability (NCCD) levels of adjustments and associated funding for students with disability in response to the findings of the Student with disability loading settings review.
- b. The Australian Government and the Education Ministers Meeting should review disability loading settings and total funding for adjustments every five years to ensure the funding allocated bears a close relationship to the actual cost of supporting students with disability in classrooms and to determine appropriate indexation and distribution of funding.
- c. State and territory governments should ensure they are using a disability funding model based on strengths and needs that aligns with enhanced NCCD levels of adjustment and Australian Government needs-based funding arrangements to enable students with disability to access and participate in education on an equal basis to their peers.
- d. State and territory education departments should improve transparency on the use of disability funding in the government school sector by:
  - developing a methodology and reporting template to record the use of all sources of school funding against defined categories of adjustments and support for students with disability
  - applying this methodology and template to record expenditure on services and staff commissioned by the department on behalf of schools for students with disability
  - publicly reporting on how the needs of students with disability are being met from all available resources, with early priority given to capturing the use of disability-specific loadings and other disability-specific program funding.
- e. State and territory school registration authorities should require schools to complete the funding template mentioned at d. and submit the template to the relevant state or territory education department

### **Recommendation 7.13 National Roadmap to Inclusive Education**

- a. The Education Ministers Meeting should publicly release a 'National Roadmap to Inclusive Education' for students with disability. The roadmap should:
  - detail the outcome measures, targets, actions and milestones for delivering the Royal Commission's recommendations for inclusive education
  - provide public transparency on how the recommendations will be implemented and progress tracked and publicly reported.
- b. State and territory education ministers should report annually to the Education Ministers Meeting on progress against agreed milestones and associated outcome performance measures in the roadmap. Annual progress reports should outline actions to overcome identified barriers to progress and be publicly released.
- c. The Education Ministers Meeting should identify the National Roadmap to Inclusive Education in its 2024 report to National Cabinet as one of its priorities and include

it in its workplan.

### **Recommendation 7.14 Phasing out and ending special/segregated education**

Commissioners Bennett, Galbally and McEwin recommend:

- a. The Australian Government and state and territory governments should recognise that inclusive education as required by article 24 of *the Convention on the Rights of Persons with Disabilities* is not compatible with sustaining special/segregated education as a long-term feature of education systems in Australia.
- b. As part of the National School Reform Agreement 2025–2029, the Education Ministers Meeting should agree to:
  - the phasing out of special/segregated education
  - no new special/segregated schools being built or new special/segregated classes or units being included within schools from 2025
  - a process for work on milestones and activities related to ceasing special/segregated education by all jurisdictions.
- c. As part of the National School Reform Agreement 2030–2034, the Education Ministers Meeting should agree to milestones for phasing out and ending special/segregated education settings and financial penalties for failing to meet these milestones, including:
  - no new enrolments of students with disability in special/segregated schools from 2032
  - no new placements of students with disability in special/segregated units or classes from 2041
  - no students remaining in special/segregated schools by the end of 2051.
- d. The Education Ministers Meeting should update the Roadmap to Inclusive Education and Australia’s Disability Strategy to incorporate the milestones and actions to phase out and end special/segregated education settings included in the National School Reform Agreement 2030–2034.
- e. The Australian Government should consider the design of a ‘Transition Fund’ under the National School Reform Agreement from 2028 to provide discrete funding to schools that require additional support as part of their transition journey, with clear performance and reporting requirements.
- f. Consistent with phasing out and ending special/segregated education, states and territories should implement the following recommendations:
  - when no students are in special/segregated schools, the sunsetting of:
    - measures to prevent gatekeeping (see Recommendation 7.1)
    - provisions to facilitate the engagement of students with disability enrolled in special/segregated schools with students and activities of mainstream schools (see Recommendation 7.4)
  - to prevent stigmatisation and segregation of students with disability, ensure the careers guidance and transition support program for students with disability (see Recommendation 7.5):
    - is delivered alongside careers guidance for students without disability
    - has clear rules that no student with disability can be referred to work experience or employment through Australian Disability Enterprises.

## **Recommendation 7.15 An alternative approach**

The Chair and Commissioners Mason and Ryan recommend:

- a. State and territory educational authorities should implement the following measures:
  - wherever practicable locate new non-mainstream schools (that is, schools that enrol exclusively or primarily children and young people with complex support needs) and relocate existing non-mainstream schools within or in close proximity to mainstream schools
  - create partnerships between mainstream and non-mainstream schools as a means of encouraging and arranging regular interchange between groups of students enrolled in the schools
  - facilitate to the maximum extent feasible participation by individual students and groups of students enrolled in non-mainstream schools in educational, cultural, sporting, recreational and celebratory activities with their peers in partnership with mainstream schools and other educational institutions
  - arrange for students in non-mainstream schools, where practicable, to participate in classes and educational activities with their peers in mainstream schools
  - establish programs for students enrolled in mainstream schools to participate in activities with their peers in non-mainstream schools
  - provide, where appropriate, for concurrent enrolment for individual students in both mainstream and non-mainstream schools
  - assist non-mainstream schools to facilitate where appropriate, the transition of students with disability, particularly those with complex support needs, to mainstream schools, whether on a full-time or part-time basis
  - provide assistance to mainstream and non-mainstream schools in understanding the strengths and skills of students with disability for post-school transition, including assistance in planning and preparing for further study and training
  - ensure non-mainstream schools encourage and support students with disability completing their education to seek and obtain employment in the open labour market, rather than in Australian Disability Enterprises or similar environments.
- b. The National Disability Commission (see Recommendation 5.5) should conduct or arrange for a comprehensive review of progress towards providing inclusive education for children and young people with complex support needs. The review's assessment should include the matters we have identified.

## **Part B: Inclusive employment**

### **Recommendation 7.16 Priorities for inclusion in the new Disability Employment Services model**

The Australian Government Department of Social Services should ensure that the design of the new Disability Employment Services model:

- is developed using inclusive design principles, and co-designed by people with disability who are employed as paid members of the design team adopts customised employment models as a core component of service provision

- ensures funding arrangements facilitate flexible employment supports, such as customised employment, and support the progress of Disability Employment Services participants in achieving employment goals and long-term employment outcomes
- considers options to remove the requirement for a person to have a minimum future work capacity of eight hours a week in order to access the Disability Employment Services program, to facilitate access for all people with disability to the new model.

### **Recommendation 7.17 Develop education and training resources for Disability Employment Services staff**

The Australian Government Department of Social Services should develop a suite of accessible education and training resources for providers of Disability Employment Services to upskill their staff.

Resources should be co-designed by people with disability and involve consultation with advocates, employers and Disability Employment Services providers.

Resources should address the gaps we have identified, including in:

- disability awareness
- cultural competence
- human rights
- customised employment
- employer engagement
- Disability Employment Services guidelines and procedures.

### **Recommendation 7.18 Establish specific and disaggregated targets for disability employment in the public sector**

The Australian Government and state and territory governments should adopt specific and disaggregated targets to increase the proportion in the public sector of:

- employees with disability at entry and graduate levels
- employees with disability at executive levels
- employees with cognitive disability.

Public sector targets should be supported by:

- clear employment pathways into the relevant public services for each target cohort
- measures and programs to support the recruitment and progression of each target cohort
- provision of appropriate supports.

The Australian Public Service Commission and state and territory public service commissions should ensure these targets contribute to their existing overall employment targets for people with disability.



### **Recommendation 7.19 Establish specific disability employment targets for new public service hires in agencies and departments**

The Australian Government and state and territory government departments and agencies should be required to set a target to ensure that a proportion of new public service hires to their respective workforce are people with disability.

The target should be at least 7 per cent by 2025.

The target should increase to at least 9 per cent by 2030.

### **Recommendation 7.20 Clarify the application of the merit principle in public sector recruitment**

The Australian Public Service Commission should incorporate clearer directions in Australian Public Service training and support on applying the merit principle in recruitment. Training and support materials should:

- specifically address the importance of having a diverse public sector workforce that reflects the community it serves
- provide guidance in considering the need for diversity in the application of the merit principle in recruitment.

### **Recommendation 7.21 Introduce consistent adjustment principles and adjustment passports**

The Australian Public Service Commission should:

- a. lead the development of common principles to underpin adjustment policies for providing and managing adjustments in the public sector. This should occur in partnership with state and territory public service commissions. The principles should be used to inform Australian Government and state and territory government department policies and procedures on adjustments. The principles should include:
  - clear and accessible processes for staff to request adjustments
  - timeframes for implementing adjustments and a process for review and seeking feedback on adjustments
  - clear and accessible processes for making and responding to complaints relating to adjustments (including complaints about refusal to provide an adjustment)
  - clear policies on handling and sharing information about a person's disability or adjustments
  - referrals to internal and external supports in relation to requesting and managing adjustments
  - requirements to collect data on applications for, and the implementation of, adjustments.
- b. develop an Australian Public Service-wide adjustment passport to improve the ease with which people with disability can maintain and transfer their adjustments when moving within the Australian Public Service.



### **Recommendation 7.22 Public reporting on public sector disability employment strategies and targets**

The Australian Public Service Commission and state and territory public service commissions should report annually on the progress of their public sector disability employment strategies, including progress against overall and disaggregated targets for increasing the percentage of employees with disability. These reports should be published and made available in accessible formats.

### **Recommendation 7.23 Strengthen disability employment procurement policies**

The Australian Government and state and territory governments should adopt procurement policies that:

- a. favour businesses and entities able to demonstrate, in accordance with published criteria, they are providing employment opportunities for people with disability in open, inclusive and accessible settings, including people with intellectual disability or cognitive impairments.
- b. require all information and communication technology purchases to comply with the current Australian information and communication technology (ICT) accessibility standard (AS EN 301 549:2020 – Accessibility requirements for ICT products and services)

### **Recommendation 7.24 Convene a Disability Employment Rights Council**

The Australian Government should convene a Disability Employment Rights Council to improve coordination, consistency and clarity across regulatory bodies and frameworks to improve outcomes for people with disability in employment.

### **Recommendation 7.25 Amend the *Fair Work Act 2009 (Cth)***

*The Fair Work Act 2009 (Cth)* should be amended to:

- a. ensure the definition of ‘disability’ is consistent with the *Disability Discrimination Act 1992 (Cth)*
- b. remove the words ‘physical and mental’ preceding ‘disability’ in sections 351 and 772.

### **Recommendation 7.26 Amend the *Disability Discrimination Act 1992 (Cth)***

Section 21A of the *Disability Discrimination Act 1992 (Cth)* should be amended to expand the factors to be considered in determining whether a prospective or existing employee would be able to carry out the inherent requirements of a particular role.

These factors include the:

- nature and extent of any adjustments made
- extent of consultation with any person with disability concerned.

### **Recommendation 7.27 Enable a Fair Work Ombudsman referral mechanism**

The Australian Government should expand the functions of the Fair Work Ombudsman to allow a matter involving an employee with disability to be referred back to the Fair Work Ombudsman by relevant authorities if they:

- consider a complaint may be best addressed by the Fair Work Ombudsman
- have the complainant's consent to do so.

The referral mechanism should be available in instances where a matter was initially referred by the Fair Work Ombudsman to a relevant authority.

### **Recommendation 7.28 Improve information about wages and the Disability Support Pension**

The Australian Government should fund Disability Representative Organisations to deliver an information campaign for employees with disability in Australian Disability Enterprises. This campaign should provide information about:

- open employment, including wage conditions
- how receipt of the Disability Support Pension (DSP) interacts with a person's wages, including –
  - assistance with financial literacy materials
  - supports for individuals to calculate how changes to their DSP or wages impact their overall income and financial situation
- options for a person to suspend their DSP if they are earning above the threshold
- who to contact to ask questions or obtain further information.

