Inquiry into abuse in disability services
Final Report
Committee functions

The Family and Community Development Committee is constituted under section 11 of the Parliamentary Committees Act 2003.

The committee's functions are to inquire into, consider and report to the Parliament on:

a. any proposal, matter or thing concerned with:
   i. the family or the welfare of the family
   ii. community development or the welfare of the community

b. the role of Government in community development and welfare, including the welfare of the family.
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Terms of Reference

Inquiry into abuse in disability services

To the Family and Community Development Committee — for inquiry, consideration and completion of an interim report no later than 31 July 2015 and a final report by no later than 1 March 2016 an inquiry into abuse in disability services and —

(a) in particular the inquiry will include but not be limited to:
   i) why abuse is not reported or acted upon; and
   ii) how it can be prevented;

(b) the Committee should note that the Victorian Ombudsman is currently conducting an investigation into how allegations of abuse in the disability sector are reported and investigated, including the effectiveness of the statutory oversight mechanisms in reviewing incidents and reporting on deficiencies (Ombudsman's investigation) and that this investigation will cover services which include residential, respite and day programs funded by the Victorian Government;

(c) in undertaking the inquiry, the Committee should:
   i) seek not to prejudice any investigations being undertaken by the Ombudsman or any Victorian Government agencies or any legal proceedings; and
   ii) work cooperatively with the Ombudsman to avoid unnecessary duplication;

(d) the inquiry will be conducted in two stages:
   i) Stage 1:
      A. the Committee should consider the strengths and weaknesses of Victoria's regulation of the disability service system with a view to informing Victoria's position on appropriate quality and safeguards for the National Disability Insurance Scheme, this may include issues being considered for the quality and safeguards framework including:
         I. workforce recruitment, screening, induction, training and supervision;
         II. provider registration requirements;
         III. systems for handling complaints; and
         IV. the impact of current systemic safeguards on the rights and protections of people accessing disability services;
      B. the Committee should have regard to any preliminary findings, recommendations or advice from the Ombudsman's investigation, and any other evidence that the Committee considers appropriate;
C. the Committee is requested to provide an interim report to the Parliament (on the matters set out in paragraph (d)(i)(A)) no later than 31 July 2015;

ii) Stage 2:

A. the Committee should consider any further systemic issues that impact on why abuse of people accessing services provided by disability service providers within the meaning of the Disability Act 2006 are not reported or acted upon and this should include:

I. any interim measures to strengthen the disability services system prior to transition to the National Disability Insurance Scheme;

II. any measures to strengthen the capacity of providers to prevent, report and act upon abuse to enhance the capability of service providers to transition to the National Disability Insurance Scheme; and

III. any measures to support people with a disability, their families and informal supports to identify, report and respond to abuse;

B. the Committee should undertake research to determine best practice approaches to how abuse of people accessing services provided by disability service providers within the meaning of the Disability Act 2006 can be prevented and this should include:

I. identifying early indications of abuse;

II. strategies to prevent abuse occurring;

III. consideration of needs specific to particular cohorts;

C. the Committee should examine the powers and processes of Victorian investigation and oversight bodies with jurisdiction over abuse of people with a disability, with particular focus on the ongoing role of these bodies in the context of the National Disability Insurance Scheme; and

D. the Committee should have regard to the final report, findings and recommendations of the Ombudsman’s investigation, and any other evidence that the Committee considers appropriate.
Chair’s foreword

“We are fortunate to have great expertise at hand. Our state of Victoria has been a leader, nationally and internationally, in responding to violence against women. What has been learnt is transferable. It is transferable because the effects and treatments are similar and because the causes are similar. They lie in the derogatory attitudes towards both women and people with disabilities and inequalities in power”. 1

For too long, people with disability in Victoria have endured violence in all its forms. The voices of people with disability, their families and carers have been sidelined or ignored, and widespread abuse and neglect continues. Similar to the issue of violence against women, violence against people with disability is inextricably linked to the denigration of their human rights.

Throughout this Inquiry the voices of people with disability, their families, carers, advocates and disability sector workers have reinforced over and again that the disability sector in Victoria is marked by an intrinsic lack of effective safeguarding and oversight. Fundamental change in the sector is needed to address these ingrained issues of violence, abuse and neglect.

Through submissions and extensive public hearings across Victoria the Committee heard consistently of the need for a single independent oversight body that can be implemented quickly with the capacity to prevent and respond to violence against people with disability.

The recommendations in this report are focused on the interim measures necessary to strengthen the disability services system in Victoria prior to the transition to the NDIS, with a focus on the powers and processes required within a Victorian quality and safeguarding framework.

A central barrier to reporting abuse is the systemic normalisation of abuse within disability services. This must be addressed through major cultural change that commences with implementing mandatory reporting and a zero tolerance of abuse approach. It must be underpinned with improved reporting practices and strengthened legal protections for people with disability.

This report when read in conjunction with recommendations in the Victorian Ombudsman’s Phase 2 report and the Senate Community Affairs References Committee report provides compelling need for change; change that will result in people with disability who have suffered violence, abuse and neglect being accorded the human rights and access to justice they have been denied for too long.

1 Ms J Hargrave, Women with Disabilities Victoria, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 2.
On behalf of the Committee I would like to acknowledge and thank everyone who contributed to this Inquiry through written submissions and at public hearings.

For many it was harrowing and confronting to relive their experiences of violence. Their evidence has been critical to the formulation of the recommendations in the report and to the Committee's view that their voices be heard, acknowledged and be the catalyst for ending violence, abuse and neglect against people with disability.

The Committee thanks the Secretariat – Dr Greg Gardiner, Executive Officer, Dr Kelly Butler, Research Officer, Ms Helen Ross-Soden, Administrative Officer and Ms Ashley Coleman-Bock, Research Assistant – for their outstanding research and support to the Committee.

I would like to thank my fellow Committee Members, Deputy Chair, Ms Cindy McLeish MP, Ms Chris Couzens MP, Ms Suzanna Sheed MP, Mr Bernie Finn MLC, Mr Paul Edbrooke MP, and Ms Emma Kealy MP, for their commitment to this Inquiry and to improving the lives of people with disability.

Maree Edwards, MP
Chair
Executive summary

Throughout the Inquiry the Committee heard undeniable evidence of the widespread nature of abuse and neglect of people with disability over a long period of time. It found that for too long the lived experience of people with disability, their families and carers has been ignored. The Committee has heard that abuse takes many forms: criminal physical and sexual assault, verbal and emotional abuse, financial abuse, and neglect endangering life. Abuse occurs in a range of different settings, from residential accommodation to day programs, and in services operated by both the Department of Health and Human Services (the Department) and non-government disability service providers. Witnesses consistently linked the abuse of people with disability to the failure to uphold the rights of people with disability, a cultural problem that goes beyond the quality of care in disability services. The Committee heard a significant amount of evidence about the gendered nature of the abuse of people with disability.

Families shared accounts of their family members’ abuse, and spoke of their own experiences attempting to report abuse and advocate on behalf of their relatives. The Committee heard from numerous parents frustrated with the systems for reporting abuse and fearful for their children. In particular, many parents reported feeling that their concerns about suspected abuse were repeatedly ignored or dismissed by the Department of Health and Human Services and service providers.

The Committee drew on the important work of the Victorian Ombudsman in her 2015 investigation into abuse in the disability sector. While some of the Ombudsman’s recommendations cover issues which are out of scope for the Committee’s Inquiry, the Ombudsman made a number of recommendations in her Phase 2 report which the Committee has carefully considered.

The eight chapters of this report provide a detailed account of the experiences of people with disability within a disability sector marked by a fundamental lack of essential safeguarding and oversight. Much of the evidence presented to the Committee, and contained in this report, is confronting. The Committee heard from parents of children with disability who had been repeatedly sexually assaulted while in care. The Committee heard that physical violence towards people with disability was ‘normalised’ within the sector. It heard about the theft of money from people with disability while in care. The Committee was presented with evidence that demonstrates that the disability workforce is frequently ill-equipped for the complex tasks required, is untrained or undertrained, and often poorly supervised. The Committee has heard that the sector has employed predators who repeatedly assaulted the clients of residential facilities. The Committee is adamant that the human rights of people with disability must be put at the forefront of every action and can no longer be ignored. Attempts to date have failed people with disability.

The Committee believes that fundamental change in the sector is required in order to address these endemic issues of abuse. Under the terms of reference for Stage 2, the Committee was asked to report on any interim measures necessary to strengthen the disability services system prior to transition to the National Disability Insurance Scheme (NDIS), and to examine the powers and processes of Victoria’s oversight
bodies, with a focus on their ongoing role in the context of the NDIS. One of the key questions for the Committee to consider in Stage 2 therefore centred on how oversight could be dramatically improved in Victoria, and by whom it should be provided.

The Committee is confident that the Disability Reform Council will establish a national oversight body. However, it is the view of the Committee – and the majority of the Inquiry’s stakeholders – that the Victorian Government cannot wait until the introduction of a national oversight system to address deficiencies in the operation of Victoria’s own oversight bodies. The Committee is mindful that any changes to Victoria’s oversight system need to be capable of being implemented quickly, be cost effective, and must improve the capacity of the system to prevent and respond to abuse.

There was overwhelming support from stakeholders to the Inquiry for an independent statutory oversight body to oversee reports of abuse and neglect. However, stakeholders held a diverse range of views about whether a new oversight body should be established in Victoria, or whether oversight functions should be enhanced and consolidated in an existing body – such as the Disability Services Commissioner, the Victorian Ombudsman, the Office of the Public Advocate, or the Victorian Equal Opportunity and Human Rights Commission (VEOHRC).

**Victoria’s oversight body**

Throughout the Inquiry the Committee heard criticism of the Disability Services Commissioner (DSC). Many witnesses feel that the DSC has failed in its current role to provide effective oversight of the disability sector, especially in relation to investigating reports of abuse. The Committee’s Interim Report outlines how the VEOHRC, the Victorian Ombudsman and the Office of the Public Advocate have important functions as part of Victoria’s broad system of oversight for people with disability. In Stage 2 the Committee has assessed the role of each of these bodies, and the DSC, in relation to the oversight of disability services in Victoria. The Committee has also considered the creation of an entirely new oversight body.

Despite the public perception that the DSC has not fulfilled its obligations, the Committee is aware that the DSC was established to serve as a complaints body, with an explicit focus on conciliating between people with disability and service providers around issues of service quality. At the same time, the Committee acknowledges that the DSC in its current form has not lived up to the expectations of many within the disability sector. While the Committee believes that this is primarily related to the narrow functions given to the office, and confusion about the relationship between service complaints and reports of neglect and abuse, it also acknowledges the role that leadership plays in developing confidence in the abilities of an oversight body.

The Committee believes that a renewed DSC should become the key oversight body for the disability sector, with responsibilities for handling complaints and receiving reports of abuse; monitoring service quality; and providing leadership and resources on best practice approaches to preventing, identifying, and responding to abuse. The Committee recommends the DSC be empowered with own motion powers of investigation, be funded to employ authorised officers to perform inspections and
executive summary

inquiry into abuse in disability services

investigations, and have a central role in developing zero tolerance training for all disability support services. A renewed DSC will also possess powers to penalise disability service employers that are found to have taken adverse action against employees for reporting abuse. The Committee makes a number of other recommendations in relation to a renewed DSC.

Given the broadening of its role, the Committee considers that a name change should also occur to reflect this, and that the DSC will become the ‘Disability Commissioner’.

Chapter One: Experiences of abuse in disability services

In Chapter One the Committee provides testimonies and personal stories of the abuse of people with disability, their carers and families. These devastating accounts provide the substantive evidence of the widespread nature of sexual and physical assault, verbal abuse, financial abuse, and neglect that have occurred across the disability sector, and continue to occur. The Committee also heard about the link between neglect and unexplained deaths.

In this chapter, the Committee addressed the experiences that people with disability, their families and carers have had when disclosing or reporting abuse. The Committee found that a number of factors contribute to an increased risk of abuse for people with disability, including gender, age, type of disability, type of accommodation, and cultural background.

The Committee received evidence from key stakeholders, such as the Australian Cross Disability Alliance and Women with Disabilities Victoria, who both argued for better data collection on crimes against people with disability, to enable a more exact understanding of the prevalence of violence. The Committee identified that data collection on violence against people with disability is extremely limited. The Committee welcomed Victoria Police’s Accessibility Action Plan: 2014-2017. The Committee recommended that all police reporting processes should include disability as a demographic characteristic to ensure that both crimes against people with disability and alleged offences committed by people with disability can be quantified and analysed for trends. The Committee also recommended that a broad research initiative on violence against people with disability be undertaken by key agencies to significantly advance knowledge of abuse and shape a whole-of-community response to its prevention.

One of the main recommendations of the Senate Community Affairs References Committee’s recent inquiry into the abuse of people with a disability was for a federal Royal Commission. The Committee supports the call for a Royal Commission. A federal Royal Commission would send a powerful message to the broader community about the seriousness of the abuse of people with disability, and would serve as an opportunity for governments across Australia to work cooperatively on developing strategies for prevention.

The Committee received evidence that neglectful practices within disability services can, and have, led to the deaths of people with disability in Victoria. The Committee sought information from the State Coroner in relation to the deaths of people with disability. The Committee focused on case reports where deaths could potentially
have been related to abuse or neglect in disability services, within the Committee’s terms of reference. The Committee concluded that although there was no evidence of specific instances of abuse or deliberate neglect some cases included practices that indicate neglectful service practices, such as gaps in supervision of high needs clients, insufficient staffing levels and inadequate training.

In Victoria, there is no process to systematically review deaths in disability services. The Committee recommended that a renewed Disability Commissioner undertake comprehensive and regular reviews of deaths in disability services. The Committee also recommended that the Coroner’s Court be funded to undertake the ICT improvements to facilitate accurate reporting and analysis of deaths of people with disability, and that the Coroner report all deaths that occur in disability services directly to the Disability Commissioner.

Chapter Two: Barriers to reporting abuse

The Committee heard that people with disability and their families face barriers when seeking to report abuse. Barriers to reporting include: a fear of reprisals from service providers; a belief that allegations of abuse will not be taken seriously; and a lack of accessible knowledge about how to make a report. Families told the Committee about their frustration with the process of reporting and the emotional toll of pursuing complaints across a number of different agencies with little prospect of resolution. The Committee heard that disability support staff also face barriers to reporting abuse, and require increased protection from reprisals.

Chapter Two examines one of the central questions of the Committee’s terms of reference: what are the ‘systemic issues’ that impact on why the abuse of people with disability is not reported?

The Committee found that a fundamental barrier to reporting abuse is the systemic normalisation of abuse within disability services. This must be addressed through major cultural change, accompanied by improved reporting practices, and strengthened legal protections for people with disability. The Committee recommends that the disability sector adopt a zero tolerance approach to abuse and that all disability service providers demonstrate their commitment to the principle of zero tolerance as a condition of registration.

The Committee believes it is the role of disability service providers to actively encourage and support employees to identify and report abuse. The Committee is concerned about the protections for ‘whistleblowers’, and considers that an amendment to the Disability Act 2006 (Vic) (the Disability Act) should impose penalties on employers that take adverse action against staff for reporting abuse. The responsibility for enforcing this penalty should be a function of a renewed Disability Services Commissioner.

The Committee believes that changes to the Department’s incident management system that emphasise the impact that acts of abuse and violence have on people with disability are necessary. The Department should cease usage of the term ‘incident’ and instead employ terminology that actually reflects the type of abuse experienced. These changes will send a strong message to people with disability,
their families and carers, service providers, and disability support staff that abuse is more than a service ‘incident’. Dedicated funding is needed for independent organisations to deliver human rights education programs to people with disability, their families and carers, that provides information on how to identify and report abuse. Support plans need to address the special requirements of people with complex communication needs. To reduce barriers to reporting, the Committee also concluded that there needs to be an expansion of the Independent Third Person (ITP) program operated by the Office of the Public Advocate; that the Evidence Act 2008 (Vic) (the Evidence Act) needs to be amended to provide for communication intermediaries to assist people with complex communication needs; and that Victoria Police be adequately funded to implement its Accessibility Action Plan.

Chapter Three: Mandatory reporting and improvements to the processes for reporting abuse

The Committee found that the majority of the Inquiry’s stakeholders considered the introduction of a mandatory reporting scheme for suspected abuse as the most crucial improvement needed to Victoria’s reporting system.

There is a high level of variance from service provider to service provider about the steps that should be taken to support clients that have experienced abuse. The Committee believes that it is essential to standardise the processes used by service providers to ensure that all people with disability can be assured of an appropriate level of support, regardless of which service provider they use, and recommends that the Victorian Government work with the Department of Health and Human Services, the Disability Services Commissioner, and peak body National Disability Services to create standardised policies and processes for providers.

The Committee found the technology that supports reporting is outdated, lacks commonality across the sector, and is vulnerable to failure. The Committee is adamant that the disability sector adopt a common online system for lodging and tracking reports of abuse. To enhance reporting, the Committee supports the streamlining of the Department’s reporting system, reduction in the number of ‘incident types’, and clearly describing the impact of abuse on clients by using new terminology.

The Committee considers that the introduction of a mandatory reporting scheme is fundamental to improving Victoria’s safeguards for people with disability. While the Committee expects that a national scheme will be established by the Commonwealth Department of Social Services as part of the overarching safeguarding framework for the NDIS, the Committee believes that the Victorian Government should implement its own scheme as an interim measure.

The Committee considers a renewed DSC to be the most appropriate body to manage a system of mandatory reporting. In this scheme, the DSC would analyse all reports of abuse received from service providers, identify any patterns or trends, and recommend further investigations or improvements to service provision. Penalties would apply for disability service providers and their staff that fail to report abuse to the DSC.
Chapter Four: Disability workforce

This chapter examines the disability workforce in Victoria with a focus on improving screening processes and training for disability support workers. The Committee accepts that disability support workers should not be made the scapegoats for a sector that has failed to protect people with disability from abuse. However, the Committee has received substantial evidence of the bitter disappointment of carers and parents of people with disability, who have placed their loved ones in the care of service providers, only to find that in doing so they have exposed their family members to sexual and physical assaults, neglect endangering life, financial abuse and incompetence. As both the public revelations of abuse in 2014 and the evidence to this Inquiry demonstrate, it has been, and continues to be, too easy for predators to gain access to employment in the disability sector. The Committee found that the workplace culture of the disability sector requires profound change to ensure that the abuse of people with disability is prevented.

The Committee found an urgent need for reform of the disability workforce. The chapter recommends the development of a statewide prevention and risk management workforce strategy for disability services, as a core component of the zero tolerance of abuse framework; the introduction of a Working with Vulnerable People Check; the extension of the existing Disability Worker Exclusion Scheme (DWES) to cover all disability services; a revised Certificate IV in Disability to become the national minimum standard qualification; measures to address the casualisation of the workforce; and recommendations to address workforce culture.

Chapter Five: Gender and the prevention of abuse

The Committee heard evidence that women with disability are more likely to experience abuse compared with men with disability and women without disability. The chapter considers the need to recognise the role of gender in the experience of people with disability, and the need to develop strategies to prevent abuse that acknowledge the importance of gender.

The Committee heard that there was widespread concern amongst people with disability and their families who felt they had little choice in determining who would provide assistance with intimate and personal tasks. The Committee recommends changes to the Disability Act that require disability providers to record the gender preference of people with disability in relation to the provision of intimate supports. This includes consulting the views of families, carers and guardians (where relevant), and providing assistance to people with complex communication needs to express their preference.

The Committee is aware that Victoria has a number of specialist support services and programs aimed at preventing violence against women, and recommends that the Victorian Government fund the expansion of these programs to support women with disability. Further, the Committee recommends that the Victorian Government supports the development of healthy and respectful relationships education in order to prevent the abuse of people with intellectual disabilities who access disability services.
This chapter also refers to the work of the recent Victorian Royal Commission into Family Violence, which highlighted the particular situation of people with disability in relation to family violence. The Committee notes that some of the Commission’s recommendations concern issues on which the Committee has also made recommendations, including the need for a more comprehensive approach to data collection on people with disability and crime; the training of disability workers to identify violence and abuse; the application of the Evidence Act to people with disability; and eligibility for services of people with disability who are victims of family violence.

The Committee recommends that the Victorian Government adopt each of the Commission’s recommendations that relate directly to people with disability.

Chapter Six: Advocacy

Witnesses argued that independent advocacy services are an important safeguard that work to prevent and improve responses to abuse. The Committee heard that existing advocacy services are operating at capacity, and that demand for advocacy is rising with the roll-out of the NDIS. While it has been confirmed that the Australian Government's National Disability Advocacy Program will continue, and the NDIS will fund some forms of advocacy, stakeholders are anxious about the future of disability advocacy.

The Committee recommends that the Victorian Government continues to fund advocacy services at the state level, following a review of the demand for different forms of advocacy that includes the views of people with disability.

Throughout the Inquiry the Committee has been impressed by the dedication of many parents and families who advocate on behalf of their family members. The Committee recommends that the Victorian Government fund dedicated advocacy services to support the families of people with disability to continue in this important role, particularly in rural and regional areas.

Chapter Seven: The future of Victoria’s oversight bodies

As mentioned above, while the Committee heard criticism of the current DSC and confusion around the role and powers of the DSC, the majority of stakeholders were supportive of the establishment of an independent statutory oversight body very similar to the model of the current DSC. The Committee recommends that the Victorian Government comprehensively renew the DSC – with expanded legislative powers and additional funding – to become the primary oversight body for the disability sector. The Committee recommends that a renewed DSC be retitled as the ‘Disability Commissioner’, and have responsibility for handling complaints about service quality; receiving mandatory reports of suspected abuse and neglect; conducting own motion investigations with dedicated authorised officers; developing practice guides and workforce professional development; and leading the state’s commitment to the principle of zero tolerance of abuse.
With regard to the future role of the Community Visitors Program, the Committee is of the view that in the interim period, while their national role is being reviewed as part of the NDIS environment, the Community Visitors Program should be retained in Victoria. While a renewed office of the Disability Commissioner may be the logical location for this group, and within which it can be located at a future date, at the present time it makes more sense for the Office of the Public Advocate and the Board to continue to administer their activities, until such time as a national model for quality assurance is determined. Community Visitors need further training in the detection, prevention and reporting of abuse, and in communicating with people with complex communication needs, and should also make their reports to the Disability Commissioner.

The Committee believes that the weight of evidence to this Inquiry supports the creation of a specialist group of authorised officers to be appointed within a renewed Disability Commission. These officers will be empowered by the Commissioner to act on individual complaints, undertake investigations into systemic failures, conduct unannounced visits to any facility and any service, and liaise directly with Victoria Police. These officers will be in addition to the current ongoing external accreditation and review process.

With regard to the position of the Senior Practitioner (Disability), the Committee heard evidence that there was a perceived conflict of interest with the current location of the Senior Practitioner within the Department. In the interim period prior to the full roll-out of the NDIS, the Committee is of the view that a renewed Disability Commissioner should become the new location for the Senior Practitioner (Disability), with the proviso that such a structure does not conflict with the national safeguarding framework.

Chapter Eight: The NDIS roll-out in Victoria

This chapter provides an overview of the concerns of stakeholders about the roll-out of the NDIS in Victoria. Broadly the Committee heard that the NDIS has been a positive development for people in the Barwon trial site, however some witnesses reported that there has been a lack of information about how to transition to the scheme. The Committee recommends that the quality and accessibility of information about the NDIS be improved to ensure that people with disabilities and their families and carers are fully informed.

The chapter also considers the ongoing role of the Charter of Human Rights and Responsibilities Act 2006 (Vic) (the Charter) in the context of the NDIS. The Committee heard that many in the disability sector view the Charter as an important element of Victoria’s safeguarding system that should not be diminished. As such, the Committee recommends that further work be undertaken by the Victorian Equal Opportunity and Human Rights Commission and the Victorian Ombudsman on how to preserve the protections of the Charter for people with disability in Victoria. The Committee also recommends that the Victorian Government use its position on the Disability Reform Council to ensure that the protections of the United Nations Convention on the Rights of Persons with Disabilities are incorporated into the National Disability Insurance Scheme Act 2013 (Cth).
### Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>ABI</td>
<td>Acquired Brain Injury</td>
</tr>
<tr>
<td>ABS</td>
<td>Australian Bureau of Statistics</td>
</tr>
<tr>
<td>ACT</td>
<td>Australian Capital Territory</td>
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<tr>
<td>ACSO</td>
<td>Australian Community Support Organisation</td>
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<tr>
<td>AHPRA</td>
<td>Australian Health Practitioner Regulation Agency</td>
</tr>
<tr>
<td>AMIDA</td>
<td>Action for More Independence and Dignity in Accommodation</td>
</tr>
<tr>
<td>ASD</td>
<td>Autism Spectrum Disorder</td>
</tr>
<tr>
<td>CALD</td>
<td>Culturally and Linguistically Diverse</td>
</tr>
<tr>
<td>CASA</td>
<td>Centres Against Sexual Assault</td>
</tr>
<tr>
<td>COAG</td>
<td>Council of Australian Governments</td>
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<tr>
<td>CRA</td>
<td>Communication Rights Australia</td>
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<td>CRU</td>
<td>Community Residential Unit</td>
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<tr>
<td>CSO</td>
<td>Community Service Organisations</td>
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<tr>
<td>Cth</td>
<td>Commonwealth</td>
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<tr>
<td>CV</td>
<td>Community Visitor</td>
</tr>
<tr>
<td>DARU</td>
<td>Disability Advocacy Resource Unit</td>
</tr>
<tr>
<td>DHHS</td>
<td>Department of Health and Human Services</td>
</tr>
<tr>
<td>DHS</td>
<td>the former Department of Human Services (now DHHS)</td>
</tr>
<tr>
<td>DDLS</td>
<td>Disability Discrimination Legal Service</td>
</tr>
<tr>
<td>DSC</td>
<td>Victorian Disability Services Commissioner</td>
</tr>
<tr>
<td>DSS</td>
<td>Department of Social Services</td>
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<tr>
<td>DWEL</td>
<td>Disability Worker Exclusion List</td>
</tr>
<tr>
<td>DWES</td>
<td>Disability Worker Exclusion Scheme</td>
</tr>
<tr>
<td>GdA</td>
<td>Grampians disAbility Advocacy</td>
</tr>
<tr>
<td>HACC</td>
<td>Home and Community Care</td>
</tr>
<tr>
<td>HACSU</td>
<td>Health and Community Services Union</td>
</tr>
<tr>
<td>IBAC</td>
<td>Independent Broad-based Anti-corruption Commission</td>
</tr>
<tr>
<td>ICT</td>
<td>Information and Communication Technology</td>
</tr>
<tr>
<td>ISP</td>
<td>Individual Support Package</td>
</tr>
<tr>
<td>ITP</td>
<td>Independent Third Person</td>
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<tr>
<td>LISA</td>
<td>Lifestyle in Supported Accommodation</td>
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<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>NDIA</td>
<td>National Disability Insurance Agency</td>
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<tr>
<td>NDIS</td>
<td>National Disability Insurance Scheme</td>
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<td>NDS</td>
<td>National Disability Services</td>
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<td>NSW</td>
<td>New South Wales</td>
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<td>OHS</td>
<td>Occupational Health and Safety</td>
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<tr>
<td>OPA</td>
<td>Office of the Public Advocate</td>
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<tr>
<td>PMC</td>
<td>Prejudice Motivated Crime</td>
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<tr>
<td>QoSR</td>
<td>Quality of Support Review</td>
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<tr>
<td>RAPSA</td>
<td>Responding to Allegations of Physical and Sexual Assault Instruction</td>
</tr>
<tr>
<td>RTO</td>
<td>Registered Training Organisation</td>
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<tr>
<td>SA</td>
<td>South Australia</td>
</tr>
<tr>
<td>SARU</td>
<td>Self Advocacy Resource Unit</td>
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<tr>
<td>SECASA</td>
<td>South Eastern Centre Against Sexual Assault</td>
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<tr>
<td>SOCIT</td>
<td>Sexual Offences and Child Abuse Investigation Team</td>
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<tr>
<td>SRS</td>
<td>Supported Residential Service</td>
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<tr>
<td>TAC</td>
<td>Transport Accident Commission</td>
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<td>TAS</td>
<td>Tasmania</td>
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<tr>
<td>VALID</td>
<td>Victorian Advocacy League for Individuals with Disability Inc</td>
</tr>
<tr>
<td>VCOSS</td>
<td>Victorian Council of Social Service</td>
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<tr>
<td>VEOHRC</td>
<td>Victorian Equal Opportunity and Human Rights Commission</td>
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<tr>
<td>VHIMS</td>
<td>Victorian Health Incident Management System</td>
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<tr>
<td>WWVPC</td>
<td>Working with Vulnerable People Check</td>
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<tr>
<td>WWCC</td>
<td>Working with Children Check</td>
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<tr>
<td>YDAS</td>
<td>Youth Disability Advocacy Service</td>
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</tbody>
</table>
Glossary

**Community Visitors**

Community Visitors are volunteers appointed by the Governor in Council to visit accommodation facilities operating under the *Disability Act 2006* (Vic). They can inquire into various matters relating to service delivery, including whether the rights of people with disability are being upheld and cases of suspected abuse or neglect of people with disability. The Community Visitors are managed by the Office of the Public Advocate.

**Complaint**

A complaint is the expression of dissatisfaction with a decision, service or product.

**Critical incident**

The term used by the Department of Health and Human Services in Victoria to describe an incident that relates to a serious outcome (severe trauma or death), or a threat to the health, safety or wellbeing of people who access disability services.

**Department of Health and Human Services (DHHS)**

The Department has a multifaceted and complex role, including responsibility under the *Disability Act 2006* (Vic) to promote the rights of people accessing disability services and to support the provision of quality disability support services. In order to meet these responsibilities, the Department has a range of functions.

**Disability Act 2006 (Vic)**

The Act sets out principles for people with disability and for disability service providers. The Act aims to provide a stronger whole of government, whole of community response to the rights and needs of people with disability, and a framework for the provision of high quality services and supports for people with disability.

**Disability Reform Council**

The Council of Australian Government’s Disability Reform Council oversees the trial and implementation of the NDIS. The Council consists of Commonwealth, State and Territory Ministers with responsibility for disability policy and supports.

**Disability service provider**

A person or body (for example a non-government community service organisation) that provides disability services under the *Disability Act 2006* (Vic) and is registered on the register of disability service providers. The Department of Health and Human Services is also a disability service provider.
Disability Services Commissioner
The Disability Services Commissioner was established on 1 July 2007 under the Disability Act 2006 (Vic) to improve services for people with disability in Victoria through assisting in the resolution of complaints raised by or on behalf of people who receive services. The Commissioner is a statutory body that functions independent of government, the Department of Health and Human Services and Victorian disability services to provide a free, confidential and supportive complaints resolution process.

Disability Worker Exclusion List (DWEL)
The Disability Worker Exclusion List details people who pose a threat to the health, safety or welfare of people with a disability living in disability residential services.

Disability Worker Exclusion Scheme (DWES)
The Disability Worker Exclusion Scheme was introduced in Victoria in September 2014. It seeks to ensure that people who pose a threat to the health, safety or welfare of people with a disability are excluded from working in disability residential services in Victoria.

Guardianship
The appointment of a person to make decisions for an adult with a disability when they are unable to do so.

Individualised or self directed funding
Where government funds can be given directly to service users to then purchase services. This would mean service providers receive funding only after being approached (chosen) by the service user.

Individual Support Package (ISP)
An ISP enables a person to provide direction for the identification and implementation of supports that are most appropriate to their individual needs and circumstances. It enables the person to exercise choice in obtaining support that will assist them to achieve their goals and pursue their own lifestyle.²

Individual Support Plan
The Disability Act 2006 (Vic) requires that a person has a support plan in place if they are in receipt of an ongoing disability support such as an Individual Support Package (ISP). The support plan outlines the person’s goals and the strategies and resources required to achieve those goals. If the supports require disability funding, these need to be written in a funding proposal.³

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² Department of Health and Human Services, Individual support packages for people with a disability: Guidelines, Department of Health and Human Services, Melbourne 2014.
³ Department of Health and Human Services, Individual support package handbook, Department of Health and Human Services, Melbourne, 2009, p. 41.
**National Disability Insurance Agency (NDIA)**
An independent statutory agency whose role is to implement the National Disability Insurance Scheme (NDIS).  

**National Disability Insurance Scheme (NDIS)**
The new way of providing individualised support for eligible people with permanent and significant disability, their families and carers.  

**National Disability Services (NDS)**
The national peak body for non-government disability service providers. Its purpose is to promote quality service provision and life opportunities for Victorians with disability.  

**Office of the Public Advocate**
A statutory body established under the Guardianship and Administration Act 1986 (Vic) with the primary function as a guardian of last resort. Functions and powers include being appointed as a statutory guardian, providing advice and assistance, investigating complaints and advocating on behalf of people with disability.  

**Quality of Support reviews**
Quality of Support reviews are undertaken to ensure appropriate action has been taken to support a client’s health, safety and wellbeing following an incident. They are undertaken for all allegations of physical or sexual assault of a client by a staff member in disability services. A quality of support review may also be undertaken for patterns of unexplained injuries.  

**Restrictive intervention**
A restrictive intervention includes any intervention used to restrict the rights and freedom of movement of a person with a disability and can include the use of chemical, physical or mechanical restraint or seclusion. Restrictive interventions can only be used to prevent the person hurting themself or others and require an approved Behaviour Support Plan to be in place before an intervention is used.  

**Senior Practitioner (Disability)**
The Senior Practitioner (Disability) was established in 2007 by the Disability Act 2006 (Vic). Its remit is to ensure the rights of persons who are subject to restrictive interventions and compulsory treatment are protected and that appropriate standards in relation to these practices are complied with.

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### Summary of recommendations

#### Chapter One

<table>
<thead>
<tr>
<th>Number</th>
<th>Recommendation</th>
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<tbody>
<tr>
<td>1.1</td>
<td>The Victorian Government fund the Coroner’s Court of Victoria to undertake the necessary ICT improvements to facilitate accurate reporting and analysis of deaths of people with disability.</td>
</tr>
<tr>
<td>1.2</td>
<td>The Victorian Government make the legislative changes necessary to provide for the Coroner to report all deaths that occur in disability services directly to the Disability Services Commissioner.</td>
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<tr>
<td>1.3</td>
<td>The Victorian Government fund a renewed Disability Services Commissioner to undertake a comprehensive, annual review of all deaths that occur in disability services, and the results of this review should be made public.</td>
</tr>
<tr>
<td>1.4</td>
<td>The Victorian Government requires Victoria Police to change its data collection process to include disability as a standard demographic characteristic in all police crime reports, for both victims of crime and alleged offenders. This data should be made available publicly through the Crime Statistics Agency and disaggregated by gender, age, and cultural background.</td>
</tr>
<tr>
<td>1.5</td>
<td>The Victorian Government develop reliable data on the incidence of violence against people with disability – including violence that occurs in the context of all disability service providers as well as the broader community. The findings of this research should be made available publicly, and include information on rates of violence according to gender, age, type of disability, cultural background, and place of residence.</td>
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</table>
| 1.6    | The Victorian Government use its position on the Disability Reform Council and the Council of Australian Governments to:  
  - support a federal Royal Commission into violence against people with disability; and  
  - in addition to the quality and safeguarding framework for the NDIS, develop a national strategy for the prevention of violence against people with disability. |
## Chapter Two

<table>
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<th>Number</th>
<th>Recommendation</th>
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| 2.1    | The Victorian Government:  
• amend section 5 of the *Disability Act 2006* (Vic) to include zero tolerance as a guiding principle for the delivery of disability services;  
• require all disability service providers to demonstrate their commitment to the principle of zero tolerance as a condition of registration; and  
• fund the Disability Services Commissioner to work with National Disability Services, advocacy organisations and people with disability to develop and deliver zero tolerance training to all disability support services in Victoria. |
| 2.2    | The Department of Health and Human Services changes its critical incident management system to include descriptions that emphasise the impact that acts of abuse have on people with disability. The Department should cease usage of the term ‘incident’ and instead employ terminology that reflects the type of abuse, including, but not restricted to:  
• sexual assault and physical assault  
• violence  
• allegation of assault and disclosure of assault  
• verbal, emotional and financial abuse  
• neglect. |
| 2.3    | The Victorian Government provide dedicated funding to appropriate independent organisations to deliver human rights education programs to people with disability, their families and carers, that provide information on how to identify and report abuse. |
| 2.4    | The Victorian Government amend the *Disability Act 2006* (Vic) to allow for the Disability Services Commissioner to penalise disability service employers that are found to have taken adverse action against employees for reporting abuse. |
| 2.5    | Disability service providers be required, as a condition of registration, to have clearly documented and articulated processes for supporting employees who report abuse.  
• The zero tolerance framework will clearly state the rights and obligations of workers to report abuse, and the obligations of employers to support workers who report abuse. |
| 2.6    | The Victorian Government ensures that Victoria Police is appropriately resourced to implement its *Accessibility Action Plan 2014-2017*.  
• Victoria Police be directed to report annually on the implementation of its Accessibility Action Plan with particular reference to the four stated goals of the Plan, and progress on each of the goals deliverables. |
### Summary of recommendations

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| 2.7    | The Victorian Government:  
|        | • fund an expansion of the Independent Third Person (ITP) program operated by the Office of the Public Advocate; and  
|        | • ensure that the Victoria Police Manual is updated to require that a person’s ITP is independent of their disability service provider. |
| 2.8    | The Victorian Government amend the *Disability Act 2006* (Vic) to require that support plans prepared under section 54 address the complex communication needs of people with disability. |
| 2.9    | The Victorian Government:  
|        | • amend the *Evidence Act 2008* (Vic) to provide for communication intermediaries to assist people with complex communication needs; and  
|        | • investigate the feasibility of introducing the UK model of funded, registered intermediaries in Victoria. |

### Chapter Three

<table>
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<tr>
<td>3.1</td>
<td>As part of the development of a zero tolerance of abuse framework, the Victorian Government work with the Department of Health and Human Services, the Disability Services Commissioner, and National Disability Services to create standardised policies and processes for providers to follow when reporting suspected abuse, and supporting clients in the aftermath of abuse.</td>
</tr>
<tr>
<td>3.2</td>
<td>The Victorian Government funds the Department of Health and Human Services and the Disability Services Commissioner to implement an online reporting system for all disability service providers that enables improved recording, tracking, and analysis of all reported instances of abuse.</td>
</tr>
<tr>
<td>3.3</td>
<td>The Victorian Government requires the Department of Health and Human Services to streamline its critical incident management system to more clearly describe the impact of abuse on clients by using new terminology (as referred to in Recommendation 2.2) and fewer ‘incident types’ to categorise abuse.</td>
</tr>
<tr>
<td>3.4</td>
<td>The Victorian Government use its position on the Disability Reform Council and the Council of Australian Governments to support the establishment of a national system for reporting and investigating violence against people with disability, including a mandatory reporting scheme, as recommended by the Senate Community Affairs References Committee.</td>
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</table>
Summary of recommendations

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<tr>
<th>Number</th>
<th>Recommendation</th>
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</table>
| 3.5    | The Victorian Government amend the *Disability Act 2006* (Vic) to establish a mandatory reporting scheme that:  
  - requires all registered disability service providers to report cases of suspected abuse and neglect within their organisation to the Disability Services Commissioner; and  
  - includes penalties for disability service providers and their staff that fail to report abuse to the Disability Services Commissioner. |

Chapter Four

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<th>Number</th>
<th>Recommendation</th>
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<tbody>
<tr>
<td>4.1</td>
<td>The Victorian Government develop a statewide prevention and risk management workforce strategy for disability services. This strategy will be a core element of Victoria’s new zero tolerance of abuse framework (as recommended in Recommendation 2.1). It will address workforce screening and recruitment, registration, induction and supervision, ongoing training and professional development, certification, and workforce culture.</td>
</tr>
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</table>
| 4.2    | The Victorian Government legislate for the introduction of a Working with Vulnerable People Check, which will include, but not be limited to:  
  - national and international criminal history and non-conviction information;  
  - professional conduct reports;  
  - information from any relevant sources and agencies;  
  - across lifetime examination;  
  - ongoing monitoring;  
  - provision for the revocation of the check; and  
  - penalties for contravention of provisions. |
| 4.3    | The Victorian Government extend the Disability Worker Exclusion Scheme (DWES) to cover all disability services, and disability service providers, and ensure that the scheme becomes more transparent to key stakeholders.  
  - The Department of Health and Human Services will provide disability service providers with updated information, and greater clarity, on the application and workings of the DWES. |
| 4.4    | The Victorian Government require the Disability Services Commissioner to collaborate with peak-body National Disability Services, disability service providers, and the Department of Health and Human Services, to develop best practice employment screening and induction processes.  
  - This best practice model will be underpinned by the principle of the involvement of people with disability in the selection and choice of staff, wherever practicable and appropriate. |
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| 4.5    | The Victorian Government use its position on the Disability Reform Council and the Council of Australian Governments to provide for a revised Certificate IV in Disability to become the national minimum standard qualification for the disability workforce, ensuring that:  
  - a core component of a revised Certificate IV be a unit focusing on the recognition, prevention and reporting of abuse. |
| 4.6    | Through the offices of the Skills Commissioner for Victoria, the Victorian Government review the content and delivery of the Certificate IV in Disability, ensuring that:  
  - the recognition, prevention and reporting of abuse becomes a compulsory unit of a revised Certificate IV. |
| 4.7    | As part of a statewide prevention and risk management workforce strategy, the Disability Services Commissioner take a leadership role in the provision of ongoing professional development for the sector.  
  - The DSC will collaborate with peak-body National Disability Services, disability service providers, the Department of Health and Human Services, advocacy groups and registered training organisations, to develop a coherent, practical and tailored suite of training packages and modules for delivery to the sector.  
  - A guide to best practice in staff supervision will be developed, which addresses the appropriate supervision and monitoring necessary for new and ongoing staff. |
| 4.8    | On the subject of casualisation, the statewide prevention and risk management workforce strategy clearly state that all disability support workers employed by disability service providers, regardless of employment status, must be properly screened, inducted, trained, qualified, and engaged in ongoing professional development.  
  - The strategy will provide guidance on the parameters within which the hiring of casual staff is acceptable. |
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<tr>
<td>4.9</td>
<td>The statewide prevention and risk management workforce strategy for disability services clearly state the need for cultural change in the workplace and in service provision, within the context of the zero tolerance of abuse framework. The strategy will further state that:</td>
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<td></td>
<td>• the Disability Services Commissioner will monitor and evaluate the workplace culture of service providers to ensure compliance with a zero tolerance of abuse framework;</td>
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<td></td>
<td>• the disability workforce be equipped with the skills and capacity to provide equitable, person centred services, including the recognition of people’s human rights and their requirements related to their race, religion, sexuality and gender;</td>
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<td>• boards of management, CEOs, and service managers are to be held accountable for the services that they provide;</td>
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<td>• the penalties to be imposed for a failure to comply with mandatory reporting, or for adverse action taken against employees who report abuse; and</td>
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<td>• failure to comply with the obligations for service providers contained in the zero tolerance framework will lead to de-registration.</td>
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**Chapter Five**

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<tr>
<td>5.1</td>
<td>The Victorian Government expand current programs and support new initiatives that are designed to make support services and programs for the prevention of violence against women more responsive to, and accessible for, women with disability.</td>
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<td>5.2</td>
<td>The Victorian Government clarify the obligations of disability service providers and the rights of people with disability in relation to gender preference for the provision of intimate supports, by developing:</td>
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<td>• information sheets for people with disability and their families to be made available online and in accessible formats, including Easy English; and</td>
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<td>• a practice guide for service providers and disability support workers on providing intimate supports.</td>
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<td>Recommendation</td>
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| 5.3    | The Victorian Government amend the *Disability Act 2006 (Vic)* with the addition of a new section in relation to the provision of intimate supports and support plans. The new section will require:  
  - all support plans to record the gender preference of people with disability in relation to the provision of intimate supports;  
  - that where necessary or requested, disability service providers will provide independent assistance, such as the services of a communication specialist, to people with an intellectual disability or complex communication needs, to record gender preference in relation to the provision of intimate supports;  
  - that in the interim period prior to the development of a full support plan, disability service providers must ascertain the gender preference of people with disability in relation to the provision of intimate supports, including where necessary the provision of assistance to do so; and  
  - that in the circumstance where no gender preference can be determined in relation to the provision of intimate supports, support plans for women with disability will provide for intimate supports to be provided by female support workers. |
| 5.4    | The Victorian Government supports the development of healthy and respectful relationships education in order to prevent the abuse of people with intellectual disabilities, who access disability services.  
  - Disability service providers must ensure that their clients have access to such programs. |
| 5.5    | The Victorian Government amend the *Family Violence Protection Act 2008 (Vic)* to ensure that people with disability living in supported residential accommodation are covered by the legal definition of family violence and can access the Act’s protection mechanisms. |
| 5.6    | The Victorian Government adopt each of the recommendations (170-179) made by the Royal Commission into Family Violence that relate directly to people with disability. |
## Chapter Six

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<tr>
<td>6.1</td>
<td>The Victorian Government use its position on the Disability Reform Council to support the roll-out of a self-advocacy program nationally, based on the Victorian Self Advocacy Resource Unit model.</td>
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<tr>
<td>6.2</td>
<td>The Victorian Government continue to administer funding for disability advocacy through the Office for Disability. In addition, the Victorian Government conduct a review of disability advocacy, with a focus on: &lt;ul&gt;&lt;li&gt;identifying the demand for different types of advocacy;&lt;/li&gt;&lt;li&gt;establishing the views of people with disability about advocacy services;&lt;/li&gt;&lt;li&gt;determining the impact of the NDIS on the capacity of advocacy services; and&lt;/li&gt;&lt;li&gt;ensuring that both funded and volunteer advocacy services undergo safety screenings and meet appropriate quality standards.&lt;/li&gt;&lt;/ul&gt;</td>
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<td>6.3</td>
<td>The Victorian Government establish and fund a program for appropriately qualified advocacy organisations to deliver dedicated family advocacy services, including in rural and regional areas.</td>
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## Chapter Seven

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<tr>
<td>7.1</td>
<td>The Victorian Government amend the <em>Disability Act 2006</em> (Vic) to make the Disability Commissioner the key oversight body for the disability sector in Victoria with responsibility for: &lt;ul&gt;&lt;li&gt;resolving complaints about disability service providers;&lt;/li&gt;&lt;li&gt;receiving mandatory reports about abuse and neglect (with penalties for failure to report);&lt;/li&gt;&lt;li&gt;own motion powers to investigate reports of abuse and neglect of both an individual and systemic nature;&lt;/li&gt;&lt;li&gt;developing standardised policies and processes for providers to follow when reporting and investigating suspected abuse;&lt;/li&gt;&lt;li&gt;monitoring and evaluating service quality (through the use of dedicated investigation officers); and&lt;/li&gt;&lt;li&gt;supporting the professional development of the disability workforce.&lt;/li&gt;&lt;/ul&gt;</td>
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<tr>
<td>7.2</td>
<td>The Victorian Government appropriately fund the Disability Commissioner to ensure it can perform its new functions, particularly in relation to increasing its capacity to undertake investigations into abuse and neglect.</td>
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<td>7.3</td>
<td>The Victorian Government require the Disability Commissioner and Victoria Police to develop a protocol around the investigation of abuse and neglect, which includes a clear process for disability service providers to follow to report criminal abuse.</td>
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<td>7.4</td>
<td>The Victorian Government amend section 14(3) of the <em>Disability Act 2006 (Vic)</em> to ensure that the Disability Commissioner can hold office for a maximum total of 5 years (including any periods of reappointment).</td>
</tr>
</tbody>
</table>
| 7.5    | The Victorian Government give consideration to an independent Disability Commissioner being established as a statutory body/entity under its own legislation, provided that:  
  - any such legislation be consistent with the NDIS national safeguarding framework. |
| 7.6    | In the interim period, while their national role is reviewed, the Community Visitors Program be retained in Victoria, within the context of the zero tolerance of abuse framework. The Victorian Government will ensure that:  
  - Community Visitors will be further trained in the detection, prevention and reporting of abuse;  
  - all reports of abuse and neglect will also be made to the Disability Commissioner; and  
  - Community Visitors will receive training in communicating with people with complex communication needs. |
| 7.7    | The Victorian Government amend the *Disability Act 2006 (Vic)* to provide for the appointment of authorised officers within a renewed office of the Disability Commissioner. These officers will be empowered by, and accountable to, the Disability Commissioner under the Act to:  
  - conduct investigations into reports of abuse and neglect to the Disability Commissioner of both an individual and systemic nature;  
  - investigate reports of abuse made by Community Visitors;  
  - monitor, evaluate and enforce service quality and standards; and  
  - enter the premises of any disability service provider at any time. |
| 7.8    | The Victorian Government ensure that the Senior Practitioner (Disability) role be re-located within the office of a renewed Disability Commissioner. |
## Chapter Eight

<table>
<thead>
<tr>
<th>Number</th>
<th>Recommendation</th>
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<tr>
<td>8.1</td>
<td>The Victorian Government use its role on the Council of Australian Governments Disability Reform Council to ensure that people with disability and their families, and disability service providers and their employees receive relevant and timely information about transitioning to the National Disability Insurance Scheme, in a variety of accessible formats.</td>
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<tr>
<td>8.2</td>
<td>The Victorian Government request the Victorian Equal Opportunity and Human Rights Commission and the Victorian Ombudsman provide advice on preserving the protections offered by the Charter of Human Rights and Responsibilities Act 2006 (Vic) in the context of the National Disability Insurance Scheme.</td>
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<tr>
<td>8.3</td>
<td>The Victorian Government use its role on the Council of Australian Governments Disability Reform Council to ensure that the National Disability Insurance Scheme incorporates the United Nations Convention on the Rights of Persons with Disabilities as a schedule to the National Disability Insurance Scheme Act 2013 (Cth).</td>
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Introduction

The Parliament of Victoria’s Legislative Assembly directed the Family and Community Development Committee to inquire into abuse in disability services on 5 May 2015. The Terms of Reference directed the Committee to conduct the Inquiry in two stages (see page ix).

The first stage asked the Committee to inform Victoria’s position on appropriate quality and safeguards for the National Disability Insurance Scheme (NDIS). The Interim Report on Stage 1 was tabled in Parliament on 6 August 2015. Stage 2 of the Inquiry commenced in August 2015, and focused primarily on measures to improve Victoria’s safeguarding system prior to the full roll-out of the NDIS. This Final Report presents the Committee’s findings and recommendations for Stage 2.

Stage 1 of the Inquiry

The Committee’s Interim Report was designed to inform the Victorian Government’s position on quality and safeguards for the NDIS. During Stage 1 of the Inquiry the Committee received 28 written submissions and 12 supplementary submissions from a range of individuals and organisations.

The Committee held hearings in June 2015. It heard from the Senior Practitioner (Disability), the Office of the Public Advocate, the Victorian Advocacy League for Individuals with Disability (VALID), National Disability Services (NDS), the Disability Services Commissioner, Community Visitors, the Department of Health and Human Services (the Department), and the Victorian Ombudsman.

In the Interim Report the Committee recommended that a national agency should be established to provide oversight of the disability sector, stating that:

In the context of quality assurance, screening and registration (of providers and individual disability workers) a national agency would need to have responsibility to ensure the effectiveness of cross-jurisdictional screening and national standards for registration.7

The Interim Report made eight recommendations to the Victorian Government (see below).

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<th>Number</th>
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<tr>
<td><strong>1</strong></td>
<td>That the Victorian Government advises the Disability Reform Council that in the transition to the NDIS the existing elements of the quality and safeguarding system in Victoria should not be diminished.</td>
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7 Family and Community Development Committee, Inquiry into Abuse in Disability Services – Interim Report, Family and Community Development Committee, Melbourne, 2015, p. xxi.
2. That the Victorian Government advises the Disability Reform Council to establish a single, independent oversight body with powers and responsibility for:
   - handling complaints
   - managing and investigating reportable serious incidents
   - oversight of restrictive practices
   - voluntary community visitors
   - the option of an official inspector scheme with paid inspectors or visitors.

3. That the Victorian Government advises the Disability Reform Council to ensure the establishment of an independent advocacy and capacity building body with powers and responsibility for:
   - administering funds for individual and community advocacy
   - systemic advocacy
   - capacity building through information, education and resources, including how to spot abuse and report it.

4. That the Victorian Government advises the Disability Reform Council to ensure that a guardian of last resort is maintained with responsibility for:
   - guardianship and supported decision making
   - investigation of guardianship matters.

5. That the Victorian Government advises the Disability Reform Council to ensure the establishment of a national quality assurance agency with responsibility for:
   - screening and clearance checks—administering a working with vulnerable persons check
   - provider registration
   - individual registration of disability workers.

6. That the Victorian Government recommend to the Disability Reform Council that a national evaluation is conducted of the community visitor program with a view to determining how it will function in the NDIS environment.

7. That the Victorian Government recommend to the Disability Reform Council that it establishes a mandatory reporting scheme for specified individuals and organisations to report incidents of abuse, neglect or exploitation to an independent oversight body with responsibility for managing and investigating the handling of reportable incidents.

8. That the Victorian Government recommend to the Disability Reform Council that it ensures there are consequences for those who are responsible for abuse of people accessing disability services and that service providers take steps to learn from the incident to prevent its recurrence.8

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8 Family and Community Development Committee, Inquiry into Abuse in Disability Services – Interim Report, Family and Community Development Committee, Melbourne, 2015, pp. xxvii-xxix.
In addition to these recommendations, the Interim Report proposed a number of questions to inform Stage 2 of the Inquiry process (see Appendix 5).

**Stage 2 of the Inquiry**

Stage 2 of the Inquiry commenced in August 2015, and provided an opportunity for the Committee to hear evidence from people with disability, their families and carers, advocates, and disability support staff. Listening to this evidence has been fundamental to the Inquiry process and vital to the recommendations the Committee makes in the coming chapters.

**Submissions**

On 4 September 2015 the Committee released a call for submissions for Stage 2. The call for submissions was advertised in approximately 30 Victorian newspapers, including key regional papers.

The Committee sent an invitation for submissions to a range of individuals and organisations, such as service providers, Australian disability enterprises, peak and advocacy bodies, community groups, research institutes and academics.

To assist those who wanted to make a written submission to Stage 2 of the Inquiry, the Committee released a Submission Guide. This was published on the Committee’s website and circulated to those who expressed an interest in submitting to the Inquiry. The Submission Guide outlined the scope of the Inquiry and the process for making a written submission. It provided an outline on the types of issues about which the Committee was seeking evidence. A copy of the Submission Guide is provided in Appendix 5.

The Committee also released the call for submissions and Submission Guide in an Easy English format (Appendix 6). A braille version of these documents was made available to stakeholders on request.

The Committee received 71 written submissions and 13 supplementary submissions from a range of individuals and organisations. The authors of these submissions included:

- family members of people with disabilities;
- people with disabilities;
- non-government disability service providers;
- disability support workers;
- advocacy organisations;
- peak bodies; and
- statutory bodies.
Public hearings

For Stage 2 the Committee held 12 public hearings – 5 in Melbourne and a further 7 hearings in the following regional areas:

- Geelong
- Shepparton
- Bendigo
- Ballarat
- Morwell
- Mildura
- Horsham.

The Committee heard from a range of witnesses at public hearings, including people with disability, their families and carers, advocacy organisations, service providers and disability support workers.

Site visits

In addition to the public hearings, the Committee conducted site visits. The site visits provided the Committee with an opportunity to understand the different contexts within which the abuse and neglect of people with disability occurs. The Committee visited a range of different services operated by both the Department and non-government providers, including supported residential accommodation, respite accommodation, day services, education programs, and employment services. The Committee also visited service providers operating within the Barwon NDIS trial site to gain an understanding of how the transition process is working, particularly in relation to safeguards and the growth of disability service providers. A list of the Committee’s site visits is at Appendix 3.

Additional information

Throughout the Inquiry, the Committee requested information via correspondence from organisations, statutory bodies, experts, and government departments. This additional information related to queries about evidence or information provided, or concerned newly emerging issues.

Letter to registered disability service providers

As part of Stage 2 of the Inquiry, the Committee sought further information from non-government service providers about their internal processes for identifying, reporting, and responding to abuse. The Committee wrote to all 313 community service organisations registered by the Department to provide services under the Disability Act 2006 (Vic) (the Disability Act).9 The Committee requested information

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9 The Committee wrote to all registered disability service providers listed on the Department’s website as of July 2015.
on how service providers responded to complaints and abuse within their organisations, in order to find out whether there were similar policies and procedures in place across the sector.

The Committee received 106 responses from non-government service providers located throughout Victoria; a response rate of approximately 34 per cent. These responses are discussed in Chapter Three. A list of the service providers who responded to the Committee’s request for information is available in Appendix 4.

Background and definitions

This section provides background information about people with disability in Victoria, and definitions of key terms used throughout the Final Report.

People with disability

The Disability Act defines disability as an impairment that may be sensory, physical, neurological or an acquired brain injury, which results in substantially reduced capacity in at least one of the areas of self-care, self-management, mobility or communication. The definition of disability also includes an intellectual disability or developmental delay, but does not include ageing.

People who use disability services

In Victoria, there are approximately 1.1 million people with disability, 364 000 of whom are living with profound or severe disability.10

In Victoria, around 14 500 people receive Individual Support Packages under the Disability Act, and just over 5000 people are living in supported residential accommodation.11 Of all the funding for supported accommodation, approximately 52 per cent goes to services delivered by the Department and 48 per cent to services delivered by community services and funded by the Department.

Disability services

In Victoria, legislation governing disability services is provided by the Disability Act. The Disability Act states that a person with disability, or a person on their behalf, may request services from a disability service provider. This may be the Department of Health and Human Services or another disability service provider.

The Department of Health and Human Services provides and funds services for people with disability. It also funds a range of specialist disability supports that are available to people with disability and their families, to help the person with disability participate actively in the community and reach their full potential.

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The supports provided by disability services fall into two categories:

- short-term supports—such as respite services, behaviour supports, case management and therapy; and
- ongoing supports—such as Individual Support Packages and supported accommodation.

To access disability services a person must:

- have a disability as defined by the Disability Act;
- be considered a priority for access to services; and
- meet program-specific needs (where required).

Individuals can request disability support if they have a disability and:

- the disability impacts on their mobility, communication, self-care or self-management; and
- the support request meets specific requirements related to the service they are seeking.

Only services provided under the Disability Act are in-scope for the Inquiry. In addition, the Commonwealth provides funding for some disability support services, including Disability Employment Services and Australian Disability Enterprises. Some people with disability also access services through the Home and Community Care (HACC) program. The program – which offers personal care services in a person’s own home – receives a mix of state and federal funding and is usually coordinated by local councils.

Supported residential services

Some people with disability live in privately owned and operated supported residential services (SRS). There are an estimated 4,275 SRS residents in Victoria, 91 per cent who are residents with disability. SRSs are not administered by the Disability Act, and as such are not covered by the Inquiry. However, the Victorian Ombudsman’s investigation examined SRSs and made a number of important recommendations for improving oversight of these services.12

Abuse of people with disability

As discussed in Chapter One, the Committee found that Inquiry participants defined abuse and neglect broadly. The Committee considers the following within the term ‘abuse’:

- physical, emotional abuse and/or neglect;
- financial abuse;

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• sexual abuse offences, such as rape or indecent assault under the Crimes Act 1958 (Vic);
• an incident that has resulted in a serious outcome, such as a client death or severe trauma;
• forced treatments and interventions; and
• violations of privacy and wilful deprivation.

**Victorian Ombudsman investigation and report**

On 8 December 2014 the Victorian Ombudsman announced an investigation into how allegations of abuse in the disability sector are reported and investigated.

The Terms of Reference for this Inquiry require that the Committee ‘work cooperatively with the Ombudsman to avoid unnecessary duplication’. The Committee sought to do this to the extent possible.

The Committee’s Inquiry differs particularly in its emphasis on the prevention of abuse and neglect in disability services. In addition, the Committee’s terms of reference are specific to abuse in disability services as defined under the Disability Act – whereas the Ombudsman’s investigation covered people living in SRSs and services funded by the Transport Accident Commission.

While there were some overlaps with the Committee’s Inquiry, the Ombudsman chose to focus specifically on the reporting system rather than prevention.

**Phase 1 Report recommendations**

The Ombudsman’s Phase 1 Report tabled on 25 June 2015 contained two recommendations in relation to the effectiveness of statutory oversight in the context of reporting and investigation of abuse in the disability sector. The Ombudsman recommended that the Victorian Government establish a single independent oversight body for the disability sector. In addition, the Ombudsman recommended that ‘the Victorian Parliament Family and Community Development Committee further examine the logistics of a single independent oversight body, as it considers interim measures to strengthen the disability system prior to the introduction of the NDIS’.13

The Ombudsman also recommended that the Victorian Government increase funding for advocacy, ‘which should be informed by a comprehensive assessment of the need’ for advocacy services in the context of the NDIS.14

**Phase 2 Report recommendations**

Phase 2 of the Ombudsman’s report was tabled in December 2015. The report examined the critical incident reporting processes used by the Department of Health

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14 Ibid.
and Human Services, the Transport Accident Commission and SRSs. The Ombudsman found that the reporting system ‘focused on the process rather than the person’ with disability, and argued that:

The current system of incident reporting fails at every level. It is not fit for purpose, either in its primary aim of learning and prevention, or its secondary aim of ensuring ‘client safety and wellbeing’. Prioritising systemic learning over the wellbeing of people with disability is both misguided and ineffectual: feedback to service providers is non-existent or sporadic.  

The Ombudsman also reported that the disability sector was dominated by ‘a culture of fear’ that drives the under-reporting of abuse. The Committee heard similar evidence, and discusses the barriers people face in reporting abuse in Chapter Two.

In addition to the two recommendations of Phase 1, the Victorian Ombudsman made 11 new recommendations in the Phase 2 report. A full list of recommendations is at Appendix 7. These recommendations are discussed throughout the report. Key recommendations include:

- the establishment of a single independent oversight body in Victoria (with responsibility for receiving mandatory reports of abuse and neglect);
- changes to the Department’s ‘critical incident’ reporting system to focus on the impact of abuse on client wellbeing;
- protections for whistleblowers; and
- increased training for disability workers on how to identify and report abuse.

**NDIS Quality and Safeguarding Framework**

In the Interim Report the Committee commented on the Consultation Paper for the NDIS Quality and Safeguarding Framework, and made recommendations to inform the Victorian Government’s position on the possible components of the framework.

In April 2016 the Council of Australian Government’s (COAG) Disability Reform Council announced that it had ‘agreed in-principle to the key features of a new national quality and safeguards framework for the NDIS’. The Council stated that it expects to make ‘a decision on the final framework and the respective roles of the Commonwealth, the states and territories and the NDIA by the end of May 2016’. At the time of tabling the Final Report the framework had not been confirmed.

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16 Ibid., p. 18.
17 Ibid.
18 Ibid., pp. 140-146.
20 Ibid.
While the Committee is confident that the Disability Reform Council will establish a national oversight body for the disability sector, it also reaffirms the view expressed in the Interim Report and ‘recommends that the Victorian Government ensures that in the transition to the NDIS that the existing elements of the system in Victoria are not diminished’. This report makes recommendations to strengthen, enhance and improve the safeguarding framework in Victoria.

Other relevant inquiries and investigations

The Committee is aware that a number of recent public inquiries and investigations have also addressed the abuse and neglect of people with disability, and refers to this work throughout the report. In particular, the Committee welcomes the work undertaken by the Senate Community Affairs References Committee, the Victorian Royal Commission into Family Violence and the Victorian Ombudsman, which have all made recommendations aimed at improving the prevention and response to the abuse of people with disability.

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Chapter 1
Experiences of abuse in disability services

AT A GLANCE

Background

Stage 2 of the Inquiry provided an opportunity for the Committee to hear evidence from people with disability, their families and carers, advocates, and disability support staff. Listening to this evidence has been fundamental to the Inquiry process and vital to the recommendations the Committee makes in the coming chapters.

Chapter overview

The chapter addresses aspects of a number of the terms of reference, including (A) ‘systemic issues that impact on why abuse of people .... [is] not reported or acted upon’ and (B)(III) ‘consideration of needs specific to particular cohorts’. It also engages with one of the questions the Committee posed in its Interim Report: ‘what experiences have people with disability, families and carers had when disclosing or reporting abuse?’

This chapter highlights the different types of abuse experienced by people with disability including sexual and physical assault, verbal abuse, financial abuse, and neglect. The Committee also heard about the link between neglect and unexplained deaths.

The Committee heard undeniable evidence of the widespread nature of abuse and neglect. It also found that for too long the lived experience of people with disability, their families and carers has been ignored.

The Committee also found that a number of factors contribute to an increased risk of abuse for people with disability, including gender, age, type of disability, type of accommodation, and cultural background.
Throughout the course of the Inquiry the Committee heard many stories about the abuse of people with disability. The Committee found that abuse is widespread, and that for too long the experiences of people with disability have been ignored or doubted. The Committee heard that abuse takes many forms, ranging from criminal physical and sexual assault to inconsistent, neglectful ‘care’. Abuse occurs in a range of different settings, from residential accommodation to day programs, and in services operated by both the Department of Health and Human Services (the Department) and non-government disability service providers.

This chapter draws on evidence of abuse as told to the Committee in submissions and public hearings by people with disability, their families and carers, advocates, and disability support workers. While this chapter cannot include every story of abuse the Committee heard, it attempts to highlight the varied experiences of people with disability and the different kinds of abuse that people have been subjected to.

Listening to the lived experiences of people with disability and their families and carers has been fundamental to Stage 2 of the Inquiry process. It has also been essential to the Committee’s efforts to address term of reference (A), to understand ‘systemic issues that impact on why abuse ... [is] not reported or acted upon’. This chapter also considers aspects of term of reference (B)(III) by considering experiences and ‘needs specific to particular cohorts’ of people with disability. It also engages with one of the questions the Committee posed in its Interim Report: ‘what experiences have people with disability, families and carers had when disclosing or reporting abuse?’

This chapter discusses different types of abuse, and considers evidence about the prevalence of abuse within Victorian disability services. The chapter also considers evidence of abuse presented in other recent investigations and inquiries, including reports by the Victorian Ombudsman and the Senate Community Affairs References Committee. Read alongside this Final Report, these investigations form a compelling body of evidence about the nature and extent of abuse in Victoria. The Committee found that data on abuse is limited, and what data is available is unreliable. Despite this, the Committee is adamant that the voices of people with disability and their families and carers can no longer be ignored.

1.1. Experiences of abuse, neglect and violence in disability services

The Committee heard evidence of abuse from a wide range of witnesses, including people with disability, families and carers, advocates, and disability support staff. Unfortunately, the Committee did not receive a large amount of evidence from people with disability. This is indicative of the numerous barriers faced by people with disability in disclosing abuse, such as a lack of support and advocacy services to assist with making a submission, or the difficulty of attending a public hearing without the assistance of the very person who may have perpetrated abuse. Concurrent inquiries may have also played a role in the lack of submissions from people with a disability.
In order to address some of the barriers to participating in the Inquiry, a number of advocacy groups and representative organisations collated testimony from people with disability as part of their submissions to the Committee. Often the individuals whose stories are recounted in these submissions wished to remain anonymous, generally due to a fear of retribution. For example, the Australian Cross Disability Alliance – the peak national body for disabled people’s organisations – included with its submission a document containing 70 testimonies of abuse from people with disability. Women with Disabilities Victoria and the Youth Disability Advocacy Service (YDAS) also included evidence of abuse from a number of their members and clients.

The most extensive evidence the Committee received came from families of people with disability. Families not only shared accounts of their family members’ abuse, but spoke of their own experiences attempting to report abuse and advocate on behalf of their relatives. Much of this evidence is marked by exasperation. The Committee heard from numerous parents frustrated with the systems for reporting abuse and fearful for their children. In particular, many parents reported feeling that their concerns about suspected abuse were repeatedly ignored or dismissed by the Department and service providers.

The Inquiry’s participants defined abuse broadly to include criminal acts of physical and sexual violence, verbal and emotional abuse, financial abuse, and neglect. Witnesses consistently linked the abuse of people with disability to the failure to uphold the rights of people with disability – a cultural problem that goes beyond the quality of care in disability services. The Committee heard a significant amount of evidence about the gendered nature of the abuse of people with disability, which will be addressed in detail in Chapter Two.

1.1.1. Sexual assault

The Committee’s Interim Report discussed several high-profile cases of sexual assault against people with disability, including within services provided by Yooralla and the E.W. Tipping Foundation. The criminal abuse that occurred within these organisations has attracted considerable public attention – and served as an impetus for the establishment of the Inquiry. The Committee heard that sexual abuse appears to be widespread in the disability sector. In particular, the Committee received evidence that suggests that the sexual assault of people with disability is far from uncommon, especially within supported residential accommodation. Witnesses described instances of sexual assault perpetrated by both staff and co-residents, and reported assaults occurring within some services operated by both the Department and non-government disability service providers. The Committee heard cases of individuals being sexually assaulted on a number of different occasions throughout their lifetime, in different service contexts, and by different assailants.

In its submission the Australian Cross Disability Alliance shared a number of individuals’ experiences of sexual assault within residential accommodation. One example is the story of ‘Josie’, who:

Has an intellectual disability and she lives in a group home ‘village’ style complex. There are a number of other residents with intellectual disability living in other units on the site – some live in units on their own, whilst others share. Josie was raped by a male co-resident within the grounds of the complex. She immediately disclosed the
rape to an on-site support worker who advised her to “just keep out of his way”. The rape was not reported to the police and Josie was not offered any support or counselling [sic].22

‘Lorraine’ is another woman who experienced sexual assault by a staff member of her residential accommodation service. The Alliance states that:

Lorraine was "digitally raped" by a staff member while showering in a government-owned group home. An incident report was made after the woman told another worker what happened, but that report was later rewritten by a supervisor. The worker who allegedly raped the woman was then transferred to another home and the matter was not referred to police.23

The Committee heard evidence from a number of parents and carers, who not only spoke about their relatives’ abuse, but also about the similar experiences of other families. At a public hearing in Shepparton Ms Trisha Schipp, a member of the Carers and Parents Support Group of Benalla, relayed her discovery that many of the group’s members had been impacted by sexual assault, stating that:

In our group, having coffee one day some while ago, I do not know how we got around to discussing assault, but of the six mothers who were there having coffee, four of us had children who had been sexually assaulted during their young, school age lives.24

Ms Schipp spoke to the Committee about her son’s numerous experiences of sexual assault by disability support staff:

By way of background about ourselves, our 35-year-old son has cerebral palsy. He is visually impaired. He is intellectually normal; he has tested at average or above average. He is speechless, and that is very important to the experience of abuse, and he walks. He suffers from PTSD [Post Traumatic Stress Disorder] seriously. He has been sexually assaulted many times by four different assailants that we know of. The first assaults occurred when he was 9. The other assaults occurred when he was turning 29 and after. Three of the four assailants worked in group accommodation settings: one in a Yooralla respite care unit and two in a DHS community residential unit. One assailant worked in our son’s own home.25

Michele and Stephen Armstrong also gave evidence that their daughter was sexually assaulted by a disability support worker while living in respite accommodation. After reporting the assault, the Armstrongs discovered that other children had also been assaulted at the same facility:

I went to the police with it, and unbeknownst to me there were two other clients at the same time whose parents believed something had happened to them — that they had

22 Italics in original. Australian Cross Disability Alliance, submission no. 32, ‘Personal stories and testimonies: accompanying document to submission’, p. 3.
23 Ibid., p. 5.
24 Ms T Schipp, Member, Carers and Parents Support Group of Benalla, Family and Community Development Committee public hearing – Shepparton, 29 October 2015, transcript of evidence, p. 3.
25 Ibid., p. 2.
been sexually abused — and they went forward to the police as well at around the same time. But we did not know that each other had been in contact with the police.\textsuperscript{26}

Most of the evidence the Committee heard relating to sexual assault concerns staff-to-client assault. However, the Committee did hear evidence about assaults perpetrated by co-residents. In his submission, the late Mr Peter Thomas detailed the experience of his son who was sexually assaulted by a co-resident while living in emergency accommodation. Mr Thomas stated that the Department did not remove the alleged offender ‘from the facility in a reasonable time frame, despite their knowledge and warnings that he was a cunning recidivist sexual offender, likely to strike again’.\textsuperscript{27} Mrs Maria Thomas gave further evidence at a public hearing, describing her initial reluctance to have her son live away from her and her devastation after the assaults:

The day that my son was away from me because we put him in the facility was very hard, to be honest, because the fear and the worry as a mother, it is a big question to me how they will look after my son. Will my son be safe? Will my son enjoy life there? Do they give the same love and care as a parent, as a mother, at this facility or organisation? But then again we had to give the trust and confidence to this facility and everything until we found out that my son was assaulted.\textsuperscript{28}

YDAS also gave evidence about sexual assaults perpetrated by residents living in supported accommodation. At a public hearing in Melbourne Ms Sarah Forbes, Human Rights and Advocacy Officer at YDAS, spoke about the experience of ‘Jack’, who:

Has autism and uses non-verbal communication, was one of two people allegedly sexually assaulted by a new co-resident with a well-known history of sex offending not long after he moved into the unit. The families of the existing residents made multiple complaints to the service provider and to the Department of Health and Human Services about the inappropriate placement before the alleged assault took place but were dismissed as overzealous and intolerant. Jack's family were not informed by the service provider about the alleged assault but by the family of the other victim who needed medical attention for his injury.\textsuperscript{29}

In its submission Women with Disabilities Victoria included the story of ‘Melissa’, whose complaints about a disability worker went unheeded, resulting in the sexual assault of another client. Melissa explained the events in the following way:

A disability support worker stalked me over a period of 6 months. ... He would come to my house many times, even after I had clearly told him not to. He learnt my schedule and the places I went to and he would follow me around. He left gifts for me which I returned to him. I was scared.