This information should be available in a range of accessible formats.

### **Recommendation 7.29 Embed an 'open employment first' approach in the NDIS Participant Employment Strategy**

Following the conclusion of the NDIS Participant Employment Strategy in 2023, the National Disability Insurance Scheme (NDIS) should adopt an 'open employment first' approach in the next iteration of the strategy. The strategy should:

- ensure the development of employment goals in participants' NDIS plans considers employment in open and integrated employment settings as a first option
- provide training for Local Area Coordinators, National Disability Insurance Agency planners and support coordinators to build knowledge, resources and capacity to encourage participants to –
  - develop employment goals in open and integrated employment settings as a first option
  - identify appropriate supports available to achieve open employment goalsestablish a target to increase the proportion of participants in open and integrated employment settings
- build the knowledge and capacity of NDIS employment support providers to assist participants to –
  - transition from Australian Disability Enterprises to open and integrated employment settings

- provide ongoing support in open and integrated employment settings.

### **Recommendation 7.30 Support the transition to inclusive employment**

The Australian Government Department of Social Services should develop a plan to support people with disability working in Australian Disability Enterprises (ADEs) to move to inclusive, open employment options in a range of settings.

The plan should incorporate:

- the option for people with disability to continue working in ADEs, with strong and appropriate safeguards, if that is their free and informed choice. Commissioners Bennett, Galbally, Mason and McEwin provide a recommendation to phase out ADEs by 2034 (Recommendation 7.32). They support this element of Recommendation 7.30 until ADEs are phased out
- action to increase employment opportunities in open and inclusive settings for people with disability (linking with Recommendation 7.29)
- improved information for people with disability about employment supports, opportunities in other settings, wages and the Disability Support Pension (linking with Recommendation 7.28)
- active consultation with people with disability, Disability Representative Organisations and Disabled People's Organisations Australia, and the adoption of inclusive design principles in developing and implementing the plan
- the Australian Government working with industry to support people with disability to access more inclusive, open employment options and to transform their segregated employment services to a more comprehensive service offering
- improved collaboration between the National Disability Insurance Scheme and Disability Employment Services to ensure different employment services work cohesively to deliver supports for people with intellectual disability and others.

### **Recommendation 7.31 Raise subminimum wages**

- a. The Australian Government should introduce a scheme to ensure that employees with disability are paid at least half the minimum wage. The scheme should include:
  - revision of the productivity-based wages calculation to accommodate the move to a new minimum amount of 50 per cent of the current minimum wage
  - a provision for the Australian Government to subsidise employers for the difference between the wages payable under the relevant award or enterprise agreement and the new minimum wage until 2034.
- b. A review of the scheme should be undertaken by the Disability Reform Ministerial Council after five years of operation.
- c. The Australian Government should use the results of the review to develop a model and pathway to lift minimum wages payable to employees with disability to 100 per cent of the minimum wage by 2034.

### **Recommendation 7.32 End segregated employment by 2034**

- a. Commissioners Bennett, Galbally, Mason and McEwin recommend the Australian Government Department of Social Services should develop and implement a National Inclusive Employment Roadmap to transform Australian Disability Enterprises (ADEs) and eliminate subminimum wages for people with disability by 2034.
- b. The National Inclusive Employment Roadmap should be centred on the following principles:
  - equal access for people with disability to all opportunities for employment, starting with the Australian Public Service and state and territory public services
  - increased availability of jobs for people with disability, especially in:
    - Australian and state and territory public services supported by the payment of full minimum wages to all employees, consistent with the public sector acting as a model employer. This recommendation would operate in advance of Recommendation 7.31 to raise all subminimum wages to the full minimum wage by 2034
    - non-government organisations that receive government grants
    - private companies that receive government procurement contracts
  - availability of evidence-based supports to facilitate job readiness, participation and ongoing development, particularly for people with intellectual disability
  - better pathways to work for people with disability
  - as set out in Recommendation 7.31, lifting wages to 50 per cent of the minimum wage, with all people with disability moving to the full minimum wage by 2034 (noting our expectation that the public sector, as a model employer, will pay full minimum wages to employees with disability before that time)
  - governance and accountability for system change.
- c. The National Inclusive Employment Roadmap should address:
  - the reform of ADEs to operate in accordance with the social firm model, providing open workplaces in which employees with disability can receive support in an integrated setting to undertake work tasks, develop skills and transition to further open employment
  - the establishment of a grant-based Structural Adjustment Fund to support increases in the minimum wage and achieve transformation targets in ADEs
  - support for people with disability to transition to open employment through programs such as the School Leaver Employment Supports program.
- d. To support the National Inclusive Employment Roadmap as ADEs transform into social firms, government procurement rules should also be amended to give preference to enterprises that can demonstrate they provide employment opportunities to people with disability in open, inclusive and accessible settings and pay employees with disability at least the full minimum wage at the time of the procurement process (this recommendation would operate in advance of the general recommendation to raise all subminimum wages to the full minimum wage by 2034).

- e. The implementation of the National Inclusive Employment Roadmap should be monitored by the Disability Reform Ministerial Council.

### **Part C: Inclusive housing**

#### **Recommendation 7.33 Prioritise people with disability in key national housing and homelessness approaches**

- a. The Australian Government should, in collaboration with state and territory governments, expressly identify people with disability in key housing-related agreements and planning including the:
  - National Housing and Homelessness Agreement (NHHA), which should include people with disability as a priority group of housing and homelessness reforms
  - proposed National Housing and Homelessness Plan, which should include people with disability as a priority group, and include the measurement and evaluation of outcomes for people with disability
  - National Housing Supply and Affordability Council, which should include people with disability as a priority group in the development of housing supply and affordability policy advice, data collection and reporting.
- b. All state and territory governments should include people with disability in housing and homelessness strategies, policies and action plans developed under the NHHA. This should include people with disability as a priority group, and the monitoring and evaluation of implementation and outcomes for people with disability.

#### **Recommendation 7.34 Include homelessness in Australia's Disability Strategy**

The Australian Government should increase the focus on homelessness in Australia's Disability Strategy by:

- a. ensuring consultations concerning, and reviews of, Australia's Disability Strategy include people with disability at risk of experiencing homelessness and their representative organisations
- b. expressly including homelessness as a policy priority within the 'Inclusive Homes and Communities' key outcomes.

#### **Recommendation 7.35 Increase the availability and supply of accessible and adaptive housing for people with disability through the National Construction Code**

State and territory governments should commit to increasing the availability and supply of accessible and adaptive housing for people with disability by:

- a. immediately adopting the mandatory Australian Building Codes Board (ABCB) Livable Housing Design Standard for all new dwellings if they have not done so already, and developing a plan for the full implementation of the standard, including timeframes and outcomes measures
- b. adopting the voluntary ABCB Livable Housing Design Standard for all new social housing construction
- c. auditing the demand for, and accessibility of, current crisis housing (including domestic family violence shelters and refuges, and natural disaster crisis accommodation) to –

- determine the appropriate amount, location and cost of crisis housing required to meet the needs of people with disability
- set appropriate targets for new crisis housing construction and refurbishment that meet the voluntary ABCB Livable Housing Design Standard.

### **Recommendation 7.36 Improve social housing operational policy and processes**

State and territory governments should develop and implement accessible and inclusive processes for allocating and modifying social housing for people with disability, including by:

- a. reviewing and amending application processes to:
  - identify whether applicants have a disability or accessibility needs, including those relating to communication, housing and access to community/support networks and services
  - put processes in place to update this information as needs change
- b. reviewing, amending and publishing (in accessible formats) housing allocation and 'reasonable offer' policies and procedures to ensure these can be easily understood and do not disadvantage people with disability seeking particular adjustments or modifications, or people who decline housing for accessibility reasons
- c. reviewing, amending and publishing (in accessible formats) housing modification policies. The policies should clearly articulate who is responsible for organising and funding housing modifications, expected timeframes, and contacts for following up and raising concerns.

### **Recommendation 7.37 Increase tenancy and occupancy protections for people with disability**

States and territories should review legislation governing the tenancy and occupancy rights of people with disability and adopt the best regulatory and legislative models currently in force, including:

- a. in the case of tenancies –
  - enacting legislation to replace landlords' 'no-grounds' termination rights with 'reasonable grounds' as currently specified in Victoria, Queensland and Tasmania
  - for both social housing and private housing tenancies, where a tribunal has discretion whether or not to order termination of the tenancy or that the tenant give up possession, empowering the tribunal to take the tenant's or a co-occupier's disability and the nature of that disability into account.
- b. in the case of non-tenancy accommodation –
  - adopting the provisions included in the *Residential Tenancies Act 1997 (Vic)* Part 12A to protect residents of Specialist Disability Accommodation (SDA) under the National Disability Insurance Scheme
  - introducing 'occupancy principles' similar to those under the *Boarding Houses Act 2012 (NSW)*, to cover all non-SDA housing, such as assisted boarding houses in New South Wales and supported residential services in Victoria
  - extending these occupancy principles to cover 'general boarding houses' in New South Wales and unsupported boarding and rooming houses in other jurisdictions where many people with disability live. This reform should

- include conferring jurisdiction on the appropriate tribunal to resolve disputes, particularly in relation to eviction
- in hearing disputes about eviction, tribunals be required when determining whether to make an eviction order to consider the occupant’s disability, the nature of that disability, the possibility of retaliatory eviction, and the likelihood of finding suitable alternative accommodation.

**Recommendation 7.38 Minimum service standards and monitoring and oversight of supported residential services and their equivalents**

This recommendation applies to state and territory government entities responsible for regulating privately operated and government-funded board and lodging-type supported accommodation services – including supported residential services (SRS) (in Victoria), assisted boarding houses (in New South Wales), Level 3 residential centres (Queensland), and supported residential facilities (SRF) (in South Australia). The entities should develop and implement minimum service and accommodation standards, strengthen oversight mechanisms, and increase service-level monitoring activities and compliance action, as follows:

- a. Minimum standards should require all SRS providers and their equivalents in other jurisdictions to –
  - develop support plans for each resident, covering personal care, financial management, medication management, and the use of restrictive practices
  - keep up-to-date records of how services are delivered in line with support plans, to allow regulatory bodies to more effectively monitor the quality of supports and services by regulatory bodies
  - establish clear complaint management processes, including how complaints are reported to the central registration body, and a feedback loop for residents, their family and advocates
  - guarantee access to independent advocacy services through advocacy organisations and community visitor schemes
  - support residents to access independent advocacy services focused on identifying alternative, longer term accommodation options in recognition of the transitional nature of these services.
- b. Monitoring and oversight mechanisms for SRS and their equivalents in other jurisdictions should –
  - require central registration for all SRS and equivalent services with the relevant state or territory department responsible for SRS standards require all SRS and their equivalents to undergo an initial audit when seeking registration, as well as ongoing audits (minimum yearly) for monitoring and compliance with all minimum standards. Audits should include direct engagement with people with disability residing in SRS and their equivalents, and should be undertaken centrally by the responsible state or territory department
  - establish procedures to monitor services in response to complaints and incidents, including when and how the relevant state or territory department will undertake investigations
  - establish compliance activities in response to audit results and investigations following complaints and incidents, including when registration will be impacted



- include the specific rights of community visitor programs to attend and report on standards within SRS and their equivalents
  - be developed in consultation with other regulatory systems to identify and close regulatory gaps between schemes and settings including SRS, the National Disability Insurance Scheme, and in aged care and mental health services.
- c. Regulatory entities should have adequate powers to enforce all standards. Up-to-date records of infringements, enforcement action and remedies should be maintained centrally. The regulatory entities should notify substantiated infringements by providers to other oversight bodies with responsibilities for those providers, including the NDIS Quality and Safeguards Commission.
  - d. States and territories should consider whether these recommendations should be implemented in relation to other forms of marginal accommodation for people with disability, including general boarding houses and caravan parks.

**Recommendation 7.39 Preventing homelessness when people with disability transition from service or institutional settings**

The Australian Government (including the National Disability Insurance Agency (NDIA)) and state and territory governments should commit to a policy of ‘no leaving into homelessness’ for people with disability.

The Australian Government (including the NDIA) and state and territory governments should establish or nominate a lead agency with responsibility for planning and coordinating the transition of people with disability from service or institutional settings (including health services, mental health services, correctional facilities, and out-of-home care) directly into safe and appropriate housing.

The lead agency should be the NDIA when the person is a National Disability Insurance Scheme (NDIS) participant (consistent with the role of the NDIS under Applied Principles and Tables of Support). If the person is not an NDIS participant, the lead agency should be the agency responsible for the service or institutional setting at the time the person leaves.

The role of the lead agency should include:

- developing and implementing individual plans for people with disability leaving service or institutional settings to identify housing, services and supports for a successful transition into secure housing
- ensuring supports can be put in place before a person with disability leaves the service or institutional setting
- coordinating the implementation of the plan until the person with disability has successfully transitioned to safe and appropriate housing.

**Recommendation 7.40 Address homelessness for people with disability in the National Housing and Homelessness Plan**

In developing the National Housing and Homelessness Plan, the Australian Government, working with state and territory governments, should:

- a. identify people with disability, particularly people with intellectual disability or cognitive impairment, as a discrete cohort or cohorts for intensive homelessness support, recognising their needs, circumstances and diversity



- b. review the adequacy of funding for homelessness, with particular regard to the cost of providing more intensive homelessness support for people with disability and complex needs, and current levels of unmet demand
- c. expand pathways and support for people with disability out of homelessness, including through Housing First programs
- d. consider establishing free, independent legal advice and advocacy services for people with disability experiencing homelessness to help them navigate the different homelessness supports to which they are entitled at state or territory and Australian Government levels.

#### **Recommendation 7.41 Group home reform**

The NDIS Quality and Safeguards Commission should prioritise the implementation of the Own Motion Inquiry into Aspects of Supported Accommodation – Action Plan (the Action Plan) and expand actions to include:

- a. a specific review of mechanisms to transition away from allowing the same provider to provide Supported Independent Living and Specialist Disability Accommodation services, with interim arrangements to strengthen oversight to address and monitor conflicts of interest (under Action 8)
- b. strengthening how disability providers implement models of practice, such as Active Supports, to ensure that people with disability living in group homes are actively supported to have opportunities for greater social interaction and community participation and inclusion (under Action 2)
- c. developing an implementation plan for the Action Plan, with –
  - explicit timeframes for delivery
  - annual reporting on progress and outcomes to the Disability Reform Ministerial Council.

#### **Recommendation 7.42 Improve access to alternative housing options**

The National Disability Insurance Agency (NDIA) should work with the Australian Government, and state and territory governments, to expand alternative housing options and support for people with disability to access and transition to these options through a proactive market enablement strategy. This should include:

- a. an increase in innovative housing options, such as by –
  - expanding the NDIA Home and Living Demonstration Projects with additional rounds from 2024. These rounds should –
    - focus on exploring diverse market mechanisms for sustainable housing models
    - include ongoing extensive and independent evaluation and dissemination of emerging best practice to help bring new models to scale
  - establishing a policy unit to co-design, guide and influence the development and implementation of more contemporary accommodation models
  - conducting comprehensive market research to assess market demand and understand National Disability Insurance Scheme (NDIS) participants’ housing preferences to inform state and local governments, housing authorities and developers, and drive innovation.

- b. reform of NDIS participant funding models, including Supported Independent Living, Specialist Disability Accommodation and Individualised Living Options to provide greater flexibility. In particular, this flexibility should ensure that administrative and pricing mechanisms do not favour group home living over other models of inclusive housing.
- c. development of clear and supportive transition pathways that provide access to advice, advocacy and support for people with disability to understand and explore their housing options, make decisions about transitioning to the housing of their choice, and receive support for that transition. This should include –
  - an individualised assessment of a person’s housing needs and preferences, with the option for this to be regularly updated
  - an update of a person’s NDIS plan to include specific support, including capacity building to support the decision to transition to more independent living
  - where a person is interested in changing housing, the development of an individual transition plan that identifies current available and emerging alternative housing options, beyond the offerings of their current provider
  - access to independent advocacy and an independent support coordinator to provide support for and facilitate the transition.
- d. prioritisation of the implementation of the NDIA Home and Living Framework, including–
  - establishing explicit timeframes for its implementation that recognise the urgency of these reforms, in relation to realising the rights of people with disability under the *Convention on the Rights of Persons with Disabilities*
  - continuing work with the disability community to identify key outcomes and measures, and developing a comprehensive monitoring and evaluation plan to measure and report on progress
  - ensuring the chosen approaches address the key elements set out above in this recommendation, including –
    - providing a dedicated pathway for participants with a current or anticipated high need for home and living supports
    - ensuring participants taking this pathway have appropriate and timely support to explore and design individualised home and living solutions that work for them.

**Recommendation 7.43 A roadmap to phase out group homes within 15 years**

Commissioners Bennett, Galbally, Mason and McEwin recommend the Australian Government and state and territory governments develop and implement a comprehensive roadmap to phase out group homes within the next 15 years. This roadmap should address delivering inclusive housing supply to meet demand, transition support for people with disability, and implementation planning for phasing out group homes.

It should include:

- a. delivery of inclusive housing supply to meet demand, by –
  - undertaking a comprehensive assessment of existing service demand (including people with disability who are currently living in group homes and current unmet needs) and projected service demand (forecasted demand for supported accommodation over the next 30 years)

- assessing projected supply of alternative housing to inform planning for the transition of people out of group homes, including conducting a stocktake of existing disability housing assets that may be repurposed or used to increase the supply of inclusive housing
- piloting alternative housing models with increased investment to roll out successful models in line with supply and demand modelling to meet future housing needs for people with disability (see also Recommendation 7.42).
- b. a review of the current Specialist Disability Accommodation (SDA) Pricing and Payments Framework to ensure it remains fit for purpose, focusing on ensuring that –
  - a data-driven approach is used to direct investment where it has the greatest benefit for participants and the National Disability Insurance Scheme (NDIS)
  - NDIS funding for specialist accommodation is directed to those participants with significant functional impairment or high support needs for whom specialised housing would deliver a measurable benefit
  - the needs of people with disability for affordable and accessible housing are prioritised by state and territory governments
  - prices are set to encourage development of best practice examples of SDA.
- c. transition support for people currently living in group homes, including through –
  - a transition pathway that provides access to advice, advocacy and support for people with disability to understand and explore their housing options, make decisions about transitioning to the housing of their choice, and receive support for that transition (see also Recommendation 7.42)
  - interim improvements in group home oversight and practices to ensure that people with disability living in group homes are safe and have greater choice and control during this transition period (see also Recommendation 7.41)
  - grandfathering arrangements for those people who wish to stay in their group home, including consideration of additional financial support to maintain financially viable group home arrangements where necessary
- d. implementation planning undertaken through co-design with people with disability and the disability community, including –
  - a specific timeframe for ceasing construction of any new group homes (within the next two years)
  - a specific timeframe for ceasing placement of new residents in group homes (within five years)
  - a specific timeframe for completing transition of those residents who wish to move from group homes to alternative housing options (within 15 years)
  - development of an outcomes-based evaluation framework, tool and processes to track short-, medium- and long-term outcomes across the roadmap, and build an understanding of emerging best practice.

**Recommendation 7.44 A roadmap to phase out group homes over a generational timeframe**

Commissioner Ryan recommends the Australian Government and state and territory governments commit to phasing out group homes in stages. This commitment should include:

- a. immediate commitments to reduce the reliance on group homes, including –
  - not approving new four- to six-bedroom group home models for Specialist Disability Accommodation

- only allowing new National Disability Insurance Scheme participants to enter group home accommodation as a last resort
  - prioritising moving existing residents of group homes to move into smaller groups over time on request, subject to need
- b. development of a staged approach to phasing out group homes, including consideration of housing availability, transition logistics and financial impacts. Annual progress and outcomes should be reported to the Disability Reform Ministerial Council.

# Volume 8: Criminal justice and people with disability

## **Recommendation 8.1 Conditions in custody for people with disability**

State and territory governments should uphold the rights of people with disability who are in custody. Consistent with article 14 of the *Convention on the Rights of Persons with Disabilities*, all corrective service and youth justice agencies should provide people with disability with the disability supports they require to place them in the same position, so far as feasible, as other people in custody.

## **Recommendation 8.2 Disability awareness in OPCAT monitoring**

In implementing the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, the Australian Government, in consultation with the state and territory governments, should support the development of a human rights education and training strategy that includes disability awareness training for National Preventive Mechanisms (NPMs), detention authorities and their staff. NPMs should:

- engage with disability organisations about the needs of people with disability in places of detention
- obtain training and education for their staff on the types of disability and needs of people with disability in places of detention, including the impact of intersectional disadvantage
- obtain the views of people with disability in places of detention by directly engaging with them about their experiences in places of detention
- have effective mechanisms for obtaining the views of people with disability in places of detention.

## **Recommendation 8.3 Prohibiting solitary confinement in youth detention States and territories should:**

- a. introduce legislation to prohibit solitary confinement in youth justice settings (being the enforced isolation or segregation for any purpose of a child or young person for 22 or more hours in any day)
- b. introduce legislation to prohibit the use of isolation (however described) in youth detention centres as punishment in any circumstance
- c. review legislation, policy and procedures to ensure children with disability are not subjected to isolation practices amounting to solitary confinement
- d. ensure legislation authorising isolation (including lockdowns) in youth detention centres provides for its use:
  - as a temporary response to behaviour that poses a serious and immediate risk of harm to an individual
  - as a last resort after all other measures to address risk have been exhausted
  - for a period that must not exceed a specified number of hours in any day
- e. ensure legislation authorising isolation (including lockdowns) in youth detention centres provides at a minimum the following protections for children with disability:

- a requirement to take into account the child's disability needs before any isolation period is authorised
- meaningful human contact during the period of isolation
- access to the community equivalent standard of health care, including mental health services during the period of isolation
- regular review of the order and circumstances authorising isolation
- the creation and keeping of detailed records relevant to the period of isolation and the provision of a copy of such records to the relevant body with independent oversight of places of detention (such as the Inspector of Custodial Services).

#### **Recommendation 8.4 Screening and assessment for disability in youth detention**

State and territory governments should ensure timely screening and expert assessment are available for individual children with cognitive disability involved in the criminal justice system (including, but not limited to, detention settings) and that they receive appropriate responses, including therapeutic and other interventions.

#### **Recommendation 8.5 Disability training for staff in youth detention**

State and territory governments should ensure staff and officials in youth detention centres at all levels receive appropriate initial and ongoing training and support in relation to the needs and experiences of children with disability. This includes training and support on trauma-informed care and culturally appropriate and gender responsive approaches to children with disability in detention.