\textsuperscript{26} Ms M Armstrong, parent, Family and Community Development Committee public hearing – Ballarat, 6 November 2015, transcript of evidence, p. 2.
\textsuperscript{27} Mr P Thomas, submission no. 25, p. 2.
\textsuperscript{28} Mrs M Thomas, parent, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 2.
\textsuperscript{29} Ms S Forbes, Human Rights and Advocacy Officer, Youth Disability Advocacy Service, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 3.
I reported this to the service provider at least 3 times, to my house manager, my key worker and her manager. They did nothing ...

About a month after that the worker sexually assaulted a woman who is also a client of the service. She has a communication disability and had trouble reporting the assault. After this assault the service stood the worker down.

The service said I should have told them about the problem more clearly. They offered counselling from an in house counsellor. I felt like everything I told the councillor [sic] would go back to the service.

Now he is working for another service. I am scared where he is and if he will turn up in my life.

To this day I say, "I was talking. Why wasn’t anyone listening to me".

At a public hearing Ms Michelle Kidd described her experience of discovering that her daughter may have been sexually abused by a support worker and her distress at how the allegation was handled by the service provider:

We received a phone call from the regional manager, Tipping, at 8 o’clock at night to state that there had been an allegation of sexual abuse committed against Erin by someone at the house. Now I have heard many things said about the interagency agreement that has plainly been signed by lots of different agencies, and E.W. Tipping is one of those. One of the very clear directives is that if there is a category 1 incident such as that, a parent must be notified immediately, at the earliest possible moment. We received a phone call at 8 o’clock at night. The regional manager had already been over to the house and had had Erin examined by staff before he even contacted us — totally, outrageously poor procedure, disregarding a parent’s rights, disregarding Erin’s rights and, I would say, really looking out for their own agendas ...

Those allegations were unsubstantiated, and we accepted that. Erin cannot speak out against anyone who would abuse her. But I would say that we were treated with such an air of indifference by Tipping. The regional manager sat back casually in his chair with his fingers together and said to us, ‘Well, what you expect me to do about it?’

Ms Anne Mallia had a similar experience when trying to hold a service provider accountable for an allegation of assault against her son:

I went to the directors [of the service] and said, ‘What are you guys doing about this? This is what happened’. They said, ‘No, we didn’t know this had happened’. How could you not know? Everyone is covering their backsides and basically trying to sweep it all under the carpet, and it is just hideous. It is disgraceful.

While the bulk of evidence about sexual assault received by the Committee related to supported residential accommodation, the Committee did hear reports of assaults taking place in day programs. The experience of ‘Kayla’ is one example:

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30 Women with Disabilities Victoria, submission no. 77, p. 7.
31 Ms M Kidd, parent, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 3.
Kayla, 14, has an intellectual disability and does not use spoken language. She wears a continence aid during the day and night. During the school holidays, she attended a day program for teenagers with disability. When her parent picked her up to take her home, she was soiled and her mother changed her. When she changed her, she found a very deep cut or tear to her vaginal area, between her anus and vagina. Significantly, there was no blood in the soiled continence aid. The parent took her daughter to the hospital, where she underwent surgery and had stitches to repair the injury. The hospital staff were steadfast in their opinion that this was an ‘inflicted injury’. They said that the injury would have bled profusely. Kayla is ‘well padded’ and the only possible time and place that she could have been injured was during being changed by a staff member.33

1.1.2. Physical assault

The Committee received a significant amount of evidence about physical assault, including both client-to-client and staff-to-client assaults. The Committee is aware that client-to-staff abuse also occurs. The bulk of this evidence related to assaults that occurred in supported residential accommodation. The Australian Cross Disability Alliance provided the following two case studies involving physical assault between co-residents:

Gary, a man with intellectual disability, was subject to ongoing physical and emotional abuse in a non-government group home. The abuse was being perpetrated by a female co-resident. Support workers who witnessed the abuse reported these incidents to the service coordinator of the group home. However, despite these reports being made, the service did not take appropriate action to ensure Gary’s safety.34

A “severely disabled” teenage girl had her nose almost bitten off in an attack at a government funded group home. The young girl was unable to fend off her older male attacker who was a co-resident. The man climbed into her bed during the night and tore into her face and chest with his teeth, leaving her with severe bites, black eyes, bruises and scratches all over her body. No charges were laid.35

A number of parents spoke about their children’s experiences of physical assault by co-residents. For example, Ms Julie Pianto stated that her son had been hit by another client in residential accommodation: ‘there were no incident reports created, but he was actually hit’.36 Similarly, at a public hearing in Melbourne Ms Michelle Kidd spoke about her daughter Erin’s experiences of physical assault by co-residents and other clients, stating that:

She was constantly being hit whilst travelling to and from school, the fact that there was no safe area for Erin in the house and that she was being placed in a bedroom on her own to stop other children from hitting her because she is extremely vulnerable.37

33 Australian Cross Disability Alliance, submission no. 32, ‘Personal stories and testimonies: accompanying document to submission’, p. 4.
34 Ibid., p. 8.
35 Ibid., p. 11.
37 Ms M Kidd, parent, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 3.
The Committee heard evidence about physical assault perpetrated by disability support staff, including accounts from whistleblowers who have reported assaults committed by their colleagues. At a public hearing in Melbourne Ms Jodi Portelli, disability support worker and member of the Health and Community Services Union (HACSU), stated that she had witnessed a number of staff-to-client physical assaults, including one client being ‘grabbed [by the] hair and [being] pulled to the ground. Dragging across carpet where they have carpet burns on the back of their back to the bottom of their legs’. 38 In a submission to the Inquiry, Mr Matthew Potocnik stated that he witnessed a number of staff-to-client physical assaults while employed as a disability support worker such as ‘staff client abuse where a client was thrown to the ground by his throat and while being held down, at blank range, had his face spat on by the carer’. 39

The Committee is concerned about the experience of whistleblowers, who often face repercussions for reporting on their colleagues. The issue of enhancing protections for whistleblowers is discussed in detail in Chapter Four.

At a public hearing in Morwell Mrs Jean Tops, President of the Gippsland Carers Association, relayed an incident of staff-to-client abuse that occurred in public:

There was this bus there and there was a disabled man sitting in a wheelchair and there was another guy standing beside him smoking. The guy in the wheelchair was obviously complaining because he kept calling out. He did not have the verbal skills obviously so he kept calling out and she deduced that he actually wanted to go back into the bus and back to from whence he came.

The caring staff person who was with him gave him a huge great big whack across the side of the head for being a pest and a nuisance, which is what she heard him say, and threw him back into the bus in his wheelchair and took off. That is more common than you think and that is something we have to find a way to get rid of. 40

The Committee also heard about the prevalence of ‘unexplained’ injuries and bruising on clients living in supported residential accommodation. For example, both Ms Julie Pianto and Ms Kerrie Lecluse reported finding unexplained bruises on their children while they were living in supported residential accommodation. 41

The Committee heard that client-to-client physical assault is often minimised within disability services, and sometimes dismissed as part of a client’s behaviour of concern. At a public hearing in Ballarat Ms Fiona Tipping, an advocate with Grampians disAbility Advocacy, described what she viewed as a ‘misunderstanding’ of what constitutes abuse:

I believe there is a misunderstanding of what abuse is — for example, the example I gave of that young lady being bitten by another client, amongst many other things. The attitude of the staff was, ‘It’s a bite — everybody gets bitten’. If it was you or me, we

38 Ms J Portelli, HACSU member, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 6.
39 Mr M Potocnik, submission no. 17, p. 2.
40 Mrs J Tops, President, Gippsland Carers Association, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 18.
41 Ms J Pianto, submission no. 1, p. 4; and Ms K Lecluse, submission no. 26, p. 7.
would be up in arms. We would call it assault, but for them they think, ‘Oh, well, it’s just a behavioural thing. You’ve got to live with it’, and I think that is wrong.\footnote{Ms F Tipping, Grampians disability Advocacy, Family and Community Development Committee public hearing – Ballarat, 6 November 2015, transcript of evidence, pp. 6-7.}

A number of service providers acknowledged to the Committee that physical assaults between their clients have occurred. For example Ms Marian Luehman, CEO of Mildura-based disability provider Sunraysia Residential Services, explained to the Committee that assaults can occur in respite accommodation, especially when providers aren’t always aware of the ‘background and history’ of clients, stating that:

> Often you do have one client that will hit another client. That is the hardest part to control, the abuse when you have someone, especially in respite, because with respite you do know that everyone requires the care.\footnote{Ms M Luehman, Chief Executive Officer, Sunraysia Residential Services, Family and Community Development Committee public hearing – Mildura, 30 November 2015, transcript of evidence, p. 9.}

Ms Christine Trotman, CEO of Cooinda Hill, another disability service provider, also commented on client-to-client assault, noting that:

> It is not always possible for staff to be in close proximity to them [clients with high support needs] 100 per cent of the time, so there have been occasions where clients may hit another client or verbally abuse another client. They are infrequent, but there is an understanding that some of those folk without that intellectual capacity to be able to filter their inappropriate behaviours sometimes could be excused because of their intellectual disability.\footnote{Ms C Trotman, Chief Executive Officer, Cooinda Hill, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 5.}

### Housing and client-to-client assault

The Committee heard that the undersupply of housing is a factor in the occurrence of client-to-client abuse, as it is difficult for clients to move accommodation if there are issues between co-residents. Action for More Independence and Dignity in Accommodation (AMIDA) is an advocacy organisation critical of the ‘group home model of accommodation’ whereby clients with different support needs are housed together. The organisation suggests that group homes can create an ‘abusive environment’, stating that:

> Tenant on tenant abuse is considered by many service providers and their staff to be a normal and expected feature of disability service provision. Added to this is the high demand for places in group homes and the lack of individualised support and accommodation options for people with challenging behaviours. There are barely any alternative options in place to rehouse a resident who isn’t managing in shared accommodation.\footnote{Action for More Independence and Dignity in Accommodation, submission no. 63, p. 5, 10.}

AMIDA recommends an increase in accommodation options for people with disability, including individual supported accommodation for people who have complex support needs and difficulty living with others.\footnote{Ibid., p. 8.} Lifestyle in Supported Accommodation (LISA), a parent support group, also identifies the allocation of places in supported
accommodation as a factor in client-to-client abuse, and criticises the actions of the Department in ‘placing incompatible clients with compatible sitting residents’.\textsuperscript{47} Similar to AMIDA, LISA suggests that increased support for individuals with complex support needs is required.

Mr Vaughan Winther, Chief Operations Officer at the Australian Community Support Organisation (ACSO), explained to the Committee how ACSO minimises the risk of client-to-client assault in residential accommodation:

One of the things which we note is that we do not have high levels of client-to-client assault in our services at all. What we put that down to is we do a very comprehensive assessment before people come in. We have eight residential facilities, but also we use different types of service models for people who look like they are going to be at risk of harming someone else. For instance, this year we have placed a young person in a residential setting but in what we call a headleased property ... [which is] a private rental property that is set up as a residential service.\textsuperscript{48}

Ms Teresa McClelland, Operations Manager at Life Without Barriers, a disability service provider, spoke about the benefits of an individualised housing model for clients:

The unit they went into was a new build that we had which has three self-contained units under the one roof line and then a semi-detached unit with two people that live there and the staff are on site again 24 hours a day. So we have been able to support people who don't live well with others to live in that model.\textsuperscript{49}

While a fuller discussion of housing is beyond the Inquiry’s terms of reference, the Committee is aware that the lack of safe and appropriate housing is a significant issue for people with disability and their families and carers.

\subsection*{1.1.3. Verbal, emotional and psychological abuse}

While the majority of evidence received by the Committee related to sexual and physical abuse, the Committee also heard about the broad range of actions that constitute verbal, emotional, and psychological abuse. In some instances this type of abuse can be subtle, but is nevertheless harmful and related to a broader denigration of the rights of people with disability. For example Mr Alistair Houston, Acting Deputy CEO of Wimmera UnitingCare, described to the Committee how he reacted to an incident of verbal abuse in which a staff member called a client a ‘baby’:

The staff member said to them, ‘You’re behaving like a baby’, bearing in mind this is a person of around 40 who is functioning at a much younger age. That resulted in meeting with the staff member, and we have gone through a disciplinary process with that person. We will now be going back through understanding the needs of the client. We refer to the code of conduct and to how the worker should be speaking respectfully.

\textsuperscript{47} Lifestyle in Supported Accommodation, submission no. 2, p. 3.

\textsuperscript{48} Mr V Winther, Chief Operations Officer, Australian Community Support Organisation, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 3.

\textsuperscript{49} Ms T McClelland, Operations Manager, Life Without Barriers, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 7.
and should be recognising that you may see the person who appears before you as looking the age they are. However, that is not an appropriate way for them to speak to the person.50

Ms Florence Davidson, CEO of the Christie Centre, commented on the ‘subtle’ forms that verbal and psychological abuse can take:

People ... will often be sent out to get the striped paint — ‘It was just a joke, and it was just funny’ — but it is actually just one more way of undermining and humiliating people for the pleasure of others. Whilst we can say that that is a very Australian thing and it happens everywhere, we are talking about people who are more vulnerable, and it can lead to much greater levels of bullying that can seem subtle but are no less difficult for people to accept and cope with. I think we have to be open to looking at all levels of abuse across the board. Just because it is subtle and it seems innocuous does not mean that it did not hurt.51

The Committee also heard evidence about verbal abuse from parents of people with disability, such as this incident described by Ms Michele Armstrong:

Another staff member was on duty — actually, there were a couple of them — and they heard this particular staff member saying things to our daughter like, ‘Would you like an ice-cream? You’d like an ice-cream, wouldn’t you? That’d be nice, but you can’t have one’. Just setting her up all the time, doing these really weird things.52

Ms Wendy Shanks, CEO of Shepparton Access, also commented on verbal abuse and the need to create a respectful environment, explaining that:

We really even try to have no swearing at our place. If a person with a disability swears, other people — their peers — will actually say something to them. They see that as their right to be in an environment where they are treated with respect, so they would tell the person that they feel confronted by that or that that is not a respectful way to speak to one another. In particular, if a person becomes abusive towards a staff member — and we do not have it very often — the people who attend our services become very, very upset, they let the person know that they are upset and often they will demand an apology.53

In her submission to the Committee, Ms Jenny Harrison reflected on her experiences working within the disability sector, drawing attention to the abusive language used to refer to people with disability. She stated that:

There is a plethora of tags and terms used across disability services which are disrespectful and indicative of a lack of value of the person ... ‘Non-verbals’, ‘wheelchairs’, ‘absconders’, ‘downsy’s’, ‘ID’s’, ‘high needs’, ‘nappy wearers’, ‘mind of a child or baby’ are all terms I have heard support workers, managers and trainers use, when referring to people. Similarly more endearing terms such as ‘my children’,

50 Mr A Houston, Acting Deputy Chief Executive Officer, Wimmera UnitingCare, Family and Community Development Committee public hearing – Horsham, 3 December 2015, transcript of evidence, p. 3.
51 Ms F Davidson, Chief Executive Officer, Christie Centre, Family and Community Development Committee public hearing – Mildura, 30 November 2015, transcript of evidence, p. 3.
52 Ms Michele Armstrong, parent, Family and Community Development Committee public hearing – Ballarat, 6 November 2015, transcript of evidence, p. 3.
53 Ms W Shanks, Chief Executive Officer, Shepparton Access, Family and Community Development Committee public hearing – Shepparton, 29 October 2015, transcript of evidence, p. 5.
Chapter 1 Experiences of abuse in disability services

‘special’ and ‘munchkins’. Such name calling needs to be taken as seriously as the use of racist terms. As a community we have moved away from using terms such as ‘cripples’ and ‘retards’ it would be pleasing to stop using tags at all.

1.1.4. Financial abuse

A number of witnesses gave evidence about financial abuse occurring within disability services, such as the theft and misuse of clients’ funds or staff eating food purchased for clients. In a submission to the Inquiry Ms Stephanie Mortimer described a number of incidents of financial abuse in her sister’s supported accommodation house:

One of the things the Unit Manager did at the house was to use my sister’s incontinence allowance of $468 every 6 months to buy products for the staff and the house. My sister needed incontinence undies and pads. But they bought gloves for staff, soap on tap for staff, soap powder and oxy action soaker for the whole house with my sister’s money. I still have a copy of an order form which I have kept. This is financial abuse. This went on with the knowledge of the DHS the OPA and staff at the house. Since my sister left the house I have discovered from a staff member that staff were eating the ladies food without paying for it. They were hiring videos with the ladies money which staff wanted to see. They took the ladies to the movies and saw films the staff wanted to see.

Ms Luehman, CEO of Sunraysia Residential Services (SRS), spoke to the Committee about discovering that a disability support worker within the organisation stole $20 000 from a client:

We had a staff person who, in police checks and everything, came up perfectly, had a sister with a disability and so consequently had a lot of experience in disability. This person stole $20 000 from a bank account of a person with a disability. She went into the bank with a person with a disability. The person with the disability handed over a withdrawal slip to remove their term deposit and had the cheque made out to a legal firm where, unbeknown to us, the person had committed a crime in the previous town where she lived and that was the debt she had to pay ... she was well known in the community, well liked and an incredibly nice person to be around. It went to court, and there were no convictions and no order to repay the theft, and SRS was issued with a ‘cease and desist’ legal letter if we spoke against the person, so she could continue working in and around in the system.

The Committee also heard about financial abuse from disability support workers who had witnessed acts of theft committed by their colleagues. For example, Mr Colin Bayne suggested that ‘pilfering’ was widespread in supported accommodation, particularly misusing money set aside to purchase food for clients.

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54 Ms J Harrison, submission no. 90, p. 8.
55 Ms S Mortimer, submission no. 47, pp. 1-2.
56 Ms M Luehman, Chief Executive Officer, Sunraysia Residential Services, Family and Community Development Committee public hearing – Mildura, 30 November 2015, transcript of evidence, pp. 5-6.
57 Mr C Bayne, parent and disability worker, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 7.
Potocnik described a similar incident whereby clients’ money was used to fund a Christmas lunch for disability support staff.\(^{58}\)

Ms Lorraine Beasley, disability support worker and Secretary of the Gippsland Carers Association, spoke about financial abuse from the perspective of being a manager within disability services, stating that:

> In the first four weeks in my management position I sacked three staff for client abuse and stealing their money ... That organisation that I was working with had no policy on the handling of clients’ money. I am not aware of any current practices where client moneys are being misappropriated, but their books are not audited. There needs to be more accountability when we are handling people’s money.\(^{59}\)

Ms Angela Connors, Director of South East Australia for service provider Life Without Barriers, told the Committee that disability support staff are often ‘not alert’ to financial abuse in the same way as they are ‘alerted to physical and sexual abuse because it is [not] part of the Category 1 incident reporting system’.\(^{60}\) She argues that this is concerning because the impacts of financial abuse ‘are equally as serious as the outcomes of other forms of abuse’.\(^{61}\)

### 1.1.5. Neglect

The Committee received a significant amount of evidence about the pervasiveness of neglect, which was understood broadly as the failure to provide quality of care. At a public hearing in Melbourne Ms Kerrie Lecluse described the broad range of actions that she viewed as neglect:

> The neglect and abuse perpetrated by DHHS staff have been in areas of my daughter’s basic care, her health management, her dietary management, her recreational needs and unexplained injuries. DHHS managers have been neglectful in ensuring staff meet their duty of care.\(^{62}\)

In a submission to the Inquiry the Australian Cross Disability Alliance referred to a number of cases of neglect. One example was the experience of ‘Tom’, who:

> Has intellectual disability and resides in a State Government-run group home. He was found in an appalling state of neglect. Unable to feed himself and reliant on staff to provide him food and fluids 4 to 5 times per day via a feeding tube into his stomach, Tom’s feeding tube was found to be infested with maggots at the wound where it entered his stomach. It took more than a year for the ‘incident’ to be formally investigated.\(^{63}\)

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58 Mr M Potocnik, submission no. 17, p. 3.
59 Ms L Beasley, Secretary, Gippsland Carers Association, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, pp. 7-8.
60 Ms A Connors, Director of South East Australia, Life Without Barriers, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 6.
61 Ibid.
62 Ms K Lecluse, parent, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 2.
63 Australian Cross Disability Alliance, submission no. 32, ‘Personal stories and testimonies: accompanying document to submission’, p. 2.
Ms Wendy Shanks, CEO of Shepparton Access, described a number of situations that reflected the ‘lack of dignity’ with which some people with disability are treated:

Some of the things we continually deal with are people wearing their pants back to front, wearing of odd shoes and inappropriate clothing and footwear generally.

We have on many occasions inappropriate lunches being brought to our service, and some examples of this would be apples and hard muesli bars being given to people without any teeth, food known to be on allergy lists and sandwich fillings which people continually refuse to eat …

In terms of medication, for one person we continually have insufficient insulin for their daily dose.64

Ms Sarah Forbes, Human Rights and Advocacy Officer at YDAS, suggested that neglect can occur as a result of insufficient staffing:

I heard an account from a worker who had witnessed another disability support worker put four people in a shower in an accessible bathroom in the group home they lived in stripped down and hosed them off because they were given one hour to shower four residents and it is not enough time. The worker’s question to the person who said to them, "Do you really think that is appropriate?" is, "What do you want me to do? If I have 15 minutes per person to provide someone with a dignified experience, having a bath if they choose a bath, having a shower if they choose a shower, it is just not realistic".65

Ms Margaret Ryan from JacksonRyan Partners drew attention to what she viewed as ‘low-level enduring abuse’ within disability services:

Some of it is at a high level, but with things like healthcare needs not being met, over time these things escalate with a lack of services, with families being shut out, with families being put through meeting after meeting. It is not necessarily a crime, but people are vulnerable and their right to live free from abuse – that kind of abuse, the psychological abuse as much as physical abuse – is not being upheld.66

A number of witnesses suggested that neglect was sometimes difficult to identify, particularly when compared with more ‘obvious’ cases of sexual and physical abuse.67 For example Distinctive Options, a service provider for people with autism, argued that ‘in the disability sector there are many instances in which the issue of abuse and neglect is much more difficult to define and thus respond to’, and offered the following anecdote to illustrate the issue:

Examples of the challenge [to identify neglect] may include where a service takes individuals out in a bus for a day excursion. In one case the excursion is well planned with a range of activities and learning opportunities included in the outing whilst in

64 Ms W Shanks, Chief Executive Officer, Shepparton Access, Family and Community Development Committee public hearing – Shepparton, 29 October 2015, transcript of evidence, pp. 3-4.
65 Ms S Forbes, Human Rights and Advocacy Officer, Youth Disability Advocacy Service, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 7.
67 Distinctive Options, submission no. 42, p. 2.
another service the same proposal may lack any plan, service users effectively sit on
the [bus] all day and do not have any learning.

In both instances the service users have been out for the day but in one case the
service users have had opportunities to learn whilst in the other the service users have
arguably been neglected and exploited.68

Here Distinctive Options contrasts neglectful care, with the concept of
‘person-centred care’ or ‘active support’ that aims to promote independence and
empower people with disability.

Ms Beasley also emphasised the importance of ‘active support’ as the standard for
quality care: ‘it is about keeping people involved in their lives and participating as
much as possible. It builds their self-esteem, reduces behaviours — all that stuff’.69
Ms Julie Phillips from Disability Advocacy Victoria also drew attention to the need for
active support, arguing that:

One of the things I have noticed is that staff in community residential units, for
example, often see that job as a containment job, a bit like a prison warden. I am
probably exaggerating slightly, but there is no need to have active involvement with the
person with a disability. I think there is some training that is required for the staff to
understand that a lot of these people with disabilities will need active interventions to
assist them in living, that the staff are not meant to just be there sitting watching
television in the staff room and only pop their heads up if there is a problem, and that
this is a person’s life, particularly when people do not have day programs. This is a
person’s life and it has to be made as enriching for them as possible.70

The Committee heard evidence that linked neglect to the legacy of institutional care.
AMIDA argued that many of the neglectful practices that occurred in large
institutional settings have carried over to smaller-scale support residential services
such as ‘staff convenience [taking] precedence’, ‘grouped activities at the expense of
individual activities’, and ‘early meal and bed times’.71 Other witnesses also
suggested that activities in residential accommodation are organised to be
convenient for staff, unnecessarily restricting clients’ choices. Mrs Heather Tregale
identified a number of examples, such as the practice of ‘residents [being] given
pizza as their main meal most days’ and ‘residents do[ing] few activities as staff
cannot be bothered to take them out’.72

Several witnesses emphasised that while neglect is often considered a ‘lower’ form of
abuse, neglectful practices can result in the deaths of people with disability. Mr Max
Jackson from JacksonRyan Partners urged the Committee not to:

Get caught up with the high-profile cases of neglect and abuse but to recognise and
fully understand that the neglect and abuse is happening at that enduring level. In

68 Ibid., p. 2.
69 Ms L Beasley, Secretary, Gippsland Carers Association, Family and Community Development Committee
70 Ms J Phillips, Disability Advocacy Victoria, Family and Community Development Committee public hearing –
71 Action for More Independence and Dignity in Accommodation, submission no. 8, p. 8.
72 Mrs H Tregale, Lifestyle in Supported Accommodation, Family and Community Development Committee
public hearing – Melbourne, 28 September 2015, transcript of evidence p. 3.
relation to deaths we do not know whether any of these deaths may have been attributed to the failure of staff to properly care for people in care.\footnote{Mr M Jackson, partner, JacksonRyan Partners, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, pp. 8-9.}

Professor Susan Balandin, Deakin University’s Chair in Disability and Inclusion, also suggested that the link between neglect and death can be overlooked. For example:

> When people die from choking or are in hospital with aspiration pneumonia because the person supporting them with eating was doing something else, that is not a deliberate abuse, it is ignorance. If you are compromised in your eating, you should never be left alone to eat, so it is a very complex issue to actually identify.\footnote{Professor S Balandin, Chair in Disability and Inclusion, Faculty of Health, School of Health and Social Development, Deakin University, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, pp. 10-11.}

The Committee is concerned by evidence linking neglect to unexplained deaths, and this is discussed further below. The issue of how to improve the monitoring of standards of care is discussed further in Chapter Four.

### 1.1.6. Deaths of people with disability living in supported residential accommodation

The Committee received some evidence that neglectful practices within disability services can, and have, led to the deaths of people with disability in Victoria.

In a submission to the Inquiry, JacksonRyan Partners alerted the Committee to a change in the Department’s reporting of deaths in disability care. Prior to 2012 all such deaths were reported as Category 1 incidents. However, since 2012 Category 1 reporting was only required for ‘unusual or unexpected’ deaths. JacksonRyan Partners pointed out that this categorisation means that the total number of deaths in disability care is no longer published and that ‘there is no way of knowing whether there is an investigative action in relation to any death’.\footnote{JacksonRyan Partners, submission no. 31G, p. 1.} In order to address these concerns, the Committee approached the Coroner’s office.

The \textit{Coroners Act 2008 (Vic)} (the Coroners Act) states that the Coroner must investigate ‘reportable deaths’. Reportable deaths under section 4 of the Coroners Act include ‘a death that appears to have been unexpected, unnatural or violent or to have resulted, directly or indirectly, from an accident or injury’, and ‘the death of a person who immediately before death was a person placed in custody or care’.\footnote{\textit{Coroners Act 2008 (Vic)}, sections 4(2)(a) and 4(2)(c).} Furthermore, section 52 of the Coroners Act requires the Coroner to hold an inquest into a death if ‘the deceased was, immediately before death, a person placed in
custody or care’. This is particularly relevant to people with disability who reside in supported accommodation.

The Committee sought the following information in relation to the deaths of people with disability, within the definition of disability provided by section 3 of the Disability Act 2006 (Vic) (the Disability Act):

- the number of coronial investigations conducted into the deaths of people with disability since 2007;
- the number of coronial inquests conducted into the deaths of people with disability since 2007;
- the outcomes, including any findings, of coronial investigations into the deaths of people with disability since 2007;
- the findings of inquests made in relation to the deaths of people with disability since 2007;
- any information on the ‘unexplained deaths’ of people with disability since 2007, within the contexts of coronial investigations or inquests; and
- any recommendations or referrals made by the Coroner in relation to the investigations and inquests into the deaths of people with disability since 2007.

The Coroner’s office identified 570 Victorian cases from its National Coronial Information System (NCIS) that related to deaths notified since 2007 that took place within a Residential Care Facility and contained mention of the Disability Act. Many of these cases were out of scope for this Inquiry. Moreover, limitations in the NCIS database search functionality made it difficult to isolate deaths involving clients of disability services.

The Committee manually sampled and reviewed approximately 200 of these cases. The vast majority of these cases were out of scope for the Inquiry as they did not relate to care provided by a disability service provider.

An in-depth analysis of Coroner’s cases relating to deaths of people with disability is beyond the scope of this Inquiry. The Committee focused on case reports where deaths could potentially have been related to abuse or neglect in disability services, within the Committee’s terms of reference. The Committee identified seven such cases in the sample of 200. These cases included instances of physical restraint, accidental choking on food and other ingested items, inadequate supervision and inappropriate access to medication. Accidental choking was the most common cause of death, causing four of these seven deaths.

77 Ibid., s. 52(2)(b). An inquest is a court hearing into a death by a coroner and is generally open to the public. An inquest is an inquisitorial process rather than adversarial. It is an inquiry led by a coroner that seeks to find out why the death occurred. Under section 52(3A) and (3B) the Coroner may decide not to investigate if they consider the death was due to ‘natural causes’ based on a report from a medical investigator. See Coroners Court of Victoria, The Coroners Process: Information for family and friends, Coroners Court of Victoria, Melbourne, 2013, accessed 28 April 2016, www.coronerscourt.vic.gov.au/resources/9bce4a2d-554b-4e38-a549-37a2c3f4b269/coroners+process+2013+lr.pdf.
In one case, a young person attending a disability day service who was prone to placing objects in their mouth was found choked to death on a foreign object. In that case, the Coroner’s findings included insufficient risk management relating to storage of choking hazards and insufficient staff to ensure adequate supervision and proper care for high needs clients. The Coroner acknowledged that the service had recognised these shortcomings and had taken steps to rectify the problems.

The Committee also reviewed ten deaths that involved care in services that were outside the scope of this Inquiry. Six of these deaths involved inadequate medication management and supervision in supported residential services. A further four cases related to care provided in medical facilities (e.g. hospitals). Although these services were out of the scope of this Inquiry, these cases suggest that there needs to be a more thorough focus on care of people with disability in general.

The Coroner’s reports in these cases did not identify abuse or systemic neglect as contributing to the deaths. However, in each of these cases, the Coroner recommended that the service and/or the Department introduce improved processes for safety and supervision. A number of the Coroner’s reports stated that these recommendations had been adopted and improvements had been implemented. The Committee observes that although there was no evidence of specific instances of abuse or deliberate neglect, some cases included practices that indicate neglectful service practices such as gaps in supervision of high needs clients, insufficient staffing levels and inadequate training. As discussed further in Chapter Four, addressing these deficiencies in the disability workforce is fundamental to preventing neglect and abuse within the sector.

In Victoria, there is no process to systematically review deaths in disability services. It is therefore not possible to readily identify the leading causes of death nor to meaningfully assess any possible links between a death and the adequacy of care. This is in contrast to the situation in New South Wales (NSW), where the NSW Ombudsman has responsibility for regular reporting and systemic reviews of deaths of people with disability in care. The NSW Ombudsman’s Report of reviewable deaths in 2012 and 2013 identified a range of issues in need of attention such as coordination and transfer of care, supervision and crisis response. The Committee is aware that the Queensland Office of the Public Advocate has recently recommended the implementation in Queensland of ongoing systemic reviews of deaths in care.

At a time when the disability sector is transitioning to the NDIS, the Committee considers it important for Victoria to identify a clear picture of the causes of and contributors to deaths in disability services. It recommends that a renewed Disability Services Commissioner undertake a comprehensive review of deaths in disability services. Such a review could enable better management of risks for people in disability care, such as choking and respiratory risks, and improve medical and emergency management relating to people with disability. Although beyond the scope of this Inquiry, the Committee considers that such a review should include supported residential services, as significant care concerns can arise in these settings.

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As noted above, there are limitations to the Coroner’s current system for identifying the records of people with disability. The Committee considers that these limitations will need to be addressed to ensure accurate reporting of deaths of people with disability to the Disability Services Commissioner. As a result, the Committee recommends that:

**RECOMMENDATION 1.1**

The Victorian Government fund the Coroner’s Court of Victoria to undertake the necessary ICT improvements to facilitate accurate reporting and analysis of deaths of people with disability.

To support such a review, the Committee considers that there would be benefit in introducing a legislative requirement that Coroner’s reports relating to deaths in disability services be directly provided to the Disability Services Commissioner. On this issue the Committee recommends that:

**RECOMMENDATION 1.2**

The Victorian Government make the legislative changes necessary to provide for the Coroner to report all deaths that occur in disability services directly to the Disability Services Commissioner.

The Committee considers it necessary for Victoria to implement a process for reviewing the deaths of people with disability that occur in disability services, similar to the model used by the NSW Ombudsman. In this way, the Committee recommends that:

**RECOMMENDATION 1.3**

The Victorian Government fund a renewed Disability Services Commissioner to undertake a comprehensive, annual review of all deaths that occur in disability services, and the results of this review should be made public.

### 1.1.7. Restrictive practices

The Committee heard evidence about the inappropriate use of chemical and physical restraint and the potential for abuse to occur in the form of unauthorised restrictive practices. Ms Kate Lahiff from the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) suggested that “the use of restrictive practices outside of a behaviour support plan, including physical restraint, can constitute an assault”. Mr Colin Bayne, a disability support worker, was critical of the oversight of chemical restraint:

> I remember chemical restraint. It is a dirty business. Chemical restraint is a filthy thing, and it is not run correctly. I once rang an area manager and asked about the independent person process, which is a farce, and he just gave me the glib answer of,
‘Their priest, their scoutmaster or whatever can be the independent person’. He was giving me the dead-end answer of a bureaucrat, and that is at an area manager level.\footnote{Mr C Bayne, parent and disability worker, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, pp. 10-11.}

Mr Matthew Potocnik also explained his unease about the use of restrictive practices in disability services:

It frightens me to think of the restrictive intervention practices and the lack of auditing and the environments that some of these people live in. It concerns me that medications are given by staff when they want to have a good day off.\footnote{Mr M Potocnik, parent and disability worker, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 6.}

Ms Julie Phillips, from Disability Advocacy Victoria, argued that there is a complex relationship between restrictive practices and abuse, suggesting that:

When restrictive practices are applied to people with disabilities it actually causes trauma and makes their behaviours worse. Staff tend to respond with more restrictive behaviours and practices and there is a fine line between restraint and assault. There is a fine line between seclusion and illegal imprisonment, and it gets very blurry in schools and adult services.\footnote{Ms J Phillips, Disability Advocacy Victoria, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 4.}

AMIDA identified restrictive practices as a ‘risk factor’ in abuse occurring, stating that:

Restrictive practices are a risk factor in abuse as they deny freedoms and if not warranted is a form of abuse. If restrictive practices are recommended or practised, then there must be strict supervision/reporting of these practises, and of course restrictive practices must only be used as a last resort. Restrictive practices should only be authorised by an independent decision maker resourced in alternatives, such as the Senior Practitioner.\footnote{Action for More Independence and Dignity in Accommodation, submission no. 8, p. 8.}

The role of the Senior Practitioner (Disability) within the safeguarding framework for disability services is considered in Chapter Seven.

1.2. Abuse beyond the context of disability services

While the Committee’s terms of reference focus on abuse within the context of disability services funded under the Disability Act, the Committee received evidence on the abuse of people with disability in other settings. Communication Rights Australia and the Disability Discrimination Legal Service argued that this focus on disability services meant the Committee was in ‘danger of missing the broader environment in which the abuse of people with disabilities takes place’, particularly abuse that occurs ‘in the home’.\footnote{Communication Rights Australia and Disability Discrimination Legal Service, submission no. 20, p. 2, p. 4.}

At a public hearing in Shepparton Ms Nicole O’Brien recounted witnessing an incident of abuse at a local Pizza Hut restaurant:
We were at Pizza Hut ... and one of the gentlemen got up to go and get some more food. Obviously the carers did not want him to do that, so one carer got up and nearly choked him — pulled him by hair and put him down to the ground, while the other one pushed him forwards. His scream was horrific. They then picked him up, marched him out to the car and left him out there, and then they came back in and sat to eat.\(^{86}\)

Both Ms Judy Howie, a Horsham parent, and Dr Noela Foreman, President of parent group Quality Living Options Bendigo, provided examples of financial abuse occurring within the community.\(^ {87}\) Ms Howie spoke about a case of financial abuse that occurred in a supermarket:

> It is no secret that the tellers can put through that extra $100 on your docket when you want cash out. It has been brought to my attention that this does happen, it has happened. The teller thinks, ‘Well, there is a vulnerable person, we’ll just try it here’. However, this particular person, who is at risk, noted that they should have had $100 in their hand, and questioned this. This particular time was before Christmas and the queue was very long. The worker, the teller, put the onus back on them — ‘Yes, you did want the extra cash, and here it is’. Clearly the person did not want the extra money. The support worker was nowhere to be found because they were doing their own shopping. They then did arrive on the scene and could see and knew what had happened. The teller shuffled it along and the support worker also did too. They knew what happened but gathered the client and removed them. It is not right.\(^ {88}\)

The Committee also heard some evidence from Karden Disability Support Foundation and St Laurence, two service providers that spoke about discovering that a client was being physically abused by their family and supporting the client to report the abuse.\(^ {89}\) Mr Toby O’Connor, CEO of St Laurence, explained how the organisation assisted in a case of family violence, stating that:

> The case of the individual young lady who we assisted was complex. She was non-verbal. She came from a family of refugees who had been here for 10 years and also did not speak much English — a very different social structure. There really was not anyone who could run with this, because one of our staff was able to communicate using a signboard with this person. I am sure that every case is complex and they are all very individual, but in this case it was probably a no-brainer for us that we did not think we had any option but to see this one through. Who might do that in the future, I am not sure, because even if you had someone from OPA there, I guess our connection with that person provided an entree to get things moving.\(^ {90}\)

The Committee is aware of similar evidence from other recent inquiries that have focused on the abuse of people with disability within the community. This includes recent inquiries by Senate Committees into abuse in institutional and residential

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\(^{86}\) Ms N O’Brien, Family and Community Development Committee public hearing – Shepparton, 29 October 2015, transcript of evidence, p. 3.

\(^{87}\) For example, Dr N Foreman, President, Quality Living Options Bendigo, Family and Community Development Committee public hearing – Bendigo, 5 November 2015, transcript of evidence, p. 6.

\(^{88}\) Ms J Howie, Family and Community Development Committee public hearing – Horsham, 3 December 2015, transcript of evidence, p. 3.

\(^{89}\) For example, see Ms K Robinson, Chief Executive Officer, Karden Disability Support Foundation, Family and Community Development Committee public hearing – Ballarat, 6 November 2015, transcript of evidence, p. 4.

\(^{90}\) Mr T O’Connor, Chief Executive Officer, St Laurence, Family and Community Development Committee public hearing – Geelong, 13 October 2015, transcript of evidence, p. 8.
settings and the abuse of children within the education system.\textsuperscript{91} Victoria’s Royal Commission into Family Violence has also drawn attention to the abuse of people with disability within the context of the family.\textsuperscript{92} These inquiries demonstrate the extent to which the abuse of people with disability is a problem for the whole community, not simply disability services.

1.3. Experiences of families and carers of people with disability

The Committee heard from numerous parents about their experiences coping with the abuse of their relatives and their attempts to hold service providers and the Department to account. Overwhelmingly, the Committee found that parents and carers felt ignored by the disability sector. Some witnesses suggested that the treatment of parents and carers by the Department and service providers could itself be viewed as ‘abusive’. While the process for making complaints and reporting abuse will be discussed in depth in Chapter Three, this section highlights the distress and profound frustration felt by many families of people with disability.

Almost all the parents the Committee heard from felt ignored or ostracised by the Department and service providers for raising concerns about abuse and neglectful care. Ms Sandra Guy explained to the Committee that often parents who raise concerns about their family members are ‘labelled as troublemakers’.\textsuperscript{93} Mrs Anita Geach-Bennell, Vice-President of the Gippsland Carers Association, stated that she had become known as a ‘troublemaker’ and was ‘sick and tired of hitting brick walls all the time’ when she raised issues.\textsuperscript{94} Ms Kerrie Lecluse also stated that she had been ‘bullied’ and ‘road blocked’ by the Department when raising issues about her daughter’s care.\textsuperscript{95} Ms Anne Mallia shared this view of the Department’s relationship to parents, describing staff as ‘nothing but bullies’.\textsuperscript{96} Similarly, Ms Julie Pianto argued that ‘victim blaming is a common occurrence’, stating that service providers have portrayed her as ‘a difficult, demanding parent’, while Ms Michelle Kidd described feeling ‘exhausted and burnt out’.\textsuperscript{97}

The Committee heard from parents about the emotional toll of engaging with the Department and service providers, particularly when seeking answers about

\textsuperscript{91} Senate Community Affairs References Committee, Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability, Canberra, Commonwealth of Australia, 2015; and Senate Education and Employment References Committee, Access to real learning: the impact of policy, funding and culture on students with disability, Commonwealth of Australia: Canberra, 2016.

\textsuperscript{92} State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Melbourne, Parl Paper No 132, 2014-16, p. 36; pp. 91-93.

\textsuperscript{93} Ms S Guy, parent, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 2.

\textsuperscript{94} Mrs A Geach-Bennell, Vice-President, Gippsland Carers Association, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 9.

\textsuperscript{95} Ms K Lecluse, parent, Family and Community Development Committee public hearing – Morwell, 19 October 2015, transcript of evidence, p. 2.

\textsuperscript{96} Ms A Mallia, parent, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 5.

\textsuperscript{97} Ms J Pianto, parent, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 3; and Ms M Kidd, parent, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 4.
allegations of abuse or complaints about service quality. Ms Denise Leembruggen spoke about her frustration with the lack of resolution of parents’ concerns:

Even though you may have really valid issues and valid complaints, to actually go that step and make a complaint and have it addressed is very challenging. I am talking at a personal level here. Even if you go the next step and talk to DHHS, it is taken on board, you feel that you have a voice and that you have been heard, but there is no actual referral back as to what the outcomes of that discussion have been. So again it is making pathways about complaints and issues, that you feel that they will be dealt with appropriately, that there will be no ramifications for any member of the family, and that systems will be put into place to prevent any further occurrences of what your issues may be.98

Ms Kidd made similar comments about trying to engage with service providers about allegations of abuse:

I really believe that as a process it becomes so debilitating. It takes so much out of you that parents become exhausted and burnt out. At the end of it they will say, ‘Well, there is nothing left to give any more, and for what?’ Will she have justice? I will not stop until she does.99

The Committee was concerned to hear that Occupational Health and Safety (OHS) guidelines have been used to prevent families from visiting their children. Ms Julie Phillips explained that OHS can be used to portray parents as vexatious and restrict their access to relatives:

One of the tricks of DHS, as soon as parents or family members start sending too many emails to a house due to great concern about the manner in which their family member is being treated, is often to start to slap on the OHS issue, ‘You are stressing out our staff. We may have to ban you from the house’. I know a number of people who have been banned from houses because they are simply standing up for the rights of their child. Your child is still your child when they are 20 and 30. This is to me a horrendous tactic that is used to sometimes completely stop parents from continuing a loving and caring relationship with their family member.100

Ms Lecluse spoke about her experience of having the Department restrict her ability to communicate with staff or visit her daughter’s house in response to making repeated complaints about service quality. At a public hearing in Melbourne Ms Lecluse stated that:

Despite the rhetoric it is okay to complain, the reality is that it’s not okay for parents to complain about services and failures in duty of care. To do so, as has been the reality in my case, by complaining I have been condemned to despair - to being treated as the problem, to being exposed to unnecessary elongated processes and meaningless rhetoric, rhetoric not matched by proper, necessary and appropriate actions. The harsh reality is that when I’ve lodged complaints management at all levels have employed a

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98 Ms D Leembruggen, parent, Family and Community Development Committee public hearing – Horsham, 3 December 2015, transcript of evidence, p. 11.
100 Ms J Phillips, Disability Advocacy Victoria, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 5.
range of tactics and strategies aimed at intimidating and threatening my family and me.  

Other parents also commented on feeling intimidated by the Department and service providers, or fearing retribution for raising concerns about abuse or quality of care. The Committee understands that this fear is a considerable barrier to reporting and responding to abuse, and discusses the issue further in Chapter Two.

The Committee also heard that guardianship can be used as a threat against parents who have complained to the Department. As Ms Sarah Forbes from YDAS explained:

- It is a very common strategy that we hear families come to us to say, "I've made complaint after complaint. I've put them in writing and now they're saying that we will have our guardianship taken away so they can do whatever they want ..."

- the department generally have written reasons as to why they think that is the case and they will say - they will use issues such as "the mother phones the house too often to make complaints" or "family threatened legal action against our workers and our workers feel intimidated" or "the mother has deteriorating mental health and is clearly not in a position to make good decisions". It is very clear to us, having worked with that family, that the reason that the mother or the father or the sister or the brother in some cases - I've worked with all number of parties - that they become so despairing with what's happening to their family member that they do behave erratically and that the service provider and the department will use that as a reason to say that the person is no longer fit to make decisions for their family member.

At a public hearing in Morwell Mrs Jean Tops, President of the Gippsland Carers Association, provided an example of the use of guardianship as a mechanism to silence parents:

- We had a case where a person with a disability was in a challenging behaviour facility. He had been thrown through the glass door. The mother was so distraught by what was happening she ended up taking her son home again. She then went back to the department to ask for a better place for him to be placed where he would be safe. The department were not able to offer anything else, but what the department did was notify the mother that they were making an application to the guardianship and administration board for guardianship over her son because they believed the mother was being vexatious because she would not accept a return to the facility from whence he had been injured.

The Committee is concerned by these reports about the relationship between families of people with disability, the Department, and service providers. The Committee acknowledges the exemplary work of many families in advocating on behalf of their relatives and is eager to ensure the voices of parents and carers are heard by all within the sector. Chapter Six considers the need for dedicated advocacy and support services for parents and carers.

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101 Ms K Lecluse, parent, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 3.

102 Ms S Forbes, Human Rights and Advocacy Officer, Youth Disability Advocacy Service, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 8.

103 Mrs J Tops, President, Gippsland Carers Association, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 4.
1.4. Human rights and the normalisation of abuse

Throughout the Inquiry the Committee heard that the abuse of people with disability is inextricably linked to the failure to recognise human rights. Witnesses argued that this failure was most visible in the way that the abuse of people with disability is often ‘normalised’ both within disability services and the community more broadly. Ms Sarah Forbes, Human Rights and Advocacy Officer at YDAS, suggested that ‘abuse and neglect occur because it has become ordinary’. Similarly, Ms Jenny Harrison emphasised the ‘acceptance of violence’ within disability services.

At a public hearing in Melbourne Ms Julie Phillips, representing Disability Advocacy Victoria, reflected on the causes of abuse in the following way:

Why do workers abuse people with disabilities? My simple answer is: because they can. There is insufficient fear amongst workers and organisations that there will be consequences which are very serious. It seems to me that the only fear around is experienced by people with disabilities who are in these environments.

Further, Ms Phillips argued that abuse ‘links back to the attitude of people with disabilities, in not seeing them as having rights’.

The Victorian Equal Opportunity and Human Rights Commission also linked the denigration of human rights to a normalisation of abuse, with Ms Catherine Dixon, Director of the Commissioner’s Office, commenting that:

One of the issues that came up for us with normalisation of abuse was that our research indicated, for example, that there was more likely to be a reporting of crime where it was client violence in relation to staff but not so much client violence against other clients. So that is an area of concern and part of our thinking is that it is seen as somehow normal that clients may be violent towards other clients and that is something that we think is very important to not accept.

The Committee heard evidence that the abuse of people with disability is frequently normalised by the Department and disability services – as well as the broader community – through a failure to properly recognise and name abuse. The language that is used to refer to abuse is often euphemistic, including the words ‘incident’, ‘critical incident’ and ‘adverse event’. At a public hearing in Melbourne Ms Channing Coad, Coordinator of the Certificate IV in Disability at the Kangan Institute, was unequivocal in her criticism of the language of incidents – ‘in my opinion an incident is a spill on the floor. It should be called for what it is: it is violence, it is

104 Ms S Forbes, Human Rights and Advocacy Officer, Youth Disability Advocacy Service, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 7.
105 Ms J Harrison, parent, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 6.
107 Ibid., p. 7.
Chapter 1 Experiences of abuse in disability services

mistreatment’. Similarly, Ms Kellie Marshall from the Inclusive Labor Disability Justice Working Group, stated that:

These are not incidents; these are crimes. Neglect, sexual assault and physical assault are crimes. We need to start taking that seriously and lifting up the standards on that one.109

Dr Patsie Frawley, Senior Research Fellow at Deakin University, argued that the use of the term ‘incidents’ prevents an understanding of what constitutes abuse, suggesting that:

A systemic issue of the system not having what it needs in place to actually be able to understand that abuse is abuse; abuse, neglect and violence — that is what they are. They have been renamed ‘incidents’ in the disability context, and I think that is an issue.111

Ms Carolyn Frohmader, representing the Australian Cross Disability Alliance, also drew attention to the use of separate language to describe the abuse of people with disability. At a public hearing in Melbourne Ms Frohmader stated that:

What is the approach for people who do not have a disability? Do we categorise it? If it is rape, it is rape. We need to actually be using the language of what actually occurs. We have significant evidence to show that the use of language like ‘abuse’ tends to actually minimise what is in fact a criminal offence in any other setting,...112

Further, Dr Jessica Cadwallader, from the Australian Cross Disability Alliance, stated that:

When you start using language like ‘abuse’ or ‘critical incidents’ you tend to create a hierarchy about two different standards. If this behaviour occurs in the rest of the community, it is responded to by police as violence, and when it occurs in disability services it is something else and when it is perpetrated against people with disability.113

The Committee understands the language of ‘incidents’ as a significant barrier to preventing, reporting and responding to abuse in disability services. This minimising language also contributes to a lack of awareness of the rights of people with disability even amongst people with disability themselves. The role of language and rights education in the prevention of abuse is discussed in Chapters Two and Five and the need to improve training for disability staff is addressed in Chapter Four.

109 Ms C Coad, Coordinator, Certificate IV in Disability, Kangan Institute, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 2.
111 Dr P Frawley, Senior Research Fellow, Faculty of Health, School of Health and Social Development, Deakin University, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 10.
112 Ms C Frohmader, Australian Cross Disability Alliance, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 4.
113 Dr J Cadwallader, Australian Cross Disability Alliance, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 4.
Some witnesses suggested that there is a growing awareness of abuse within the broader community. For example, at a public hearing in Melbourne Ms Kellie Marshall from the Inclusive Labor Justice Working Group argued that until now:

There has not been the motivation to address this [abuse]. It is a particular area that has been very under the radar. It has not been out there in the public. I think this is an issue that is just now starting to come to the surface with all the inquiries and research that is now being done. I think it is all about timing.\footnote{Ms K Marshall, Inclusive Labor Disability Justice Working Group, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 9.}

Others, such as Ms Judy Howie, highlighted the need to further spotlight the issue of abuse within the wider community, stating that:

I think awareness is another thing. I had even thought of advertising. We have great campaigns on our television, and I am not a big TV watcher, so this may be out there and I am unaware of it. But there are certainly huge national campaigns about drink-driving, and there are huge national campaigns about family violence. Is there the opportunity or a spot for a huge campaign on abuse of people with disabilities to touch us all?\footnote{Ms J Howie, parent, Family and Community Development Committee public hearing – Horsham, 3 December 2015, transcript of evidence, p. 10.}

The Committee also heard that a federal Royal Commission into abuse would further highlight the gravity of abuse and send a strong statement to the community about the need to uphold the human rights of people with disability. This issue is discussed further below.

The Committee is aware that Victoria is the only state with legislated protections for human rights through the \textit{Charter of Human Rights and Responsibilities Act (2006)} (Vic) (the ‘Charter’). The Disability Act administers the operation of disability services and makes specific mention of the rights of people with disability. One of the Disability Act’s key objectives is to ‘promote and protect the rights of persons accessing disability services’.\footnote{Disability Act 2006 (Vic), s. 4(d).} In particular, the Disability Act asserts that ‘persons with a disability have the same right as other members of the community to – (a) respect for their human worth and dignity as individuals; [and] (b) live free from abuse, neglect or exploitation’.\footnote{Ibid., s. 5(2)(a) & (b).} The Committee has heard a range of evidence about the need to preserve – and possibly extend – the protections for people with disability in the Charter and the Disability Act, particularly in the context of the roll-out of the NDIS. Accordingly, Chapter Eight discusses the future role of the Charter within Victoria’s safeguarding system.

\section*{1.5. Prevalence of abuse within disability services}

In the Interim Report for this Inquiry, the Committee acknowledged the difficulty of determining the scale of abuse within disability services due to the absence of reliable data. The Victorian Ombudsman has also emphasised the difficulty of assessing the prevalence of abuse within disability services, arguing that:
It is not surprising that there is no single source of data about reported abuse in the disability sector, in light of the number of agencies with responsibility for dealing with abuse against people with disability in Victoria. Agencies have different responsibilities in relation to the types of abuse they can deal with, different approaches to dealing with abuse allegations they receive, and different approaches by the same agency, depending on where the abuse occurred or which service provider was providing services to the victim of abuse at the time it occurred.\textsuperscript{118}

A number of different sources can provide information about the scale of abuse in disability services, such as:

- Category 1 incident reports for staff-to-client and client-to-client assaults recorded by the Department;
- internal data on allegations of abuse kept by service providers;
- criminal statistics on allegations of assault and successful prosecutions;
- complaints of abuse collected by the Disability Services Commissioner; and
- information gathered by the Community Visitors Program.

As noted in the Interim Report, there are significant shortcomings with all of these approaches to recording abuse and, in addition, a pervasive problem with under-reporting and miscategorising abuse. The Committee has heard that even the language used to discuss violence within disability services – for example, that of ‘abuse’ or ‘incidents’ rather than ‘assault’ – is a barrier to reliable data collection. The language of ‘incidents’ is discussed further in Chapter Two, while the varied approaches to recording and responding to allegations of abuse taken by disability services is analysed in Chapter Three.

Nevertheless the Committee heard, repeatedly, that the abuse of people with disability is the major problem in disability services in Victoria. Importantly, this view is reflective of the experience of Inquiry stakeholders and the consensus amongst national and international researchers that people with disability are considerably more likely to experience violence than people without disability – whether they are recipients of government-funded disability services or not.

\subsection*{1.5.1. Improving data collection}

A number of inquiries and research projects have emphasised the problem of quantifying the scale of abuse in both disability services and the wider community. For example, the Senate Inquiry found that ‘there are currently no nationally consistent data sets available to describe the extent of violence’ against people with

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\textsuperscript{118} Victorian Ombudsman, Reporting and investigation of allegations of abuse in the disability sector: Phase 1 – the effectiveness of statutory oversight, Victorian Ombudsman, Melbourne, 2015, p. 80.
\end{flushright}
disability, while the Victorian Ombudsman lamented the difficulty of creating ‘a clear picture of the scale of abuse’.  

Ms Keran Howe, Executive Director of Women with Disabilities Victoria, also considered issues with data, stating that:

> We know nothing publicly with regard to the prevalence and incident of abuse within disability services because we have no data collection that is transparent and publicly available. So we don't know about the gender of victims or perpetrators, their relationship, the setting in which it occurs and the type of violence that occurs. So we need research and we need our data to be collected and monitored closely.  

In a submission to the United Nations, Women with Disabilities Australia emphasised that the data is particularly poor in relation to violence against women with disabilities, arguing that:

> To date, there have been no national studies or research conducted to establish the prevalence, extent, nature, causes and impact of on violence against women and girls with disabilities in different settings. There is no data collection in Australia on violence against women with disabilities.  

The Australian Bureau of Statistics’ (ABS) Personal Safety Survey is considered to provide the most reliable data on the prevalence of violence in Australian society. In its submission to the Senate Inquiry, People with Disability Australia commented on the ABS survey, noting that:

> It does not disaggregate by disability, Indigenous status or mental illness, and only recruits those currently residing in private dwellings, excluding institutional residential settings. It also excludes those who might require some form of communication support – such as people with intellectual disability, some Deaf people, some people with hearing impairment, and people from culturally and linguistically diverse backgrounds.  

Researchers Dr Suellen Murray and Dr Anastasia Powell have been critical of the Personal Safety Survey and are also concerned that the ABS Survey of Disability, Ageing and Carers ‘does not invite participants to report on their experiences of

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119 Senate Community Affairs References Committee, Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability, Commonwealth of Australia, Canberra, 2015, p. 37; and Victorian Ombudsman, Reporting and investigation of allegations of abuse in the disability sector: Phase 2 – Incident reporting, Victorian Ombudsman, Melbourne, 2015, p. 31.

120 Ms K Howe, Executive Director, Women with Disabilities Victoria, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 6.


122 People with Disability Australia Incorporated cited in Senate Community Affairs References Committee, Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability, Commonwealth of Australia, Canberra, 2015, p. 38.
violence or abuse’. Summarising the difficulties with data on abuse, Murray and Powell argued that:

Despite evidence that approximately 20% of Australian women, and 6% of men, will experience sexual violence in their lifetime, there is no standard national data collection that includes the experiences of sexual violence amongst adults with a disability.

The 2012 version of the ABS Personal Safety Survey asked respondents whether they had a disability, and found that people with disability or a long term health condition experienced violence at a higher rate in the past 12 months than the general Australian population. However, as noted by the Senate Community Affairs References Committee, the 2012 Survey continued to exclude people living in institutional care, people with communication disabilities, and did not ‘differentiate between physical and sexual violence’.

In addition to methodological problems, the Committee is aware that the available data on violence against people with disability is impacted by the reluctance of many people with disability to disclose abuse. This reluctance is driven by a pervasive fear of the possible repercussions of reporting, and the normalisation or ‘downgrading’ of abuse by disability services and law enforcement. Accordingly, Chapters Two and Three focus on ways to overcome the barriers to reporting abuse faced by people with disability, their families and carers, and disability support staff.

The Senate Community Affairs References Committee recommended improvements to the way statistical information on abuse is collated by the ABS and also by service providers, organisations, justice agencies, and governments. The Committee is supportive of efforts to improve data collection at the national level, which would enable a deeper understanding of rates of abuse both within and beyond funded disability services.

In addition, the Committee believes it would be useful if data specific to Victoria was collated and made available publicly. While this Inquiry is focused only on abuse and neglect within disability services, the Committee considers it essential to understand how abuse within government-funded services exists as part of the broader experience of people with disability. This would enable analysis of rates of violence over time and the performance of funded services, and could be used to evaluate the effectiveness of abuse prevention measures targeted at both disability specific services and the broader community.

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124 Ibid., p. 3.
126 Senate Community Affairs References Committee, Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability, Commonwealth of Australia, Canberra, 2015, pp. 38-39.
Victoria Police does not currently include disability as one of the demographic characteristics on police reports and in its operational database alongside other key characteristics such as age, gender, and Indigenous status. However, Victoria Police does have an optional process – Voluntary Disclosure of Personal Information Regarding a Mental Disorder and/or Disability – which provides an opportunity for people with disability and their guardians to provide information that may assist police in their interactions with people with disability. This information can be disclosed to police at any time, but it is voluntary and does not have to be disclosed while reporting a crime. The Committee believes that this process is undoubtedly useful, however it does not impact on how police collect data on people with disability and does not assist in analysing the prevalence of violence against people with disability.

The Committee is aware that Victoria Police have committed to improving data on crime against people with disability in the organisation’s Accessibility Action Plan 2014-2017. The plan proposes an ‘audit of current mechanisms for identifying levels of reporting by people with disabilities’, and recommends that a ‘mechanism’ is developed to address the gaps in reporting. In addition, Victoria Police plans to strengthen its response to Prejudice Motivated Crime (PMC) to ensure ‘recognition of disability as a motivating factor in PMC’, and that ‘victims receive appropriate support when reporting’.

The Committee welcomes Victoria Police’s Accessibility Action Plan and is supportive of an audit of data collection practices. It also endorses efforts to increase the response by Victoria Police to Prejudice Motivated Crime against people with disability. The Committee believes that all police reporting processes should include disability as a demographic characteristic to ensure that both crimes against people with disability and alleged offences committed by people with disability can be quantified and analysed for trends.

Therefore, on the issue of Victoria Police data collection, the Committee recommends that:

**RECOMMENDATION 1.4**

The Victorian Government requires Victoria Police to change its data collection process to include disability as a standard demographic characteristic in all police crime reports, for both victims of crime and alleged offenders. This data should be made available publicly through the Crime Statistics Agency and disaggregated by gender, age, and cultural background.

Any attempt to gather data on the broader issue of violence against people with disability would include not only police data on crimes against people with disability, but reports of abuse and neglect collected by other organisations, such as the Department of Health and Human Services, the Disability Services Commissioner, the Department of Justice and Regulation, and VicHealth. While undoubtedly complex,
this research initiative would significantly advance our knowledge of abuse and shape a whole-of-community response to its prevention. In this way, the Committee believes that the Victorian Government should not wait until the full roll-out of the NDIS to begin this important task.

Therefore, on the issue of data collection, the Committee recommends that:

**RECOMMENDATION 1.5**

The Victorian Government develop reliable data on the incidence of violence against people with disability – including violence that occurs in the context of all disability service providers as well as the broader community. The findings of this research should be made available publicly, and include information on rates of violence according to gender, age, type of disability, cultural background, and place of residence.

**1.5.2. Research on violence against people with disability**

A number of submissions to the Inquiry summarised the available national and international studies in the prevalence of violence against people with disability. In a submission to the Inquiry, the Australian Cross Disability Alliance stated that:

> 18% of people with disability report being victims of physical or threatened violence compared to 10% without disability. People with disability experience, and are a greater risk of crimes from both strangers and people who are known to them ... People with intellectual disability are ten times more likely to experience violence than people without disability, and are three times more likely to be victims of assault, sexual assault and robbery compared with people who do not have an intellectual disability.\(^{130}\)

Deakin University cited similar research in its submission, claiming that ‘people with a disability have a 50% higher chance of experiencing violence and abuse than the general population’ and ‘individuals with an intellectual disability are at a higher risk than people with other disabilities’.\(^{131}\)

In its submission to the Inquiry, the VEOHRC noted that while there is ‘limited data’ on the abuse of people with disability in Victoria, that:

> Significant local and international research reveals that people with disabilities are more likely to be victims of crime than the general population. The experience of crime is most severe for women, people with cognitive impairments and people with communication disabilities. Further, children and young people with disabilities experience abuse and neglect at higher rates than their peers who do not have a disability.\(^{132}\)

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\(^{130}\) Australian Cross Disability Alliance, submission no. 32, p. 36.

\(^{131}\) Deakin University, submission no. 86, p. 2.

\(^{132}\) Victorian Equal Opportunity and Human Rights and Commission, submission no. 21, p. 4.
Similarly, the Victorian Ombudsman acknowledged that ‘there is broad consensus that people with disability are more likely to experience abuse than the general population’, particularly children and adults with intellectual disability.\(^{133}\)

A number of the Inquiry’s participants used their own experience of the disability sector to consider the prevalence of abuse within disability services. At a public hearing in Bendigo Ms Cath McDonald, CEO of service provider Radius, considered the prevalence of abuse, stating that:

> I would not be surprised to hear that 20 to 30 per cent of our clients have been sexually assaulted at some stage. One of the huge fears for moving the bulk of the organisation into the Morley Johnson Building was from parents, because their child had been sexually assaulted in the mall, in the streets, in the car park. I have not done a total — I did not add it up — but I would say apocryphally that would be between 20 and 30 per cent.\(^{134}\)

Drawing on data relating to their advocacy activities, the organisation Disability Justice Advocacy stated that ‘16.75% of our advocacy clients have been victims of violence, abuse or neglect in residential or respite services in our intake area’.\(^{135}\)

The Health and Community Services Union (HACSU) conducted a useful survey of their members that demonstrates a high level of awareness of abuse occurring in the sector. While this was not a comprehensive survey of all disability support workers, it does lend credence to claims that abuse is far from uncommon in Victoria. The survey questioned more than 500 HACSU members from Victoria and Tasmania, ‘the two states with the highest concentration of HSU members working in the disability sector’.\(^{136}\) A range of questions were posed about whether staff had witnessed or knew about abuse occurring in their workplaces. According to the survey of HACSU members:

> Nearly half of surveyed members (46.79 per cent) reported that they had witnessed violence, abuse or neglect against people with a disability by other staff, either at their current workplace or when working for a previous employer. Furthermore, nearly 1 in 5 respondents (18.07 per cent) reported that while they had not personally witnessed violence, abuse or neglect against people with a disability by staff, they knew colleagues who had.\(^{137}\)

Moreover, the survey found that ‘fewer than half (42.19 per cent)’ of respondents considered the process available for staff to report abuse to be adequate.\(^{138}\) Commenting on the survey’s results at a public hearing Mr Lloyd Williams, HACSU State Secretary, stated that the union was:

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134 Ms C McDonald, Chief Executive Officer, Radius, Family and Community Development Committee public hearing – Bendigo, 5 November 2015, transcript of evidence, p. 9.

135 Disability Justice Advocacy, submission no. 48, p. 2.


137 Ibid.

138 Ibid., p. 8.
Surprised by those results. We were staggered. That survey was conducted across Victoria and Tasmania but the vast majority of respondents were the Victorian respondents. We were extremely surprised. The survey didn't drill down into the types of abuse and the details. So we take from the survey results that our members there are reporting all levels, so physical, verbal … but we were extremely surprised and quite shocked.\footnote{Mr L Williams, State Secretary, Health and Community Services Union, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, pp. 6-7.}

Mr Williams suggested that the incidence of abuse was ‘symptomatic of a workforce that is highly casualised and very insecure and things occur and there is a lack of supervision in many group homes across Victoria’; these are issues that will be addressed in Chapter Four.\footnote{Ibid., p. 7.} The Committee is also aware that many staff fear reporting abuse due to possible retribution, which is a focus of Chapter Two.

### 1.5.3. Risk factors

Despite the difficulties with quantifying abuse, the Committee heard extensive evidence about the various factors that increase the risk of the abuse of people with disability – such as gender, type of disability, type of accommodation, age, and cultural background. Crucially, this highlights that people with disability are not a homogenous group, and that approaches to abuse prevention need to focus on how a diverse range of factors can contribute to the likelihood of a person with disability experiencing abuse.

**Gender**

The Committee heard a significant amount of evidence about the high rates of abuse experienced by women. According to the Australian Cross Disability Alliance – which includes Women with Disabilities Australia as a member organisation – ‘the gendered nature of violence against people with disability sees more than 70% of women with disability having been victims of violent sexual encounters at some time in their lives’.\footnote{Australian Cross Disability Alliance, submission no. 32, p. 37.} Women with Disabilities Victoria, Women’s Health West and South East Centre Against Sexual Assault (SECASA) also attested to the high rates of violence experience by women with disabilities.\footnote{See Women with Disabilities Victoria, submission no. 77, Women’s Health West, submission no. 9, and South Eastern Centre Against Sexual Assault, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence.} Keran Howe, Executive Director of Women with Disabilities Victoria, has produced an overview of the literature on violence against women with disabilities, concluding that the research ‘highlights the bleak and pervasive nature of violence against women with disabilities’ and calling for further research.\footnote{Keran Howe, ‘Violence Against Women with Disabilities – An Overview of the Literature’, Women with Disabilities Australia, 2000, accessed 3 February 2016, wwda.org.au/issues/viol/viol1995/keran/} Similarly, Suellen Murray and Anastasia Powell drew on a number of international studies, arguing that:

> Women with a range of disabilities – including physical, language or intellectual impairments – are far more likely to experience sexual assault than women without
disabilities ... and tend to experience all forms of abuse for significantly longer periods of time.\textsuperscript{144}

As part of its research into the prevention of violence against women, VicHealth has identified women with disabilities as a key ‘population group at risk’ of abuse, noting that ‘it is not uncommon for women with disabilities to experience violence by more than one person in their lifetimes and for the experience of violence to be a protracted and enduring feature in their lives’.\textsuperscript{145} VicHealth also stated that:

A staggering 90 per cent of Australian women with an intellectual disability have been subjected to sexual abuse, with more than two-thirds of women (68 per cent) having been sexually abused before they turned 18 years of age. These rates are consistent with overseas studies.\textsuperscript{146}

Other research has drawn attention to the increased risk faced by women with intellectual or communication disabilities, and the higher rate of family violence perpetrated against women with disability.\textsuperscript{147}

The Committee believes that gender is a significant factor in rates of abuse and has dedicated Chapter Five to a fuller consideration of mechanisms for addressing this issue.

\textbf{Type of disability}

The Committee heard that people with intellectual disability and/or complex communication needs were more susceptible to abuse than other people with disability. Deakin University stated that ‘this risk is particularly high for sexual abuse’.\textsuperscript{148} Suellen Murray and Anastasia Powell have summarised national and international data on the sexual assault of people with disability, and in 2008 found that, ‘a recent study of Victoria Police data regarding sexual assault indicates that just over a quarter of all victims were identified as having a disability’.\textsuperscript{149} Moreover, they argued that research suggests that:

Adults with an intellectual disability were more than twice as likely to be victims of personal crimes as the general adult population, and 10.7 times more likely to be victims of sexual assault in particular.\textsuperscript{150}

\textsuperscript{144} Suellen Murray and Anastasia Powell, ‘Sexual assault and adults with a disability: Enabling recognition, disclosure and a just response’, \textit{Issues: Australian Centre for the Study of Sexual Assault}, Australian Institute of Family Studies, issue 9, 2008, p. 3.


\textsuperscript{146} Ibid.


\textsuperscript{148} Deakin University, submission no. 86, p. 2.

\textsuperscript{149} Suellen Murray and Anastasia Powell, ‘Sexual assault and adults with a disability: Enabling recognition, disclosure and a just response’, \textit{Issues: Australian Centre for the Study of Sexual Assault}, Australian Institute of Family Studies, issue 9, 2008, p. 3.

\textsuperscript{150} Ibid.
Deakin University also reported that ‘the incidence of abuse of women with little or no functional speech who cannot report is thought to [be] as high as 93%’. In a similar way, Ms Dagmar Jenkins from SECASA stated that ‘people with complex communication needs and high support needs are often targeted at greater rates by offenders’. Moreover, the Committee heard from Communication Rights Australia that it is ‘without question’ that people with communication difficulties experience abuse at higher rates.

The Committee heard a great deal of evidence that people with intellectual disability and complex communication needs are at risk of abuse due to perceptions around their capacity to be credible witnesses. The Committee considers this a significant barrier to reporting abuse, and discusses the issue in depth in Chapter Two.

**Type of accommodation**

Many of the Inquiry’s stakeholders were of the view that the socially and physically isolated nature of some government-funded supported residential accommodation or ‘group homes’ was a factor that increased the risk of abuse for residents. Commenting on research that found that residents in group homes were more likely to experience abuse than other people with disability, the Australian Cross Disability Alliance stated that:

> This is hardly surprising, given the fact that institutional settings are widely acknowledged to be breeding grounds for the perpetration of violence and abuse, and of cultures that condone violence and abuse. Perpetrators often deliberately target people with disability in institutional and residential settings, particularly those who are least able to resist or make a formal complaint.

The Victorian Council of Social Services also drew attention to the isolation of group homes as a factor in abuse, arguing that:

> Active community participation is a protective factor as is contact with the mainstream service system. In a residential service, people with disability tend to be shut off from the rest of the world and any abuse becomes less visible. For someone in a residential service substantial contact with people outside the residence lessens opportunities for abuse to occur and increases the possibility of early detection if it occurs.

Similarly Dr George Taleporos, Manager of YDAS, suggested that it is ‘those who are isolated who are the most vulnerable’ and argued that ‘if we are serious about addressing abuse and neglect we will start taking real action around social inclusion because it is those who are isolated who are the most likely to be abused’.

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151 Deakin University, submission no. 86, p. 2.
152 Ms D Jenkins, South Eastern Centre Against Sexual Assault, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 3.
154 Australian Cross Disability Alliance, submission no. 32, p. 35.
155 Victorian Council of Social Services, submission no. 71, p. 3.
156 Dr G Taleporos, Manager, Youth Disability Advocacy Service, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 3.
At a public hearing in Morwell, Ms Julie Pianto commented on the risks associated with group homes, from the perspective of a parent:

> Families like ours assume and rely on the integrity of the people working with our loved ones. It is my opinion that the current supported accommodation model is proving to be a scattering of many institutions which are sufficiently hidden to allow appalling abuse and neglect to occur away from the public eye, and where predators can flourish, especially with the ‘one staff member on overnight’ policy.\(^{157}\)

Jonathon Goodfellow and Margaret Camilleri have highlighted that people with cognitive impairment face an increased risk of sexual assault if they live in residential settings, such as supported accommodation. Further, they have argued that ‘ whilst this has been known for some years it is still not acknowledged by the providers of these services’ including the Department.\(^{158}\)

Research conducted for People with Disability Australia by Sonya Price-Kelly and Maria Attard argued that ‘women with disability living in residential and institutional settings are at an even greater risk of abuse’ than other women with disability.\(^{159}\) Moreover, they suggest that current definitions of domestic violence are too narrow, and exclude the experiences of people living in diverse residential settings, such as supported accommodation or boarding houses.\(^{160}\)

**Age**

A number of witnesses told the Committee that children with disability were more likely to experience abuse than other children. In a submission to the Inquiry Children with Disability Australia – the peak national body representing children with disability – stated that:

> Research shows that children and young people with disability are more than three times more likely to be abused than their peers without disability. Further, children and young people with communication difficulties and high behaviour support needs have been found to have a heightened risk of abuse. It has been stated that three factors make children and young people with disability more vulnerable.\(^{161}\)

In an issues paper written for Children with Disability Australia, Sally Robinson argued that despite difficulties with data collection:

> The existing research allows us to say with confidence that children and young people with disability experience abuse and neglect at rates considerably higher than their peers who do not have disability ... [and] children with communication impairments,

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\(^{157}\) Ms J Pianto, parent, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 3.