#### **Recommendation 8.6 Western Australia youth detention staff retention**

The Department of Justice of Western Australia should immediately review its youth justice staffing and recruitment model to ensure sufficient, suitably trained staff are available to supervise children and young people to minimise lockdowns and prevent the solitary confinement of detainees. This should include developing and implementing a recruitment and retention strategy that:

- addresses high staff attrition rates in youth detention
- promotes representation at senior management level of staff with disability and First Nations backgrounds
- includes measures to help staff access mental health support.

#### **Recommendation 8.7 Western Australia youth detention operating philosophy**

The Department of Justice of Western Australia (through the Corrective Services Division) should:

- immediately cease confinement practices at youth detention centres amounting to solitary confinement of children with disability
- ensure decisions leading to the isolation of children with disability are made in conformity with legal requirements
- implement a new operating philosophy and service model to manage detainees with disability in a therapeutic, non-punitive, non-adversarial, trauma-informed and culturally competent way
- ensure the operating philosophy and implementation plan are developed in conjunction with people with disability and First Nations people

- release a clear timeline for publication of its new operating philosophy and service model for youth detention in Western Australia and the associated implementation plan
- raise awareness at every level of staff in the youth detention centres concerning the support needs of people with cognitive disability and foster respect for the rights of people with disability
- ensure lawyers representing detained clients are allowed adequate time and assured of confidentiality at youth detention centres to take instructions, especially where their clients have cognitive disability.

#### **Recommendation 8.8 *Inspector of Custodial Services Act 2003 (WA)***

The Western Australian Government should introduce and support legislation amending the *Inspector of Custodial Services Act 2003 (WA)* to provide the Inspector with a discretion to demand a response from the department or other relevant agency, within a specified time, to recommendations of the Inspector included in a report to Parliament. This should include the steps (if any) taken by the agency in response to the recommendations and an explanation of why steps have not been taken (if that be the case).

#### **Recommendation 8.9 Use of seclusion in New South Wales Justice Health and Forensic Mental Health Network**

The New South Wales Government should review existing policy regarding the use of seclusion for adults with cognitive disability in the Justice Health and Forensic Mental Health Network, including the use of clearly designated authorisation and mandatory clinical and administrative review.

#### **Recommendation 8.10 Transition from custodial supervision in the Northern Territory**

The Northern Territory Government should provide supported step-down accommodation in community-based settings for people with disability subject to custodial supervision orders.

#### **Recommendation 8.11 Information for courts and legal practitioners**

The Commonwealth, state and territory criminal justice systems should provide information about seeking or making adjustments and supports and services for people with disability, and the circumstances in which they may be required. This information should be made available to judicial officers, legal practitioners and court staff, including through practice notes or bench books.

#### **Recommendation 8.12 Implementation of the National Principles**

The Australian Government, together with state and territory governments, should review the *National Statement of Principles Relating to Persons Unfit to Plead or Not Guilty by Reason of Cognitive or Mental Health Impairment (National Principles)* through the Standing Council of Attorneys-General.

The *National Principles* should be revised to include the following:

- Indefinite detention is unacceptable and laws providing for it should be repealed.

- Where an order for detention is made, there should be a maximum term of detention nominated beyond which the person cannot be detained (a ‘limiting term’).
- The limiting term should not exceed the court’s assessment of the sentence it would have imposed on the defendant had the person been found guilty of the offence in an ordinary trial of criminal proceedings.
- In hearings conducted to determine a person’s fitness to stand trial or to plead, the court must consider whether it can modify the trial process or ensure assistance is provided to facilitate the defendant’s understanding and effective participation in the proceedings. This includes any cultural or other trauma-informed supports a First Nations defendant may need to ensure the defendant can participate in a fair trial and understand the proceedings.

The Standing Council of Attorneys-General should agree to a timetable for implementation of reforms identified in the review of the *National Principles*.

The Commonwealth, states and territories should amend their legislation on fitness to stand trial to align with the revised *National Principles*.

The Australian Government, and state and territory governments, should build their capacity to provide step-down options, including medium and low secure and community-based accommodation options, for the placement of people in the forensic system to facilitate their progressive transition to less restrictive environments.

### **Recommendation 8.13 Data about people detained in forensic systems**

The Australian Government and state and territory governments should support legislation requiring the annual collection and publication of data relating to people found unfit to plead or not guilty by reason of cognitive or mental health impairment. The data collected should include:

- the number of people under forensic orders in their jurisdiction
- the number of people under orders for detention and the numbers subject to:
  - indefinite periods of detention
  - limiting terms (or equivalent)
  - orders extending their order for detention
- the number of people under orders for detention by sex, disability, disability type and First Nations status
- the number of such people detained in:
  - an adult correctional facility
  - a youth detention facility
  - a forensic mental health or forensic disability facility
  - a general psychiatric unit.

### **Recommendation 8.14 National practice guidelines for screening in custody**

State and territory corrective services, youth justice agencies and justice health agencies, through the Corrective Services Administration Council and equivalent youth justice bodies, should develop national practice guidelines and policies relating to screening for disability and identification of support needs in custody. People with disability, including with lived experience of the criminal justice system, and people with expertise in cognitive disability should be involved in the design of the guidelines and contribute to the approaches to implementation. The guidelines and policies should:



- explain the essential elements of screening and assessment for people with disability, including a trauma-informed approach to identifying disability and the person's needs
- reduce reliance upon self-disclosure as the primary means of disability identification following admission of a person with disability to custody
- require screening upon reception into custody or shortly thereafter both for prisoners and detainees who have been sentenced and for those on remand
- promote the consistent collection of data and its use to inform system-wide responses
- encourage the development and use of culturally safe disability screening tools that address the particular needs of First Nations people with disability
- encourage the development and use of disability screening tools that are culturally appropriate for people with disability from culturally and linguistically diverse communities
- encourage investment in initial and ongoing training, education and support of staff about disability identification and awareness
- encourage collaborative practices including the engagement of clinicians to conduct assessments to identify the support needs of a person with disability in custody
- require the identification of a disability or impairment to be matched with appropriate support while in custody
- promote the use of screening outcomes to develop plans for prisoners and detainees transitioning to the community
- contribute to appropriate information sharing among agencies including court-based assessments and reports.

#### **Recommendation 8.15 Policies and practices on screening, identifying and diagnosing disability in custody**

State and territory governments should ensure that policies and practices concerning screening, identification and diagnosis of disability in respect of people with disability in custody are consistent with the national practice guidelines.

#### **Recommendation 8.16 Support by First Nations organisations to people in custody**

State and territory corrective service and youth justice agencies and justice health agencies should engage First Nations organisations, including Aboriginal Community Controlled Health Organisations, to provide culturally safe disability screening and assessment services for First Nations prisoners and detainees.

#### **Recommendation 8.17 NDIS Applied Principles and Tables of Support concerning the justice system**

Through the Disability Reform Ministerial Council, the Australian Government and state and territory governments should:

- review the *National Disability Insurance Scheme (Supports for Participants) Rules 2013 (Cth)* and the Applied Principles and Tables of Support (APTOS) and operational guidelines to align and provide clear parameters in determining which supports will be funded by the National Disability Insurance Scheme (NDIS) for participants involved in the criminal justice system

- resolve issues related to the interface between the NDIS and the criminal justice system, particularly the distinction between ‘criminogenic-related supports’ and ‘disability-related supports’
- where such issues cannot be resolved, agree on a mechanism for joint-funding of individual supports.

Proposed amendments to the *National Disability Insurance Scheme (Supports for Participants) Rules 2013 (Cth)* and the APTOS should be agreed by National Cabinet.

#### **Recommendation 8.18 Timing of NDIA-funded transition supports**

The National Disability Insurance Agency (NDIA) should issue guidelines stating expressly that a release date is not a precondition for approving funding for transitional supports for participants in custody. The NDIA’s Justice Operational Guidelines and internal practice guides should be amended to make this clear.

#### **Recommendation 8.19 Amendment of the *Disability Discrimination Act 1992 (Cth)* to cover police provision of ‘services’**

The *Disability Discrimination Act 1992 (Cth)* should be amended to expressly include ‘services provided by police officers in the course of performing policing duties and powers’ in the definition of ‘services’ in section 4.

#### **Recommendation 8.20 Improving police responses to people with disability**

The Australian Government and state and territory governments and police services should collaborate with people with disability in the co-design, implementation and evaluation of strategies to improve police responses to people with disability.

All police services should introduce adequate numbers of dedicated disability liaison officers.

The Australian Government and state and territory governments should introduce an alternative reporting pathway for people with disability to report crimes to police.

#### **Recommendation 8.21 Diversion of people with cognitive disability from criminal proceedings**

The New South Wales, South Australian, Victorian and Western Australian governments should review and fund their existing court-based diversion programs for people with cognitive disability charged with offences that can be heard in local or magistrates’ courts to ensure the programs:

- are accessible and culturally appropriate, particularly in regional and remote areas
- provide support for defendants to access the National Disability Insurance Scheme (NDIS)
- satisfy service needs, including connecting defendants to appropriate education, housing, employment and other services.

The Australian Capital Territory, Northern Territory, Queensland and Tasmanian governments should develop and fund court-based diversion programs for people with disability charged with summary offences in local or magistrates’ courts which:

- are accessible and culturally appropriate, particularly in regional and remote areas

- provide support for defendants to access the NDIS
- satisfy service needs, including connecting defendants to appropriate education, housing, employment and other services.

All states and territories should commission independent evaluations of their diversion programs. Any evaluation should assess and, where feasible, quantify economic and social benefits for both individual defendants and the community as a whole.

### **Recommendation 8.22 Age of criminal responsibility**

States and territories that have not already done so should introduce legislation to raise the minimum age of criminal responsibility to 14.

### **Recommendation 8.23 Action plan to end violence against women and children with disability**

The Australian Government and state and territory governments should develop a five-year Action Plan for Women and Children with Disability to accompany the National Plan to End Violence against Women and Children 2022–2032. The Action Plan should:

- be developed by and for women with disability
- prioritise cohorts at greatest risk of violence
- coordinate with other relevant plans and strategies, in particular the forthcoming Aboriginal and Torres Strait Islander Action Plan and Australia’s Disability Strategy 2021–2031.

The Action Plan should include comprehensive actions and investment to address violence experienced by women and children with disability across the focus areas of:

- prevention
- early intervention
- response
- recovery and healing.

### **Recommendation 8.24 Disability-inclusive definition of family and domestic violence**

In working towards nationally consistent, inclusive definitions of gender-based violence under the National Plan to End Violence against Women and Children 2022–2032, states and territories should amend their legislative definitions of family and domestic violence to include:

- all relationships in which people with disability experience family and domestic violence, including but not limited to carer and support worker relationships
- disability-based violence and abuse
- all domestic settings, including but not limited to supported accommodation such as group homes, respite centres and boarding houses.

The *Family Law Act 1975 (Cth)* and any relevant state and territory laws should also be amended consistently with this recommendation.

# Volume 9: First Nations people with disability

## **Recommendation 9.1 Culturally appropriate parenting capacity assessments**

State and territory governments should work with First Nations child protection services, peak bodies and First Nations people with disability to co-design clear principles and guidelines for parenting capacity assessments for First Nations parents with disability in their jurisdiction, to ensure assessments are culturally appropriate. The principles and guidelines should include:

- best practice standards of cultural competence for practitioners conducting parenting capacity assessments of First Nations parents with disability
- guidance to assist practitioners conducting parenting capacity assessments of First Nations parents with disability to identify and address assessment test errors that may result from an insufficient understanding of how cultural factors affect assessments of parenting capacity
- a requirement that practitioners conducting parenting capacity assessments of First Nations parents with disability complete mandatory training to implement best practice standards of cultural competence, using testing tools that are culturally appropriate and disability appropriate
- establishing a review process to ensure the design and implementation of these standards is consistent across states and territories.