\(^{159}\) Sonya Price-Kelly and Maria Attard, *Accommodating Violence: The experience of domestic violence of people with disability living in licensed boarding houses*, People with Disability Australia, Redfern, 2010, p. 37

\(^{160}\) Ibid., p. 41.

\(^{161}\) Children with Disability Australia, submission no. 55, p. 5.
Chapter 1 Experiences of abuse in disability services

behaviour difficulties, intellectual disability and sensory disability experience higher rates of abuse.\textsuperscript{162}

Dr Taleporos also commented on the higher rates of abuse experienced by children with disability:

We know that many are isolated, have very few friends and support people and some have been relinquished by their families who were not provided with timely and adequate support. Many young people with disabilities have been subjected to abuse and neglect for their whole lives and they don’t understand what it means to live free from abuse and what it feels to be safe.\textsuperscript{163}

Similarly, the Australian Cross Disability Alliance also asserted that:

Children with disability are three to four times more likely to experience sexual abuse than their peers, with many not having the language or ability to communicate the abuse. Sexual abuse of children in Australia occurs at appallingly high rates in institutional settings, in which children with disability are significantly overrepresented.\textsuperscript{164}

The Committee is aware of the 2015 report by the Victorian Commissioner for Children and Young People into the sexual abuse of children in residential care. The Commissioner found that children with intellectual disability were ‘over-represented’ in the out-of-home care system and experienced higher rates of sexual abuse than other children in care.\textsuperscript{165} The Commissioner highlighted the movement of staff between the child care, disability and aged care sectors and recommended the establishment of ‘an interconnected national register of carers’ to ‘reduce the risk of abuse’ for all ‘vulnerable people’.\textsuperscript{166}

The Interim Report of the Royal Commission into Institutional Responses to Child Sexual Abuse also found that children with disability were ‘more vulnerable to abuse’, arguing that the ‘segregation’ of children with disability – such as living in residential care homes – ‘increases’ the risk of abuse.\textsuperscript{167}

Both the Senate Community Affairs References Committee and the Senate Education and Employment References Committee drew attention to the abuse of children with

\textsuperscript{163} Dr G Taleporos, Manager, Youth Disability Advocacy Service, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 2.
\textsuperscript{164} Australian Cross Disability Alliance, submission no. 32, p. 40.
\textsuperscript{165} Commission for Children and Young People, ‘…as a good parent would…’: Inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual abuse or sexual exploitation whilst residing in residential care, Commission for Children and Young People, Melbourne, 2015, p. 79.
\textsuperscript{166} Ibid., p. 22.
\textsuperscript{167} Royal Commission into Institutional Responses to Child Sexual Abuse, Interim Report Volume 1, Commonwealth of Australia, Canberra, 2014, p. 94; p. 112.
disability in the education system through the inappropriate use of restrictive practices, such as physical restraint and isolation in separate rooms.\textsuperscript{168}

**Indigenous people**

While the Committee received limited evidence about Aboriginal and Torres Strait Islander people with disability, the Committee is aware that Indigenous people experience higher rates of violence. Investigating the experiences of both groups is difficult due to an absence of data. Summarising the available research on violence against Indigenous people with disability, the Australian Cross Disability Alliance – which includes the First Peoples Disability Network – stated that:

> Although there is essentially no data in Australia on the incidence of violence against Aboriginal and Torres Strait Islander people with disability, nor any research that examines the impact of such violence, it is known that violence against Aboriginal and Torres Strait Islander people is approximately 10 times higher than against the non-Aboriginal and Torres Strait Islander people.\textsuperscript{169}

The Senate Committee Affairs References Committee also highlighted the abuse of Indigenous people, particularly the higher proportion of Indigenous people with disability in the criminal justice system.\textsuperscript{170}

At a public hearing in Mildura Ms Diane Jones, from Mallee District Aboriginal Services, emphasised the importance of specific services for Indigenous people with disability, stating that:

> I have found that the Aboriginal people in the area have a strong sense of community and would prefer, where possible, to keep the services culturally appropriate. It is important to the families to keep the connection between the community and their culture.\textsuperscript{171}

**Culturally and linguistically diverse backgrounds**

On the issue of violence against people with disability from culturally and linguistically diverse backgrounds (CALD), the Australian Cross Disability Alliance reported that:

> Research has found that immigrant and refugee women are more likely to be murdered as a result of domestic violence, and that cultural values and immigration status enhance the complexities normally involved in domestic violence cases. It is recognised that CALD women with disability are less likely than other women to report acts of violence, particularly domestic violence and sexual assault, due to multiple and

\textsuperscript{168} Senate Community Affairs References Committee, Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability, Commonwealth of Australia, Canberra, 2015, pp. 101-111; and Senate Education and Employment References Committee, Access to real learning: the Impact of policy, funding and culture on students with disability, Commonwealth of Australia, Canberra, 2016, p. 31.

\textsuperscript{169} Australian Cross Disability Alliance, submission no. 32, pp. 38-39.

\textsuperscript{170} Senate Community Affairs References Committee, Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability, Commonwealth of Australia, Canberra, 2015, p. 179.

\textsuperscript{171} Ms D Jones, Access and Support Worker, Mallee District Aboriginal Services, Family and Community Development Committee public hearing – Mildura, 30 November 2015, transcript of evidence, p. 2.
intersecting barriers, which include linguistic barriers, cultural barriers and lack of knowledge or awareness of the criminal justice system.\textsuperscript{172}

The Senate Committee Affairs References Committee found that ‘people from culturally and linguistically diverse backgrounds – in particular newly arrived migrants such as refugees and special humanitarian entrants – can be particularly vulnerable [to abuse, and] those with disability are likely to experience multiple disadvantages’.\textsuperscript{173}

1.5.4. The evidence of lived experience

Despite the lack of data, the Committee has found that evidence of abuse in disability services – through the voices of people with disability, their families and carers, as well as disability support staff – is rife. Many have described these stories of abuse as ‘the tip of the iceberg’ – so suggestive is this testimony of an ever greater number of stories, experiences and ‘incidents’ that are unknown. It is evidence of lived experience, rather than clear data, that has compelled witnesses to describe abuse in Victoria as ‘persistent’, ‘rampant’, ‘widespread’ and at ‘epidemic proportions’.\textsuperscript{174}

One submitter who wished to remain anonymous asked the Committee to consider how many stories of abuse remain untold, stating that:

\begin{quote}
We as a family have the time and resources to make this submission but we request the Inquiry to recognize there are a multitude of people with a disability and their families who due to their age, cultural or language background, disability, health, exhaustion, carer responsibilities or numerous other impediments; cannot. Our submission is about our own experience as consumers but personal contact with many other families and organizations proves to us our concerns are the proverbial ‘tip of the iceberg’.\textsuperscript{175}
\end{quote}

Mr Tony Tregale from LISA also invoked the ‘tip of the iceberg’ analogy to describe the visibility of abuse:

\begin{quote}
We find it disappointing that the occasions of abuse which break through the covert scrutiny barriers are like the tip of the iceberg ... Here today and gone tomorrow, the public and the media have a short attention span. Incidents of abuse are soon forgotten, whilst the bulk of the iceberg which spurned the peak, poor management and undesirable direct action, staff care and lore, remain.\textsuperscript{176}
\end{quote}

\begin{thebibliography}{99}
\bibitem{172} Australian Cross Disability Alliance, submission no. 32, p. 39.
\bibitem{173} Senate Community Affairs References Committee, Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability, Commonwealth of Australia, Canberra, 2015, p. 11.
\bibitem{174} See for example Mr T Clarke, Inclusive Labor Disability Justice Working Group, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, p. 2; Victorian Council of Social Services, submission no. 71, p. 5; Ms S Guy, submission no. 13, p.2; and Australian Cross Disability Alliance, submission no. 32, p. 35.
\bibitem{175} Name withheld, submission no. 49, p. 4.
\bibitem{176} Mr T Tregale, Lifestyle in Supported Accommodation, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence p. 2.
\end{thebibliography}
Even the Office of the Public Advocate has referred to the evidence provided by community visitors as the ‘tip of the iceberg’ of abuse in Victorian disability services.\(^{177}\)

**Table 1.1**  
**Investigations dealing with the abuse of people with disability (since 2014)**

<table>
<thead>
<tr>
<th>Year</th>
<th>Investigating body</th>
<th>Report title</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>Senate Education and Employment References Committee</td>
<td>Access to real learning: the impact of policy, funding and culture on students with disability</td>
</tr>
<tr>
<td>2015</td>
<td>Victorian Ombudsman</td>
<td>Reporting and investigation of allegations of abuse in the disability sector: Phase 1 – the effectiveness of statutory oversight &amp; Phase 2 – incident reporting</td>
</tr>
<tr>
<td>2015</td>
<td>Senate Community Affairs References Committee</td>
<td>Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability</td>
</tr>
<tr>
<td>2015</td>
<td>Commission for Children and Young People</td>
<td>“… as a good parent would ...”: Inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual abuse or sexual exploitation whilst residing in residential care</td>
</tr>
<tr>
<td>2014</td>
<td>Victorian Equal Opportunity and Human Rights Commission</td>
<td>Beyond doubt: The experiences of people with disabilities reporting crime</td>
</tr>
<tr>
<td>2014</td>
<td>Australian Law Reform Commission</td>
<td>Equality, Capacity and Disability in Commonwealth Laws</td>
</tr>
<tr>
<td>2014</td>
<td>Royal Commission into Institutional Responses to Child Sexual Abuse</td>
<td>Interim Report</td>
</tr>
</tbody>
</table>

The Committee is aware that its Inquiry is just one of a number of recent investigations into the prevalence of abuse against people with disability at state and federal levels (see Table 1.1 above). Collectively, these investigations form a significant body of personal testimony about the experience of abuse of people with disability; what the Senate Community Affairs References Committee referred to as ‘a snowballing of voices that no longer would be silenced’.\(^{178}\)

While it is certainly desirable that data collection is improved, the Committee is adamant that the voices of people with disability and their carers are not simply

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\(^{178}\) Senate Community Affairs References Committee, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*, Commonwealth of Australia, Canberra, 2015, p. xxvii.
‘anecdotal’, but provide undeniable evidence of the widespread nature of abuse and neglect.

1.5.5. Senate Committee recommendation for a Royal Commission into the abuse of people with disability

One of the main recommendations of the Senate Community Affairs References Committee’s recent inquiry into the abuse of people with a disability was for a federal Royal Commission. The Senate Committee argued that ‘only a Royal Commission with investigative powers, funded and empowered to visit institutions, could properly conduct an inquiry, and give full weight to the seriousness of this issue’. The Senate Committee also suggested that it would be beneficial ‘given the lack of reliable data’ on abuse and the ‘concern that many potential witnesses were not able to access the support they required to be able to participate in the inquiry’.

In explaining its recommendation for a Royal Commission, the Senate Committee drew attention to their symbolic power, acknowledging that a Royal Commission is often called for:

When people feel strongly and seek greater recognition for a particular issue. The committee recognises the full import of such a step and believes in this instance such calls are justified.

A federal Royal Commission would send a powerful message to the broader community about the seriousness of the abuse of people with disability, and would serve as an opportunity for governments across Australia to work cooperatively on developing strategies for prevention – similar to the whole-of-community approaches being pursued to prevent family violence and child sexual abuse. That said, the Committee is concerned that federal and state governments should not wait until the completion of a Royal Commission to take action to improve the systems for reporting and preventing abuse. This is particularly urgent given that the roll-out of the NDIS is imminent. The Committee supports a federal Royal Commission into violence against people with disability. However, the Committee is concerned that any Royal Commission actively works to avoid re-traumatising individuals who have already given evidence as part of other recent inquiries. Moreover, in order to gain new evidence about abuse, a Royal Commission would need to greatly expand the participation of people with disability, particularly through the provision of funded supports for those with complex communication needs.

In relation to a federal Royal Commission the Committee recommends that:

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179 Ibid., p. 268.
180 Ibid.
181 Ibid.
RECOMMENDATION 1.6

The Victorian Government use its position on the Disability Reform Council and the Council of Australian Governments to:

- support a federal Royal Commission into violence against people with disability; and
- in addition to the quality and safeguarding framework for the NDIS, develop a national strategy for the prevention of violence against people with disability.

Listening to the evidence provided by people with disability, their families and carers, and others within the disability sector, has been fundamental to the Inquiry process and vital to the recommendations the Committee makes in the coming chapters. These recommendations focus on changes that the Victorian Government can make to safeguard the rights of people with disability prior to the full roll-out of the NDIS.

Some of these interim measures may eventually be superseded or co-opted into the national safeguarding framework for the NDIS. On the other hand, some policies and programs may continue to be managed by the Victorian Government even once the NDIS is operational. Despite this uncertainty, the evidence received by the Committee is unequivocal and cannot be ignored. The Victorian Government must act now to improve the systems for preventing, reporting, and responding to abuse. At the same time, the Committee believes that Victoria should take a leadership role at a national level in developing a national strategy for the prevention of violence against people with disability.
Chapter 2
Barriers to reporting abuse

AT A GLANCE

Background

The Committee heard that people with disability and their families face a number of barriers when seeking to report abuse to the Department of Health and Human Services (the Department), service providers, oversight bodies, and police. Barriers to reporting include a fear of reprisals from service providers; a belief that allegations of abuse will not be taken seriously; and a lack of accessible knowledge about how to make a report.

Families spoke to the Committee about their profound frustration with the process of reporting and the emotional toll of pursuing complaints across a number of different agencies with little prospect of resolution. The Committee also heard that disability support staff face barriers to reporting abuse, and require increased protection from reprisals.

Chapter overview

This chapter considers one of the central questions of the Committee’s terms of reference: what are the ‘systemic issues’ that impact on why the abuse of people with disability is not reported? In doing so it addresses term of reference (A)(III) by considering ‘any measure to support people with a disability, their families and informal supports to identify, report and respond to abuse’.

The Committee found that one of the major systemic barriers to reporting is the culture of normalisation of abuse within disability services. This ‘normalisation’ minimises the impact of abuse and leads service providers to view abuse as a service ‘incident’, rather than a criminal matter that requires independent investigation.

The chapter makes recommendations to overcome barriers to reporting for people with disability and their families. The Committee recommends that the disability sector adopt a zero tolerance approach to abuse. As part of this new framework, the Committee recommends changes to the language used to categorise abuse; enhanced protections for whistleblowers; improvements to the way Victoria Police interact with people with disability; and increased support for people with complex communication needs.

A zero tolerance approach to abuse will also necessitate improvements to the processes used to identify and investigate abuse – such as a requirement for mandatory reporting – and additional functions for some of Victoria’s oversight bodies. These changes will be outlined in Chapter Three and Chapter Seven.
This chapter discusses the barriers that discourage people from disclosing abuse and examines strategies to increase reporting. The Committee found that numerous barriers exist for people with disability and their families and carers seeking to report abuse including a fear of reprisals from service providers, a belief that their allegations will not be taken seriously, and a lack of knowledge about how to report. The Committee also heard from disability support staff about their experiences of reporting abuse, and many expressed a fear that reporting would negatively impact their employment prospects. Witnesses who had experienced reporting abuse suggested that the process was complex and emotionally draining, and offered little prospect of resolution or justice. The Committee heard that reporting was especially difficult for people with complex communication needs without access to appropriate supports.

The Committee found that the major systemic barrier to the reporting of abuse is the culture of normalisation within both disability services and the wider community. This normalisation is underpinned by a lack of recognition for the human rights of people with disability and their capacity to give evidence about their experiences. Normalisation shapes how service providers, the Department, and law enforcement agencies respond to abuse.

It is evident the language used to describe abuse – speaking of ‘incidents’ rather than ‘assaults’ or ‘violence’ – minimises its impact and discourages the investigation of alleged abuse as a criminal act. This attitude also encourages service providers to treat abuse as an ‘in-house’ or service quality issue, rather than invite external, independent scrutiny. Some stakeholders argued that only the introduction of mandatory reporting of suspected abuse to police can combat the normalisation of abuse as a ‘service’ issue.

This chapter considers one of the central questions of the Committee’s terms of reference: what are the ‘systemic issues’ that impact on why the abuse of people with disability is not reported? The chapter also responds to term of reference (A)(III) by considering: ‘any measure to support people with a disability, their families and informal supports to identify, report and respond to abuse’.

The Committee believes that the normalisation of abuse can only be overcome by the adoption of a zero tolerance approach. The disability sector must embrace this cultural change and implement processes to support people with disability, their families and carers, and disability support staff to better identify, report, and respond to abuse and neglect in all its forms.

Witnesses also suggested a range of strategies to overcome the barriers people experience when reporting abuse. A number of stakeholders focused on the need to improve rights education for people with disability to ensure that abuse can be more easily identified and that clients understand the processes for reporting issues to service providers, oversight bodies, and police. The Committee also heard that significant change is required to make the justice system more accessible to and accommodating of people with disability, particularly people with communication difficulties and cognitive impairments. In addition, witnesses suggested that greater legal protections should be afforded to disability support staff seeking to report abuse.
A zero tolerance approach to abuse will also necessitate improvements to the processes used to identify and investigate abuse. Chapter Three will outline a number of changes to reporting processes, including the introduction of an integrated ICT system for reporting and tracking disclosures and complaints, and a requirement for the mandatory reporting of abuse. Chapter Seven discusses the future role of Victoria's oversight bodies and the need for an independent oversight body to have enhanced powers to investigate abuse.

2.1. Experiences of reporting abuse

The Committee heard from people with disability, their families and carers, and advocates about their experiences reporting abuse to a range of organisations, including the Department of Health and Human Services (the Department), service providers, the Disability Services Commissioner (DSC), Community Visitors from the Office of the Public Advocate (OPA), and the Victorian Ombudsman. Witnesses also shared their experiences of dealing with Victoria Police, which are discussed in detail below. The Committee discusses the future role of the Department and Victoria’s various oversight bodies in safeguarding in Chapter Seven.

As outlined in detail in the Committee’s Interim Report, there are a range of processes for making complaints and reporting abuse, which do have some overlap. Indeed, when reflecting on their experiences with service providers and the Department, few witnesses made a clear distinction between making a complaint about standards of care and reporting neglect or abuse. In addition, while the DSC is explicitly designed to manage and mediate complaints about service quality, approximately 15 per cent of the ‘complaints’ it receives are actually related to abuse or neglect.\(^\text{182}\) This tension in clearly delineating a service complaint from an issue of abuse or neglect reflects the fact that serious neglect can often begin as a relatively ‘minor’ service problem – such as a one-off medication mistake or a meal that does not meet strict dietary requirements – but if left unaddressed, can result in significant harm. The failure to clearly distinguish complaints from abuse also reflects the normalisation of abuse within disability services, and the tendency to consider any issues raised by people with disability as a ‘service’ issue to be dealt with in-house by providers, rather than matters for independent oversight or criminal investigation.

In a submission to the Inquiry, Youth Disability Advocacy Services (YDAS) shared the experience of one of their clients, ‘Alexander’, who tried to report abuse to his service provider:

Alexander is a 25-year-old man with intellectual disability who also has brain injuries from the decade-long use by service providers of sedation, and other psychotropic medications, to manage his behaviour. He lives in semi-independent, supported accommodation and reports that staff intentionally provoke him to violence and then seek his arrest by police. These reports are verified by his family who have also made multiple complaints to the service provider. Staff enter his unit without permission, his belongings often go missing and he comes home to find his front door unlocked or wide open. Alexander will not make a complaint to the DSC because he does not believe conciliation will result in the changes necessary; he wants to move into a different

\(^{182}\) Disability Services Commissioner, submission no. 67, p. 5.
housing arrangement where he can control the hiring and firing of the staff paid to support him.\textsuperscript{183}

Women with Disabilities Victoria included the story of ‘Melissa’ in a submission to the Committee, which illustrates the difficulty some people with disability have in convincing service providers to take their concerns about abuse seriously. As Melissa stated:

A disability support worker stalked me over a period of 6 months ... I reported this to the service provider at least 3 times, to my house manager, my key worker and her manager. They did nothing ... About a month after that the worker sexually assaulted a woman who is also a client of the service. She has a communication disability and had trouble reporting the assault. After this assault the service stood the worker down.

The service said I should have told them about the problem more clearly. They offered counselling from an in house counsellor. I felt like everything I told the councillor [sic] would go back to the service.

Now he is working for another service. I am scared where he is and if he will turn up in my life.

To this day I say, “I was talking. Why wasn’t anyone listening to me.”\textsuperscript{184}

The Australian Cross Disability Alliance also included evidence from people with disability about their attempts to report abuse to service providers and police. For example, the story of ‘Josie’:

Josie is 41. She has an intellectual disability and she lives in a group home ‘village’ style complex. There are a number of other residents with intellectual disability living in other units on the site – some live in units on their own, whilst others share. Josie was raped by a male co-resident within the grounds of the complex. She immediately disclosed the rape to an on-site support worker who advised her to “just keep out of his way”. The rape was not reported to the police and Josie was not offered any support or counselling.\textsuperscript{185}

Ms Kellie Marshall, from the Inclusive Labor Disability Justice Working Group, highlighted the tendency for people with disability to be ignored if they raise concerns or report abuse, arguing that:

We know there is a real normalisation of abuse in disability services, particularly when the complainant raises the concerns. There tends to be this kind of attitude that people with disabilities, if they are communicating that this is happening, it is kind of like, ‘Well, it couldn’t be happening’. We have this instant disbelief that these issues would be happening in our society.\textsuperscript{186}

Almost all the families and carers that gave evidence to the Committee spoke of their frustrations at dealing with reporting processes. Regardless of the oversight body or

\begin{itemize}
\item \textsuperscript{183} Youth Advocacy Disability Services, submission no. 52, p. 3.
\item \textsuperscript{184} Women with Disabilities Victoria, submission no. 77, p. 7.
\item \textsuperscript{185} Australian Cross Disability Alliance, submission no. 32, ‘Personal stories and testimonies: accompanying document to submission’, p. 3.
\item \textsuperscript{186} Ms K Marshall, Inclusive Labor Disability Justice Working Group, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 3.
\end{itemize}
service provider they had dealt with, parents reported feeling fearful of their relative suffering reprisals, and spoke about the emotional toll of a system that felt repetitive and rarely delivered a sense of resolution.

At a public hearing in Melbourne, Ms Kerrie Lecluse described her experience of complaining to the Department about the suspected neglect of her daughter, and stated that she had:

Been condemned to despair – to being treated as the problem, to being exposed to unnecessary elongated processes and meaningless rhetoric, rhetoric not matched by proper, necessary and appropriate actions. The harsh reality is that when I've lodged complaints management at all levels have employed a range of tactics and strategies aimed at intimidating and threatening my family and me.\(^{187}\)

In a similar way Ms Sandra Guy expressed her frustration with the complaints and reporting processes of the Department, stating that:

There are many like me who have tried to raise issues of abuse, violence and neglect with service providers, the Department of Human Services and the so-called protective mechanisms but have merely become entangled in what is known as the meeting treadmill and see no change. All we have achieved is to be labelled as troublemakers.\(^{188}\)

At a public hearing in Horsham Ms Denise Leembruggen also emphasised the difficulties parents face in making complaints, stating that:

Even though you may have really valid issues and valid complaints, to actually go that step and make a complaint and have it addressed is very challenging. I am talking at a personal level here. Even if you go the next step and talk to DHHS, it is taken on board, you feel that you have a voice and that you have been heard, but there is no actual referral back as to what the outcomes of that discussion have been. So again it is making pathways about complaints and issues, that you feel that they will be dealt with appropriately, that there will be no ramifications for any member of the family, and that systems will be put into place to prevent any further occurrences of what your issues may be.\(^{189}\)

Ms Michelle Kidd described the process of making complaints as ‘debilitating’ and spoke about the lack of resolution and follow up she received from her daughter’s service provider:

I thought, ‘Okay, you are telling me some administrative details you are going to make changes to. You are reviewing your processes. What about Erin? What about the outcome of our particular case? What about justice for Erin?’ The attitude was disgraceful. It was absolutely disgraceful. I said, ‘I have to say, I am a parent of a profoundly disabled child who has been neglected in your care. This is a very serious matter. I’m asking you to deal with this. You’re the person who deals with complaints’.

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187 Ms K Lecluse, parent, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 3.
188 Ms S Guy, parent, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 2.
189 Ms D Leembruggen, parent, Family and Community Development Committee public hearing – Horsham, 3 December 2015, transcript of evidence, p. 11.
She said, ‘Oh, I’ve spent more than enough time on your case, on your complaint’. I said, ‘Have you? I don’t think so, because it’s obviously shallow. It’s incomplete’. She said, ‘No, we won’t be conducting any more inquiry into your complaint’. I said, ‘I find your air of indifference really concerning’.  

The Committee also heard that the experience of reporting abuse can be traumatic for people with disability. For example, at a public hearing in Ballarat Ms Michele Armstrong spoke about her daughter’s experience of being interviewed:  

They wanted our daughter to be interviewed. It was more like an interrogation. I cannot remember if it was a psychiatrist or a psychologist provided by the department; so it was somebody they had chosen. The outcome of the interview, which was an absolutely horrendous thing for our daughter and I to go through and I will never forget it for the rest of my life, was that the person who was interviewing us, in his report — and all of this is on record; there are police files that can be looked into, DHS files — said the result that he came up with was that he had no doubt that this sexual assault had taken place and that she was so traumatised by being made to recall the assault that she should never be questioned about it again. No charges were laid against the staff member, and he moved to Queensland and we went to CASA for counselling. So it was not a good outcome when there were a lot of things that happened.  

Ms Julie Pianto spoke at a public hearing in Morwell about dealing with a number of oversight bodies and reporting processes in her attempt to address concerns about her son’s care:  

The final example I would like to discuss is the life-threatening one that caused me to remove Christopher from the Tipping house. My complaints to E. W. Tipping had gone on for over a year at this point, where, among a lot of other things, I was very concerned about Christopher being fed enough to keep his blood glucose stable. Over a period of weeks Christopher was inadequately fed so consistently that eventually his blood glucose dropped to 1.4, which put him at immediate risk of seizure, coma or sudden death, and an ambulance was called.  

This occurred in the middle of a formal complaint with the office of the disability services commissioner, after the first resolutions conference, and after the E. W. Tipping service coordinator had agreed to produce a meal plan but did not get around to it because she ‘got too busy’.  

Mr Tony Tregale, from Lifestyle in Supported Accommodation (LISA), also described the ‘burn out’ experienced by families dealing with service providers:  

Families get burnt out and disillusioned because they are reporting problems, and even if these problems are addressed at the time, they are soon forgotten. The next time the staff changes, the next time the manager changes, the problem is back again. So we need a systemic and overall fix to these problems so families are not constantly chasing the problems year after year. They should be able to relax. Families and parents should be able to depart this world feeling their family member is going to be

190 Ms M Kidd, parent, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 9.  
191 Ms M Armstrong, parent, Family and Community Development Committee public hearing – Ballarat, 6 November 2015, transcript of evidence, pp. 2-3.  
well cared for. Most of them cannot. They are constantly saying, ‘We must live forever’. We are still working on the problem of how we live forever to make sure the system is doing what it is supposed to be doing.\textsuperscript{193}

Ms Catherine Dixon, from the Victorian Equal Opportunity and Human Rights Commission (VEOHRC), commented on the organisation’s own research that suggested the emotional impact of reporting abuse was a significant barrier to reporting, stating that:

\begin{quote}
We also heard from people about the emotional toll of reporting. So feelings of shame, self-blame, fear that their family will find out, the emotional strain of retelling stories, those are significant barriers.
\end{quote}

\textsuperscript{194}

The VEOHRC also found that fear of reprisals or ‘negative consequences’ acted as a barrier to people with disability wanting to report abuse, noting that:

\begin{quote}
There was a fear of negative consequences. People not being believed, was a very strong concern that came through our research, or of losing support, particularly if the alleged offender provides that support.\textsuperscript{195}
\end{quote}

At a public hearing in Melbourne, Ms Pauline Williams from Action for More Independence and Dignity in Accommodation (AMIDA), explained that reprisals for residents can take a variety of forms, stating that:

\begin{quote}
There will be subtle ways in which people are punished or given the cold shoulder or restricted in some way — whether it is opportunities for going out that do not transpire or enjoyed activities that do not happen, through to more serious forms of restraint. That is another part of the problem, which comes from, I guess, that culture of control by services over people with disability.\textsuperscript{196}
\end{quote}

Ms Williams also suggested that the culture of supported accommodation houses encourages clients to remain silent, arguing that:

\begin{quote}
You are rewarded for passivity and for just going along; you are punished for complaining and speaking up; and you learn pretty quickly, whether you have a cognitive impairment or not, the way to behave.\textsuperscript{197}
\end{quote}

Dr George Taleporos from YDAS suggested that the way young people are socialised not to criticise adults can discourage people from reporting issues, stating that:

\begin{quote}
Particularly as a young person it can be scary to speak up against an older person. Young people talk to us about their elders. They are taught to be nice and don’t complain. We don’t often encourage children and young people to challenge authority.
\end{quote}

\textsuperscript{193} Mr T Tregale, Lifestyle in Supported Accommodation, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 3.
\textsuperscript{194} Ms C Dixon, Director, Commissioner’s Office, Victorian Equal Opportunity and Human Rights Commission, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 2.
\textsuperscript{195} Ibid., p. 3.
\textsuperscript{196} Ms P Williams, Housing Rights Coordinator, Action for More Independence and Dignity in Accommodation, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 3.
\textsuperscript{197} Ibid.
We don't often provide them with the support they might need to be able to say to an older person, "That's not okay." I think that's part of it. 198

Dr Taleporos also drew attention to the way that lack of choice in services can impact on whether someone reports abuse or not, arguing that:

I also think that the other problem is that people that rely on these services, they don't have other options presented to them. If they complain against a certain provider it is not like they can pack their bags and know there's another one. That's a very scary thing to be told, "Well, like it or lump it", which is sometimes the responses that we hear. 199

In a submission to the Inquiry the Disability Justice Advocacy group also emphasised that many people are fearful of losing supports if they complain or report abuse, stating that:

Some victims are reluctant to report abuse because of fear of reprisals such as withdrawal of support or accommodation services. In fact a major conflict of interest occurs in the group home environment when a person with a disability is a victim of abuse and neglect by one of the staff because the employer is also the victim's landlord. This discourages reporting by the victim. 200

The Committee heard from parents who were also afraid of reprisals and some who felt that the way they were treated by service providers changed after making complaints. Ms Michele Armstrong explained that:

I am pretty sure, and I cannot say, but it was our feeling that once we put in a complaint about all the things with E. W. Tipping, there was a change from the staff in their attitude towards us — a big change — and you do not want to live with the fear of wondering, 'Well, is there going to be payback?’. Payback can be very subtle. 201

Ms Kellie Marshall from the Inclusive Labor Disability Justice Working Group also highlighted the negative treatment parents experienced from service providers after reporting issues:

Family members have been harassed by service providers on social media — for instance, Facebook — for speaking up about abuse in care of their loved ones with disabilities. I know I have had countless families say to me, ‘I am terrified to speak up, because if I speak up, what is going to happen to my loved one?’. They are absolutely terrified. It is really quite concerning. In Australia we tend to be very proud of our human rights laws and all these wonderful things we actually do, but on a practice level, we are not actually seeing that play out, and I think that is a real concern. 202

The Committee also received a large body of evidence about the difficulties and frustrations people have experienced when making a complaint to the Disability

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198 Dr G Taleporos, Manager, Youth Disability Advocacy Service, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 9.
199 Ibid.
200 Disability Justice Advocacy, submission on. 48, p. 3.
201 Ms M Armstrong, parent, Family and Community Development Committee public hearing – Ballarat, 6 November 2015, transcript of evidence, p. 6.
Services Commissioner (DSC). Reflecting on experiences of supporting his clients to contact the DSC, Mr Max Jackson from JacksonRyan Partners stated that ‘the reality is it may well be OK to complain, but families are put through the hoops and are made out to be the bad guy’. Mr Max Jackson, partner, JacksonRyan Partners, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 7.

Mrs Anita Geach-Bennell, Vice-President, Gippsland Carers Association, was also critical of the DSC:

Anyway, when you do have a problem, you do complain and you go to the disability services commissioner. What a waste of time that is, because all these people are paid and what do they do? Talk, talk, talk, talk, trying to do reconciliation and stuff. Nothing happens.

Mr Toby O’Connor, CEO of service provider St Laurence, also questioned the efficacy of the DSC, noting that:

[The] Disability Services Commissioner’s legislated role is to resolve complaints brought to his office. The Commissioner’s role was originally conceived to be a facilitator rather than an arbitrator. Given this approach, it may sometimes be less than optimal in instilling confidence in people with disability who lodge a complaint, that they will have it satisfactorily resolved where there are opposing views taken by the three parties involved in responding to the complaint. Likewise, without legislative independence from the funder — in this case, the Department of Health and Human Services and the NDIA — and greater authority to be more than an influencer of provider behaviour, there may be issues in achieving the desired outcomes that people with a disability and their families expect from such a position.

A number of other witnesses also criticised the DSC’s ‘conciliatory’ approach, and questioned the independence of the office. This evidence is discussed in detail in Chapter Seven, in the context of considering the future role of the DSC in Victoria’s safeguarding system.

Some stakeholders suggested that the reporting systems were overly complex and confusing for people with disabilities and their families. For example, research from the VEOHRC found that:

Many ... people that gave up along the way [did so] because the system was so difficult and they may have got part way through and then found it too much pressure and just not enough accommodation of their disability, for example, in the process.

Ms Cath McDonald, CEO of Bendigo-based service provider Radius, also suggested that reporting processes were complex, stating that ‘it is more complicated than it

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203 Mr M Jackson, partner, JacksonRyan Partners, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 7.
204 Mrs A Geach-Bennell, Vice-President, Gippsland Carers Association, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 9.
205 Mr T O’Connor, Chief Executive Officer, St Laurence, Family and Community Development Committee public hearing – Geelong, 13 October 2015, transcript of evidence, p. 2.
needs to be, and there are more people involved than need to be. I would think that one contact would be ideal’. 207

Ms Michelle Kidd described the circular process of being directed to different oversight bodies in the following way:

The Victorian Ombudsman told me that they do not have the jurisdiction to investigate Tipping. They have redirected me back now to the disability services commission, and of course the disability commission has not conducted an investigation for years, so I would say then, as I have said to the Victorian Ombudsman, is the commission seen as a toothless tiger? Because it should not be that way. I really believe that organisations — caring organisations — they know. They know that there will not be the recourse. They know that they will not be investigated, that it will not be followed up. DHS knows it, and parents know it. When we are going through that process, we become acutely aware of it. 208

At a public hearing in Shepparton, Ms Nicole O’Brien recounted her experience of reporting an incident of abuse she witnessed in public, stating that she only knew how to report the incident because she worked in the disability sector — ‘there is not enough awareness out there as to if you are just walking down the street and saw someone treating someone badly, who do you call?’ 209

In contrast, JacksonRyan Partners argues that the system is not too complex, stating that:

A system that provides multiple pathways to make a complaint should be seen as favourable to one that is restrictive. After all, in relation to the management of complaints in the workplace, the standard practice is that an employee who seeks to make a complaint has a number of pathways. This includes going directly to the alleged perpetrator, to his or her immediate line manager, to a more senior manager, to his industrial body, to Fair Work Australia, or indeed the police if the staff member believes that a crime has been committed against him. No one would dare suggest that this is a confused and complex system. 210

They argue further that any ‘deficits’ that occur in following up issues are ‘people based’, rather than related to the reporting system itself. 211

Ms Sandra Guy has made a similar argument rejecting the notion that the reporting process is too complex:

It is not complex. It is simply that it does not work. Nothing happens except the buck is passed from one bureaucrat to one so-called protective mechanism to another. No-one takes ownership of an issue. It can happen like this: you can raise concerns with a service provider, yet nothing changes; you can raise concerns with the department that

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207 Ms C McDonald, Chief Executive Officer, Radius, Family and Community Development Committee public hearing – Bendigo, 5 November 2015, transcript of evidence, p. 7.
208 Ms M Kidd, parent, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 4.
209 Ms N O’Brien, Family and Community Development Committee public hearing – Shepparton, 29 October 2015, transcript of evidence, p. 3.
210 JacksonRyan Partners, submission no. 31, p. 15.
211 Ibid., pp. 16-17.
funds them, yet nothing happens; you can lodge a complaint with a disability services commissioner, conciliation is demanded, yet nothing changes. Because nothing changes, you start to wonder how many times and over how many years that the disability services commissioner must gently educate a service provider before anything does change.

You can contact community visitors, yet nothing changes. Families are kept in the dark in relation to any outcomes. You can contact the public advocate, yet nothing changes. You can contact a funded advocate, yet nothing changes. Meetings, meetings and more meetings are suggested, with the service providers, bureaucrats and so-called watchdogs of course being paid to attend them.  

2.1.1. Zero tolerance approach to abuse

The Committee found that the fundamental barrier to reporting abuse is the systemic normalisation of abuse within disability services. This must be addressed through major cultural change, accompanied by improved reporting practices, and strengthened legal protections for people with disability. The Committee is aware that a number of disability service providers have adopted the principle of ‘zero tolerance’ as the guiding value for their work, but believes that it is far from established across the sector.

The Committee heard from National Disability Services (NDS) – the national representative organisation for non-government disability service providers – about its role in developing the Zero Tolerance Project to assist its members to better identify, report, and respond to abuse. The NDS described the project in the following way:

While policies and procedures matter, organisational culture matters more. The Zero Tolerance Framework provides a comprehensive, evidence-based ‘curriculum’ for providers to prompt improved approaches to tackling the risk of abuse. Building on the Framework, NDS has published advice for service providers on recruitment and screening practices.  

The project developed a range of resources and training to support providers to establish a zero tolerance framework within their organisations.

At a public hearing during the first stage of the Inquiry, Mr James Bannister, National Senior Sector Development Officer of NDS, explicitly linked the zero tolerance framework to the need for disability services to uphold the human rights of people with disability and pursue person-centred care. Mr Bannister drew attention to the need for prevention strategies to identify the denial of choice as the ‘step before violence’, noting that:

Would people say a denial of choice is necessarily an act of violence? When it is perpetuated against a person’s life, it absolutely is. It about stopping it before it even starts perpetuating, and it is about making people understand that responding to people’s choices is a critical factor. Within that you can see that we have added an

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212 Ms S Guy, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 3.
213 National Disability Services, submission no. 23, p. 6.
understanding of abuse by pulling that from a human rights perspective, then we have put in place the practices and safeguards that prevent abuse.\textsuperscript{214}

A number of disability service providers spoke to the Committee about their adoption of a zero tolerance framework and the subsequent changes that have taken place in their organisations. At a public hearing in Shepparton Ms Wendy Shanks, CEO of Shepparton Access, explained her approach to zero tolerance:

Shepparton Access promotes a zero tolerance to incidents. We have a culture where abuse of any kind is totally unacceptable. Our no-touch strategies and the use of the relationship circle tends to promote a culture of respect. All incidents or anything out of the ordinary are reported in an incident report. The incidents are recorded in a register and can be viewed in a graph, which can be used to identify any frequency or potential trends.\textsuperscript{215}

In its submission to the Inquiry the Endeavour Foundation – a provider focusing on services for people with intellectual disability – stated that:

Endeavour Foundation operates a "zero tolerance" approach to the abuse, neglect or exploitation of any person. That is means that all allegations of abuse, neglect or exploitation are considered serious. Endeavour will vigorously respond to all such allegations regardless of their nature.\textsuperscript{216}

Service providers Gateways, Wesley Mission and Radius also stated their commitment to zero tolerance policies.\textsuperscript{217}

The principle of zero tolerance and the work of the NDS to establish this in the sector was strongly supported by many of the Inquiry’s stakeholders. For example, in its submission to the Inquiry Deakin University stated that:

The work that has been undertaken by National Disability Services, Zero Tolerance, is an important step towards engaging with disability services across Australia on the issue of abuse prevention and the development of robust identification and reporting mechanisms that align with domestic legislation on reporting abuse within the criminal justice system and within disability services. The practice advice information for disability services contained within this program is an important step towards informing disability services about prevention of abuse and strengthening their accountabilities to report and respond appropriately when abuse occurs. Further research about the outcomes of the approaches advised by this program is needed. It is important to evaluate if these recommended approaches shape cultural change within disability services and if and how this impacts upon the incidence and prevalence of abuse of people with disability within services. This work is an important national approach that

\textsuperscript{214} Mr J Bannister, National Senior Sector Development Officer, Family and Community Development Committee public hearing – Melbourne, 22 June 2015, transcript of evidence, p. 4.

\textsuperscript{215} Ms W Shanks, Chief Executive Officer, Shepparton Access, Family and Community Development Committee public hearing – Shepparton, 29 October 2015, transcript of evidence, p. 2.

\textsuperscript{216} Endeavour Foundation, submission no. 73, pp. 4-5.

\textsuperscript{217} Gateways Support Services, submission no. 75; Wesley Mission Victoria, submission no. 70; and Ms C McDonald, Chief Executive Officer, Radius, Family and Community Development Committee public hearing – Bendigo, 5 November 2015, transcript of evidence, p. 2.
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Chapter 2 Barriers to reporting abuse

if used by disability services, could form the basis of a strong service provider sector that understands abuse. 218

At a public hearing in Melbourne, Dr Patsie Frawley elaborated on Deakin University’s view:

Probably the one thing that is happening across Australian disability at the moment is being led by national disability services, and that is the Zero Tolerance program. I was on their expert panel in developing that model and have recently seen where they are up to with that. I think that has the potential to lead disability services into good practice. I do not think that there are many that are there yet. You know from the Ombudsman’s report that the issue of incident reporting is horrific. That would be the first thing that you would have expected people to have right. Services do not have that right. 219

Service provider the Australian Community Service Organisation (ACSO) argued that all ‘Victorian disability services should have a clear statement of intent explicitly stating zero tolerance to abuse and neglect in their services’. 220

The Victorian Council of Social Service was also supportive of a zero tolerance approach to abuse, noting that:

Cultural change needs to occur across the Australian community that recognises the rights and contributions of people with disability. Workforce cultural change would be part of this that accepts a zero tolerance approach to abuse and neglect in disability services. 221

In contrast, Ms McDonald from Radius suggested that the Department is not as familiar with zero tolerance principles as service providers, stating that:

DHHS had to ask, when we recently had an incident of sexual assault, what a zero tolerance policy was, which I found rather interesting. That may have been particular workers in DHHS not understanding what zero tolerance could be or would be, or it might be a departmental lack of understanding. 222

The Committee believes that zero tolerance must be established as the central principle for the delivery of all disability services. It is from this core value that all improvements to the processes for reporting and responding to abuse will flow. Throughout the Final Report the Committee makes a number of recommendations to improve the processes for identifying, reporting, and responding to abuse.

Chapter Three recommends strategies to assist the Department and service providers to improve their management of allegations of abuse – including the establishment of clearer reporting categories and a more streamlined, online

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218 Deakin University, submission no. 86, p. 4.
219 Dr P Frawley, Senior Research Fellow, Faculty of Health, School of Health and Social Development, Deakin University, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 9.
220 Australian Community Support Organisation, submission no. 71, p. 9.
221 Victorian Council of Social Service, submission no. 71, p. 15.
222 Ms C McDonald, Chief Executive Officer, Radius, Family and Community Development Committee public hearing – Bendigo, 5 November 2015, transcript of evidence, transcript of evidence, p. 2.
reporting system – and a requirement for the mandatory reporting of abuse. Moreover, Chapter Seven considers the future of Victoria’s oversight bodies, including the benefits of reducing the complexity of reporting by having a single independent oversight body that handles both service complaints and reports of abuse.

While these changes are essential to addressing abuse, they flow from the core principle of zero tolerance which has at its heart an unswerving commitment to respecting the human rights of people with disability. In this way, the Committee recommends that:

**RECOMMENDATION 2.1**

The Victorian Government:

- amend section 5 of the *Disability Act 2006* (Vic) to include zero tolerance as a guiding principle for the delivery of disability services;
- require all disability service providers to demonstrate their commitment to the principle of zero tolerance as a condition of registration; and
- fund the Disability Services Commissioner to work with National Disability Services, advocacy organisations and people with disability to develop and deliver zero tolerance training to all disability support services in Victoria.

### 2.2. The normalisation of abuse and the language of ‘incidents’

The Committee found that the primary barrier to reporting abuse is the normalisation of abuse within Victoria’s disability services. Chapter One highlighted the way that the abuse of people with disability is linked to a denigration of their human rights, and as a result is often ‘normalised’ both within disability services, and the community more broadly. The Committee heard that the normalisation of abuse is also reflected in the language used by the Department and disability services to describe abuse. This language is often euphemistic, including the words ‘incident’, ‘critical incident’ and ‘adverse event’, rather than ‘abuse’ or ‘violence’. There is also a tendency to label client-to-client abuse as ‘challenging behaviour’ or ‘behaviours of concern’. Witnesses argued that this euphemistic language is a significant barrier to reporting abuse. The Committee found that the language of ‘incidents’ obscures the impact of abuse, and prevents individuals and organisations from properly identifying and responding to reports of abuse.

At a public hearing in Melbourne Ms Channing Coad, Coordinator of the Certificate IV in Disability at the Kangan Institute, was unequivocal in her criticism of the language of incidents – ‘in my opinion an incident is a spill on the floor. It should be called for what it is: it is violence, it is mistreatment’.223 Similarly, Ms Kellie Marshall from the Inclusive Labor Disability Justice Working Group stated that:

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223 Ms C Coad, Coordinator, Certificate IV in Disability, Kangan Institute, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 2.
These are not incidents; these are crimes. Neglect, sexual assault and physical assault are crimes. We need to start taking that seriously and lifting up the standards on that one.\textsuperscript{224}

Dr Patsie Frawley, Senior Research Fellow at Deakin University, argued that the use of the term ‘incidents’ prevents an understanding of what constitutes abuse, suggesting that:

A systemic issue of the system not having what it needs in place to actually be able to understand that abuse is abuse; abuse, neglect and violence — that is what they are. They have been renamed ‘incidents’ in the disability context, and I think that is an issue.\textsuperscript{225}

Further, she suggested that the use of different terminology for abuse can separate people with disability from the wider community, stating that ‘we have used euphemisms to talk about violence in people’s lives when they have a disability that we would not use for ourselves’.\textsuperscript{226} Ms Kellie Marshall also drew attention to the gulf between the language used to discuss the abuse of people with disability versus people without disability, asking:

Why is it that we call that an incident but for an able-bodied person it is considered an alleged assault or a crime? I just do not understand why there is that difference — why we label it so differently. One of the problems with calling it just an incident is that it tends to be just an administrative response. It is just, ‘Do an incident report and file it away’, and life goes on. I think what we do is we completely disempower this group of people. They are already disempowered, so I think that is a really big issue.\textsuperscript{227}

The Victorian Equal Opportunity and Human Rights Commission reported that:

We were told that, in some settings, actions are accepted that would not be tolerated in another environment. In these circumstances, violence may become normalised, with the seriousness of client-on-client violence seen to be mitigated by the perpetrator’s disability. Some people reported that “it is only when a staff member gets assaulted that there is action taken against the client”.\textsuperscript{228}

Ms Lorraine Beasley, a disability support worker from Gippsland, argued that staff need to reflect on whether they would tolerate the treatment their clients receive: ‘they need to stop and think about, ‘Would I accept that myself? Then it is not okay, but they do not’.\textsuperscript{229}

\begin{thebibliography}{99}
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\bibitem{225} Dr P Frawley, Senior Research Fellow, Faculty of Health, School of Health and Social Development, Deakin University, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 10.
\bibitem{226} Ibid., p. 11.
\bibitem{227} Ms K Marshall, Inclusive Labor Disability Justice Working Group, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 11.
\bibitem{229} Ms L Beasley, Secretary, Gippsland Carers Association, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 13.
\end{thebibliography}
The Committee heard that client-to-client abuse is sometimes normalised as ‘challenging behaviour’. For example, Ms Fiona Tipping from Grampians disAbility Advocacy argued that:

I believe there is a misunderstanding of what abuse is — for example, the example I gave of that young lady being bitten by another client, amongst many other things. The attitude of the staff was, ‘It’s a bite — everybody gets bitten’. If it was you or me, we would be up in arms. We would call it assault, but for them they think, ‘Oh, well, it’s just a behavioural thing. You’ve got to live with it’, and I think that is wrong.\textsuperscript{230}

The VEOHRC also emphasised how violence may be minimised as part of a client’s ‘challenging behaviour’, noting that:

In some services, this violence may become normalised because it happens frequently or because staff justify their actions as an appropriate way to manage challenging behaviour'.\textsuperscript{231}

The Committee heard that the language of ‘incidents’ encourages service providers and the Department to consider alleged abuse within a service context, rather than a justice framework. Dr Jessica Cadwallader suggested that the use of the term ‘incidents’:

Tends to detoxify what is actually happening in these [abusive] situations and it lends itself to a service understanding these crimes as incidents that simply need to be responded to in-house.\textsuperscript{232}

Disability Justice Advocacy also suggested that the use of the term ‘incident’ can discourage service providers from reporting abuse to the police, arguing that:

Notifications of allegations by victims are too often treated as Incident Reports by disability services and not referred to relevant authorities such as the police ... Police sometimes regard abuse allegations as internal residential or OHS issues and fail to investigate the matters further or even attempt to interview the victim.\textsuperscript{233}

Children with Disability Australia argued that the language of incidents is so pervasive that it can lead law enforcement agencies to view abuse as a quality of service issue, rather than a criminal matter, noting that:

Incidents are often not correctly identified as crimes. In these cases, abuse may be seen as an incident that can be addressed within an organisation, rather than making appropriate referral to police. In addition, police often do not recognise abuse experienced by children and young people with disability as a crime. An example reported to CDA involved a four year old being trapped under a chair by his Principal at

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\item \textsuperscript{230} Ms F Tipping, Grampians disAbility Advocacy, Family and Community Development Committee public hearing – Ballarat, 6 November 2015, transcript of evidence, pp. 6-7.
\item \textsuperscript{232} Dr J Cadwallader, Australian Cross Disability Alliance, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 4.
\item \textsuperscript{233} Disability Justice Advocacy, submission no. 48, p. 2.
\end{itemize}
school. The boy’s mother went to the police after the school refused to recognise what had occurred, however the police refused to take her statement.\textsuperscript{234}

The VEOHRC made similar findings in its 2014 report \textit{Beyond Doubt}, stating that:

\begin{quote}
Services where violence and abuse is normalised are more likely to treat crimes involving people with disabilities as ‘incidents’ requiring an internal investigation, rather than as matters to be reported to the police. Where a crime is reported, we were told that police may be unlikely to investigate and may refer the matter back to the service for internal review.\textsuperscript{235}
\end{quote}

Women with Disabilities Victoria suggested that referring to incidents of abuse as ‘allegations’ could encourage the view that people with disability cannot provide trustworthy evidence, arguing instead for the use of the term ‘disclosures’:

\begin{quote}
When the word ‘allegation of abuse’ are used they impute a question of the reality of the violence. Rewording ‘allegations of abuse,’ to be identified as ‘disclosures of abuse’ would challenge the current scepticism of people with disabilities who report abuse.\textsuperscript{236}
\end{quote}

The Committee also received evidence demonstrating the impact of this language on the attitudes of people with disability. Ms Therese Sands argued that the ‘normalisation’ of abuse impacts the ability of people with disability to recognise and report abuse they have experienced:

\begin{quote}
This is when you do realise about normalisation, because most of the people go, ‘Well, that’s happened to me’ or, ‘That happens all the time. That just is part of my normal life’. That is when you realise that it is normalised, because it is not being seen as violence, abuse and neglect, but when you break it down clearly this is being experienced as a normal part of daily reality.\textsuperscript{237}
\end{quote}

Ms Jenny Harrison, a parent of an adult with disability, also commented on the role of language in changing cultural perceptions, arguing that ‘I think challenging the language challenges culture and can highlight the discrimination and turn it around’.\textsuperscript{238}

The Committee views the language of ‘incidents’ as part of the broader normalisation of abuse within disability services and the wider community. The Committee believes that the use of the term ‘incidents’ encourages service providers to deal with allegations of neglect and abuse ‘in-house’ rather than involving police or other external agencies. The normalisation of abuse is a fundamental barrier to identifying, reporting and investigating abuse appropriately – this is a systemic issue that requires significant cultural change on the part of the Department, service providers and the criminal justice system.

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\textsuperscript{234} Children with Disability Australia, submission no. 55, p. 30.
\textsuperscript{236} Women with Disabilities Victoria, submission no. 4, p. 10.
\textsuperscript{237} Ms T Sands, Australian Cross Disability Alliance, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, pp. 4-5.
\textsuperscript{238} Ms J Harrison, parent, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 2.
\end{flushleft}
The Committee is aware that the Department is planning a number of changes to its system for critical incident management and reporting. As part of this, consideration is being given to the use of the term ‘incident’ and the way that the reporting system categorises different forms of violence and abuse. At a public hearing in Melbourne Ms Janine Toomey, Director, Service Outcomes, outlined the discussions the Department has been having about language with stakeholders, noting that:

We have had lots of feedback in relation to the assault categorisation that we have had previously, and people have said very clearly that it does not deal with the impact to the service user, to the client, and that in fact ‘abuse’ is a better description and more of a catch-all description, so we are certainly thinking about reducing the number of more criminally focused assault-type categories and moving them to a broader ‘abuse’ category, where judgement is made by the service provider about how that is classified.239

Ms Toomey further stated that the term ‘violence’ has been considered as part of a new classification system:

[The] language that we have proposed as part of that overview has been quite hotly debated. Violence is something that has been put forward as something that we need to consider most definitely. I think the issue, certainly of considering abuse rather than assault, takes it away from what is a criminal threshold issue to a broader issue ...

I think that the current system very much focuses on physical and sexual assault. That is the frame. I think abuse, neglect, exploitation — a broader definition — is actually being debated at the moment as part of the new system to ensure that matters of neglect are being captured appropriately – certainly matters of exploitation are being captured appropriately.240

The Committee is aware that the Department’s critical incident management system is designed to cover incidents relating not only to disability clients, but other areas including mental health. However, the Committee believes that changes to the incident management system that emphasise the impact that acts of abuse and violence have on people with disability is necessary. These changes will send a strong message to people with disability, their families and carers, service providers, and disability support staff that abuse is more than a service ‘incident’. On the language used by the Department to describe abuse, the Committee recommends that:

239 Ms J Toomey, Director, Service Outcomes, Service Design and Operations Division, Department of Health and Human Services, Family and Community Development Committee public hearing – Melbourne, 22 February 2016, transcript of evidence, p. 5.
240 Ibid., p. 12.
RECOMMENDATION 2.2

The Department of Health and Human Services changes its critical incident management system to include descriptions that emphasise the impact that acts of abuse have on people with disability.

The Department should cease usage of the term ‘incident’ and instead employ terminology that reflects the type of abuse, including, but not restricted to:

- sexual assault and physical assault
- violence
- allegation of assault and disclosure of assault
- verbal, emotional and financial abuse
- neglect.

2.3. Understanding the rights of people with disability

The Committee heard that people with disability should be better supported to understand their rights and the processes to report abuse and make complaints. Witnesses argued that education programs offered by independent advocates, peer support groups, and service providers can challenge the normalisation of abuse by empowering people with disability to identify and take action against inappropriate behaviour.

Some stakeholders told the Committee that a lack of knowledge about human rights and information on reporting processes was a barrier to identifying and responding to abuse. The VEOHRC found that ‘a lack of access to information means that some victims do not know how or where to report a crime. Some may not know that what happened to them is a crime’. 241 Ms Jen Hargrave from Women with Disabilities Victoria argued that ‘providing peer support; supporting self-advocacy programs; and providing accessible information on rights, relationships and services’ are fundamental to the prevention of abuse. 242

The Committee heard from a number of service providers about their efforts to educate clients about their rights and to provide clear information on how to report complaints or abuse. For example Ms Christine Trotman, CEO of service provider Cooinda Hill, explained that:

> For our clients we have regular sessions on empowerment, on respecting personal space, personal hygiene. We have also run courses. The Centre Against Sexual Assault, the CASA group, has run a four-week course on healthy relationships, and we have had similar programs from Relationships Australia. We also inform them about the National Disability Abuse and Neglect Hotline. 243

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242 Ms J Hargrave, Women with Disabilities Victoria, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 3.

243 Ms C Trotman, Chief Executive Officer, Cooinda Hill, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 3.
Similarly Ms Cath McDonald, CEO of service provider Radius, stated the importance of education and ‘empowering our guys’, through self-advocacy.244

Ms Wendy Shanks, CEO of service provider Shepparton Access, stated that the organisation encourages and supports clients to make complaints, and views the process as central to improving services, noting that:

We encourage people to make complaints, and each of our complaints forms is entitled ‘Getting it right’. We use complaints as a mechanism to improve our service, and these are all entered into our quality improvement register. When making a complaint, we ask the person with a disability, their family or their carer to outline the outcome or solution that they are seeking. In many cases our staff or I assist people to put the complaint together in that documented format. If at the end of that process they are unsatisfied with the process that we have followed or the solution that we have offered, we then support those people to make a complaint to the disability services commissioner.

Generally we do not receive many complaints. We tend to focus on open communication with our clients, families and carers, and have an open-door strategy where they are welcome to come in and discuss any concerns in the early stages, before they manifest into complaints. Most of our families and carers use this option, and so do the people who access that service. They are comfortable coming into our offices and discussing any of these issues.245

Ms Florence Davidson, CEO of Mildura-based provider the Christie Centre, stated that the organisation provides accessible Easy English information about how to make complaints and report abuse, but also highlighted the importance of peer support:

We are also quite keen on peer support, so if you do not feel that you can speak with a team member, there are peer supporters within the agency that people can talk to as well. We also have very good ties and links with the Mallee sexual assault unit, community policing, who are in fairly regularly to talk about being safe at home and what that looks like. We have had some good success in doing that — in opening that up for people so that they are able to say afterwards, ‘I might like to speak with the constable in regard to something at home’. We have also been quite active more broadly within the community in terms of the Not Silent, Not Violent project that we were able to champion a few years ago and that has continued on in terms of domestic violence.246

Mr Bernie O’Connor, CEO of Woodbine, a provider based in Warracknabeal, explained that the organisation has established an information group run by a local advocate to ensure that clients understand how to report issues, stating that:

Some people are very comfortable coming to see me; I would argue everybody is comfortable coming to see me with their complaint. It is sort of well-known that people with a disability do not need an appointment to come and see me. Trudy Joyce [a local advocate], who I think you are going to hear from, makes it very clear. She runs a

244 Ms C McDonald, Chief Executive Officer, Radius, Family and Community Development Committee public hearing – Bendigo, 5 November 2015, transcript of evidence, p. 7.
245 Ms W Shanks, Chief Executive Officer, Shepparton Access, Family and Community Development Committee public hearing – Shepparton, 29 October 2015, transcript of evidence, p. 3.
246 Ms F Davidson, Chief Executive Officer, Christie Centre, Family and Community Development Committee public hearing – Mildura, 30 November 2015, transcript of evidence, p. 7.
committee at Woodbine which Woodbine does not participate in it but representatives of the people we support are on that. Trudy coordinates that committee, and she instils in those people, ‘If you’ve a problem, go and see Bernie. Don’t see anybody else. Go and see Bernie. He is responsible for investigating it, and you won’t get sidetracked’. I think is important that you have one point of contact. It is no good complaining to the staff who work in your house necessarily. You need to make sure that it actually comes to the person who is going to do something about it.247

The Committee heard evidence from advocacy groups about the programs they have developed to educate people with disability about their rights. Ms Pauline Williams from AMIDA discussed a peer education program that the organisation developed as ‘an opportunity to talk about respect and rights’. Ms Williams stated that:

What we found when we sat down with people [living in supported accommodation] and provided a real focus on rights and respect was that there was a real discussion that started and people began to talk about things like, ‘I’m never allowed to have butter. It’s a little thing, but I’m never allowed to have it, and I’m not happy about that’ and ‘Why does that happen that I’m never allowed to watch the TV show that I like’ or ‘Staff make me go to bed really early and I don’t want to do that. I’m 23 and I want to go out’. What we found was that people were telling us that their lives were very restricted a lot of the time and they were unhappy about those restrictions. They were glad of a space to talk about it. They also told us about more serious forms of restriction and abuse, and we were able then to say, ‘We can actually stand beside you and assist you. We can report this. We can take it through and see what happens and go with you on that process — provide advocacy for you’. We were able to do that on a number of occasions. I am sure that had we not been there having that conversation those people would never have reported those abuses, be they minor or major.248

Ms Carmen Harris gave evidence about her role in establishing an innovative rights education program for Yooralla, after allegations of sexual assault in the organisation came to light. As part of the program, entitled ‘Life Skills – Speaking Up’, Ms Harris developed a system of colour-coded cards that clients could use to indicate whether they want to make a complaint or meet with an advocate. She explained that:

The green card was for any time that you wanted to speak to an advocate, and it has the hands reaching out. The next one is a yellow card, which is that you have a problem but it is not a serious problem. It could possibly wait for a little while, so the carer might be making dinner or something and it could wait for 10 or 15 minutes. The red card was over a serious problem, and that was, ‘You need to stop now and help me straightaway’. The last card was about making a complaint. At first we had a mouth on there and then we changed it to a picture of the complaints form, because most of them would see it in the lessons and get familiar with that and to know that it was serious as well. It was not just you speaking about it; it was actually a written formal complaint where most of them would need assistance doing that.249

247 Mr B O’Connor, Chief Executive Officer, Woodbine, Family and Community Development Committee public hearing – Horsham, 3 December 2015, transcript of evidence, pp. 11-12.
249 Ms C Harris, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 2.
Ms Harris stated that she delivered the program to over 200 clients throughout Yooralla, including in supported residential accommodation, day programs, supported employment and education programs. Ms Harris found that the attitude of staff to the program varied significantly from site-to-site, noting that:

I felt like a lot of the places that I went were very welcoming, and then there were some that were not so welcoming as well. Generally, what I would do during the class at some point was run through what it was like to actually do one. So we would look at the service and we would say, ‘Do you want to make a complaint, a suggestion or a compliment?’ Generally what I found was that it would either be that it was all compliments or it was all complaints, and it just depended on which one you were at.²⁵⁰

The Committee considers it essential that all service providers make information available to their clients about how to raise issues and report abuse both within the organisation and to external bodies. Further, the Committee recognises that some service providers have been proactive at developing in-house rights education programs, while others have worked to facilitate their clients’ access to independent advocacy groups.

The Committee believes that peer education programs are especially important, as they not only provide information but can instil a sense of confidence in people with disability about asserting their rights. The importance of funded independent advocacy for people with disability and their families and carers is further discussed in Chapter Six.

The Committee also heard evidence about the need to improve training for disability support workers to ensure that all staff understand the rights of people with disability and can identify and report on abuse appropriately. The issue of workforce training is covered in Chapter Four.

In relation to rights education, the Committee recommends that:

**RECOMMENDATION 2.3**

The Victorian Government provide dedicated funding to appropriate independent organisations to deliver human rights education programs to people with disability, their families and carers, that provide information on how to identify and report abuse.

**2.4. Whistleblowers**

The Committee was concerned to hear that disability support staff sometimes faced barriers to reporting abuse within their workplace. Witnesses generally described staff who reported abuse or other service problems as ‘whistleblowers’, and argued for increased support and legal protection to support those that speak out about abuse in disability services.

²⁵⁰ Ibid., p. 2.
Ms Pauline Williams from AMIDA argued that disability support staff were often reluctant to contact advocacy groups to discuss concerns or suspected abuse because:

Of fear of reprisals — that staff may lose shifts, that they may in some subtle way be punished, in ways that are hard to prove. We find that that can happen at all levels within big bureaucracies that operate services, that from the middle management level down staff get the message that they have to toe the line and not necessarily complain and not necessarily bring in outsiders, and they act accordingly.251

Ms Joan Broughan, a disability educator at Victorian University, argued that:

“Dobbing” or “Whistleblowing” is culturally adverse in this sector (and many others) so there must be genuine and real protection for persons who report abuse.252

While delivering a rights education program to disability clients, Ms Carmen Harris found that many disability support staff were afraid of reporting abuse, noting that:

There were ... services where staff were afraid and clients were afraid, and there were even times when I was personally abused by service managers, basically I think because they were afraid of what was going to happen.253

Further, Ms Harris stated that at some services ‘there was a sense that there would be retribution of some kind’ if staff were to report on colleagues.254

At a public hearing in Morwell, Ms Lorraine Beasley gave extensive evidence about her experiences of working in the disability sector as a direct support worker and manager, and detailed a number of instances where she was victimised for reporting abuse. Ms Beasley described herself as ‘proudly a whistleblower’ and stated that:

I reported a staff person for rough-handling a female client. Management told the staff person that I had reported them. At 3.00 p.m. that afternoon I arrived at work for my shift. What also arrived was a cement truck — 6 metres of wet concrete ordered to the house in my name. I have been performance managed because I refused to lock a client in his room at night. When I argued that it was against the law and that the OSP had not approved it, there was no behaviour support plan, nothing — and it is against the law to restrain people in that manner — I had shifts taken off me and the senior coordinator informed me that she had approved it and they did not need the senior practitioner.255

In addition, Ms Beasley noted that:

I have not worked in that house since; I refuse to — they are not giving me any shifts anyway. A supervisor screamed at me in front of the whole team because I dared to

251 Ms P Williams, Housing Rights Coordinator, Action for More Independence and Dignity in Accommodation, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 3.
252 Ms J Broughan, submission no. 53, p. 2.
253 Ms C Harris, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 3.
254 Ibid.
255 Ms L Beasley, Secretary, Gippsland Carers Association, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 7.
give a client a choice of their drink for supper. Another supervisor demanded I cease taking a client for her afternoon walk. When I pointed out that, according to her BSP, it was a required behaviour management strategy within the BSP, which we are legally required to follow, I was told, ‘Stop being a smart-arse and cut it out’. 256

Ms Julie Pianto told the Committee that she had been previously approached by disability support workers who worked at her son’s supported accommodation house, who had been discouraged from reporting abuse, stating that:

They were basically told to keep quiet about things. For example, I was told by one of the staff members that the particular worker, whom we all know now, one of the other female clients had complained that he had touched her inappropriately. When the worker she said that to said that to the manager of the house, the manager of the house said, ‘Oh well, you know what she’s like. She’s probably just making it up’, and nothing was done about it. I think it depends on the culture within the house, within the organisation, and I think there is a cover-up culture. 257

Mr Matthew Potocnik also spoke about his experiences as a disability support worker reporting incidents:

I then followed up with management and also involved the union in relation to the way this incident was handled, and I was told to write out a new incident report. I said, ‘No, I have written out an incident report. We need to meet, and we need to see what has happened to it’. I was told that the incident report was lost. I also started to receive a lot of bullying and was put in a very difficult situation repetitively by supervisors. Part of that was the actual domain manager continuing to operate within my work environment. I actually broke down at a house meeting because I could not cope with the injustice of this incident process with the knowledge that I had had and the experience I had had where incident reports had previously gone missing and been destroyed at the Department of Health and Human Services and where I have witnessed physical assault by staff on people in our care. 258

At a public hearing in Melbourne Mr Lloyd Williams, State Secretary of the Health and Community Services Union (HACSU), provided an overview of the union’s research into the experiences of disability support workers, which found that whistleblowers were often ‘targeted’ by management. The research indicated that whistleblowers:

Are either not adequately supported or they fear reprisals or are targeted by management for raising concerns. HACSU’s research shows that casual workers are far less likely to report abuse than those in secure employment. To do so might put them in direct conflict with co-workers and management making their employment more tenuous. This is a concern given the over reliance on a highly casualised workforce within the disability sector. Our members report they fear they won’t be believed or will be viewed as troublemakers. 259

256 Ibid.
257 Ms J Pianto, parent, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 5.
258 Mr M Potocnik, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 4.
259 Mr L Williams, State Secretary, Health and Community Services Union, Family and Community Development Committee public hearing – Melbourne, 19 October, transcript of evidence, p. 3.
Ms Andrea Passadore, HACSU member, argued that casual workers were especially afraid of reporting abuse, as they felt it would jeopardise their employment:

I have often heard casuals telling stories about how they've witnessed abuse in care but unless it was something extremely serious, such as sexual assault, they would not report it for fear that they would no longer be getting work. One of my experiences is when a casual staff member who did report abuse in care - so she was a whistleblower. However, somebody - I don't know - must have spread the word and everyone seemed to know about it and everybody spread the word to be careful of what you said around her and for her to be the last person that you offered shifts to in the house. Slowly, but surely, that person stopped getting work and we haven't seen her around at that workplace for a few years now.\textsuperscript{260}

In contrast, Ms Trisha Schipp noted that it was a casual support worker that raised the alarm about an assault that her son experienced in a supported accommodation house in a small regional town. Ms Schipp recalled that:

The other carers did not come forward. It was a casual worker who finally disclosed, in one case. I do not know if the small-town effect is impacting on the carers. If they do somebody in, that person has a role in town that they know or that the town values, and they do not want to be seen to be making the comment about what the abuser did. So the small-town effect is really an important one. The carers know each other outside of work. In the case in Benalla, one of the carers, the assailants were very high profile in town in having a specific role, and that made it even more difficult for this to be chased down and for all parties to believe what was happening. If it had not been for the casual worker, who knows where this would have gone.\textsuperscript{261}

The Committee also heard that the reluctance of staff to report on colleagues was exacerbated in regional areas. Speculating on why incidents of abuse in Benalla were not reported earlier, Ms Schipp commented that:

Benalla has 9000 people, and people know most other townspeople. I even get genealogy: ‘Oh, she was a’, which tells you which family she came from. It is that small a town that you deal in a ‘She was a’. The sense that the other carers knew when abuse was going on was very, very strong amongst the Benalla parents, and it is quite likely. Certainly in one case we know the other carer knew. In other cases we do not know, but we know the other carer knew in one of the cases. The parents feel strongly that the other carer would have known in the other cases as well.\textsuperscript{262}

Some service providers commented on suggestions that disability support workers were fearful or discouraged from reporting abuse. At a public hearing in Melbourne Dr Sherene Devanesen, CEO of Yooralla, stated that the organisation had improved its reporting processes after revelations of sexual abuse at a number of supported accommodation houses. Dr Devanesen noted that:

What I can say is that I’m confident that we now have an emerging culture that - where people feel comfortable about speaking up and without fear of retribution, both

\textsuperscript{260} Ms A Passadore, HACSU member, Health and Community Services Union, Family and Community Development Committee public hearing – Melbourne, 19 October, transcript of evidence, p. 5.

\textsuperscript{261} Ms T Schipp, Member, Carers and Parents Support Group of Benalla, Family and Community Development Committee public hearing – Shepparton, 29 October 2015, transcript of evidence, p. 4.

\textsuperscript{262} Ibid.
customers and staff, and where staff are being taught to identify the signs of abuse to report it and where the organisation knows how to make timely responses, particularly in safeguarding, protecting and supporting the client but also in having the appropriate investigations.263

In a submission to the Inquiry, service provider Karingal argued that an independent review of the organisation ‘confirmed that there is a generally supportive culture towards staff raising quality of care concerns about colleagues’.264

Despite this, the Committee heard that few service providers had an explicit policy to protect staff that made disclosures about their colleagues. Mr Alistair Houston explained that Wimmera UnitingCare supported whistleblowers in the organisation in the following way:

Whistleblowing is a key part in quality of care, but we also have to make sure we look after whistleblowers as well because research tells us that they are heavily impacted in blowing the whistle. We have got EAP, the employee assistance program, so that would be an external support. We would allocate somebody to be with that person, their support. We have contact officers who are there to support staff, so we are trying to get somebody who would actually support that person and stand alongside them while they are going through the process. I think the welfare side of things is really important for a whistleblower, and all through my work historically it is very damaging to whistleblowers. There is high impact on them as well. We see it as a very important role to make sure that that person can say what they need to say and be supported while they are saying it but also afterwards as well.265

Some service providers stated that they sought to support whistleblowers through the use of a ‘zero tolerance’ of abuse policy. For example, Ms Cath McDonald, CEO of Radius, stated that she sought to create a workplace culture where staff were, ‘uncomfortable about not reporting’ abuse. ‘The [organisation’s] zero tolerance policy says you will be sacked if you do not report it, so they have to report it if they know about it’.266

In a submission to the Inquiry Wesley Mission Victoria explained its approach to supporting whistleblowers:

The dynamics and issues inherent in staff reporting abusive or concerning actions of fellow staff members are significant, particularly in small work units or rural communities where staff are easily identifiable and may fear reprisal or involving contract or casual workers who believe reporting may jeopardise their employment. Strategies to promote disclosure in these situations require well planned, sensitive and sustained management by supervisors and managers which enable support of disclosers throughout any investigation and well after the event.267

263 Dr S Devanesen, Chief Executive Officer, Yooralla, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, pp. 12-13.
264 Karingal, submission no. 65, Appendix 1, p. 3.
265 Mr A Houston, Acting Deputy Chief Executive Officer, Wimmera UnitingCare, Family and Community Development Committee public hearing – Horsham, 3 December 2015, transcript of evidence, p. 7.
266 Ms C McDonald, Chief Executive Officer, Radius, Family and Community Development Committee public hearing – Bendigo, 5 November 2015, transcript of evidence, p. 9.
267 Wesley Mission Victoria, submission no. 70, p. 11.
Some witnesses argued that whistleblowers should be offered legal protection against reprisals from their colleagues and employers. For example, Ms Trisha Schipp argued that:

In terms of protecting the workers, the whistleblowers, it seems to me that if it were illegal to not report, that would protect the other workers. If legally they must report, as they have to do now with children, then that is a protection in itself. It is not like a choice they make.  