## **Recommendation 9.2 Ages and Stages Questionnaire-Talking about Raising Aboriginal Kids (ASQ-TRAK)**

State and territory governments should ensure all First Nations children up to five years of age coming into out-of-home care are screened using the culturally adapted developmental screening Ages and Stages Questionnaire-Talking about Raising Aboriginal Kids (ASQ-TRAK) tool. Children who are vulnerable in two or more of the five domains of communication, gross motor, fine motor, problem solving, and personal-social should be supported by an application for an Early Childhood Early Intervention plan.

## **Recommendation 9.3 Cultural safety of First Nations people in criminal justice settings**

By the end of 2024, state and territory governments should review the effectiveness of their strategies, if any, directed to providing and ensuring the cultural safety of First Nations people with disability in criminal justice settings and in doing so take into consideration what the Royal Commission has heard about that issue.

The review findings and recommendations should be made public.

## **Recommendation 9.4 Expand community connector programs**

The National Disability Insurance Agency should increase the number and coverage of the community connector programs for First Nations people with disability in remote areas. The implementation of the programs should be community-led and delivered. This expansion must be accompanied by adequate long-term funding for the programs and organisations delivering the programs, with sufficient training for staff delivering the programs.

In regions where English is not the preferred language for First Nations people, the programs should focus on recruiting staff who speak local languages.

### **Recommendation 9.5 Block funding the community-controlled sector**

The National Disability Insurance Agency (NDIA) should provide block funding for First Nations Community Controlled Organisations to flexibly deliver supports and services to First Nations people with disability. This could include funding for:

- respite or accommodation in connection with their plan or disability services
- cultural supports to maintain or improve health and wellbeing
- essential supports such as food, bedding and clothing
- supports that enable access to therapy, such as transport and fuel
- translation or other services to build understanding around disability and the National Disability Insurance Scheme
- other matters as agreed by the NDIA and First Nations Community Controlled Organisations.

### **Recommendation 9.6 National Disability Insurance Agency Board**

Section 127 of the *National Disability Insurance Scheme Act 2013 (Cth)* should be amended to provide that the National Disability Insurance Agency Board must include at least one First Nations person at all times.

### **Recommendation 9.7 Participation in cultural life**

Sections 3, 4 and 17A of the *National Disability Insurance Scheme Act 2013 (Cth)* should be amended to refer to participation in cultural life, in addition to participation in social and economic life.

### **Recommendation 9.8 Return to Country**

In consultation with the First Nations Advisory Council, the National Disability Insurance Agency (NDIA) should:

- create a new line item in the Pricing Arrangements recognising cultural supports and return to Country trips
- develop guidelines for NDIA staff on including cultural supports and return to Country trips as reasonable and necessary supports in plans
- educate First Nations participants about the availability of cultural supports and return to Country trips included in their plans.

### **Recommendation 9.9 Criteria for funding family supports**

The National Disability Insurance Agency (NDIA), the First Nations Advisory Council and First Nations Community Controlled Organisations should co-design policy guidelines on funding for First Nations family members to provide supports to participants in remote communities. Any policy guidelines should consider:

- the risk of financial exploitation, the need for a regulatory framework and oversight, and whether a similar approach would apply to non-First Nations carers in remote communities in similar situations
- the availability of suitable services, including culturally safe services

- training for NDIA staff on how to apply the policy guidelines, including how staff can support family to apply to be paid for the care provided
- building awareness of the circumstances in which participants and their families can apply to be paid
- how to build the capacity of family and community members to become part of the local workforce, such as trained support or community workers, which may include connecting family members with a First Nations Community Controlled Organisation.

### **Recommendation 9.10 First Nations Disability Forum**

The Australian Government and state and territory governments should support the establishment of a First Nations Disability Forum to lead further development and implementation of the Disability Sector Strengthening Plan (DSSP) by the end of March 2024. The Forum should consist of representatives of:

- First Peoples Disability Network
- First Nations Community Controlled Organisations
- both Aboriginal and Torres Strait Islander peak bodies
- First Nations people with disability.

The Forum should be supported by a First Nations disability investment fund, with the purpose of:

- supporting the operation of, and participation in, the Forum
- implementing the DSSP
- developing the First Nations Disability Workforce.
- The Forum should have the capacity to direct funding under the DSSP to:
  - enable First Nations people with disability to provide advice and guidance from their lived experience to the Forum
  - enable community-controlled organisations to develop their capacity to design and deliver disability-specific services and supports
  - enable community-controlled organisations to work with other organisations to drive national leadership in disability policy and services reform
  - enable community-controlled organisations to deliver on specific priority areas as identified in the DSSP
  - enable the participation of community-controlled organisations not engaged in the Coalition of Aboriginal Peaks process
  - support First Nations community-based organisations across the health, criminal justice and early childhood sectors to improve workforce disability competency to ensure First Nations people with disability receive appropriate disability support
- take into consideration the recommendations of the Royal Commission.

The Forum should develop and implement a strategy, supported by the First Nations disability investment fund, to build disability-specific expertise into First Nations Community Controlled Organisations.

### **Recommendation 9.11 Building on the Disability Sector Strengthening Plan**

Parties to the National Agreement on Closing the Gap should commit to releasing a revised Disability Sector Strengthening Plan (DSSP) in partnership with the First Nations Disability Forum by the end September of 2024. The revised DSSP should have:

- agreed priority areas, determined through consultation with the community controlled sector under the guidance of First People’s Disability Network
- a commitment to future funding and longer timeframes
- agreed timeframes for delivering actions and achieving outcomes
- annual reporting requirements for government parties to the National Agreement on Closing the Gap.

### **Recommendation 9.12 Disability-inclusive cultural safety standards**

The Australian Government in partnership with the First Nations Disability Forum should develop disability-inclusive cultural safety standards for the provision of services for First Nations people with disability.

Disability service providers that support and have a responsibility for First Nations people with disability, including in the health, criminal justice and early childhood sectors, should incorporate these disability-inclusive cultural safety standards in their practices and organisations.

### **Recommendation 9.13 Remote workforce development**

The First Nations Disability Forum and parties to the Disability Sector Strengthening Plan (DSSP) should collaborate to develop a strategy to develop First Nations local workforces in remote communities. The strategy should consider:

- funding for community-level assessments to determine:
  - existing infrastructure and resources
  - the capacity and willingness of the First Nations community-controlled sector to support local workforce development
  - the level of demand within the community
- that allocation of funding for local workforce development should include funding to build the capacity of family members to provide care
- the strategy should be co-developed and co-implemented with First Nations Community Controlled Organisations, noting their capacity, expertise and willingness to be involved. The involvement of First Nations Community Controlled Organisations must be adequately supported and funded.



# Volume 10: Disability services

## **Part A: Disability service providers**

### **Recommendation 10.1 Embedding human rights**

The NDIS Quality and Safeguards Commission (NDIS Commission) should commission a capacity-building program to support disability service providers to embed human rights in the design and delivery of their services. The program should be co-designed with people with disability, disabled people's organisations, disability representative organisations including member-led First Nations Community Controlled Organisations, and peak bodies.

The program should:

- develop opportunities for dialogue between providers and people with disability to address challenges and share promising practices
- develop tools, resources and training packages that reflect the diversity of people with disability and disability service providers across Australia
- focus on practical, implementable strategies that lead to better outcomes for people with disability
- be grounded in the principles of the *Convention on the Rights of Persons with Disabilities*, and reflect our findings, the NDIS Review, and the NDIS Commission's own motion inquiries and recent Safeguarding Policy Implementation Plan
- enable providers to prepare for, or demonstrate compliance with, current and future legislative and registration requirements associated with the rights of people with disability. This includes responsibilities under the *Disability Discrimination Act 1992 (Cth)* and the Disability Rights Act (if enacted).

The National Disability Insurance Agency, and state and territory governments involved in providing, regulating or conducting oversight of disability services not funded under the National Disability Insurance Scheme, should actively participate in all stages of the program.

The program should begin by 1 July 2025.

### **Recommendation 10.2 Independent support coordination**

To address potential conflicts of interest, the Minister for the National Disability Insurance Scheme (NDIS) should, in consultation with states and territories, create or amend an NDIS Rule to make clear that it is not appropriate for a provider of support coordination to be the provider of any other funded supports in an NDIS participant's plan.

Exceptions to the Rule should be developed in consultation with people with disability, disabled people's organisations, disability representative organisations including member-led First Nations Community Controlled Organisations, and peak bodies.

Exceptions may include situations where there are limited alternative service options for NDIS participants due to thin disability service markets, or where there are limited culturally appropriate or specialised services available.

### **Recommendation 10.3 Adequate support coordination**



The National Disability Insurance Agency should ensure that participants in the National Disability Insurance Scheme (NDIS) identified as being at heightened risk of violence, abuse, neglect or exploitation, particularly those living in supported accommodation, have funding for support coordination included in their NDIS plans.

Funding for support coordination should reflect the NDIS participant's support and communication needs. Funding for hours of support coordination should also be sufficient to facilitate face-to-face contact at least monthly.

NDIS participant plans should be updated by 30 September 2025.

#### **Recommendation 10.4 Quality of support coordination**

The NDIS Quality and Safeguards Commission should examine the quality and consistency of support coordination, with a particular focus on National Disability Insurance Scheme participants who:

- live in remote and very remote locations
- are First Nations people with disability
- are culturally and linguistically diverse
- are navigating state or territory housing, health or criminal justice systems
- are experiencing housing insecurity or homelessness
- are living in supported accommodation
- are attending day programs or working in Australian Disability Enterprises.

The examination may be part of the proposed own motion inquiry on support coordination.

#### **Recommendation 10.5 Advocacy**

- a. The National Disability Insurance Agency (NDIA) should develop a program to connect National Disability Insurance Scheme (NDIS) participants living in supported accommodation with an appropriate disability advocacy organisation. The program should be co-designed with people with disability, disabled people's organisations, disability representative organisations including member-led First Nations Community Controlled Organisations, and peak bodies.

The program should:

- promote advocacy in the course of NDIS planning processes
- increase awareness of the role of advocacy in disability services among NDIS participants and their families and supporters
- strengthen advocacy referral processes when participants and their families and supporters raise concerns, make complaints or report incidents
- foster relationships between NDIS participants, their families and supporters, and disability advocacy organisations
- strengthen collaboration between disability service providers and disability advocacy organisations to enable advocates to maintain periodic contact with people with disability so they can identify potential or emerging issues.

The program should commence by January 2025.

Following an evaluation of the program's impact and outcomes, the NDIA should consider expanding the program to reach other groups of people with disability who are identified as being at heightened risk of violence, abuse, neglect or

exploitation.

- b. The NDIS Quality and Safeguards Commission, when reviewing complaints and reportable incidents, should also actively promote the value of independent advocacy for NDIS participants identified as being at heightened risk of violence, abuse, neglect or exploitation, and/or those who live in supported accommodation.

### **Recommendation 10.6 Supported decision-making in disability services**

The NDIS Quality and Safeguards Commissioner should amend the *National Disability Insurance Scheme (Quality Indicators for NDIS Practice Standards) Guidelines 2018 (Cth)* to reflect that each participant:

- is entitled to support to make everyday life decisions including what services they receive, in what way and from whom
- has opportunities to make decisions about their goals and aspirations
- is supported to develop their decision-making skills
- is supported to communicate their will and preferences
- has the right to choose their own supporter.

Amendments should be completed by 30 June 2025.

### **Recommendation 10.7 Practical guidance on supported decision-making**

The NDIS Quality and Safeguards Commission should co-design – with people with disability, disabled people’s organisations, disability representative organisations including member-led First Nations Community Controlled Organisations, and peak bodies – a practice guide on supported decision-making for service providers.

This should be consistent with the NDIS Supported Decision Making Policy and the supported decision-making principles outlined in Recommendation 6.6.

### **Recommendation 10.8 A national disability support worker registration scheme**

The Australian Government should establish a national disability support worker registration scheme by 1 July 2028.

Consultation about the scope and elements of the national disability support worker registration scheme should begin as soon as possible. The consultations should include people with disability, disabled people’s organisations, disability representative organisations including member-led First Nations Community Controlled Organisations, support workers and their representative bodies, disability service providers, state and territory governments, and peak and regulatory bodies.

The design of the scheme should consider:

- the definition of ‘disability support worker’
- a code of conduct and minimum standards for registered disability support workers, including support coordinators
- mandating the NDIS Worker Screening Check for all disability support workers

- recognition and accreditation of workers' qualifications, experience, capabilities and skills
- continuing professional development requirements for disability support workers
- automatic registration for disability support workers who are registered with other relevant professional bodies
- a First Nations workforce pathway to address barriers to First Nations workers entering the sector
- an accessible portal to enable people with disability and their supporters to view the profiles and registration status of disability support workers
- portable training and leave entitlements.

### **Recommendation 10.9 The Social, Community, Home Care and Disability Services Industry Award**

Organisations entitled to represent the industrial interests of members of the disability support workforce covered by the Social, Community, Home Care and Disability Services (SCHADS) Industry Award 2010, along with the Australian Government and employers, should consider a joint application to vary the modern award in accordance with section 158 of the *Fair Work Act 2009 (Cth)*.

This would seek to ensure equal remuneration of workers for work of equal or comparable value in accordance with section 302 of the *Fair Work Act 2009 (Cth)*, paying particular attention to employers' continued use of Schedule E and the 'work value' of contemporary disability support work.

### **Recommendation 10.10 Provider of last resort**

The Australian Government should urgently engage with state and territory governments about funding and arrangements for a provider of last resort scheme. It should also consult with people with disability, disabled people's organisations, disability representative organisations including member-led First Nations Community Controlled Organisations, and peak bodies about how such a scheme could operate.

The scheme should be designed to address:

- failed or thin markets, particularly for First Nations people with disability in remote or very remote areas, and consider the use of block funding to guarantee service provision in those communities
- access to services for:
  - people in crisis situations
  - people at risk of losing their accommodation and disability services
  - people whose needs cannot be adequately met by existing services
    - access to case management for people with disability at heightened risk of violence, abuse, neglect or exploitation
    - clarity about which agency has the lead coordinating role. The Australian Government should put forward a proposal for discussion to the Disability Reform Ministers Council in 2024.

## **Part B: NDIS Quality and Safeguards Commission**

### **Recommendation 10.11 Internal procedures for monitoring reportable incidents**

The NDIS Quality and Safeguards Commission should improve its internal procedures for monitoring reportable incidents, paying particular attention to:

- a. communicating feedback about the quality of providers' handling of incidents
- b. seeking clarification from providers, National Disability Insurance Scheme participants and their families when deficiencies or evidentiary gaps are identified, particularly where participants have been harmed or are at immediate risk of harm
- c. the efficiency of the online portal used by providers to report incidents

### **Recommendation 10.12 Introduction of class or kind determinations**

The Minister for the National Disability Insurance Scheme should, in consultation with states and territories, amend the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018 (Cth)* to:

- a. introduce 'class or kind' determinations exempting certain registered providers from notifying less serious types or categories of reportable incidents where they have demonstrated a satisfactory level of competence in managing and investigating incidents
- b. enable the NDIS Quality and Safeguards Commission to conduct audits to assess compliance with class or kind determinations.

### **Recommendation 10.13 Creating an independent investigators panel**

The NDIS Quality and Safeguards Commission (NDIS Commission) should establish a panel of independent investigators with strong credentials in relation to safeguarding, human rights and investigative practice. The NDIS Commission should seek regular feedback from providers about the quality of independent investigators' work.

### **Recommendation 10.14 Developing model policies and procedures**

The NDIS Quality and Safeguards Commission should develop model procedures for National Disability Insurance Scheme (NDIS) providers, including:

- a. for frontline workers about recognising and reporting incidents, with clear definitions around what incidents must be reported and when
- b. for incident management incorporating guidance on undertaking causal reviews of incidents and preventive action, as well as implementing wider system improvements
- c. for complaints articulating person-centred approaches for managing and resolving complaints and providing feedback, and requiring supports for a participant who needs to participate in a complaints process
- d. that address the need to consider the impact or harm caused to a participant and provide guidance on forms of redress that should be offered to people with disability involved in incidents and complaints.

These procedures should be developed in consultation with people with disability, family members, advocates and NDIS providers.

#### **Recommendation 10.15 Complaint handling and investigative practice guideline**

- a. The NDIS Quality and Safeguards Commissioner should issue a guideline, by notifiable instrument, addressing accessible and responsive complaint handling and investigative practice. The guideline should:
  - outline the core components of an accessible and responsive complaint handling and investigative practice involving people with disability, consistent with Recommendation 11.5
  - be co-designed by people with disability and their representative organisations and involve consultation with National Disability Insurance Scheme (NDIS) provider representatives.
- b. The Minister for the NDIS should, in consultation with states and territories, amend the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018 (Cth)* and *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018 (Cth)* to include recognition of, and a requirement for compliance with, the guideline.

#### **Recommendation 10.16 Requirement to consider redress**

- a. The Minister for the National Disability Insurance Scheme (NDIS) should, in consultation with states and territories, amend the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018 (Cth)* and *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018 (Cth)* to include a requirement for NDIS providers to consider redress and forms of support to an NDIS participant where the NDIS Quality and Safeguards Commission (NDIS Commission) forms the view that the service provider bears responsibility for the violence, abuse, neglect or exploitation experienced by the NDIS participant.
- b. The NDIS Commission should:
  - provide practical advice on suitable forms of redress when making the guideline on accessible and responsive complaint handling and investigative practice (see Recommendation 10.15)
  - consider whether it has power to incorporate in enforceable undertakings a requirement that service providers afford redress to NDIS participants in appropriate cases. If not, it should seek the necessary powers and be prepared to use them where appropriate.

#### **Recommendation 10.17 Access to safeguarding indicators and expertise**

In developing and publishing guidance about best practice governance models for National Disability Insurance Scheme (NDIS) providers, the NDIS Quality and Safeguards Commission should:

- a. include safeguarding indicators for use by NDIS providers based on the sample indicators outlined in Table 10.8.3
- b. provide guidance encouraging governing bodies of NDIS providers to have regular access to specialist safeguarding advice in considering issues arising from

complaints and incidents.

### **Recommendation 10.18 Improved complaint handling procedures and responses**

The NDIS Quality and Safeguards Commission should:

- a. ensure complainants are updated appropriately throughout key stages of the complaint process and their expectations managed
- b. ensure triage and streamlining models effectively prioritise complaints requiring a more immediate response
- c. clearly define risk categories, timeframes and procedures for handling these complaints
- d. establish realistic and achievable metrics for measuring its performance with respect to timeframes.

### **Recommendation 10.19 Requirement to investigate certain complaints**

The Minister for the National Disability Insurance Scheme should, in consultation with states and territories, amend the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018 (Cth)* to empower the NDIS Quality and Safeguards Commission to require a provider to carry out an investigation into a complaint and report on its contact with the complainant and its findings.

### **Recommendation 10.20 Making complaint processes accessible**

The NDIS Quality and Safeguards Commission should further enhance the accessibility of its complaint handling processes, having regard to the following steps:

- a. making information simple and easy to navigate
- b. adopting a 'no wrong door' approach
- c. accommodating people's preferred means of communication and making other adjustments as needed
- d. assisting people to secure advocacy and other supports
- e. identifying people at risk of abuse
- f. implementing a strategy for 'hard to reach' groups
- g. ensuring complainants are involved in complaint processes and when this is not possible, recording the reasons for their non-involvement
- h. examining whether providers are supporting people with disability to access advocates when they make a complaint and where providers conduct investigations.

### **Recommendation 10.21 Registration and audit process**

- a. To enhance the registration process, the NDIS Quality and Safeguards Commission (NDIS Commission) should:
  - develop and implement a framework for sharing relevant information with quality auditors
  - conduct a comprehensive review of the provider registration process focused on:

- simplifying the process for smaller providers seeking to renew their registration
  - improving the NDIS Commission’s operating system (COS) portal and online application forms used to submit registration applications
  - removing any duplication of requirements for cohorts of practitioners or organisations working within multiple schemes and for recognising other forms of accreditation
  - identifying areas where there are workforce shortages or ‘thin provider markets’, and encouraging the use of easier and more cost-effective certification audit processes in these areas
  - assessing whether the number of approved quality auditors accredited for remote auditing and assessment should be increased
  - collect and publish de-identified data about quality audit outcomes to inform best practice
  - alert quality auditors to known systemic issues across the NDIS provider market.
- b. The Minister for the National Disability Insurance Scheme should, in consultation with states and territories, amend the *National Disability Insurance Scheme (Protection and Disclosure of Information—Commissioner) Rules 2018 (Cth)* to clarify the NDIS Commission is able to share relevant information with quality auditors

**Recommendation 10.22 Strengthened regulatory requirements**

- a. The Minister for the National Disability Insurance Scheme should, in consultation with states and territories, amend the Core Module of the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018 (Cth)* to issue further standards that address complaint handling and incident management.
- b. The NDIS Quality and Safeguards Commissioner should amend the Core Module of the *National Disability Insurance Scheme (Quality Indicators for NDIS Practice Standards) Guidelines 2018 (Cth)* to strengthen the requirements relating to complaints and incidents (see Table 10.10.2), accountable governance (see Table 10.10.3), and worker capacity and training (see Table 10.10.4).

**Recommendation 10.23 Publishing data about the unregistered provider market**

The NDIS Quality and Safeguards Commission (NDIS Commission) should collect and publish data relating to trends and risks identified within the unregistered provider market, including a breakdown of:

- the number of complaints received involving unregistered providers
- quality and safety issues identified by the NDIS Commission through its oversight of complaints in relation to unregistered providers
- the number of compliance matters and investigations commenced by the NDIS Commission in relation to unregistered providers the number of unregistered providers involved in contraventions identified by the NDIS Commission and the type of breach identified



- the number and type of compliance and enforcement actions taken in relation to unregistered providers
- the number of workers engaged by unregistered providers involved in complaints, compliance matters or investigations without a worker screening clearance at the time of the alleged conduct or issue.

**Recommendation 10.24 Improved access to behaviour support practitioners**

- a. The NDIS Quality and Safeguards Commission should, by December 2024, improve access to behaviour support practitioners by:
  - a. providing incentives for practitioners and National Disability Insurance Scheme providers to provide behaviour support services, including in regional and remote areas in which ‘thin markets’ operate
  - b. forming a partnership with First Nations leaders from the disability and employment services sectors to develop a recruitment strategy targeting First Nations people and others with experience in working with First Nations communities to address behaviour support shortages in regional and remote areas
  - c. exploring with behaviour support practitioners, service providers and people with disability, the merits of an ‘on-the-job’ professional development and accreditation model for behaviour support practitioners
  - d. creating a publicly accessible list of all individual behaviour support practitioners.