Ms Julie Pianto was also supportive of legislation and argued that:

I think the whistleblower thing is really important. I was horrified when I saw that the guy who had exposed all the emails at Yooralla got prosecuted and convicted. I assume he probably cannot work in disability anymore because he has a conviction. What does that say to all of those disability support workers out there who would like to tell someone about what is going on in those services? Like I said, it is a travesty. That needs to be fixed; that hole needs to be fixed, and really quickly.

Mr Williams, state secretary of HACSU, argued for greater legislative protection for whistleblowers, stating that:

We think there needs to be some mandatory protection of workers and people who report abuse. Currently the only whistleblower protection to my understanding is within the reports to the Ombudsman. However, we don't report all issues of abuse to the Ombudsman and we have had recent experience where an employee has sought to make protected disclosures and because those disclosures haven't been made directly to the Ombudsman but to the Department of Health and Human Services, no protections have been afforded so therefore the member has had to take the next step of reporting it to the Ombudsman to try and receive that level of protection. So we think that a legislative change to the Victorian Disability Services Act could address this problem quite effectively and quite quickly.

The VEOHRC did not suggest legislated protections for whistleblowers, rather they emphasised the need to encourage reporting by developing a:

Workforce culture and creating an environment where if someone does speak up they are supported in doing so, they are not victimised, and you have a specific policy that addresses that and encourages people and that is developed through training and through really making sure that reports are then actioned so that people think, "It does make a difference if I do speak up." That is the framework we focussed on rather than a legislative one.

The Victorian Council of Social Service linked protections for whistleblowers to mandatory reporting and the need for an independent oversight body, noting that:

268 Ms T Schipp, Member, Carers and Parents Support Group of Benalla, Family and Community Development Committee public hearing – Shepparton, 29 October 2015, transcript of evidence, p. 6.


270 Mr L Williams, State Secretary, Health and Community Services Union, Family and Community Development Committee public hearing – Melbourne, 19 October, transcript of evidence, p. 10.

Staff who report incidents of abuse and neglect to the independent oversight body may fear for their jobs without decent protections.\textsuperscript{272}

In a submission to the Inquiry service provider Life Without Barriers made a similar comment on the need for a ‘consistent national policy and procedures for mandatory reporting of abuse, neglect and/or standards of care concerns as well as protection for Whistle Blowers.’\textsuperscript{273}

The Committee understands that there is some uncertainty about the legal protections open to whistleblowers within the disability sector. In 2012 the Whistleblowers Protection Act 2001 (Vic) was replaced by the Protected Disclosure Act 2012 (Vic). The Act outlined the process for how individuals can make disclosures about improper conduct and corruption in the public sector to the Independent Broad-based Anti-corruption Commission (IBAC). In her report on allegations of abuse in the disability sector, the Victorian Ombudsman suggested that the Act could provide protection for disability workers seeking to support abuse, noting that:

> Allegations surrounding abuse of people with disability by departmental staff may amount to a disclosure of improper conduct under the Protected Disclosure Act and be subject to investigation by my office or IBAC.\textsuperscript{274}

To this end, the Victorian Ombudsman recommended that protected disclosure legislation is extended to cover ‘all workers across the disability sector’, including those employed by not-for-profit community service organisations.\textsuperscript{275}

The Committee understands that the confidentiality offered by the Protected Disclosure Act 2012 (Vic) is attractive to disability support workers who feel unable to raise issues about abuse to management or the Department. The Victorian Ombudsman referred to a case involving the falsification of records in supported accommodation houses, which could be considered under the umbrella of ‘misconduct’. However, IBAC is primarily designed to hear disclosures, not to investigate crimes against the person. While IBAC can hear disclosures relating to the Department of Health and Human Services that relate to serious misconduct or corruption, the investigation of criminal abuse is properly a matter for Victoria Police. In addition, if whistleblowers were to remain confidential when reporting abuse, their evidence as witnesses to crime could not be used in the courts to pursue justice for people with disability.

In its report on abuse in the disability sector, the Senate Community Affairs References Committee found that many stakeholders believed that an independent, national oversight body should have responsibility for handling reports of abuse, and could provide ‘appropriate whistleblower protections’.\textsuperscript{276}

\begin{thebibliography}{99}
\bibitem{272} Victorian Council of Social Service, submission no. 71, p. 15.
\bibitem{273} Life Without Barriers, submission no. 61, p. 3.
\bibitem{275} Ibid., p. 144.
\bibitem{276} Senate Community Affairs References Committee, \textit{Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability}, Commonwealth of Australia, Canberra, 2015, p. 147.
\end{thebibliography}
The Committee does not consider the Protected Disclosure Act 2012 (Vic) to be the most appropriate legal mechanism to protect disability support workers who report abuse. In line with the Committee’s recommendation for the sector to adopt a zero tolerance framework, the Committee considers it the role of disability service providers to actively encourage and support employees to identify and report abuse. In addition to this, the Committee considers that an amendment to the Disability Act 2006 (Vic) should impose penalties on employers that take adverse action against staff for reporting abuse. The responsibility for enforcing this penalty should be a function of a renewed Disability Services Commissioner. As discussed in Chapter Seven, the Committee considers a substantially re-designed DSC to be a key component of Victoria’s future safeguarding system.

In order to increase protections for whistleblowers in the disability sector, the Committee recommends that:

RECOMMENDATION 2.4

The Victorian Government amend the Disability Act 2006 (Vic) to allow for the Disability Services Commissioner to penalise disability service employers that are found to have taken adverse action against employees for reporting abuse.

The Committee is aware that the federal Fair Work Act 2009 (Cth) provides employees with a range of protections under Chapter Three, including the right to not have adverse actions taken against them.277

In addition to the Disability Service Commissioner gaining powers to penalise service providers who take adverse action against whistleblowers, the zero tolerance framework should clearly articulate employer responsibilities in supporting their employees who report abuse. The Committee therefore recommends that:

RECOMMENDATION 2.5

Disability service providers be required, as a condition of registration, to have clearly documented and articulated processes for supporting employees who report abuse.

- The zero tolerance framework will clearly state the rights and obligations of workers to report abuse, and the obligations of employers to support workers who report abuse.

2.5. Victoria Police and the criminal justice system

Throughout the Inquiry the Committee heard evidence about the experiences people with disability and their families have had interacting with the criminal justice system. Broadly, the Committee found that there is a widespread pessimism about the ability of people with disability to access justice, with many people questioning the likelihood that reporting abuse to the police would lead to a successful prosecution. Stakeholders identified a range of barriers to accessing justice including a fear of not being believed or taken seriously by police, a lack of accessible information on how to

277 See Fair Work Act 2009 (Cth), s.340-345.
report, inadequate legal support, and negative views on the capacity of people with disability to be competent witnesses. The Committee found that these negative encounters with police act as a significant barrier to reporting abuse.

Ms Fiona Tipping, an advocate from Grampians disAbility Advocacy, told the Committee that she found the police and the justice system ‘problematic’, stating that:

There is this philosophy that people with a disability can be deemed an unreliable witness. When it comes to reporting it to the police, there is a problem there where I feel there is a reluctance to investigate appropriately. I also have been told that they want to be sure that it will go to court — that it is a winnable case — before they bother going through all of the investigative processes. I feel that the justice system is very problematic.278

In a similar way Mr Bernie O’Connor, CEO of service provider Woodbine, suggested that police were often ‘disinterested’ in people with disability:

I find a bit of a lack of interest from the police. On two occasions they were not interested at all, and one in fact said, ‘Do you know how many cars I have got on the road between Echuca and Rochester at the moment? I’ve only got one there and you are saying someone possibly got manhandled’. I do not think it is being unfair on them; I think it is the same thing that happens on every Friday night in pubs all around Victoria. Someone gets pushed over or a smack in the ear and the police just do not have the time or energy to look into it. But we do. It is a category 1 for us; for them it is a category 0.279

Ms Keran Howe from Women with Disabilities Victoria argued that people with disability are not always given an opportunity to make a statement to the police, noting that:

We are seeing that people with disabilities who want to make a statement sometimes don’t get to make a statement. If they get to make a statement they don’t get further than that. They don’t get caught. They don’t get their day no court. If they do get their day in court they are often not empowered by the court process and the court response.280

Ms Michelle Kidd described the difficulties she experienced in reporting the abuse of her daughter to police:

We went down to see the police the next morning and they said that because it had happened a few months ago there was no way to collect any kind of DNA evidence, and because Erin is so profoundly disabled she would not be able to substantiate if anyone was hurting her, which of course we knew. The detective from SOCIT said that he was quite appalled by the standard of care that was going on at the house. He had obviously been there to do with the other allegation that was going on. He was

278 Ms F Tipping, Grampians disAbility Advocacy, Family and Community Development Committee public hearing – Ballarat, 6 November 2015, transcript of evidence, p. 3.
279 Mr B O’Connor, Chief Executive Officer, Woodbine, Family and Community Development Committee public hearing – Horsham, 3 December 2015, transcript of evidence, p. 7.
280 Ms K Howe, Executive Director, Women with Disabilities Victoria, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 5.
appalled, and he said, ‘I shall be telling them that today’. He said, ‘I’m going to a meeting today now. I shall be discussing this with them and telling them’, but of course we knew right from the start — my husband is an ex-policeman and he said to me, ‘There’s no way anything will come of this’.281

In a submission to the Inquiry, the Australian Cross Disability Alliance shared the story of ‘Frances’, who was actively discouraged by police from pursuing justice for an assault she experienced:

Frances was physically beaten by a group of young girls at a regional TAFE institute. The violent attack was captured on CCTV footage. The local police advised Frances not to pursue charges because she was “mentally retarded” and there would be “no chance of any conviction” against the perpetrators.282

Ms Jan Ashford from Communication Rights Australia, who has assisted people to make police reports, explained that the response of police members varies significantly:

We have found that it is the attitude as well. You have to pick the policeman. I know we have had cases where an individual has looked abused and everything and we have called the police in and they have not followed through with any reporting and things. So you get the next policeman to come along, and they will follow through. There is a bit of hit and miss. We have had good cases go right the way through, but it is so intensive.283

Ms Trisha Schipp also noted that:

Yes. I was thrilled with the way the detective handled the second and third — the two for which statements were taken; I was really pleased. They worked really well with the Communications advocate, and he worked really well with my son.284

The Committee also heard that service providers can sometimes act as ‘gatekeepers’ for clients seeking to make contact with police. In addition, there is a tendency for police to engage with service providers instead of directly with the person with disability. For example, Dr Jessica Cadwallader representing Australian Cross Disability Alliance stated that:

I think one of the other issues that comes with a closed [residential accommodation] setting is that there is a bit of a tendency for a service setting to claim expertise in relation to a person with disability that is then expected to override other services. For example, police will often take the word of a service provider who says, ‘It’s probably not worth you talking to that person because they have intellectual disability and it is going to be hard’. In some circumstances … where people call the service and get, obviously, a support worker, and the support worker says, ‘Oh no, you will just confuse

282 Australian Cross Disability Alliance, submission no. 32, ‘Personal stories and testimonies: accompanying document to submission’, p. 3.
283 Ms J Ashford, Chief Executive Officer, Communication Rights Australia, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 3.
284 Ms T Schipp, Member, Carers and Parents Support Group of Benalla, Family and Community Development Committee public hearing – Shepparton, 29 October 2015, transcript of evidence, p. 7.
her, so we’re not going to put her through’. These are the kinds of things where there is a bit of a closing down, so all of the lines out are kind of controlled. 285

Released in 2014, the Victorian Equal Opportunity and Human Rights Commission report *Beyond Doubt: the experiences of people with disabilities reporting crime*, is a significant research study of the barriers to accessing justice faced by people with disabilities and their families. The study affirms many of the stories shared by witnesses to the Inquiry, especially the fear that many families and people with disability feel about ‘lacking credibility’ with police or being labelled as ‘troublemakers’ by service providers. 286 The report found that:

Negative attitudes among police towards people with disabilities are commonplace. We were told that police can treat those reporting crime as childlike, time wasters or as someone deserving of suspicion. 287

The report identified numerous barriers facing people with disability in their interactions with police, arguing that:

People with disabilities can face significant challenges trying to tell police what has happened, such as communication barriers, attention or memory difficulties, low self-confidence and the effects of discrimination. 288

The VEOHRC also highlighted that even where the response from police is positive, ‘the matter may still fail to proceed to court’, noting that:

Police described having to push hard to have briefs authorised where behaviours that form part of a disability were seen to compromise the quality of evidence and, as a result, the likelihood of conviction ... A range of other factors may prevent an investigation from proceeding, including where there is no witness, concern that the criminal justice process could re-traumatise the victim or fear about the cost of an unsuccessful prosecution. 289

Crucially, the VEOHRC found that a ‘successful prosecution remains the exception rather than the rule when the victim has a disability’. 290

The Committee did not hear extensive evidence on the use of Independent Third Persons (ITP), although some witnesses drew attention to the failure of police to ensure that process is used. The Victoria Police Manual requires that ‘an ITP be present where a victim, suspect or witness who is to be interviewed by police has an intellectual disability, a mental illness, acquired brain injury or dementia’. 291 An ITP

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285 Dr J Cadwallader, Australian Cross Disability Alliance, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 12.


287 Ibid., p. 24.

288 Ibid., p. 32.

289 Ibid., pp. 35-36.

290 Ibid., p. 11.

can be a family member or friend, or a volunteer from the Office of the Public Advocate (OPA). The role of the ITP is to assist people with disability to understand the police process, whether as victims, witnesses or suspects. While ITPs do provide some communication assistance – such as rephrasing a question from police or explaining aspects of the legal process – they do not offer legal advice.

The Committee is concerned by evidence from witnesses that suggest ITPs are not always engaged by police. Ms Jai Phillips from Communication Rights Australia suggested that the engagement of an ITP ‘sometimes does not happen’. Mr Trevor Carroll from Disability Justice Advocacy also stated that he was aware from the experiences of his clients that ITPs were not always used. Research conducted by the VEOHRC found that:

> It is not known what proportion of interviews are attended by trained volunteer ITPs compared to a family member or friend. How many interviews with people with disabilities are not attended by an ITP at all is also not known.

The VEOHRC also found that police often have difficulty identifying whether a person has a disability and as such believes that ‘it is likely that ITP volunteers are not called as frequently as they should be’. The OPA has argued that ITPs need to have a legislative role, while the VEOHRC has suggested that police need further information about how to engage an ITP.

The Committee is concerned that people with intellectual disability are afforded the assistance of an ITP when interacting with police, and that this ITP is independent from their service provider, i.e. is not a disability support worker.

Stakeholders emphasised other barriers to reporting to police, including the lack of accessible information about how to make a police report, difficulties physically accessing police stations, and the lack of appropriate legal advocacy to support people during their interactions with the justice system. For example, Ms Fiona Tipping raised the issue of legal representation for people with disability, noting that:

> There is not enough specialised representation for disability. We have Villamanta in Geelong, which only has two practitioners to service the whole of Victoria, from the last I heard. They are brilliant, but they are spread very thin and with a huge waiting list. There need to be more of them.

Since the publication of the VEOHRC report *Beyond Doubt*, Victoria Police has released its *Accessibility Action Plan 2014-2017*, outlining ways to overcome some of
the barriers people with disabilities face in dealing with the agency. In introducing the Plan Victoria Police Chief Commissioner, Graham Ashton, stated that:

> It is a key priority of Victoria Police to develop a consistency of service delivery for people with disabilities, so that people can feel confident in the service they will receive across the organisation, and have equal access to safety and justice.298

The Plan commits to a number of changes to police practice, including:

- the development of a good practice guide for working with people with disabilities;
- promoting the use of communication aids and Visual and Audio Recorded Evidence;
- ensuring that police members understand the need to engage ITPs;
- developing accessible materials such as Easy English forms and AUSLAN videos;
- training about Prejudice Motivated Crime; and
- establishing a network of Disability Liaison Officers to work in partnership with other police liaison officers across Victoria Police.299

The Plan clearly responds to many of the concerns that have been raised by people with disability and their advocates for some time, and represents an important opportunity to improve access to justice for people with disability.

Accordingly, the Committee strongly supports the implementation of the Plan and recommends that:

**RECOMMENDATION 2.6**

The Victorian Government ensures that Victoria Police is appropriately resourced to implement its *Accessibility Action Plan 2014-2017*.

- Victoria Police be directed to report annually on the implementation of its Accessibility Action Plan with particular reference to the four stated goals of the Plan, and progress on each of the goals deliverables.

Further, on the issue of ITPs, the Committee recommends that:

**RECOMMENDATION 2.7**

The Victorian Government:

- fund an expansion of the Independent Third Person (ITP) program operated by the Office of the Public Advocate; and
- ensure that the Victoria Police Manual is updated to require that a person’s ITP is independent of their disability service provider.

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299 Ibid., pp. 8-9; p. 15.
In addition, the Committee heard evidence of the need to amend the *Evidence Act 2008* (Vic) to support people with complex communication needs to give evidence in court. This issue is addressed below.

### 2.6. Complex communication needs

The Committee heard that people with complex communication needs face additional barriers when reporting abuse, whether to the police, the Department, service providers, or oversight bodies. ‘Complex communication needs’ is a broad term that refers to difficulties communicating using speech and writing, or difficulties understanding how others communicate. Complex communication needs can be associated with developmental disability, such as intellectual disability or autism, or acquired disability like brain injury or stroke.300

Mr Tony Clarke from Inclusive Labor Disability Justice Working Group emphasised the difficulties for people with complex communication needs, stating that ‘sadly the law does not protect people with disabilities who cannot communicate’.301 Similarly, Ms Trisha Schipp argued that ‘severe communication impairment is a barrier to both help or justice’.302

At a public hearing in Melbourne Mr Trevor Carroll, Executive Officer of Disability Justice Advocacy, challenged the view that many people with disability cannot communicate, arguing that:

> When it comes to attitudes and assumptions, a common misconception is that it is the person’s disability that is the barrier, particularly to access to justice. For example, and I have heard this said, ‘They can’t speak all right, so I can’t take a statement’. The attitude is, ‘Because they can’t speak or write, then I can’t take a statement’. Not that the person with a disability cannot make a statement using alternative or augmentative communication aids, but just the fact that ‘I can’t take it, so I’m not going to do it’. That is a problem. What it does is that sort of attitude and assumption highlights the problem that many people in society have towards people with disabilities, and it is reflected across all levels of government services and agencies. That is a common perception that we come across very often in our advocacy work. It is a real barrier. People who have intellectual disabilities, acquired brain injuries or who are non-verbal and use alternative or augmentative aids are at real risk of and they are very vulnerable to denial of justice, particularly in relation to abuse, neglect and violence.303

The Committee heard that often the evidence given by people with complex communication needs is not recognised, particularly if their mode of communication is non-verbal. For example Ms Fiona Tipping, an advocate with Grampians disAbility


301 Mr T Clarke, Inclusive Labor Disability Justice Working Group, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 2.

302 Ms T Schipp, Member, Carers and Parents Support Group of Benalla, Family and Community Development Committee public hearing – Shepparton, 29 October 2015, transcript of evidence, p. 3.

303 Mr T Carroll, Executive Officer, Disability Justice Advocacy, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 5.
Advocacy, spoke about the difficulties faced by a person using a drawing to describe their abuse:

It was in Ballarat, because she was filling in for me, so I suppose that is relevant. There was an issue where a non-verbal person actually managed to draw the incident, report the incident via a drawing. It was obvious what had occurred via that drawing, but it was dismissed because she could not verbalise it.\textsuperscript{304}

Some witnesses suggested that dramatic or unusual changes in behaviour could be a way for people without a formal means of communication to signal that something has happened to them. For example, Ms Michelle Kidd described the change in her daughter’s behaviour when she passes by the supported accommodation house she used to live in:

When Erin went to Sue, who is her foster mum, she was traumatised. I have to say that there is no doubt that she has bad memories of that place. Sue told me that she has twice driven up the street, and when she has turned onto the street where that house is and Erin is in a very, very happy state, she turns into that street and she goes hysterical, crying until she is driven out of the street. That does not lie. She cannot speak, but that does not lie.\textsuperscript{305}

Dr Jessica Cadwallader highlighted the fact that service providers are often in a unique position to understand the non-formal communication styles of people with disability, suggesting that:

I think the capacity of people with disability is often underestimated and the service provider is often in a position where they know the person very well, they often know the styles of communication, limited as they may be, that they have, and that means they are actually in a unique position to be able to ask questions of the person and have their response demonstrated in a range of ways.\textsuperscript{306}

Witnesses told the Committee that communication difficulties are compounded by a lack of access to specialists in augmentative and alternative communication who can develop a formal method of communication for some people with communication disabilities. Augmentative and alternative communication refers to a broad range of communication methods that can be developed for people who do not use speech or writing. Augmentative and alternative communication methods can include low-tech devices such as communication boards with pictures or words, or more complex electronic devices that can generate speech. People who use these communication methods typically touch, point, gaze, or gesture at specific words or pictures to indicate the desired meaning. Drawing on research undertaken by Scope, the VEOHRC stated that ‘one in 500 Victorians have communication disabilities’.\textsuperscript{307}

\textsuperscript{304} Ms F Tipping, Grampians disAbility Advocacy, Family and Community Development Committee public hearing – Ballarat, 6 November 2015, transcript of evidence, p. 4.
\textsuperscript{305} Ms M Kidd, parent, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 5.
\textsuperscript{306} Dr J Cadwallader, Australian Cross Disability Alliance, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 8.
At a public hearing in Melbourne, Mr Carroll from Disability Justice Advocacy gave a demonstration of how his organisation uses a low-tech communication board with movable tiles to work with some clients. As Mr Carroll explained:

This [the communication board] is a tool that my advocates use on a regular basis ... Here is a simple low-tech model. I will just hold it up there so you can see. You can see we have a series. This is just a simple mat with a velcro sticker on the back, and this first one says, ‘What day did this happen?’. We have a series of tiles that we put down until the client indicates, using whatever their system is for communicating yes or no, because quite often that is the only way they can communicate. Sometimes it is by blink, once for yes and twice for no. Sometimes it is an upward curve of their head for yes and a downward curve for no. Sometimes agitated behaviour means no and a smile means yes — whatever it is. Sometimes they have a head pointer and they can actually touch it with their head pointer and indicate.308

The Committee is aware that there is currently no routine process whereby people without a formal means of communication undergo an assessment of their capacities and training in different communication methods; there is often an assumption that many people with disability simply cannot communicate. Ms Jan Ashford from Communication Rights Australia highlighted the lack of attention that is given to the right of people to access a means of communication, arguing that:

It is a human right, but it is not actually stated in the Victorian charter and all of that. There is freedom of expression, but there is not an actual ‘There is a right to communicate’ and a means to communicate.309

Communication Rights Australia is an advocacy organisation that assists people with disability to access support to develop a means of communication. Ms Jai Phillips described the organisation’s work with one client who was considered unable to communicate but wanted to make a statement to the police. Ms Phillips stated that:

She pulled out my iPhone and could use that quite efficiently to communicate with the communication tools we took along to the meeting with the individual. The lady wanted to make a statement to the police. DHS turned around and said, ‘There is no funding for it. She had a communication device back when she was 5’ — this lady is now in her 30s — ‘If the lady wants to make a statement to the police then the advocate can support her to communicate what it is she wants’. The speech pathologist employed through DHS said they had tried doing what they could, but they were not alternative and augmentative communication specialists. Therefore the speech pathologist was at a loss as to how to work with the individual ... We provided a multitude of different communication specialists that the lady could see and access promptly to give her a functional means to communicate.310

308  Mr T Carroll, Executive Officer, Disability Justice Advocacy, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 6.
309  Ms J Ashford, Chief Executive Officer, Communication Rights Australia, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 10.
Ms Trisha Schipp also spoke to the Committee about her experience of engaging a communication advocate to work with her son to assist him to communicate effectively with police about the abuse he had suffered:

When I contacted Communication Rights, their support was interesting and helpful, and I had not anticipated it. The first thing they did was to try to work out a protocol with the police for our son to give a statement, and they worked on two different protocols. That helped us and the police enormously. They also then liaised before any statement and helped us find an independent person who could support the communication process during the statement. I do not know how we would have proceeded if we had not had an advocate from Communication Rights.311

Mr Carroll stated that while many advocates are experienced at using augmentative and alternative methods of communication to work with clients, this form of communication is not always accepted by police. Mr Carroll explained the process of using a communication board to assist a client to report to police, noting that:

We photograph it with our phone and if necessary we will email that to the local police station, and we keep that as evidence. Unfortunately it is not acceptable. It is acceptable to us because we have got the client’s consent to do it. We know they can only indicate yes or no. We have got a road map here of what actually happened to them. All it takes is an effort from a frontline sworn officer to actually investigate that further.312

At a public hearing in Melbourne, Ms Channing Coad spoke about the process of teaching students undertaking the Certificate IV in Disability to develop communication methods for clients:

We also have a unit called ‘Communicate using augmentative and alternative communication strategies’. In that unit what we do is actually ask clients to select the student on placement that they are working with or we give them a case study, and they actually formulate a communication aid for somebody who is non-verbal or has limited speech. They then bring that communication aid and do a presentation, at which point it is shown, and we keep the communication aid. That is a very brief introduction into what they may need to do as a support worker to communicate. We also encourage students to look at augmentative methods of communication such as eye contact, changes in tone if someone is able to make noises, changes in body language and all of those things.313

Professor Susan Balandin drew attention to the way that changes in technology have enabled people to communicate who were previously thought to be incapable of doing so, stating that:

The other thing of course is that as technology improves almost daily we see daily people who did not have a communication system, who were thought not to ever be able to use a formal system, actually can. They can use iPads, they can use apps. So

311 Ms T Schipp, Member, Carers and Parents Support Group of Benalla, Family and Community Development Committee public hearing – Shepparton, 29 October 2015, transcript of evidence, p. 4.

312 Mr T Carroll, Executive Officer, Disability Justice Advocacy, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 6.

313 Ms C Coad, Coordinator, Certificate IV in Disability, Kangan Institute, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 5.
there is one group. Then there is another group who will never have formal communication. Therefore somebody has to support them and gauge from their behaviours what they might or might not be wanting or liking. That takes a lot of time and it relies on people either knowing the person well or having very good documentation. Of course that is easy now, because everybody has smart phones and things.\textsuperscript{314}

Ms Carmen Harris highlighted that people without a formal means of communication may be particularly at risk of abuse and argued for the need for accessible ways for people to report abuse. Ms Harris explained that:

With the right technology et cetera, then there are ways [for people to report abuse]. If it is simple — something on their iPad, for example, where they press a button and they know that they are going to get a response within 24 hours — I think it is more likely to be a bit more foolproof, but I guess there is no guarantee. But at the same time, I feel like unless they are enabled to find a way for themselves, then it is even less likely that they will be able to access the help that they need when they need it.\textsuperscript{315}

The VEOHRC emphasised the issues facing people with communication difficulties in accessing justice in the \textit{Beyond Doubt} report. The VEOHRC found that while SOCIT (Sexual Offences and Child Abuse Investigation Team) police members often have training on augmentative and alternative communication methods other police members ‘say they feel poorly equipped to make the reasonable adjustments required to communicate with many people with disabilities’.\textsuperscript{316} The VEOHRC argued strongly that the ‘failure to make reasonable adjustments for people with disabilities in service delivery, including steps to facilitate communication, is a breach of the \textit{Equal Opportunity Act 2010 (Vic)}’.\textsuperscript{317} Reasonable adjustments can include communication assistance, but may also refer to accommodating the physical needs of people with disability (for example, ensuring access to police buildings).

Ms Kellie Marshall from the Inclusive Labor Disability Justice Working Group noted that while support plans should include information on how to support a person to communicate these plans are often not kept up-to-date by service providers and the Department. Ms Marshall stated that:

Support plans are actually mandated under the Disability Act, section 52 to section 54. Any service provider has to provide a support plan. Support plans are very important, particularly if you have a communication disability because a support plan actually highlights the types of supports you need, like communication supports. When there has been an alleged sexual assault or physical assault and it has gone to the police for investigation or an interview I have had some families say to me that their loved one has not had a support plan for seven years. The Disability Act clearly states that a support plan has to be updated every three years. These are the types of challenges

\textsuperscript{314} Professor S Balandin, Chair in Disability and Inclusion, Faculty of Health, School of Health and Social Development, Deakin University, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 5.

\textsuperscript{315} Ms C Harris, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 4.


\textsuperscript{317} Ibid., p. 45.
that have been coming up for people and you can see why people are not able to articulate in the way that is appropriate for their needs what they have experienced.318

While most witnesses were supportive of efforts to improve access to augmentative and alternative communication for people with disability, some witnesses also emphasised that not all people will be able to develop a formal means of communication. For example, Ms Kellie Marshall of the Inclusive Labor Disability Justice Working Group stated that:

It is also very important to highlight that for some people with disabilities no matter what supports we actually put in place they will never be able to communicate because of their severe disability. I think that is an issue that particularly gets overlooked quite a bit. Clearly from what I have seen with the way the current legal system operates, that is something that just does not get catered for.319

In a similar way, Ms Sandra Guy noted that:

Over the last 34 years I have met many people who have had very severe disability and have not been able to communicate, so a communication device and help with that has been wonderful. However, in the argument here we have people — it is an unfortunate fact of life; it is like dementia — over here, whether we like it or not, even with all the support in the world, who do not have capacity to communicate. We might have people like my son who, when talking about communication, can communicate really well with me about things he can understand. My son has a significant intellectual disability, but if you ask him if he wants fish and chips for tea, he says yes; if you ask him if he wants to go to the wrestling, he says yes. But if I say to him, ‘Did Vinod Kumar abuse you?’, he does not understand that.320

Professor Susan Balandin from Deakin University was critical of the view that there are people with disability who are not able to communicate, arguing that:

I think it is probably not true to say — not ‘probably’, I think it is not true to say that there are people who do not communicate. Everybody communicates. Sometimes it is very difficult to work out because they are not using speech ... I think that whilst it has been thought that people with very little communication skills, as we think of communication skills, cannot make decisions, that is nonsense. They can make a lot of decisions, particularly about what they like, what they do not like, where they want to be or do not want to be. They are able to do it, but they have suffered greatly in the past because people have thought that they could not do it or have just sort of dismissed them. I think that is prevalent across the world. It is a very great risk because to think that someone cannot communicate, to therefore think, if somebody’s behaviour changes, ‘Oh, well, their behaviour’s changed. That’s because they’ve got such a severe intellectual disability’, rather than, ‘Suddenly their behaviour’s changed.


319 Ibid.

320 Ms S Guy, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, pp. 7-8.
What’s happened? Maybe they are being abused, maybe they are in a situation where they are not safe. 321

The Committee is concerned that the needs of people with communication difficulties can be overlooked by the Department and service providers. It is especially concerning to hear from witnesses that there are adults with disability who have not undergone a communication assessment or had access to a communication device since they were children. The Committee understands that the support planning process mandated by the Disability Act 2006 (Vic) is an appropriate opportunity for service providers to address the need for communication supports.

Therefore, the Committee recommends that:

RECOMMENDATION 2.8
The Victorian Government amend the Disability Act 2006 (Vic) to require that support plans prepared under section 54 address the complex communication needs of people with disability.

2.6.1. Witnesses with complex communication needs

The Committee heard that legislative change is required to ensure that people with complex communication needs can participate equitably in the justice system. Recently, South Australia passed the Statutes Amendment (Vulnerable Witnesses) Act 2015 (SA), which included a number of mechanisms to improve access to justice for people with communication difficulties. The Act includes provisions to:

- give people, whether victims, witnesses or defendants, with complex communication needs a general entitlement to have a communication assistant present for any contact with the criminal justice system;
- minimise the number of times vulnerable witnesses have to recount their experiences by providing alternative measures for their evidence to be presented to the court, including the use of pre-recorded evidence and investigative interviews at trial;
- tackle the misconception that disability denotes ‘unreliability’;
- enhance the supports available for vulnerable victims, witnesses and defendants, both in and out of court;
- allow the evidence of vulnerable witnesses to be taken in informal surroundings;
- extend the priority listing of sexual assault trials where the complainant is a child to those where the complainant has a disability that adversely affects their capacity to give evidence. 322

321 Professor S Balandin, Chair in Disability and Inclusion, Faculty of Health, School of Health and Social Development, Deakin University, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 5.
Importantly, the Act allows for people with complex communication needs to give evidence using ‘communication assistance’, which is defined in the following way:

Communication assistance for a witness may be provided, for example, by a communication partner or by using a device (such as a speak-and-spell communication device).\(^{323}\)

A number of witnesses were supportive of similar changes taking place in Victoria. Ms Schipp described the South Australian changes as ‘brilliant’, and Ms Sands noted that South Australia was ‘the first state to really look at that’, and Dr Cadwallader argued that the legislative changes were ‘a key part of a disability justice strategy’.\(^{324}\) The Inclusive Labor Disability Justice Working Group was also supportive of Victoria pursuing similar changes, and Ms Carolyn Worth from SECASA described it as ‘a good idea’.\(^{325}\)

While Communication Rights Victoria was supportive of changes to Victorian legislation to mirror those passed in South Australia, the organisation also emphasised the need for communication intermediaries to be a funded, specialist role, similar to the UK model. In this way, Ms Ashford argued that:

One of the things in South Australia that I was a bit disappointed in was the role of intermediaries. We are talking with the Department of Justice and Regulation around the role of intermediaries. We believe it should be a funded position. Over there it is voluntary. If you compare it to an interpreter for the deaf or a signer, there are rules and regulations attached to that. We need the same process attached to intermediaries. The UK has done a lot of work on that and worked with their justice system around providing independent intermediaries, and it is a funded process.\(^{326}\)

In its report into the abuse and neglect of people with disability, the Senate Community Affairs References Committee recommended legislative changes to support people with communication difficulties to give evidence. In particular, the Senate Committee recommended the ‘national implementation of the South Australian model to ensure people with disability are able to provide evidence’, including options to introduce communication partners or registered intermediaries (as in the UK).\(^{327}\)

The UK system of registered intermediaries provides for individuals with specific training to be appointed to assist people with disability in court.\(^{328}\) The UK Ministry of

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323 Statutes Amendment (Vulnerable Witnesses) Act 2015 (SA), part 12AB, section (2) (a) (iii).
324 Ms T Schipp, Member, Carers and Parents Support Group of Benalla, Family and Community Development Committee public hearing – Shepparton, 29 October 2015, transcript of evidence, p. 6; Ms T Sands and Dr J Cadwallader, Australian Cross Disability Alliance, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 9
325 Ms K Marshall, Inclusive Labor Disability Justice Working Group, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, pp. 4-5; and Ms C Worth, South East Centre Against Sexual Assault, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 8.
326 Ms J Ashford, Chief Executive Officer, Communication Rights Australia, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 2.
327 Senate Community Affairs References Committee, Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability, Commonwealth of Australia, Canberra, 2015, p. xvii.
328 Ibid., p. 186.
Justice recruits and maintains a register of intermediaries that can be ‘matched’ to witnesses if the police or courts identify a need for communication assistance. The UK model recognises that communication assistance requires specialist skills – akin to those of translators – and is not something that standard disability advocacy and legal services can usually provide.

Many intermediaries are speech therapists with specific training in augmentative and alternative communication, although occupational therapists, psychologists and social workers and other professionals can be registered if they can demonstrate their ability to facilitate communication between people with disability and the justice system.

On the issue of supporting witnesses with complex communication needs, the Committee recommends that:

**RECOMMENDATION 2.9**

The Victorian Government:
- amend the *Evidence Act 2008* (Vic) to provide for communication intermediaries to assist people with complex communication needs; and
- investigate the feasibility of introducing the UK model of funded, registered intermediaries in Victoria.

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Chapter 3
Mandatory reporting and improvements to the processes for reporting abuse

AT A GLANCE

Background

In the Interim Report the Committee discussed the critical incident management system used by the Department of Health and Human Services (the Department) to address reports of abuse. In Stage 2 of the Inquiry the Committee received further evidence about deficiencies in the Department’s reporting system and heard evidence from non-government service providers about their own internal processes for recording and responding to instances of abuse.

Chapter overview

This chapter focuses on terms of reference (A)(I) and (II) – ‘any interim measures to strengthen the disability services system prior to transition to the National Disability Insurance Scheme’, and ‘any measures to strengthen the capacity of providers to prevent, report and act upon abuse to enhance the capability of service providers to transition to the National Disability Insurance Scheme’.

This chapter considers the processes used by the Department and non-government service providers to identify, record, and respond to reports of abuse. Witnesses made a range of suggestions for improving reporting processes including: simplification of reporting categories; combining the reporting processes for abuse and complaints; and instituting the use of online databases to record and track responses to abuse.

The Committee found that the majority of the Inquiry’s stakeholders considered the introduction of a mandatory reporting scheme for suspected abuse as the most crucial improvement needed to Victoria’s reporting system. Witnesses argued that reporting to an independent oversight body should be mandatory for all staff within the disability sector, and would assist with combating some of the barriers to reporting faced by disability support workers. It would also send a wider message to the community about the commitment of the Victorian Government, the Department, and service providers to the principle of zero tolerance of abuse.
This chapter examines the current processes used by disability service providers to report on and respond to abuse within their services, including systems for managing critical incidents and complaints. While the Interim Report described the Department’s processes for reporting and responding to abuse in detail, during Stage 2 of the Inquiry the Committee heard further evidence on the critical incident management system. The Committee also sought evidence from non-government service providers about the internal processes used by these organisations to manage both complaints and critical incidents.

The Committee is concerned that all cases of suspected abuse are identified and investigated appropriately, regardless of which service provider a person with disability uses. The Committee is also aware that the Department has conducted a number of reviews of its critical incident management system and is planning a number of improvements to its processes. While the Committee welcomes this important work, it is however concerned at the time that has been taken to implement these changes. The Committee also makes recommendations to further improve the reporting system, including the need to establish an online database for tracking all reports of abuse across the sector.

The majority of the Inquiry’s stakeholders argued that a mandatory reporting scheme for all cases of suspected abuse and neglect is the key improvement needed to the sector’s reporting processes. Broadly, witnesses agreed that all disability support workers should be required to report all instances of suspected abuse to an independent oversight body. The Committee believes that a system of mandatory reporting is an essential step in combating the culture of normalisation within disability services, and an important way of supporting disability support workers to report abuse without fear of retribution.

### 3.1. The Department of Health and Human Services’ critical incident management system

As discussed in the Interim Report, all disability service providers funded under the Disability Act 2006 (Vic) are required to report all ‘critical incidents’ to the Department and adhere to the Department’s process for critical incident management. The process for managing incidents has five main phases – as outlined in Table 3.1 below. The first three phases of the critical incident reporting process involve incident identification, reporting and response. Phases four and five of the process aim to review practices and improve services.

The critical incident management system managed by the Department categorises all ‘incidents’ that occur in disability services as either Category 1 or Category 2. As can be seen from Table 3.2, the categorisation of incidents as either Category 1 or Category 2 affects the urgency matters are dealt with.
Table 3.1  Critical incident management—five phases

<table>
<thead>
<tr>
<th>Phase</th>
<th>Overview</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Phase 1:</strong> Incident identification, notification and response</td>
<td>Ensure client and the staff member are safe and that the police are notified if required. Ensure specific reporting requirements in the RAPSA (responding to allegations of physical or sexual assault instruction) are followed. Report all allegations regarding physical or sexual assault to the police (no discretion).</td>
</tr>
</tbody>
</table>
| **Phase 2:** Reporting | Determine if it is a Category 1 or Category 2 incident:  
• Category 1—relates to a serious outcome such as death or severe trauma to a client or person (service required to report to the Department within 24 hours).  
• Category 2—a threat to client health, safety or wellbeing (service required to report to the Department within two days).  
The agency or the Department staff member — the most senior person present — must complete the incident report, send it in and outline any immediate actions that have occurred. |
| **Phase 3:** Post incident response and investigation |  
• Ongoing support to ensure health and safety are attended to and referral to relevant support agencies and services, if necessary.  
• Senior manager to assess the incident, what happened, and make decisions—firstly, regarding the need for a formal investigation, and secondly, whether that investigation should be internal or external.  
• In this phase the senior manager will also assess whether there has been any alleged or likely misconduct by a staff member involved in the incident and start taking appropriate action if that is the case. |
| **Phase 4:** Review | Identify underlying causes of the incident — any lessons and practice implications that there might be — make recommendations for improvement and, if needed, develop some strategies and review the effectiveness of those strategies.  
Reviews might include:  
• Quality of Support Review  
• Practice review  
• Service review (whole of organisation review) |
| **Phase 5:** Organisation and systems learning | Review incident information over time, identify any patterns, lessons and practice implications, make recommendations for improvement and monitor implementation of actions. |

Source: DHHS Transcript of evidence, 29 June 2015.

Under the Department’s ‘critical client incident management instruction’, all incident forms are to be completed and faxed to the Department. Incident reports are then recorded in a Department database and the data is analysed to inform policy development, training, and practice improvements.

As the Committee argued in Chapter Two, the way that abuse is categorised and described by the critical incident management system is concerning. In particular, the Committee believes that the use of the term ‘incidents’ contributes to a broader...
normalisation of abuse within the sector. Moreover, the Committee has heard that
disability support workers often struggle to correctly categorise abuse using the
Department’s system.

Table 3.2 below shows extracts from the Department’s current definitions of
Category 1 and Category 2.

**Table 3.2** Critical incident management – incident types

<table>
<thead>
<tr>
<th>Type</th>
<th>Description</th>
<th>Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1</td>
<td>Event that has resulted in a serious outcome, such as a client death or severe trauma.</td>
<td>Reports must be sent to the Department designated divisional office as soon as possible and at the latest within one working day of the incident or within one working day from first being told of the incident.</td>
</tr>
<tr>
<td></td>
<td>All staff/carer to client sexual assaults.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Client-to-client sexual assaults.</td>
<td></td>
</tr>
<tr>
<td>Category 2</td>
<td>Event that threatens the health, safety and/or wellbeing of clients or staff.</td>
<td>Reports must be sent to the Department designated divisional office as soon as possible and at the latest within two working days of the incident or two working days from first being told of the incident.</td>
</tr>
</tbody>
</table>

Critical incidents that are criminal child abuse

Critical incidents may also be criminal child sexual abuse and therefore must be reported to police. The offence for failure to disclose child sexual abuse to the police came into effect on 27 October 2014.


All client incident reports are to be filed by the service provider and should be accessible to relevant staff and Community Visitors at all times. Service providers are also required to maintain a critical client incident register, or database, and conduct regular internal reviews and analysis of the information to improve service provision.

In order to support service providers to comply with the critical incident management system, the Department has produced a range of guidelines to assist service providers to appropriately respond to and investigate abuse. Table 3.3 below lists examples of the range of guidelines DHSS has produced to assist service providers to respond to abuse.
### Table 3.3  DHHS guidelines for funded agencies processes for responding to incidents

<table>
<thead>
<tr>
<th>Type of Incident</th>
<th>Guideline</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allegations of</td>
<td>DHHS Standards and evidence guide 2011</td>
<td>Requires funded disability services to:                                                                                     &lt;br&gt;have processes in place to respond to allegations of misconduct/abuse in ways that ensure people are protected from future harm.                                                                                       &lt;br&gt;the service provider promotes an environment where people are free from abuse, neglect, violence and preventable injury.                                                                                     &lt;br&gt;the service provider has clearly documented polices and processes for responding to potential or actual harm, abuse, neglect, violence and/or preventable injury.</td>
</tr>
<tr>
<td>misconduct / abuse</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allegations of</td>
<td>Responding to allegations of physical or sexual assault (DHHS instruction issued in 2005 and updated in 2014)</td>
<td>Provides a more detailed outline of the reporting and management requirements for allegations of physical or sexual assault that involves a client for all services directly delivered or funded by the Department. This includes reporting to police, initiating disciplinary procedures and reporting to the Department through its critical incident management process.</td>
</tr>
<tr>
<td>Critical client</td>
<td>Critical client incident management instruction (issued in 2011 and updated in 2014)</td>
<td>Describes the requirements for funded service providers to submit client incident reports to DHHS for all critical incidents that occur at the service or during service delivery which involve and/or impact upon clients.</td>
</tr>
<tr>
<td>incidents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Physical and</td>
<td>DHHS residential services practice manual, 3rd edition</td>
<td>Outlines roles and responsibilities for responding to physical and sexual assault in residential services managed by DHHS.</td>
</tr>
<tr>
<td>sexual assault</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not specified</td>
<td>Managing Performance and Conduct in Disability Services Policy</td>
<td>Focuses on disciplinary investigations.</td>
</tr>
<tr>
<td>Not specified</td>
<td>Promoting Better Outcomes - Systemic Improvement Policy: Managing and reviewing adverse events</td>
<td>Aims to assist in the effective management of all adverse events and promote a learning culture and continuous improvement in disability service delivery.</td>
</tr>
</tbody>
</table>

Source: Compiled by the Family and Community Development Committee from DHHS publications and supplementary evidence (Response to request for information, Department of Health and Human Services, 23 July 2015).

### 3.1.1. Disability Services Commissioner and critical incidents

As noted in the Interim Report, the Disability Services Commissioner (DSC) is primarily responsible for receiving and managing complaints regarding service quality. In addition, the DSC has a limited role in reviewing and providing advice to the Department on critical incidents involving staff-to-client abuse. However, this role
does not extend to conducting investigations into specific incidents of staff-to-client abuse.

The Committee understands that there is significant confusion within the disability sector about the role of the DSC and its obligations in relation to investigating abuse. The Committee is also aware that the DSC has recently undertaken investigations into ‘complaints’ that it has received that relate more to possible abuse and neglect, than service quality. While this is an encouraging step – and affirms the DSC’s willingness to go beyond a conciliatory approach to resolving issues – this move contributes further to the confusion surrounding the role of the organisation. A number of witnesses have suggested that the Department’s oversight of critical incidents should be combined with the DSC’s role in managing complaints – thus streamlining the system that people with disabilities, their families and carers, and service providers use to report and address issues relating to service quality and potential abuse. This would also enable more effective oversight of issues of neglect that are often minimised as problems of service provision, rather than potential abuse. This proposal is examined further in Chapter Seven as part of a broader discussion of the future role of the DSC in Victoria’s safeguarding framework.

3.1.2. KPMG review of the critical incident management system

In 2014 the Department engaged KPMG to undertake a review of the critical incident management system. KPMG found that the system is ‘overly ambitious, ambiguous and difficult to measure’ and has a disproportionate focus on routine matters and compliance rather than safety of clients. The review concluded that the Department is ‘failing to meet the stated aims of the CCIRM [client critical incident and response management] framework and to adequately mitigate risks from critical incidents’.331 The KPMG review determined that:

The risks, challenges and deficiencies arising from the CCIRM framework cannot be adequately mitigated without fundamental reform of the end-to-end system.332

KPMG has recommended a change to the categorisation model, including ‘more clearly defining and differentiating incident types, removing duplication, minimising the capture of routine, non-critical incidents and reflecting a primary emphasis on significant harm or risk of harm’.333

Table 3.4 outlines KPMG’s concerns about the five phases of the Department’s critical incident management process. It is important to note that the KPMG review is concerned with all areas within the Department that are subject to the critical incident management process, such as children, youth and families. While the Committee is concerned with how the system functions in the disability sector, the Department is focused on improving how the process works across all its portfolio areas.

332 Ibid., p. 5.
333 Ibid., p. 6.
### Table 3.4 Summary of KPMG concerns about the phases of the critical incident reporting process

<table>
<thead>
<tr>
<th>Phase</th>
<th>KPMG concerns</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase 1: Incident identification, notification and response</td>
<td>At the current volume of 33,000 incident reports per year (about 15,300 relating to disability), the divisions cannot reasonably be expected to manage and ensure the adequacy of all incident responses.</td>
</tr>
<tr>
<td>Phase 2: Reporting</td>
<td>Rigour and effectiveness of the system is compromised by the categorisation model, which currently captures a range of non-critical, routine service delivery and case management matters rather than risks to the safety of clients or staff.</td>
</tr>
<tr>
<td>Phase 3: Post incident response and investigation</td>
<td>The current DHS policy framework for incident investigation and review can be described as a patchwork of processes with varying levels of detail and maturity.</td>
</tr>
<tr>
<td>Phase 4: Review</td>
<td>While quality of care and quality of support reviews provide the primary formal review mechanisms, they do not apply across all DHS services.</td>
</tr>
<tr>
<td>Phase 5: Organisation and systems learning</td>
<td>The analysis of incident data currently occurs in the absence of benchmarks and consideration of incident outcomes, which means that DHS is relying on unsubstantiated reports and unsophisticated analysis, thus limiting the usefulness of the information provided.</td>
</tr>
</tbody>
</table>

Source: KPMG report, pp. 6-7. Note that KPMG refers to DHS in its report as it was conducted prior to the establishment of DHHS.

The Committee is aware that the Department is currently developing changes to its critical incident management system in response to the KPMG review. At a public hearing in Melbourne during Stage 2 of the Inquiry Mr Arthur Rogers, Deputy Secretary, explained the Department’s progress on this work:

> The system is aiming to provide more consistent approaches, greater transparency and accountability and, importantly, put much greater focus on client safety, wellbeing, client outcomes and experience. We have been criticised in the past for being too process orientated, this is more about focusing on outcomes for clients and their wellbeing.334

Mr Rogers also commented on proposed changes to the way that incidents are categorised, and the need to ensure that responses to abuse focus on the impact on the client, rather than the management of risk to service providers, noting that:

> We are looking at reducing incident types from 28 to 11 — and again those incident types focus on the experience of the client — being more accountable, clear about the department’s role as a funder and a provider, and clear about the agency’s role. We are building in a rigorous feedback loop and sharing learnings around that, making sure that we focus on the incident and the impact on the client, and understanding it complements other things we are doing as well, that the focus of the system should be

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334 Mr A Rogers, Deputy Secretary, Social Housing and NDIS Reform, Department of Health and Human Services, Family and Community Development Committee public hearing – Melbourne, 22 February 2016, transcript of evidence, p. 3.
related to the impact on the client, so obviously any impact is not acceptable but we actually want to make sure we focus where we need to our attentions.\textsuperscript{335}

\section*{3.2. Reporting processes used by non-government disability service providers}

While all disability services are covered by the Department’s critical incident management system, the Committee heard from witnesses that suggested that responses to abuse vary across the sector. The Committee is concerned that all service complaints and reports of abuse are appropriately recorded and addressed regardless of which service provider a person with disability uses. As a result many stakeholders argued that there needs to be a greater level of consistency in the processes used to record and manage instances of abuse.

In the Interim Report, the Committee noted that it had received little evidence that indicated whether processes for handling complaints and reports of abuse differed between services operated by the Department and those run by non-government providers.\textsuperscript{336} However, the Interim Report noted that the Victorian Ombudsman and the Public Advocate have both suggested that services operated by the Department had a higher level of compliance to the critical incident management process. For example, the Public Advocate argued that:

Incident reporting in DHS houses is of a higher standard than CSOs. In part that is due to having central command... when you have CSOs who have various sizes of organisation they may or may not have the same capacity... the weaknesses are definitely in CSOs and how those services are monitored.\textsuperscript{337}

The Committee also heard from some Community Visitors that it could be difficult to gain access to incident reports in supported accommodation houses operated by non-government providers, despite the legislative requirements for open access to client files.\textsuperscript{338}

As part of Stage 2 of the Inquiry, the Committee sought further information from non-government service providers about their internal processes for identifying, reporting, and responding to abuse. The Committee wrote to all 313 community service organisations registered by the Department to provide services under the \textit{Disability Act 2006} (Vic).\textsuperscript{339} The Committee requested information on how service providers responded to complaints and abuse within their organisations, in order to find out whether there were similar policies and procedures in place across the sector. While all registered disability service providers are required to use the Department’s critical incident management system to record Category 1 and 2 incidents, service providers also use a range of internal processes to handle service

\begin{itemize}
\item \textsuperscript{335} Ibid., pp. 3-4.
\item \textsuperscript{336} Family and Community Development Committee, \textit{Inquiry into Abuse in Disability Services: Interim Report}, Parliament of Victoria, Melbourne, 2015, p. 105.
\item \textsuperscript{337} Victorian Ombudsman, \textit{Reporting and investigation of allegations of abuse in the disability sector: Phase 1 - the effectiveness of statutory oversight}, Victorian Ombudsman, Melbourne 2015, p. 29.
\item \textsuperscript{338} Family and Community Development Committee, \textit{Inquiry into Abuse in Disability Services: Interim Report}, Parliament of Victoria, Melbourne, 2015, p. 120
\item \textsuperscript{339} The Committee wrote to all registered disability service providers listed on the DHHS website as of July 2015.
\end{itemize}
complaints and respond to ‘non-critical’ incidents. The Committee is also aware that service providers vary in their level of compliance to the Department’s systems.

The Committee received 106 responses from non-government service providers located throughout Victoria; a response rate of approximately 34 per cent. The responses were representative of the diversity of the sector and came from organisations that varied significantly in size and service focus. For example, the Committee heard from providers that primarily provided services for people with disability, as well as from organisations for which disability services formed only a small part of their work, such as aged care or health services.

The Committee found that approaches to handling complaints and responding to abuse differed throughout the sector. Overall, the larger disability service providers generally demonstrated a more sophisticated understanding of best practice approaches to identifying and responding to abuse, and were more likely to have clear procedures for investigating reports and supporting the victims of abuse. In addition, health care providers for which disability services were only a small part of their work also had clear and well-developed policies and processes for handling complaints and reports of abuse.

3.2.1. Approaches to complaints

The responses provided by service providers indicated that understandings of what constituted a ‘complaint’ varied significantly throughout the sector, as did the approaches to resolving service issues. A number of providers stated that a ‘complaint’ was a sense of dissatisfaction or unhappiness directed towards the service provider. For example, complaints could be:

- Anything that someone considers is unreasonable or unfair.
- A complaint is an expression of concern, dissatisfaction or frustration made by a community member or consumer, with the quality or delivery of service or the conduct of another person.
- Any matter of concern raised by staff, service users or families as a complaint.

Examples of complaints given by providers varied widely, with respondents giving a range of responses that varied in the degree of complexity and seriousness of the issue. For example, several complaints regarding service delivery issues were used:

- Clothes not sent home.
- Fellow resident not completing set chores.
- Invoicing error with regard to funding.

However, some providers gave examples of complaints that are actually more appropriately understood as reports of neglect or possible abuse, such as the following comments:

- Parents informing us of comments they heard a respite support worker make about a participant that they found offensive.
When a resident feels intimidated by the behaviour of another resident.

Staff being too bossy to clients.

Despite the fact that the Disability Services Commissioner has developed a large body of work on how providers should handle complaints, only 12 per cent of respondents relied on the Disability Services Commissioner’s definitions and processes.

The Committee received complaints policy documents from 88 per cent of respondents. These varied in length and complexity. Policies that were comprehensive usually included: an attention to specificity and detail; a set date for policy review; specific steps to take in addressing complaints; noted all the relevant parties in the process and their individual roles, and provided information regarding internal lines of escalation, as well as external resolution bodies. While the existence of policy documentation doesn’t indicate that the policies are fit-for-purpose, or indeed followed by staff, the Committee is concerned that some service providers did not appear to have clear internal processes or only had policies that were vague.

3.2.2. Responding to reports of abuse

Despite the requirement for all service providers to adhere to the Department’s critical incident management system, service providers reported that they used a range of external and internal processes for acting on reports of abuse. Only 16 per cent of respondents explicitly referred to the Department’s critical incident management system when describing their process for responding to reports of abuse. In contrast, 26 per cent wrote that they would follow their own internal processes for dealing with abuse.

The Committee also received a range of different responses to the question of which external body providers contacted about reports of abuse. Fifty-five per cent of responders indicated they would make a referral to the police. Forty-three per cent stated that they would refer to DHHS. Others noted that they would refer reports of abuse to the organisation’s CEO or to a client’s next-of-kin. Service providers often noted that they would report suspected abuse to different bodies simultaneously, for example to both the Department and police.

Unlike complaints management, providers receive guidance from DHHS in regards to the management of critical incidents. The *Critical client incident management instruction (technical update, 2014)* guides the management of critical incidents within providers. It is accepted across the sector as mandatory, and sets the standard for reporting procedures.

3.2.3. Supporting clients that experience abuse

The Committee received evidence showing that providers were generally well aware of the need to support clients that had experienced abuse. Service providers noted that a range of services were offered to clients including counselling, access to

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advocates, interpreters, referral to expert services such as CASAs, and access to medical services. A low number of respondents included the next-of-kin or the family in supporting the client.

Crucially, almost all service providers that responded emphasised the need to remove contact between the client impacted and the staff member involved in allegations of abuse. Most respondents indicated that the staff member involved in suspected abuse would be stood down or placed on leave without pay. A few respondents said they would be moved to other services or duties, or the client’s services would be altered to cease contact with the staff member.

Overall, the responses that the Committee received from service providers indicates that most have a solid understanding of the requirements of the Department’s critical incident management system, and most have clear processes for dealing internally with complaints. However, the Committee is concerned that there remains a high level of variance from provider to provider about the steps that should be taken to support clients that have experienced abuse, and some confusion about which external bodies should be alerted to reports of abuse. The Committee believes that it is essential to standardise the processes used by service providers to ensure that all people with disability can be assured of an appropriate level of support, regardless of which service provider they use.

As a result, the Committee recommends that:

**RECOMMENDATION 3.1**

As part of the development of a zero tolerance of abuse framework, the Victorian Government work with the Department of Health and Human Services, the Disability Services Commissioner, and National Disability Services to create standardised policies and processes for providers to follow when reporting suspected abuse, and supporting clients in the aftermath of abuse.

### 3.3. Improving the system for recording and tracking reports of abuse

The Committee heard evidence about the need for both government and non-government service providers to improve their processes for recording and responding to complaints and allegations of abuse. In particular, witnesses strongly argued that all providers should adopt the use of an online database to record reports of abuse and track the actions of staff.

A number of service providers responded to questions from the Committee about the use of online or computerised databases. The majority of respondents indicated that they did not have a reporting database in place; only 29 per cent were utilising databases in their service. Of those respondents, 19 per cent used RiskMan or the Victorian Health Incident Management System (VHIMS). The majority of providers that indicated they were using an online database were primarily health care providers or larger disability providers. Smaller organisations were unlikely to report using a database to track complaints or reports of abuse.
At a public hearing in Melbourne, Ms Carmen Harris explained that programs like RiskMan assist staff to report issues more effectively as the system has clear categories, stating that ‘what it does is that you put in what has happened, and it will actually tell you’ how to categorise an incident.\footnote{Ms C Harris, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 6.}

The Committee heard evidence from Yooralla about how the organisation implemented the RiskMan system as a way of improving reporting processes after revelations of sexual abuse in its services. Dr Sherene Devanesen, CEO of Yooralla, explained that the organisation has introduced a version of RiskMan to lodge and track all complaints and reports of abuse. Dr Devanesen noted that when a staff member makes a report in the system:

> The original report cannot be changed and … follow up actions can be tracked and monitored. [The] system also generates the mandatory report that is required by the Department of Health and Human Services.\footnote{Dr S Devanesen, Chief Executive Officer, Yooralla, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 4.}

Adjunct Professor Jeffrey Chan, Yooralla’s Chief Practitioner, elaborated on the functions of the RiskMan system, and the way the program automatically alerts relevant staff of any issues, stating that:

> It is an off-the-shelf system but what is significant that Yooralla has done is enhance that system even from the developer's product. We have a unique identifier number which means as soon as a person enters any staff members can log in and enter an incident. It cannot be changed ...

> All staff are given their own username and password and they enter the log in system. Just by entering that system and categorising it sends an alert - a category 1 or 2 - sends an alert to the CEO and myself and to the various general managers. Then that goes to ... the DHHS system and the service manager looks into it.\footnote{Adjunct Professor J Chan, Chief Practitioner, Yooralla, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 9.}

The Committee heard from a number of other service providers about the benefits of lodging and tracking all complaints and reports of abuse using RiskMan or other online databases. Mr Vaughan Winther, Chief Operations Officer, the Australian Community Service Organisation (ACSO), explained that all incidents in the organisation are lodged using RiskMan, in which reports are:

> Escalated via our online system, so it goes up to the CEO or myself with any category 1. We have a really good visibility on what is happening in relation to critical incidents in our services.\footnote{Mr V Winther, Chief Operations Officer, Australian Community Support Organisation, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence p. 3.}

Ms Wendy Shanks, CEO of Shepparton Access, commented on the database used by her organisation to track and respond to reports of abuse within the organisation, noting that:

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\footnote{Ms C Harris, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 6.}
\footnote{Dr S Devanesen, Chief Executive Officer, Yooralla, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 4.}
\footnote{Adjunct Professor J Chan, Chief Practitioner, Yooralla, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 9.}
\footnote{Mr V Winther, Chief Operations Officer, Australian Community Support Organisation, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence p. 3.
All incidents or anything out of the ordinary are reported in an incident report. The incidents are recorded in a register and can be viewed in a graph, which can be used to identify any frequency or potential trends.

Information is utilised to review and renew our positive behaviour support plans at team meetings, where the graph information and the incident report register are used to look at the incidents, their warning signs and potential triggers.\textsuperscript{345}

In a submission to the Inquiry, Wesley Mission Victoria reported that the organisation uses RiskMan which generates reports on incidents for the Department as well as gathering data for internal scrutiny to the organisation’s ‘Quality Risk and Compliance Committee and on a quarterly basis to the Quality Governance subcommittee and the Board of Management meetings’.\textsuperscript{346}

At a public hearing in Melbourne Ms Janine Toomey explained the Department’s current work on developing a new online reporting system for disability services. She stated that:

\begin{quote}
Many have success with systems like RiskMan and are quite keen for us to take some learning from those systems. Our ICT area’s advice at this stage is that we need a system that is interoperable. We need to make sure that in fact we are drawing from and informing the case management system as well as other systems that are in place — that we do not want a standalone IT solution for incident management. This needs to work alongside other IT systems that are in place. The case management system in particular is a critical interface that needs to be worked through.\textsuperscript{347}
\end{quote}

The Victorian Ombudsman has been highly critical of the fact that the Department’s critical incident management system is paper-based and relies on the use of fax machines. In this way, even disability service providers that use their own internal online database for incident reporting must print out all information about an incident and fax this to the Department. According to the Victorian Ombudsman this process:

\begin{quote}
Generates numerous risks: that forms are mislaid, illegible or delayed in transmission. One regional CSO told us that reports may pass through a number of hands and many kilometres in order to access a fax machine. We also heard that the department has, from time to time, notified service providers that the receiving fax machine had failed to operate for lengthy periods and they were required to resend reports.\textsuperscript{348}
\end{quote}

In her recommendations, the Victorian Ombudsman was supportive of the Department’s plans to introduce an online database to manage incident reporting, as part of ‘a broader reform project’ that is person-centred and ‘capable of tracking developments, analysing data and facilitating feedback’.\textsuperscript{349}

\textsuperscript{345} Ms W Shanks, Chief Executive Officer, Shepparton Access, Family and Community Development Committee public hearing – Shepparton, 29 October 2015, transcript of evidence, p. 2.
\textsuperscript{346} Wesley Mission Victoria, submission no. 70, p. 14.
\textsuperscript{347} Ms J Toomey, Director, Service Outcomes, Service Design and Operations Division, Department of Health and Human Services, Family and Community Development Committee public hearing – Melbourne, 22 February 2016, transcript of evidence, p. 11.
\textsuperscript{349} Ibid., p. 143.
The Committee is aware that online reporting databases, like RiskMan, are widely used in the health sector throughout Australia. The Committee also understands that any ICT system used by the Department to track ‘incidents’ will be used not only in relation to disability services, but the other policy areas managed by the Department. While the Committee has no preference regarding the specific software that is used by the Department and service providers, the Committee is adamant that the disability sector adopt a common online system for lodging and tracking reports of abuse.

Accordingly, the Committee recommends that:

**RECOMMENDATION 3.2**

The Victorian Government funds the Department of Health and Human Services and the Disability Services Commissioner to implement an online reporting system for all disability service providers that enables improved recording, tracking, and analysis of all reported instances of abuse.

As discussed in Chapter Two, the Committee is aware that the Department is in the process of responding to the KPMG report and streamlining the categorisation of ‘incidents’. Chapter Two recommended that the Department discontinue the use of the term ‘incidents’ in favour of terminology that acknowledges the impact that acts of abuse have on people with disability, such as the terms assault, neglect, and violence.

At a public hearing in Melbourne Mr Arthur Rogers, Deputy Secretary, social housing and NDIS reform for the Department, stated that feedback from service providers indicated that the Department’s critical incident management system used too many ‘incident types’ to categorise abuse. Mr Rogers commented that:

> KPMG through their review in 2014 said very clearly that the large number of incident types was leading to in fact incorrect classification of incident type, and they felt that it would be more appropriate for a smaller number with more granular detail sitting underneath those incident types so we could get a better understanding of the nature of allegations that were being made. That will continue to be tested through the consultation phase.  

Mr Rogers explained that the Department was considering ‘reducing incident types from 28 to 11’. This new system of categorising abuse would include fewer ‘incident types’ for service providers to choose when entering an instance of abuse into the reporting system, but it would also include a section where staff could describe an ‘incident’ in detail to preserve its context and specificity. The Committee is supportive of attempts to simplify the Department’s reporting system for staff and believes that streamlining the ‘number of incident types’ could assist in preventing the miscategorisation of abuse.

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350 Mr A Rogers, Deputy Secretary, Social Housing and NDIS Reform, Department of Health and Human Services, Family and Community Development Committee public hearing – Melbourne, 22 February 2016, transcript of evidence, p. 6.

351 Ibid., p. 3.
On the issue of reducing the number of categories used to report abuse, the Committee recommends that:

**RECOMMENDATION 3.3**

The Victorian Government requires the Department of Health and Human Services to streamline its critical incident management system to more clearly describe the impact of abuse on clients by using new terminology (as referred to in Recommendation 2.2) and fewer ‘incident types’ to categorise abuse.

### 3.4. Mandatory reporting

In its Interim Report, the Committee indicated its preference for a national system of mandatory reporting arguing that it would ‘legitimise reporting of abuse and provide clarity around the obligation to report’. During Stage 2 of the Inquiry the Committee heard extensive evidence in favour of establishing a process of mandatory reporting to an independent oversight body. Witnesses viewed mandatory reporting as a way of highlighting the problem of abuse and offering protection to disability support workers who sought to report on their colleagues.

At a public hearing in Morwell Mrs Jean Tops, President of the Gippsland Carers Association, strongly promoted a system of mandatory reporting, arguing that:

> It is clear that the current state of affairs and the responses of government are completely broken and entirely need to be fixed. All authorities that come into contact with people with disabilities, such as the family doctor, hospital, social worker, health centre and any other public authority, including police and funded advocates — this is not an exhaustive list — must be included in mandatory reporting. Every funded service provider most certainly be mandated to include the Department of Health and Human Services as well. The department has no credibility left for responding to critical incidents as all the recent media publicity over sexual abuse clearly shows. The failure to act immediately by reporting to the police and standing down alleged offenders must be mandated.

In a submission to the Inquiry, Wesley Mission Victoria stated that:

> In our view the introduction of mandatory reporting will significantly assist in the detection and investigation of cases of abuse, neglect and exploitation of people with a disability. It will also heighten community awareness regarding the vulnerability of some people with a disability and particularly those with limited communication, who are profoundly disabled or living in residential care, and the need to report allegations of abuse to ensure safety and wellbeing.

Ms Channing Coad, a Coordinator of the Certificate IV in Disability at Kangan Institute, suggested that mandatory reporting would support disability workers who are often afraid of reporting abuse:

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353 Mrs J Tops, President, Gippsland Carers Association, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 5.

354 Wesley Mission Victoria, submission no. 70, pp. 13 – 14.
I think that is certainly something that needs to be included, not only in training but for support workers to be morally and ethically responsible for reporting instances. I think there is almost too much of a culture of, ‘If I am quiet and pretend I didn’t see it, then it didn’t happen’. If there is actually a legal and mandatory requirement to report, I think you will see a lot more instances of abuse and neglect coming up.\(^{355}\)

Some witnesses argued that disability service providers are already subject to a system of mandatory reporting through the Department’s critical incident management system. For example, Mr Alistair Houston, from Wimmera UnitingCare, stated that, ‘we are mandatory reporters. It is in our policies and procedures’.\(^{356}\) Other witnesses agreed that service providers were already ‘mandatory reporters’, but suggested that reporting should be changed to an independent body rather than the Department. In a submission to the Inquiry, autism service provider Distinctive Options stated that:

> In effect mandatory reporting is already part of the monitoring system service providers are required to comply with via DHHS.

> The more important question would seem to be when a report is made how effectively does DHHS respond. Given they are a service provider, funder, quality controller, policy developer and monitor should this role remain with DHHS or for sake of confidence in the system and for ensuring an impartial response to claims particularly where they relate to DHHS staffed services an independent body oversee the service system including services provided by DHHS.\(^{357}\)

Stakeholders had a range of views on who should be mandated to report abuse. Advocacy organisation YDAS argued that ‘mandatory reporting requirements should apply to all workers in registered disability services’.\(^{358}\) Others believed a wider range of people should be covered by mandatory reporting requirements. One submitter argued that everyone connected to the disability sector should be required to report, recommending:

> Mandatory for all persons who work in or are associated with the disability sector, medical and allied health professionals, educational professionals and financial advisors.\(^{359}\)

Parent and disability support worker Mr Matthew Potocnik argued similarly that:

> All disability direct care workers, management and service organizations must be mandated to report to the new independent oversight body in regard to any abuse.\(^{360}\)

Ms Michelle Kidd suggested that mandatory reporting should cover a wider range of workers involved in the care of people with disabilities, such as pharmacists.\(^{361}\)

\(^{355}\) Ms C Coad, Coordinator, Certificate IV in Disability, Kangan Institute, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 6.

\(^{356}\) Mr A Houston, acting deputy CEO, Wimmera UnitingCare, Family and Community Development Committee public hearing – Horsham, 3 December 2015, transcript of evidence, p. 4.

\(^{357}\) Distinctive Options, submission no. 42, p. 12.

\(^{358}\) Youth Disability Advocacy Service, submission no. 52, p. 5.

\(^{359}\) Name withheld, submission no. 49, p. 20.

\(^{360}\) Mr M Potocnik, submission no. 66, p. 8.

\(^{361}\) Ms M Kidd, submission no. 89, p. 4.
Ms Jai Phillips from Communication Rights Australia argued that mandatory reporting should cover ‘everyone ... the support workers, the teachers, the aides, all the witnesses to the abuse, with the powers to also speak up to protect them’.\textsuperscript{362}

The Royal Children’s Hospital was supportive of a system of mandatory reporting for adults with disability, and argued that the scheme should be consistent with existing legislative requirements regarding child abuse. In a submission to the Inquiry the Hospital stated that:

\begin{quote}
The presence of an agency with the statutory authority provided to child protection for adults with a disability who could investigate incidents or allegations and make recommendations in keeping with the advocacy and safety of very vulnerable people is therefore warranted. The agency should have appropriately trained staff to undergo investigation of allegations and to support victims to provide the evidence required.\textsuperscript{363}
\end{quote}

JacksonRyan Partners also suggested that the people mandated to report abuse should be ‘at least those as listed for mandatory reporting in child protection’.\textsuperscript{364}

Mr Trevor Carroll from Disability Justice Advocacy also drew attention to the similarity between mandatory reporting in the context of child abuse and the disability sector, noting that:

\begin{quote}
There needs to be mandatory reporting just like we have in child protection across various states and territories. The problem is: who is it that decides who is obliged to report? Obviously from my point of view it should be the person who is responsible for the daily care and support, or advocates if they become aware of it.\textsuperscript{365}
\end{quote}

Almost all stakeholders – including service providers, parents and carers, and advocates – were of the view that mandatory reporting should be to an independent oversight body, rather than the Department. For example, Karingal, AMIDA, YDAS, Endeavour Foundation, Communication Rights Australia, Disability Discrimination Legal Service and Villamanta Disability Rights Legal Service stated that mandatory reporting should be overseen by an independent oversight body.\textsuperscript{366}

The Inclusive Labour Disability Justice Working Group also suggested that mandatory reporting should involve the police:

\begin{quote}
Disability mandatory reporting needs to be reported to Victoria Police. This seriously needs to be looked at in the sense that I would have concerns if mandatory reporting was legislated and it was recommended that it gets reported back to the service provider. To me that would be a conflict of interest. As I said before, it needs to start being looked at. These are not incidents; these are crimes. Neglect, sexual assault and
\end{quote}

\textsuperscript{362} Ms J Phillips, Communication Rights Australia, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 4.
\textsuperscript{363} Royal Children’s Hospital, submission no 62, p. 6.
\textsuperscript{364} JacksonRyan Partners, submission no. 31, p. 31.
\textsuperscript{365} Mr T Carroll, Executive Officer, Disability Justice Advocacy, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, pp. 5-6.
\textsuperscript{366} Karingal, submission no. 65, p. 1; AMIDA, submission no. 63, p. 14; Youth Disability Advocacy Service, submission no. 52, pp. 4-5; Endeavour Foundation, submission no. 73, p. 7, Communication Rights Australia, Disability Discrimination Legal Service and Villamanta Disability Rights Legal Service, submission no. 59, p. 8.
physical assault are crimes. We need to start taking that seriously and lifting up the standards on that one. 367

Some stakeholders did not support mandatory reporting, or did so only for a small group of people with disability. Women with Disabilities Victoria argued that ‘the Victorian government only introduce mandatory reporting where the victim is unable to make informed decisions about the response they require’. 368 The organisation further stated that:

Mandatory reporting is a useful power in some situations but not in all situations. It requires a nuanced framework to ensure reports are not further disempowering people ...