**Recommendation 10.25 Strengthened monitoring, compliance and enforcement**

The NDIS Quality and Safeguards Commission should review its compliance and enforcement policy and in doing so have regard to:

- a. where appropriate, transitioning its primary compliance approach from educational and capacity building strategies to stronger compliance and enforcement activities
- b. increasing its face-to-face engagement with National Disability Insurance Scheme (NDIS) participants who are at greater risk of experiencing violence, abuse, neglect and exploitation, and site visits to speak with providers and workers
- c. increasing the use of its enforcement powers and monitoring tools in relation to NDIS providers that:
  - have a history of non-compliance or repeatedly fail to meet their obligations to provide safe and quality supports and services
  - have demonstrated a disregard for the safety of people with disability
  - have caused serious harm to a person or people with disability
- d. the availability of enforceable undertakings and compliance notices to address non-compliance by NDIS providers.

**Recommendation 10.26 Expanded data reporting and publication**

- a. In addition to data currently published, the NDIS Quality and Safeguards Commission should publish in quarterly activity reports and annual reports:
  - ‘disaggregated data’ relating to complaints, reportable incidents and behaviour support, having regard to suggested data in Table 10.13.1



- a comprehensive analysis of data trends, identifying systemic issues relating to the quality and safety of National Disability Insurance Scheme (NDIS) supports and services
  - ‘operational performance data’ relating to complaints, reportable incidents, compliance and enforcement, having regard to the suggestions in Table 10.13.2.
- b. The Minister for the NDIS should, in consultation with states and territories, amend the reporting requirements in the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018 (Cth)* to enable provider investigation outcome data to be collected on a routine basis from NDIS providers.

### **Recommendation 10.27 Strengthened intelligence capacity**

The NDIS Quality and Safeguards Commission (NDIS Commission) should establish a dedicated intelligence unit within the NDIS Commission to enhance its capacity to collect intelligence, identify and respond to higher risk participants, take action relating to providers where necessary and identify systemic issues.

### **Recommendation 10.28 Information sharing between prescribed bodies**

- a. The Minister for the National Disability Insurance Scheme (NDIS) should, in consultation with states and territories, amend the *National Disability Insurance Scheme (Protection and Disclosure of Information—Commissioner) Rules 2018 (Cth)* to include safeguarding bodies with the type of functions described in Table 10.13.3 as ‘prescribed bodies’ for the purposes of section 67A(1)(db) of the *National Disability Insurance Scheme Act 2013 (Cth)*.
- b. States and territories should introduce legislative and administrative arrangements that would allow prescribed bodies in each jurisdiction to exchange risk-related information with the NDIS Quality and Safeguards Commission, where the exchange of information will promote the safety of NDIS participants who may be at risk of experiencing violence, abuse, neglect or exploitation.

### **Recommendation 10.29 Establishing a First Nations Unit**

The NDIS Quality and Safeguards Commission should establish a dedicated First Nations Unit to develop its engagement with and understanding of the issues facing First Nations participants in the National Disability Insurance Scheme, particularly in regional and remote communities.

### **Recommendation 10.30 Engagement and capacity building activities**

The NDIS Quality and Safeguards Commission should enhance its engagement and capacity building activities with National Disability Insurance Scheme (NDIS) providers by:

- a. routinely sharing data analysis and insights from its oversight activities with NDIS providers to promote improvements in the quality and safety of services
- b. facilitating regular industry forums and communities of practice to raise and address critical safeguarding practice issues and share best practice
- c. expanding its training offerings to NDIS providers, particularly in relation to fulfilling their obligations to recognise, report and investigate incidents and deal appropriately with complaints

- d. developing a training and resources hub for use by people with disability and their supporters, as well as the NDIS provider workforce.

### **Recommendation 10.31 Continuous monitoring of criminal charges**

The Australian Government and state and territory governments should amend the Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme to clarify the role of the Australian Federal Police (or other national bodies) in monitoring new charges relating to disability support workers who hold a clearance, and sharing information with state and territory worker screening units.

### **Recommendation 10.32 Operational framework to guide worker screening**

The NDIS Quality and Safeguards Commission (NDIS Commission) should, in consultation with state and territory worker screening units, develop an operational framework to guide the efficient and effective provision of information to worker screening units to inform their assessments. In doing so, it should establish criteria to inform the provision of initial monitoring advice to screening bodies to promote consistency and help better inform initial screening actions. Such advice could include:

- date of the incident
- duration of alleged conduct (if applicable)
- description, nature and circumstances of the matter
- whether the police are involved (noting that the screening unit will only be alerted via the monitoring system at the point at which charges are laid)
- critical information relating to the available evidence (for example, an investigation report from an employer)
- relevant information relating to the NDIS Commission's oversight of the matter (for example, whether the matter is open, closed, substantiated or not and whether further outcomes are pending).

### **Recommendation 10.33 Reviewing information sharing arrangements**

As part of the National Disability Insurance Scheme worker screening review, the Australian Government, and state and territory governments, should consider the adequacy of information sharing arrangements with regard to:

- the ability of worker screening units to obtain relevant risk-related information from bodies outside of their operating jurisdiction to inform their assessments
- the ability of the NDIS Quality and Safeguards Commission and worker screening units to obtain and share relevant risk-related information (such as misconduct and disciplinary investigation outcomes) held by other safeguarding and complaint handling bodies to inform worker screening decisions.

# Volume 11: Independent oversight and complaint mechanisms

## **Recommendation 11.1 Nationally consistent adult safeguarding functions**

States and territories should each:

- a. introduce legislation to establish nationally consistent adult safeguarding functions, including:
  - definitions of ‘adult with disability’, ‘violence’, ‘abuse’, ‘neglect’, and ‘exploitation’
  - at a minimum, the principles, functions and powers outlined in Table 11.1.1
  - data collection and public reporting, including demographic data (for example, relating to First Nations, culturally and linguistically diverse, and LGBTIQ+ people with disability)
  - a mechanism to review the legislation after a reasonable period to examine its efficacy.
- b. ensure adult safeguarding functions are operated by adequately resourced independent statutory bodies
- c. develop a National Adult Safeguarding Framework led by the appointed adult safeguarding bodies
- d. consider whether to co-locate the adult safeguarding function with the ‘one-stop shop’ independent complaint reporting, referral and support mechanism (see Recommendation 11.3).

## **Recommendation 11.2 An integrated national adult safeguarding framework**

The Australian Government should incorporate the National Adult Safeguarding Framework proposed in Recommendation 11.1 into the Safety Targeted Action Plan within Australia’s Disability Strategy or another suitable authorising document.

## **Recommendation 11.3 ‘One-stop shop’ complaint reporting, referral and support**

States and territories should each establish or maintain an independent ‘one-stop shop’ complaint reporting, referral and support mechanism to receive reports of violence, abuse, neglect and exploitation of people with disability. This mechanism should perform the following functions:

- a. receive complaints or reports from anyone concerned about violence, abuse, neglect and exploitation involving a person with disability in any setting
- b. provide advice and information to people with disability, representative organisations and other interested parties about appropriate reporting options
- c. with a person’s consent:
  - make warm referrals to appropriate complaints bodies
  - make warm referrals to advocacy and other services who can support them in the complaint process
- d. refer ‘third party’ reports to police, including anonymous reports
- e. collect, analyse and publicly report annual data on complaints and reports received and on referrals.

The mechanism should be co-designed with people with disability to ensure entry points are accessible to and effective for people with a range of abilities, language and communication needs. The mechanism should be placed, if possible, within an existing independent organisation which has appropriate expertise and relationships with services to perform its functions.

#### **Recommendation 11.4 Creating accessible complaint pathways**

The Australian Government should work with states and territories to establish a national 1800 number, website and other accessible reporting tools to direct people to the independent complaint and referral mechanism in their state or territory.

#### **Recommendation 11.5 Complaint handling and investigative practice guidelines**

The Commonwealth Ombudsman should lead a co-design process with the NDIS Quality and Safeguards Commission, state and territory ombudsmen and other bodies with complaint handling and investigation expertise, to develop guidelines for organisations on implementing complaint handling systems that are accessible and responsive to people with disability. The guidelines should reflect the ten core components:

- creating a rights-focused complaints culture
- encouraging people with disability and others to speak up
- making adjustments to enable participation
- supporting the person with disability, their family and others in complaint processes
- respecting complexity, diversity and cultural difference
- providing clear information about how to complain and multiple pathways to complain
- working respectfully and effectively alongside police
- conducting safe and inclusive investigations that are trauma-informed
- providing tailored outcomes and redress
- using complaints data to drive continuous improvement in service provision and complaint handling.

#### **Recommendation 11.6 Enshrining key provisions of OPCAT in legislation**

The Australian Government should revisit the Australian Human Rights Commission's recommendation and introduce legislation enshrining the key provisions of *the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)* and facilitate the national coordination of Australia's OPCAT response.

#### **Recommendation 11.7 Resourcing and wider definition of places of detention**

The Australian Government and state and territory governments should:

- a. agree to provide resources to enable National Preventive Mechanism bodies in all jurisdictions to fulfil the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment's* core functions, including the 'preventive package'

- b. enact legislation incorporating a broader definition of ‘places of detention’ to enable all places where people with disability may be deprived of their liberty to be monitored by National Preventive Mechanism bodies.

### **Recommendation 11.8 Legislating National Preventive Mechanisms**

All state and territory governments should introduce legislation to establish the functions of their National Preventive Mechanism bodies and facilitate inspections by the United Nations Subcommittee on the Prevention of Torture.

### **Recommendation 11.9 Designating National Preventive Mechanism bodies**

The governments of New South Wales, Victoria and Queensland should designate National Preventive Mechanism bodies in their jurisdictions.

### **Recommendation 11.10 Improved consistency and coordination**

The Commonwealth Ombudsman should:

- a. ensure the OPCAT Advisory Group includes people with disability
- b. lead work with the National Preventive Mechanism Network to:
  - develop a consistent methodology for determining National Preventive Mechanism inspection priorities
  - implement a coordinated approach to prioritising inspections of places of detention that pose a high risk to people with disability, focusing on particular practices affecting people with disability across detention settings
  - develop and adopt common disability inspection standards for use in all jurisdictions
  - commit to nationally consistent collection and reporting of data about monitoring places of detention

### **Recommendation 11.11 Disability inclusive approach to implementing *OPCAT***

National Preventive Mechanism (NPM) bodies in all Australian jurisdictions should implement their functions in a disability-inclusive way by:

- enabling people with disability in places of detention to share information and experiences with the NPM using a variety of communication forms
- ensuring staff participate in ongoing education and training about the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, human rights and issues affecting people with disability in places of detention
- ensuring staff conducting NPM inspections have the skills and experience to provide reasonable adjustments, communication supports and supported decision-making to people with disability when required
- involving people with disability in the inspection of places of detention
- collecting and publishing data about people with disability in places of detention, aligned with disability inspection standards.

### **Recommendation 11.12 Nationally consistent community visitor schemes**

States and territories should:

- a. urgently implement community visitor schemes (CVS) for people with disability, if they have not done so already
- b. ensure CVS are resourced to conduct frequent visits to individuals who may be at elevated risk of abuse or harm
- c. agree to make CVS nationally consistent regarding people with disability, including in relation to:
  - the scope of schemes (who community visitors should visit)
  - powers to visit people with disability, inspect records and provide information to other relevant bodies
  - common monitoring standards
  - the type of data that CVS should capture and report on
- d. as a priority, define the scope of CVS with reference to:
  - 'visitable services'
  - mechanisms for identifying factors that may place a person with disability at increased risk of violence, abuse, neglect or exploitation
- e. ensure CVS legislation enables relevant information to be shared between CVS, the NDIS Quality and Safeguards Commission and the National Disability Insurance Agency.