If mandatory reporting to an oversight body were to be introduced across the board, it is essential that principles of empowerment around decision making are included, as navigating the criminal justice system can be retraumatising for people, and more so when their choice about whether to participate in the process has been taken away. 369

Women with Disabilities Victoria highlighted the usefulness of the person-centred support model used by Centres Against Sexual Assault, that focuses on the right of people to make decisions for themselves after experiencing abuse. At a public hearing in Melbourne, Ms Jen Hargrave from Women with Disabilities Victoria explained the benefits of this approach:

Family violence services use a person-centred approach. This responds to the person who discloses the abuse. Disability services can work with violence-response specialists like this to respond to the victim’s fear, their trauma, their safety and their rights. I think this person-centred approach is important to consider when we are considering whether or not mandatory reporting is appropriate, how we hold a person-centred approach at the same time as having a mandatory reporting system. 370

Ms Jenny Harrison, mother of an adult with disability, was also uncertain about the need to introduce mandatory reporting, commenting that:

I would be concerned about adults not having the right to privacy and not having the right to make decisions about what happens and what they disclose. I think even though we might see people with disabilities, and certainly people who are ageing, as vulnerable, people still have rights as adults. That is the conflict, I suppose, for me. And I think, too, that there is an important role for other responses. If you mandate, then you might say, ‘We don’t need to do the other. We might not need to do the education, or we might not do some other awareness raising’. I think there are lots of benefits from the other. 371

Ms Carolyn Worth, from South Eastern CASA, was also concerned that mandatory reporting would undermine the rights of adults with disability, arguing that:


368 Women with Disabilities Victoria, submission no. 77, p. 6.

369 Ibid., p. 23.

370 Ms J Hargrave, Policy Officer, Women with Disabilities Victoria, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 3.

371 Ms J Harrison, parent, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 4
We actually do think you should not mandate it for people who can make informed decisions, because that is not how it is for the rest of the world, unless you are under 16 and it is intrafamilial, so I do not think that helps to empower people. Being empowered is part of the way you do not get assaulted. If you are infantilised in some way, it makes you much more vulnerable ... Only this is adults. We do not do that for any other adults, so I would have thought that places need robust processes in place that you report to your supervisor, and there is no choice about this and it becomes whatever they call a cat. 1 sort of incident ... There are people who cannot, that is true, but if you do it across the board, there are people who can make informed decisions who are able to make decisions about other things, and this is a decision you are then taking away from them.\textsuperscript{372}

The Senate Community Affairs References Committee recommended a national mandatory reporting scheme as part of the safeguarding framework for the NDIS to ‘cover all disability workers, organisations and people with disability, without being restricted to NDIS participants’.\textsuperscript{373} Similarly, in her report the Victorian Ombudsman recommended the introduction of mandatory reporting ‘by all service providers, of all serious incidents to an independent oversight body’.\textsuperscript{374}

Most witnesses advocating a system of mandatory reporting referred to Victoria’s child protection provisions as a possible model for the disability sector. However, most stakeholders were not aware that Victoria’s mandatory reporting system for children has recently undergone a significant change that requires \textit{all adults}, not simply people working directly with children, to report suspected abuse. Mandatory reporting for child abuse in Victoria has evolved over time from a system that required only specified professionals such as teachers, doctors and nurses to report, to the current system that covers all adults. In 2014 an amendment to the \textit{Crimes Act 1958 (Vic)} introduced the criminal offence of ‘failure to disclose’ which mandates that any adult who forms a reasonable belief that a sexual offence has been committed by an adult against a child under 16 has an obligation to report to the police.\textsuperscript{375} The introduction of this offence affirms that child protection is a community responsibility and was a key recommendation of \textit{Betrayal of Trust} – the report of the Inquiry into the handling of child abuse by religious and other non-government organisations, conducted by the Family and Community Development Committee of the \textit{57th} Victorian Parliament.

Children with disability living in Victoria are automatically covered by this new mandatory reporting requirement. In this way, any mandatory reporting system for the disability sector will necessarily be a system designed to safeguard adults. The Committee understands that some stakeholders are concerned that a mandatory reporting scheme would undermine the ability of adults with disability to make their own decisions about reporting abuse. The Committee recognises that the cognitive

\textsuperscript{372} Ms C Worth, South East Centre Against Sexual Assault, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 6.

\textsuperscript{373} Senate Community Affairs References Committee, \textit{Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability}, Commonwealth of Australia, Canberra, 2015, p. xv.


abilities of adults with disability vary widely. At the same time, the Committee is aware that some people with disability – particularly people living in supported accommodation who have intellectual or communication difficulties – are at higher risk of abuse and face significant barriers to reporting abuse. The Committee believes that a mandatory reporting scheme for adults with disability is necessary to safeguard this group.

The Victorian Ombudsman suggested that the mandatory reporting scheme managed by the New South Wales Ombudsman provides a good model for Victoria. Since 2014 the NSW Ombudsman has had oversight of ‘reportable incidents’ involving the abuse and neglect of people with disability in that state. Under this system service providers are still required to report ‘incidents’ to the Department of Family and Community Services as normal, but particular incidents must be reported to the Ombudsman within 30 days for further scrutiny, including:

- staff-to-client incidents;
- client-to-client incidents;
- contravention of an apprehended violence order; and
- unexplained serious injuries.

The NSW Ombudsman explains its role in the following way:

> Our role under the new scheme is to oversee investigations undertaken by FACS [Department of Family and Community Services] or FACS funded providers into reportable incidents and to determine whether appropriate action has been taken as a result of the investigation.\(^{376}\)

The reporting scheme covers all funded disability service providers and relates to incidents that involve clients that live in supported accommodation houses (and covers incidents that might occur while a client attends a day program).

The Committee received limited evidence about the NSW scheme of mandatory reporting. However, Dr Jessica Cadwallader was critical of the scheme used in NSW, which while independent of the Department of Family and Community Services, still views abuse within a service setting:

> In New South Wales you have no doubt seen that there is now a mandatory reporting scheme around what I think they call ‘critical incidents’ at supported accommodation. The rates of reporting for that have been extraordinarily high. On the one hand it is great that we now have some sense of data that is backing up what we see every day on the front lines, but again, because it is identified as ‘serious behaviour’ or ‘critical incidents’, it tends to mean that these do not get referred to police and they do not lead to criminal investigation or to prosecution.\(^{377}\)

The Committee considers that introduction of a mandatory reporting scheme is fundamental to improving Victoria’s safeguards for people with disability. While the

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\(^{377}\) Dr J Cadwallader, Australian Cross Disability Alliance, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 4.
Committee expects that a national scheme will be established by the Commonwealth Department of Social Services as part of the overarching safeguarding framework for the NDIS, the Committee believes that the Victorian Government should implement its own scheme as an interim measure.

The Committee confirms its previous recommendation in its Interim Report that a national scheme be established, which has now been recommended by the Senate Inquiry. Accordingly the Committee recommends that:

**RECOMMENDATION 3.4**

The Victorian Government use its position on the Disability Reform Council and the Council of Australian Governments to support the establishment of a national system for reporting and investigating violence against people with disability, including a mandatory reporting scheme, as recommended by the Senate Community Affairs References Committee.

The Committee emphasises that mandatory reporting is *not* a substitute for reporting suspected abuse to the police. A mandatory reporting scheme provides an additional level of security and oversight of disability service providers – it cannot replace a formal criminal investigation. As part of the Department’s critical incident management system service providers are currently required to report all Category 1 incidents – which include sexual assaults perpetrated by staff or clients – to police. More broadly, all citizens have an ethical obligation to report cases of assault they witness, regardless of whether it involves a person with a disability or not.

The Committee agrees with the overwhelming majority of the Inquiry’s stakeholders that mandatory reporting should be to an independent oversight body. Although the current critical incident management system operated by the Department is ‘mandatory’ for all funded organisations, the Committee believes that the Department is not sufficiently independent from service delivery to provide adequate oversight of reporting practices. The Committee considers a renewed DSC to be the most appropriate body to manage a system of mandatory reporting as – unlike other oversight bodies, such as the Victorian Ombudsman or the Victorian Equal Opportunity and Human Rights Commission – the organisation already has the appropriate expertise in the disability sector. In this scheme, the DSC would analyse all reports of abuse received from service providers, identify any patterns or trends, and recommend further investigations or improvements to service provision.

On the issue of mandatory reporting the Committee recommends that:

**RECOMMENDATION 3.5**

The Victorian Government amend the *Disability Act 2006* (Vic) to establish a mandatory reporting scheme that:

- requires all registered disability service providers to report cases of suspected abuse and neglect within their organisation to the Disability Services Commissioner; and
- includes penalties for disability service providers and their staff that fail to report abuse to the Disability Services Commissioner.
Chapter 4
Disability workforce

AT A GLANCE

Background

In the Committee’s Interim Report, the Committee recommended that ‘the Victorian Government advises the Disability Reform Council to ensure the establishment of a national quality assurance agency with responsibility for:

- screening and clearance checks—administering a working with vulnerable persons check
- provider registration
- individual registration of disability workers’. \(^{378}\)

Chapter overview

This chapter examines the disability workforce in Victoria. It responds to term of reference (A)(I) by considering ‘any interim measures to strengthen the disability services system prior to transition to the National Disability Insurance Scheme’. It also addresses terms of reference (A)(II) ‘any measures to strengthen the capacity of providers to prevent, report and act upon abuse to enhance the capability of service providers to transition to the National Disability Insurance Scheme’, and (B)(II) ‘strategies to prevent abuse occurring’.

The chapter also engages with one of the questions posed by the Committee in its Interim Report: Should the Victorian Government develop a statewide prevention and risk management strategy for the Victorian disability workforce from 2016 to 2019?

The Committee accepts that disability support workers should not be made the scapegoats for a sector that has failed to protect people with disability from abuse. However, the Committee has received substantial evidence of the bitter disappointment of carers and parents of people with disability, who have placed their loved ones in the care of service providers, only to find that in doing so they have exposed their family members to sexual and physical assaults, neglect endangering life, financial abuse and incompetence. The Committee found that the workplace culture of the disability sector requires profound change to ensure that the abuse of people with disability is prevented.

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\(^{378}\) Family and Community Development Committee, Inquiry into Abuse in Disability Services – Interim Report, Parliament of Victoria, Melbourne, 2015, p. xxix
The Committee found an urgent need for the reform of the sector. It recommends: the development of a statewide prevention and risk management workforce strategy for disability services, as a core component of the zero tolerance of abuse framework; the introduction of a Working with Vulnerable People Check; the extension of the Disability Worker Exclusion Scheme (DWES) to cover all disability services; a revised Certificate IV in Disability become the national minimum standard qualification; measures to address the casualisation of the workforce; and recommendations to address workforce culture.
This chapter examines the disability workforce in Victoria. It responds to term of reference (A)(I) by considering ‘any interim measures to strengthen the disability services system prior to transition to the National Disability Insurance Scheme’. It also addresses terms of reference (A)(II) ‘any measures to strengthen the capacity of providers to prevent, report and act upon abuse to enhance the capability of service providers to transition to the National Disability Insurance Scheme’, and (B)(II) ‘strategies to prevent abuse occurring’. The chapter also engages with one of the questions posed by the Committee in its Interim Report: ‘Should the Victorian Government develop a statewide prevention and risk management strategy for the Victorian disability workforce from 2016 to 2019?’.379

In the Committee’s Interim Report, the Committee recommended that ‘the Victorian Government advises the Disability Reform Council to ensure the establishment of a national quality assurance agency with responsibility for:

- screening and clearance checks—administering a working with vulnerable persons check
- provider registration
- individual registration of disability workers’.380

The Disability Reform Council’s ‘Integrated Market Sector and Workforce Strategy June 2015’ proposed that the Sector Development Fund be used to support the disability sector through funding the analysis of training and skill requirements.381 The Council sees the National Disability Insurance Scheme (NDIS) as requiring a greatly expanded and diversified workforce in coming years, and identifies the necessity of balancing low barriers for entry to the workforce with appropriate levels of workforce screening through the development of the National Quality and Safeguarding Framework.382

With its focus on the disability workforce, this chapter outlines the legislative, policy and process changes that are needed to prevent abuse. The Committee is adamant that as much as these changes are required, there is an urgent need for a profound change within the workplace culture of disability services. This change must hinge on the principle of the zero tolerance of abuse.

**4.1. Disability workforce**

Through the evidence presented to this Inquiry, including the many site inspections of disability service providers conducted around the state, the Committee understands that the disability workforce comprises many dedicated, committed and caring support workers. The Committee is aware that, as a workforce, disability support workers are amongst the lowest paid workers in the care sector, work in challenging environments that are often poorly managed, and are frequently poorly trained, or

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379 Ibid., p. xxx.
380 Ibid., p. xix
382 Ibid., p. 22.
undertrained, for the complex tasks they are required to undertake. Moreover, disability workers work in an industry which is known to have punished whistleblowers, who give voice to incidents or patterns of abuse and mismanagement, an issue the Committee addressed in Chapter Two. Even trenchant critics of the disability workplace, such as parent and disability support worker Mr Colin Bayne, admit that the sector contains many committed workers:

There are a lot of good people in this field — some incredible people; some who should be canonised and some who should be cannoned. I have met some absolute saints.

Similarly, Mrs Jean Tops, President of the Gippsland Carers Association, told the Committee at a public hearing in Morwell that:

On the other side of the coin of course there are many people who are genuinely providing a caring and collaborative arrangement with their residents and their families. They have shockingly inadequate training for the diversity of residents and clients they are providing a service to.

The Committee accepts that disability support workers should not be made the scapegoats for a sector that, as a whole, has comprehensively failed to protect people with disability from abuse. However, the Committee has received substantial evidence of the bitter disappointment of carers and parents of people with disability, who have placed their loved ones in the care of service providers, only to find that in doing so they have exposed their family members to sexual and physical assaults, neglect endangering life, financial abuse and incompetence.

Previous chapters of this report have outlined examples of the kinds of sexual and physical assaults that have plagued this sector. Carers and parents of people with disability, and some support workers, have expressed their horror and astonishment at the failures and incompetence present in residential accommodation, the unwarranted attacks on them for making complaints, and the sheer absence of respect for dignity and human rights of people with disability in the provision of services. The failures and incompetence encompass staff, management, supervisors, and boards in both government and non-government sectors.

At the Morwell public hearing the Committee heard from members of the Gippsland Carers Association. Ms Lorraine Beasley told the Committee of her 20 years of experience of the sector, as a parent, disability support worker and whistleblower:

I and many other carers, paid and unpaid, have seen a range of abuse and neglect. In my 20 years working in disability services, I have worked with some wonderful staff. Unfortunately not all paid carers treat people in the respectful manner they deserve. Further, in some organisations those who report abuse and neglect concerns are labelled troublemakers by management and offenders alike. This in turn reduces

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384 Mr C Bayne, parent and disability worker, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 11.
385 Mrs J Tops, President, Gippsland Carers Association, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 5.
reporting by staff, who become scared of the consequences and impact. It impacts on the shifts they are offered and they are just treated badly. I am proudly a whistleblower and will remain that.³⁸⁶

Mrs Jean Tops, President of the Gippsland Carers Association, told the Committee that the sector had a profound problem within its workplace culture:

Then we come to the workforce culture. In order to stamp out a workforce culture of abuse and neglect there must be a quantum change in the attitudes of people who are working in the sector. Families who have spent a lifetime caring for loved family members are often treated with an offhand manner on a sliding scale up to a culture of fear and complete rejection.³⁸⁷

Mrs Tops related to the Committee her personal stories of the treatment of her daughter in a residential care service. At her own expense, Mrs Tops provided the incontinence products her daughter required, plus a protective sheet for the mattress and special blankets. The day after providing these products to the house Mrs Tops received a call from the house supervisor:

‘Jean, have you got another one of those mattress protectors?’. I went, ‘Why? You just got a new one put on the bed yesterday’. ‘Ah, well, the staff kind of did not know how to make Moya’s bed,’ so what they actually did was they put Moya into the bed with just the mattress protector on it and put all of the incontinence products, including the rubber draw sheet, on top of her, and then her blankets. Naturally the entire mattress was soaked from one end to the other.³⁸⁸

Mrs Tops resorted to drawing a detailed diagram for staff in order for them to be able to properly prepare her daughter’s bed, and concluded by saying, ‘That ought to be mandatory within the training for people who work in disability services, but it clearly is not.’³⁸⁹

At the Morwell public hearing the Committee also heard from Ms Julie Pianto. In addition to not knowing whether or not her son was sexually assaulted at his residential facility, Ms Pianto recounts the substandard level of care provided by staff, which endangered her son’s life:

The final example I would like to discuss is the life-threatening one that caused me to remove Christopher from the Tipping house. My complaints to E. W. Tipping had gone on for over a year at this point, where, among a lot of other things, I was very concerned about Christopher being fed enough to keep his blood glucose stable. Over a period of weeks Christopher was inadequately fed so consistently that eventually his blood glucose dropped to 1.4, which put him at immediate risk of seizure, coma or sudden death, and an ambulance was called.³⁹⁰

³⁸⁶ Mrs L Beasley, Gippsland Carers Association, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, pp. 6-7.
³⁸⁷ Mrs J Tops, President, Gippsland Carers Association, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 5.
³⁸⁸ Ibid., p. 16.
³⁸⁹ Ibid., p. 17.
Ms Pianto was highly critical of the serious lack of training of staff to perform their duties, particularly in relation to the individual needs of clients. She told the Committee that:

If you look at the house, the clients in the house, there was someone with an ABI. The requirements to be able to support someone with an ABI and with OCD is different to requirements for someone who is non-verbal and severely autistic and hypoglycaemic. ...

I believe, by the way, that the morning the ambulance was called and we had to take Christopher out, the worker that was on that day had very little training and she was devastated. If Christopher had died there would have been a lot of people impacted and she would have been one of them. I feel that Tipping actually did a bad disservice to their staff, too. It is not just the clients and the families that are at risk; it is the staff that are at risk as well. I think there needs to be a proper support plan done for every individual client and the training has to be tailored to that particular person’s needs.391

At the Ballarat public hearing the Committee heard from parent Ms Michele Armstrong, whose daughter had been in residential care. Ms Armstrong arrived at the facility while her daughter was being bathed and was met with the following reaction from staff:

When I arrived there, they did not want me to go to the bathroom. They stood in the doorway. They said, ‘She’s in the bath at the moment. You’ll have to wait till she gets out’. The fact that a staff member stood in the doorway, alarm bells rang instantly with me. I thought, ‘As soon as she moves from that doorway, I’m down that passage’, which is what happened. When I got down there she was in the bath. I looked around, and I said, ‘Where’s your towel?’ She said, ‘Over there’. I said, ‘That is not your towel’. I had bought her nice new towels. ‘Yes, that’s what they give me to dry myself’. It was a rag. In here they have put that it was a ripped towel. It was not a towel; it was about the size of these here. It was stiff as a board, as if it had been used as a rag and hung up, and it had holes in it. I took it and went straight down to DHS with it, and had quite a bit to say about the level or the lack of care in that house.392

Ms Michelle Kidd told the Committee at a Melbourne public hearing about her daughter, who was in residential care. Ms Kidd stated that over time it became clear that ‘basic human needs were not being afforded to her — dignity, food, water, pain relief, protection’.393 Ms Kidd related to the Committee an occasion when her daughter was not administered her prescribed drugs, despite the fact that three carers were on duty at the house:

There were three carers. One looked no older than my eldest daughter, a school leaver who stood in absolute astonishment when I walked through the door. The other was a middle-aged woman with children of her own. The other was a man who told me he was a miner in his last job. He did not have any children of his own. He did not have any qualifications. I was very calm, I was very dignified and I think quite polite, but I stated, ‘Not one of you as an individual or the three of you as a collective have stopped for one

391 Ibid., p. 4.
392 Ms M Armstrong, Family and Community Development Committee public hearing – Ballarat, 6 November 2015, transcript of evidence, p. 3.
393 Ms M Kidd, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 2.
moment and thought, “What does Erin need right now?”. The answer is Panadol’. She needed Panadol, they did not give it to her and she cannot ask for it. I said to them, ‘I know that you don’t want to be scrutinised, you don’t want to feel that you’re being watched, but I don’t come to the house; I go to school to see her. I don’t come and watch you all the time. I need to trust that you can give my little girl Panadol’. These are basic things.\textsuperscript{394}

At the same public hearing, Mr Matthew Potocnik, parent and disability support worker, advised the Committee that he had witnessed staff malpractice involving assaults of clients and the misuse of client funds.\textsuperscript{395} The Committee heard multiple accounts of this nature.

In its Interim Report, the Committee posed the question for Stage 2: ‘Should the Victorian Government develop a statewide prevention and risk management strategy for the Victorian disability workforce from 2016 to 2019?’\textsuperscript{396} Few of the Committee’s respondents directly addressed this question, preferring instead to outline specific measures or components that could comprise such a strategy. These are discussed in detail below. However, the Health and Community Services Union did state in its submission that, ‘We believe it is of fundamental importance that the government develop a statewide prevention and risk management workforce strategy.’\textsuperscript{397} This view was supported by the Wesley Mission in its submission.\textsuperscript{398}

The Committee has recommended that zero tolerance of abuse become a guiding principle for the delivery of all disability services, and that a demonstrated commitment to this principle be a condition of registration for all service providers. The Committee has also urged the Victorian Government to use its position on the Disability Reform Council to develop a national strategy for the prevention of violence against people with disability. The Committee is strongly of the view that reform of the sector cannot wait until the full roll-out of the NDIS.

In regard to workforce strategy, the Committee believes that it is essential that a statewide prevention and risk management workforce strategy be developed. This strategy will be guided by the principle of zero tolerance of abuse, and will include such matters as workforce screening and recruitment, registration and de-registration, induction and supervision, training and professional development, certification, and workforce culture.

Accordingly, the Committee recommends that:

\begin{itemize}
  \item \textsuperscript{394} Ibid., p. 5.
  \item \textsuperscript{395} Mr M Potocnik, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence.
  \item \textsuperscript{396} Family and Community Development Committee, \textit{Inquiry into Abuse in Disability Services – Interim Report}, Parliament of Victoria, Melbourne, 2015, p. xxx.
  \item \textsuperscript{397} Health and Community Services Union, submission no. 95, p. 8.
  \item \textsuperscript{398} Wesley Mission Victoria, submission no. 70, p. 4.
\end{itemize}
RECOMMENDATION 4.1

The Victorian Government develop a statewide prevention and risk management workforce strategy for disability services. This strategy will be a core element of Victoria’s new zero tolerance of abuse framework (as recommended in Recommendation 2.1). It will address workforce screening and recruitment, registration, induction and supervision, ongoing training and professional development, certification, and workforce culture.

4.2. Workforce screening

The Committee understands that effective workforce screening is an essential component in the prevention of abuse of people with disability. Stage 2 of the Inquiry has revealed widespread dissatisfaction with the adequacy of workforce screening processes, and a divergent set of practices conducted by disability service providers. As both the public revelations of abuse in 2014 and the evidence to this Inquiry demonstrate, it has been, and continues to be, too easy for predators to gain access to employment in the disability sector. The nexus between levels of abuse and workforce screening was underlined by Ms Cath McDonald, CEO of the Bendigo-based disability service provider Radius, who told the Committee that:

What has got to happen is that we have got to remove the ones who are abusers from the program. You have got to then have your culture established so that new abusers do not come in...\(^\text{399}\)

The Department of Health and Human Services (the Department) has established standards for safety screening for all funded organisations, within its Service Agreement Information Kit.\(^\text{400}\) Pre-employment safety screening involves: Disability Worker Exclusion List check; Disqualified Carer check; employment history; police record check; qualification check; confirmation of Working with Children Check; and referee checks. The policy states that the ‘overarching imperative of the policy is to strengthen the protections and safeguards for people through a rigorous approach to managing employment safety screening’.\(^\text{401}\) However, the Committee questions whether the Department follows up on the compliance with these standards.

There was widespread support from key stakeholders to this Inquiry for the disability workforce screening processes to be expanded and deepened. Stakeholders to the Inquiry strongly supported the introduction of a Working with Vulnerable People Check, and a registration scheme for all disability workers. In regard to the latter, many stakeholders saw a necessity for a registration scheme to be nationally based.

There was criticism of the Disability Worker Exclusion Scheme (DWES) in regard to its current narrow application, and support for its expansion to cover all disability

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\(^{399}\) Ms C McDonald, Chief Executive Officer, Radius, Family and Community Development Committee public hearing – Bendigo, 5 November 2015, p. 10.


\(^{401}\) Ibid.
support workers. There was significant support for registration to be handled by a single independent agency.

In their submission the Health and Community Services Union (HACSU) supported an expanded screening system, including a Working with Vulnerable People Check and a registration body to investigate allegations of abuse. Like some others, HACSU saw an eventual registration scheme making the DWES redundant:

HACSU submit that the preferable screening system in Victoria is a legislated, working with vulnerable persons check aligned with a risk based disability registration scheme. This will include the capacity of the registration body to investigate allegations of abuse and would include the authority to remove a workers registration, this would render the need for a legislated disability worker exclusion scheme redundant.  

HACSU envisage base level registration would require all disability workers to undertake and pass: a police check, a Working with Vulnerable People Check (akin to that legislated in the ACT) to prove that they are a fit and proper person, and if they have lived and worked overseas, an international police check. HACSU view the development of a risk-based disability worker accreditation and registration system as occurring in stages:

We would say that the initial phase of background checks and the Working with Vulnerable People Checks would be the first step and then next step would be towards a more robust registration system where qualifications at certain levels are then incorporated and continuing professional development and standards processes would be implemented. We think it would be a stage process.

In their submission service provider Gateways Support Services stated that they currently employ a pre-employment check and screening process in accordance with a zero tolerance approach to abuse and neglect. However, due to the fact that Gateways also provides services to out of home care for children, and disability services, the Department’s current system is too unwieldy:

Gateways currently has to comply with two DHHS systems, the carers register for out of home carers and the DEWS [sic] system for disability residential services. We support the concept of one scheme that applies to all those who work with vulnerable people.

Establishing a single screening system was also supported by the Australian Community Support Organisation (ACSO). ACSO stated in their submission that:

In the current climate, ACSO believes that establishing a combined version of a screening system will provide a stronger safeguard to prevent abuse and neglect against vulnerable persons. Service providers will have access to screening processes that provide the highest level of scrutiny into a potential worker’s employment history. Not only will workers who have a criminal record be picked up through the screening

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402 Health and Community Services Union, submission no. 95, p. 8.
403 Ibid., p. 9
404 Mr L Williams, State Secretary, Health And Community Services Union, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 9.
405 Gateways Support Services, submission no. 75, p. 4.
ACSO argue that this screening process ‘should be consistent across all sectors given the similarity of the risks that vulnerable clients face when accessing a service, and it should be managed centrally to reduce waste and duplicated effort across sectors and increase confidence in the checks.’ The screening process should also require ongoing monitoring similar to the Working with Children Check. ACSO support a future national disability worker registration scheme as the preferable option in order to ‘ensure consistency in registration processes across jurisdictions, given that support workers may move across different jurisdictions.’

Service provider Karingal also sees a place for a future legislated national screening system. Following the full transition to the NDIS, Karingal favour the establishment of an independent body to oversee service standards, accreditation and registration. In their submission Karingal stated that such a system would include, ‘A combination of an exclusion scheme, a working with vulnerable persons check and minimum qualifications [which] is a preferable model and should be established in a similar manner to the Australian Health Practitioner Regulation Agency (AHPRA).’ Service provider Distinctive Options supported a national registration process for all workers to be managed by the one registration body.

At a public hearing in Melbourne, Ms Catherine Dixon, Director of Commissioner’s Office, at the Victorian Equal Opportunity and Human Rights Commission (VEOHRC), told the Committee that, while the DWES was a good start, a registration scheme would ensure a more comprehensive analysis of a person’s “suitability to work” in the sector:

The second response to questions that you’ve raised that we wanted to touch on was in relation to whether a Disability Worker Registration Scheme should be established. That was an important issue that came out of our research in Beyond Doubt. We considered that a registration scheme would bring many benefits and it would ensure a comprehensive risk analysis to determine a person's suitability to work at a disability service. We think that criminal penalties for people who seek to work or volunteer contrary to conditions attached to registration would be a powerful tool for compliance. We know that such a scheme would be extremely broad in nature so one of the things that we recommended was further consultation, particularly with people with disabilities and potentially a feasibility study. We know there are models we can look to, whether it is Victorian Institute of Teaching, AHPRA or the Working With Children Checks and we think the exclusion scheme is a good start but we think it could be broadened to other settings but also more broadly to a registration scheme.

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406 Australian Community Support Organisation, submission no. 69, pp. 7-8.
407 Ibid., p. 8.
408 Ibid., p. 8.
409 Ibid., p. 8.
410 Karingal, submission no. 65, p. 1.
411 Distinctive Options, submission no. 42, p. 8.
In their submission the Wesley Mission stated that the DWES should be extended beyond residential services to all providers and services, and incorporated into a Working with Vulnerable People Check (WWVPC) screening process to be managed by an independent body. The WWVPC would entail a broad based screening process including: a national police check; information from relevant professional bodies; information from courts, and Corrections; information on spent convictions; employment history; and any other information relevant to working with people with disability.

Ms Wendy Shanks, CEO of Shepparton Access, told the Committee at the Shepparton public hearing that she supported the introduction of a WWVPC, provided that it did not add another layer of compliance:

I think everything would be good, but then we have to look at the time involved in that, the cost involved in that — and that becomes more compliance. One of our biggest issues, I believe, is compliance. And if that could be interacted with one of the others, it would be good, rather than doing a third check.

JacksonRyan Partners told the Committee at a public hearing in Melbourne that they supported the registration of workers, and the need for an interim system to be put in place in Victoria:

We strongly believe that workers need to be registered. In terms of an interim arrangement, we do believe there need to be some new arrangements set in place in Victoria, so we accept that an interim system is required. Some of that does require acknowledging that the current system has failed and that what is required is urgent action.

JacksonRyan Partners argued that the oversight body for registration of workers should also be the body that handles complaints. Ms Ryan told the Committee that:

If you do not do it that way, you create gaps. Because if you have another body that handles the registration of workers as well as the registration of service providers — I think we called one accreditation and one registration — that body does that, but then you take your complaint about a service provider to this other body and you have immediately got a gap. That is what is being said as some of the problems now: you have these black spots, you have these gaps. We do not want to set up anything that creates more gaps.

Amongst carers and parents there was strong support for an enhanced screening process that would protect people with disability. In her submission Ms Jenny Harrison stated that:

A registering body or national agency is a good place to start. This would include a range of entry level requirements to meet registration. I don’t know the Australian

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413 Wesley Mission Victoria, submission no. 70, pp. 5-6.
414 Ibid., pp. 4-6.
417 Ibid.
Health Practitioner Regulation Agency but the website looks user friendly. The registering body would have a process by which support workers could be de registered by employers, until matters are resolved, Fair Work Australia could assist in resolving those matters. I would prefer this process, to the exclusion list currently in place for DHS accommodation services.

A registering body would be a fabulous work force development that also supports individuals and families to directly employ. Sourcing and ensuring the credentials of support workers is one of the biggest challenges to an individual as employer... 418

Ms Harrison supported the introduction of a WWVPC for all support workers, who would be registered with the one registration body. But Ms Harrison suggested that a more appropriate name for the WWVPC would be the ‘Working with Adult Check’. 419

Ms Lorraine Beasley, parent and disability support worker, told the Committee at the Morwell hearing that:

As professional carers it is seen as appropriate to introduce some sort of registration scheme, like nurses have — when I was a div. 2 I had to be registered — and hopefully that would help weed out inappropriate staff. On the DHS worker exclusion scheme, despite the fact that the union — and I am a union delegate too — jumped up and down about it, most of us feel that it is good. However, some managers have used it inappropriately to punish whistleblowers. 420

The Committee has heard substantial support for the introduction of a WWVPC. The only jurisdiction in Australia with such a check in place is the Australian Capital Territory (ACT). Tasmania has introduced recent legislation, the Registration to Work with Vulnerable People Act 2013 (Tas), which defines a vulnerable person as either a child or an adult accessing a regulated activity. However, the Tasmanian law is being phased in over 3 years beginning July 2014, and child services are the first sector required to make the transition to the new regulations.

The ACT’s Working with Vulnerable People (Background Checking) Act 2011, (the WWVP Act) defines a person as being vulnerable if they are a child under the age of 18 years or an adult who is experiencing disadvantage and accesses a regulated activity or service related to the disadvantage. One of the regulated activities provided for in the Act is disability services. The WWVP Act established a staged approach for registration. In the second year of operation religious organisations and all employees and volunteers providing community services, disability services, respite care services and services to homeless people, and victims of crime were required to be registered.

The WWVP Act requires registration for people working or volunteering with vulnerable people in a regulated activity or service on a regular basis. There are some exemptions. All applicants must undergo a risk assessment in accordance with the Working with Vulnerable People (Background Checking) Risk Assessment Guidelines. The assessment considers an applicant’s criminal history, non-conviction information,

418 Ms Jenny Harrison, submission no. 90, p. 24.
419 Ibid.
past working with vulnerable people registration history, and relevant information to make a decision about whether the applicant poses an unacceptable risk of harm to vulnerable people. The WWVP Act provides for de-registration. Penalties apply throughout the WWVP Act for contraventions of its provisions. The registering body can request any information from any person believed to have information relevant to deciding the application, which may include regulatory or authorising authorities, independent advisors and other law enforcement agencies. 421

Victoria has a Working with Children Check (WWCC), which was created by the Working with Children Act 2005 (Vic). The WWCC examines relevant information from national criminal records and reports by professional bodies. It also examines reports from Corrections Victoria, the Department of Health and Human Services’ Child Protection Unit, other courts, information provided by organisations and other relevant sources. If the check does not reveal any relevant offences or professional conduct reports, it is passed, a card issued and the check becomes valid for five years. Unlike a police check, which only provides a list of the offences that can be disclosed from a person’s national criminal records, the WWCC is a screening process that examines serious criminal charges, offences, findings of guilt and professional conduct reports related to the safety of children across a person’s lifetime. While police checks are not automatically updated, the WWCC is subject to continuous monitoring for the duration of the validity of the check (five years). Victoria Police automatically notifies the Department of relevant charges, offences and findings of guilt, which then results in a re-assessment of eligibility. The check can be suspended or revoked if the holder is charged with a relevant offence, or if a professional conduct report is made. 422 A WWCC is required for disability support workers who work with children with disability. The Committee recommends that the evaluation of the ACT and Tasmanian Working with Vulnerable People Acts be taken into consideration when Victoria creates its own check.

As noted above, in its Interim Report the Committee recommended the creation of a national quality assurance agency to be responsible for screening, including a working with vulnerable persons check, and the registration of disability workers. The Committee strongly supports the views of stakeholders for the development of a national screening program, established under legislation, that would provide for a national registration body to register all disability support workers. The national screening program would incorporate a Working with Vulnerable People Check, providing for a full screening process that examines all relevant and serious criminal charges, offences, findings of guilt and professional conduct reports across a

421 The criminal history check includes any conviction of, or finding of guilt against, the person for a relevant offence, such as sexual offences; offences against a person; offences involving violence; offences involving dishonesty or fraud; offences relating to property; offences involving possession of, or trafficking in, a drug of dependence or a controlled drug; offences against an animal; and driving offences. Non-conviction information includes where a person has been charged with a relevant offence, but the proceeding is not finalised, the charge has lapsed, been withdrawn or acquitted, had a conviction for the alleged offence quashed or set aside, or been served with an infringement notice for the alleged offence. It also includes spent convictions. Relevant information can cover supporting information from an employer, counsellor, psychotherapist, or other health practitioner. Working with Vulnerable People (Background Checking) Act 2011 (ACT), s. 24-26. The registration body in the ACT is Access Canberra, an agency within the ACT’s Chief Minister, Treasury and Economic Development Directorate. Access Canberra was established in 2014, see Access Canberra, ‘About Access Canberra’, ACT Government, Canberra, accessed 23 March 2016, www.accesscanberra.act.gov.au/app/answers/detail/a_id/1782/~/about-access-canberra.

person’s lifetime. Such an assessment would include an applicant’s criminal history, non-conviction information, past working with vulnerable people registration history, and any relevant information to make a decision about whether the applicant poses an unacceptable risk of harm to vulnerable people. The system would provide a clearance to work that is revocable and the check would be monitored for its duration. It would thus allow for de-registration, and penalties would apply for contraventions of legislative provisions.

The Committee did hear limited support for the introduction of a regulatory agency analogous to the Australian Health Practitioner Regulation Agency (AHPRA), established in 2008 to create a single national registration and accreditation scheme for registered health practitioners. The Committee believes that at this stage this professions-based model would not sufficiently ‘capture’ the current disability workforce for registration, but that it may offer a sound adjunct to the future registration of a more professionalised disability workforce.

The Committee is extremely concerned that in the interim period prior to the full roll-out of the NDIS, and the implementation of its safeguarding framework, people with disability in Victoria will continue to be exposed to the risk of abuse, neglect, violence and the assaults of predators. The Committee therefore believes that the Victorian Government must act to improve the protections for people with disability as a matter of urgency, and that an enhanced workforce screening process is central to this improvement. The Committee believes an essential component of a prevention and risk management workforce strategy for disability services is the introduction of a Working with Vulnerable People Act in Victoria. This new legislation can provide the basis for a substantive Working with Vulnerable People Check for people wishing to work with adults with disability (and other vulnerable adults). Its provisions would mirror those outlined above as the preferred elements of a national check – a check that examines all relevant criminal charges, offences, findings of guilt and professional conduct reports across a person’s lifetime, information from multiple sources and agencies, ongoing monitoring, provisions for the revocation of the check, and penalties. The Victorian Working with Children Check, and the ACT’s Working with Vulnerable People check provide working models for the development of such a check. The Victorian Government should prioritise application of the new check to the disability sector, ahead of a roll-out to other ‘regulated activities’ such as community services, services for the homeless and victims of crime.

This would not be a substitute for a national registration scheme, to be overseen by an independent national body, and which would allow for across jurisdiction checks and protections. However, it does introduce a standard of protection to Victoria which is currently absent. The Committee heard from various submitters that careful consideration should be given to how such a check is to be titled. As Ms Jenny Harrison, and others throughout this Inquiry have suggested, the use of language and terminology by agencies, government and providers is highly relevant to how people with disability are perceived by the wider community. The Committee believes on balance that the new check be titled the ‘Working with Vulnerable People Check’. Accordingly the Committee recommends that:

RECOMMENDATION 4.2
The Victorian Government legislate for the introduction of a Working with Vulnerable People Check, which will include, but not be limited to:

- national and international criminal history and non-conviction information;
- professional conduct reports;
- information from any relevant sources and agencies;
- across lifetime examination;
- ongoing monitoring;
- provision for the revocation of the check; and
- penalties for contravention of provisions.

While the Disability Worker Exclusion Scheme (DWES) in its current form has shortcomings, and has had its critics, evidence suggests it has been a useful instrument for excluding from the sector those workers found to be unfit to continue to work with people with disability. In the interim period prior to the full roll-out of the NDIS, the Committee sees the DWES continuing to have a role in the prevention of abuse. The Committee has concerns that not all disability service providers appear to have an accurate understanding of the workings of the DWES. This is partly as a result of the fact that the application of the DWES has, up to now, been restricted to residential services.

The Committee is strongly of the view that the DWES must be extended to cover all disability services, including respite and day services, employment services, and any other funded services for people with disability. In extending the remit of the DWES to all disability services, the Victorian Government, through the Department of Health and Human Services, can use this as an opportunity to further educate and inform disability service providers about the DWES. Accordingly the Committee recommends that:

RECOMMENDATION 4.3
The Victorian Government extend the Disability Worker Exclusion Scheme (DWES) to cover all disability services, and disability service providers, and ensure that the scheme becomes more transparent to key stakeholders.

- The Department of Health and Human Services will provide disability service providers with updated information, and greater clarity, on the application and workings of the DWES.

4.3. Recruitment and induction

Many disability service providers provided the Committee with information on their own screening processes, employment procedures including interviews, induction and orientation, and further training. While the Department provides important information for safety screening for funded providers as part of its service agreement kit, the evidence received by the Committee shows that there is no standard practice employment procedure across the sector. Some providers rely on ‘attitudinal’ and ‘values’ assessments of prospective workers, while others involve their clients in the
assessments of a person’s suitability to work with the organisation. Police checks are almost universal, and where required service providers obtain a Working with Children Check. But as Ms Christine Trotman, CEO, Cooinda Hill, told the Committee at a hearing in Morwell:

Firstly, in relation to the safety screening of employees, I believe there are some shortcomings in the current process of criminal record checks and working with children checks. Our clients are predominantly adults, so they are over 18. We could do working with children checks for our staff if our clients were under 18. Of course they are not, but they are still vulnerable. The current process means that we can do a criminal record check on a prospective employee today, they could start working with us tomorrow and on Thursday they could commit crimes, and although our policies say that they have a duty to inform us of any criminal action or procedures in place, if they choose not to do so, we might not find out for three years until we do that police records check again.424

This issue of the system’s current limitations was also highlighted by Mr Alistair Houston, Acting Deputy CEO, Wimmera UnitingCare, at a public hearing in Horsham:

We do working with children checks and police checks. That is great. That means that person has not been caught or convicted of something. It does not mean they have not done anything. That is why we must continue to monitor and supervise and make sure that we are aware. The knowledge of the clients is incredibly helpful, because if we can actually see changes in behaviour, that is an indication that something is not right. We then need to look at what that is.425

Many service providers spoke to the Committee about their use of ‘values’ identification during the employment checking and induction process. Mr Bernie O’Connor, CEO of Woodbine, told the Committee at a public hearing in Horsham that:

One thing we pride ourselves on at Woodbine is a thorough induction for all new staff. We run through a lot of the values and the culture of the organisation and a lot of the day-to-day routines and my expectations and how much importance we place on community inclusion.426

When asked about screening processes for workers entering the sector, the CEO of service provider Radius, Ms Cath McDonald, told a public hearing at Bendigo that:

Certainly there needs to be — and for us as an organisation we need to have — a better induction and on-boarding process. It needs to be a very clear three-month attitudinally based process. The staff and particularly the managers need to be aware of what grooming behaviour is, and they need to call it. We can go back to data: there are percentages of the population who are abusers, and to pull them out of a workforce is going to be very difficult.427

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424  Ms C Trotman, Chief Executive Officer, Cooinda Hill, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 3.
425  Mr A Houston, Acting Deputy Chief Executive Officer, Wimmera UnitingCare, Family and Community Development Committee public hearing – Horsham, 3 December 2015, transcript of evidence, p. 4.
426  Mr B O’Connor, Chief Executive Officer, Woodbine, Family and Community Development Committee public hearing – Horsham, 3 December 2015, transcript of evidence, p. 4.
427  Ms C McDonald, Chief Executive Officer Radius, Family and Community Development Committee public hearing – Bendigo, 5 November 2015, transcript of evidence, p. 4.
Ms Trotman told the Committee that ‘rights’ were at the centre of their recruitment practice:

In relation to my views on safeguarding and abuse prevention, I believe there are a lot of rights - things that we need to do right. First of all, right people, so we recruit for attitude and for their values, and the safety screening of course, which I will talk a bit more about later. The right training and development for staff and for clients.\textsuperscript{428}

Ms Karen Robinson, CEO of the Karden Disability Support Foundation, described her organisation’s approach to recruitment, interviewing and induction, and orientation at a public hearing in Ballarat. Karden employ the technique of behavioural interviewing, combined with a staged approach to full employment, and the involvement of clients in the selection of staff. Ms Robinson stated that:

Obviously, as we have identified in our written information we provided to you, we have an approach in which we use behavioural interviewing for our staff selection and we recruit for attitudinal and cultural fit, with it being explained very clearly to anybody that the people we support are the ultimate selectors of staff within our organisation. We also respond very regularly to requests from people we support with regard to them bringing their own staff to the organisation. They might have people who they have worked with in the past. They might have people who they know they would like to work with. We will employ those people, subject to them of course meeting all of the pre-screening processes and the ongoing compliance with our policies and procedures.\textsuperscript{429}

According to Ms Robinson, the Karden interview approach can reveal who is not appropriate to be employed:

So all staff come in and they do the orientation training in the same way, regardless of whether they are casual or going into a more permanent role. In fact the majority of our staff would start in casual roles because we might go through that behavioural interviewing process, which includes questions around, ‘Would you report your workmate if you saw them do something?’ or ‘If this incident happened, what would you think of it? How would you report that?’. It is amazing how many people you can find at that point in time that might not fit with our organisation, and we use that as an opportunity, as an education process, to express why you might not be getting a job at this point in time with us. But we think that is an opportunity that everybody needs to learn, even at interview, that this is what our culture is, straight from the very start of your relationship, and if you are successful then we might employ you as a casual while we go through the process of introducing you to different people that we support. Then they select whether you are going to work in their program, and then you might become more permanent into that particular program.\textsuperscript{430}

The orientation training is, according to Ms Robinson, treated as a separate process but one which involves all members of staff, from casuals to permanents:

\textsuperscript{428} Ms C Trotman, Chief Executive Officer, Cooinda Hill, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 3.

\textsuperscript{429} Ms K Robinson, Chief Executive Officer, Karden Disability Support Foundation, Family and Community Development Committee public hearing – Ballarat, 6 November 2015, transcript of evidence, p. 3.

\textsuperscript{430} Ibid., p. 7.
With that model everyone has to have the same level of orientation, same level of induction. So in our orientation training, the generic orientation training includes human rights training, it includes cultural diversity training and it includes a whole range of things around our values and attitudes. Then every individual person that we support has their own orientation program once again, so we have an individual orientation checklist for every single person we support that is tailored to them. So every casual, every permanent staff member has to go through that process and has to be signed off that they know how to work with that particular person and they are ticked off on that. Any training that is offered is offered to all staff. It is open to everybody. It is not segregated to just specific groups.\(^4\)

The Committee also heard that some service providers employ psychometric testing as part of their pre-employment checks. Yooralla employ psychometric testing for every prospective disability support worker, as part of a screening process that includes police checks, Working with Children Checks and referee checks.\(^5\) The E.W. Tipping Foundation use ‘values alignment and psychometric testing for senior staff’.\(^6\) The Australian Community Support Organisation (ACSO) explained that while they do not perform psychometric testing as part of screening, they do employ an emotional health screen test. The health screen tests people’s level of emotional health, including a potential staff member’s willingness to disclose behaviours and instances where behaviours have resulted in a crime being committed.\(^7\) The Committee also heard from witnesses who were sceptical about the value of psychometric testing as a screening tool. Mr Alistair Houston, Acting Deputy CEO, Wimmera UnitingCare, told the Committee at a public hearing in Horsham that based on his own knowledge of psychometric testing, he was not convinced that it would be of assistance.\(^8\) Ms Cath McDonald, CEO of Radius, told the Committee at a public hearing in Bendigo that she had used psychometric testing as a screening tool in a previous role and it had not been effective.\(^9\)

That the current system for accreditation, recruitment and screening has no central set of standard practices was recognised by some service providers. Ms Florence Davidson, Executive Officer for disability service provider the Christie Centre, told the Committee at a public hearing in Mildura that:

> All agencies spend considerable amounts of time, effort and money in ensuring that we meet the standards set by various government departments — international standards et cetera — but it is about the follow-through and the follow-up and what does this look like. Are we assured that something like this will in fact be covered in a good governance way — that it is not open to abuse and that it is not just further compartmentalising the system? The system is very fragmented at the moment. Coming back into the disability field after a period of time away from it, the level of

\(^4\) Ibid., pp. 6-7. 
\(^5\) Dr S Devanesen, Chief Executive Officer, Yooralla, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 12. 
\(^6\) Mr G Kelly, Chief Executive Officer, E.W. Tipping Foundation, Family and Community Development Committee public hearing – Melbourne, 22 February 2016, transcript of evidence, p. 3. 
\(^7\) Mr V Winther, Chief Operations Officer, Australian Community Support Organisation, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 9. 
\(^8\) Mr A Houston, Acting Deputy Chief Executive Officer, Wimmera UnitingCare, –Family and Community Development Committee public hearing – Horsham, 3 December 2015, transcript of evidence, p. 4. 
\(^9\) Ms C McDonald, Chief Executive Officer, Radius, Family and Community Development Committee public hearing – Bendigo, 5 November 2015, transcript of evidence, p. 4.
fragmentation is possibly the worst I have ever seen in terms of it being so fixed on program needs. Whilst we talk about being person-centred practice and the NDIS is talking about individual service, the process of going about that is very fractured.\textsuperscript{437}

The Committee understands that the Department is involved in setting guidelines for pre-employment safety checks for employers. However, the industry as a whole needs to develop a stronger and more coherent set of practices around employment screening, interviewing, induction and orientation. Wherever appropriate and possible, the clients of service providers should have a role in the selection of the staff who are to be working with them. Probation periods need to be of sufficient length so as to be able to identify those workers who, having passed the interview process, are subsequently shown to not possess the right set of skills and attitudes to be working with people with disability. The next section deals with issues of training and supervision, which are vital elements in the prevention of abuse.

Peak-body National Disability Services (NDS), has developed a series of ‘practice advices’ for its members as part of its zero tolerance framework. One of these practices relates specifically to recruitment and screening.\textsuperscript{438} The ‘Safer Recruitment and Screening’ advice advises service providers that in addition to an interview, a range of other checks need to be undertaken to build an understanding of the prospective employee. The advice states that, ‘Individual checks cannot completely eliminate all risk but by using all the resources at your disposal you can reduce the risk for the people you support and for your organisation.’\textsuperscript{439} The advice points to the importance of on-the-job monitoring once a person is employed:

Evidence shows that organisational culture is one of the most significant factors in the perpetuation of abuse, neglect and violence. It is critical to set out your organisation’s values and expectations with regard to the rights, quality of support, safety and attitudes towards people with a disability to all new starters.\textsuperscript{440}

In terms of funding support the Disability Reform Council stated in its 2015 Integrated Market Sector and Workforce Strategy that the Commonwealth would support the sector in the development of induction training to be provided to the workforce.\textsuperscript{441} On the question of employer screening and induction of prospective workers the Committee therefore recommends that:

\textsuperscript{437} Ms F Davidson, Executive Officer, Christie Centre, Family and Community Development Committee public hearing – Ballarat, 30 November 2015, transcript of evidence, p. 5.
\textsuperscript{440} Ibid.
\textsuperscript{441} Disability Reform Council, Integrated Market, Sector and Workforce Strategy, National Disability Insurance Scheme, Canberra, 2015, p. 21.
RECOMMENDATION 4.4

The Victorian Government require the Disability Services Commissioner to collaborate with peak-body National Disability Services, disability service providers, and the Department of Health and Human Services, to develop best practice employment screening and induction processes.

- This best practice model will be underpinned by the principle of the involvement of people with disability in the selection and choice of staff, wherever practicable and appropriate.

4.4. Training and qualifications

A key element in the prevention of abuse and neglect is a workforce that is adequately trained, appropriately qualified, and engaged in ongoing professional development. The Committee heard numerous stories of poorly or inadequately trained staff, whose lack of expertise, qualifications and experience placed the people in their care at risk. The Committee also heard that the supervision of staff was often inadequate, and in some instances, non-existent. As Ms Michelle Kidd stated in her submission:

Legally agencies do not have to employ qualified staff. I wrote to the CEO of the agency caring for our daughter and stated that "This policy to employ unqualified staff is not illegal but we would say it is dangerous and foolish and a disaster waiting to happen". Staff should have qualifications in disability care. Please call for it to be a required standard. I visited the house one day to find a young carer, a recent school-leaver and one other staff member in charge of four profoundly disabled children. All of these children had complex medical conditions.442

A significant issue for Stage 2 of the Inquiry has been the role of the Certificate IV in Disability. The Department of Health and Human Services requires those disability support workers it employs to have a Certificate IV in Disability or higher. The Committee heard a wide range of views from stakeholders concerning this qualification. Some stakeholders were of the view that the whole sector should adopt the position of the Department and make the Certificate IV mandatory for all disability support workers. The Health and Community Services Union stated in its submission that:

To be registered at anything above a base level registration a disability worker would need to hold a Certificate IV in Disability or equivalent as the mandatory practice qualification and, according, to the level of risk and complexity of the person / people with whom they work would be required to provide evidence of having undertaken further training. Indicative training would include, but not be limited to, subjects such as: a. facilitating a person’s individual plan; b. specific and / or complex health needs; c. managing and reporting on behaviours of concern; d. leadership and management; e. occupational violence; f. forensic disability; g. complex communication and h. dual disability.443

442 Ms Michelle Kidd, submission no. 89, p. 2.
443 Health and Community Services Union, submission no. 95, p. 9.
In its submission, the Inclusive Labor Disability Justice Working Group stated that to ‘be employed by a disability service provider, a minimum of a CERT IV and Diploma qualification in disability services’ be required.444 Mr Matthew Potocnik stated in his submission that Certificate IV should be a mandatory and national minimum qualification,445 a view that was supported by Mr Colin Bayne in his submission, who stated that he viewed Certificate IV as a ‘baseline qualification’.446

Service provider Karingal stated in its submission that it strives to have all of its staff trained and qualified, particularly in accommodation services:

Whilst there is no minimum qualification required for disability support workers employed by Community Service Organisations, Karingal strives to employ staff who are qualified and who have a range of community sector work experience including high and low support, HACC services, specialist disability support, residential care, respite services, day activity/program support, training, mental health recovery programs, in-home support, ageing well programs, community access and social inclusion.

All staff employed within the Accommodation Support branch (permanent and casuals) have a minimum qualification in Certificate IV in Disability.447

The Endeavour Foundation stated in its submission its support for minimum qualifications:

Endeavour Foundation believes there is a need for compulsory professional development for disability workers. Disability workers are providing services to some of the most vulnerable people in our community. It is essential that they are adequately qualified and trained. All disability support workers at Endeavour Foundation either hold a Certificate III in Disability Services or are working towards attaining this qualification. Endeavour Foundation provides training through the auspices of the Endeavour Business College, which was specifically established to meet this need. The College also delivers Certificate IV in Disability Services, leadership, management and operational training. In general this training is provided at no cost to staff.448

However, not all stakeholders to the Inquiry were convinced about the adequacy or efficacy of the current Certificate IV in Disability. In her submission, Ms Fay Richards was critical of what she saw as the declining standards in the content and delivery of Certificate IV:

This certificate should require a minimum of 18 months full-time study to become relevant in providing the required professionalization of staff in accommodation services, thereby assisting in eliminating those people likely to abuse/neglect people with a disability.

Recent information is that the Certificate IV in Disability Studies is being considered to become less than its current 10 months (February to November) in TAFE Colleges, and that some discussion has occurred of reducing the length of the present course structure by removal of some Units e.g. Legislation. This is abhorrent to the whole basis

445 Mr M Potocnik, submission no. 66, p. 5.
446 Mr C Bayne, submission no. 68, p. 5.
447 Karingal, submission no. 65, Appendix 2, p. 12.
448 Endeavour Foundation, submission no. 73, p. 9.
of service required for people with disability, and will likely to lead to further abuse/neglect of these people.

Additionally, recent information is that some individuals with the Certificate IV in Disability Studies qualification from a private Training Agency, were unable to answer questions at employment interviews about the Disability Act (2006), or Person Centred Planning. This severely undermines the level of competency of staff with the Certificate IV qualification and adds further risk to inadequate competencies of staff increasingly gaining work in the sector.\(^ \text{449} \)

Service provider Distinctive Options also has doubts about the current Certificate IV. While acknowledging that it is regarded as a minimum qualification for the sector, Distinctive Options stated in its submission that, ‘In many senses of the word this is a generic certificate that does not in itself ensure staff are well equipped either in terms of work place skills or the necessary empathy and compassion required to work in the field.’\(^ \text{450} \)

Distinctive Options also pointed to the difficulty of service providers outside metropolitan Melbourne in being able to find potential staff who have the qualification. Distinctive Options is also concerned that the Certificate IV is not adequate to the task ahead with an expanded sector under the NDIS, particularly in relation to the expected demand for autism services, stating that, ‘very few of the Cert. IV courses have Autism as a core subject but rather ASD [Autism Spectrum Disorder] is an elective subject for students to select who have, in many instances, limited knowledge of the workplace.’\(^ \text{451} \) The limitations of the Certificate IV was also a matter of concern for the Wesley Mission in its submission. Wesley Mission stated that:

Wesley has had mixed experience of the current Certificate IV in Disability which is the current requirement for disability support workers. Though the program has been conducted for some time, in recent years it has been provided by a number of Registered Training Organisations (RTOs) in a range of delivery modes which enable the academic component of the program to be completed in as little as six weeks, where previously the course was completed over a twelve month period integrated with industry based placements.

Though some graduates are adequately prepared for the work role, Wesley has observed the quality and ‘work readiness’ of graduates of the course in recent years to be highly variable. Applicants who have recently completed their training frequently demonstrate a poor understanding of core concepts including "person centred planning" and the legislative base of disability work.\(^ \text{452} \)

The Wesley Mission would support the Certificate IV as a preferred qualification provided that ‘a substantial review regarding course content, quality, optimum modes of delivery, registration and accreditation provisions of RTOs is required.’\(^ \text{453} \)

\(^{449} \) Ms F Richards, submission no. 85, p. 2.  
\(^{450} \) Distinctive Options, submission no. 42, p. 8.  
\(^{451} \) Distinctive Options, submission no. 42, p. 8.  
\(^{452} \) Wesley Mission Victoria, submission no. 70, p. 6.  
\(^{453} \) Ibid., p. 7.
Ms Jenny Harrison has also stated her view that making the current Certificate IV a minimum requirement ‘is a simplistic response that will not address current problems.’\textsuperscript{454} Ms Harrison suggests that a Certificate IV could become one element of revamped and broadened training and professional development scheme for disability workers.

Several stakeholders suggested that a minimum mandatory training standard was required, but that it should be a matter of consultation with the sector.\textsuperscript{455} ACSO requires its disability support workers to have a minimum diploma level qualification. In its submission ACSO stated that:

As mentioned in the previous responses, disability workers play a pivotal role in the quality of safeguards for clients with a disability. It is essential that the right worker with the right skills and knowledge are recruited to work with this vulnerable client group. ACSO believes that there is a need for a consistent approach to the level of qualification this workforce needs to have.\textsuperscript{456}

In contrast to the above, the Youth Disability Advocacy Service (YDAS) opposed the introduction of minimum mandatory qualifications for people who work with people with disability. In its submission YDAS stated that:

Having an across-the-board, mandatory requirement of a minimum qualification would place limitations on the ability of young people to decide who works with them. We are also aware that young people with disability generally want to be supported by people close to their age and with whom they have common interests. These young people are unlikely to have specific disability qualifications while still being an appropriate and suitable person to provide paid support to a young people with a disability.\textsuperscript{457}

YDAS believe that training should be tailored to the person with disability’s needs. In its submission YDAS argue that:

YDAS is opposed to mandatory qualifications for disability support workers because we believe that the training that would be required to support one young person is likely to be different to what is required to support another individual who may have very different support needs. For this reason we advocate for tailored and individualised training that includes competencies that are specific to the individual who is being supported. For one young person this might include training in manual handling, supported decision-making, and training to assist with communication. For another young person, a different skill set may be required such as the ability to communicate through sign language and/or training in behaviour support.\textsuperscript{458}

The Certificate IV is an endorsed VET qualification delivered by a range of registered training organisations, including Victorian TAFE institutes. The course currently is comprised of 11 core units and 5 elective units. The 11 core units are focused on person-centred behaviour and planning, individual support, facilitating empowerment and social inclusion, managing legal and ethical compliance, recognising good health,

\textsuperscript{454} Ms J Harrison, submission no. 90, p. 25.
\textsuperscript{456} Australian Community Support Organisation, submission no. 69, p. 8.
\textsuperscript{457} Youth Disability Advocacy Service, submission no. 52, p. 6.
\textsuperscript{458} Ibid., p. 7.
and following safe work practices. One of the electives focuses on the prevention of abuse. It is not a core unit. The average time required to complete the Certificate IV is six months.

At a Melbourne public hearing, the Committee heard from Ms Channing Coad, Coordinator and Teacher of the Certificate IV in Disability at Kangan Institute. Ms Coad discussed course contents, student placements, and the current limitations of the course. In describing the delivery of the course, Ms Coad said that, 'We give focus to the empowerment of inspiring support workers and people living with disabilities to self-advocate and stand up for their rights in the workplace or service. We also use a range of case studies to provide examples of ethics, misconduct or potential breaches or undermining of rights.'

Ms Coad stated that both training organisations and service providers alike had an ‘immense ethical and social responsibility … to facilitate networks between clients, stakeholders and independent investigative bodies’. She said that:

> The notion of abuse needs to be clear among training providers, service providers and clients. It is simply not that a client appears with physical injury or bruising; it can extend to financial, emotional or sexual abuse, neglect or exclusion. The last two appear to be quite prevalent in our sector.

When asked whether the Certificate IV should include a core unit in recognising, preventing and reporting abuse she replied:

> Absolutely. I think it should be standardised because right now it can be so different across the board, from Kangan where I work to a private RTO or another training provider, and there is not a lot of clarity in terms of how we teach students about abuse and how we empower them to make a complaint in a workplace where everything is shrouded in secrecy and dealt with internally. So I think to standardise that and to make mandatory reporting units compulsory is really important.

Ms Coad also pointed out that under the current Certificate IV training package student placement is not listed:

> Also, I think that mandatory placement experience is very important for students. Right now that is not listed in the current training package (CHC40312). Our students undertake 200 hours of independent placement in a disability service of their choosing. Throughout that time they can come in to forums and express concerns to us — whilst maintaining confidentiality, of course. In other training providers there is not necessarily a mandatory placement requirement that makes students accountable and actually helps them to see what the industry is actually like. Until that time there is almost an ivory tower classroom component to it, because we tell them all the good things and what disability services should be and quite often we have found that students are a little bit shocked upon entering the industry and seeing that that is not necessarily the way things are run.

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459 Ms C Coad, Coordinator Certificate IV, Kangan Institute, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 2.
460 Ibid.
461 Ibid.
462 Ibid., p. 3.
So I think to have standardised practices that exist, particularly standardised units around legal and ethical compliance, and also mandatory placement for students is of immense importance.\textsuperscript{463}

Ms Coad advised the Committee that she estimated that up to 40 per cent of her student base undertaking the Certificate IV were already working in the sector, mostly as casuals. Ms Coad stated that she understood that this student cohort had, prior to beginning the Certificate IV, no training for the work they were doing in the disability sector. Ms Coad told the Committee that:

Also, it is almost like a six-month screening process when they come and do a cert IV. But what I found with students who are already employed in the sector is that a lot of them were unaware of the Disability Act and what that was, let alone what it did for clients and support workers. Quite a high number of our students are unaware of the charter of human rights and what that did for disability services. Quite often I think people, even those who are working in the industry, are really unaware that the legislation underpins what they do.\textsuperscript{464}

Ms Coad also advised the Committee that in addition to placement hours not being mandatory with some other RTOs of Certificate IV, there was no mandatory time frame, ‘In a lot of cases we have had students say, ‘Oh, I had a friend of mine do this in three months’ or ‘in a four-week period and never met a teacher; they did it online’.’\textsuperscript{465} Ms Coad believes that the Certificate IV should be upgraded, ‘To be honest with you, at first when I started teaching I thought six months was adequate; now that I have trained for quite a few years and I have seen students out on placement I would say that an 8 to 12-month course would be more appropriate.’\textsuperscript{466}

The Committee believes that the disability workforce does require a minimum standard of qualification. It is disturbed to hear that disability support workers are being employed with either little or no training, and that the Certificate IV is being delivered, in some circumstances without any workplace experience, or completely online, with few if any contact hours. The Committee is very concerned that a unit that focusses on the recognition, prevention and reporting of abuse is not a core unit of the program for the Certificate IV. The Committee does not believe that the attainment of the Certificate IV is a substitute for ongoing professional development, proper screening and induction processes, and a range of other training packages specifically tailored for particular client cohorts, such as people with autism spectrum disorder.

The Committee appreciates that there have been significant recent changes to the VET sector following reviews. However, it believes that the Certificate IV does require a review to ensure that a core mandated unit of the course is one that focuses on the recognition, prevention and reporting of abuse. This unit could also include material in relation to understanding the human rights of people with disability, and empowering people with disability to assert their rights and self-advocate. A revised Certificate IV would also mandate student work placements for a set number of

\textsuperscript{463} Ibid.
\textsuperscript{464} Ibid., pp. 7-8.
\textsuperscript{465} Ibid., p. 8.
\textsuperscript{466} Ibid.
minimum hours, a minimum number of teaching contact hours, and a prescribed
minimum time frame for the course.

The Committee is also of the view that a review of Certificate IV should be undertaken
involving key stakeholder groups. As well as service providers and registered training
organisations, people with disability, families and carers, and advocacy groups should
be consulted in the development of an improved Certificate IV. Accordingly the
Committee recommends that:

RECOMMENDATION 4.5
The Victorian Government use its position on the Disability Reform Council and
the Council of Australian Governments to provide for a revised Certificate IV in
Disability to become the national minimum standard qualification for the
disability workforce, ensuring that:

- a core component of a revised Certificate IV be a unit focusing on the
recognition, prevention and reporting of abuse.

In the interim period while such a review is undertaken, the Committee believes that
Victoria can undertake its own state review of the content and delivery of the
Certificate IV in Disability provided by RTOs in this state. With the Victorian
Government outlining its support for a more managed, sustainable training system,
as recommended by the Independent VET Funding Review, there is an opportunity to
enhance this qualification to provide better protections for the sector. Specifically,
the Victorian RTOs should offer the Certificate IV in Disability with a compulsory unit
in the recognition, prevention and reporting of abuse. The recently appointed Skills
Commissioner for Victoria provides an avenue for review. Accordingly the Committee
recommends that:

RECOMMENDATION 4.6
Through the offices of the Skills Commissioner for Victoria, the Victorian
Government review the content and delivery of the Certificate IV in Disability,
ensuring that:

- the recognition, prevention and reporting of abuse becomes a compulsory
unit of a revised Certificate IV.

The Committee is adamant that ongoing professional development is essential for
the prevention of abuse, and to increase the professionalisation of the sector
workforce. Currently, ongoing professional development is occurring on an ad hoc
basis. The Department provides guidance and training modules, the DSC produces
training resources, some service providers deliver in-house training to their staff,
while others such as Scope have been engaged to create industry-wide packages.
Stakeholders to the Inquiry have emphasised the importance of ongoing professional
development. Service provider Distinctive Options stated in its submission that its
staff received training appropriate to the roles they were undertaking, and following
demonstration of the right attributes:

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467 See Minister for Training and Skills, ‘Labor Government Outlines Response to VET Funding Review’, Premier
of Victoria, Melbourne, accessed 6 April 2016,
Distinctive Options has taken a different pathway in which staff are recruited on the basis of values and practice models which includes a period of shadow shifting and observation by highly experienced staff to determine if, in the first instance, potential employees possess the necessary empathy, compassion and enthusiasm for the support role.

If staff can demonstrate the attributes our organisation seeks they are then supported to attend training in core units including ASD, Person Centred Positive Behaviour Support and Effective Communication skills.

Training is provided to our staff by organisations and individuals with established records of knowledge and competency such as Amaze (formerly Autism Victoria) and Gary Radler, internationally recognised for his work in Person Centred positive behaviour support practices.

Additional training is provided on the basis of identified need and includes training in such areas as sexually [sic] and disability, medications and manual handling etc.

The reason for taking this approach is this organisation is keen to ensure all staff have received the same training (ASD, PBS etc.) so any behaviour management strategies that are employed are not only understood by all staff but equally all staff understand the importance of consistency of message and following established behaviour management strategies.468

468 Distinctive Options, submission no. 42, p. 8.

Service provider Life Without Barriers stated in its submission that ‘The implementation of any NDIS quality and safeguarding system will be strengthened by the provision of professional development resources for support staff, including consideration of minimum qualifications, and specialty training around critical elements such as identifying early indications of abuse.’469

469 Life Without Barriers, submission no. 61, p. 3.

The need for professional development was highlighted by advocacy organisation Action for More Independence and Dignity in Accommodation (AMIDA), which has created education and training packages for service providers around respect and rights issues:

More than good values are needed to work effectively in this field but this is certainly a component of what they need to learn. Workers with the best of intentions find themselves challenged by the demands of the work where they must use positive practice methods that are counter intuitive, communicate well with clients with difficulties communicating, manage the demands of groups of people with differing needs but be person centred, facilitate community inclusion and lifestyle choices when there are many costs and other barriers to this, assist people sensitively with personal care issues being mindful of Occupational health practices and privacy, be aware of all policies and practices they need to, be aware of all rights and responsibilities, etc. It is a complex role that needs significant training and professional development.470

470 Action for More Independence and Dignity in Accommodation, submission no. 63, p. 22.

AMIDA noted the lack of funding for supporting professional development initiatives.

At a public hearing in Melbourne, Ms Pauline Williams, Housing Rights Coordinator for AMIDA, told the Committee that workers in the sector, while they may have a
qualification, receive little or no ongoing training. Many workers are often ‘shadowed’ for only a short period, and many workers remain as casuals with no professional development at all. Ms Williams stated that:

I think the not-for-profits in particular do not seem to have a budget for training. Little if any training goes on. So the staff are really in need of ongoing refreshers and ongoing sort of cultural training about what their attitudes should be. I think it is more than just the basic skills, although there is a lot in that. I have seen workers not even know that it would be a good idea to put two drinks, like milk and juice, in front of a person and let them pick. A lot of the time people just do what is easy, most of the time — do what is easy. That is the kind of thing that easily becomes institutional practices and creeps up very quickly unless it is countered. That ongoing cultural development and cultural challenging is necessary or the tendency is, because of those factors I talked about before, to become institutional.

In its Interim Report the Committee raised the issue of the proposed unit pricing under the NDIS, and whether it allowed for sufficient funding for ongoing professional development for disability workers. The Committee sees a need for the Commonwealth to extend its commitment for funding support for induction training, mentioned above, to funding support for ongoing professional development for the disability workforce. The Committee views ongoing professional development as a critical component of the statewide prevention and risk management disability workforce strategy. The sector requires leadership and collaboration to develop a coherent, practical and tailored suite of training packages and modules to ensure a high standard of professional development. The Committee sees a role in their development for a renewed DSC, in collaboration with the Department, peak-body National Disability Services, disability service providers, registered training organisations, and advocacy groups.

The Committee has also heard from the sector that the supervision of staff within disability services has no sector wide standard set of practices. The Committee is concerned about the adequacy of current levels of ‘shadowing’ for new staff, and ongoing supervision, particularly in group homes. The Committee has also heard that it is frequently the practice in shared residential accommodation that only one staff member is present at the residence for overnight duties. As many of the stories from carers in this report attest, supervision of staff within the sector is often seriously inadequate.

The Committee believes that, as part of the zero tolerance framework for abuse, the sector needs to develop a set of practices for the adequate supervision of staff, as part of ongoing professional development and workforce management. Accordingly it recommends that:

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RECOMMENDATION 4.7

As part of a statewide prevention and risk management workforce strategy, the Disability Services Commissioner take a leadership role in the provision of ongoing professional development for the sector.

- The DSC will collaborate with peak-body National Disability Services, disability service providers, the Department of Health and Human Services, advocacy groups and registered training organisations, to develop a coherent, practical and tailored suite of training packages and modules for delivery to the sector.
- A guide to best practice in staff supervision will be developed, which addresses the appropriate supervision and monitoring necessary for new and ongoing staff.

4.5. Casuailisation

The casualisation of the disability workforce is a key issue for the sector, particularly in the context of the roll-out of the NDIS, which will require an expanded and diverse workforce to meet the needs of NDIS participants.472 According to Ms Robyn Pollard, CEO of the labour hire company ONCALL Personnel and Training, the level of need for casual placements of workers once the NDIS is rolled out will 'start high until everybody works out what it is that they want'.473 Many of the stakeholders to the Inquiry expressed their concerns with the current level of casualisation in the sector, and the future demands for casualisation created by the NDIS. For example, Children with Disability Australia stated that casualisation represented a systemic workforce risk for the sector. In their submission Children with Disability Australia cited research to suggest that:

In particular, high levels of worker casualisation have been associated with an increased risk of client abuse. Research has found that the "increasing number of short term and casual staff has serious implications for the recognition and response to patterns of abuse and neglect in particular, as there is a dearth of long-term moral witnesses to note the cumulative effect of this maltreatment."474

A common theme of participants to the Inquiry was that casualisation was a source of workforce instability. Advocacy organisation AMIDA said in their submission that:

Workforce instability is caused by frequent use of casual staff in many CRUs, high levels of staff turn-over and other practices whereby permanent staff are taken from one house to fill temporary roles in others. The instability of the workforce makes it hard to develop significant relationships between staff and clients and to provide on-going training and supervision.475

474 Children with Disability Australia, submission no. 55, pp. 44-45.
475 Action for More Independence and Dignity in Accommodation, submission no. 63, p. 46.
According to HACSU, casual staff feel particularly vulnerable in reporting abuse.\footnote{Health and Community Services Union, submission no. 95, p. 4.} HACSU regard casual staff as the least trained section of the workforce, and when presenting at group homes they are not given an induction into that home and its residents and have no knowledge of the supports that are needed, or an understanding of the complexities or the behaviours of a particular person.\footnote{Mr L Williams, State Secretary, Health And Community Services Union, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 4, and p. 11.} Ms Sarah Forbes, Human Rights and Advocacy Officer with YDAS, told the Committee at a public hearing in Melbourne that there were real concerns about the potential gendered impacts of casualisation:

For this young woman I mentioned before there is constant male casuals coming into the house where she is - not only is it a male who she doesn't want providing her support, it is a male she has never met before. You can only imagine what it is like to have somebody you don't want and a different personality every day coming in to provide you with intimate personal care. Casualisation is a problem for that reason. It would be far more protective for her to be able to hire and fire herself. Whether workers involved in that situation would perhaps opt to be casual, perhaps she would choose for them to be casual, is in my view separate from the broad casualisation. I think larger service providers are very reliant on casuals and what I see in that situation is an increase in abuse and neglect.\footnote{Ms S Forbes, Human Rights and Advocacy Officer, Youth Disability Advocacy Service, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 10.}

Ms Florence Davidson, Executive Officer at the Christie Centre in Mildura, told the Committee at a public hearing about her concerns with casualisation and potential abuse:

However, there is also within the field the danger, particularly with casualisation of staff within the field, which is one of my great concerns — people who move around and are involved in working independently with people who may not have a strong enough voice to be able to say, ‘This is not okay’, or, ‘I didn’t like this’, or, ‘I felt odd when someone was here in my house’. When we do not have those safeguards in place and when we do not have great assurances about the quality component and confidence that everybody is there to do the right thing I think we leave ourselves wide open to further levels of abuse.\footnote{Ms F Davidson, Executive Officer, Christie Centre, Family and Community Development Committee public hearing – Mildura, 30 November 2015, transcript of evidence, p. 5.}

For Mrs Jean Tops, President of the Gippsland Carers Association, a key issue with casualisation was the lack of continuity of care. Mrs Tops said that when she visited her daughter’s accommodation and would ask for information from staff she would often be told that, ‘Oh, I’m a casual. I don’t know the answer to that”.’ Mrs Tops was critical of the absence of appropriate handovers between staffing shifts, and the failure of critical information to be passed on.\footnote{Mrs J Tops, Gippsland Carers Association, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 16.} For advocacy organisation VALID the heavy use of casual staff has actually caused a decline in regarding disability services as a worthy vocation and career.\footnote{Victorian Advocacy League for Individuals with Disability, submission no. 91, p. 13.}
By contrast, officers of the NDIA told the Committee at a public hearing in Geelong that casualisation did provide opportunities for diversity and flexibility in responding to an individual’s needs, provided that casuals received the necessary supports, induction and training. Dr George Taleporos, Manager at YDAS, told the Committee that the real issue in staffing was inconsistency of support:

We should be looking at what is it that results in such a high turnover in services. What is it that means that a service can in two years’ time have a completely different set of people working there? Young people with disabilities say to us that they want flexibility in who they hire and they want to be able to get rid of them if they don't like them for obvious reasons. My point to the Committee would be, let's look at how we can bring good people into the sector and keep them in the sector and that often - it might suit them to be casual. They may have to be at university and be a parent and want to do some support work but let's not make it less flexible, let's just see what we can do to make it more consistent for people so they know that the people who are supporting them are the people that know them and understand their needs.482

The Committee did hear from service providers, such as Life Without Barriers, that their casual staff receive the same training levels as other staff, and must be qualified or engaged in gaining qualification.483 Ms Christine Trotman, CEO at service provider Cooinda Hill, told the Committee that her organisation has low numbers of casual staff because, 'when we have good casual staff we give them contracts because we want to hang onto them.'484 Mr Graeme Kelly, CEO at the E.W. Tipping Foundation, told the Committee at a public hearing in Melbourne that his organisation was actively reducing its casual workforce, partly in relation to risk issues, but also in relation to quality and consistency of care.485

At a Melbourne public hearing the Committee heard from Ms Robyn Pollard, CEO of labour hire firm ONCALL Personnel and Training. ONCALL have over 1 000 registered staff, and the organisation provides casual, part-time and full-time staff capacity for the sector.486 Ms Pollard told the Committee that recruitment and screening of prospective staff includes behavioural interviewing, literacy and numeracy testing, a minimum of Certificate IV and/or six months relevant industry experience, a national police check, working with children check, and DWES check. ONCALL applicants undertake orientation, which includes a legislation overview, overview of DWES and the Out-of-Home Care carer check, NDIS, UN Convention on the Rights of Persons with Disabilities, DHHS standards, supporting a client to make a complaint, Duty of Care, Dignity of Risk, the ONCALL Code of Conduct and incident reporting.487

Ms Pollard told the Committee that:

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482 Dr G Taleporos, Manager, Youth Disability Advocacy Service, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 11.
483 Ms A Connors, Director of South East Australia, Life Without Barriers, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, pp. 8-9.
484 Ms C Trotman, Chief Executive Officer, Cooinda Hill, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 7.
486 Ms R Pollard, Chief Executive Officer, ONCALL Personnel and Training, Family and Community Development Committee public hearing – Melbourne, 22 February 2016, transcript of evidence, p. 2.
487 Ibid.
ONCALL understands that casual staff play an important role in the disability sector as they allow backfill requirements to be met and unplanned, short notice absenteeism filled; allows for the consistent delivery of services; and ensures the client-to-staff ratio for OCC health and safety can be met. It also assists with emergency and last-minute situations and allows individual clients to have increased flexibility, choice and control.\footnote{488}

Ms Pollard advised the Committee that ONCALL regard reporting incidents by staff as mandatory:

I have actually probably terminated a couple of people just based on the fact that they have seen something and not reported it. To me that is as serious. So we have done a lot of work with the casual staff around understanding their responsibility. I do not know that the culture has necessarily changed, but I think we are getting a much better or higher level of reporting.\footnote{489}

ONCALL do not regard casual staff as being more likely to offend than permanent staff. The main issue from this organisation’s perspective is the training and support provided to casuals, and having a code of conduct that mandates the reporting of abuse. Ms Pollard viewed casual staff as having the capacity to bring ‘fresh eyes’ to a workplace:

We need to equip the casual workforce that it is okay to come back and say, ‘I saw something and I am not really sure that it’s right’. It does not necessarily have to be physical abuse; it could be practices.\footnote{490}

The Committee accepts that the disability sector has a need for casual staff in a variety of contexts, such as filling short notice absenteeism, meeting unplanned demand, ensuring appropriate client-to-staff ratios are maintained, and in emergency situations. The Committee also accepts that many casuals in the sector provide excellent service, are trained, capable and qualified to work with people with disability. However, the Committee is also aware that the evidence presented to it shows that too often casual staff are unprepared for the roles they are allocated, insufficiently trained, and are rotated through the sector to a degree that does not provide for continuity of care. In all of this the risk of abuse is heightened, as the evidence indicates the unwillingness of many casual staff to report abuse through fears for their employment.

The Committee believes that regardless of a disability worker’s status, that all workers in the sector – casual, permanent and part-time – must be equally screened, inducted, trained, qualified and engaged in professional development. The Committee believes that the statewide prevention and risk management workforce strategy should clearly articulate this principle. Casualisation should not be the first choice of service providers, and the risk strategy should clearly state the parameters within which the hiring of casual staff is acceptable.

At the same time, the Committee supports the rights of people with disability to directly engage casual disability support workers to provide intimate and other

\footnotesize\begin{itemize}
\item \footnote{488} Ibid., p. 4.
\item \footnote{489} Ibid., p. 7.
\item \footnote{490} Ibid., p. 10.
\end{itemize}
supports, as articulated by Dr Taleporos above. Wherever possible and practicable, people with disability should be involved in the selection and choice of staff, including casual staff, as outlined in Recommendation 4.4 above.

Accordingly the Committee recommends that:

**RECOMMENDATION 4.8**

On the subject of casualisation, the statewide prevention and risk management workforce strategy clearly state that all disability support workers employed by disability service providers, regardless of employment status, must be properly screened, inducted, trained, qualified, and engaged in ongoing professional development.

- The strategy will provide guidance on the parameters within which the hiring of casual staff is acceptable.

### 4.6. Workplace culture

In its Interim Report the Committee asked two important questions in relation to workplace culture. First, what does the Victorian Government need to do to support a disability workforce culture that does not tolerate abuse, neglect or exploitation? And second, what do Victorian disability service providers need to do to promote and achieve a workforce culture that does not tolerate abuse, neglect or exploitation? Respondents to Stage 2 of the Inquiry provided a range of views on the workplace culture of the disability sector in Victoria, and what needed to be done to rectify it. While few argued that the current culture of the sector was not in need of substantial change, there was disagreement over how best to achieve and implement change.

In their submission, Women with Disabilities Victoria stated that:

> Staff qualifications alone cannot improve disability services. Service cultures are always going to have the biggest impact. Legislation is also a critical factor ... It is important to state that core competencies for service managers should include the skills to recognise and appropriately respond to violence, abuse and neglect (including by seeking specialist secondary consultation and offering victims referrals to specialist services).

> A workforce development schedule must develop workers' capacity to provide equitable, person centred services. This includes recognising people’s requirements related to their race, religion, sexuality and gender.\(^{491}\)

For advocacy group VALID, in addition to a severely demoralised staff culture in many organisations, a key element is the failure of leadership in those organisations:

> Abuse prevention is not led from the top down in organisations. Service provider Boards are not held sufficiently accountable for operational matters. Management are not required to provide adequate training in abuse prevention and identification to staff or have in place open and transparent processes to make complaints or report abuse.

\(^{491}\) Women with Disabilities Victoria, submission no. 77, p. 21.
Reports of abuse are often not appropriately managed by management and staff who dare to report are often then targeted. 492

Service provider Gateways Support Services also saw organisational leadership as a key to reforming workplace culture, within a zero tolerance framework. 493 The South West Carer and Respite Service Network viewed strong leadership as essential to change, and that ‘disability organisations must accept that gender equity is a key component of preventing abuse against women with disabilities and is therefore part of their core business.’ 494 The South West Carer and Respite Service Network argue that a range of measures need to become mandatory.

Ms Jenny Harrison argued in her submission that workplace culture reform was about changing the power relationships in the way services are provided. Ms Harrison supports the ISP and NDIS package model, where people with disability and their families can elect to be the direct employer. For those who do not want this role, Ms Harrison says that ‘every effort should be made to ensure they are engaged in the process of employing the support worker/s of their choice’. On the subject of accommodation, Ms Harrison states that, ‘There needs to be very deliberate action taken to develop strategies that change the power relationships within the CRU’s [Community Residential Units].’ 495

For the Inclusive Labor Disability Justice Working Group, the key to workplace reform lies in the application of punitive measures to ensure compliance. Inclusive Labor argue that there are currently none within the sector. Inclusive Labor recommend amendments to the Public Administration Act 2004 (Vic), to legislate penalty points for unprofessional conduct by government employees, and penalty points to be added to all areas of the Disability Act 2006 (Vic). The Government also needs to change its culture, according to Inclusive Labor, by prioritising the minimisation of abuse, while service providers need to start complying with legislation. 496

The Victorian Council of Social Service regard cultural change as having a society wide dimension, and being linked to a framework of zero tolerance:

> Cultural change needs to occur across the Australian community that recognises the rights and contributions of people with disability. Workforce cultural change would be part of this that accepts a zero tolerance approach to abuse and neglect in disability services.

> The National Disability Services Zero Tolerance Framework is an example of how the disability services sector has sought organisational cultural change as well as improving practices.

> A zero tolerance approach also needs protection for whistleblowers. Staff who report incidents of abuse and neglect to the independent oversight body may fear for their jobs without decent protections. 497

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492 Victorian Advocacy League for Individuals with Disability, submission no. 91, p. 13.
493 Gateways Support Services, submission no. 75, p. 4.
494 South West Carers and Respite Services Network, submission no. 72, p. 5.
495 Ms J Harrison, submission no. 90, p. 32.
497 Victorian Council of Social Service, submission no. 71, p. 15.
ACSO stated in its submission that the Victorian Government should create a public statement of intent that ‘explicitly states that it does not tolerate abuse, neglect or exploitation and highlights the consequences to organisations for ignoring, omitting or disregarding client allegations of abuse or neglect such as defunding or deregistration.’

ACSO also argue that service providers should have a similar statement of intent which explicitly states their adherence to a zero tolerance framework.

For service provider Distinctive Options cultural change amongst service providers can be brought about, in part, through external means such as the demands of accreditation. The application of a proper monitoring and evaluation process built around quality of life measures, with a real threat of funding loss for failure to comply, can help instigate change.

Communication Rights Australia (CRA), Disability Discrimination Legal Service (DDLS) and Villamanta Disability Rights Legal Service (Villamanta) state in their joint submission to Stage 2 that there are no incentives for government and government contractors to substantially alter current cultures. According to CRA, DDLS and Villamanta:

> There are few consequences for the current cultures that allow mistreatment and abuse to flourish. There appears to be no real commitment or interest at Secretary or Deputy Secretary levels to overhaul the system in that regard. Apart from rhetoric, there has been no evidence to date that any leader in government has made a singular effort to reform the sector in order that violence, abuse, neglect and exploitation do not occur. On the contrary, anecdotal evidence suggests that the reporting of human rights abuses to DHHS and private providers are routinely ignored.

CRA, DDLS and Villamanta argue that consequences ‘for leaders in government who provide disability services, and for senior personnel in private service providers, need to be established.’

At the beginning of this chapter the Committee quoted the views of Mrs Jean Tops, President of the Gippsland Carers Association, on the need for workforce culture change. Mrs Tops said that, ‘In order to stamp out a workforce culture of abuse and neglect there must be a quantum change in the attitudes of people who are working in the sector.’ In one phrase Mrs Tops has captured the frustration, disappointment and anger felt by many families and carers towards the disability sector. The Committee concurs with Mrs Tops that there needs to be a quantum change in the workplace culture of the disability sector. This change needs to be led by both government and by the sector itself.

Given the history of the sector, achieving cultural change will not be straightforward. The Committee does not believe that there is one single factor that must be

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498 Australian Community Support Organisation, submission no. 69, p. 9.
499 Distinctive Options, submission no. 42, p. 9.
500 Communication Rights Australia, Disability Discrimination Legal Service and Villamanta Disability Rights Legal Service, submission no. 59, pp. 6-7.
501 Ibid., p. 7.
502 Mrs J Tops, President, Gippsland Carers Association, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 5.
addressed to achieve change. Rather, there are multiple factors involved: entrenched behaviours and attitudes that must be addressed and made redundant, outmoded practices to be dispensed with, policy and process clarity to be achieved, new practices and assumptions to be introduced, and legislative change. The language surrounding the sector needs to fundamentally change, so that people with disability are seen to possess human rights, self-interests and their own will. The entire sector needs to be involved in order for cultural change to occur, starting with people with disability and their families. While government must take a lead, there clearly needs to be leadership demonstrated from the boards of management, CEOs, local directors and service managers of disability service providers. Change in this sector also involves advocacy groups, peak-bodies, carer organisations, union bodies, academics and others.

In this and other chapters of the Committee’s report, the Committee has made a series of recommendations, which, if implemented, it believes will have a positive effect on improving the workplace culture of the sector.

The Committee believes that a statewide prevention and risk management workforce strategy, guided by the principle of zero tolerance of abuse, must also directly address the issue of workplace culture. The strategy should clearly state the need for cultural change in the workplace and in service provision. Disability support workers need to be equipped with the skills and capacity to provide equitable, person centred services, including the recognition of people’s human rights and their requirements related to their race, religion, sexuality and gender. Boards of management, CEOs, and service managers need to be held accountable for the services that they provide. The strategy should clearly state that in circumstances of the repeated failure to comply with the obligations for service providers contained in the zero tolerance framework, that de-registration will be enacted. The strategy will re-iterate the central role that people with disability should have in the selection and appointment of staff.

The Victorian Government, through a renewed and revitalised Disability Services Commissioner, and enhanced with new powers of investigation, monitoring and evaluation, will ensure that the sector is compliant with a zero tolerance of abuse framework. This issue will be elaborated further in Chapter Seven. Disability service providers must implement zero tolerance of abuse in the workplace, remove predators and potential predators from within their organisations, and adopt screening and induction processes that prevent the hiring of abusers, and workers who are not appropriately skilled or qualified or who lack the appropriate attitudes, perspectives and values to work in the industry. Accordingly, the Committee recommends that:
RECOMMENDATION 4.9

The statewide prevention and risk management workforce strategy for disability services clearly state the need for cultural change in the workplace and in service provision, within the context of the zero tolerance of abuse framework. The strategy will further state that:

- the Disability Services Commissioner will monitor and evaluate the workplace culture of service providers to ensure compliance with a zero tolerance of abuse framework;
- the disability workforce be equipped with the skills and capacity to provide equitable, person centred services, including the recognition of people’s human rights and their requirements related to their race, religion, sexuality and gender;
- boards of management, CEOs, and service managers are to be held accountable for the services that they provide;
- the penalties to be imposed for a failure to comply with mandatory reporting, or for adverse action taken against employees who report abuse; and
- failure to comply with the obligations for service providers contained in the zero tolerance framework will lead to de-registration.
Chapter 5
Gender and the prevention of abuse

AT A GLANCE

Background
The Committee heard evidence that women with disability are more likely to experience abuse compared with men with disability and women without disability. A range of Inquiry stakeholders argued that considering the role of gender was essential in developing strategies to prevent the abuse of people with disability.

Chapter overview
This chapter discusses ways that disability services can be more responsive to gender, such as by acknowledging that some people with disability would like to choose the gender of the person providing them with intimate supports. It also considers the importance of sexuality and relationships education in developing the ability of people with intellectual disability to identify and report abuse. Further, the chapter considers the usefulness of drawing on existing programs in the areas of sexual assault and family violence prevention to assist women with disability.

The chapter relates to a number of the Inquiry’s terms of reference, including:

- A(II) ‘any measures to strengthen the capacity of providers to prevent, report and act upon abuse’;
- A(III), ‘any measures to support people with a disability, their families and informal supports to identify, report and respond to abuse’; and
- (B)(III) – ‘consideration of needs specific to particular cohorts’.
During the Inquiry the Committee heard that it is vital to consider how gender shapes the experience of people with disability. The Committee heard that it was particularly important in the case of women with disability who face obstacles associated with both their gender and their disability. Stakeholders argued that it is this intersection between gender and disability that places women with disability at a greater risk of abuse. A number of stakeholders made suggestions about how to better support and prevent the abuse of women with disability. These included increasing the availability of sexuality and relationships education, and drawing on existing programs in the areas of sexual assault and family violence prevention.

However, the Committee also heard evidence of the need for greater protections for those most at risk.

Witnesses drew attention to the need to consider how gender shapes the experience of disability for men as well as women, particularly in relation to the provision of intimate supports. The Committee heard that there was widespread concern amongst people with disability and their families, who felt they had little choice in determining who would provide assistance with intimate and personal tasks. For some, the role of gender in the provision of intimate supports was linked to efforts to minimise the risk of abuse for women with disability. For others the issue was reflective of the broader difficulties people with disability face in seeking to exercise choice and exert control over who provides their care.

This chapter addresses the gendered dimension of the abuse of people with disability, and in particular discusses a number of measures aimed at preventing the abuse of women with disability. In doing so, the chapter considers aspects of terms of reference A(II) ‘any measures to strengthen the capacity of providers to prevent, report and act upon abuse’, and A(III), ‘any measures to support people with a disability, their families and informal supports to identify, report and respond to abuse’. By examining the needs of women with disability the chapter also engages with term of reference (B)(III) – ‘consideration of needs specific to particular cohorts’.

While this chapter has a particular focus on the needs of women with disability, the Committee believes it is critical that all people with disability, regardless of their gender, have access to disability services that take into account the specificity of their lives and their individual preferences around how their supports are delivered. The evidence the Committee received overwhelmingly referred to abuse of people with disability being perpetrated by males.

5.1. Gender and violence against people with disability

As discussed in Chapter One, there is a consensus in both national and international research that women with disabilities are more likely to experience violence compared with men with disability and women without disability. In particular, women with intellectual disabilities and/or communication difficulties are at a higher risk of abuse. While most of the available research examines violence within the wider community – rather than within disability-specific services – the Committee considers it critical to prevention strategies to view the abuse of women who use disability services within this broader context.
While Chapter One acknowledged the lack of accurate data on violence against women with disability, it also highlighted that researchers overwhelmingly agree that women with disability are at a greater risk of experiencing violence. According to the Australian Cross Disability Alliance – which includes Women with Disabilities Australia as a member organisation – ‘the gendered nature of violence against people with disability sees more than 70% of women with disability having been victims of violent sexual encounters at some time in their lives’.\(^\text{503}\) The Victorian Equal Opportunity and Human Rights Commission also acknowledged that:

\[
\text{Whilst the data is limited there are national and international studies that say that people with disabilities are more likely to be victims of crime than the general population, that crime is most severe for women, people with cognitive impairments and people with communication disabilities.}\(^\text{504}\)
\]

Researchers Suellen Murray and Anastasia Powell drew on a number of international studies to explain the increased risk of abuse for women with disabilities, arguing that:

\[
\text{Women with a range of disabilities – including physical, language or intellectual impairments – are far more likely to experience sexual assault than women without disabilities ... and tend to experience all forms of abuse for significantly longer periods of time.}\(^\text{505}\)
\]

In a submission to the Inquiry, Women’s Health West discussed research on the abuse of women with disabilities and noted that:

\[
\text{Regardless of age, race, ethnicity, sexual orientation or class, women with a disability are assaulted, raped and abused at a rate at least two times greater than women without disabilities.}\(^\text{506}\)
\]

Women’s Health West also highlighted a recent survey of 367 women and girls conducted by Women with Disabilities Australia that found that ‘22 per cent had experienced violence in the past year’.\(^\text{507}\)

In an overview of relevant academic literature, Ms Keran Howe found that ‘overseas studies indicate that women with disabilities are raped and abused at a rate at least twice that of the general population of women’, and that ‘83% of women with disabilities will be sexually assaulted in their lifetime’.\(^\text{508}\) Further, Ms Howe found that research suggests that ‘women with developmental disabilities are at particularly high risk of sexual abuse as both children and adults’.\(^\text{509}\) Examining the Australian

\(^{503}\) Australian Cross Disability Alliance, submission no. 32, p. 37.

\(^{504}\) Ms C Dixon, Director, Commissioner’s Office, Victorian Equal Opportunity and Human Rights Commission, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 2.


\(^{506}\) Women’s Health West, submission no. 9, p. 6.

\(^{507}\) Ibid.


\(^{509}\) Ibid.
research, Ms Howe noted that studies ‘confirm that these women [with intellectual disabilities] are more likely to be abused than women in general’.  

VicHealth has made similar findings, noting that ‘it is not uncommon for women with disabilities to experience violence by more than one person in their lifetimes and for the experience of violence to be a protracted and enduring feature in their lives’. VicHealth also emphasised the intersectional nature of violence against women with disability, arguing that the:

> Violence experienced by women with disabilities is often specific to the nature of their disability and includes the denial of mobility and communication devices, a withholding of food or medication, and threats of institutionalisation.

While much of the available research focuses broadly on Australia or extrapolates from international contexts, the Committee is aware that Women with Disabilities Victoria has recently undertaken a substantial research project focusing on the abuse of women with disability in Victoria. In 2014 Women with Disabilities Victoria partnered with the Office of the Public Advocate (OPA) and the Domestic Violence Resource Centre Victoria to conduct a major investigation into the ways in which women with disabilities experienced violence. The resulting report – Voices Against Violence – was unequivocal in its assertion that ‘violence is a gendered issue. The majority of victims of violence are women and the greatest numbers of perpetrators are men’. The report made the following key findings about the abuse of women with disability in Victoria:

- Women with disabilities experience high levels of family and sexual violence.
- Women with disabilities experience the same kinds of violence experienced by other women but also ‘disability-based violence’.
- Gender-based and disability-based discrimination intersect and increase the risk of violence for women with disabilities.
- Women with disabilities experience violence from many (usually male) perpetrators.
- Women experience a wide range of violence throughout their lives, in a variety of settings.

As part of the project researchers examined 100 files held by OPA, which revealed that ‘almost half of the 100 women ... had experienced violence, and these women experienced violence from 89 perpetrators ... One woman had reportedly had 15 perpetrators in the course of her life’. The project also conducted interviews with women with disability, staff and volunteers from OPA and engaged with practitioners from family violence, sexual assault and legal services. In doing so, the project has  

510 Ibid.  
512 Ibid.  
514 Ibid., p. 5.  
515 Ibid., p. 15.
gathered a significant body of evidence of the prevalence of abuse against women with disabilities in Victoria, and makes a compelling argument that governments need to consider the gendered aspect of disability in their prevention strategies.

Throughout the Inquiry the Committee also heard about the violence and abuse of men with disability in disability services, as Chapter One of this report amply demonstrated. Witnesses recounted how their sons had been physically or sexually assaulted, by co-residents and by support staff. As noted earlier, Ms Trisha Schipp spoke to the Committee about her son’s experiences of assault by disability support staff. Her son was first sexually assaulted at the age of nine. He continued to be sexually assaulted as a young man by disability support workers. The late Mr Peter Thomas’ son was sexually assaulted by a co-resident while living in emergency accommodation, and despite the fact that this was known to authorities the assailant remained in the house.

These cases, along with the many other case studies provided to the Committee, illustrate that men with disability are subject to violence and abuse within disability services, and that nearly all of the perpetrators of this violence are men. In its focus on violence against women with disability in this chapter, the Committee does not diminish or downplay the severe and calculated violence that has occurred, and continues to occur against men with disability. However, as the research and evidence of this chapter indicates, women with disability are at greater risk of sexual assault and physical assault than both women without disability, and men with disability.

5.1.1. The intersectionality of disability and gender

Researchers have argued that the increased risk of abuse faced by women with disability is the product of the intersectional nature of their experience – that is, they are uniquely impacted by both their gender and disability. The Australian Cross Disability Alliance described ‘intersectionality’ in the following way:

>[It] recognises that human beings are not only men, women, intersex or transgender, they also have ethnic, indigenous, cultural and/or religious backgrounds, they may have an impairment or not and have other layers of identity, social positions and experiences, such as age, marital status, sexual orientation, gender identity, language, health status, place of residence, immigration status, economic status or social situation.\(^\text{516}\)

An appreciation of the intersectional nature of identity is essential in examining the experiences of people with disability as it allows for an understanding of the way that different ‘layers’ of identity shape an individual and their interactions with others. It also highlights the way that people with disability may be affected by multiple forms of discrimination relating to their gender, age or cultural background. For example, the Australian Cross Disability Alliance noted that:

>Women and girls with disability are more likely to be subjected to forced interventions which infringe their reproductive rights (such as forced sterilisation) than women without disabilities and men with disabilities. People with disability in institutional
settings are more likely to be subject to guardianship proceedings for the formal removal of their legal capacity. This facilitates and may even authorise forced interventions. Aboriginal people with disability are more likely to be subject to indefinite detention than non-Aboriginal people with disability and people without disability. These human rights violations are perpetrated on account of the interaction and intersection of various layers of identity, social position, and experiences.\textsuperscript{517}

Similarly, Women with Disabilities Victoria emphasised the relationship between violence and the intersectional experiences of women with disability, noting that:

Both violence against people with disabilities and violence against women have become prominent social issues of our time. Research has established a link between these two forms of violence which, when it intersects, increases the risk of violence for women with disabilities exponentially. Consequently, violence against women with disabilities is a prevalent and serious problem which cannot be ignored by disability service providers.\textsuperscript{518}

Women with Disabilities Victoria also emphasised that the gendered nature of abuse impacts both women and men with disability. The organisation analysed the abuse perpetrated by Vimod Kumar at Yooralla and noted that:

Kumar’s abuse of Phillip emasculated and cruelly humiliated [him] in front of a female co-resident. In contrast, Kumar’s assaults towards women were to treat them as sex objects. These cases indicate the gendered nature of abuse and violence in keeping with wider studies on violence. In these cases, gender based violence is combined with disability based violence.\textsuperscript{519}

The South West Carer and Respite Services Network argued that service providers need to acknowledge how ‘gender-based and disability-based discrimination intersect and increase the risk of violence for women with disabilities’.\textsuperscript{520} The Network suggested that many service providers are ill-equipped to respond to violence against women with disability and do not provide staff with adequate training on how to identify and prevent the abuse of women with disability. Accordingly, the organisation argued that service providers:

Must accept that gender equity is a key component of preventing abuse against women with disabilities and is therefore part of their core business. They must make the connection between the alarming high rates of abuse against women with disabilities and their own service users … gender and disability training is given low priority in comparison to other requirements in the context of constrained resources. Gender and disability training and prevention of violence against women with disabilities training needs to become a priority of disability services.\textsuperscript{521}

The Committee heard from some service providers that prioritised an intersectional understanding of their clients’ needs. For example, following the public revelations of abuse in 2014 Yooralla stated that:

\textsuperscript{517} Ibid.  
\textsuperscript{518} Women with Disabilities Victoria, submission no. 4, p. 21.  
\textsuperscript{519} ‘Phillip’ is a pseudonym. Women with Disabilities Victoria, submission no. 77, p. 18.  
\textsuperscript{520} South West Carer and Respite Services Network, submission no. 72, p. 2.  
\textsuperscript{521} Ibid., p. 5.
Recognition of gender and disability, sexual orientation and gender identity is important in quality standards and safeguarding rights. Similarly, attention should also be focused on indigenous people and people from culturally linguistically diverse communities. Women and children with disabilities are particularly vulnerable to abuse and violence.\textsuperscript{522}

In a submission to the Inquiry, service provider Life Without Barriers highlighted the organisation’s commitment to providing services reflective of the diversity of clients’ experiences, including their gender, stating a commitment ‘to the sensitive delivery of services reflecting our clients’ previous life experiences, abilities, age, gender and cultural background’.\textsuperscript{523}

5.2. Strategies to prevent violence against women with disability

Throughout the Inquiry the Committee heard from a range of stakeholders that emphasised the need for disability services to address the increased risk of abuse faced by women with disability, and implement strategies that draw on existing approaches to preventing violence against women. The Committee also heard that a key element of prevention is the effort to change community attitudes about women with disability, as part of a broader move to uphold the human rights of people with disability.

Women with Disabilities Victoria provided substantial evidence to the Committee about the impact of gender on the provision of disability services and the particular needs of women with disability. Broadly, the organisation was critical of the lack of awareness of the gendered experience of disability – for both women and men – on the part of the Department of Health and Human Services (the Department) and service providers. The organisation suggested that the disability sector needs to become ‘gender sensitive’ and to ‘take account of the importance of gender in compounding the power imbalance between disability workers and clients’.\textsuperscript{524} At a public hearing in Melbourne Ms Keran Howe, Executive Director of Women with Disabilities Victoria, argued that:

\begin{quote}
I think disability services have not been very conscious of, or aware of, gender. It's what you might say is a gender ignorant sector, as are a number of other sectors, but when you are talking about human services and responding to women and men we need services that are sensitive to the needs of women and men and, I think, there is no reason why we can't have gender-sensitive services provided by disability organisations. It is really about those services examining their values and their culture and looking at the ways in which they may not have taken account of the marginalisation of women.\textsuperscript{525}
\end{quote}

\textsuperscript{523} Life Without Barriers, submission no. 61, p. 2.
\textsuperscript{524} Women with Disabilities Victoria, submission no. 4, pp. 11-12.
\textsuperscript{525} Ms K Howe, Executive Director, Women with Disabilities Victoria, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 6.
Ms Hargrave argued further that gender-sensitive services recognise that when ‘working with people with disabilities ... there are inherently inequalities in power. Many workers know this and work to empower people with disabilities, but others choose to abuse their power’.\textsuperscript{526}

Women with Disabilities Victoria also emphasised the way that community attitudes towards both women and disability impact on how violence against women with disabilities is responded to. Ms Howe described how ‘stereotypes’ about women with disabilities increase their risk of violence, stating that:

\begin{quote}
We talk about “at risk” and we talk about people being more at risk because they’re targeted by perpetrators who perceive us to be easy targets, if you like. The current stereotype of women with disabilities is that we’re compliant and submissive and the research would suggest that men who have strong, dominant sex roles, [and] stereotypical traits do target women with disabilities and similarly we know now in disability and care, we get disability and care workers who target women and men with disabilities.\textsuperscript{527}
\end{quote}

The Committee heard that efforts to prevent the abuse of women with disability should engage with existing strategies to prevent violence against women. Witnesses explained that women with disability often do not have access to these existing services, such as counselling for sexual assault, or family violence support programs. Ms Hargrave argued that Victoria is a leader in the prevention of violence against women, and should draw on this expertise to address violence against women with disability, stating that:

\begin{quote}
We are fortunate to have great expertise at hand. Our state of Victoria has been a leader, nationally and internationally, in responding to violence against women. What has been learnt is transferrable. It is transferrable because the effects and treatments are similar and because the causes are similar. They lie in derogatory attitudes towards both women and people with disabilities and inequalities in power.\textsuperscript{528}
\end{quote}

In particular, Women with Disabilities Victoria endorsed VicHealth’s 2007 framework for the prevention of violence against women, which highlighted ‘three areas for action: promoting respectful relationships; promoting non-violent norms; and improving access to information and support’.\textsuperscript{529}

Dr Patsie Frawley, a researcher at Deakin University, told the Committee about her work to expand ‘mainstream’ women’s services to better address the needs of women with disability. Her work has included developing the Living Safer Sexual Lives peer education program (discussed below), and ‘a national project looking at
improving access and inclusion for women and girls with disabilities in domestic violence and sexual assault services’.530

The Committee is aware of a number of prevention programs that have drawn on expertise in the area of violence prevention to support women with disability. For example, the South Eastern Centre Against Sexual Assault (SECASA) developed the Making Rights Reality program to make their support services more accessible to ‘adults who have been sexually assaulted and who have an intellectual disability or Acquired Brain Injury, or use aids to communicate’.531 The program builds on the existing CASA counselling and legal resources for sexual assault. SECASA has developed a range of resources that tailor information to people with cognitive impairment (such as Easy English guides on reporting abuse and the justice system), and has adapted its counselling approach to take into account the needs of women with disability. At a public hearing in Melbourne, Ms Dagmar Jenkins outlined the key components of the program:

The main facets of the project were the training of all counsellor advocates at SECASA and the Springvale Monash Legal Service worker on working with people with disabilities. We had people from Scope come out to talk about working with people with complex communication needs, we had arbias come out, we had Amaze come out, and we have had a number of things going on throughout. All counsellor advocates have been trained as independent third persons by the Office of the Public Advocate. As part of the project we developed some easy-read booklets, which we have brought along for you all today, which cover a number of different aspects of what people might want or need to do following a sexual assault.532

Ms Carolyn Worth emphasised the usefulness of the program at strengthening the capacity of CASA staff to respond to the needs of clients with disabilities, explaining that ‘the problem with disability clients is they get lost in all the other clients, so nobody knows how many they see, they do not necessarily know always how to work with them, whereas it is easier at SECASA’.533

The Making Rights Reality (MRR) project was independently evaluated by researchers at La Trobe University, who found that:

Having a program like MRR in a CASA and in a legal service provides a focus on this cohort of victims of sexual assault who is recognised are at higher risk of abuse than the general population and other people with disabilities ... It ‘shines a light’ on them, collects important data about their experiences of abuse, focuses attention on their recovery needs and honed the skills of those involved in counselling and advocacy to meet these needs.534

530 Dr P Frawley, Senior Research Fellow, Faculty of Health, School of Health and Social Development, Deakin University, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 4.


532 Ms D Jenkins, South Eastern Centre Against Sexual Assault, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 2.

533 Ms C Worth, South East Centre Against Sexual Assault, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 5.

534 Patsie Frawley, Making Rights Reality: Final Evaluation report: a pilot project for sexual assault survivors with a cognitive impairment, La Trobe University, Melbourne, 2014, p. 32.
The Committee also heard about a program developed by Women with Disabilities Victoria to alert services to the need to deliver gender equitable and sensitive services. Created in 2013, the Gender and Disability Workforce Development Program has been delivered to a range of women’s health services and disability organisations, including service providers such as Yooralla and Gateways. The program was funded under the Victorian Government’s Plan to Address Violence Against Women and Children. Women with Disabilities Victoria employs a ‘train-the-trainer’ approach, which trains women with disabilities to co-facilitate the training with professional trainers from women’s health and violence prevention and response services. The program highlights the importance of gender in service provision by emphasising ‘the relationship between marginalisation, disability, gender stereotypes and violence’. The Victorian Equal Opportunity and Human Rights Commission endorsed the Gender and Disability Workforce Development Program, as it ‘recognises and fosters recognition of the expertise of people with disabilities’ through its train-the-trainer approach.

As a leader in the development of strategies to prevent violence against women, the Committee believes that Victoria is well-placed to ensure the inclusion of people with disability in already successful abuse prevention programs and services. The Committee is encouraged by evidence that there are some programs already working to include people with disability in existing support services, such as the work of SECASA and Women with Disabilities Victoria.

Accordingly, the Committee recommends that:

**RECOMMENDATION 5.1**

The Victorian Government expand current programs and support new initiatives that are designed to make support services and programs for the prevention of violence against women more responsive to, and accessible for, women with disability.

### 5.3. Intimate supports

The Committee heard that many people with disability are concerned that they are not able to choose the gender of the workers who provide them with intimate supports. Intimate or personal supports cover a range of tasks such as toileting (including changing continence aids), bathing, and managing menstruation. While the Committee heard that this issue is especially important to many women with disability, a number of witnesses emphasised the right of all people with disability to choose who provides their intimate supports.

At a public hearing Ms Jen Hargrave, Policy Officer from Women with Disabilities Victoria, spoke about difficulties facing women who do not want intimate supports provided by men:

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535 Women with Disabilities Victoria, submission no. 4, Appendix.
536 Ibid.
537 Ibid.
In one instance reported to us recently a service is refusing to provide female support workers for a woman. She says she feels unsafe with the male workers, and I’m sure that you can imagine how that would feel to have a male come in and help you with the most intimate of care with your menstrual management and those types of things after you have made it really clear, emphatically, that that is not something you feel safe with.\(^{539}\)

Ms Michelle Kidd spoke to the Committee about the difficulties she faced requesting a service provider to ensure only women provided intimate supports at her daughter’s supported accommodation house. Ms Kidd explained that:

We had requested that no male be sleeping on a sleepover in the house, because there was only one staff member who slept at the house; one carer stayed at the house at night. We asked that that not be a male. I have to say that at the time the regional manager was quite affronted by that request and said that it was not very nice to be accusing his staff that if they are male they could be abusers. I said, ‘Well, I know that a female staff member could potentially be an abuser, but the stats show that a very high percentage, 90 something per cent, of offenders are males, and I would say that we need to say the protective need for a disabled child in such a vulnerable position must far outweigh a staff member who might feel affronted’. I would have thought that staff member might say, ‘Well, you know what, there will be no comeback from me because I am not there’. So I said, ‘Maybe we should see it that way; maybe we should see that it safeguards any further accusations’. I said, ‘I do not want a male staff member changing Erin now. No intimate care, no showering’.\(^{540}\)

Some witnesses drew attention to the fact that women with disability are more likely to be assaulted by men than by other women, and that this should be a consideration when rostering staff to provide intimate supports. Ms Keran Howe, Executive Director of Women with Disabilities Australia, stated that:

I believe not only should women have the choice about receiving services of intimate care from a woman but, in fact, if we know that the perpetrators are more likely to be men and victims more likely to be women we are putting women at significant risk by even suggesting that personal care or intimate care should be provided by male workers.\(^{541}\)

Ms Howe also argued that service providers need to be more attuned to the risks associated with male workers providing women with intimate supports, suggesting that:

If we know that it is more likely to be male workers - not all male workers obviously target people with disabilities - I think we need to be much more careful about the situations in which male workers are alone, certainly in bathrooms and places where it’s just not appropriate for male workers to be working with female women with disabilities.\(^{542}\)

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\(^{539}\) Ms J Hargrave, Policy Officer, Women with Disabilities Victoria, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 3.

\(^{540}\) Ms M Kidd, parent, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 7.

\(^{541}\) Ms K Howe, Executive Director, Women with Disabilities Victoria, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 7.

\(^{542}\) Ibid., p.9.
Despite emphasising that the majority of perpetrators are men, Ms Carolyn Frohmader from the Australian Cross Disability Alliance suggested that the issue of who provides intimate support is more complex than restricting male workers:

I think in terms of safeguarding — the sexual violence against women with disability in institutional and residential settings, we cannot say that it does not happen and is not getting worse. There is an urgency about addressing it, and there has been. The United Nations has been recommending to Australia for the last decade to actually address this as a matter of urgency, so I think there is a whole range of things. I wish there was a really simple, easy answer — do not have male carers overnight at group homes — but it is not that simple.\(^{543}\)

Some disability support workers and service providers reported that they were mindful of gender when assigning staff to provide intimate supports. Ms Nicole O’Brien, a disability support worker from Shepparton, explained the approach of her service to gender, stating that:

For my work we actually coordinate a respite program for children with complex medical care needs. We have boys and girls coming into that program, and we have both males and females working in the program. For the personal care needs we are very mindful of making sure that females are providing the personal care for the female clients and the males for the boys — where we can, because there are predominantly less males working in the field. We have nurses working in this program also, and predominantly there are a lot more female nurses. Where we can be, we try to be mindful. I know that with the parents I meet with regularly, that is something that they bring up as one of their biggest drawbacks as to why they do not use our home respite — because they are worried about the personal care being provided by males. That is something I try to talk to them about — that it would be the preference of the facility to make sure that personal care is being provided by the female staff, where they can.\(^{544}\)

Other witnesses noted that in rostering staff to provide intimate supports gender is not the only consideration. Ms Florence Davidson, CEO of the Christie Centre, a Mildura-based provider, commented that:

We try to ensure that it is not just gender preference but it might be personal preference. So sometimes the individual may not be too fussed whether it is male or female but would in fact be more concerned about who the person was ... It certainly can be a gender issue, and in terms of support we would always provide the option for people. Sometimes it cannot — you know, needs must — but certainly in terms of capacity we would always look at the individual’s preference.\(^{545}\)

Ms Channing Coad, a Coordinator of the Certificate IV in Disability based at the Kangan Institute, emphasised that the gender of support workers is also a concern for men. Commenting on the issue at a public hearing, Ms Coad noted that:

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\(^{543}\) Ms C Frohmader, Australian Cross Disability Alliance, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 13.

\(^{544}\) Ms N O’Brien, Family and Community Development Committee public hearing – Shepparton, 29 October 2015, transcript of evidence, p. 5.

\(^{545}\) Ms F Davidson, Chief Executive Officer, Christie Centre, Family and Community Development Committee public hearing – Mildura, 30 November 2015, transcript of evidence, p. 7.
Particularly older gentlemen feel quite uncomfortable about a lady coming in to assist with personal care. I also find with younger clients that if they get time to know the support worker placed with them, they are quite comfortable with that. Obviously it comes down to personal preference, but I would say that the overwhelming majority tend to be older clients who prefer the same gender for personal care and things like that.\textsuperscript{546}

Ms Coad also highlighted an example of a woman who chose to have a male worker provide intimate supports, based on the trusting relationship they had formed:

If I could give you an example, I know of a young woman at the moment who had quite a traumatic experience. She has lived with quite severe cerebral palsy, and up until recently she actually just requested female support workers. That was well within her rights. I think that had been the case for the previous 10 years, and it was only recently that she chose a male support worker based on the bond that she had with him. Again, that was a choice she was able to make, and risk assessments were done around that and the student was briefed about what they needed to do in the event that things happened or what kind of documentation they needed to keep.\textsuperscript{547}

Similarly Ms Carolyn Frohmader, representing the Australian Cross Disability Alliance, also noted that gender was not the only consideration in choosing who would provide intimate supports, stating that:

I certainly have members of our organisation who live in group homes and supported accommodation facilities who actually do not want anybody who works in their service to give them a shower in the morning. They actually want somebody from an external agency to come and do that. Again, essentially you do not want the people that you live with, and often that is the support workers as well, showering you. I think we need to look at a whole range of options.\textsuperscript{548}

Overwhelmingly, witnesses emphasised the need for people with disability to be able to choose the gender of who provides intimate supports. Ms Therese Sands from the Australian Cross Disability Alliance argued that ‘a woman with disability, should be able to have the person that she wants to provide that kind of intimate support, and more than likely that could be a female worker’.\textsuperscript{549} Ms Sarah Forbes, from the Youth Disability Advocacy Service (YDAS), has suggested that the issue of gender and intimate supports is related to the broader problem that people with disability generally have little choice in who supports them. Ms Forbes argued that:

Potentially what is a larger issue is that people have no control over who supports them. For this young woman I mentioned before there is constant male casuals coming into the house where she is - not only is it a male who she doesn't want providing her support, it is a male she has never met before. You can only imagine what it is like to have somebody you don't want and a different personality every day coming in to provide you with intimate personal care. Casualisation is a problem for that reason. It

\textsuperscript{546} Ms C Coad, Coordinator and Teacher, Certificate IV in Disability, Kangan Institute, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 7.

\textsuperscript{547} Ibid., p. 7.

\textsuperscript{548} Ms C Frohmader, Australian Cross Disability Alliance, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 13.

\textsuperscript{549} Ms T Sands, Australian Cross Disability Alliance, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 13.
would be far more protective for her to be able to hire and fire herself. Whether workers involved in that situation would perhaps opt to be casual, perhaps she would choose for them to be casual, is in my view separate from the broad casualisation.\footnote{550}

Similarly, Ms Hargrave explained that respecting the gender preference of clients is crucial to their safety, arguing that ‘a fundamental way services can empower people with disabilities is by listening to what they say makes them feel safe and what they say makes them feel unsafe’.\footnote{551}

Ms Coad commented that she believed that many service providers were aware of the need to respect clients’ choices, and that ‘in the majority of cases … you would hope [clients] get an opportunity to select the support worker they are with’.\footnote{552}

While the Committee received limited evidence on the issue, the Committee is aware that cultural background can be a factor in choosing workers to provide intimate supports. For example, Ms Diane Jones, from Mallee District Aboriginal Services, emphasised the importance of specific services for Indigenous people with disability, stating that she found that Aboriginal people in the area had a strong sense of community and generally preferred to use culturally appropriate services.\footnote{553}

Ms Sarah Forbes from YDAS suggested that many service providers are unaware that it is lawful for women to request support workers of a specific gender, stating that:

> I had a conversation with the CEO of an organisation recently providing services to hundreds of people in Victoria who doesn't understand the law that relates to how you can positively discriminate against male support workers if a female resident requests female support workers for intimate personal care. No understanding that the law allows him to exclude male workers in that case and therefore refuses to exclude male workers from providing intimate personal care to this young woman who has requested to have female support workers and in the process has been hospitalised for impacted bowels and urinary obstructions and infection of her catheter because she refuses to have males support her in the bathroom. The service providers see no issues with that.\footnote{554}

The Committee is aware that while the \textit{Equal Opportunity Act 2010 (Vic)} prevents discrimination because of gender, it does provide an exception for the provision of ‘domestic or personal services’. Section 24 includes an example and states that:

\begin{quote}
(1) An employer may discriminate in determining who should be offered employment in relation to the provision of domestic or personal services (including the care, instruction or supervision of children)—

(a) in the employer's home; or
\end{quote}

\footnotesize
\begin{itemize}
  \item \footnote{550}{Ms S Forbes, Human Rights and Advocacy Officer, Youth Disability Advocacy Service, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 10.}
  \item \footnote{551}{Ms J Hargrave, Policy Officer, Women with Disabilities Victoria, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 3.}
  \item \footnote{552}{Ms C Coad, Coordinator and Teacher, Certificate IV in Disability, Kangan Institute, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 6.}
  \item \footnote{553}{Ms D Jones, Access and Support Worker, Mallee District Aboriginal Services, Family and Community Development Committee public hearing – Mildura, 30 November 2015, transcript of evidence, p. 2.}
  \item \footnote{554}{Ms S Forbes, Human Rights and Advocacy Officer, Youth Disability Advocacy Service, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 7.}
\end{itemize}
(b) if the employer is in the business of providing domestic or personal services to others, in the home of the person to whom those services are provided if the discrimination is requested by or on behalf of that person.

Example

An agency employs people to provide personal care services. A woman contacts the agency and requests that it provide a carer to assist her with personal care in her home. The woman tells the agency that the carer must be female. The agency may discriminate in determining who should be employed to provide personal care to the woman as the services will be provided in the woman's home, and she has specifically asked for a female carer.  

The Committee is concerned that there is a lack of awareness regarding this exception – both on the part of service providers and people with disability and their families and carers.

The Committee is aware of recent work by the South Australian Department for Communities and Social Inclusion to clarify the responsibilities of service providers in relation to intimate supports. The Department for Communities and Social Inclusion has recently released a bulletin on ‘gender safety’ that clearly details the right of people with disability to choose the gender of the workers providing intimate supports. It also outlines a process for service providers to follow to account for the preferences of their clients, including ‘having a conversation about this type of request as early as possible – preferably in the care planning process’ and ensuring that ‘the client’s personal preferences are clearly documented, so that individuals or parents can be consulted when circumstances might unexpectedly change’.  

Given the widespread confusion and frustration amongst the Inquiry’s stakeholders, the Committee believes a similar information sheet and practice guide to the ones used in South Australia would be a useful way to highlight the obligations of service providers and ensure that the wishes of people with disability and their families are respected.

In this way the Committee recommends that:

**RECOMMENDATION 5.2**

The Victorian Government clarify the obligations of disability service providers and the rights of people with disability in relation to gender preference for the provision of intimate supports, by developing:

- information sheets for people with disability and their families to be made available online and in accessible formats, including Easy English; and
- a practice guide for service providers and disability support workers on providing intimate supports.

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555 Equal Opportunity Act 2010 (Vic), s. 24.
In addition, the Committee is aware that section 54 of the Disability Act 2006 (Vic) (the Disability Act) mandates the preparation of support plans for people receiving ‘on-going disability services’. The Disability Act states that planning for support services should ‘be individualised’ and ‘underpinned by the right of the person with a disability to exercise control over their own life’. The Committee considers the planning process an appropriate opportunity for service providers to discuss the issue of gender and intimate supports, if relevant to the clients’ needs.

Given the importance of recognising the role of gender in the experience of people with disability – and developing strategies to prevent abuse that acknowledge gender – the Committee believes that legislative change is necessary to ensure that the gender preferences of clients are addressed.

The Committee also believes that it is incumbent on disability service providers to provide whatever assistance is necessary to assist their clients to have their preferences recorded as part of their individual support plans, including where necessary the assistance of communication specialists. Family members, carers and guardians can also be consulted. The primary goals should be to ascertain the wishes of the person with disability and the prevention of abuse.

Accordingly, the Committee recommends that:

**RECOMMENDATION 5.3**

The Victorian Government amend the Disability Act 2006 (Vic) with the addition of a new section in relation to the provision of intimate supports and support plans. The new section will require:

- all support plans to record the gender preference of people with disability in relation to the provision of intimate supports;
- that where necessary or requested, disability service providers will provide independent assistance, such as the services of a communication specialist, to people with an intellectual disability or complex communication needs, to record gender preference in relation to the provision of intimate supports;
- that in the interim period prior to the development of a full support plan, disability service providers must ascertain the gender preference of people with disability in relation to the provision of intimate supports, including where necessary the provision of assistance to do so; and
- that in the circumstance where no gender preference can be determined in relation to the provision of intimate supports, support plans for women with disability will provide for intimate supports to be provided by female support workers.

The Committee understands that the NDIS will encourage participants to exercise greater choice in selecting service providers, and may lead to some people directly employing workers to provide supports in their homes. The Committee believes it will

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557 Disability Act 2006 (Vic), s. 52 (2).
be important for NDIS participants to understand their responsibilities under the 
*Equal Opportunity Act 2010* (Vic) and their choices regarding who they can employ.

### 5.4. Sexuality and relationships education

A number of the Inquiry’s stakeholders alerted the Committee to the importance of 
sexuality and relationships education for people with intellectual disability. Witnesses 
viewed these programs both as a way of supporting the wellbeing of people 
particularly with intellectual disability and as a way of preventing abuse by raising 
awareness of what respectful relationships look like. The Committee heard that 
service providers, and the community in general, overlook the sexuality of people with 
intellectual disability, and stakeholders argued that education programs are 
necessary to empower people to form healthy relationships and identify inappropriate 
sexual conduct.

Ms Carolyn Worth, from South Eastern Centre Against Sexual Assault (SECASA), 
suggested that disability services often ignore sex education for clients due to the 
assumption that people with disability lack sexual desires. Ms Worth explained that:

> There is a great assumption that people with disabilities, physical or in fact intellectual, 
aresexual and it will not be an issue for them. Of course that is not true, because 
people are sexual beings, so they do not get any information of that nature in many 
places.\(^{558}\)

Ms Channing Coad, Coordinator of the Certificate IV in Disability at the Kangan 
Institute, explained that she teaches students about the need to respect the sexuality 
of their clients. Commenting on the Certificate IV unit ‘maintain an environment to 
empower people with disabilities’, Ms Coad stated that:

> We talk a lot about people expressing their needs as human beings, and obviously 
those sexual wants and desires and things like that. We talk about the legalities around 
if somebody is living in a residential service, what happens if they have a partner — are 
they able to bring them back home, and things like that. We also talk about the event 
that clients would like to access sex workers and the legalities around that. We get a lot 
of people who go, ‘Oh, my goodness, we shouldn’t talk about that!’, but by the end 
students are quite aware that it is a basic human need and that everybody has the 
right to express this appropriately.\(^{559}\)

Ms Christine Trotman, CEO of Cooinda Hill, a disability service provider in Gippsland, 
also emphasised the importance of making relationships education available to her 
clients, and commented that:

> For our clients we have regular sessions on empowerment, on respecting personal 
space, personal hygiene. We have also run courses. The Centre Against Sexual Assault, 
the CASA group, has run a four-week course on healthy relationships, and we have had

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\(^{558}\) Ms Carolyn Worth, South East Centre Against Sexual Assault, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 5.

\(^{559}\) Ms C Coad, Coordinator and Teacher, Certificate IV in Disability, Kangan Institute, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 7.
similar programs from Relationships Australia. We also inform them about the National Disability Abuse and Neglect Hotline.  

Professor Susan Balandin from Deakin University argued that sexuality and relationships education is an important strand of violence prevention as it assists people to recognise inappropriate behaviour. Using the example of a client who was assaulted by her disability support worker, Professor Balandin explained that:

I have certainly worked with people, women, who have been having regular sex with male staff who have told them that they loved them and told them that they were very special. If you do not feel very loved or very special and somebody tells you this, you do not see it as abuse; you see it as your privilege — until it goes wrong.  

The Committee heard from Dr Patsie Frawley, Senior Research Fellow at Deakin University, about her involvement in the education program for people with intellectual disability, Living Safer Sexual Lives – Respectful Relationships. At a public hearing in Melbourne Dr Frawley described the program as:

Targeted at prevention of violence for people with an intellectual disability. It uses a collaborative cross-sector model bringing people with disability, disability advocacy, the sexual assault sector, women’s health and the domestic violence sector together to develop and run peer-led programs that are run by people with an intellectual disability for people with an intellectual disability. That is a program that I have developed over a number of years, and it is now running in four sites in Victoria, and it is growing.  

While Dr Frawley argued that the program has been popular with participants, she also noted that a number of people had been discouraged from attending, often by their families or service providers. She argued that:

There are many, many people with an intellectual disability who have wanted to participate in that program as peer educators or as participants in the program who have actually been stopped from doing that by gatekeepers in their life, whether that is their parents, families or service providers, who are actually just too frightened to allow a person — and ‘allow’ is an interesting word — to participate because they are concerned about repercussions, particularly disclosure. Disclosures do happen in those programs but they are properly supported and safely managed, and of course the right to actually learn about respectful relationships is the important thing.  

Women with Disabilities Victoria has endorsed the program as ‘an example of primary violence prevention’ by encouraging people with intellectual disability to learn more ‘about sexuality, rights in relationships, respectful relationships, supports and services’. The program ‘uses a ‘train the trainer’ approach so that people with disabilities are trained as peer educators to work with co-facilitators who are people

560 Ms C Trotman, Chief Executive Officer, Cooinda Hill, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 3.
561 Professor S Balandin, Chair in Disability and Inclusion, Faculty of Health, School of Health and Social Development, Deakin University, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 10.
562 Dr P Frawley, Senior Research Fellow, Faculty of Health, School of Health and Social Development, Deakin University, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 3.
563 Ibid.
564 Women with Disabilities Victoria, submission no. 77, p. 11.
working in disability, sexual health or educational services’ – a model that Women with Disabilities Victoria has drawn on in their own peer education programs.\(^{565}\)

As discussed in Chapter Two the Committee is supportive of rights education for people with disability, to assist with identifying inappropriate or abusive behaviour, understanding the difference between healthy and abusive relationships, and reporting processes. Further, Chapter Six outlines the Committee’s view on the importance of independent advocacy and peer support programs.

As this report demonstrates, the Committee is adamant that prevention of abuse involves the zero tolerance of abuse at all levels, from recruitment screening through to effective abuse reporting systems. The Committee understands relationships education as an important element in the prevention of abuse, particularly of people with intellectual disability, by raising awareness of what respectful relationships look like. Like advocacy, relationships education should be delivered by organisations independent from service providers and the Department.

Therefore, the Committee recommends that:

**RECOMMENDATION 5.4**

The Victorian Government supports the development of healthy and respectful relationships education in order to prevent the abuse of people with intellectual disabilities, who access disability services.

- Disability service providers must ensure that their clients have access to such programs.

### 5.5. Family violence

While the focus of the Inquiry is on abuse within disability services, the Committee is aware that family violence impacts on women with disability. The Committee also heard from witnesses that argued that abuse within supported residential accommodation should be viewed as family violence and responded to as such by police and other agencies, given that it occurs within a domestic environment.

Women with Disabilities Victoria argued that women with disability experience family violence, similar to other women in the community, noting that:

> The most prevalent form of violence experienced by Victorian women is family violence. This includes a range of controlling behaviours such as financial abuse, isolation, continual humiliation, psychological abuse, threats to harm children, injury and death.\(^{566}\)

Ms Worth from SECASA also emphasised that women with disability experience family violence, stating that:

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565  Ibid.
566  Women with Disabilities Victoria, submission no. 4, Appendix.
I think there is also the issue about vulnerability. There are obviously the high-profile sexual assaults and often murders of people by strangers, but mostly it is people who people know who assault [people with disability].

As discussed in Chapter One, people with disability living in supported residential accommodation and institutions are particularly susceptible to abuse, by both co-residents and disability support staff. A literature review conducted by Sonya Price-Kelly and Maria Attard for the organisation People with Disability argued that ‘women with disability living in residential and institutional settings are at an even greater risk of abuse’ than other women with disability. They also argued that women living in residential settings ‘face significant barriers in accessing appropriate services and legal redress’ and are impacted by ‘cultures of silence and bullying within organisations’.

The Committee heard evidence that women with disability who experienced family violence were not afforded the same response by police and support services as people without disability. Ms Keran Howe stated that Women with Disabilities Victoria:

Interviewed 20 women about their experiences of violence and a number of women said that they were ridiculed by police when they went to police to make a statement ...

Not all of those women received a respectful response. The difference we found is that women who approached the SO CIT teams received a much more respectful and effective response than going to the general police station. So, sexual offences teams were much more effective.

Ms Fiona Tipping from Grampians disAbility Advocacy also spoke about the lack of awareness from police about how people with disability experience family violence. Ms Tipping argued that:

There seems to be a general misunderstanding of the effects of disability — for example, an acquired brain injury. I had a woman, a victim of domestic violence — quite serious — where the police officer did not understand how the acquired brain injury affected her decision-making or processing of information, and therefore it was deemed, despite there being a five-year intervention order imposed, that because she got manipulated back into the violent relationship it was her free choice, but it was not if he had understood the impact of an ABI on that person. Nobody can invite someone to breach an intervention order anyway, so I found that to be interesting.

Women’s Health West commented on the need for greater collaboration across the disability and family violence sectors, stating that:

567 Ms C Worth, South East Centre Against Sexual Assault, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 5.
569 Ibid., pp. 37-38.
570 Ms K Howe, Executive Director, Women with Disabilities Victoria, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, pp. 7-8.
571 Ms F Tipping, Grampians disAbility Advocacy, Family and Community Development Committee public hearing – Ballarat, 6 November 2015, transcript of evidence, p. 7.
While professionals in the disability and family violence sectors have a common commitment to the safety and wellbeing of women, there are considerable differences in their philosophies and practices. The lack of agreed protocols, frameworks, and even common definitions of family violence, indicated that significant professional development and organisational capacity building was required to respond appropriately to women who experience family violence. This experience can be easily extrapolated to women who are abused in disability services.572

In addition to a need for greater attention to the needs of people with disability who experience family violence, the Committee heard that Victoria’s legal definition of family violence should be expanded to include people living in supported residential accommodation. In her witness statement to the Victorian Royal Commission into Family Violence, Ms Colleen Pearce, the Victorian Public Advocate, explained that people living in supported residential accommodation can be viewed as living in a domestic arrangement, stating that:

[People living in supported accommodation] will tend to spend significant amounts of time with co-residents. Co-residents in group homes share a degree of power deficit, in often being reliant on paid staff for support with daily living and social inclusion activities. While co-residents in group homes may become friends with one another, their lack of choice about who lives in their homes does make the relationships between group home co-residents closer in some ways to family members than anything else.573

Ms Pearce argued that violence in supported accommodation could be understood as fulfilling the definition of family violence under the Family Violence Protection Act 2008 (Vic), stating that:

Any ‘behaviour by a person towards a family member of that person if that behaviour is physically or sexually abusive; or emotionally or psychologically abusive; or economically abusive; or threatening or; coercive; or in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person’ ... Under the Family Violence Protection Act 2008, a family member includes any person whom the relevant person regards or regarded as being like a family member, including consideration of whether the relevant person and the other person live together or relate together in a home environment, and paid and unpaid carers.574

Dr Jessica Cadwallader from the Australian Cross Disability Alliance contrasted Victoria’s approach to violence in supported residential accommodation to that of New South Wales, where the definition of family violence has been changed – ‘all residential settings are included and relationships between paid and unpaid workers and people with disabilities’.575 Dr Cadwallader argued that a similar change of definition in Victoria would be beneficial, explaining that:

572 Women’s Heath West, submission no. 9, p. 11.
574 Ibid., p. 7.
575 Dr J Cadwallader, Australian Cross Disability Alliance, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 9.
I think one of the things about legislative change around the inclusivity of domestic violence, as Carolyn has outlined, is that it potentially changes attitudes. It gives people with disability access to some of the protections that victims of domestic violence also have access to, and it can also help to shift violence response services in how they are conceptualising who their client base is. One of the ongoing issues is that people with disability rarely get access to the kinds of counselling supports or domestic violence response supports that they need, and that has impacts on their engagement with police and with court processes. So actually changing the focus of the legislation can also help the service settings and the police to engage with what domestic violence is for people with disability.576

Ms Pearce also recommended changes to police practice, including amendment to ‘the Police Code of Practice for the Investigation of Family Violence to include guidelines for recognising and responding to family violence in disability residential settings’. 577

Given efforts by the Victorian Government to address the issue of family violence, the Committee is concerned that people with disability living in supported accommodation are afforded the same benefits and access to support and legal recourse that are available to people without disability who experience family violence. As discussed in Chapter Two, the Committee is aware that access to justice and lack of support are major barriers for people with disability seeking to report abuse. Chapter Two considered the changes Victoria Police has planned to make their services more accessible to people with disability, and to recognise violence against people with disability as part of the umbrella of ‘Prejudice Motivated Crime’. 578 Alongside these changes, the Committee believes that access to justice for people with disability can be enhanced by recognising that people living in supported residential accommodation also experience family violence.

The Committee is of the view that people living in supported residential accommodation should be able to access the protections of the Family Violence Protection Act 2008 (Vic). For example, including people with disability under the Act would enable police to issue Family Violence Safety Notices, a mechanism that operates outside of court hours and can offer interim protection for people experiencing violence prior to securing a Family Violence Intervention Order. Further, amendments to the Act would increase awareness within disability services of the gravity of abuse and the need for violence within institutional settings to be treated as a criminal rather than internal matter.

On the issue of family violence in supported residential accommodation, the Committee recommends that:

576 Ibid.
RECOMMENDATION 5.5

The Victorian Government amend the *Family Violence Protection Act 2008 (Vic)* to ensure that people with disability living in supported residential accommodation are covered by the legal definition of family violence and can access the Act’s protection mechanisms.

5.6. Royal Commission into Family Violence

On 30 March 2016 the Royal Commission into Family Violence Report was tabled in the Victorian Parliament. The Report contained 227 recommendations, of which recommendations 170 to 179 related directly to people with disability. The Commission recommended that:

- **Recommendation 170** - The Victorian Government adopt a consistent and comprehensive approach to the collection of data on people with disabilities who experience or perpetrate family violence. This should include collecting data from relevant services—for example, incident reports made to the Department of Health and Human Services by disability services when family violence has occurred [within two years].

- **Recommendation 171** - The Victorian Government fund research into the prevalence of acquired brain injury among family violence victims and perpetrators [within two years].

- **Recommendation 172** - The Victorian Government fund training and education programs for disability workers—including residential workers, home and community care workers, interpreters and communication assistants and attendant carers—to encourage identification and reporting of family violence among people with disabilities [within two years].

- **Recommendation 173** - The Victorian Government, through the Council of Australian Governments Disability Reform Council, encourage the Commonwealth Government and the National Disability Insurance Agency to ensure that all disability services workers involved in assessing needs and delivering services have successfully completed certified training in identifying family violence and responding to it. This could include further developing and mandating the units on family violence and responding to suspected abuse in the Community Service Training Package [within five years].

- **Recommendation 174** - Victoria Police, in the redesign of the police referral (L17) form, ensure that disability data is collected, including on the type of disability and the support required. Training should be provided to help police members identify how and when to make adjustments for people with disabilities [within 12 months].

- **Recommendation 175** - The Judicial College of Victoria provide training to judicial officers in order to raise awareness and encourage consistent application of section 31 of the *Evidence Act 2008 (Vic)*, which allows courts to make adjustments to the way people with disabilities may be questioned and give evidence [within 12 months].
• **Recommendation 176** - The Department of Health and Human Services review the funding model for crisis supported accommodation to remove barriers for women and children with disabilities [within 12 months].

• **Recommendation 177** - The Victorian Government, in phasing out communal refuges, ensure that replacement accommodation contains disability-accessible units (universal design), where carers can be accommodated as needed and adaptations for children with disabilities are made [within five years].

• **Recommendation 178** - The Victorian Government extend eligibility for the Victorian Disability Family Violence Crisis Response to assist people with disabilities who are victims of family violence and are not eligible for services under the **Disability Act 2006 (Vic)** but who nevertheless require assistance. Such eligibility should apply when these individuals do not have access to alternative supports [within 12 months].

• **Recommendation 179** - The Victorian Government encourage the National Disability Insurance Agency, in the transition to the National Disability Insurance Scheme, to provide flexible packages that are responsive to people with disabilities experiencing family violence. These packages should incorporate crisis supports and assistance for rebuilding and recovering from family violence [within two years].

The Committee supports all of the recommendations made by the Royal Commission in relation to people with disability. The work of the Commission highlights the particular situation of people with disability in relation to violence, family violence and abuse, and its gendered nature. The Committees notes that some of the Commission’s recommendations concern issues on which the Committee has also made recommendations, including the need for a more comprehensive approach to data collection on people with disability and crime, the training of disability workers to identify violence and abuse, certified training, the application of the **Evidence Act 2008 (Vic)** to people with disability, and eligibility for services of people with disability who are victims of family violence.

Accordingly the Committee recommends that:

**RECOMMENDATION 5.6**

The Victorian Government adopt each of the recommendations (170-179) made by the Royal Commission into Family Violence that relate directly to people with disability.

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Chapter 6
Advocacy

AT A GLANCE

Background

In its Interim Report the Committee recommended the establishment of a national, independent advocacy body with responsibilities for administering funds for individual and community advocacy, and capacity building through information, education and resources, including how to identify and report abuse.

During Stage 2 of the Inquiry the Committee asked stakeholders about what role, if any, the Victorian Government should play in supporting advocacy in the interim and after the roll-out of the National Disability Insurance Scheme (NDIS).

Chapter overview

Stakeholders were strongly of the view that the Victorian Government should continue to fund advocacy services. Witnesses argued that current advocacy services for people with disability are unable to meet the need for individual advocacy, and that this demand for advocacy services is likely to increase with the introduction of the NDIS.

Stakeholders also argued that parents and families of people with disability need access to advocacy services to assist them to support their relatives, particularly when reporting abuse or making complaints to service providers. The Committee is aware of the tremendous efforts of many families to advocate on behalf of their relatives, and believes that increased family advocacy services are necessary to safeguard the rights of people with disability.
In its Interim Report the Committee recommended the establishment of a national, independent advocacy body with responsibilities for administering funds for individual and community advocacy, and capacity building through information and education, including how to identify and report abuse. The Committee considers this body to be a key component of a robust safeguarding framework for the NDIS.

Throughout State 2 of the Inquiry, the Committee received evidence about the need for additional advocacy services to meet the increased demand for advocacy during the interim and the roll-out of the NDIS. While the NDIS has confirmed that some aspects of advocacy will be funded as part of the scheme, such as ‘decision supports’ as part of the individual planning process, other forms of advocacy will not be funded. Accordingly, the Inquiry’s stakeholders argued strongly that the Victorian Government should continue to fund advocacy at a state level.

As highlighted throughout the Final Report, the Committee has heard about the tireless efforts of many parents and carers who advocate on behalf of people with disability. The Committee believes that in many cases families can be the most powerful and enduring ‘natural’ supports for people with disability, and additional funding is required to assist families in this role.

6.1. **Types of disability advocacy**

The Committee is aware that advocacy is a broad term that can be used to describe a range of different activities. Individual advocacy focuses on supporting an individual with a specific issue or problem and is generally not ongoing, while other types of advocacy are concerned with developing policy to uphold the rights of people with disability on a more systemic level. Different types of advocacy have different purposes and can be more or less useful for individuals depending on their circumstances. For example, a person with a disability seeking advice and representation in a specific legal matter will be more likely to engage a legal advocacy service than a systemic advocacy organisation. In addition, some advocacy groups are only focused on providing advice to a particular demographic, such as young people with disability or Indigenous people with disability. Table 6.1 (below) describes a number of different types of advocacy.

Advocacy groups are diverse, ranging from funded advocacy organisations that undergo quality audits and employ trained staff, to informal, volunteer support groups. Further, a variety of individuals can act as advocates, such as relatives or friends, volunteers, or trained advocates within organisations.
Table 6.1  Types of advocacy

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<thead>
<tr>
<th>Type</th>
<th>Description</th>
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<tbody>
<tr>
<td>Individual advocacy</td>
<td>Focuses on the rights of individual people with disability by working to address specific issues of discrimination, abuse and neglect.</td>
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<tr>
<td>Self-advocacy (peer advocacy)</td>
<td>Strengthens the capacity of people with disability to speak for themselves or as a group.</td>
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<tr>
<td>Legal advocacy</td>
<td>Focuses on the legal aspects of discrimination, abuse and neglect, and includes both individual advocacy for specific legal issues and broader, more systemic advocacy and policy research.</td>
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<tr>
<td>Family advocacy</td>
<td>Assists parents and family members of people with disability to advocate on behalf of a person with disability, usually in relation to a particular issue or problem.</td>
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<tr>
<td>Systemic advocacy</td>
<td>Takes a broader, systemic approach to addressing discrimination against people with disability through research and policy development.</td>
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<tr>
<td>Citizen advocacy</td>
<td>A form of advocacy that is volunteer-based and aims to ‘match’ people with disability with suitable volunteers who can offer support.</td>
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</table>

Source: Department of Social Services, ‘National Disability Advocacy Program’.

The Australian Government’s Department of Social Services defines advocacy for people with disability in the following way:

> Speaking, acting or writing with minimal conflict of interest on behalf of the interests of a disadvantaged person or group, in order to promote, protect and defend the welfare of and justice for either the person or group by:

- Acting in a partisan manner (i.e. being on their side and no one else's);
- Being primarily concerned with their fundamental needs;
- Remaining loyal and accountable to them in a way which is empathic and vigorous (whilst respecting the rights of others); and
- Ensuring duty of care at all times.\(^{580}\)

Funded disability advocacy aims to promote the rights of people with disability in accordance with the United Nations Convention on the Rights of Persons with Disabilities and relevant Commonwealth and state legislation regarding disability and discrimination.

The Committee heard evidence from people with disability, their families and carers, and advocates, about the different types of advocacy available in Victoria and the need for a diversity of advocacy services to meet the needs of people with disability.

Currently, advocacy is funded through both Commonwealth and state government programs. While some organisations only receive funding from one source, a number of organisations receive a mix of funding. Organisations that receive government

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funding are required to adhere to service agreements that mandate a range of quality assurance measures, including that staff undergo relevant safety screenings, such as police and Working With Children Checks.

As discussed in Chapter Two, the Committee is aware that many disability service providers work with their clients to provide information about their rights and how to identify and report abuse, and some have long-established relationships with advocacy groups to assist with delivering education programs. This work, while vital, is often undertaken by advocates in addition to the core advocacy services they are funded to provide, and is not a substitute for dedicated individual advocacy to assist people with specific issues and problems. As such, Chapters Two and Five recommended that additional funding be made available to deliver education programs on human rights, and healthy and respectful relationships.

6.2. National Disability Advocacy Program

The Australian Government currently funds disability advocacy through the Department of Social Services’ National Disability Advocacy Program. The primary objective of the Program is to ensure that people with disability have ‘access to effective disability advocacy that promotes, protects and ensures their full and equal enjoyment of all human rights enabling community participation’. All organisations that receive funding under the Program are required to comply with a range of quality assurance and operational guidelines, and are subject to annual on-site financial and performance audits.

The Australian Government has indicated that the National Disability Advocacy Program will continue, however aspects of the program are currently under review in light of the establishment of the NDIS. The review is being used to produce a new national disability advocacy framework. This is due to be released in the second half of 2016.

In the Interim Report, the Committee recommended the establishment of a national, independent advocacy body with powers and responsibilities for:

- administering funds for individual and community advocacy;
- systemic advocacy; and
- capacity building through information, education and resources, including how to spot abuse and report it.