### **Recommendation 11.13 Integration of community visitor schemes with the NDIS**

- a. The Commonwealth should amend the *National Disability Insurance Scheme Act 2013 (Cth)* to formally recognise community visitor schemes (CVS) as a safeguard for people with disability and provide the authorising environment for information-sharing between the NDIS Quality and Safeguards Commission (NDIS Commission) and CVS.
- b. The Australian Government should:
  - enter into a national agreement with states and territories that commits CVS and the NDIS Commission to:
    - sharing relevant information to effectively exercise their respective functions
    - developing common standards for guiding the work of CVS relating to people with disability.
  - update the NDIS Quality and Safeguarding Framework to formally recognise the important safeguarding role played by CVS.

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- b. The Australian Government should:
  - enter into a national agreement with states and territories that commits CVS and the NDIS Commission to:

- sharing relevant information to effectively exercise their respective functions
- developing common standards for guiding the work of CVS relating to people with disability.
- update the NDIS Quality and Safeguarding Framework to formally recognise the important safeguarding role played by CVS.

#### **Recommendation 11.14 Establishing disability death review schemes**

States and territories should establish and appropriately resource disability death review schemes. These schemes should include:

- a. functions to:
  - receive, assess and record ‘reviewable deaths’ of people with disability, as defined in recommendation 11.15
  - monitor and review reviewable deaths
  - formulate recommendations about policies and practices to prevent or reduce reviewable deaths
  - maintain a register of reviewable deaths
  - formulate strategies to reduce or remove potentially avoidable risk factors for reviewable deaths
  - establish and support the work of an expert advisory committee
- b. powers to:
  - scrutinise systems for reporting reviewable deaths
  - undertake detailed reviews of information relating to reviewable deaths
  - conduct own motion investigations into individual or groups of deaths
  - analyse data on the causes of reviewable deaths to identify patterns and trends
  - consult with, and obtain information from, any person or body with relevant information or appropriate expertise
  - invite and consider information from the deceased person’s family or guardian or advocate when reviewing and/or investigating a death
  - notify the NDIS Quality and Safeguards Commission of matters relevant to the exercise of its functions
  - refer identified concerns about conduct or service provision to relevant regulatory bodies for their consideration and appropriate action
  - publish reports periodically on systemic findings and recommendations arising from all reviewable deaths
  - make a special report to the relevant state or territory parliament about any matter that the scheme operator considers to be in the public interest.

#### **Recommendation 11.15 Disability death review scheme requirements**

States and territories should ensure legislation establishing disability death review schemes:

- a. defines ‘reviewable deaths’ to include:
  - deaths subject to mandatory notification
  - deaths that a person or body with legitimate interest requests a scheme to review



- b. requires deaths that are subject to a mandatory notification requirement include the death of a person with disability:
  - living in supported accommodation at the time of their death
  - residing in a licensed boarding house (or equivalent) at the time of their death
  - residing in custody or in an acute health facility at the time of their death (after the disability death review scheme has operated for a period).

### **Recommendation 11.16 National agreement on disability death reviews**

The Australian Government and state and territory governments should enter into a national agreement that:

- a. reflects the functions, powers and definitions outlined in recommendations 11.14 and 11.15
- b. defines the respective roles of state and territory death review schemes and the NDIS Quality and Safeguards Commission (NDIS Commission) in relation to the deaths of people with disability
- c. articulates the relationship between the functions of the disability death review schemes and the NDIS Commission and ensures the appropriate operational processes are in place to facilitate this
- d. provides for information sharing between the death review schemes and the NDIS Commission
- e. commits to nationally consistent disability death data collection and reporting requirements, and the inclusion of disability death data within the proposed National Disability Data Asset.

### **Recommendation 11.17 Nationally consistent reportable conduct schemes**

States and territories should:

- a. establish reportable conduct schemes, where not already in place, in accordance with Recommendation 7.9 of the Royal Commission into Institutional Responses to Child Sexual Abuse and make public their intended timeframe for doing so
- b. take action to harmonise their reportable conduct schemes
- c. introduce or amend existing legislation to:
  - ensure disability service providers that deliver supports or services to children with disability, including NDIS providers, are included in their reportable conduct scheme
  - include 'ill-treatment' in the definition of reportable conduct
  - enable reportable conduct scheme operators to adopt a common definition of disability
  - require reportable conduct scheme operators to collect and publicly report consistent data about reportable conduct notifications and outcomes relating to children with disability.

### **Recommendation 11.18 Dual oversight of reportable conduct and incidents**



State and territory reportable conduct scheme operators and the NDIS Quality and Safeguards Commission should:

- a. jointly develop guiding principles to support the efficient and effective handling of reportable incidents that are also allegations of reportable conduct
- b. develop broadly consistent guidance material to assist organisations to better understand key issues relevant to notifying, managing and investigating allegations of reportable conduct and incidents involving children with disability.

# Volume 12: Beyond the Royal Commission

## **Recommendation 12.1 Government responses to the Final report**

The Australian Government and state and territory governments should each publish a written response to the Royal Commission's Final report by 31 March 2024. Their responses should indicate whether the recommendations are accepted, rejected or subject to further consideration. They should include a plan for how the accepted recommendations will be implemented, the reasons for rejecting any recommendations, and a timeframe for any further consideration required.

The Australian Government and state and territory governments should table their responses in their respective parliaments and legislative assemblies.

## **Recommendation 12.2 Implementation of the Final report recommendations**

The Disability Reform Ministerial Council should oversee the implementation of the Royal Commission's recommendations across the Australian Government and state and territory governments.

The Australian Government and each state and territory government should report to the Disability Reform Ministerial Council every six months. Their reports should detail the implementation status of each recommendation and raise any issues and risks.

In its 2024 report to National Cabinet, the Disability Reform Ministerial Council should identify the implementation of the Royal Commission's recommendations as one of its priorities and include it in its workplan.

## **Recommendation 12.3 Progress reporting on implementation of recommendations**

Commencing in 2025, the National Disability Commission should table an annual report in the Australian Parliament reporting on the progress of the Australian Government and state and territory governments in implementing the recommendations of the Royal Commission.

The report should compare progress across jurisdictions.

(For details of the National Disability Commission, see Volume 5, *Governing for inclusion*, Recommendation 5.5.)

## **Recommendation 12.4 Evaluation of effectiveness in improving outcomes**

The National Disability Commission should lead independent evaluations of the implementation of the Royal Commission's recommendations and their effectiveness in improving outcomes for people with disability. The evaluations should examine barriers to and drivers of effective implementation, and suggest measures for improvement.

The evaluations should be conducted five and 10 years after the delivery of the Final report, with reports tabled in the Australian Parliament.

### **Recommendation 12.5 A nationally consistent approach to data collection**

The Australian Government and state and territory governments, through the Disability Reform Ministerial Council, should address the lack of consistent disability data by developing a nationally consistent approach to collecting disability information.

By December 2024, the Australian Government and state and territory governments should agree to a core set of questions to identify disability status to be used across all mainstream services and population surveys. This should be led by the Australian Bureau of Statistics and the Australian Institute for Health and Welfare. The questions should be co-designed with people with disability and their representative organisations, and with First Nations subject matter experts.

### **Recommendation 12.6 Disability flags in data collection for mainstream services**

The Australian Government and state and territory governments, through the Disability Reform Ministerial Council, should address the lack of available disability data by implementing disability flags in data collections for key mainstream services.

By June 2025, the Australian Government and state and territory governments should publish an implementation plan outlining how the core set of questions will be integrated into data collections of priority mainstream services. This should be led by the Australian Bureau of Statistics and the Australian Institute for Health and Welfare.

### **Recommendation 12.7 Improving disability data collection**

The Australian Government and state and territory governments should support a strategy, led by the Australian Bureau of Statistics and the Australian Institute of Health and Welfare, to extend disability data collection:

- a. to include people with disability in closed and segregated settings and those with communication support needs
- b. to improve data on types of impairment
- c. to improve data for intersectional analysis by enhancing data on women with disability; children and young people with disability; and First Nations, culturally and linguistically diverse, and LGBTIQ+ people with disability.

This strategy should form part of the Australia's Disability Strategy 2021–2031 Data Improvement Plan.

### **Recommendation 12.8 Long-term support for the National Disability Data Asset**

The Australian Government and state and territory governments, through the Disability Reform Ministerial Council, should commit to long-term support to the National Disability Data Asset (NDDA).

All governments should:

- a. by June 2024, commit to continuing funding to establish the NDDA as a national resource for longitudinal analysis of linked data across service systems
- b. commit to publishing an annual statistical summary of the analyses of the NDDA's linked data. This should focus on data insights not available from other sources and provide transparency on projects underway. All reported data should be disaggregated as far as possible to enable intersectional analysis
- c. by December 2024, commence specific data projects using the NDDA that:

- identify the factors that put people with disability at greatest risk of violence, abuse, neglect or exploitation
- demonstrate the outcomes and experiences of people with disability transitioning between systems, including:
  - education and employment, child protection and justice systems, and housing and health
  - the National Disability Insurance Scheme and mainstream services
- evaluate the accuracy of disability status collection in various service settings.

# About AFDO

Since 2003, the Australian Federation of Disability Organisations (AFDO), a Disabled Peoples Organisation (DPO), a funded Disability Representative Organisation (DRO), has been the recognised national peak organisation in the disability sector, along with its disability specific members, representing people with disability. AFDO's mission is to champion the rights of people with disability in Australia and support them to participate fully in Australian life.

Our thirty four (34) member organisations represent disability specific communities and cross-disability communities with a total reach of over 4 million Australians.

AFDO continues to provide a strong, trusted, independent voice for the disability sector on national policy, inquiries, submissions, systemic advocacy and advisory on government initiatives with the Federal and State/Territory governments.

We work to develop a community where people with disability can participate in all aspects of social, economic, political and cultural life. This includes genuine participation in mainstream community life, the development of respectful and valued relationships, social and economic participation, and the opportunity to contribute as valued citizens.

## Our vision

That all people with disabilities must be involved equally in all aspects of social, economic, political and cultural life.

## Our mission

Using the strength of our membership-based organisations to harness the collective power of uniting people with disability to change society into a community where everyone is equal.

## Our strategic objectives

To represent the interests and united voice of our members and people with disability at a national and international level in all relevant forums.

To build the capacity, profile, reputation and sustainability of AFDO through the strength of our member organisations.

To enhance the connection and influence in international disability initiatives by policy, advocacy and engagement, focused on the Asia Pacific region.

# Our members

## Full members:

- Advocacy for Inclusion Incorporated
- Arts Access Australia
- Autism Aspergers Advocacy Australia
- Blind Citizens Australia
- Brain Injury Australia
- Deaf Australia
- Deafblind Australia
- Deafness Forum Australia
- Disability Advocacy Network Australia
- Disability Justice Australia
- Disability Resources Centre
- Down Syndrome Australia
- Enhanced Lifestyles
- National Mental Health Consumer & Carer Forum
- People With Disabilities WA
- Polio Australia
- Physical Disability Australia
- South West Autism Network - WA
- Women With Disabilities ACT - ACT
- Women with Disabilities Victoria - Vic

## Associate members:

- All Means All
- AED Legal Centre
- Amaze - Vic
- Aspergers Victoria
- Disability Voices Tasmania
- Disability Advocacy and Complaints Service of South Australia
- Explorability Inc
- Leadership Plus
- Multiple Sclerosis Australia
- National Organisation for Fetal Alcohol Spectrum Disorder
- National Union of Students - Disabilities Department
- Star Victoria Inc
- TASC National Limited
- Tourettes Syndrome Association of Australia
- Youth Disability Advocacy Service