581 Ibid.
584 Family and Community Development Committee, Inquiry into Abuse in Disability Services – Interim Report, Parliament of Victoria, Melbourne, 2015, p. xxviii.
The Committee envisages this body as distinct from a national independent oversight body to ensure that advocacy services are administered independently from the organisation responsible for oversight of complaints and reports of abuse. In this way, advocacy services funded by the national advocacy organisation would have no conflict of interest in representing people with disability in dealings with the oversight body, as they would not be relying on this body for funding.

In its report the Senate Community Affairs References Committee recommended improvements to the National Disability Advocacy Program, including:

- significant investment to National Disability Advocacy Program funded advocates, to deliver equitable access and representation of issues and to match the increased demand for advocacy anticipated under the NDIS;
- undertake a review to ensure delivered advocacy is appropriately spread across service types and complaint types, to ensure the most vulnerable are receiving advocacy;
- increase funding for self-advocacy programs;
- ensure that [the] current model of funding peak bodies does not inadvertently result in the closure of smaller specialist or local advocacy organisations. 585

The Committee supports the views of the Senate Community Affairs References Committee, and welcomes confirmation from the Australian Government that the National Disability Advocacy Program will continue to provide advocacy services for people with disability.

### 6.3. Advocacy and the NDIS

In addition to funded advocacy administered by the Australian Government, the Committee is aware that the NDIS will fund some forms of advocacy as part of individual plans. However, the Committee heard that there remains uncertainty about how advocacy will be funded, and the impact that individualised funding for advocacy services will have on organisations that have traditionally received block-funding to provide advocacy to people on an as-needs basis. Also, given that many people access individual advocacy only when a specific issue arises, it may be difficult for NDIS participants to factor this into their initial support planning process.

In April 2015, the Council of Australian Governments Disability Reform Council indicated that the NDIS will provide funding for the following advocacy activities:

- decision supports;
- safeguard supports; and
- capacity-building for participants. 586

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585 Senate Community Affairs References Committee, Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability, Commonwealth of Australia, Canberra, 2015, p. xx.
The NDIS currently advises people transitioning to the scheme to consider advocacy as part of the broader set of safeguards available when planning their supports, stating that:

The planning conversation and the development of the individual support plans is an opportunity for an open discussion about actual and potential risks. The NDIA planner and participant work together to identify risks and any safeguards that may be required, and discuss plan management options. The planner helps to identify how participants can enhance the existing safeguards they have in their lives, ways they could enhance their capacity to protect themselves from risk, and other formal safeguarding mechanisms that they might wish to access.\(^{587}\)

The Disability Reform Council determined that systemic advocacy and legal representation will be funded outside the NDIS. This includes advocacy for people seeking review of their NDIS support plan through the Administrative Appeals Tribunal – which is currently funded through the federal National Disability Advocacy Program.

At a public hearing in Geelong, Ms Stephanie Gunn, Branch Manager, Local Area Coordination with the National Disability Insurance Agency (NDIA), spoke about the role of advocacy under the NDIS in the following way:

I think that one of the things that we want to see is a broader definition of advocacy and self-advocacy. It is very exciting to watch the peer-based support groups coming up out of the scheme, so that the person who has a need for support has many more options to turn to in dealing with the issue in many different ways rather than just through a very formal advocacy process. As you know, there is a funded support to assist people to put the external appeals into the scheme, and that has been fantastic. But we have seen when people have had, for example, concerns with what is in their plan, they have come to us with lots of different supports with them. They might have come with an advocate, they might have come with another participant or they might have come with their parent, who has been given support from a peer-based support group.\(^{588}\)

Despite confirmation that some forms of advocacy will be funded through the NDIS, there remains uncertainty around how this will impact existing services available to people with disability. In addition, there is also a need to ensure people with disability and their families have access to relevant information and resources to manage their plans and access to support to further build their capacity in navigating the NDIS. For example, Ms Judy Howie, a parent from the Horsham area, stated that:

I think there is a lot of questions to be had from a lot of families and a lot of people who probably are not even tapped into the idea of NDIS that clearly will need a lot of support when it comes the time. It is tapping into these families as well. I think that is


\(^{588}\) Ms S Gunn, Branch Manager, Local Area Coordination and former Barwon Trial Site Manager, National Disability Insurance Agency, Family and Community Development Committee public hearing – Geelong, 13 October 2015, transcript of evidence, pp. 9-10.
actually a bit of a challenge for our region at the moment as to a lot of questions are being asked. How will it be implemented?\textsuperscript{589}

In its submission to the Inquiry, the Victorian Council of Social Service (VCOSS) stated that it has already witnessed an increase in demand for advocacy services as a result of the NDIS, noting that:

Professional, independent advocacy will help people with disability and their carers to navigate the new system and to engage with services under the NDIS. VCOSS members report that disability advocacy services in the Barwon launch site have experienced significant increases in demand resulting from the transition to the NDIS, to help people assert their rights in the planning process.\textsuperscript{590}

The Committee heard some evidence about the distinction between advocacy services and case management. Advocacy services have traditionally been focused on working with people to solve specific problems, whereas case management assists people with disability in an ongoing way to coordinate access to different supports and services. Ms Jan Ashford from Communication Rights Australia emphasised the difference between case management and advocacy, explaining that advocacy is designed as a ‘short-term intervention’:

You are not in the person’s life for the long term. You are not a service provider as such; you are responding to whatever they want to change. It is quite an empowering process when it is done correctly. You identify what the individual wants to change and you move through that and develop strategies ... Our model of advocacy is about ensuring the person’s rights are being protected and moving along that line. We have a particular model of advocacy. We are not there as a friend; we are not there for the long term.\textsuperscript{591}

The Committee is concerned that people with disability and their families are adequately supported to make the transition to the NDIS – including through the timely provision of information – and this is discussed further in Chapter Eight.

\textbf{6.4. The future of advocacy in Victoria}\n
While the NDIS has made provision for some aspects of advocacy and the Department of Social Services has indicated that the National Disability Advocacy Program will continue in some form, there remains a great deal of uncertainty about how advocacy services will be funded and delivered into the future. It is clear that as a minimum, state governments will be required to fund systemic and legal advocacy, which will not be covered by individual support plans under the NDIS. The overwhelming majority of the Inquiry’s stakeholders argued that the Victorian Government should continue to provide funding for independent disability advocacy services. Witnesses argued that independent advocates – that is, independent from service providers and government – are an important safeguard that work to prevent

\textsuperscript{589} Ms J Howie, Family and Community Development Committee public hearing – Horsham, 3 December 2015, transcript of evidence, p. 7.

\textsuperscript{590} Victorian Council of Social Service, submission no. 71, p. 13.

\textsuperscript{591} Ms J Ashford, Chief Executive Officer, Communication Rights Australia, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 8.
and improve responses to abuse. Moreover, the Committee heard that current advocacy services generally operate at capacity, and require further resources to meet the growing demand for assistance.

6.4.1. **Current Victorian Government advocacy funding**

The Victorian Government currently provides funding to some advocacy organisations. Through the Office for Disability, the government also funds two resource centres that do not provide direct advocacy services, but produce and disseminate information: the Disability Advocacy Resource Unit (DARU) and the Self Advocacy Resource Unit (SARU).

In addition to funding for advocacy organisations, the Victorian Government also runs a small grants scheme to provide disability self-help groups with non-recurrent funding of up to $10,000 over two years. These grants are designed to assist with equipment, expenses, and minor works.\(^{592}\)

In its report the Senate Community Affairs References Committee praised Victoria’s SARU and recommended that consideration be given to its ‘roll out across other states and territories’.\(^{593}\) Evidence received by the Senate Committee argued that SARU represents ‘a possible best practice model for other jurisdictions’, by strengthening the capacity of people with disability to advocate on their own behalf.\(^{594}\) Accordingly the Committee recommends:

**RECOMMENDATION 6.1**

The Victorian Government use its position on the Disability Reform Council to support the roll-out of a self-advocacy program nationally, based on the Victorian Self Advocacy Resource Unit model.

6.4.2. **Advocacy and the prevention of abuse**

The Committee received extensive evidence about the importance of independent advocacy services both as a form of abuse prevention, and as a mechanism to support people with disability and their families to report abuse. For example, Dr Jessica Cadwallader from the Australian Cross Disability Alliance described individual advocacy services as a ‘safeguard’ that ensures people with disability without family connections, ‘have someone who can come in and advocate for them’.\(^{595}\)

Ms Denise Leembrugen, a parent from the Horsham area, also affirmed the importance of advocacy, stating that:

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593 Senate Community Affairs References Committee, Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability, Commonwealth of Australia, Canberra, 2015, p. xx.

594 Ibid., pp. 197-198.

595 Dr J Cadwallader, Australian Cross Disability Alliance, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 6.
We also need to maintain our peak advocacy organisations, because they make a positive contribution to the quality and safeguards and play a continuing positive role in raising issues of abuse and neglect, and they are particularly important for people who do not have natural supports around them.\textsuperscript{596}

Stakeholders emphasised the need for advocacy to be ‘independent’ of the Department of Health and Human Services (the Department) and service providers, to avoid conflict of interest and ensure that advocates represent the views of people with disability. Ms Therese Sands, from the Australian Cross Disability Alliance, explained the need for ‘independence’ in the following way:

When I say ‘independent’ what I mean is it is not part of the service system. It is an independent system. It could be funded through the government in terms of an advocacy program, but I mean it is not tied to someone delivering the supports, for example.\textsuperscript{597}

Parent and disability support worker Mr Matthew Potocnik stated that ‘advocacy needs to stand-alone and there can be no service provision in an advocacy organization’.\textsuperscript{598}

Dr George Taleporos, Manager of Youth Disability Advocacy Service (YDAS), argued that advocacy services need to be independent to establish trust with people with disability:

It needs to be independent of Government and it needs to be independent of service providers. Currently we know that the access to advocacy is very much limited to the person’s ability to approach us or send an email or pick up the phone ... There are a lot of people with disabilities who don’t have those supports so the advocacy organisations need the capacity to go out to where young people with disabilities are, whether that be schools, whether that be within services and speak directly with them and develop relationships that will allow them to speak out when they need someone to respond and see whether their human rights are being violated or abused or neglect has occurred.\textsuperscript{599}

Mr Trevor Carroll, Executive Officer of Disability Justice Advocacy, also emphasised independence from service provision, commenting that:

My agency is funded by the federal government, which does not provide daily care and support services for people with disabilities, so we can be absolutely fearless when we go to a state-funded agency or to the department of human services about something that has happened in a group home or an institution. We can be totally fearless, and it does not matter to us. But some of my colleagues who are funded by the state government have a conflict of interest because the money they get comes from the very state government that they often have to investigate claims of abuse and neglect against it from people with disabilities who live in state-run group homes. There is a

\begin{footnotesize}
\begin{itemize}
  \item [596] Ms D Leembruggen, parent, Family and Community Development Committee public hearing – Horsham, 3 December 2015, transcript of evidence, p. 6.
  \item [597] Ms T Sands, Australian Cross Disability Alliance, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 5.
  \item [598] Mr M Potocnik, submission no. 66, p. 5.
  \item [599] Dr G Taleporos, Manager, Youth Disability Advocacy Service, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 4.
\end{itemize}
\end{footnotesize}
real conflict of interest there, and I think what needs to be done is there needs to be a real commitment from the Disability Reform Council to block-fund advocacy across the whole country, make it independent of government and somehow combine the resources so that block funding of advocacy is available right across the whole of the country to support people in this, not just with this sort of issue but with lots of others. 600

6.4.3. Meeting demand for advocacy

The Committee heard a range of views about the efficacy of funded advocacy organisations, with many suggesting that they are ill-equipped to deal with the demand for advocacy. A number of stakeholders also suggested that there is a need for a review of advocacy services at the state level, to ensure that the advocacy services that are available are appropriate to meet demand.

For example, Ms Sandra Guy was critical of peak advocacy organisation Victorian Advocacy League for Individuals with Disability (VALID) but also acknowledged the organisation lacks capacity to deal sufficiently with the number of issues in the sector:

There is a funded advocacy organisation, VALID, that has been a recipient of public funds for more than a quarter of a century, but by its CEO’s own recent admission, the service is ‘inadequate to meet the needs of people with intellectual disability’. The CEO claims that the organisation is Victoria’s ‘peak advocacy organisation for Victorians with an intellectual disability’, with one full-time advocate and one part-time advocate. I repeat that: Victoria’s peak body with one full-time advocate and one part-time advocate. 601

Dr Cadwallader from the Australian Cross Disability Alliance also drew attention to the unmet demand for advocacy, stating that:

I think what is important to recognise is that most advocacy organisations operate constantly at capacity and in fact are often required to kind of triage the things that come through. It is clear that the demand is much, much, much higher than supply. 602

At a public hearing in Melbourne Ms Sarah Forbes explained how the capacity of YDAS is constrained by its funding agreement:

At the moment the expectation around our service is that we see 18 new clients every quarter which means that some clients would have to move on for that to happen. This would include clients who have been sexually assaulted in group homes, for example, the case I mentioned earlier, it might take me 12 or 18 months to resolve the case to completion with that level of complexity where departments have sought to have documents destroyed, where I have to apply for freedom of information in order to get information. It might take me six months alone just to get the documentation I need to begin. So in terms of the way that things are currently funded there’s no waiting for

600 Mr T Carroll, Executive Officer, Disability Justice Advocacy, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 7.
601 Ms S Guy, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 3.
602 Dr J Cadwallader, Australian Cross Disability Alliance, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 6.
whether someone has a complex case. So I could take 18 simple ones where I write a letter and make a complaint and move it on or I could choose to deal with who approaches me and who approaches me despite having had enough support to get to our door, which is difficult enough, for me to be able to resolve the extent of their complaints, which often involve abuse and neglect, in particular around education given the 12 to 25 age group that we deal with, but that would include restraint and inclusion in schools.603

Dr Taleporos elaborated on the difficulty of meeting funding targets, stating that:

The [State] Treasury requires us to do 75 hits of advocacy in a year and in order to do that they also require us not to work with that person any more than once in a 12-month period. So how do you say no to a person who has come to you about one issue and then you find out that, in fact, they need advocacy support around a very serious issue? We can’t turn them down, yet Treasury won’t allow us to work with him technically. Does that make sense?604

Ms Fiona Tipping, advocate with Grampians disAbility Advocacy (GdA), also drew attention to the lack of advocacy staff, explaining that:

I am funded by the state government through the Office for Disability. GdA consists of five advocates, including the executive officer. I am the only one servicing the Ballarat area ... As I am the only staff member funded to provide disability advocacy for all of Ballarat, including the Aboriginal community, I am not adequately resourced to provide representation and education.605

Ms Pauline Williams from advocacy organisation Action for More Independence and Dignity in Accommodation (AMIDA), argued that the efficacy of advocacy is impacted by the difficulties advocates can have in reaching people with disability, particularly people living in supported residential accommodation. Ms Williams suggested that advocates could have a ‘right of entry’ into accommodation services:

Our message would be that we should really be opening up for advocacy services to have addresses and that if that requires legislating for advocates to have right of entry in the same way that unionists have a right of entry and others who have a role in assisting people to get their rights have a right of entry, I think that needs to happen. We find when we go into group homes that immediately the staff change in their approaches. Often they need us to come in because perhaps there are senior managers and others who are pressuring them to cut corners, and it is helpful often to have somebody there who is saying, ‘Actually, you cannot be doing that because people have a right to have choices and to have a say in decisions that affect them’ and so on and so forth. So it is actually a necessary part of the equation that at the moment is missing.606

603 Ms S Forbes, Human Rights and Advocacy Officer, Youth Disability Advocacy Service, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 5.
604 Dr G Taleporos, Manager, Youth Disability Advocacy Service, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 6.
605 Ms F Tipping, Grampians disAbility Advocacy, Family and Community Development Committee public hearing – Ballarat, 6 November 2015, transcript of evidence, p. 2.
Ms Sharyn Laugher, an advocate with the Rights Information and Advocacy Centre, also noted that it can be difficult to make contact with some people with disability:

If we have not got the guardian speaking on behalf of that person, there can be a little bit of a problem because we are self-referral; so I am presuming that in those instances some people can get missed because there is nobody able to speak on their behalf. We promote self-advocacy, systemic advocacy, empowerment and social justice.607

Some stakeholders were supportive of a review of advocacy services in order to assess the extent to which need is unmet. For example, Ms Therese Sands from the Australian Cross Disability Alliance suggested that following the national review of advocacy, a similar review should be undertaken at the state level:

It may be at state-based levels there needs to be that kind of a review as well in terms of how advocacy is delivered: what people with disability want from advocacy and the kinds of skills that they need. There are different kinds of advocacies: there is self-advocacy as well, which is really quite critical; and there are individual advocacies, systemic advocacies — there is a whole range of advocacies, which is relevant in different kinds of situations and settings.608

Dr Patsie Frawley from Deakin University argued that little research has been conducted into the experience of accessing advocacy services, from the perspectives of people with disability themselves, stating that:

I still do not think we have understood really well what advocacy can be for people and we have particularly not understood that from the perspective of people with disabilities. There has been very, very little research by people who have actually gone to people with disabilities and said, ‘What do you think about advocacy? What’s it been like for you? When do you need it? When has it worked? When hasn’t it worked?’.

Particularly the strong focus on systemic advocacy means that there is a lot of high-level policy advocacy going on by a whole range of people. I am not suggesting they should not do that — they most definitely do need to do that — but that we are missing out on this sort of other area of advocacy, which is along the continuum from just needing someone to talk to about making a decision or questioning a decision through to something more formal, which might be about a major life decision like where you live or whether you take medication or not. So my view is we need to do a lot more work on it. There are some great models but there are big gaps, in my view.609

VALID is also supportive of a review of current advocacy services, noting that:

VALID believes that a thorough review is required of all components of the advocacy system. We are reluctant to propose yet another review, given the number of reviews that have been previously ignored or dismissed, but there is a strong case to argue that

607 Ms S Laugher, Advocate, Rights Information and Advocacy Centre, Family and Community Development Committee public hearing – Bendigo, 5 November 2015, transcript of evidence, p. 2.
608 Ms T Sands, Australian Cross Disability Alliance, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 5.
609 Dr P Frawley, Senior Research Fellow, Faculty of Health, School of Health and Social Development, Deakin University, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 6.
the NDIS reforms will greatly increase the demand on advocacy groups and thereby reduce their capacity to deal with other core issues such as abuse and neglect.\(^6\)

JacksonRyan Partners were in favour of a review of current advocacy services, with a view to improve quality assurance mechanisms:

The writers contend this [review] should include discussion as to the efficacy of advocacy, the functions that should be included in advocacy, the funding, the management of the funding and the accountability for the expenditure of such funds.\(^7\)

Some stakeholders raised concerns about the quality of available advocacy services and drew attention to the need for unfunded or volunteer advocates to undergo safety screenings. Ms Williams from AMIDA explained the process that funded advocates currently go through, stating that:

By accepting funding you are actually accepting all the requirements to safety screening for all your staff, including police checks, working with children checks and so on. So at least there is that minimum safety screening with funded advocacy services having access. The only possible drawback would be if you allowed unfunded services in that did not have some requirement to safety screening. However, I suppose you could establish a system that requires anybody who goes into community residential units to have safety screening, so I guess that is another way of addressing that.\(^8\)

Ms Sharon Laugher from the Rights Information and Advocacy Centre highlighted the fact that there are no standard qualifications for advocates, which reflects the diversity of issues advocates encounter in their role:

There are no formal qualifications for advocacy. We generally have qualifications across the board. Because advocacy is not specific — you can be dealing with an education issue one day, a Centrelink issue the other — there is no one set that we are working on at the time.\(^9\)

In a submission to the Committee, service provider Distinctive Options raised concerns about the quality of advocacy provided by unfunded advocacy organisations ‘both “fee for service” and volunteer’ groups, stating that:

There is little quality control on the type of advocacy available or the ability of the advocate to appropriately support and engage individuals with a disability in the advocacy process.

Advocacy services, particularly in the non-funded sector appear to take a much more aggressive and confrontational approach to advocacy in comparison to the funded

\(^6\) Victorian Advocacy League for Individuals with Disability, submission no. 91, p. 8.

\(^7\) JacksonRyan Partners, submission no. 31, p. 26.

\(^8\) Ms P Williams, Housing Rights Coordinator, Action for More Independence and Dignity in Accommodation, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 6.

\(^9\) Ms S Laugher, Advocate, Rights Information and Advocacy Centre, Family and Community Development Committee public hearing – Bendigo, 5 November 2015, transcript of evidence, p. 3.
advocacy services that take a more conciliatory model of advocacy focusing on the goal of a positive, negotiated outcome.\textsuperscript{614}

As a result, Distinctive Options suggested that advocacy services ‘should be subject to a certification process that captures the critical elements of advocacy’.\textsuperscript{615}

Ms Jenny Harrison had a similar view on the quality of current advocacy, stating that:

Anyone can call themselves a ‘Disability Advocate’. Lots of groups say they are engaged in doing ‘Systemic Advocacy’, ‘train others to advocate’ and are ‘the voice’. Currently, we know more about what doesn’t work than about what does work. There is a lack of agreement about what constitutes advocacy, who should be doing it and who gets it right.\textsuperscript{616}

### 6.4.4. Administering advocacy at the state level

The Inquiry’s stakeholders were adamant that the Victorian Government should continue to provide funding to advocacy organisations. However, there were a range of views about whether the Department should continue to administer advocacy funding through the Office for Disability, or whether this function should be transferred to another body.

Ms Therese Sands argued that state governments should continue to fund advocacy after the roll-out of the NDIS:

But I think one of our key concerns is that with the NDIS a number of governments are continually seeing that they can perhaps shift the role of advocacy to the national area, and we would be concerned probably that there was not a state-based complementary role in terms of advocacy, because as I was mentioning before, the NDIS is just one component. It might be 10 per cent of people with disability who have a funding package, but many people with disability will still need to engage with a whole range of service systems that the state government has responsibility for, and they will need advocacy support through that system as well. So I think a robust, independent advocacy system is critical.\textsuperscript{617}

The Health and Community Services Union also affirmed the need for continued state government funding of advocacy:

Funding should remain within the remit of the state government. The State of Victoria has a clear responsibility to ensure that its most vulnerable citizens are supported by independent advocacy services to ensure their service needs, cultural safety, rights and entitlements are upheld.\textsuperscript{618}

The Victorian Council of Social Service similarly argued that:

\begin{verbatim}
614  Distinctive Options, submission no. 42, p. 7.
615  Ibid.
616  Ms J Harrison, submission no. 90, p. 23.
617  Ms T Sands, Australian Cross Disability Alliance, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 5.
618  Health and Community Services Union, submission no. 95, p. 7.
\end{verbatim}
Victoria has a strong and diverse disability advocacy system and it is important this is retained and strengthened in the transition to the NDIS, including preserving areas of specialisation such as legal, youth and children’s advocacy, as well as specialist advocacy areas, such as for people with acquired brain injury, people with intellectual disability, non-verbal people or people with complex communication needs and people with autism.\textsuperscript{619}

Some advocates suggested that there are pragmatic benefits for maintaining advocacy funding programs at both state and federal levels. For example, Ms Julie Phillips from Disability Advocacy Victoria – a group designed to represent advocacy organisations – argued that funding levels can vary according to different government priorities:

Depending on who is in power at different times, the whole sector over here can be cut by a state government, or a change of government can mean that it is being cut by that area of government — federal versus state. I guess one of the advantages of having funding from both is that where one area might be suffering, another might build up, and there are swings and roundabouts.\textsuperscript{620}

In a similar way, Ms Pauline Williams from AMIDA suggested that:

Having the federal and the state funding for advocacy is, I think, a really important feature. In some ways people would think it would be better to have one body that oversees it all Australia-wide, and I can see a sense of that in a practical way for lots and lots of different services. For advocacy, however, I do not think that would work, because as part of the nature of advocacy you are often biting the hand that feeds you. What we have seen with advocacy over the years is that different governments, both federal and state, have cut funding for advocacy ... Governments come and go, and that is what happens. At least if you have got funding from both state and federal, it is a kind of insurance. You hope that if you lose it here, you will still have it there. That is the way advocacy has survived over the years.\textsuperscript{621}

In a submission to the Inquiry, YDAS suggested that state funding for advocacy could be transferred to the Victoria Ombudsman, noting that:

We believe that the administration of advocacy funding needs to be separate from government and service providers in order to avoid conflicts of interest. We believe that the Victorian Ombudsman is such a body and their experience with complaints and upholding human rights and the law are especially relevant to disability advocacy. We believe that the current arrangement of the Department of Human Services funding advocacy has a significant conflict of interest with disability advocacy as does the Office of the Public Advocate and the Disability Services Commissioner.\textsuperscript{622}

The Australian Community Service Organisation (ACSO) and Women with Disabilities Victoria recommended that the Victorian Equal Opportunity and Human Rights

\textsuperscript{619} Victorian Council of Social Service, submission no. 71, p. 12.
\textsuperscript{620} Ms J Phillips, Disability Advocacy Victoria, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 6.
\textsuperscript{621} Ms P Williams, Housing Rights Coordinator, Action for More Independence and Dignity in Accommodation, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 6.
\textsuperscript{622} Youth Disability Advocacy Service, submission no. 52, p. 7.
Commission be responsible for administering advocacy funding in the future. In contrast, VALID suggested that the administration of advocacy funding should continue through the Office for Disability, arguing in a submission that:

We are not aware of any evidence to support the proposition that the current arrangement - i.e. through the Office for Disability - presents a manifest conflict of interest. While we accept that there might be a perception of conflict of interest, given OfD is part of DHHS which is the major service provider - we would argue that the current arrangement has worked well for many years without compromising the fearlessness of funded organisations.

As noted in the Interim Report, the Victorian Ombudsman recommended that responsibility for the administration of advocacy funding should be transferred to the Office of the Public Advocate. The Interim Report discussed this suggestion and found that it would not be appropriate, given that the Office of the Public Advocate has responsibility for guardianship as ‘advocate of last resort’. During Stage 2 of the Inquiry stakeholders reiterated this view. For example, Ms Julie Philips from Disability Advocacy Victoria argued that:

We reject suggestions, just raised by the Ombudsman, that the Office of the Public Advocate have a role in independent advocacy. Again, the ethos, the philosophy behind their best interest advocacy, doing what is best for someone, is at loggerheads with our rights-based approach which is to ensure that we can, as much possible, find out what the person wants and compare what they want and their wishes and desires to the rights they have under international and domestic human rights legislation.

In a similar way, VALID commented that:

We believe that a move to OPA administration would carry similar perceptions of conflict of interest, given they are the primary provider of guardianship. There is certainly a case for moving to a more independent model of administration, but until such time as that is established we see no urgent case for change.

The Committee is adamant that the Victorian Government should continue to fund advocacy services at the state level, and believes that this will be particularly important once the NDIS is fully established. However, the Committee concurs with the findings of the Victorian Ombudsman that ‘there is currently limited funding for advocacy’ and a need to better understand the demand for different types of advocacy services. It is clear that there is much uncertainty about which forms of advocacy are required to meet demand into the future and concerns that both funded and volunteer advocacy should meet certain quality standards.

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623 Australian Community Support Organisation, submission no 69, p. 6; and Women with Disabilities Victoria, submission no. 77, p. 14.
624 Italics in original. Victorian Advocacy League for Individuals with Disability, submission no. 91, p. 7.
626 Family and Community Development Committee, Inquiry into Abuse in Disability Services – Interim Report, Parliament of Victoria, Melbourne, 2015, p. 62.
627 Ms J Phillips, Disability Advocacy Victoria, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 3.
628 Victorian Advocacy League for Individuals with Disability, submission no. 91, p. 7.
The Committee also agrees with the view of the Victorian Ombudsman, and many of the Inquiry’s stakeholders, that the administration of advocacy should avoid conflict of interest with service provision and other oversight functions. However, the Committee is aware that the Department is currently considering the transfer of some of its disability services to non-government service providers, which will lessen any perception that the Office for Disability has a conflict of interest in administering advocacy funding. The Committee does not believe that responsibility for advocacy should be transferred to the Disability Services Commissioner, as advocates need to be free to represent people with disability in their dealings with the Commissioner without fear or favour.

On the future of advocacy services in Victoria, the Committee recommends that:

**RECOMMENDATION 6.2**

The Victorian Government continue to administer funding for disability advocacy through the Office for Disability. In addition, the Victorian Government conduct a review of disability advocacy, with a focus on:

- identifying the demand for different types of advocacy;
- establishing the views of people with disability about advocacy services;
- determining the impact of the NDIS on the capacity of advocacy services; and
- ensuring that both funded and volunteer advocacy services undergo safety screenings and meet appropriate quality standards.

### 6.5. Advocacy for families

Throughout the Inquiry the Committee has been impressed by the dedication of many parents and families who advocate on behalf of their family members. As discussed in Chapter Two, the Committee heard about the emotional toll experienced by families who have sought to make complaints or to report abuse and neglect. The Inquiry’s stakeholders argued strongly that parents and families of people with disability need dedicated advocacy services to support them in their efforts to uphold the rights of their family members.

Witnesses emphasised the important role that family members can play as advocates for people with disability. Ms Kellie Marshall, from the Inclusive Labor Disability Justice Working Group, commented that:

> One of the things that gets highlighted to me quite often by families is that there tends to be some advocacy support for people with disabilities out in the community but there is no family advocacy. There are people out there who do not have communication needs, who are quite severely disabled. The voice for these people tends to be their family members.

> From what I know, and certainly from the families I have spoken to, there is no family-funded advocacy out there. I think that needs to be a recommendation. We need to get really serious about that in terms of supporting families because they are the
ones who tend to be the biggest advocates and the biggest voices and are there for the long term.\textsuperscript{630}

Dr George Taleporos from advocacy group YDAS also highlighted the role that family members can play as advocates, noting that ‘it is often the family who are the only people there that are speaking out for the young person’.\textsuperscript{631} In a similar way, Ms Therese Sands from the Australian Cross Disability Alliance also acknowledged the role of families as advocates, noting that ‘families can be fantastic advocates, and certainly a person with disability may choose to have their family member or a close friend as their advocate’.\textsuperscript{632}

At a public hearing in Bendigo Dr Noela Foreman, president of parent group Quality Living Options Bendigo, highlighted the need for support for ageing parents anxious about the future care of their children. Dr Foreman explained that:

There is an urgent need for advocacy and counselling to be available to assist elderly parents in finding ways to gain secure, appropriate and ongoing care for their adults and for support during the transitional process to ensure that it is appropriate for all parties.\textsuperscript{633}

In her submission to the Inquiry, Ms Barbara Dixon argued that family advocacy should be funded to support parents in their interactions with services providers – ‘Family advocacy must be funded to ensure there is a level playing field when going up against service providers’.\textsuperscript{634}

Mrs Jean Tops, President of the Gippsland Carers Association drew attention to the tension between advocacy services designed to support individuals with disability, and the need for families of people with disability to access advocacy. At a public hearing in Morwell, Mrs Tops commented on the situation of a mother requesting that the Department move her son’s accommodation following an assault:

We had a case where a person with a disability was in a challenging behaviour facility. He had been thrown through the glass door. The mother was so distraught by what was happening she ended up taking her son home again. She then went back to the department to ask for a better place for him to be placed where he would be safe. The department were not able to offer anything else, but what the department did was notify the mother that they were making an application to the guardianship and administration board for guardianship over her son because they believed the mother was being vexatious because she would not accept a return to the facility from whence he had been injured.

When the mother came to us she said she had asked Disability Advocacy would they help, and Disability Advocacy said no, they could not. They could advocate for her son but they could not advocate for her and in point of fact they had had discussions with

\begin{footnotesize}
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\item \textsuperscript{630} Ms K Marshall, Inclusive Labor Disability Justice Working Group, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 5.
\item \textsuperscript{631} Dr G Taleporos, Manager, Youth Disability Advocacy Service, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 9.
\item \textsuperscript{632} Ms T Sands, Australian Cross Disability Alliance, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 7.
\item \textsuperscript{633} Dr N Foreman, President, Quality Living Options Bendigo, Family and Community Development Committee public hearing – Bendigo, 5 November 2015, transcript of evidence, p. 3.
\item \textsuperscript{634} Ms B Dixon, submission no. 100, p. 3.
\end{itemize}
\end{footnotesize}
the department and it was likely that they would support the application for a guardianship order. So we encouraged the mother to make her own application to the guardianship and administration board and put before the board what was the true picture. The outcome of all of that was that the guardianship board appointed the mother as guardian and the department was ordered to find a suitable accommodation and support service for the son.635

Mrs Tops was also critical of the lack of capacity in existing carers support services, especially in regional areas, stating that:

People will say to us, ‘Well, there is Carers Australia and there is Carers Victoria’, but I am here to tell you that Carers Australia and Carers Victoria do not provide on-the-ground peer support advocacy links to services and networking for families living in the regions. They just do not do it.636

While many parents lamented the lack of targeted support services for families, Ms Trisha Schipp, a parent from the Shepparton region, spoke positively about the assistance she had received from advocates:

I have always felt strongly for advocates. I have always used an advocate at meetings in schools and the like. Only recently have I not bothered with an advocate. I have found, particularly when my son was growing up and then in the transition times, that a lot of people said that I would not need an advocate because I am a pretty collected lady, but I was always glad for the other pair of ears there. I would always tell my advocate before the meeting, ‘What I want out of this meeting is X; in case I can’t cope with it, can you make sure I get X?’ I think that if I need an advocate, a lot of people do. That might sound arrogant, but yes, I believe in advocacy.637

The Committee believes that families of people with disability need access to specific advocacy services to support them in their efforts to advocate for their relatives. It is particularly necessary that families have access to advice and support when pursuing complaints with the Department and service providers, or reporting abuse. The Committee is aware of the important work currently undertaken by volunteer parent support groups, which act as a valuable peer-support network. However, this work must be complemented by funded family advocacy delivered by appropriately trained advocates. In this way, the Committee recommends that:

**RECOMMENDATION 6.3**

The Victorian Government establish and fund a program for appropriately qualified advocacy organisations to deliver dedicated family advocacy services, including in rural and regional areas.

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635  Mrs J Tops, President, Gippsland Carers Association, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 4.

636  Ibid.

637  Ms T Schipp, Member, Carers and Parents Support Group of Benalla, Family and Community Development Committee public hearing – Shepparton, 29 October 2015, transcript of evidence, p. 8.
Chapter 7
The future of Victoria’s oversight bodies

AT A GLANCE

Background

In its Interim Report, the Committee recommended the establishment of a national independent oversight body, with powers and responsibility for handling complaints; investigating reportable serious incidents; oversight of restrictive practices; voluntary community visitors, and a possible paid inspector scheme.638

While the Committee is confident that a national oversight body will be established, it has been a key argument of this Final Report that the Victorian Government must act now to improve the state’s safeguarding and oversight framework to better support people with disability in the interim.

Chapter overview

This chapter discusses the future of Victoria’s oversight bodies, including the role of:

- the Disability Services Commissioner (DSC);
- the Office of the Public Advocate (OPA) and the Community Visitors Program;
- the Victorian Ombudsman;
- the Victorian Equal Opportunity and Human Rights Commission (VEOHRC); and
- the Office of the Senior Practitioner (Disability).

In doing so the chapter addresses a number of questions posed in the Interim Report about the roles and responsibilities of these bodies.

The chapter also responds to term of reference (C): ‘the Committee should examine the powers and processes of Victorian investigation and oversight bodies with jurisdiction over abuse of people with a disability, with particular focus on the ongoing role of these bodies in the context of the National Disability Insurance Scheme’.

Although the Committee heard trenchant criticism of the current DSC and confusion around the role and powers of the DSC, the majority of stakeholders were supportive of the establishment of an independent statutory oversight body very similar to the model of the current DSC. The Committee recommends that the Victorian Government comprehensively renew the DSC – with expanded legislative powers and additional funding – to become the primary oversight body for the disability sector. The Committee recommends that a renewed DSC be retitled as the ‘Disability Commissioner’, and have responsibility for handling complaints about service quality; receiving mandatory reports of suspected abuse and neglect; conducting own motion investigations with dedicated authorised officers; developing practice guides and workforce professional development; and leading the state’s commitment to the principle of zero tolerance of abuse.
This chapter discusses the future of Victoria’s oversight bodies, particularly the role of the Disability Services Commissioner (DSC). The Committee is confident that the Disability Reform Council will recommend the establishment of a national oversight body. However, it is adamant that the Victorian Government must not rely on this, and needs to improve Victoria’s oversight system in the interim period.

Throughout the Inquiry, the Committee heard extensive criticism of the DSC, particularly in relation to its perceived failure to investigate reports of abuse and neglect. The Committee considers that some of the dissatisfaction with the DSC relates to confusion about its role – the DSC is mandated to conciliate and investigate complaints about service quality, not abuse. Indeed, as argued throughout the Final Report, cases of suspected criminal sexual and physical abuse are fundamentally a matter for police, and should not be investigated as an ‘incident’ or minimised as an issue of service provision to be dealt with ‘in house’.

While many of the Inquiry’s stakeholders were critical of the DSC, there was overwhelming support for an independent statutory oversight body to oversee reports of abuse and neglect, in the model of the DSC. Other witnesses suggested that a range of bodies could take over the functions of the DSC, and take on new powers in relation to the mandatory reporting of abuse, such as the Victorian Equal Opportunity and Human Rights Commission (VEOHRC), the Victorian Ombudsman or the Office of the Public Advocate (OPA). The Committee considers that these bodies each play distinct roles in relation to the disability sector which should be retained. Although the Committee accepts that the DSC has not met the expectations of most of the disability sector, it is nevertheless of the view that a renewed and appropriately resourced DSC offers the most appropriate model of oversight prior to the establishment of a new, national oversight body. Given the broadening of its role, the Committee considers that a name change should also occur to reflect this, and that the DSC will become the ‘Disability Commissioner’.

The Committee appreciates that the Community Visitors are dedicated volunteers. The Community Visitors Program was criticised, but it also has its supporters. Much of the criticism of this Program stems from the absence in Victoria of a paid inspectorate for the sector. The Committee firmly believes that the latter must be appointed within a renewed Disability Commissioner. There was a strong view expressed to the Committee that the location of the Senior Practitioner (Disability) within the Department of Health and Human Services (the Department) is inappropriate.

### 7.1. Options for independent oversight in Victoria

In its Interim Report, the Committee recommended the establishment of a national independent oversight body, with powers and responsibility for:

- handling complaints
- managing and investigating reportable serious incidents
- oversight of restrictive practices
• voluntary community visitors
• the option of an official inspector scheme with paid inspectors or visitors.\textsuperscript{639}

It is the view of the Committee – and the majority of the Inquiry’s stakeholders – that the Victorian Government cannot wait until the introduction of a national oversight system to address deficiencies in the operation of Victoria’s own oversight bodies.

The Interim Report posed the following questions about the future of oversight in Victoria for Stage 2 of the Inquiry process:

During the interim period of transition to the NDIS from 2016 to 2020, should the Victorian Government:
• create a new body under new legislation
• allocate the responsibilities to a single existing body
• improve the integration of existing bodies to fill the gaps and address overlaps on the boundaries?

If the current safeguarding responsibilities were allocated to a single existing body, should this body be:
• Disability Services Commissioner
• Victorian Equal Opportunity and Human Rights Commissioner
• Victorian Ombudsman
• another existing body?

Should the state maintain responsibility for some elements of the safeguarding system during and after the transition to the NDIS?

If a single oversight body were established in Victoria what governance, accountability and oversight arrangements would need to be established to ensure it is accountable in safeguarding people who access disability services?\textsuperscript{640}

In Phase 1 of her report, the Victorian Ombudsman recommended the establishment of a single independent oversight body for Victoria with responsibility for complaints handling and the investigation of abuse.\textsuperscript{641} At a public hearing the Victorian Ombudsman suggested that these oversight functions could be undertaken by a new body, a single existing body, or the government could ‘improve the integration of existing bodies to fill the gaps and address the overlaps on the boundaries’.\textsuperscript{642} In Phase 2 of her investigation the Victorian Ombudsman reiterated her support for an independent body, and emphasised that ‘the government, guided by the parliamentary inquiry, needs to determine which of the options it is able to put in place in a short timeframe to address the obvious deficiencies in the system’.\textsuperscript{643}

\textsuperscript{640} Ibid., p. xxx.
\textsuperscript{642} Ibid.
\textsuperscript{643} Ibid.
The Committee is mindful that any changes to Victoria’s oversight system need to be capable of being implemented quickly, be cost effective, and must improve the capacity of the system to prevent and respond to abuse. While the Committee appreciates that much of the responsibility for oversight may be transferred to a national body following the roll-out of the National Disability Insurance Scheme (NDIS), Victoria has committed – through a bilateral agreement with the Commonwealth – to managing oversight of all disability services (including those funded through the NDIS) in the interim. The Committee considers it vital for the Victorian Government to act now to improve Victoria’s oversight system.

Stakeholders held a diverse range of views about whether a new oversight body should be established in Victoria, or whether oversight functions should be enhanced and consolidated in an existing body – such as the Disability Services Commissioner, the Victorian Ombudsman, or the Victorian Equal Opportunity and Human Rights Commission.

Some witnesses suggested that the Victorian Ombudsman could assume responsibility for oversight. Ms Julie Phillips from Disability Advocacy Victoria argued that:

> If it has to be a decision to choose amongst current bodies, we would go with the Ombudsman. We do not believe there is time to wait for the NDIS to come in before an independent body is established. Also we want to make sure that it is known that abuse is not going to be simply connected with the provision of services under the NDIS. It is going to be broader than that and it makes sense that there only be one body to investigate these sorts of things. If one independent body was set up now, it could be transferred to a national body with some planning so it would not be a waste of time for people in setting it up and looking at the statutory obligations it needed to have.\(^{644}\)

In a submission to the Inquiry, advocacy group Action for More Independence in Accommodation (AMIDA) suggested that the Victorian Ombudsman could assume responsibility for oversight in the interim.\(^ {645}\)

In a joint submission Communication Rights Australia, Disability Discrimination Legal Service and Villamanta Disability Rights Legal Services argued that:

> A new body should be established due to the fact that the current authorities have failed to prevent abuse. If an independent body was established now, with coordination and planning, such a body could transfer over to become the state arm of a new national oversight body.\(^ {646}\)

However, these organisations also argued that the Victorian Ombudsman would be the most appropriate of the existing oversight bodies, commenting that:

> The Office of the Public Advocate has a conflict of interest due to its Guardianship Program and will not be accepted by many people with disabilities and their families.

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646  Communication Rights Australia, Disability Discrimination Legal Service and Villamanta Disability Rights Legal Service, submission no. 59, p. 4.
The Victorian Equal Opportunity and Human Rights Commission are often interveners in matters before VCAT involving the *Equal Opportunity Act* and the *Charter* and therefore would be seen to have a conflict by service providers.

The Disability Services Commission has lost the confidence of the sector. Therefore if the decision to reject the establishment of an independent oversight body is made and an existing statutory authority was chosen [to] perform this function instead, we endorse the office of the Ombudsman.\(^\text{647}\)

There was some support amongst stakeholders for the Victorian Equal Opportunity and Human Rights Commission to become the oversight body for disability. Disability Justice Advocacy considered the VEOHRC as the most appropriate body for oversight given its commitment to upholding human rights, stating that:

> The current safeguarding responsibilities should be allocated to a single existing body, namely the Victorian Equal Opportunity and Human Rights Commission with relevant amendments made to the Victorian Equal Opportunity Act 2010 to facilitate this.\(^\text{648}\)

Despite this, the VEOHRC argued it was not ‘the appropriate body’ to take on a role handling complaints and investigating abuse. At a public hearing in Melbourne, Ms Catherine Dixon, Director of the Commissioner’s office, responded to suggestions that the VEOHRC could be the oversight body for disability, commenting that:

> We noticed in your first report that the kind of responsibilities and powers you thought this body should have would be complaint handling, managing and investigating reportable serious incidents, oversight of restrictive practices, the Community Visitors Program and the potential for paid inspectors. That is a really broad ambit and our role really is to make sure that people are aware of their rights and obligations under equal opportunity legislation and under the human rights Charter and the under the Racial and Religious Tolerance Act. So our functions really revolve around that, whether it is research, education or complaint handling. We don’t have the expertise when it comes to service delivery in the disability sector so we don’t think we would be the appropriate body to undertake that work.\(^\text{649}\)

Some witnesses argued strongly that Victoria requires a new independent oversight body, on the basis that existing bodies have failed to address the prevalence of abuse. In this way, Ms Margaret Ryan of JacksonRyan Partners stated that:

> The department, the DSC, the community visitors and the Public Advocate are the main oversight bodies in Victoria. We know they all have considerable powers and authorities to protect people with disabilities. Therefore, given the Public Advocate’s statement that abuse and neglect is systemic and on the rise, this tells us that jointly these entities have largely failed to stem the flow of abuse and neglect. We also know that these are the people and entities that have the responsibility and the power to not only prevent and stamp out abuse and neglect but to expose those individuals who perpetrate abuse and those entities where it is practised. We say they have not done so. Therefore let us stop this nonsense talk about systems being at fault. We must fully

\(^{647}\) Ibid.

\(^{648}\) Disability Justice Advocacy, submission no. 48, p. 5.

acknowledge that it is people who commit acts of abuse and not systems. We must fully acknowledge that it is people who manage and oversight the system and that the system does not manage itself. People must therefore be called to account.\textsuperscript{650}

Mrs Jean Tops, President of the Gippsland Carers Association, also supported the establishment of a new body, commenting that:

We believe that the best possible way that the committee could consider recommending is that the independent oversight body should be just that — it should be completely independent of anything or anyone that currently exists. I know that you have talked in your report about whether or not any of the existing entities could take on the role of the independent oversight body. We believe that because of what has taken place over decades of time there is an absolute need for a new broom that will completely sweep clean the national disability insurance scheme system to ensure that the bad habits and the bad practices of the past are wiped out completely.\textsuperscript{651}

Mrs Tops also suggested that a parliamentary committee should be established to monitor the new independent oversight body.\textsuperscript{652} One submitter suggested that a new oversight body could take a stronger consumer rights focus and be titled the Disability Services Consumer Protection Commissioner.\textsuperscript{653}

Some witnesses emphasised the need to minimise changes to Victoria’s oversight system, given that the federal Department of Social Services has yet to confirm the national oversight framework for the NDIS. Ms Christine Trotman, CEO of service provider Cooinda Hill, argued that the DSC should be ‘expanded’:

I am loath to introduce another layer or another level of complexity into the system. If I was in a position to make a decision, that would be my advice — that the disability services commissioner’s office have their scope expanded to be able to facilitate a more effective reporting and monitoring system.\textsuperscript{654}

Ms Karen Robinson, CEO of service provider Karden Disability Support Foundation, drew attention to the unique status of the DSC as an independent oversight body within Australia, stating that:

I think having an independent body is a really key part of having any sort of incident reporting or complaints reporting process. I think that an independent body is a really critical part of the puzzle because someone who is not a service provider or a funding body I think has a different perspective on how they might investigate a process, and I think that is a really good thing. As much as we are certainly not a perfect system, I think the fact that Victoria has a stand-alone commissioner’s office is quite unique in Australia. As we know, it is the only one of its kind.\textsuperscript{655}

\begin{thebibliography}{655}
\bibitem{650} Ms M Ryan, partner, JacksonRyan Partners, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 4.
\bibitem{651} Mrs J Tops, President, Gippsland Carers Association, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 3.
\bibitem{652} Ibid., p. 4.
\bibitem{653} Name withheld, submission no. 49, p. 17.
\bibitem{654} Ms C Trotman, Chief Executive Officer, Cooinda Hill, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, p. 8.
\bibitem{655} Ms K Robinson, Chief Executive Officer, Karden Disability Support Foundation, Family and Community Development Committee public hearing – Ballarat, 6 November 2015, transcript of evidence, p. 8.
\end{thebibliography}
Ms Pauline Williams from advocacy group AMIDA argued that:

I know that we are in this interim period before the NDIS comes in and we support some of the recommendations for a single oversight body, but I guess I think it is possibly a duplication if we try to establish that again in Victoria or change the structures we have in Victoria if they are about to be changed again nationally.\footnote{Ms P Williams, Housing Rights Coordinator, Action for More Independence and Dignity in Accommodation, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 5.}

As outlined in the Interim Report, the VEOHRC, the Victorian Ombudsman and the Office of the Public Advocate have important functions as part of Victoria’s broad system of oversight for people with disability. The Committee considers the Public Advocate’s role as the guardian of last resort incompatible with a more direct oversight role of reports of abuse. Similarly, the VEOHRC has specific responsibilities under the \textit{Equal Opportunity Act 2010 (Vic)}, the \textit{Racial and Religious Tolerance Act 2001 (Vic)} and the \textit{Charter of Human Rights and Responsibilities Act 2006 (Vic)}, that should not be in any way diminished by additional functions in relation to individual service complaints or reports of abuse.

Further, while the Victorian Ombudsman does have a function in relation to complaints against state government departments, local government and most statutory authorities, adding oversight for disability service provision would require significant time and resourcing to achieve. The Committee appreciates that the Victorian Ombudsman has responsibility for a broad range of functions. The Committee is concerned that for the prevention, investigation and reporting of disability abuse the sector requires a focal point for leadership and oversight.

Notwithstanding the concerns of many within the disability sector – discussed below – the Committee is of the view that a renewed Disability Services Commissioner offers the most appropriate model of oversight prior to the establishment of a new, national oversight body once the NDIS is fully established.

\subsection*{7.2. Disability Services Commissioner}

Throughout the Inquiry the Committee heard extensive criticism of the DSC. Some of the criticism of the DSC was as a consequence of a lack of understanding of the role; some of the criticism of the DSC was a direct result of the handling of complaints and the conciliation process. Many witnesses feel that the DSC has failed in its current role to provide effective oversight of the disability sector, especially in relation to investigating reports of abuse. Despite the public perception that the DSC has not fulfilled its obligations, the Committee is aware that the DSC was established to serve as a complaints body, with an explicit focus on conciliating between people with disability and service providers around issues of service quality. The DSC was not designed to investigate reports of abuse or review ‘critical incidents’ – these have been the responsibility of the Department, and in relation to criminal matters, Victoria Police.

The Committee heard from a number of parents of people with disability who are extremely disappointed at the way the current DSC has handed their complaints.
number of submissions and witnesses highlight the gaps between public perception of the role of the DSC and its actual responsibilities. At a public hearing in Melbourne, Ms Kerrie Lecluse stated that:

I want to conclude by impressing on the Committee how Victoria’s Disability Services Commission has refused to investigate my complaints relating to the abuse and neglect of my daughter over a number of years. I want to impress on the Committee that how by refusing to investigate complaints the Commissioner has not only failed to protect the rights of my daughter to live free from abuse and neglect as required by the Disability Act but he has, in effect, condoned the abuse and neglect.657

Ms Jenny Harrison described her experience with the current DSC in the following way:

I went to the DSC with my complaints as a way of sort of testing the system a bit. To me it was in part an academic exercise — there is this office here and this is its purpose, so I gave it a good shot. I have been so disappointed. I felt that they have chosen to take a line of conciliation rather than being able to advise, direct and be progressive.658

At a public hearing in Morwell Mrs Jean Tops, President of the Gippsland Carers Association, spoke about the disappointment many parents have felt about the DSC:

We have carers all over Gippsland who have been to the disability commissioner, and meetings and meetings and years upon years upon years of so-called conciliation, and nothing has happened. There are no resolutions for the families who are completely stressed out by these kinds of issues that they are facing on a regular basis, without any solution to them, and that applies as much to the disability commissioner as it applies to the department of human services. Neither of them are doing what they ought to be doing then in terms of acting immediately on issues that have been put before them.659

A number of witnesses questioned the conciliatory approach taken by the current DSC. For example Mr Toby O’Connor, CEO of service provider St Laurence, commented that:

We note that Disability Services Commissioner’s legislated role is to resolve complaints brought to his office. The Commissioner’s role was originally conceived to be a facilitator rather than an arbitrator. Given this approach, it may sometimes be less than optimal in instilling confidence in people with disability who lodge a complaint, that they will have it satisfactorily resolved where there are opposing views taken by the three parties involved in responding to the complaint.660

In a similar way, Ms Keran Howe, Executive Director of Women with Disabilities Victoria, questioned the appropriateness of the DSC’s current emphasis on conciliation, noting that:

657 Ms K Lecluse, parent, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 5.
658 Ms J Harrison, parent, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 6.
660 Mr T O’Connor, Chief Executive Officer, St Laurence, Family and Community Development Committee public hearing – Geelong, 13 October 2015, transcript of evidence, p. 2.
We believe that the Disability Services Commission has not demonstrated sufficient effectiveness in its conciliation style. It is well-known that extreme power differentials between disability organisations and service users make conciliation ineffective in addressing their concerns.\(^{661}\)

Advocacy groups were also frustrated by the approach of the DSC. For example, Ms Julie Phillips from Disability Advocacy Victoria, explained that:

In terms of the Disability Services Commissioner, I am afraid that many in the sector lost faith and trust in that body as soon as someone from DHS was appointed to be in charge. I think it is too late to regain confidence in the Disability Services Commissioner and the fact is that while they have claimed to be a little more active since December they have been receiving complaints about their services for many years. It is only since they have been made public that there seems to have been a response.\(^{662}\)

The Committee heard limited evidence from witnesses that reported positive outcomes with the DSC in its current role. For example, advocate Ms Sharyn Laugher stated that one of her client’s cases was ‘handled quite well’ by the DSC.\(^{663}\) However, the Inquiry’s participants are largely self-selecting and cannot represent the views of all people engaging with the DSC.

A number of stakeholders have questioned the DSC’s position that it is not empowered to conduct investigations. At a public hearing in Melbourne, Ms Margaret Ryan from JacksonRyan Partners stated that:

We know the Disability Act gives the DSC an unambiguous power to investigate. What we do not know, however, is why the Commissioner does not investigate. Could it be incompetence, a lack of skills or a refusal to accept that wrong is wrong, and thus he believes that abuse and neglect can be conciliated? As well as the power to investigate, we also know that the DSC, by using section 16 of the act, can initiate inquiries subject to the approval of the minister. But has he?\(^{664}\)

In a submission to the Inquiry, service provider Distinctive Options highlighted that there is a ‘public perception’ that the DSC has not acted on reports of abuse, commenting that:

Much has recently been made of the role of the Disability Services Commissioner and the apparent lack of action by this office with regards responding to complaints. Without making comment on their role and whether this is effective or not it is acknowledged that clearly there is a public perception not enough is being done at the present time to safeguard individuals with a disability.\(^{665}\)

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\(^{661}\) Ms K Howe, Executive Director, Women with Disabilities Victoria, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 5.

\(^{662}\) Ms J Phillips, Disability Advocacy Victoria, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 2.

\(^{663}\) Ms S Laugher, Rights Information Advocacy Centre, Family and Community Development Committee public hearing – Bendigo, 5 November 2015, transcript of evidence p. 5.

\(^{664}\) Ms M Ryan, partner, JacksonRyan Partners, Family and Community Development Committee public hearing – Melbourne, 28 September 2015, transcript of evidence, p. 3.

\(^{665}\) Distinctive Options, submission no. 42, p. 5.
7.2.1. Current powers and role of the Disability Services Commissioner

The Committee believes that much of the dissatisfaction with the current DSC relates to confusion about its role in relation to reports of abuse – a function that it has never been mandated to perform. Under section 16 of the Disability Act 2006 (Vic) (the Disability Act) the DSC has a number of functions relating to complaints rather than abuse or ‘critical incidents’. These include the power to ‘investigate complaints relating to disability services’ and ‘conciliate where a complaint has been made in relation to a disability service provider’.666

Section 109 specifies ‘what matters can be the subject of a complaint’:

A complaint may be made to the Disability Services Commissioner if the complaint –

(a) arises out of the provision of services by a disability service provider; or

(b) arises out of the provision of services to a person with a disability by a contracted service provider or a funded service provider; or

(c) is that a disability service provider, contracted service provider or funded service provider has acted unreasonably by not properly investigating, or not taking proper action upon, a complaint made to the service provider.667

While the Disability Act establishes processes for the DSC in relation to the conciliation and investigation of complaints, it gives explicit priority to conciliation.668

Under section 116, the Disability Act specifies the following:

(1) If –

(a) the Disability Services Commissioner decides to consider a complaint in whole or in part; and

(b) the Disability Services Commissioner considers that the complaint is suitable for conciliation –

the Disability Services Commissioner must make all reasonable endeavours to conciliate the complaint.669

In addition, section 116 outlines the process that the current DSC is required to follow in order to respond to complaints deemed ‘suitable for conciliation’, including facilitating discussions between service providers and complainants and assisting the parties to ‘reach agreement’.670 The Disability Act also gives the DSC the power to ‘specify ... any action which the Disability Services Commissioner considers ought to be taken to remedy the complaint’.671

666  Disability Act 2006 (Vic), s.16 (a) and (d).
667  Ibid., s.109.
668  See Second Reading Speech, Minister for Community Services, Victoria, Legislative Assembly, Debates, Book 2, 1 March 2006, pp. 413-414, where it is made clear that the Commissioner’s powers are modelled on the Health Services Commissioner.
670  Ibid.
671  Ibid., s.119 (1) (c).
Chapter 7 The future of Victoria’s oversight bodies

The Disability Act provides for the DSC to investigate a complaint only where the DSC determines that it is ‘not suitable for conciliation’ or if the DSC ‘is of the view that conciliation has failed and further action is required’. 672

The DSC has noted that the overwhelming majority of complaints brought to the office relate to quality of care and service issues, not to allegations of abuse. In this way, the DSC reported that:

Over 95 per cent of issues raised with our office are related to issues other than assault or abuse (over 85 per cent other than assault, abuse or neglect). Most complaints relate to issues of service quality including insufficient service/care, inadequate or insufficient communication, or staff behaviours and attitudes. Almost half of the enquiries and complaints raised pertain to group homes. 673

In a submission to the Inquiry, the DSC described its conciliatory approach to complaints handling:

To resolve complaints we apply an Alternative Dispute Resolution approach within a rights-based legislative framework to achieve outcomes that addresses both the individual's needs and aspirations, and promotes service improvement through the use of educative and advisory functions. This strengthens our effort in promoting people’s rights to raise issues about their service delivery and for staff in responding effectively to complaints. 674

While the Act does empower the DSC to investigate ‘complaints’ that are found to be unsuitable for conciliation, the DSC emphasised that:

The Act does not provide own motion capacity for the Victorian Disability Services Commissioner. This capability, if legislated in Victoria, would allow the Commissioner the avenue of investigating serious matters where a complaint has not been raised. Currently, it is contingent upon a complaint of a specific matter to be before the office or for the Minister to agree to an Inquiry. 675

Instead of own motion powers, the Disability Act states that:

(m) subject to the approval of the Minister, to initiate inquiries into –

(i) matters referred by the Disability Services Board; and

(ii) broader issues concerning services for persons with a disability arising out of complaints received. 676

The Act also allows for the DSC to ‘provide advice or inquire into matters referred by the Minister or the Secretary’. 677 In this way, the investigation powers of the DSC are limited and relate only to complaints received that are deemed unsuitable for

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672  Ibid., s.118 (1).
673  Disability Services Commissioner, submission no. 67, p. 5.
674  Ibid., p. 2.
675  Ibid., pp. 11-12.
676  Disability Act 2006 (Vic), s.16 (m).
677  Ibid., s.16 (c).
conciliation, and matters that the DSC has sought approval from the Minister to pursue.

In correspondence to the Committee, the DSC stated that it has received an increase in complaints related to serious allegations of abuse. As a result, the DSC has recently been involved in fourteen investigations relating to abuse. These are not own motion investigations – these are investigations into complaints under the process outlined in section 118.

At a public hearing during Stage 1 of the Inquiry, Mr Laurie Harkin, Disability Services Commissioner, commented on criticisms that the DSC was not fulfilling an obligation to investigate:

I am alive to the fact that there are people who hold quite a strong view about the extent to which we have applied the legislation in its present form and indeed have a view that perhaps we have not applied it so well at all. I was always reasonably confident, without ever being overconfident about things, that the interpretation and application of the act that I had stewardship of was correct. I more recently sought advice from the Victorian government solicitor ... It is the case that the Victorian government solicitor holds the same view as I do in terms of the approach to be adopted and that has been adopted. 679

While the current DSC has been focused on handling service complaints, rather than allegations of abuse, the body has actively provided a number of guidelines for service providers on how to prevent and respond to abuse. The Committee believes that this work is an important part of the DSC's role in improving services for people with disability. However, it has also clearly contributed to confusion about the office's responsibilities in relation to abuse.

At the same time, the Committee has heard that many people with disability and their families consider poor service quality a form of neglect, which should be responded to like other types of abuse, not as disagreements between people with disability and service providers. This view of the relationship between quality of care and neglect may account for the fact that approximately 5 per cent of the complaints the DSC receives actually relate to abuse.

Further confusing the purpose of the DSC were changes to its role brought by the Minister in 2012. Following a 2011 inquiry by the DSC into the Department’s processes for conducting Quality of Support Reviews, in June 2012 the DSC was instructed to begin independent reviews of incident reports relating to allegations of staff-to-client assault and unexplained injuries. This function does not relate to investigating specific cases of abuse. Rather, the DSC provides advice to the

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678 Disability Services Commissioner, Correspondence to the Committee, 11 March 2016.
679 Mr L Harkin, AM, Commissioner, Disability Services Commissioner, Family and Community Development Committee public hearing – Melbourne, 22 June 2015, transcript of evidence, p. 3.
680 See, for example, Disability Services Commissioner, Safeguarding People’s Right to be Free from Abuse, Disability Services Commissioner, Melbourne, 2012.
681 Disability Services Commissioner, submission no. 67, p. 5.
Minister, the Department, and service providers on the handling of ‘individual incidents, themes and issues identified from our reviews’.  

In a public hearing in Melbourne, Mr Harkin highlighted the differences between investigations conducted by a complaints body, and the investigation of abuse by police, commenting that:

I do not think that a Disability Commissioner, however described, ought to be conducting criminal investigations. I think that is a matter for police. Leave those things that belong to specialists, to specialists.  

The Committee concurs with this view, and has strongly argued throughout the Final Report that cases of suspected sexual and physical abuse must be investigated by police. Abuse should not be investigated as an ‘incident’ or minimised as an issue relating to service provision to be dealt with ‘in house’. While an oversight body can provide guidance on how abuse can be prevented and responded to by service providers, any complaints or reports relating to abuse are not suitable for conciliation and must always be referred to police.

7.2.2. Renewing the Disability Services Commissioner

The Committee is aware that the current DSC remains the only dedicated oversight body in Australia devoted to the disability sector. The Committee considers it vital to the prevention of abuse that there remains a specific body with responsibilities for oversight of disability services – rather than transferring oversight functions to an office with a broader focus on complaints or human rights. It is important that there is a clear pathway for people in the sector to voice their concerns, and a focal point within the sector for developing policy and guidance on how to deliver quality services to people with disability.

At the same time, the Committee acknowledges that the DSC in its current form has not lived up to the expectations of many within the disability sector. While the Committee believes that this is primarily related to the narrow functions given to the office, and confusion about the relationship between service complaints and reports of neglect and abuse, it also acknowledges the role that leadership plays in developing confidence in the abilities of an oversight body.

The Committee is confident that the Disability Reform Council will recommend the establishment of a national oversight body for disability services. However, the structure and functions of this body remain unclear, as does the timeline for its implementation. The Committee considers it vital then that the DSC not only be retained by the Victorian Government, but comprehensively renewed and refocused as the primary oversight body for the disability sector.

Throughout the Final Report the Committee has recommended a number of changes, including amendments to the Disability Act, to enhance the role of the DSC, such as:

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682 Ibid.
683 Mr L Harkin, AM, Commissioner, Disability Services Commission, Family and Community Development Committee public hearing – Melbourne, 22 June 2015, transcript of evidence, p. 8.
• In Chapter Two: recommendations to introduce zero tolerance as a guiding principle for the delivery of disability services under the Disability Act; provision for a role for the DSC in developing and delivering zero tolerance training to all disability support services; and the powers for the DSC to penalise disability service employers that are found to have taken adverse action against employees for reporting abuse.

• In Chapter Three: recommendations for establishing a mandatory reporting scheme (with penalties) that requires all registered disability service providers to report cases of suspected abuse and neglect within their organisation to the DSC; for the DSC to work with the Department and National Disability Services to create standardised policies and processes for providers to follow when reporting suspected abuse, and supporting clients in the aftermath of abuse; and funding the DSC and the Department to implement an online reporting system for all disability service providers that enables improved recording, tracking, and analysis of all reported instances of abuse.

• In Chapter Four: recommendations for the DSC to take a leadership role in the provision of ongoing professional development for the sector, including the provision of a coherent, practical and tailored suite of training packages for delivery to the sector; and a role for the DSC in monitoring and evaluating the workplace culture of service providers to ensure compliance with a zero tolerance of abuse framework.

The Committee believes that the DSC should become the key oversight body for the disability sector, with responsibilities for handling complaints and receiving reports of abuse; monitoring service quality; and providing leadership and resources on best practice approaches to preventing, identifying, and responding to abuse. Over time, the Committee anticipates that the Department will have a progressively smaller role in direct disability service provision, and may eventually transfer management of the current disability ‘incident reporting’ system to the DSC. The success of a renewed DSC will not only depend on increased resources, but also on the efforts of all within the sector to create a culture of zero tolerance of abuse.

The Committee is of the view that, ideally, a Disability Commissioner with these enhanced powers and responsibilities, widening of the role, and greater funding, should be established as an independent statutory body under its own legislation. However, in the interim period prior to the establishment of the NDIS and the national safeguarding framework, the Committee believes that much can be accomplished by amendments to the Disability Act.

In addition, and to reflect the broadening of its role, increased powers and greater funding, the Committee considers that a name change should also be made to the DSC. The DSC will become the ‘Disability Commissioner’.

Accordingly, on the future role of the Disability Commissioner the Committee recommends that:
Chapter 7 The future of Victoria’s oversight bodies

RECOMMENDATION 7.1

The Victorian Government amend the Disability Act 2006 (Vic) to make the Disability Commissioner the key oversight body for the disability sector in Victoria with responsibility for:

- resolving complaints about disability service providers;
- receiving mandatory reports about abuse and neglect (with penalties for failure to report);
- own motion powers to investigate reports of abuse and neglect of both an individual and systemic nature;
- developing standardised policies and processes for providers to follow when reporting and investigating suspected abuse;
- monitoring and evaluating service quality (through the use of dedicated investigation officers); and
- supporting the professional development of the disability workforce.

In addition, the Committee recommends that:

RECOMMENDATION 7.2

The Victorian Government appropriately fund the Disability Commissioner to ensure it can perform its new functions, particularly in relation to increasing its capacity to undertake investigations into abuse and neglect.

While the Committee believes that the Disability Commissioner must be resourced to undertake own motion investigations into abuse and neglect (on both an individual and systemic basis), evidence relating to possible criminal acts must be reported to the police.

On the relationship between Victoria Police and the Disability Commissioner the Committee recommends that:

RECOMMENDATION 7.3

The Victorian Government require the Disability Commissioner and Victoria Police to develop a protocol around the investigation of abuse and neglect, which includes a clear process for disability service providers to follow to report criminal abuse.

The Committee is aware that many within the disability sector are concerned about conflict of interest in relation to service provision and oversight. These concerns have been exacerbated by the relatively small size of the sector and the capacity for personnel to move between roles in the Department, service providers, and oversight bodies. The Committee believes it is paramount that the Disability Commissioner be free from both perceived and actual conflict of interest in order to provide renewal and independent oversight.

In recognition of the roll-out of the NDIS and the changing nature of the disability sector, the Committee recommends that:
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RECOMMENDATION 7.4

The Victorian Government amend section 14(3) of the Disability Act 2006 (Vic) to ensure that the Disability Commissioner can hold office for a maximum total of 5 years (including any periods of reappointment).

On an independent Disability Commissioner being established as a statutory body under its own separate legislation, the Committee recommends that:

RECOMMENDATION 7.5

The Victorian Government give consideration to an independent Disability Commissioner being established as a statutory body/entity under its own legislation, provided that:

- any such legislation be consistent with the NDIS national safeguarding framework.

7.3. Community Visitors

In its Interim Report the Committee recommended ‘that the Victorian Government recommend to the Disability Reform Council that a national evaluation is conducted of the Community Visitor Program with a view to determining how it will function in the NDIS environment’.

The Interim Report also raised a number of questions for Stage 2 of the Inquiry, namely:

In relation to visiting schemes and the existing Community Visitor scheme:

- Should volunteer Community Visitors continue to be part of the safeguarding framework in Victoria?
- If Community Visitors continue to be part of a safeguarding framework in Victoria, should they be located within the Office of the Public Advocate, a new independent oversight entity or another body?

Community Visitors are dedicated volunteers, who are independent, statutory appointments under the Disability Act. In addition to Community Visitors who visit disability service providers, there are also Community Visitors appointed to visit mental health facilities and supported residential services. Community Visitors are trained and empowered to visit any premises where a disability service provider is providing residential services and to inquire into a number of different aspects of the provision of services. There are a total of 550 Community Visitors, of whom approximately half are dedicated to visiting residential disability services.

In the year 2014-2015, Community Visitors conducted over 3,000 visits to disability service providers. Following visits, Community Visitors prepare a report, which is

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684 Family and Community Development Committee, Inquiry into Abuse in Disability Services - Interim Report, Melbourne, Parliament of Victoria, 2015, p. 125.
685 Ibid., p. 124.
686 Office of the Public Advocate, submission no. 87, p. 14; and Family and Community Development Committee, Inquiry into Abuse in Disability Services - Interim Report, Parliament of Victoria, Melbourne, 2015, p. 23.
provided to the most senior staff member. If the Community Visitors cannot resolve issues at a facility level, the matter is referred to the Department’s regional office. In the instance of serious matters, these are referred to the Public Advocate, who chairs the Community Visitors Board. The Board may refer a matter reported by a Community Visitor to the Secretary of the Department, the Disability Services Commissioner, the Senior Practitioner, or the Ombudsman. The timeliness of this process was questioned in evidence to Stage 1.

In response to the Committee’s questions posed for Stage 2, the Committee received a divergent set of views concerning the effectiveness of the Community Visitors Program, and their role in the future. The Program was criticised as being ineffectual, lacking resources, insufficiently trained, ill-informed, unprofessional, and too infrequent and sporadic a service to hold the sector sufficiently to account. In regional areas, Community Visitors may visit only once a year, with some participants to the Inquiry advising the Committee that they had never met a Community Visitor. Ms Stephanie Mortimer stated in her submission that the shared residential accommodation in which her sister resided had multiple issues of poor service and neglect:

Ladies would be on the toilet while another was in the shower and another was having their teeth brushed. One lady got up at night and showered making a lot of noise waking the residents. There was absolutely no privacy. The house is still there and the problems are still the same. The community visitors visit the house and it appears they have done nothing about this issue. The Office of the Public Advocate have been notified and they have done nothing either. What the OPA did was to try to stop my sister coming home to me when they knew how bad the conditions were.\(^{688}\)

One submitter described the Program as well-meaning but ineffectual:

Their resources are so limited and therefore their attendance is so infrequent and brief, their well-meaning efforts really are of no consequence. Additionally their annual report elicits very little government action and we are not aware of them being involved in the recent family-uncovered serious cases of abuse and assault.\(^{689}\)

This submitter also complained that Community Visitors did not consult with families about their loved one’s welfare, and recommended that they be disbanded.\(^{690}\)

JacksonRyan Partners were scathing in their criticism of the Program. On the issue of whether Community Visitors provide effective safeguarding they stated that:

Further on this matter, given that community visitors in Victoria only visit residential services on an infrequent basis and on their own admission a maximum of twice per year, and each visit is for a limited period of time, then the suggestion that they are an effective force in safeguarding the interests of people with a disability is quite fatuous.\(^{691}\)

JacksonRyan Partners do not consider volunteerism to be appropriate to the task of safeguarding:

\(^{688}\) Ms S Mortimer, submission no. 47, p. 1.
\(^{689}\) Name withheld, submission no. 49, p. 9.
\(^{690}\) Ibid., pp. 9-10, p. 14.
\(^{691}\) JacksonRyan Partners, submission no. 31, p. 25.
Secondly, as voluntary appointments, community visitors, no matter what their entry skills and qualifications and no matter the limited training they may be exposed to, they do not constitute a professional monitoring or investigatory regime. The writers argue that if the government is truly serious about safeguarding the interests of people with a disability, then the Committee must recommend that the concept of volunteerism as part of the safeguarding system is no longer appropriate. In other words, the totality of the system must be fully professionalised, as in paid individuals and entities.\(^{692}\)

The Royal Children’s Hospital stated in its submission that while a ‘good idea’, it was unclear how effective the Program is. The Hospital stated that:

> The level of the skills and training required and the complexity of the issues involved may indicate that these are positions best undertaken in a paid capacity and embedded within formal support structures such as those mentioned above, for example, the Office of the Public Advocate.\(^{693}\)

Parent and disability worker Mr Colin Bayne stated that:

> The sporadic visits from Community Visitors are overall ineffective and ill informed. They miss obvious items such as a decent menu and resident meetings which are often overlooked.\(^{694}\)

Mr Bayne’s sentiments were echoed by Mr Matthew Potocnik, who stated that, ‘the Community Visitors scheme in my experience is uneducated to the necessary requirements and understanding required to do the job properly’.\(^{695}\) In a joint submission Communication Rights Australia, Disability Discrimination Legal Service and Villamanta Disability Rights Legal Service told the Inquiry that ‘the Community Visitors Scheme should be transformed into a formal funded program and transferred to the new oversight body.’\(^{696}\) The Gippsland Carers Association (GCA) said that it wanted the volunteer program to be replaced by paid inspectors:

> GCA supports the establishment of a much stronger system with clear guidelines that will insist on accountability and compliance in order to uphold the rights of people with disabilities. To support this process GCA supports the recommendation of paid inspectors appropriately trained performing the role in place of the current Volunteer Community Visitors Scheme.\(^{697}\)

Distinctive Options stated that while it had some support for the Program, it wanted it to be enhanced through better funding, training in communication, and be made part of a new oversight body.\(^{698}\) Ms Joan Broughan said that to be effective Community Visitors would need increased powers and report to a body other than the Public Advocate.\(^{699}\)

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692 Ibid.
693 Royal Children’s Hospital, submission no. 62, p. 6.
694 Mr C Bayne, submission no. 68A, p. 3.
695 Mr M Potocnik, submission no. 66, p. 7.
696 Communication Rights Australia, Disability Discrimination Legal Service and Villamanta Disability Rights Legal Service, submission no. 59, p. 5.
697 Gippsland Carers Association, submission no. 54, p. 4.
698 Distinctive Options, submission no. 42, p. 12.
The Community Visitors Program also had its supporters amongst those who responded to the Committee’s questions for Stage 2. Service provider Karingal strongly supported the retention of the Program ‘with the transition to the NDIS as part of an integrated approach to monitoring quality and safeguards.’

Advocacy organisation AMIDA stated that the Community Visitors ‘should continue to be part of the safeguarding framework in Victoria and they should during the transition to the NDIS continue to be located at OPA.’ Huntington’s Victoria documented their long association with the Program and its benefits. The Health and Community Services Union wants the Program to continue:

We believe Community Visitors should continue to be part of the safeguarding framework and should have a close working relationship with a new independent oversight entity and paid inspector in the event such a body and function is created.

Service provider Gateways has also worked with Community Visitors over many years:

Gateways has experience working with the Community Visitors Scheme over many years in our residential services, and respects the importance of regular visits by independent people as part of a safety net in relation to care and respect for human rights.

The Australian Community Support Organisation (ACSO) want to retain the Community Visitors as part of a new integrated approach to safeguarding:

ACSO believes that the Community Visitors play an important role in the safeguarding framework. Despite their limited capacity for action to address abuse in disability services, their role should continue because they provide another layer of monitoring and on occasion may act as advocates for disability services clients. In the future, ACSO suggests an integrated approach of both the volunteer community visitors and paid inspectors to monitoring quality and compliance of service delivery.

According to the Victorian Council of Social Service (VCOSS), ‘Community Visitors Schemes are an important component of an overall system for identifying and reporting on abuse and neglect in residential disability services including Supported Residential Services.’ For VCOSS the scheme can be enhanced by the following:

- encouraging volunteers to identify good practice or poor practice, rather than just focusing on more serious issues of abuse or neglect
- training of Community Visitors in communication with non-verbal clients or be accompanied by people with these skills
- ensuring residential service employees have access to Community Visitors independent of service management

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700 Karingal, submission no. 65, p. 3.
701 Action for More Independence and Dignity in Accommodation, submission no. 63, p. 4.
702 Huntington’s Victoria, submission no. 78, p. 1.
703 Health and Community Services Union, submission no. 95, p. 13.
704 Gateways Support Services, submission no. 75, p. 1.
705 Australian Community Support Organisation, submission no. 69, p. 11.
• making reports publicly available (but this would need to maintain privacy for residents).\textsuperscript{707}

The Community also received submissions from a number of Community Visitors, who spoke about the effective work conducted by them and others. Community Visitors, such as Mr Aldo Pitre and Ms Dawn Richardson, argue that they are independent, highly motivated, cost-effective, and often intervene in situations where the welfare of people with disability is under threat.\textsuperscript{708} Mr David Roche argued that the Program should be used as a model for prevention across Australia under the NDIS. In the event that a new independent oversight body comes into being, Mr Roche wants all Community Visitor reports to be ‘provided to this oversight body for thorough investigation and the body is resourced to a level, and with the necessary powers, whereby it can conduct these investigations.’\textsuperscript{709}

In their submission the Australian Cross Disability Alliance provided case studies that included the work of Community Visitors intervening to support the welfare of people with disability at risk.\textsuperscript{710}

The Office of the Public Advocate (OPA) argued in its submission for the retention of the Program, as part of the safeguarding framework in Victoria. The OPA believes that the Community Visitor Program should be retained and administered by the OPA. In its submission to Stage 2 of the Inquiry, the OPA stated that it believes that the roles of the Public Advocate and Community Visitors in relation to the protection of rights of people with disability were aligned.\textsuperscript{711} It also stated that ‘as a statutory body sitting in the Department of Justice and Regulation, the Office of the Public Advocate provides independence from the Department of Health and Human Services’, and that the majority of Community Visitors surveyed by the OPA on the issue of the location of the Program said that it should continue to sit with the OPA.\textsuperscript{712}

The Committee believes that a volunteer Community Visitors Program is not a substitute for a fully trained, professional, paid investigation force. A renewed Disability Commissioner will be empowered to conduct own motion investigations, to be conducted by professional authorised officers, and this reform is discussed in detail in the next section.

The Committee accepts that there are many dedicated volunteers in the Community Visitors Program, who give their time and effort to the Program as a social service without remuneration. The Committee is of the view that at least part of the criticism of Community Visitors stems from the fact that the sector does not have a properly empowered oversight body, with officers employed to pursue investigations. The Committee accepts that Community Visitors have limited powers under the Disability Act, and are by definition a volunteer group, one that cannot be expected to undertake the kind of complex, time-consuming and costly investigations that will be needed to rid this sector of predators, and prevent their re-emergence.

\textsuperscript{707} Ibid.
\textsuperscript{708} See Mr A Pitre, submission no. 79, p. 2; and Ms D Richardson, submission no. 80, p. 1.
\textsuperscript{709} Mr D Roche, submission no. 46, p. 2.
\textsuperscript{710} See Australian Cross Disability Alliance, submission no. 32, ‘Personal stories and testimonies’, p. 16.
\textsuperscript{711} Office of the Public Advocate, submission no. 87, p. 16.
\textsuperscript{712} Ibid., pp. 16-17.
On balance, the Committee agrees with the commentary above which sees a future role for volunteers as part of an integrated approach to monitoring quality and compliance of service delivery and as a core preventative measure. Community Visitors can provide an important adjunct to the work of the renewed Disability Commissioner. They do need further training, particularly in the area of communicating with people with complex communication needs, their reporting lines need to be simplified, and their remit should extend beyond residential services to all disability services.

In the interim period, while their national role is being reviewed as part of the NDIS environment, the Committee believes that the Community Visitors should be retained in Victoria. While a renewed office of the Disability Commissioner may be the logical location for this group, and within which it can be located at a future date, at the present time it makes more sense for the Public Advocate and the Board to continue to administer their activities, until such time as a national model for quality assurance is determined.

However, an immediate change is required whereby all abuse and neglect is also reported to the Disability Commissioner. The work of the Community Visitors will be undertaken within the context of Victoria’s zero tolerance of abuse framework.

Accordingly the Committee recommends that:

**RECOMMENDATION 7.6**

In the interim period, while their national role is reviewed, the Community Visitors Program be retained in Victoria, within the context of the zero tolerance of abuse framework. The Victorian Government will ensure that:

- Community Visitors will be further trained in the detection, prevention and reporting of abuse;
- all reports of abuse and neglect will also be made to the Disability Commissioner; and
- Community Visitors will receive training in communicating with people with complex communication needs.

### 7.4. Paid inspectors

In its Interim Report the Committee posed two questions for Stage 2 in relation to the appointment of paid inspectors:

> In view of the skills necessary in identifying and responding to abuse and neglect, should consideration be given to paid inspectors or paid official visitors in Victoria?

> If a paid official inspector or paid official visitor role is introduced in Victoria, should they be located with an independent oversight body or other entity?\textsuperscript{713}

As the previous section on Community Visitors identified, there is support for the creation of a paid inspectorate to monitor quality and compliance of service delivery. Mr Tony Tregale from Lifestyle in Supported Accommodation told a public hearing in Melbourne that his organisation agreed with the appointment of paid inspectors so that the system would become more accountable.\(^7\)\(^1\)\(^4\)

Ms Julie Phillips from Disability Advocacy Victoria told the same public hearing that she supported paid inspectors and that it would be appropriate for paid inspectors to be ‘intimidating’ for the staff and the organisations, and also to be able to effectively liaise and communicate well with people with disability.\(^7\)\(^1\)\(^5\) Mr Lloyd Williams, State Secretary, Health and Community Services Union, told the Committee that paid inspectors were crucial:

> We think there are some serious governance issues and the boards of service providers need to lift their game in terms of the risk management and prevention around abuse and we think that there is a strong case for an inspectorate for disability services or paid inspectors who have the proper powers, supported by advocacy services, to properly inspect, similar to accreditation standards within our aged care services.\(^7\)\(^1\)\(^6\)

Dr Sherene Devanesen, CEO of Yooralla, advised the Committee that her organisation was regularly audited and underwent a mandated, external ongoing accreditation and review process. Dr Devanesen said that, therefore, there were already a type of paid inspector coming into the organisation on a regular basis, and went on to make a comparison with the aged care sector saying that, ‘if you added on-the-spot, unannounced visits like we have for aged care services it would be pretty similar and it would be continuous external evaluation of services, which would be a good idea.’\(^7\)\(^1\)\(^7\)

The aged care sector has a number of safeguards in place including the roles of the Aged Care Complaints Commissioner,\(^7\)\(^1\)\(^8\) and the Aged Care Pricing Commissioner.\(^7\)\(^1\)\(^9\) The federal Aged Care Act 1997 (Cth) provides extensive ‘monitoring powers’ for authorised officers to investigate aged care facilities.\(^7\)\(^2\)\(^0\)

Not all stakeholders to the Inquiry were convinced about the need for a paid inspectorate. Ms Tricia Schipp, from the Carers and Parents Support Group of Benalla, told the Committee in Shepparton that:

> I do not think that is necessary, and I think that might alienate the CRUs [community residential units]. I think the CRUs might get a bit defensive, and I do not think that will

\(^7\)\(^1\)\(^4\) Mr T Tregale, Lifestyle in Supported Accommodation, Family and Community Development Committee public hearing, Melbourne 28 September 2015, transcript of evidence p. 5.

\(^7\)\(^1\)\(^5\) Ms J Phillips, Disability Advocacy Victoria, Family and Community Development Committee public hearing, Melbourne 28 September 2015, transcript of evidence p. 9.

\(^7\)\(^1\)\(^6\) Mr L Williams, State Secretary, Health and Community Services Union, Family and Community Development Committee public hearing, Melbourne 19 October 2015, transcript of evidence p. 12.

\(^7\)\(^1\)\(^7\) Dr S Devanesen, Chief Executive Officer, Yooralla, Family and Community Development Committee public hearing, Melbourne 19 October 2015, transcript of evidence pp. 7-8.


\(^7\)\(^2\)\(^0\) See Aged Care Act 1997 (Cth), sections 90-92.
help. I think what we need are well-trained community visitors. I think that paid inspectors introduces power into the equation. And I am not sure that that would help.\textsuperscript{721}

Ms Sharyn Laugher, an advocate from the Rights Information and Advocacy Centre, told the Committee at Bendigo that such a position might create an element of fear, which would be an unwanted element in residential accommodation.\textsuperscript{722} Ms Christine Trotman, CEO at Cooinda Hill, told the hearing at Morwell that she remembered the term ‘inspector’ from her school days, and that it had negative connotations. She said that:

Unless they did spot checks, I do not know that that is quite the environment that I would like to promote. I would like to be providing a more positive reinforcement rather than a punitive, negative, ‘The inspector is coming; everybody had better be on their best behaviour’ type of model. I think that the current liaison person that we have from the department would be able to fulfil that role, because they come and visit us regularly, and they are able to visit our sites and walk through and talk to clients if they wish. I do not quite know that the inspector is the answer.\textsuperscript{723}

The Committee believes that the weight of evidence to this Inquiry – particularly in Chapter Four relating to the disability workforce – supports the creation of a specialist group of authorised officers to be appointed within a renewed Disability Commissioner. In addition to an enhanced Community Visitors Program, the Committee believes that authorised officers should be empowered to visit disability services to respond to reports of abuse and audit service quality. The \textit{Disability Act 2006} (Vic) will require amendment. These officers will be empowered to act on individual complaints, undertake investigations into systemic failures, conduct unannounced visits to any facility and any service, and liaise directly with Victoria Police. These officers will be in addition to the current ongoing external accreditation and review process.

For those concerned that authorised officers will create a climate of fear in the sector, the Committee envisages these authorised officers will be highly trained individuals capable of, and able to, effectively liaise and communicate well with people with disability, and respect their human rights and dignity. Authorised officers will be trained in communicating with people with complex communication needs.

Accordingly the Committee recommends that:

\begin{itemize}
\item \textsuperscript{721} Ms T Schipp, Carers and Parents Support Group of Benalla, Family and Community Development Committee public hearing, Shepparton 29 October 2015, transcript of evidence p. 8.
\item \textsuperscript{722} Ms S Laugher, Rights Information and Advocacy Centre, Family and Community Development Committee public hearing, Bendigo – 5 November 2015, transcript of evidence p. 5.
\item \textsuperscript{723} Ms C Trotman, Chief Executive Officer, Cooinda Hill, Family and Community Development Committee public hearing, Morwell – 17 November 2015, transcript of evidence p. 8.
\end{itemize}
RECOMMENDATION 7.7

The Victorian Government amend the Disability Act 2006 (Vic) to provide for the appointment of authorised officers within a renewed office of the Disability Commissioner. These officers will be empowered by, and accountable to, the Disability Commissioner under the Act to:

- conduct investigations into reports of abuse and neglect to the Disability Commissioner of both an individual and systemic nature;
- investigate reports of abuse made by Community Visitors;
- monitor, evaluate and enforce service quality and standards; and
- enter the premises of any disability service provider at any time.

7.5. Senior Practitioner (Disability)

In its Interim Report the Committee posed a question in relation to the Senior Practitioner (Disability), for Stage 2 of the Inquiry, namely, ‘should the Senior Practitioner be independent from the Department of Health and Human Services in its role in oversight of restrictive practices?’.

Established in 2007 by the Disability Act, the Senior Practitioner (Disability) role is to ensure the rights of persons who are subject to restrictive interventions and compulsory treatment are protected and that appropriate standards in relation to these practices are complied with. The Senior Practitioner, Dr Frank Lambrick, provided details of his role to the Committee during Stage 1.

In Stage 2, discussion of the role of the Senior Practitioner was limited, with most respondents to the above question and stakeholders arguing in favour of the Office of Professional Practice/Senior Practitioner being re-located outside the Department. Service provider Distinctive Options would like the role of the Senior Practitioner located within a new oversight body, which would allow for the Senior Practitioner role to include remedial recommendations, and a more active role in addressing strategies in response to restrictive practices.

JacksonRyan Partners were adamant that the role should be shifted, stating that:

Given that the Senior Practitioner has responsibility for overseeing restrictive practices and compulsory interventions, and given that the Department operates as a service provider in part, then clearly the Senior Practitioner should be independent of the Department and as such the position should be relocated elsewhere.

724 Family and Community Development Committee, Inquiry into Abuse in Disability Services: Interim Report, Parliament of Victoria, Melbourne, 2015, p. 132.
725 Dr F Lambrick, Senior Practitioner (Disability), Family and Community Development Committee public hearing - Melbourne 15 June 2015, transcript of evidence.
726 Distinctive Options, submission no. 42, p. 13.
727 JacksonRyan Partners, submission no. 31, p. 44.
The Youth Disability Advocacy Service also argued that ‘the current positioning of this Office under the Department of Health and Human Services poses a conflict of interest that needs to be removed.’\textsuperscript{728} The Health and Community Services Union agreed with this position and argued that the Senior Practitioner (Disability) should sit within an independent oversight body.\textsuperscript{729} That the Senior Practitioner (Disability) should be independent of the Department was also supported by Communication Rights Australia, Disability Discrimination Legal Service and Villamanta Disability Rights Legal Service, service provider Gateways, the Royal Children’s Hospital, Action for More Independence and Dignity in Accommodation, the Australian Community Support Organisation and others.\textsuperscript{730}

The Committee believes that were the Department to remain a provider of disability services it would be untenable for the Senior Practitioner (Disability) to remain located within it. The preferred option is for the re-location of this Office to an independent oversight body, as part of a national safeguarding framework.

The Committee heard during Stage 1 of the Inquiry that the role of the Senior Practitioner is well regarded and there is an ongoing need for a body that oversees restrictive practices and works towards their elimination. The Committee is aware of a perception of a conflict of interest because of the role of the Department in service provision and believes this would be addressed by relocating the Senior Practitioner.

In the interim period prior to the full roll-out of the NDIS, the Committee is of the view that a renewed Disability Commissioner should become the new location for the Senior Practitioner (Disability), with the caveat that such a revised structure does not conflict with the national safeguarding framework, when it is announced by the Disability Reform Council.

Accordingly the Committee recommends that:

**RECOMMENDATION 7.8**

The Victorian Government ensure that the Senior Practitioner (Disability) role be re-located within the office of a renewed Disability Commissioner.

\textsuperscript{728} Youth Disability Advocacy Service, submission no. 52, p. 4.
\textsuperscript{729} Health and Community Services Union, submission no. 95, p. 14.
\textsuperscript{730} See Communication Rights Australia, Disability Discrimination Legal Service and Villamanta Disability Rights Legal Service, submission no. 59, p. 8; Gateways Support Services, submission no. 75, p. 3; Royal Children’s Hospital, submission no. 62, p. 7; Action for More Independence and Dignity in Accommodation, submission no. 63, p. 4; and Australian Community Support Organisation, submission no. 69, p. 11.
Chapter 8
The NDIS roll-out in Victoria

AT A GLANCE

Background
In its Interim Report the Committee made a number of recommendations to inform the Victorian Government’s position on the NDIS Quality and Safeguarding Framework. Throughout the Final Report, the Committee has re-affirmed its expectation that a national, independent oversight body will be established to resolve complaints and investigate reports of abuse in disability services provided under the National Disability Insurance Scheme (NDIS).

While the roll-out of the NDIS is not a core focus of the Inquiry, many stakeholders took the opportunity to raise their concerns with the Committee. During Stage 2, the Committee has also been interested in strategies to maintain the protections offered by the Charter of Human Rights and Responsibilities Act 2006 (Vic) for Victorians participating in the NDIS.

Chapter overview
This chapter provides an overview of the concerns of stakeholders about the roll-out of the NDIS in Victoria. In particular, it recommends that the quality and accessibility of information about the NDIS be improved to ensure that people with disabilities and their families are fully informed about the transition.

The chapter also recommends that further consideration be given to the future operation of the Charter in the context of the NDIS.
Throughout the Inquiry, the Committee heard a range of concerns about the roll-out of the National Disability Insurance Scheme (NDIS) in Victoria. While the roll-out was not a primary focus of the Committee, this chapter provides an overview of witnesses’ concerns and recommends improvements to the information available about the scheme for people with disabilities and their families.

The Committee also heard from some stakeholders who believed that Victoria should have an ongoing role in providing safeguards for people with disability after the roll-out, such as through the Charter of Human Rights and Responsibilities Act 2006 (Vic) (the Charter). The chapter recommends that further work is conducted on how best to ensure that the protections available to Victorians with disability are not diminished with the establishment of the NDIS.

8.1. NDIS Quality and Safeguarding Framework

The Committee welcomes the introduction of the NDIS. The scheme is a landmark reform that will bring greater choice and certainty for people with permanent and significant disability. The Committee believes the NDIS will play an important role in supporting people to achieve their goals – such as living independently, participating in community activities, and accessing employment – and is keen to see the scheme succeed.

In its Interim Report the Committee made a range of recommendations to inform the Victorian Government’s position on the NDIS Quality and Safeguarding Framework. The Framework was initially due to be finalised in early 2016, but is now expected to be released at the end of May 2016.

The Disability Reform Council provided an update on the Framework’s progress in March 2016. In a communiqué the Council stated that:

The Council agreed in-principle to the key features of a new national quality and safeguards framework for the NDIS, noting it will be implemented for [the] full scheme ... The Council noted the Commonwealth’s proposal to establish new national functions for provider quality and registration, as well as national functions for handling complaints, including investigating serious incidents, and overseeing the use of restrictive practices.

The Council asked its officials to continue to work on finalising the framework and assessing the regulatory impacts, as well as doing more work on restrictive practices functions and worker screening.731

The Committee welcomes the Council’s confirmation that work is progressing on the establishment of a national oversight body, with responsibilities for investigating both complaints and reports of abuse. This body will be vital to future efforts to prevent, identify and respond to the abuse of people with disability in Australia.

8.2. Barwon trial site

During Stage 2 of the Inquiry the Committee heard evidence about the progress of the NDIS roll-out in Victoria, including information about the Barwon area trial site. Broadly, the Committee heard that the NDIS has been a positive development for people in the Geelong region. However, the Committee also heard evidence that the scheme has been difficult for some to understand, and there has been a lack of information about how to transition.

Ms Wendy Jones, a parent of two adults with intellectual disabilities, described her family’s experiences with the NDIS: ‘I need to say that my personal experience with the NDIS has been very good; it has been much better than I actually expected’. At the same time, Ms Jones also noted that she felt that the process for reviewing client plans was sometimes ‘rushed’, with a lack of opportunity for service providers to consult with clients about the different supports available to them. Ms Jones stated that:

I guess what I am trying to say is that the efficiency had become so good that they rushed these plans through, but they had not bothered giving the disability providers enough time to consult with the clients. That is something that they really need to do. When the client is going through the plan the people they allocate as the disability providers also need to look at the plan because there could be something new that is available for the client ... For example, at Encompass there has been a new holiday respite program introduced just recently, maybe in the last 12 months. So any client who accessed the disability plan from last year, if they were not aware, if they had not been told, they might just want to stay with the same funding, but that same funding may not cover, say, the respite program.

The Committee also heard evidence from service provider St Laurence about its experiences as a part of the Barwon trial. Mr Toby O’Connor, CEO of St Laurence, commented that there was some confusion about the registration and safeguarding requirements for new providers, which could increase the risk of abuse in the sector. Mr O’Connor stated that:

Certainly the introduction of the NDIS in the Barwon region has highlighted some shortcomings that arise from the interaction of the Commonwealth and the state legislation. For example, it is not clear that the rigorous accreditation that a Disability Service Organisation needs to go through under the Victorian registration process in the case of an existing provider organisation — which includes an external audit of the complaints management system, as previously covered — is now required by the NDIA for newly established provider organisations or from individuals registered to deliver services funded under the NDIS schedule of fees. It takes many, many months to prepare for an audit, so it is not clear to St Laurence how long incoming service suppliers of NDIS services can operate without having to meet the standard required to be met by those suppliers that have a former history with the Department of Health and Human Services.

732 Ms W Jones, parent, Family and Community Development Committee public hearing – Geelong, 13 October 2015, transcript of evidence, p. 2.
733 Ibid.
A related question then arises about which government agency — that is, which level of government, is responsible when an unaccredited supplier fails to meet the Victorian standards. Also, in an environment where clients, known as NDIS eligible Participants, have a very different relationship with the funder and with the provider and where the NDIA has limited or no resources to respond to some instances of potential, alleged or actual abuse, there is an increased risk that the system may not adequately respond to people with disability who are at risk of abuse.\(^7\)\(^3\)\(^4\)

At a public hearing in Geelong, the Committee heard from representatives of the National Disability Insurance Agency (NDIA), who acknowledged that initially some aspects of the scheme were not adequately explained to participants. Ms Louise Glanville, Deputy CEO of the NDIA, explained that some of the scheme’s early processes which were overly ‘bureaucratic’ have been altered to be more client-focused:

> I think some of our processes have been incredibly bureaucratic. I remember once when I first visited a trial site staff had laid out end-to-end on a table the number of pages that people needed to fill in to actually access the scheme. It was such a graphic demonstration of what we did not want to be. I say that with great respect to all those who have come before and built the scheme, because we had to start somewhere, and you learn as you go. We are now trying to attend to those things to make a much more simplified access process; we are even trying ... verbal access processes in some parts of the country. We are very much looking at our materials. Particularly in Indigenous communities but also for CALD communities, some of our materials are woefully inadequate, so we have redeveloped those.

> We have a very big focus on intellectual disability, thinking about easy English and thinking about visual plans ... So I think we have learnt a lot from participants about how to do things differently, particularly about how to do the planning processes differently.\(^7\)\(^3\)\(^5\)

In addition, Ms Stephanie Gunn, Branch Manager, Local Area Coordination and former Barwon NDIS trial site manager, stated that:

> The feedback was very much that our participants felt very rushed coming into our process. In particular the providers were struggling to understand what the change in the scheme meant for them. Interfacing with our system was not an easy thing but put simply, the mechanisms for transition were still being designed as we were rolling out, and it was a very large and very quick process.\(^7\)\(^3\)\(^6\)

Ms Glanville emphasised that the NDIA had responded to feedback by introducing ‘much more pre-planning work’ to ensure participants and their families are better equipped to develop support plans.\(^7\)\(^3\)\(^7\)

\(^7\)\(^3\)\(^4\) Mr T O’Connor, Chief Executive Officer, St Laurence, Family and Community Development Committee public hearing – Geelong, 13 October 2015, transcript of evidence, p. 3.

\(^7\)\(^3\)\(^5\) Ms L Glanville, Deputy Chief Executive Officer, National Disability Insurance Agency, Family and Community Development Committee public hearing – Geelong, 13 October 2015, transcript of evidence, p. 7.

\(^7\)\(^3\)\(^6\) Ms S Gunn, Branch Manager, Local Area Coordination and former Barwon Trial Site Manager, National Disability Insurance Agency, Family and Community Development Committee public hearing – Geelong, 13 October 2015, transcript of evidence, p. 4.

\(^7\)\(^3\)\(^7\) Ms L Glanville, Deputy Chief Executive Officer, National Disability Insurance Agency, Family and Community Development Committee public hearing – Geelong, 13 October 2015, transcript of evidence, pp. 3-4.
8.3. Transitioning to the NDIS

The Committee also heard evidence from stakeholders who have not yet transitioned to the scheme. While some witnesses expressed concerns about aspects of the NDIS, others were hopeful about the changes in service provision and expansion of choice it might bring. For example, at a public hearing in Shepparton, Ms Trisha Schipp explained that many local parents welcomed the roll-out:

> What I hear at every [support group] meeting is a mistrust and a dislike and ‘Roll on NDIS so we can get another service provider’. Yooralla is the only service provider in Benalla, and the parents’ anger and the feeling of being trapped is palpable.\(^738\)

Bendigo-based service provider Radius was also positive about the roll-out. Ms Cath Macdonald, CEO of Radius, believes that the NDIS will improve service delivery across the sector by focusing on evidence of best practice, arguing that:

> But there is no evidence-based culture in disability, so people can introduce anything because anything goes. It is cowboy country. That was one of the shocks when I came to the industry, coming from an evidence-based culture to a culture where we do not use evidence and even if evidence was around, we would not look at it because this is how we do it — ‘We’ve done it like that for 40 years and no-one has ever complained before’. My immediate response to this was, ‘Oh, gosh, I need to get out of this. This is dangerous country to be in, particularly as a nurse’. But the NDIS was coming, and the NDIS is evidence-based. It is going to provide us with a bucketload of evidence about what will work very well, so I am quite excited about that.\(^739\)

Other stakeholders were more uncertain about the benefits of the NDIS. Mr Matthew Potocnik, parent and disability support worker, questioned whether clients were equipped to exercise choice in service provision, noting that:

> One of the problems in relation to the NDIS is that a lot of people who have never experienced or received services are not aware of what good service should be. In the majority of cases, I believe that most people would be just pleased to receive service. It is important for people who have never received services and who are not educated to know their rights and entitlements.\(^740\)

Ms Christine Trotman, CEO of service provider Cooinda Hill, drew attention to the ‘unfunded supports’ that many service providers deliver that would be overlooked by the NDIS:

> Our concerns with the NDIS is that these unfunded supports that we pick up — there is no space for that in the NDIS. I have been at many seminars about NDIS transition, most recently yesterday, and we are very strongly being advised to reduce our unfunded supports. I can give you plenty of examples, but one that comes to mind is a client who frequently has head lice. When she comes, if we do not treat her, we know that mum will not treat her. We have another client who comes to us in the same

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\(^{738}\) Ms T Schipp, Member, Carers and Parents Support Group of Benalla, Family and Community Development Committee public hearing – Shepparton, 29 October 2015, transcript of evidence, p. 9.

\(^{739}\) Ms C McDonald, Chief Executive Officer, Radius, Family and Community Development Committee public hearing – Bendigo, 5 November 2015, transcript of evidence, p. 4.

\(^{740}\) Mr M Potocnik, parent and disability worker, Family and Community Development Committee public hearing – Melbourne, 7 December 2015, transcript of evidence, p. 3.
clothes that she was sent home in the night before, having not changed ... While we can promote advocacy for our clients, it is a really difficult situation to be able to advocate for a client who is living at home with family members when we know the care is suboptimal.741

Disability Justice Advocacy argued that there could be difficulties under the NDIS when residents of supported accommodation choose different service providers under their plans, stating that:

I am not exactly sure how it is going to work when you have five residents in a group home and they all have their own individual package. Do they all have to agree on which agency is going to provide the care and support for them or can they pick their own? How will that practically work? It is going to be difficult. But at least it will break that nexus, and whoever owns the house that they live in and they pay rent to will not necessarily be the same person who provides the daily care and support. We really need to do that.742

The Committee heard from some stakeholders that felt there was insufficient information about the NDIS and how to transition to the scheme. Ms Margaret Turvey, from the Sunraysia DisAbility Resource Centre, explained that it had been difficult to find out information about the roll-out in Mildura, noting that:

[The Centre manager] has tried to get people to come up here to explain to us what it is about, but nobody wants to come at the moment because we are not getting it till 2019 or 2017 something, so everyone just shrugs their shoulders and says, ‘Just get on the Net and read it’. That is not the same as speaking to people face to face.743

Mr O’Connor, from service provider St Laurence, also raised concerns about the lack of information about the scheme, commenting that:

The agency itself probably could have done better at communicating what it was all about. We are now in the third year of the NDIS, so I would be pretty confident that there would be a number of our client families who really would just think it is the same department doing it. It is so complex to get across to people. Some of our client families would come from non-English-speaking backgrounds or lower socioeconomic circumstances. They certainly cannot read the documents written in Canberraspeak; they just go right over their heads. That has meant that providers like St Laurence and other providers are having to spend a lot of time trying to explain it. I think the process could be better explained, and then the procedure about how you get assessed also needs to be better explained.744

The Committee was particularly concerned to hear from some parents that they did not know if their relatives would qualify to participate in the NDIS and felt unable to access clear advice on the issue. For example, Ms Michele Armstrong stated that ‘a DHS worker’ had advised her that her daughter would not be eligible – ‘What they are

741 Ms C Trotman, Chief Executive Officer, Cooinda Hill, Family and Community Development Committee public hearing – Morwell, 17 November 2015, transcript of evidence, pp. 3-4.
742 Mr T Carroll, Executive Officer, Disability Justice Advocacy, Family and Community Development Committee public hearing – Melbourne, 15 December 2015, transcript of evidence, p. 5.
744 Mr T O’Connor, Chief Executive Officer, St Laurence, Family and Community Development Committee public hearing – Geelong, 13 October 2015, transcript of evidence, p. 5.
saying is she is already receiving a big amount of money, so she will not qualify for the NDIS’.745

As part of this, Ms Glanville noted that the NDIA is considering how to assist people in choosing service providers by introducing a website to share information about the scheme and reviews about the quality of different providers. Ms Glanville commented that:

As part of our ICT build we are really thinking a lot about how we harness, often, the information that exists within people with disability about who are good service providers and who are not, for the benefit of the whole. For example, when you go on a trip with your family you look at TripAdvisor and you read comments, and that is influential to me. If I read something and there are five good comments from someone who has stayed at some hotel, then I think, ‘It’s worth having a look at’ — maybe not always correctly!

That parallel is not dissimilar. We would wish to have informed participants who actually can share — and their families and carers can share — their experiences, so that it is much more public. It might be through an e-market or through particular ways of constructing that information sharing on a system. We would want providers to be actually articulating why they should be chosen — what it is that about them, their practices, the way they work, that makes them the provider of choice for individuals. It is very exciting to think of these possibilities.746

The Committee found that most stakeholders are hopeful about the possibilities offered by the NDIS roll-out in Victoria. However, the Committee is concerned that people with disabilities and their families have not always been able to access appropriate information about transitioning to the NDIS. The Committee is aware that as the roll-out progresses forums will continue to be held across the state to provide face-to-face information. In order to ensure that people with disabilities and their families are fully informed about the transition to the NDIS, the Committee recommends that:

**RECOMMENDATION 8.1**

The Victorian Government use its role on the Council of Australian Governments Disability Reform Council to ensure that people with disability and their families, and disability service providers and their employees receive relevant and timely information about transitioning to the National Disability Insurance Scheme, in a variety of accessible formats.

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745 Ms M Armstrong, parent, Family and Community Development Committee public hearing – Ballarat, 6 November 2015, transcript of evidence, p. 8.
746 Ms L Glanville, Deputy Chief Executive Officer, National Disability Insurance Agency, Family and Community Development Committee public hearing – Geelong, 13 October 2015, transcript of evidence, p. 9.
8.4. **Victorian Charter of Human Rights and Responsibilities**

In its Interim Report the Committee highlighted the unique status of the Victorian Charter of Human Rights and Responsibilities within Australia, and asked ‘how can the rights provided under the Charter ... be maintained for people accessing disability services in the transition to the NDIS once it has been fully rolled out?’ Some stakeholders suggested mechanisms to ensure that the Charter can continue to provide protections for Victorians with disability.

The Youth Disability Advocacy Service argued that it was vital that the Charter continued to cover Victorians, stating that:

> It is essential that Victorians with disabilities who are accessing disability services have available the protections of the Victorian Charter of Human Rights now and into the future. We recognise that this poses challenges with the NDIS falling under federal jurisdiction but strongly recommend that the necessary reforms are made to the Charter to include NDIS participants who are living in Victoria.

Another advocacy organisation, Action for More Independence and Dignity in Accommodation (AMIDA), also emphasised the importance of the Charter and suggested that the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) could have an expanded role following the roll-out of the NDIS:

> In the interim period before the NDIS is fully rolled out the Charter of Human Rights and Responsibilities Act could be modified to allow application to the Equal Opportunity Commission for conciliation and arbitration of matters related to the Charter.

One submitter questioned the feasibility of the Charter continuing to apply after the roll-out, commenting that: ‘Once Federal NDIS is established the Charter to have little application to the then Federal system’.

At a public hearing in Melbourne, Ms Catherine Dixon, Director of the Commissioner’s Office, VEOHRC, responded to concerns about the role of the Charter in the context of the NDIS. Ms Dixon stated that:

> The NDIS [should] apply the same human rights protections across Australia by incorporating the Convention on the Rights of Persons with Disabilities. That could potentially be annexed, for example, as a schedule to the NDIS legislation. We think it’s critical that a human rights framework shapes the work of the new NDIS and that’s one way of doing it that would provide consistency across Australia. The other option would be that the framework ensures that the human rights Charter in Victoria at least continues to afford human rights protection to people with a disability in Victoria. That means the Charter would apply to the NDIA when making decisions in Victoria and to NDIS service providers in Victoria.

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748 Youth Disability Advocacy Service, submission no. 52, p. 4.

749 Action for More Independence and Dignity in Accommodation, submission no. 63, p. 3.

750 Name withheld, submission no. 49, p. 15.
That's our submission about human rights and safeguards, to make sure – that framework is not diminished in the move to the NDIS.\textsuperscript{751}

In 2015 the Attorney-General tabled a review into the Charter. The review made 52 recommendations aimed at ‘refreshing’ the Charter, to ‘strengthen human rights culture and make the Charter more accessible, effective and practical’.\textsuperscript{752} In relation to the VEOHRC, the review recommended that the body ‘be given the statutory function and resources to offer dispute resolution for disputes under the Charter’.\textsuperscript{753} Further, the review recommended that the Victorian Civil and Administrative Tribunal should play a role in remediying breaches of the Charter.\textsuperscript{754}

The review also recommended that the Victorian Government consider the operation of the Charter when developing any national schemes, stating that:

Human rights should be an integral part of the development of any new national scheme. For this reason, I recommend Victoria adopt a whole-of-government policy that, in developing a national scheme, the Charter should apply to the scheme in Victoria to the fullest extent possible, or alternatively the scheme should incorporate equivalent human rights protections.\textsuperscript{755}

This recommendation is important for considering the future role of the Charter in the context of the NDIS.

At the same time, the Committee is aware that many in the disability sector view the Charter as an important element of Victoria’s safeguarding system. Accordingly, the Committee considers it vital that the Victorian Equal Opportunity and Human Rights Commission and the Victorian Ombudsman – which both currently have responsibilities in relation to the Charter – work cooperatively to advise the Victorian Government on how to preserve the protections of the Charter after the establishment of the NDIS.

On the issue of the Charter the Committee recommends that:

**RECOMMENDATION 8.2**

The Victorian Government request the Victorian Equal Opportunity and Human Rights Commission and the Victorian Ombudsman provide advice on preserving the protections offered by the *Charter of Human Rights and Responsibilities Act 2006* (Vic) in the context of the National Disability Insurance Scheme.

\textsuperscript{751} Ms C Dixon, Director, Commissioner’s Office, Victorian Equal Opportunity and Human Rights Commission, Family and Community Development Committee public hearing – Melbourne, 19 October 2015, transcript of evidence, p. 4.


\textsuperscript{754} Ibid., p. 133.

\textsuperscript{755} Ibid., p. 203.
The Committee believes that the Victorian Government can use its role on the Disability Reform Council to ensure that the National Disability Insurance Scheme incorporates the United Nations Convention on the Rights of Persons with Disabilities as a schedule to the *National Disability Insurance Scheme Act 2013* (Cth). Accordingly the Committee recommends:

**RECOMMENDATION 8.3**

The Victorian Government use its role on the Council of Australian Governments Disability Reform Council to ensure that the National Disability Insurance Scheme incorporates the United Nations Convention on the Rights of Persons with Disabilities as a schedule to the *National Disability Insurance Scheme Act 2013* (Cth).
# Appendix 1
## List of submissions

### Stage 1 Submissions

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<td>5</td>
<td>Ms Dinah Phillips</td>
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### Appendix 1
List of submissions

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### Stage 2 Submissions

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Appendix 2
Public hearings

The Committee held the following Public Hearings:

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15 June 2015, Melbourne

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<td>National Disability Services</td>
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<td>Mr James Bannister</td>
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<td>Mr Laurie Harkin, AM</td>
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## 29 June 2015, Melbourne

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<td>Mr Max Jackson</td>
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<td>Action for More Independence and Dignity in Accommodation (AMIDA)</td>
<td>Ms Pauline Williams</td>
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## Appendix 2

**Public hearings**

### Inquiry into abuse in disability services

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<td>Mrs Heather Tregale</td>
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<td>Communication Rights Australia</td>
<td>Ms Jan Ashford</td>
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<td>Ms Jai Phillips</td>
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<td>Disability Advocacy Victoria</td>
<td>Ms Julie Phillips</td>
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<td>Ms Stephanie Gunn</td>
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<td>St Laurence</td>
<td>Mr Toby O'Connor</td>
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<td>Ms Gudrun Dewey</td>
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<td>Ms Tricia Schipp</td>
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<td>Cooinda Hill</td>
<td>Ms Christine Trotman</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td>Gippsland Carers Association Inc.</td>
<td>Mrs Jean Tops</td>
<td>President</td>
</tr>
<tr>
<td></td>
<td>Ms Lorraine Beasley</td>
<td>Secretary</td>
</tr>
<tr>
<td></td>
<td>Mrs Anita Geach-Bennell</td>
<td>Vice President</td>
</tr>
<tr>
<td></td>
<td>Mrs Gizella Terranova</td>
<td>Parent</td>
</tr>
<tr>
<td>Individual</td>
<td>Ms Julie Pianto</td>
<td>Parent</td>
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</table>

### 30 November 2015, Mildura

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Name</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sunraysia Residential Services</td>
<td>Ms Marian Luehman</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td>Sunraysia DisAbility Resource Centre</td>
<td>Ms Margaret Turvey</td>
<td></td>
</tr>
<tr>
<td>Christie Centre</td>
<td>Ms Florence Davidson</td>
<td>Executive Officer</td>
</tr>
<tr>
<td>Mallee District Aboriginal Services</td>
<td>Ms Diane Jones</td>
<td>Access and Support Worker</td>
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### 3 December 2015, Horsham

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Name</th>
<th>Position</th>
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<tbody>
<tr>
<td>Woodbine</td>
<td>Mr Bernie O'Connor</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td>Wimmera Uniting Care</td>
<td>Mr Alistair Houston</td>
<td>Acting Deputy Chief Executive Officer</td>
</tr>
<tr>
<td>Individual</td>
<td>Ms Judy Howie</td>
<td>Parent</td>
</tr>
<tr>
<td></td>
<td>Ms Denise Leembruggen</td>
<td>Parent</td>
</tr>
<tr>
<td></td>
<td>Ms Dawn Scott</td>
<td>Parent</td>
</tr>
<tr>
<td>Barwon CASA – Wimmera Counselling Service</td>
<td>Ms Jo-Anne Bates</td>
<td>Office Manager</td>
</tr>
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</table>
### 7 December 2015, Melbourne

<table>
<thead>
<tr>
<th>Organisation</th>
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<th>Position</th>
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<tbody>
<tr>
<td>Individual</td>
<td>Mr Matthew Potocnik</td>
<td>Parent and disability support worker</td>
</tr>
<tr>
<td>Individual</td>
<td>Ms Michelle Kidd</td>
<td>Parent</td>
</tr>
<tr>
<td>Individual</td>
<td>Mrs Maria Thomas</td>
<td>Parent</td>
</tr>
<tr>
<td>Individual</td>
<td>Mr Kevin Stone</td>
<td>VALID</td>
</tr>
<tr>
<td></td>
<td>Mr Elmo De Alwis</td>
<td></td>
</tr>
<tr>
<td>Australian Cross Disability Alliance</td>
<td>Ms Carolyn Frohmader</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ms Therese Sands</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Dr Jessica Cadwallader</td>
<td></td>
</tr>
<tr>
<td>Australian Community Support Organisation (ACSO)</td>
<td>Ms Karenza Louis-Smith</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td></td>
<td>Mr Vaughan Winther</td>
<td>Chief Operations Officer</td>
</tr>
<tr>
<td>Individual</td>
<td>Ms Jenny Harrison</td>
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### 15 December 2015, Melbourne

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<tr>
<th>Organisation</th>
<th>Name</th>
<th>Position</th>
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<tbody>
<tr>
<td>Inclusive Labor Disability Justice Working Group</td>
<td>Ms Kellie Marshall</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mr Tony Clarke</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mr John Jordan</td>
<td></td>
</tr>
<tr>
<td>Kangar TAFE</td>
<td>Ms Channing Coad</td>
<td>Coordinator and Teacher, Certificate IV in Disability</td>
</tr>
<tr>
<td>Individual</td>
<td>Mr Colin Bayne</td>
<td>Parent and disability support worker</td>
</tr>
<tr>
<td>Individual</td>
<td>Ms Anne Mallia</td>
<td>Parent</td>
</tr>
<tr>
<td>Deakin University, Faculty of Health, School of Health and Social Development</td>
<td>Professor Susan Balandin</td>
<td>Chair in Disability and Inclusion</td>
</tr>
<tr>
<td></td>
<td>Dr Patsie Frawley</td>
<td>Senior Lecturer in Disability and Inclusion</td>
</tr>
<tr>
<td>Disability Justice Advocacy</td>
<td>Mr Trevor Carroll</td>
<td>Executive Officer</td>
</tr>
<tr>
<td>Individual</td>
<td>Ms Moreen Lyons</td>
<td></td>
</tr>
<tr>
<td>South East Centre Against Sexual Assault</td>
<td>Ms Carolyn Worth</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ms Dagmar Jenkins</td>
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## 22 February 2016, Melbourne

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Name</th>
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<tbody>
<tr>
<td>E.W. Tipping Foundation</td>
<td>Mr Graeme Kelly</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td></td>
<td>Ms Jayne Gallo</td>
<td>General Manager Client Services</td>
</tr>
<tr>
<td>ONCALL Personnel and Training</td>
<td>Ms Robyn Pollard</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td></td>
<td>Ms Susan Rundle</td>
<td>Executive Manager, People and Culture</td>
</tr>
<tr>
<td>Department of Health and Human Services</td>
<td>Mr Arthur Rogers</td>
<td>Deputy Secretary, NDIS Reform and Director of Housing</td>
</tr>
<tr>
<td></td>
<td>Ms Janine Toomey</td>
<td>Director, Service Outcomes, Service Design and Operations Division</td>
</tr>
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</table>
## Appendix 3
### Briefings and site visits

#### 1 June 2015

<table>
<thead>
<tr>
<th>Date</th>
<th>Organisation</th>
<th>Name</th>
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<tbody>
<tr>
<td>1 June 2015</td>
<td>Victorian Ombudsman</td>
<td>Ms Deborah Glass OBE, Victorian Ombudsman</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mr Glenn Sullivan, Principal Investigator</td>
</tr>
<tr>
<td>1 June 2015</td>
<td>Department of Health and Human Services</td>
<td>Mr Arthur Rogers, Deputy Secretary, Social Housing and NDIS Reform</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ms Katy Haire, Deputy Secretary, Service Design and Operations</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ms Janine Toomey, Director, Service Outcomes</td>
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#### Stage 2 – site visits

<table>
<thead>
<tr>
<th>Date</th>
<th>Site</th>
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<tr>
<td>13 October</td>
<td>Karingal, Geelong</td>
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<td></td>
<td>Encompass Community Services, Geelong</td>
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<td></td>
<td>Colanda Residential Services, Colac</td>
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<td>14 October</td>
<td>Gateways Support Services, Warrnambool</td>
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<td>Mpower Inc, Warrnambool</td>
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<tr>
<td></td>
<td>Kyeema Support Services, Portland</td>
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<tr>
<td>29 October</td>
<td>Sobroan Street Children’s Respite (DHHS), Shepparton</td>
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<td></td>
<td>Yooralla, Benalla</td>
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<tr>
<td>5 November</td>
<td>Golden City Support Services, Bendigo</td>
</tr>
<tr>
<td></td>
<td>Radius Disability Services, Bendigo</td>
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<tr>
<td>6 November</td>
<td>McCallum Disability Services, Ballarat</td>
</tr>
<tr>
<td></td>
<td>Pinarc Disability Support, Ballarat</td>
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<tr>
<td>9 November</td>
<td>Distinctive Options, Sunbury</td>
</tr>
<tr>
<td></td>
<td>Women with Disabilities Victoria, Melbourne</td>
</tr>
<tr>
<td>17 November</td>
<td>Cooinda Hill, Morwell</td>
</tr>
<tr>
<td>30 November</td>
<td>Christie Centre, Mildura</td>
</tr>
<tr>
<td>3 December</td>
<td>Pinnacle Inc, Ararat</td>
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### Appendix 4
Disability service provider responses

Disability service providers that responded to the Committee’s request for information on complaints and reporting processes

<table>
<thead>
<tr>
<th>Name of provider</th>
<th>Name of provider</th>
</tr>
</thead>
<tbody>
<tr>
<td>Able Australia</td>
<td>Deaf Children Australia</td>
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<tr>
<td>Access Care Southern</td>
<td>Distinctive Options</td>
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<tr>
<td>Albury Wodonga Health</td>
<td>E.W. Tipping Foundation</td>
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<tr>
<td>Alkira Centre - Box Hill Inc.</td>
<td>East Grampians Health Service</td>
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<tr>
<td>Austin Health</td>
<td>Epworth HealthCare</td>
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<tr>
<td>Australian Camps Association</td>
<td>Ermha Ltd</td>
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<tr>
<td>Australian Community Support Organisation (ACSO)</td>
<td>Extended Families Australia</td>
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<tr>
<td>Australian Home Care Services</td>
<td>Fog Theatre – Port Phillip City Council</td>
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<tr>
<td>Ballarat Health Services</td>
<td>Footscray Community Arts Centre</td>
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<td>Baptcare</td>
<td>Gateway Health</td>
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<td>Bass Coast Health</td>
<td>Gippsland Lakes Community Health</td>
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<td>Baw Baw Shire Council</td>
<td>GLBT Disability Support Services</td>
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<td>Bendigo Access Employment</td>
<td>Goulburn Valley Health</td>
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<td>Bendigo Health</td>
<td>Grampians Community Health</td>
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<td>Berry Street</td>
<td>Guide Dogs Victoria</td>
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<td>Burke and Beyond</td>
<td>Hobsons Bay City Council</td>
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<td>Calvary</td>
<td>Independent Disability Services</td>
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<td>Care Choice</td>
<td>Interchange Inner East</td>
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<td>Care Connect</td>
<td>Interchange Outer East</td>
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<td>Carers Australia</td>
<td>Jesuit Social Services</td>
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<td>CatholicCare Sandhurst</td>
<td>Jewish Care Victoria</td>
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<tr>
<td>City of Casey</td>
<td>Karden Disability Support Foundation</td>
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<td>Community Living &amp; Respite Services Inc.</td>
<td>Karingal</td>
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<td>Connecting Skills Australia</td>
<td>Kirinari Community Services</td>
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<td>Cooinda Terang Inc</td>
<td>LEAP Services</td>
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<td>Disability service provider responses</td>
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<td>----------------------------------------</td>
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<tr>
<td>MacKillop Family Services</td>
<td>Radius</td>
</tr>
<tr>
<td>Mallee District Aboriginal Services</td>
<td>Riding for the Disabled Association of Victoria</td>
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<tr>
<td>Manningham City Council</td>
<td>Rural City of Wangaratta</td>
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<td>Mansfield Autism Statewide Services</td>
<td>Salvo Connect</td>
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<td>Marriott Support Services</td>
<td>Sandybeach Centre</td>
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<tr>
<td>mecwacare</td>
<td>Scope (Vic) Ltd</td>
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<tr>
<td>Mental Illness Fellowship Victoria</td>
<td>Shepparton Access</td>
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<tr>
<td>Mercy Centre Lavington Ltd</td>
<td>South Kingsville Community Centre</td>
</tr>
<tr>
<td>Merri Community Health Services</td>
<td>South West Institute of TAFE</td>
</tr>
<tr>
<td>Mildura Rural City Council</td>
<td>Southern Way Direct Care Service Inc.</td>
</tr>
<tr>
<td>MiLife-Victoria Inc</td>
<td>Spectrum MRC</td>
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<tr>
<td>MOIRA</td>
<td>St Laurence</td>
</tr>
<tr>
<td>Monash Health</td>
<td>Sunraysia Residential Services</td>
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<tr>
<td>MND Victoria</td>
<td>The Bouverie Centre</td>
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<tr>
<td>Multiple Sclerosis Limited</td>
<td>The Royal Children's Hospital Melbourne</td>
</tr>
<tr>
<td>Murray Human Services Inc.</td>
<td>The Salvation Army - Adult Services</td>
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<tr>
<td>Murray Valley Centre Inc</td>
<td>UnitingCare Gippsland</td>
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<tr>
<td>Nadrasca</td>
<td>UnitingCare Goulburn North East</td>
</tr>
<tr>
<td>Neami National</td>
<td>UnitingCare Harrison</td>
</tr>
<tr>
<td>Northern Support Services</td>
<td>UnitingCare lifeassist</td>
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<tr>
<td>Oakleigh Centre</td>
<td>Upper Murray Family Care</td>
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<tr>
<td>Omeo District Health</td>
<td>Villa Maria Catholic Homes</td>
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<tr>
<td>ONCALL Personnel and Training</td>
<td>Wallara Australia Ltd</td>
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<tr>
<td>Orbost Regional Health</td>
<td>Wesley Mission Victoria</td>
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<tr>
<td>Outlook (Vic) Inc</td>
<td>Wimmera Uniting Care</td>
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<tr>
<td>OzChild</td>
<td>WISE Employment Ltd</td>
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<td>Peninsula Health</td>
<td>Woodbine</td>
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<td>Private Respite Services</td>
<td>YMCA Victoria</td>
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</table>
INQUIRY INTO ABUSE IN DISABILITY SERVICES

STAGE 2

GUIDE TO SUBMISSIONS & PUBLIC HEARINGS

1. OVERVIEW

The Family and Community Development Committee has been asked by the Victorian Parliament to inquire into abuse in disability services in two stages.

The Committee released an Interim report based on stage 1 of the Terms of Reference in August 2015. The report is available on the Committee’s website:


This Guide is intended to assist organisations and individuals who want to make a written submission to the Committee for the second stage of the Inquiry. The Committee is due to release its final report in March 2016.

The questions in this Guide provide an indication of the issues the Committee will be considering in the second stage, but they are not intended to be exhaustive. It is not necessary to address all the questions in a submission.

If you have already made a submission to stage 1 of the Inquiry, you do not need to make another submission. The Committee will take your submission into consideration during the second stage of its investigation. However, if you wish to comment on aspects of the Committee’s interim report or on the terms of reference for stage 2, you may write another submission.

Submissions for stage 2 close on FRIDAY 30 OCTOBER 2015.

The Committee will be holding public hearings from late September 2015. Public hearings provide an opportunity for the Committee to meet members of the public – including individuals and organisations that have made submissions – and discuss key issues. Public hearings will take place in Melbourne and in regional areas. If you would like to talk to the Committee at a public hearing please indicate this in your submission. Once the locations and times for the public hearings have been confirmed the Committee will publicise these on its website.

2. THE INQUIRY—STAGE 2

Stage 2 is outlined in the Terms of Reference, which state that:

A. the Committee should consider any further systemic issues that impact on why abuse of people accessing services provided by disability service providers within the meaning of the Disability Act 2006 are not reported or acted upon and this should include:

   I. any interim measures to strengthen the disability services system prior to transition to the National Disability Insurance Scheme;

   II. any measures to strengthen the capacity of providers to prevent, report and act upon abuse to enhance the capability of service providers to transition to the National Disability Insurance Scheme; and

B. the Committee should undertake research to determine best practice approaches to how abuse of people accessing services provided by disability service providers within the meaning of the Disability Act 2006 can be prevented and this should include:

   I. identifying early indications of abuse;

   II. strategies to prevent abuse occurring;

   III. consideration of needs specific to particular cohorts;

C. the Committee should examine the powers and processes of Victorian investigation and oversight bodies with jurisdiction over abuse of people with a disability, with particular focus on the ongoing role of these bodies in the context of the National Disability Insurance Scheme; and
Appendix 5 Submission Guide (Stage 2)

D. The Committee should have regard to the final report, findings and recommendations of the Ombudsman’s investigation, and any other evidence that the Committee considers appropriate.

The full Terms of Reference (stage 1 and stage 2) can be found on the Committee's website.

The Committee notes there are current inquiries into abuse in disability services being undertaken by the Victorian Ombudsman and the Commonwealth Senate Community Affairs References Committee. The Family and Community Development Committee is committed to avoiding duplication and ensuring it does not prejudice work carried out by these and other bodies.

3. Making a Submission

The overarching purpose of this inquiry is to examine why abuse is not reported or acted upon and how it can be prevented.

All interested parties can make submissions to the Inquiry. The Family and Community Development Committee is seeking submissions from both individuals and organisations relating to stage 2 of the Inquiry.

If you have already made a submission to stage 1 of the Inquiry, you do not need to make another submission. The Committee will take your submission into consideration during the second stage of its investigation. However, if you wish to comment on aspects of the Committee’s Interim Report or on the terms of reference for stage 2, you may write another submission.

While the Committee will be examining systems and processes only, it welcomes the views of those affected by abuse in disability services regarding the effectiveness or otherwise of processes. These views will help inform the Committee’s findings. Importantly, however, the Committee will not investigate individual cases.

This Guide is intended to assist in the process of preparing a submission. There is no single way for any person or organisation to approach a submission. The Committee understands that people will want to approach their submissions differently.

Your submission can take the form of a letter, an email or a longer document.

Submissions can be provided in either hard copy or by email to the Executive Officer. Please include your contact details in your submission, including an address and phone number.

Electronic submissions should be sent via:
- The submission form on the Committee’s website: http://www.parliament.vic.gov.au/fcdcc
- Or by email to: fcdcc@parliament.vic.gov.au

Hard copy submissions should be sent to:
Family and Community Development Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

4. Confidentiality

All submissions are treated as public, unless otherwise requested. The Committee can receive written submissions on a confidential basis or can withhold names where this is requested and agreed to by the Committee. This will often be in situations in which victims of abuse believe that giving evidence publicly may have an adverse effect on them or their families.

Please indicate if you want your submission treated as confidential or your name withheld and provide a brief explanation.

5. Parliamentary Privilege

A submission to a Committee becomes a Committee document once the Committee formally decides to accept it as a submission. A Committee may decide not to accept a submission as evidence if it is not relevant to the Terms of Reference, or is offensive.

Once the Committee has authorised the release of a submission, any subsequent publication of it by the Committee is protected by parliamentary privilege. This means that what you say in your submission cannot be used in court against you.

Parliamentary privilege only extends to submissions that are published by the Committee. If a submission is published in another form or for another purpose, that publication will not be protected by parliamentary privilege. This means that you should not reproduce the submission in another format or context. You can, however, refer others to your submission on the Committee’s
website, or advise them to contact the Committee directly.

It is against parliamentary rules for anyone to try to stop you from making a submission by threats or intimidation. It is also a breach of these rules for anyone to harass you or discriminate against you because you have made a submission, and Parliament can take action against this behaviour.

6. PUBLIC HEARINGS

As part of stage 2 the Committee will be holding public hearings in Melbourne and throughout regional Victoria. Public hearings are an opportunity for the Committee to meet with individuals and organisations to discuss the Inquiry’s key issues.

The Committee decides who will be invited to give evidence at a public hearing. Generally, the Committee will invite individuals and representatives of organisations that have made submissions.

If you do not wish to make a submission but still want to talk to the Committee at a public hearing, please contact the Committee to request this.

In general, all submissions and transcripts of evidence given at public hearings are public documents. This means that the evidence may be published on the Committee’s website and quoted in the Committee’s report to the Parliament. However, in special circumstances, a committee may decide to hear evidence in private (in camera). If you wish to present all or part of your evidence confidentially, you must ask the Committee in advance.

Support services will be made available to individuals and their families at all public hearings.

More information about public hearings is available on the Parliament’s website:


7. HELPLINE

With the support of the Victorian Government, a helpline has been established to provide assistance to the public for stage 2 of the Inquiry.

The helpline is available from 8.00 am to 11.00 pm, 7 days a week. The helpline can also provide you with assistance to make a submission to the Inquiry, and for witnesses who are appearing at public hearings.

To contact the helpline, freecall 1800 819 817, or text 0427 767 891.

The helpline can also be contacted as follows:

The National Relay Service – TTY users 1800 555 677
Speak and Listen users 1800 555 727
Internet relay users: relayservice.gov.au

8. DEFINITIONS AND TERMINOLOGY

The Committee acknowledges that there are terms and definitions relating to the Terms of Reference that require further clarification.

People with a disability

The Disability Act 2006 (Vic) (the Disability Act) defines disability as an impairment that may be sensory, physical, neurological or an acquired brain injury, which results in substantially reduced capacity in at least one of the areas of self-care, self-management, mobility or communication. The definition of disability also includes an intellectual disability or developmental delay but does not include ageing.

Disability services

In Victoria, legislation governing disability services is provided by the Disability Act.

The Department of Health and Human Services provides and funds services for people with disabilities. It also funds a range of specialist disability supports that are available to people with a disability and their families, to help the person with a disability participate actively in the community and reach their full potential.

The support provided by disability services fall into two categories:

- short-term supports—such as respite services, behaviour supports, case management and therapy
- ongoing supports—such as Individual Support Packages and supported accommodation

Individuals can request disability support if they have a disability and:
Appendix 5 Submission Guide (Stage 2)

- Disability impacts on their mobility, communication, self-care or self-management
- Support request meets specific requirements related to the service they are seeking.

The Disability Act says a person with a disability, or a person on their behalf, may request services from a disability service provider. This may be the Department of Health and Human Services or another disability service provider.

The Commonwealth also provides funding for some disability support services, including Disability Employment Services and Australian Disability Enterprises.

Abuse of people with disability

In the context of abuse of people with disability, abuse can include:
- Physical, emotional abuse and/or neglect
- Financial abuse
- Sexual abuse offences, such as rape or indecent assault under the维多利亚州性犯罪法案 1958
- An incident that has resulted in a serious outcome, such as a client death or severe trauma
- Forced treatments and interventions
- Violations of privacy and willful deprivation.

9. Questions for Stage 2 of the Inquiry

In its Interim report for stage 1, the Committee made a number of recommendations to inform Victoria’s position on quality measures and safeguards for the introduction of the NDIS. In stage 2, the Committee will examine more closely the experience of individuals in reporting abuse. The Committee will also consider interim arrangements to improve the prevention and reporting of abuse in Victoria prior to the state’s transition to the NDIS.

In the Interim report the Committee proposed a range of questions to guide its investigations during stage 2 of the Inquiry. Individuals and organisations preparing a submission for stage 2 may wish to consider the Committee’s questions. However, submissions do not need to provide responses to all the questions in the Interim Report.

Experience of disclosing or reporting abuse reporting abuse

- What experiences have people with disability, families and carers had when disclosing or reporting abuse?
- What systems and processes do disability service providers have in place to prevent abuse occurring in their organisation or to respond to any allegations of abuse or neglect of people accessing their disability services?

Human rights and safeguards

- How can the rights provided under the Charter of Human Rights in Victoria be maintained for people accessing disability services in the transition to the NDIS once it has been fully rolled out?

Independent oversight body

- During the interim period of transition to the NDIS from 2018 to 2020, should the Victorian Government:
  - Create a new body under new legislation?
  - Allocate the responsibilities to a single existing body?
  - Improve the integration of existing bodies to fill the gaps and address overlaps on the boundaries?

If the current safeguarding responsibilities were allocated to a single existing body, should this body be:

- Disability Services Commissioner?
- Victorian Equal Opportunity and Human Rights Commissioner?
- Victorian Ombudsman?
- Another existing body?

Should the state maintain responsibility for some elements of the safeguarding system during and after the transition to the NDIS?

- If a single oversight body was established in Victoria what governance, accountability and oversight arrangements would need to be established to ensure it is accountable in safeguarding people who access disability services?
Disability advocacy services

What would be the most appropriate approach to the administration of funding disability and advocacy services, bearing in mind there are both state and federal funding streams?

Should an existing or new body have responsibility for this role?

In undertaking a comprehensive assessment of advocacy needs, what components of the advocacy system need to be evaluated or reviewed?

Prevention, screening and accreditation

Should the Victorian Government develop a statewide prevention and risk management strategy for the Victorian disability workforce from 2016 to 2019?

If so, what specific components would comprise such a strategy?

In Victoria, what would be the most preferable screening system to establish:

- a legislated disability worker exclusion scheme?
- a legislated working with vulnerable persons check?
- a combined version of an exclusion scheme and a working with vulnerable persons check?

Should a disability worker registration scheme be established, similar to the Australian Health Practitioner Regulation Agency (AHPRA)?

- If so, should this be a national or state agency?

Should an independent body be established to oversee service standards, accreditation and registration?

- If so, should this be a national or state agency?

Professional development

Should minimum qualifications be introduced for all disability workers?

- If so, what should be the minimum qualification?
- Should this be a state or national requirement?

Should there be compulsory requirements for professional development for disability workers?

- If so, what core components of ongoing professional development would be required?

Workforce culture

What does the Victorian Government need to do to support a disability workforce culture that does not tolerate abuse, neglect or exploitation?

What do Victorian disability service providers need to do to promote and achieve a workforce culture that does not tolerate abuse, neglect or exploitation?

Complaints handling

If the Victorian Government introduces an independent oversight body, should it have responsibility for handling general complaints about disability service providers, as the Disability Services Commissioner currently does?

If there is a new independent oversight body with responsibility for complaints handling and responding to serious incidents, should it have the power to conduct own-motion investigations?

- Should these powers relate to both complaints and the investigation of allegations of abuse and neglect?

Guidelines for responding to abuse

If an independent oversight body is established in Victoria, should that body have responsibility for developing a standard set of guidelines for responding to allegations of abuse and neglect in disability services?

Visiting schemes

In view of the skills necessary in identifying and responding to abuse and neglect, should consideration be given to paid inspectors or paid official visitors in Victoria?
If a paid inspector or paid official visitor role is introduced in Victoria, should they be located with an independent oversight body or other entity?

In relation to visiting schemes and the existing community visitor schemes:

- Should volunteer Community Visitors continue to be part of the safeguarding framework in Victoria?
- If Community Visitors continue to be part of a safeguarding framework in Victoria, should they be located within the Office of the Public Advocate, a new independent oversight entity or another body?

**Mandatory reporting**

Should the Victorian Government introduce mandatory reporting of serious or critical incidents to a new independent, oversight body? If so:

- What individuals and organisations should be mandated to make such reports?
- What current functions of the Department of Health and Human Services regarding the management of critical incidents should be transferred to the new body? And should the Department retain any functions relating to critical incident management?

**Oversight of restrictive practices**

Should the Senior Practitioner be independent from the Department of Health and Human Services in its role in oversight of restrictive practices?

If the view is that the Senior Practitioner should be independent, what option would be most appropriate for the nature of that independence:

- a specific entity with independent statutory powers and its own offices?
- a new single independent oversight body?

Should Authorised Program Officers in disability services have minimum qualifications for making decisions in relation to emergency restrictive practices, such as restraint?

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**10. Further Information**

If you have any questions please contact the Committee Secretariat on:

- Email: fcdc@parliament.vic.gov.au
- Phone: 8662 2843
Appendix 6
Easy English guide

Keeping people with disability safe

An Easy Read guide to the Parliamentary Inquiry into abuse in disability services in Victoria
How to use this document

This information is written in an easy to read way. We use pictures to explain some ideas.

This document has been written by the Parliament of Victoria's Family and Community Development Committee, or the Committee. When you see the word 'we', it means the Committee.

Some words are written in bold. We explain what these words mean. There is a list of these words on page 16.

This Easy Read document is a summary of another document.

You can find the other document on www.parliament.vic.gov.au/fcdcc/article/1853

You can ask for help to read this document. A friend, family member or support person may be able to help you.
What's in this document?

- What is abuse? 4
- What we want to achieve 6
- What we want to do 7
- The laws that apply 12
- What we will do next 13
- Word list 16
What is abuse?

This document is about abuse in disability services in Victoria.

Abuse is an act that hurts another person.

It may happen once, or it may happen again and again.

It can happen over weeks, months or years.

There are different types of abuse.

Abuse can be physical.

Like if someone:

- hits you
- kicks you.
Appendix 6 Easy English guide

Abuse can be financial.

Like if someone:
- stops you from using your money or things
- won’t let you decide how to use your own money.

Abuse can be emotional.

Like if someone says something that:
- hurts your feelings
- makes you feel bad.

Abuse can be sexual.

This is when someone does something to you in a sexual way that is not ok — especially if you don’t want them to do this, or if you are young.

Abuse can also be when someone deliberately tries to scare you.

This is called psychological abuse.

All of these things are wrong.
What we want to achieve

We want people to be safe when they use a disability service.

We want to make sure people tell someone if they are being abused at a disability service.

We want to know:

- Why, in some cases, people don’t tell someone when they are being abused.

- Why, in a lot of cases, nothing is done about a person being abused.

- How we can stop people being abused.
What we want to do

This **inquiry** will look into abuse in disability services in Victoria.

An inquiry is when the government looks into a problem or issue.

1 > 2

We will do this in 2 stages.

Stage 1

Stage 1 is finished.

In Stage 1 we looked at how we can make sure disability services are doing the right thing in Victoria.

We looked at the things the government and services do well.

And we looked at the things they could do better.
We looked at how staff in disability services:

- get their jobs
- are checked to make sure it is safe for them to work with people with disability
- are trained
- are managed.

We also looked at:

- what organisations need to do to become a disability service
- what happens when someone makes a complaint
- how the rights of people with disability are being protected.
We also looked at what is being done to make services better under the National Disability Insurance Scheme.

This is usually called the NDIS.

The NDIS is a new way of providing care and support for people with disability.

In the future, the NDIS will be responsible for making sure that people who use disability services:

- receive good services
- feel safe.

And we told Parliament what we found out.

Our report about Stage 1 is on our website at www.parliament.vic.gov.au/fcdc/article/1851
Stage 2

In Stage 2 we want to hear from people with disability.

We want to know what is being done to help people with disability and their families to:

- know when something is wrong
- tell someone when a person is being abused.

We want to look at what is being done to make it easier for services to:

- stop people being abused
- tell someone if a person is being abused
- do something about a person being abused.

We want to find out how to stop people being abused in disability services.
We want to know the best ways for the government and service providers to:

- find out quickly if someone is being abused
- stop people being abused
- look after people’s different needs.

There are organisations whose job is to find out and stop abuse in disability services. We want to find out more about what they do and how they can be improved, or if we need a new organisation for people to complain to.

And we want to know how all of these things will work once the NDIS has started.
The laws that apply

We will look at these things according to the laws in Victoria.

The law that applies is the *Disability Act 2006*. 
What we will do next

2. We will ask people what they think about Stage 2.

We will ask people to write to us.

We will hold public meetings.

You will find information about how to tell us what you think at


1 March 2016

We will give the Parliament our final report on 1 March 2016.
The government will then let us know what they think.

You will be able to read the report and what the government thinks at

How you can be involved

You can share your thoughts by writing to us.
You can talk to us about meeting the Committee.

For more information contact:

(03) 8682 2843

fcdc@parliament.vic.gov.au

The Executive Officer
Family and Community Development Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002


If you need help writing your thoughts you can also call The Helpline.

Phone: 1800 819 817
TTY: 1800 555 677
Speak and Listen: 1800 555 727

Internet relay: relayservice.gov.au

Text: 0427 767 891
Word list

Abuse
An act that hurts another person.

Inquiry
When the government looks into a problem or issue. This helps us find a way to make things better.

NDIS
The NDIS is a new way of providing support to people with disability in Australia.

Rights
Having rights means you can expect to be treated fairly.

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Appendix 7
Victorian Ombudsman’s recommendations

Recommendations from the Victorian Ombudsman’s Phase 2 report

Mandatory reporting

To the government:

Recommendation 3

As part of the reforms being undertaken to implement a single independent oversight body (whichever option is chosen):

1. introduce a mandatory reporting requirement to that body of all serious incidents relating to people with disability by all service providers, regardless of the regulatory regime under which they fall
2. consider the benefit of extending mandatory reporting by third parties along the child protection models in Victoria and NSW.

The department’s incident reporting system

To the department:

Recommendation 4

Amend the Critical client incident management instruction (CCIMI) to ensure client wellbeing is the primary purpose of incident reporting and management.

Response from the Department of Health and Human Services:

Accepted.

Recommendation 5

Ensure the new incident report form and system:

- is person-centred

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Excerpted from Victorian Ombudsman, Reporting and investigation of allegations of abuse in the disability sector: Phase 2 – incident reporting, Victorian Ombudsman, Melbourne, 2015, pp. 142-146.
records accountability for, and completion of, follow-up actions; the outcome of the response to the incident; and feedback to service providers on incident reporting and management.

Response from the Department of Health and Human Services:

Accepted.

Reporting of abuse: whistleblowers

To the government:

Recommendation 6

Ensure that all workers across the disability sector are covered by protected disclosure legislation in order to support a culture of reporting.

To the department:

Recommendation 7

Examine opportunities to achieve cultural change in the reporting of abuse, including through:

- introducing mandatory training for disability workers in DAS and CSO, with a focus on incident reporting, identifying abuse and respect for human rights
- developing guidance to service providers on learning from incidents, including timely debriefing with staff involved.

Response from the Department of Health and Human Services:

Accepted.

Systemic gaps: investigation and review

To the department:

Recommendation 8

Develop an investigation framework and guidance for investigation of incidents in DAS, CSO and SRS, including the purpose of investigations, accountability for determining when an investigation will be initiated, minimum standards for conducting investigations and action expected upon conclusion.

Response from the Department of Health and Human Services:

Accepted.
Recommendation 9

Develop guidance on reviews, including when, how and what type of incident requires review, and extend the application as appropriate to client-to-client assault, dangerous behaviour, self-harm and suicide.

Response from the Department of Health and Human Services:

Accepted.

Recommendation 10

Perform an active role in supporting service providers to investigate incidents. This should include, upon receipt of an incident report requiring investigation: examining the service provider’s capacity to effectively investigate the allegation; providing advice throughout the investigation; recommending the engagement of an external investigator where appropriate; assisting the provider to build its capacity to conduct investigations; and examining the outcome of investigations.

Response from the Department of Health and Human Services:

Accepted.

Systemic gaps: SRS

To the department:

Recommendation 11

Subject incidents in SRS to the same level of scrutiny as those in DAS and CSO to ensure consistent protections for people with disability across the sector, including by:

- requiring SRS to complete the departmental incident report form for prescribed reportable incidents
- requiring SRS to provide the form to the authorised officer
- using the department’s enforcement powers where breaches are identified
- extending the department’s review mechanisms to incidents in SRS.

Response from the Department of Health and Human Services:

Accepted.
**Systemic gaps: TAC**

To the department and the TAC:

**Recommendation 12**

Implement an information-sharing protocol and extend this to incidents in SRS.

*Response from the Department of Health and Human Services:*

Accepted in principle.

*Response from the TAC:*

Accepted.

To the TAC:

**Recommendation 13**

Provide for access by Community Visitors to TAC registered providers.

*In response to my recommendation, the TAC stated:*

The TAC would welcome inspections by Community Visitors at all accommodation facilities housing TAC clients and operated by TAC-registered service providers, and may be able to facilitate access through provisions in its service provider registration requirements.